CHIARA DEGANO

A Diachronic Perspective

1. Introduction

International commercial arbitration is being increasingly criticized for losing its distinctive character, while resembling litigation more and more closely (Mustill 1997; Nariman 2000; Browner 2007). In particular, what is regretted is the loss of its original drive towards a swift and satisfactory solution for the parties, in line with the needs of the commercial community, in favour of a more legalistic approach. This in turn has been laid at the door of lawyers, who have, it is felt, appropriated the practice of arbitration, transferring their litigative skills and strategies from national courtrooms to the resolution of disputes in arbitral tribunals.

From a linguistic point of view, this state of 'instability' in the practice of arbitration offers an opportunity to investigate genre variation, on the assumption that changes at the level of practice are likely to produce changes in discourse. Assuming that arbitration and litigation are characterized by different discursive features as a consequence of their different macro-functions, this chapter aims to provide some evidence as to whether arbitration awards present elements of hybridization as an effect of the influence of litigation. The scope of this study is restricted to argumentation, a discursive practice central to litigation, by virtue of the need to justify courts' decisions in relation to existing laws. In order to discover whether such elements of hybridization, can be traced in the text, the chapter analyses an electronic corpus of awards spanning over 20 years diachronically with the theme of questioning whether it reveals any intensification in the use of indicators of argumentation over time.

2. Background

Rivkin (2008: 375) summarizes the goals of international commercial arbitration as

> i) a fair and neutral process, (ii) conducted by intelligent and experienced arbitrators, (iii) resulting in a timely and well-reasoned decision, and (iv) benefiting from an effective enforcement mechanism.

According to some critical voices, the mission of the arbitration institution as expressed by these goals is being betrayed in more than one respect due to the legalistic turn taken by ICA. On the one hand, Rivkin expresses concern especially with regard to timeliness, arguing that the huge increase in recourse to ICA, resulting in arbitrators being too busy to schedule timely hearings, as well as the highly complex procedures involving "more extenuated proceedings, mountainous written submissions, longer hearings, document discovery" (2008: 377), are harming arbitration making it less efficient than it was supposed to be. On this ground, he argues for a return to what he calls the *town elder model*: "two business people taking their dispute to a wise business person in whom they both trusted [...] asking the arbitrator to provide them with the best solution to their dispute", thus making the case for a default simplified procedure as a starting point, to which additional procedures can be added if need be.

On the other hand Nariman draws attention to what he perceives as a betrayal of the original 'spirit of arbitration', defined – quoting Michel Gaudet – as follows:

> The dominant feature of arbitration is mutual understanding so as to be able to solve the conflict that has occurred. The aim of arbitration is not to draw from the applicable law a decision against the parties involved but to clarify, together with the parties, what should be done in a given situation to achieve justice with co-operation. (Nariman 2000: 261)

Co-operation, then seems to be a key word, as remarked on also by Bernardini (2004: 117), who recalls that arbitration should be animated by the will to find a solution to the problems through the inter-

action between the parties and the arbitrator, and not by a confrontational attitude. According to Nariman, however, modern ICA, far from embodying this spirit, is floundering under the burden of too much legal baggage, with the result of being 'almost indistinguishable from litigation'. In particular, the origins of this drift are to be found in the increasing publication of awards which came with the flourishing of literature on arbitration. Deprived of their original private nature, international arbitration awards tend to lose the original 'lightness of touch' and simplicity, which responded to the need of being understood by the parties for which they were exclusively intended. The original function of reaching a result which applies to a particular case is now associated with the intention of establishing a body of 'legal opinion' which can inspire future decisions of arbitral tribunals. Motivated or reasoned decisions tend to be longer and to contain much learned legal reasoning and reference to previous cases, thus turning awards into international jurisprudence.

The emphasis on co-operation, originally a defining aspect of arbitration, seems to be preserved in other Alternative Dispute Resolution techniques. Hunter (2000) points out that the outcome of arbitration is generally 'rights-based', as lawyers, trained for litigation, tend to focus on their clients' legal rights, while a focus on 'interest' might serve them better: while litigation aims at victory over 'enemies', clients might benefit more from continuing commercial relations, an outcome that, as things are, is more likely to be achieved through mediation than through litigation-influenced arbitration.

That argumentation and legal discourse are closely related is almost self-evident. Following the pragma-dialectic perspective, argumentation can be defined exactly as a process aimed to solve a 'difference of opinion' by justifying one standpoint (or refuting the other party's standpoint) through valid arguments. Van Eemeren *et al.* consider it as

> a verbal and social activity of reason aimed at increasing (or decreasing) the acceptability of a controversial standpoint for the listener or reader, by putting forward a constellation of propositions intended to justify (or refute) the standpoint before a rational judge. (van Eemeren *et al.* 1996: 5)

A key premise for such a process to take place is that behind each attempt at resolving a difference of opinion through argumentation there is an appeal to rationality, since the parties implicitly accept to rely on logical reasoning in order to find a solution to the dispute. In the legal context, in order not to sound arbitrary any judicial decision needs to be justified against the body of existing normative texts, be they statutory sources of law or previous decisions with the value of precedent. In common law legal systems, and with the court's attempt to present decisions as fair and consistent with the law, this confers on them an essentially argumentative nature.

Comparing the functions of litigation and arbitration respectively – judging a case against a set of rules vs. finding a solution through the co-operative interaction of the parties – it can be concluded that while in litigation discourse is primarily argumentative, in arbitration emphasis is expected to fall not so much, or not only, on rationality, but rather on cooperation and mutual understanding.

From a discursive point of view, such a difference of function is expected to determine different discursive strategies which influence the selection of textual structures both at the macro and the micro-linguistic level. Limiting the scope to legal English, a functional variety which has been thoroughly investigated (cf. among others Gibbons 1994; Garzone 2001, 2008, Gotti 2005: Bhatia *et al.* 2008,), an important feature of judicial discourse is the presence of what Stati (2002: 63) calls 'auxiliary argumentative lexis'[1], i.e. expressions which signal the argumentative function of propositions within the

1 Stati (2002) identifies five categories of auxiliary argumentative lexis: connectives, meta-argumentative expressions, modalizers, reference operators and, finally, para-argumentative expressions. Connectives are conjuncts, adverbs or phrases that link, argumentatively, two parts of a text. Meta-argumentative expressions are nouns or verbs which indicate the argumentative role of the part of text to which they are referred (e.g. *reason*, *objection*, *proof* or *refute*, *hypothesise* etc.). Modalizers encompass expressions which codify the author's stance towards the propositional content, in terms of epistemic modality (*must, may, likely*) or commitment (*definitely, tentatively* etc.). Reference operators attribute statements to others, and para-argumentative expressions present statements as true without supporting them through argument, either because they are considered self-evident or on the ground of the speaker's authority.

text, thus fulfilling the twofold purpose of enhancing its clarity while at the same time presenting the text as argumentatively sound, and therefore more persuasive.

In light of the above, a conspicuous presence of typical traits of argumentation in arbitration awards might be seen as a linguistic clue of its bending towards litigation. This chapter aims at verifying whether in a time span of about 20 years (1984-2003) indicators of argumentation have increased in arbitral awards, limiting attention to the category of connectives, as they can be more readily identified though automatic routine searches of electronic corpora.

3. Materials and method

The study is carried out on a selection of ICC awards included in the Kluwer Bank <http://www.kluwerarbitration.com>. An *ad hoc* corpus was created downloading all the ICC awards which reported the heading 'final award' (73 files), for a total amount of about 445,000 words, distributed across years as follows:

1984	1	1991	5	1998	2
1985	1	1992	8	1999	6
1986	–	1993	3	2000	2
1987	4	1994	7	2001	2
1988	3	1995	6	2002	1
1989	8	1996	4	2003	2
1990	7	1997	1		

Table 1. Corpus composition.

Using Wordsmith Tools 4 (Scott 2004), a general wordlist was extracted for the whole corpus, in order to identify the indicators of argumentation (van Eemeren/Houtlosser/Snoeck Henkemans 2007) which occur most frequently, limiting the scope – as already said – to connectors. As a second step, concordances were extracted for the

most frequent connectors, focusing then on the respective dispersion plots, with the aim of visualizing trends of distribution (if any) for each indicator throughout the corpus. The visual impression thus obtained was then checked against numbers, by grouping the files in three periods of time: 1984-1990, 1991-1997 and 1998-2003. More specifically, starting from the dispersion plot data of each connector, the average p.1000 ratio was calculated for each period of time, and the average values for the three time spans were compared. The insights from quantitative analysis thus obtained were then integrated with qualitative analysis, with special regard to lexico-grammar and textual structure, relying also on notions of text grammar (Werlich 1983).

4. Results

The general wordlist presents *but*, *therefore*, *however*, *because* and *thus* as the most common connectors in the corpus, with the following ranking:

Word	*%*
But	0.16
Therefore	0.13
However	0.12
Because	0.08
Thus	0.07

Table 2. Connectors.

The extraction of the concordances for each of them allowed to calculate and visualize the dispersion plot, which shows "where mention is made most" of the search word in each file"(Wordsmith Tools Manual, Scott 2004). The dispersion plot referred to the word *but* is reported below for the purpose of exemplification:

N	File	Words	Hits	r 1,000	persion	Plot
1	2003_2.txt	8.430	17	2,02	0,724	
2	2003_1.txt	184	1	5,43	-0,069	
3	2002_1.txt	8.818	15	1,70	0,800	
4	2001_3.txt	1.735	2	1,15	-0,069	
5	2001_2.txt	8.660	16	1,85	0,774	
6	2001_1.txt	8.480	9	1,06	0,622	
7	2000_2.txt	10.702	19	1,78	0,746	
8	2000_1.txt	5.059	11	2,17	0,642	
9	1999_6.txt	4.529	4	0,88	0,300	
10	1999_5.txt	10.425	14	1,34	0,776	
11	1999_4.txt	4.243	9	2,12	0,785	
12	1999_3.txt	8.261	6	0,73	0,478	
13	1999_2.txt	9.443	15	1,59	0,871	
14	1999_1.txt	10.170	48	4,72	0,784	
15	1998_2.txt	5.630	10	1,78	0,687	
16	1998_1.txt	7.046	4	0,57	0,429	
17	1997_1.txt	5.438	1	0,18	-0,069	
18	1996_4.txt	5.210	10	1,92	0,648	
19	1996_3.txt	3.124	1	0,32	-0,069	
20	1996_2.txt	4.844	2	0,41	-0,069	
21	1996_1.txt	5.160	7	1,36	0,640	
22	1995_6.txt	7.125	8	1,12	0,650	
23	1995_5.txt	5.302	6	1,13	0,478	
24	1995_4.txt	6.581	13	1,98	0,753	
25	1995_3.txt	7.203	11	1,53	0,613	
26	1995_2.txt	3.546	4	1,13	0,429	
27	1995_1.txt	6.592	3	0,46	0,478	
28	1994_7.txt	11.477	40	3,49	0,819	
29	1994_6.txt	3.572	14	3,92	0,679	
30	1994_5.txt	5.893	5	0,85	0,550	
31	1994_4.txt	5.803	15	2,58	0,773	
32	1994_3.txt	7.755	4	0,52	0,429	
33	1994_2.txt	9.978	15	1,50	0,706	
34	1994_1.txt	7.847	20	2,55	0,838	
35	1993_3.txt	1.919	9	4,69	0,667	
36	1993_2.txt	2.514	2	0,80	0,300	
37	1993_1.txt	13.326	28	2,10	0,817	
38	1992_8.txt	4.502	13	2,89	0,628	
39	1992_7.txt	7.531	16	2,12	0,825	
40	1992_6.txt	4.493	12	2,67	0,596	
41	1992_5.txt	3.853	9	2,34	0,581	
42	1992_3.txt	19.955	31	1,55	0,903	
43	1992_1.txt	5.190	4	0,77	0,429	
44	1991_5.txt	6.303	7	1,11	0,514	
45	1991_3.txt	4.038	5	1,24	0,687	
46	1991_2.txt	10.895	44	4,04	0,774	
47	1991_1.txt	1.829	3	1,64	0,250	
48	1990_7.txt	6.811	9	1,32	0,785	
49	1990_6.txt	8.540	7	0,82	0,723	
50	1990_5.txt	3.537	4	1,13	0,429	
51	1990_4.txt	2.928	3	1,02	0,478	
52	1990_3.txt	5.620	10	1,78	0,522	
53	1990_1.txt	2.833	3	1,06	0,478	
54	1989_8.txt	2.327	2	0,86	-0,069	
55	1989_7.txt	2.320	3	1,29	0,250	
56	1989_6.txt	4.124	5	1,21	0,446	
57	1989_5.txt	9.314	7	0,75	0,514	
58	1989_4.txt	5.214	4	0,77	0,300	
59	1989_3.txt	3.833	4	1,04	0,429	
60	1989_1.txt	2.409	5	2,08	0,550	
61	1988_3.txt	7.890	11	1,39	0,795	
62	1988_2.txt	6.605	16	2,42	0,733	
63	1988_1.txt	4.317	7	1,62	0,514	
64	1987_4.txt	2.261	4	1,77	0,429	
65	1987_3.txt	4.717	3	0,64	0,478	
66	1987_2.txt	2.064	1	0,48	-0,069	
67	1987_1.txt	7.292	13	1,78	0,589	
68	1985_1.txt	1.963	5	2,55	0,550	
69	1984.txt	4.993	7	1,40	0,640	

Figure 1. Dispersion plot.

The impression drawn from the plot representation is that a lower concentration of bars (each one representing an occurrence of the search word) roughly corresponds to the years 1984-1990. However, this intuition needs to be confirmed by the figures reported in the columns on the left of Figure 1, where each line represents a file. As all the files have different dimensions, they are only comparable by looking at the p.1000 word value. Grouping the files into three time-spans, the average of the p.1000 word value was calculated for each file group, with the following results:

	1984/90	1991/97	1998/03
but	1.33	1.77	1.93

Table 3. Breakdown of *but* frequency throughout the corpus.

As shown in the table, data confirm that *but* occurs more frequently in the most recent files. Following the same procedure as illustrated for the word *but*, the breakdown for each connector was calculated, giving the following output:

	1984/90	1991/97	1998/03
Therefore	1.29	1.24	*1.54*
However	1.19	*1.46*	1.16
Because	0.71	0.91	*1.13*
Thus	0.79	0.81	*0.93*
Although	0.38	*0.58*	0.48

Table 4. Breakdown of the frequency of other connectors.

As shown in Table 4, all the connectors present an increase in frequency during time, with respect to the earlier files, with a peak (in italics in the table) either in the second or in the third time span.

5. Qualitative analysis

The quantitative analysis presented so far has highlighted an increase in the frequency of contrastive and resultative connectors. In order to check these data against textual evidence, the first and the last awards in the corpus have been analysed in more detail, thus integrating a quantitative with a qualitative approach. In particular, attention has been devoted to the sections which summarise facts, looking for extended textual patterns which might classify them as more or less argumentative.

Resting on the categorization proposed by Werlich (1983), the function of argumentative texts is that of "proposing relations between concepts of phenomena, […] in opposition to deviant or alternative propositions", such text type being connected to the cognitive process of "judging in answer to a problem" (Werlich 1983: 40.). The judgemental dimension thus involved in argumentation is reflected in a number of linguistic aspects, many of which can be subsumed under the broad notion of 'evaluation', which Hunston and Thompson (2001: 5) define as

> the broad cover term for the expression of the speaker's or writer's attitude or stance towards, viewpoint on, or feelings about the entities or propositions that he or she is talking about.

The expression of stance in a context of opposition – be it explicit or implicit – to deviant or alternative proposition gives rise to a situation of polyphony, drawing on a concept developed with reference to academic writing (cf. especially Breivega/Dahl/Fløttum 2002; Fløttum 2005; Fløttum/Kinn/Dahl 2006). Elements of evaluation, either mono or polyphonic, can be found at all levels of language description, the most obvious one being the lexical level.

Looking at the lexicon of both texts through the lens of wordlists, a first difference between them can be detected in respect of verbs: the 2003 award presents a significant recurrence of the modal *should* (0.51%) and of the verb *argued* (0.39%), *vis-à-vis* a lower frequency of *should* (0.36%) in the 1984 text and the absence of the verb

argue/argued.[2] While the verb *argue* explicitly refers to an argumentative process, *should* points into the same direction, albeit more overtly, by virtue of its obligational nature, which reveals the stance of the locutor (most often the Arbitral Tribunal) as to what someone else (mostly claimant or defendant) should do. A similar point can be made for nouns, with the nominalised form *claims* ranking among the top lexical words in the 2003 wordlist (1.03%) as opposed to zero occurrence in the 1984 text.

Moving on to the lexico-grammatical level, attention was devoted to the semantic patterns associated with the main actors in both texts, i.e. claimant/defendant in the 1984 text and buyer/seller in the 2003 one. The respective concordance lines are reported below:

N	Concordance
1	payments. On 17 November, claimant gave notice terminating the
2	made by defendant to claimant. Claimant pledged to the issuing bank the
3	of Justice of Geneva. Furthermore, the claimant proved unable, as a practical
4	defendant gave claimant notice. Claimant thereupon initiated the
5	of performance under the contract. Claimant was unable to meet various

Concordance 1. 'Claimant' as subject (1984).

N	Concordance
1	Payment Guarantee. In consideration, defendant caused a "Risk Exposure
2	of significant procedural developments. Defendant entered bankruptcy, and its
3	the contract, and on 18 November defendant gave claimant notice. Claimant
4	by its trustees in bankruptcy. Defendant initiated criminal proceedings
5	to meet various milestones, and the defendant made deductions from the
6	of certain sums due under the contract. Defendant objected that the amount
7	was a member. In January 1977, the defendant subcontracted part of the
8	and a Belgian consortium of which the defendant was a member. In January

Concordance 2. 'Defendant' as subject (1984).

2 In the 1984 text, on the other hand, the verb *held* features with considerable frequency (0.53%) while occurring only once in the 2003 text.

What emerges from these concordance lines is a pattern of the kind *subject + verb of action*, with the exception of one metadiscursive verb signalling disagreement (i.e. "defendant objected"). Quite different is the case in the 2003 text, as shown by the concordance lines below:

N	Concordance
1	several counterclaims. Because the seller argued that most of the claims
2	of Licences specified in the MA. The seller argued that the Licences could not
3	compensation from the seller. The seller asserted several counterclaims.
4	not be able to be used by buyer. The seller had not provided such a list and
5	the SA, the buyer alleged that the seller had violated representations,
6	as part of the business. Moreover, the seller had not included them on the list
7	approach including follow-up problems. Seller sought to reduce the
8	appear to be intentional. However, the seller was aware of the problems

Concordance 3. 'Seller' as subject (2003).

N	Concordance
1	(SA). Notwithstanding the SA, the buyer alleged that the seller had violated
2	was to be reduced by one third. The buyer also claimed compensation for
3	to Sects. 7 and 8 of the MA. The buyer argued that it was entitled to
4	rejected the seller's argument that the buyer had not suffered any damage, but
5	be made using judicial discretion. The buyer had been under a duty to inform
6	any damage, but did find that the buyer had been negligent as it had been

Concordance 4. 'Buyer' as subject (2003).

Consistently with the function of the 'facts' section, also in this concordance lines we note a core set of action verbs (*seller* 'had not provided', 'had violated', 'had not included', 'sought to reduce'; *buyer* 'had not suffered', 'had been under a duty'). Alongside this core pattern, however, another one is well represented, featuring metadiscursive verbs with a clear argumentative connotation, such as 'argued' and 'asserted' referred to *seller* and 'alleged', 'claimed' and 'argued' to *buyer*.

Finally, with reference to the same section, the textual level was taken into account, still relying on Werlich's (1983) model of text grammar, with a view to add a qualitative perspective to what elec-

tronic tools highlighted as regards connectors. From the perspective of text grammar, connectors are part of what Werlich calls 'sequence forms', i.e. lexical or grammatical expressions signalling progression and coherence in the textual structure. Each text type is characterised by specific sequence forms 'selected' on the basis of the function of the text and of the cognitive process activated by the text type.

In the 1984 award, sequence forms suggest that textual progression is mainly chronological, quite in tune with the function of the section, i.e. to sum up previous facts which are relevant for the judgement rendered in the award itself. Relevant facts are mentioned in a chronological order, through temporal reference, in the form of precise dates. The occurrences of these sequence forms are highlighted in italics in the text extract below:

1984: narrative text type

(1) This arbitration was the subject of a partial award rendered *14 June 1979*, and reported in Yearbook, Vol. VII (1982), pp. 96-106. A related dispute between the claimant and the bank which issued a "risk exposure guarantee" in its favor was decided by an award made *23 October 1979*, Case No. 3316 (published in Yearbook, Vol. VII (1982) pp. 106-116).
The dispute related to a construction contract entered into *in June 1976* between a Saudi Arabian government entity and a Belgian consortium of which the defendant was a member. *In January 1977*, the defendant subcontracted part of the project to claimant.
[…]
Difficulties arose in the first few months of performance under the contract. Claimant was unable to meet various milestones, and the defendant made deductions from the sixth and seventh installment payments. *On 17 November*, claimant gave notice terminating the contract, and *on 18 November* defendant gave claimant notice.
Claimant *thereupon* initiated the arbitration. The partial award made 14 June 1979 found in favor of claimant on a certain number of points. […]
Subsequent to this partial award, there were a number of significant procedural developments. Defendant entered bankruptcy, and its case was thereafter conducted by its trustees in bankruptcy. Defendant initiated criminal proceedings in Belgium against claimant, and sought a review of the partial award pursuant to Art. 41 of the Swiss Concordat. […] *After extensive negotiations*, amounts due to claimant under the Risk Exposure Guarantee, and to defendant under the various performance guarantees, were deposited into va-

rious escrow accounts, and held subject to the final disposition of the case by the arbitral tribunal.

Not only does the occurrence of chronological sequence forms, but also the representation of events rendered by the groups of subjects and predicates (underlined in the text), allow us to classify these text units as examples of narration. As already remarked when discussing concordances, the majority of verbs in this extract belong to the category of actions, as for example *to decide* (a dispute), *to subcontract* (a project), *to meet* (milestones), *to make* (deductions), *to give* (notice), and so on, with few exceptions in the introductory paragraphs which are typical of the expository text type ('the arbitration *was* the subject' and 'the dispute *related to'*). Also the textual structure is typical of the narrative text type, as both sequence forms and predicates present actions in a relation of cause and effect (e.g. "On 17 November, claimant gave notice terminating the contract, and on 18 November defendant gave claimant notice"; "Subsequent to this partial award, there were a number of significant procedural developments"). All these elements taken together construct a texture which is essentially narrative.

In the 2003 text, on the other hand, chronological sequence forms account for a scant minority of the occurring sequence forms – essentially limited to the time reference in the first paragraph ("in 1998" and "in 1999") –, while for the most part they are contrastive or resultative, as is typical of the argumentative text type (Werlich 1983):

2003: argumentative text type

(2) In 1998, the parties entered into a Master Agreement (MA) by which the respondent sold its business to claimant. For the determination of the final purchase price the MA provided a purchase price adjustment mechanism based on a Consolidated Financial Statement (CFS). *Because of* discrepancies between the auditors' reports with regard to the CFS, the parties entered into negotiations which resulted in 1999 in a Settlement Agreement (SA).
Notwithstanding the SA, the buyer alleged that the seller had violated representations, warranties and other obligations arising out of the MA and initiated ICC arbitration, claiming compensation from the seller. The seller asserted several counterclaims.

(3) *Because* the seller argued that most of the claims were covered by the SA, the arbitral tribunal first established its scope, using a systematic approach to determine the intention of the parties. […]
The arbitral tribunal noted that: "If experienced business people advised by high-profile lawyers conclude a Settlement Agreement that comprises a whole bundle of claims based on Representations and Warranties – the core element of the MA and any such transaction – *it is hardly conceivable* that this is not reflected in the text of the SA." *Hence*, the settlement clause of the SA comprised only claims within the framework of the price adjustment procedure and claimant was not precluded from founding its claims of breach of Representations and/or Warranties pursuant to Sects. 7 and 8 of the MA.
The buyer argued that it was entitled to compensation from the seller for the renewal of non-transferable software licences (the Licences). In the view of the buyer, the Licences were assets and should be transferred as part of the business. *Moreover*, the seller had not included them on the list of Licences specified in the MA. The seller argued that the Licences could not be qualified as assets and that it only was required by the MA to give the buyer "reasonable assistance" regarding the licences. […]
The arbitral tribunal rejected the seller's argument that the buyer had not suffered any damage, *but* did find that the buyer had been negligent *as* it had been aware that there might be a problem. *Therefore*, the damage was to be reduced by one third.
The buyer also claimed compensation for expenses incurred as a result of computer problems related to the change from 1999 to 2000 (the Y2K-problem or -phenomenon). The arbitral tribunal held that also this claim did not fall under the SA, but was a claim for a breach of representations and warranties. […] The arbitral tribunal found that the damages could be mitigated if the reduction did not constitute an unbearable burden for the buyer and that this determination should be made using judicial discretion. The buyer had been under a duty to inform the seller of facts which could be the basis for claims, *but* had not done so, *although* this did not appear to be intentional. *However*, the seller was aware of the problems '128' and the failure to notify was without financial consequences. Any added value had, *however*, been taken into account by the deduction of one third.

In this case, chronological sequence forms are concentrated in the very first part of the text, to locate the beginning of the dispute in time, while the development of the dispute itself is presented in a way which emphasises relations of causality by making them explicit through the use of resultative/causal sequence forms (*therefore, because, hence, as*). These add to the text a flavour of logical soundness which is generally typical of the argumentative text type, a connota-

tion which is further reinforced by the use of contrastive sequence forms (*however, although, but*) which are genuinely argumentative.

To conclude, the comparison of the two 'facts' sections reveals that the first presents the textual features of narrative text types, while the latter presents the typical traits of the argumentative text type. Considering that the section under review has the same function in both texts, i.e. summing up the previous stages of a dispute, it is reasonable to expect that it bears some of the features of the narrative text type and some of the argumentative text type. However, in the 1984 award, the focus conveyed by text structuring is on narration, while the content still reports of a difference of opinion, whereas in the 2003 text the narration of facts is embedded in a structure that is predominantly argumentative.

6. Conclusion

Starting from the premise that an increase of argumentation indicators in international awards over time might be the reflection of an increased influence of litigation practices, this study has highlighted a trend in this direction. Both quantitative analysis conducted on the whole corpus and qualitative analysis carried out more deeply on the 'facts' sections of the texts at the two poles of the temporal span, have revealed a difference in the linguistic texture which characterises the 1984 extract as narrative, while the 2003 excerpt combines contents which remain necessarily narrative, summing up the main events in the dispute, with an argumentative form.

Tentative as they are, due to the limited nature of the sample on which the analysis was conducted, these results suggest an influence of litigation practices on arbitration at two levels. First, the argumentative focus in the 2003 text emphasises the adversarial positioning of the parties typical of court cases, whereas in the 'spirit of arbitration' there would be no point in such an action, since the aim should be the reaching of a solution which can be acceptable for both

parties. On a second level, an increasingly argumentative effort on the part of the Arbitral Tribunal might suggest a desire to justify their decision as sound on the basis of existing legislation, which, as pointed out by Nariman (2000: 262), does not fall within the purview of arbitration, rather than as "just in the particular case".

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