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The language of Italian Arbitration Rules in English: Some measurable aspects

Questo articolo esamina alcune caratteristiche sintattiche dei regolamenti delle Camere Arbitrali di Milano e di Bergamo e delle Corte Arbitrale Nazionale ed Internazionale di Venezia, redatti in lingua inglese quale supporto alle imprese per la risoluzione delle controversie in materia di commercio internazionale. L'intento è di confrontare le caratteristiche sintattiche di questi regolamenti arbitrali con quelle del linguaggio giuridico inglese mettendo in rilievo divergenze e convergenze. I dati ricavati da questa prima analisi sono poi utilizzati per verificare se e in quale misura il linguaggio di questi regolamenti arbitrali sia diverso da quello utilizzato nella redazione del regolamento arbitrale proposto dalle Nazioni Unite (UNCITRAL 1998).

The adoption by the Italian Parliament, on January 5, 1994, of specific legislation[1] on international arbitration marked a new approach to commercial arbitration. Several Italian Chambers of Commerce have since set up special agencies, known as Arbitration Chambers, whose rules cater for the needs of local businesses involved in international trade. As the contract is the most popular means of doing business in international settings, some of the clauses may be interpreted in different ways or unexpected variations in market conditions may lead to a possible failure to fulfil promises which were part of the contract itself. In the past, breaches of contract were within the jurisdiction of Tribunals, which meant a long time lapse before any decision could be made, as well as high costs. This is particularly true in Italy where the Court system finds it more and more difficult to cope with the amount of cases, not to mention new laws, which results in long delays.

This is why more and more business people have been requesting procedures which are fair, expeditious, economical and less burdensome than

[1] Law no. 25 of Jan 5, 1994, *Gazzetta Ufficiale della Repubblica Italiana* 4, Jan 17, 1994. It is an amendment to a general arbitration law, but with a separate charter dealing with international arbitration.

litigation. To meet these needs, a number of Chambers of Commerce have created special agencies called Arbitration Chambers in order "to provide for the national and the international commercial community a system for the resolution of disputes, neutral, confidential and flexible and in which the parties may be assured of the competence of arbitrators and of efficient administration to obtain rapid awards at a reasonable cost" (Chamber of National and International Arbitration of Milan, Presentation).

The primary objectives of arbitration, as indicated by the Milan Arbitration Chamber, are the same as those set down in the statutes enacted by other Arbitration Chambers, which emphasize their aim "to avoid and to contain delays and, above all, to contain the expenses for proceedings, by keeping registration, administrative and arbitrators' fees low" (The Venice Court of National and International Arbitration-Presentation). They all seem to highlight the main advantages of arbitration which, compared to litigation, may be listed as follows:

a) Privacy
b) Arbitrator/Tribunal of the parties' choice
c) Informality of proceedings
d) Speed and efficiency
e) Lower costs
f) Finality of the award.

This paper analyses the arbitration rules in English enacted by The Chamber of National and International Arbitration of Milan (CONAIAM), The Arbitration Chamber of Bergamo (ACOB), and The Venice Court of National and International Arbitration (VENCA). The aim of this study is to investigate the main characteristics of the language of arbitration and highlight in what aspects it is different from the language of legislative texts. The data will be compared to those referring to the UNCITRAL Arbitration Rules (UAR), approved by the United Nations General Assembly (Resolution 31/98)[2].

[2] The texts taken into consideration are the following: The Arbitration Chamber of Bergamo Statute and International Arbitration Rules, 1997 (ACOB), available at *http://www.bg.camcom.it/camera_arbitrale;* The Chamber of National and International Arbitration of Milan International Arbitration Rules, 1996 (CONAIAM), *http://www.mi.camcom.it/eng/arbitration.chamber/ reging.htm*; The Venice Court of National and International Arbitration Rules of Arbitration, 1998 (VENCA), *http://venca.it/rules.htm*; The UNCITRAL Arbitration Rules, 1998 (UAR), *http://www.uncitral.org/english/text/arbconc/arbitrul.htm*.

1. *Syntactic properties of the language of Arbitration Rules*

1.1. *Sentence length*

Sentence length has been considered an important indicator of the difficulty of a text and, at the same time, one of the main characteristics of legal language, in which long sentences have mainly been the rule and very rarely the exception. Gustafsson (1975:12) suggests that the reasons date back to the original form of the plea, which was considered a sort of model and therefore copied by generations of lawyers. However, during the past thirty years, legal language has been characterised by a noticeable decrease in the average number of words contained in each sentence. Kurzon (1997: 131-132) states that the average number of words per sentence started decreasing from 92.50 in 1970 to 45.06 in 1980, down to 37.06 in 1990. Table 1 shows the number of sentences, words and the average number of words per sentence in the corpus. As can be seen, the trend towards a decrease in the number of words per sentence seems to be confirmed as the average in UAR, CONAIAM, ACOB and VENCA is 34.50, 32.15, 35.75 and 35.39 respectively.

TABLE 1. *Number of sentences, words and average number of words per sentence.*

	Sentences	Words	Average
UNCITRAL Arbitration Rules (UAR)	168	5796	34.50
The Chamber of National and International Arbitration of Milan (CONAIAM)	181	5820	32.15
The Arbitration Chamber of Bergamo (ACOB)	236	8439	35.75
The Venice Court of National and International Arbitration (VENCA)	126	4460	35.39
Total	**711**	**24515**	**34.44**

The data also reveals that the average number of words of the corpus (34.44) is considerably lower both than that of Gustafsson's material (1975:10), which showed a median of 48.05 words per sentence, and the data in Hiltunen's research (2001: 56) which shows a median of 45.04

words per sentence. Some sentences show the traditional length of legal language; for example, the longest sentence in the corpus, ACOB, (Section 8 -Attributed powers of the Arbitration Panel), contains 196 words. In UAR, clause 3 of Article 6, which contains a number of detailed provisions on the appointment of arbitrators, is composed of a single sentence of 181 words. Long sentences are also present in CONAIAM's Art.2 with 162 words and VENCA's Art.6 with 103 words (cf. Appendix). In general, however, sentences are short. Indeed, as can be seen in Table 2, which shows the distribution of sentence length in the data, the frequency of sentences containing a maximum of 30 words constitute 57% of the whole corpus. If we compare these figures with those contained in previous studies, we find that the number of short sentences, i.e those composed of up to 30 words, have greatly increased from 17% in Gustafsson's (1975: 10) and 36% in Hiltunen's (2001: 57) up to 57% in the present material.

TABLE 2. *Distribution of sentence length in the corpus.*

Length In words	**Frequency**			
	UAR	CONAIAM	ACOB	VENCA
1-5		1		
6-10	2	11	7	7
11-15	16	23	15	9
16-20	34	22	42	23
21-25	20	42	39	19
26-30	14	20	31	11
31-35	15	18	31	14
36-40	24	16	18	7
41-45	8	7	9	14
46-50	13	3	10	7
51-55	7	5	8	2
56-60	4		4	1
61-65	1	7	3	3
66-70	3	1	3	1
71-75	1		3	1

76-80			1	
81-85	1	2	3	
86-90	1		1	1
91-95			2	
96-100	1		1	
101-105		1		2
106-110				
111-115	1		1	1
116-120				
121-125		1		1
126-130			2	
131-135				
136-140				
141-145	1			1
146-150				
151-155				
156-160				
161-165		1		
166-170				
171-175				
176-180				
181-185	1			
186-190			1	
191-195				
196-200			1	

1.2. *Sentence types*

In our corpus the number of main clauses (830) exceeds that of dependent ones (551); the percentage of the latter ranges from 51.8% in UAR up to a remarkable 69.4% in ACOB. The high number of subordinate clauses underlines the complexity of the language of arbitration rules, particularly in CONAIAM, ACOB and VENCA. As far as sen-

tence types are concerned, the differences between UAR and CONAIAM, ACOB,VENCA are noteworthy (cf. Table 3).

TABLE 3. *Distribution of sentence types.*

	UAR	CONAIAM	ACOB	VENCA
Simple	37.50%	41.25%	50.20%	43.62%
Compound	3.57%	5.63%	9.88%	4.03%
Complex	50.00%	48.75%	34.39%	43.62%
Complex-compound	8.93%	4.38%	5.53%	8.72%

Simple sentences show a percentage of 37.50 in UAR, while the aggregated data from CONAIAM, ACOB and VENCA show a percentage of 45.02, with a peak of 50.20 in ACOB data. Compound sentences are rare in all data even though in CONAIAM, ACOB and VENCA there are nearly twice as many as in UAR, with a peak of 9.88 in ACOB. On the other hand, complex sentences are the most common sentence types in UAR, CONAIAM and VENCA data, with the exception of ACOB, in which complex sentences are fewer than simple sentences. Complex-compound sentences comprise 8.93% of all sentences in UAR and 6,21% of the aggregated data from CONAIAM, ACOB and VENCA with a peak of 8,72% in VENCA. The figures in Table 3 show that the syntax of the language of statutes is still quite elaborate; indeed, simple sentences are fewer than complex ones in most of the documents examined. It is interesting to note, however, that this picture is gradually changing, as the high number of simple sentences in ACOB shows.

1.3. *Clause types*

Discussing the syntax of legal language, Crystal and Davy observe that: “It is a characteristic legal habit to conflate, by means of an array of subordinating devices, sections of language which would elsewhere be much more likely to appear as separate sentences” (1969: 201). It has also been argued that the high frequency of various kinds of dependent clauses constitutes the syntactic device which serves the purpose of precision and all-inclusiveness in legal texts. In order to investigate the na-

ture of syntactic properties of the present material, we have followed Gustafsson's analysis of clausal structures. The total number of finite clauses in UAR is 369, consisting of 191 main and 178 subordinate clauses. As UAR contains 168 sentences, that makes an average of 2.19 clauses per sentence, it is interesting to note that the total number of main clauses exceeds the number of subordinate ones.

In CONAIAM, the total number of finite clauses is 352, of which 203 are main and 149 subordinate clauses; as the number of sentences is 181, the average of clauses per sentence is 1.94. The total number of finite clauses in ACOB is 412, consisting of 280 main and 132 subordinate clauses; as there are 236 sentences in all, that makes an average of 1.74 clauses per sentence. This section of the corpus also shows that the number of main clauses is more than double that of the subordinate ones. In VENCA, the total number of finite clauses is 250, of which 144 main clauses and 106 subordinate; as VENCA contains 126 sentences, that makes an average of 1.98 clause per sentence; once again, the number of main clauses exceeds the number of subordinate ones. If the data from UAR, CONAIAM, ACOB and VENCA are aggregated, the average number of clauses per sentence is 1.96 in the whole corpus. This clearly confirms the ongoing decrease noted in Gustafsson's (2.86) and in Hiltunen's data (2.52). Moreover, CONAIAM, ACOB and VENCA (aggregated data) contain an average number of clauses per sentence (1.87) which is lower than UAR (2.19). This may indicate a growing trend towards simpler language structure in the Italian texts compared to that of the UNCITRAL.

Another factor which deserves attention is the type of subordinate clauses present in the corpus. We have followed Gustafsson's model (1975: 16-17) in order to make a comparison between the present data and hers. The frequencies of the four major classes are given in Table 4.

TABLE 4. *Frequencies of adverbial clauses.*

	UAR	CONAIAM	ACOB	VENCA
That clause	7.4%	18.8%	7.4%	6.9%
Adverbial clause	67.7%	54.6%	52.6%	74.3%
Comparative clause	0.5%	7.8%	3.6%	0.9%
Relative clause	24.4%	18.8%	36.4%	17.9%

The table shows that adverbial clauses make up more than half of the instances in all arbitration rules while in Gustafsson's material they covered only 31% of all instances. These adverbial clauses belong mainly to conditional constructions (*if…; where…; should…)* which are placed at the beginning of the sentence in order to set down the conditions under which the rule, specified in the main clause, will be applied. The high frequency of adverbial clauses is due to the fact that "they provide a highly versatile way of expressing a variety of functions that are essential for the law, such as conditions, purposes, reasons and consequences" (Hiltunen 2001: 61). As far as relative clauses are concerned, the data in the present material show that their occurrence is lower than in Gustafsson's and the explanation may be found in the more marked shift towards simple sentences, as shown above.

2. *Lexico-grammatical resources*

2.1. *Binomials and multinomials*

As pointed out by Mellinkoff (1963: 349), binomials are one of the most distinctive features of legal writing. Crystal and Davy (1969: 208) date the use of binomials back to the time when draftsmen, uncertain whether to use a native English term or a French borrowing for the same referent, decided to use both. Binomials and multinomials are also present in our corpus and they show a variety of patterns as, for example, in UAR:

> (1) For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a *notice*, *notification*, *communication* or *proposal* is received. If the last day of such period is an *official holiday* or *a non-business day* at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period. (UAR, Art. 2.2)

The multinomial *notice, notification, communication* or *proposal* shows a pattern in which the first three words are synonyms and the

fourth has been added to integrate the meanings of the first three. In the same article, the binomial *official holiday* and *non-business day* seems to belong to those binomials which should be regarded as worthless doublings (Mellinkoff 1963: 349). In fact, the two expressions are not redundant, as *holiday* is used to mean a day, fixed by law, on which people do not have to go to work or school while a *non-business day* denotes a period of time when people do not work, which can be decided autonomously by the firms or individuals themselves (e.g. summer holidays). A similar pattern can be seen in UAR, where the binomial *amend* and *supplement* are not synonyms but serve a complementary function because the changes or improvements made to a law (*amend)*, may be integrated with further additions to make it more complete *(supplement)*.

> (2) During the course of the arbitral proceedings either party may *amend* or *supplement* his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement. (UAR, Art. 20)

In general, legal binomials are mainly nouns, with few exceptions for adjectives, verbs and adverbs (Gustafsson 1984: 132); the present corpus reveals that the same applies to the language of arbitration, with an interesting example of an unusual phrase-binomial in UAR:

> (3) The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration. (Art. 33.2)

The phrase-binomial in (3) is composed of two legal formulas in two different languages, namely French in *amiable compositeur* and Latin in *ex aequo et bono*, both of which mean the same thing, since a case to be decided as *amiable compositeur* or *ex aequo et bono* overrides the strict rule of law and requires a decision based on what is fair and just in

those particular circumstances. In ACOB, there are two instances of binomials belonging to two different types.

> (4) In order to ensure his impartiality, the arbitrator *must be and must remain* independent throughout the entire course of the arbitration proceedings, safeguarding his role from any *direct or indirect* external pressure. (ACOB-Rules regulating the behaviour of Arbitrators, Art. 4

In the first instance, the binomial *must be and must remain* looks like a reminiscence of the past, as it was used in contracts in the sixteenth century (Mellinkoff 1963: 213). In our corpus, this binomial looks quite formulaic and its inclusion may have been decided on in order to stress the initial condition *(must be)* of independency which is to be perpetuated *(must remain)* during the course of the arbitral procedure. The second example of binomial, *direct or indirect*, follows a pattern (adjective + adjective) which is quite common in legal language. In this case the second adjective (*indirect*) tends to complete the meaning delivered by the first (*direct*), thus making the phrase *external pressure* as all-inclusive as possible. In different circumstances, binomials seem to have the function of emphasizing what is already clear and unambiguous as in the case of *null and void* in UAR:

> (5) A decision by the arbitral tribunal that the contract is *null and void* shall not entail *ipso jure* the invalidity of the arbitration clause. (uar. Art. 21.2)

The adjective *void* does not serve the function of making the meaning of *null* clearer or more comprehensive as "*null and void* together mean the same as either of the words separately." (Mellinkoff 1963: 359)

2.2. *Complex prepositional phrases (CPP)*

In legal texts the use of complex prepositional phrases (P-N-P), instead of simple prepositions, serves the function of avoiding ambiguity (Bhatia 1994b: 107). Table 5 shows the distribution of the most frequent complex prepositional phrases in the corpus, which contains a total of 155 instances.

TABLE 5. *Type and number of occurrences of complex prepositional phrases.*

	UAR	CONAIAM	ACOB	VENCA
In accordance with	5		7	3
In compliance with		4	3	3
In case of	1	7	7	3
In the event of	3		17	1
In respect of	2		6	
In the absence of	1	3	5	3
In the presence of		1	2	
On the basis of		2	9	
At the request of	3	3		
On/upon the request of			3	1
In connection with	1			2
In relation to	2			
For the purposes of	2			
In addition to	2			
During the course of	2			
In view of			2	

UAR, CONAIAM and VENCA include similar percentages (22%) of complex prepositional phrases while in ACOB there are 67 instances, a conspicuous 43% of all those in the corpus. If we consider the types of CPP in ACOB, we find that the most common are *in the event of* (17 times) and *on the basis of* (9 times), the former used as an alternative to conditional clauses having the structure *should + subject + be + past participle*, as in 'should objections be raised', and the latter as a more formal way of expressing 'using'. The use of CPP may be considered an indicator of how those drafting arbitration rules have opted for their use instead of employing simple prepositions, in order to make arbitration rules more similar to legal provisions and thus confer generic integrity to them.

2.3. *Passive forms*

Passive forms are very frequent in legal documents and they have become one of the most distinctive features of legal English. The use of the passive voice in legal drafting has been discussed both in terms of 'thematic topicalization' (Bowers 1989: 284), to emphasize whatever draftsmen want to explain or define, and in terms of a useful device to de-emphasize the performer of the action, giving the greatest possible rhetorical force to the statements contained in laws and statutes (Tiersma 1999: 76). In the present material, a great variety of passive tenses has been found; the distribution of passive forms (Table 6) shows that those drafting UAR and CONAIAM rules have used mainly the *shall be + passive infinitive* forms while ACOB and VENCA draftsmen have employed the simple present[3].

TABLE 6. *Types and occurrences of passive forms.*

	UAR	CONAIAM	ACOB	VENCA
Simple present	26	23	48	72
Present perfect	9	15	8	6
Simple past	6	1	1	
Future (will be + past participle)			2	
Infinitive	16	9	33	12
Shall be + past participle	42	44	9	5
Should be + past participle	1		20	2
Can be + past participle	3		4	
Could be + past participle		2		
May be + past participle	9	10	10	6
Must be + past participle			12	

The comparison of the passive forms used in UAR and CONAIAM also reveals that CONAIAM Arbitration Rules seem to be modelled on

[3] The interchangeability of SHALL forms and the present indicative in legal texts has been discussed by Garzone (2001: 153-173).

UAR not only for the organisation of the content but also for the verb forms employed. Furthermore, UAR seems to be the statute where passive forms have been used as a distinctive characteristic of this type of language. The following example illustrates the point:

(6) For the purposes of these Rules, any notice, including a notification, communication or proposal**, is deemed to have been received** if it **is** physically **delivered** to the addressee or if it **is delivered** at his habitual residence, place of business or mailing address, or, if none of these **can be found** after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice **shall be deemed to have been received** on the day it **is** so **delivered**. (UAR, Art. 2.1)

2.4. *Nominalization*

In legal language nominalization is considered an effective device which can be used in order to de-emphasize or obscure the performer of the action and make provisions apply as broadly as possible (Tiersma 1999: 77). Another reason for nominalization in legal texts is that draftsmen, by using nominal elements, can insert as many details as are required in a single sentence, thus making it all-inclusive (Gustafsson 1975:23; Bhatia 1993:148). In the present material, nominalization seems to have been used quite extensively and the following examples illustrate this point.

(7) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing. (UAR, Art. 1.1)

(8) Sole Arbitrator Unless otherwise agreed, the sole arbitrator shall be appointed by the Arbitral Council. Where the parties have provided for the common designation of the sole arbitrator, such designation shall be made within fifteen days of the filing of the Statement of Defence by defendant. If the parties cannot reach an agreement, the arbitrator shall be appointed by the Council. (CONAIAM, Art. 5.2)

(9) The rejection must be explained and submitted **by** direct appeal **to**

> the Arbitration Board; it must be filed **with** the Secretary's Office no later than 10 days **from** notification **of** the acceptance **of** the appointment and **from** the declaration **of** independence or **from** the time the reason **for** rejection is first known, otherwise the rejection will be rendered ineffective. (ACOB, Section 8.2)

Examples (7) and (8), largely representative of the whole corpus, show that nominalization is used in a way that does not hinder comprehension: the sentences are quite short and pre-/post-modifying constructions are absent. Example (9), on the other hand, reveals that, when nominalization is used, one of the ways to indicate the internal relations of several nominal forms is by using a conspicuous set of prepositions. The result is a sentence containing a large number of nominalized verb forms and prepositions. Although this may appear somewhat inelegant from a stylistic point of view, it serves the function of conveying the right amount of information.

2.5. *Qualifications*

Qualifications are considered the most important element of legislative provisions because they can be applied to specific conditions; it is apparent that if the conditions are well detailed, the provisions will be better applied. Qualifications may be of three different types (Bhatia 1993: 114): preparatory qualifications, which give the description of the case, operational qualifications, in which information about the execution or operation can be found, and referential qualifications that serve the purpose of revealing the inter-textual nature of the legislative provisions. The two examples below will show how qualificational insertions are used in our corpus. In UAR, the main provisionary clause (in bold type), is applied under the conditions specified in a preparatory qualification (in normal type), and better specified in the operational clause (in italics):

> (10) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under UNCITRAL Arbitration Rules, **then such disputes shall be settled in accordance with these Rules** *subject to such modifications as the parties may agree in writing.* (UAR, Art. 1.1)

In the example below, the preparatory clause (in italics), states the conditions under which the parties may apply to the Arbitration Chamber of Milan, according to the rules contained in the provisionary clause (in bold type).

> (11) *Where there is no arbitration agreement or the arbitration agreement does not contain at least one of the indications under paragraph 1 of this article,* **the party wishing nonetheless to commence arbitration according to the Rules of the Chamber of Arbitration of Milan may request to do so by filing a Request for Arbitration with the Chamber of Arbitration according to Art. 2 of these Rules.** *(CONAIAM, Art. 1.3)*

2.6. *Syntactic discontinuities*

One of the features of legal language is to place dependent clauses next to the words they modify in a position not common in normal language (Tiersma 1999: 57). The insertions can occur in different ways and have been classified according either to their position, for example immediately after the subject and between the auxiliary and the main verb (Gustafsson 1975: 20), or to their syntactic characteristics (Bhatia 1994a: 147).

Discontinuities, though not very frequent, are used in these texts in a way which looks similar to other legal texts, as in the example that follows.

> (12) The arbitral tribunal may, *if it considers it appropriate*, require a party to deliver to the tribunal and to the other party, *within such a period of time as the arbitral tribunal shall decide*, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence. (UAR, Art. 24.2)

The article, which is made up of a single sentence, contains an example of syntactic discontinuity since the qualification *if it considers it appropriate* has been inserted between the modal *may* and the main verb *require*. In the same way, the clause *within such a period of time as the arbitral tribunal shall decide*, has been placed between the indirect object and the direct object with the clear intention of indicat-

ing that the time limit is to be decided by the arbitral tribunal. In the article below, the qualification *if the disclosure takes place during the arbitration, or to the other Party alone, if the disclosure takes place after the termination of the arbitration* has been inserted between the nominalized form *by furnishing* and the direct object *details of the disclosure and an explanation of the reason for it*. The purpose of the insertion is to determine what steps may be taken in two different circumstances: during the arbitration and when the arbitration has come to an end.

> (13) Except to the extent necessary in connection with a court challenge to the arbitration or an action for the enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a Party to a third party unless it is required to do so by law or by a competent regulatory body, and then only:
>
> (i) by disclosing no more than legally required, and
>
> (ii) by furnishing to the Tribunal and to the other Party, *if the disclosure takes place during the arbitration, or to the other Party alone, if the disclosure takes place after the termination of the arbitration*, details of the disclosure and an explanation of the reason for it. (VENCA, Art.36.1)

2.7. *Textual-mapping*

Referential devices are used in legislative writing primarily to signal textual relations between parts of the same set of provisions (internal relations) or between parts of the considered set of provisions and the existing jurisdiction (external relations). Bhatia (1987: 2) calls them 'textual-mapping devices' and considers them a useful attempt to avoid repetitions and to make legal language more comprehensible for potential readers. In our corpus there are several textual-mapping devices in the form of reduced relative clauses, complex prepositional phrases and simple prepositions. As shown in Table 7, most referential devices belong to the reduced relative clause pattern (39 occurrences) while the other two patterns seem to have been used only marginally.

TABLE 7. *Type and occurrences of referential devices.*

	UAR	CONAIAM	ACOB	VENCA
Referred to	5		6	1
Mentioned in	1	1		
Provided in	4	6		1
Indicated under		2		
Specified in			3	
Enshrined in			1	
Prescribed in			2	
Anticipated in			1	
Set forth in				2
Listed in				1
Indicated in				1
Established in				1
In accordance with	1		4	2
According to		1		
Pursuant to	1			
Under	2	2		
For the purposes of	1			
In compliance with			1	

Most of the devices in the corpus have either anaphoric or cataphoric reference; that is, they have a pure text-cohering function. Others, less frequent, apart from serving the purpose of linking parts of the same set of rules, are used to signal specific legal relationships. The following examples illustrate the point:

(14) The party may reject the arbitrator in the cases ***specified in Section 51 of the Italian Code of Civil Practice***. (ACOB, Section 8.1)

(15) During proceedings, the arbitrator may turn down the assignment for serious health or family or work-related reasons by submitting his abdication to the Arbitration Board in written form. The abdication is to be recorded by the Secretary in the Register as ***specified in Section 10.1 of these Rules.*** (ACOB, Section 8.4)

In (14) the draftsman makes reference to a specific article of the Italian Code of Civil Procedure, which becomes vitally important if the party wants to reject the arbitrator, as it lists all the cases in which an arbitrator may be rejected; in this case the referential device signals a relationship between this clause and a specific section of a code which is part of the jurisdiction (external relation). In (15) the expression *specified in Section 10.1 of these Rules* has what Bhatia (1987:3) defines as 'a text-claritive' function, which serves the purpose of indicating where specific information can be found.

As far as information mapping is concerned, we can say that all the statutes in the corpus show a good level of readability. First of all type faces, ranging from 10 points in size of ACOB and CONAIAM to 12 of VENCA and 13.5 of UAR, have been chosen in order to facilitate reading. Secondly, the main sections are divided into subsections, each marked individually, using letters, numbers or symbols. Furthermore, each section and subsection is captioned in bold type, so as to supply the reader with useful reference points. In ACOB, Section 6, which deals with the formation of a roster of arbitrators, illustrates this point.

1. As enshrined in Section 3.2 of the Statute and so as to facilitate the choice of the arbitrators, the Board of the Arbitration Chamber shall proceed with forming a roster of arbitrators with specific expertise in legal, economic and technical matters in general. The roster is to be renewed every three years.
2. If particular needs should arise, the Chamber may appoint persons with specific competences to undertake the above-mentioned tasks even though they are not listed in the Arbitrators Roster.
3. Through a final and binding resolution the same Arbitration Board may remove persons listed in the roster for reasons serious enough to result in being unfit to carry out arbitration functions.
4. The resolution of removal is adopted after having heard the interested party and is of a strictly confidential nature.
5. Enrolments may take place through decisions reached by the Arbitration Board subject to acceptance by the interested parties or on applications submitted by the latter. Applications are to be accompanied by documentation pertinent to:
   a) educational and professional qualifications;
   b) active professional experience gained in government offices or as a freelance professional;
   c) experience acquired in arbitration-related matters;

d) participating in training courses for arbitrators;
e) publications regarding legal or technical matters;
f) any other appropriate element that illustrates specific experience;
g) a declaration of acceptance of the Rules by the arbitrator and of the attached tariffs.

6. If those applying for enrolment in Roster of Arbitrators are professionals registered in professional rolls and rosters, they must have been enrolled for a minimum of three years.
7. The regulations relating to arbitrators in these rules also apply to arbitrators, specialists and mediators.

2.8. *Latin words and phrases*

Mellinkoff (1963:13) states that the frequent use of Latin words and phrases is one of the chief characteristics of legal language: the importance of Latin for legal language, both past and present, has been stressed by Crystal and Davy (1969: 209) and Tiersma (1999: 25). Crystal and Davy say that Latin words and phrases are not used as often as they were in the past but that they still play an important role as easily recognisable technical terms, shared in the community of those who work with legal terminology. Tiersma, on the other hand, highlights the use of Latin for legal canons and maxims which, repeated over and over by judges, have acquired an aura of dignity. The present material contains few instances of Latin phrases, one of which (*Ex aequo et bono*) occurs five times and in all Arbitration Rules, except in ACOB. This phrase, which means that the arbitrators or the arbitral tribunal shall decide on disputes according to the principle of equity, is used in UAR (Art. 33.2) in conjunction with *amiable compositeur*, possibly because it refers to the practice in which amicable compounders *(compositeurs)* are arbitrators "authorized to abate something of the strictness of the law in favour of natural equity"(*West's Law and Commercial Dictionary* 1985: 79). *De iure* or *de facto*, meaning something which exists by law or in fact, occurs in UAR, and together with *ipso iure*, i.e by the law itself, seem to be used in the text as formulaic references which tend to stress the importance and formality of the statements containing them. The phrase *in camera*, on the other hand, can be considered a hallmark of the whole arbitration process because it gives a clear idea of how the different phases of arbitration are conducted, that is, in private. It is also noteworthy that all Latin phrases in UAR are written in italics, probably

to emphasize the fact that they are formulas. ACOB, on the contrary, does not contain any Latin phrases and the contents that might have been turned into Latin formulas have been written in plain English. The data shows, once again, that UAR is the statute which is written in the traditional legislative style as it contains more Latin words than the others and that, at the same time, CONAIAM is the statute which follows UAR most closely.

2.9. *Archaic words*

The main aim of arbitration rules is to set standards which can be easily comprehended and shared by parties wishing to resolve disputes outside courts. Nonetheless, legal draftsmen make frequent use of archaic words mainly derived from Old and Middle English (Mellinkoff 1963: 12) which serve the purpose of making references either to other sections of the same rules or to the parties involved in the arbitration procedure. The corpus shows the presence of a number of these words which are composed of an adverbial word to which a preposition has been suffixed (Crystal and Davy 1969: 208). As Table 8 demonstrates, nearly half of all archaic words have been used in UAR, followed by CONAIAM with 9 instances, while there are no examples in ACOB and 3 only in VENCA.

TABLE 8. *Type and number of occurrences of Old and Middle English words.*

	UAR	CONAIAM	ACOB	VENCA
Forthwith		1		
Hereinafter	1			
Such (used as adjective)				
Therefore	2	2		
Therefor	2	2		
Therein		1		
Thereof	2	3		3
Thereon	2			
Thereto	2			
KTotal	11	9		3

2.10. *Words and phrases with flexible meaning*

The language of arbitration rules seems to be characterized, on the one hand, by an attempt to be as precise and all-inclusive as possible and, on the other hand, by the use of terms and phrases with vague or flexible meaning. This has been described as customary in legal language (Mellinkoff 1963: 20) in which precise and more flexible words are used according to what Crystal and Davy define as 'a studied interplay'(1969: 213). As the notions of vagueness and flexibility are different, the former containing the idea of something not clearly expressed and therefore leading to ambiguity, while the latter embodies the idea of something capable of variation or modification, we will focus our attention on those words present in the corpus which convey the idea of flexibility.

In UAR (Art. 6.3), when referring to the procedure of appointing the arbitrators, the draftsman uses the adverbial phrase *as promptly as possible* which gives the appointing authority, designated by the Permanent Court of Arbitration at The Hague, the liberty to fix the period of time in which the appointment is to be made. The rationale behind the use of such a flexible phrase is to be found in the preceding clause 2 and in the same clause, under subsection b, where fixed times are indicated. In clause 2, it is clearly stated that both parties have thirty days at their disposal to agree on the proposed names of the sole arbitrator and that, if the parties have not reached an agreement, the appointing authority has sixty days to appoint the arbitrator. It is apparent that the use of the expression *as promptly as possible* conveys the meaning that something has to be done, but without setting any binding time limit. In other words, it seems the most reasonable solution to a problem which has been solved by neither of the parties nor the appointing authority chosen by the parties themselves.

Another example of flexible meaning can be found in ACOB (Section 6, Roster of Arbitrators). This section deals with the list of prospective arbitrators; a list which should facilitate the choice of arbitrators. On certain occasions, and at the discretion of the Chamber of Arbitration, persons with *specific competences* can be appointed arbitrators, even if not listed in the Arbitration Roster. The phrase *specific competences* allows the Chamber of Arbitration to choose the people most suitable in those circumstances, among those who are supposed to pos-

sess the skills and the qualifications required for that particular task without having to define in advance what exactly is meant by *specific competences*. In the same section, when referring to persons being removed from the Roster, the draftsman indicates that the Arbitration Board 'may remove persons listed in the roster for *reasons serious enough* to result in being unfit to carry out arbitration functions'. The meaning of the phrase *serious enough* is twofold. It may mean that the prospective arbitrator has been responsible for misconduct of some sort, or that the removal has been decided on the basis of ill health. The first interpretation seems to be the one that best suits the notion 'serious reason', since in Section 6b (Characteristics of arbitrators) it is stated that to be an arbitrator, one must have a 'record of irreproachable conduct, both in civil and moral terms'. Nonetheless, the Arbitration Board seems to have complete freedom in deciding what is serious and what is not. The whole corpus presents a number of examples of words and expressions with flexible meaning and this may be due to the nature of the arbitration procedure itself. As a matter of fact, the arbitration procedure seems to leave the parties involved quite free to determine not only the procedure, but also the way of solving any problems that might prevent the procedure from functioning properly. In other words, the insertion of words and phrases with flexible meaning serves the purpose of keeping the whole arbitration structure as flexible as possible, flexibility being one of the most important features of arbitration itself.

2.11. *Anaphoric links*

Anaphoric links are used to signal the identity between what is said or written and what has been said or written before (Quirk and Greenbaum 1973: 302). Although legal language is characterized by the effort to avoid ambiguity and lack of precision, anaphoric links are considered devices which can increase the level of ambiguity because they may refer to words other than those the draftsman had in mind and therefore be discarded as useless (Crystal and Davy 1969: 202). However, in the present corpus, anaphoric links are used quite often with the purpose of avoiding repetition, as in the example below.

(16) The arbitrator $_{a}$ can always suggest to the parties $_{b}$ that they $_{b}$ reach a settlement to their $_{b}$ dispute but he $_{a}$ cannot influence their $_{b}$ deci-

> sions by hinting he $_{a}$ has already made a judgement on the outcome of the proceedings". (ACOB, Rules regulating the behaviour of arbitrators, 3)

As shown in Table 9, the types and the occurrences of anaphoric links clearly indicate that draftsmen have used them quite extensively. This use marks a clear difference between the legal language and arbitration language.

TABLE 9. *Types and number of occurrences of anaphoric links.*

	UAR	CONAIAM	ACOB	VENCA
It	33	14	26	16
Its	16	23	24	14
He	9	7	12	2
Him	3	8	5	
His	25	25	37	6
Her			1	6
She			3	2
That	6			4
Their	7	14	17	4
They	2	8	16	2
Them	6	3	12	3
These	8	15	11	8
This	8	9	12	3
Those	1	3	4	2

3. *Conclusions*

The characteristics of the language of arbitration rules place it somewhere between legal language and plain language. This is due to the fact that this language deals with rules and not with laws; general laws are enacted to regulate human behaviour covering a wide range of situa-

tions, while arbitration rules serve the purpose of making the arbitral procedure as rapid and transparent as possible. As arbitration has been conceived as an alternative way of resolving disputes, it is quite realistic that the language of arbitration itself would appear to be 'alternative' to legal language, in the sense that arbitration rules are issued differently from the traditional ways of expressing legal concepts.

From the point of view of the addressee of the rule, the language and syntax of these texts are of critical importance and arbitration rules are to be comprehensible not only to lawyers and legal practitioners but also to business people, managers, and to anyone who might be involved in an arbitration procedure. This is the reason why the number of words per sentence in our corpus is lower than that of legal language or that the percentage of main clauses is considerably higher in arbitration language than in the language of the law. Thus, arbitration language shares some features with plain English, such as the use of anaphoric links and the low level of embedding, which makes it comprehensible to arbitration non-experts or laymen. Also from the lexical point of view, arbitration language contains hardly any instances of common words with uncommon meaning and very few 'terms of art', apart from those strictly connected to arbitration.

On the other hand, this type of language retains some of the features of traditional legal language such as the use of binomials/multinomials and complex prepositional phrases, the insertion of syntactic discontinuities and the extensive use of passive forms and nominalization. Even so, the language of arbitration statutes is relatively 'new', in the sense that it does not make reference to 'authoritative' texts and it serves the purpose of providing business people and arbitration authorities with a set of rules which have to be interpreted easily in order to save time and money.

As far as the four sets of rules are concerned, we can conclude that CONAIAM seems to possess the same syntactic and lexical characteristics as UAR, while ACOB and VENCA draftsmen have used a language which is closer to plain English than to legal language. ACOB, in particular, seems to be the most 'user-friendly' of all, as it has the lowest average of subordinate clauses per sentence and the highest percentage of simple sentences, and makes no use of Latin expressions or archaic words.

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APPENDIX

The Arbitration Chamber of Bergamo
Statute and International Arbitration Rules (ACOB)

Section 8 – Attributed powers of the Arbitral Panel

In particular, through majority decisions, the Arbitration Panel:
appoints the arbitrators under the regulations laid down in the Arbitration Rules and is responsible for their replacement and rejection;
prepares the arbitration agreements and settlements of the type defined in Section 3.1;
submits, to the Council of the Chamber of Commerce, possible modifications to be made to the Statute and to the Arbitration Rules, and defines ethical rules for the arbitrators;
puts forward proposals, recommendations and views when requested to do so by the Council of the Chamber of Commerce on matters to do with the organisation and management of services related to the carrying out of arbitration procedures;
expresses view and opinions concerning proposals of agreements with other Institutions and Bodies on arbitration-related issues, as well as on statutory modifications;
determines the costs of arbitration proceedings;
makes decisions with regard to claims for paying arbitration proceedings;
reaches collaborative agreements with other Italian and foreign arbitration organisations, also to promote cooperation and exchanges of arbitration services;
pronounces on other matters or activities submitted to it;
prepares and draws up, for internal use only, the roster of arbitrators referred to in Section 3.1 and sees to its updating.

UNCITRAL ARBITRATION RULES (UAR)

Art. 6.3 Appointment of Arbitrators

In making the appointment the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;

(b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

The Chamber of National and International Arbitration of Milan International Arbitration Rules (CONAIAM)

Art. 2 Request for Arbitration

The party wishing to commence proceedings shall file a signed Request for Arbitration with the Chamber of Arbitration, containing:

a) the name and address of the parties and their domicile for the proceedings, if any;

b) the document containing the clause or submission or, in the case indicated under Art. 1.3 of these Rules, the request to the other party to accept arbitration before the Chamber of Arbitration of Milan;

c) all indications, if any, as to the language of the arbitration, the norms applicable to the merits of the dispute or the ex aequo et bono decision;

d) a description of the facts and claims and a (summary) indication of the economic value of the dispute, if possible;

e) the evidence, if any, in support of its claim and any document which the party deems appropriate to enclose;

f) the designation of the arbitrator or all indications necessary for selecting him;

g) the original power of attorney to counsel, if any.

The Venice Court of National and International Arbitration Rules of Arbitration (VENCA)

Art. 6 The Secretariat of the Court

The Secretariat is instituted at the Court and is managed by the Secretary General. The Secretariat:

(i) assists the Court in the performance of its tasks and duties.
(ii) registers the Request for Arbitration and the Answer to the Request;
(iii) ensures proper and timely communications between the Court and the Parties;
(iv) entertains any necessary contact with the Arbitrator/s for the organisation of the arbitral proceedings;
(v) transmits the file of the case to the Arbitrator/s as soon as appointed;
(vi) ensures that payment of fees and deposits provided for by the Rules be timely effected;
(vii) performs any other administrative functions.