ARBITRATION DISCOURSE ACROSS CULTURES: ASIAN PERSPECTIVES

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Abstract

The intensification of commercial exchanges and business relationships between Eastern and Western countries brings with it an increasing need to resolve disputes involving parties from profoundly different and geographically distant regions (Bhatia and Gotti 2015). International commercial disputes are often resolved through Alternative Dispute Resolution (ADR) procedures, the use of which is particularly on the increase in Asia. Consequently, a mutual understanding of the contours that ADR discourse may assume within different legal cultures is crucial.

In this study, the websites of the main arbitration centres operating in Asia are analysed from a textual perspective in order to define how they are discursively constructed and can be used as promotional tools. This investigation can thus help to understand the importance assumed by internationalization processes or by local cultural elements in the promotion of a particular centre as a convenient seat for international arbitration.

While each country represents a dynamic world where rules, practices, conventions and values are subject to constant change, this investigation confirms that the online presentation of arbitration institutions in the Asian region is characterized by a tendency towards standardization, in line with what is happening on a global scale. Thus, it may be argued that, on the one hand, cultural elements play a major role in how laws are executed and practices develop but, on the other hand, harmonization of legal and procedural aspects occurring globally is also influencing arbitration in Asia, and the promotional discourses which characterize the arbitral centres analysed appear to be particularly standardized.

The analysis also serves to illustrate the concept of discursive isomorphism, intended as a process leading to the resemblance or even the replication of specific discursive forms and patterns which emerge across different institutional websites.

1. Introduction and objectives

Recent years have witnessed a surge in efforts to encourage the use of ADR [1] all over the globe. The Asian region is also following this trend, and several Asian countries have promoted ADR processes such as arbitration both at domestic and at international levels. In particular, among the drivers which have determined the success and

[1] For a comprehensive overview of Alternative Dispute Resolution methods see Blake, Browne and Sime (2016).

expansion of arbitration in Asia we can identify two main elements: economic growth and the increasing sophistication and modernization of the legal systems of the Asian countries concerned.

This study presents two central points: the first regards the cultural factors which typify arbitration in Asia and the second the discursive aspects which characterize the promotion of arbitration centres across Asian countries. More specifically, the analysis of this form of promotional discourse is based on an investigation of the main Asian arbitral institution web pages.

It is plausible to assume that the harmonization of legal and procedural practices taking place on a global scale in the field of arbitration may be followed by a 'discursive harmonization' of generic features with regard to promotional tools such as institutional websites. The analysis can reveal whether processes of harmonization and standardization in the promotion of arbitration on the part of Asian institutions are taking place, and to what extent local features are still present.

As each Asian country possesses unique characteristics, this paper does not purport to provide a comprehensive description of all jurisdictions present in the heterogeneous Asian region [2]. Rather, it aims to offer some insights into the complexity of the cultures involved and to go beyond the mere West-East distinction when dealing with dispute resolution.

Given the vast geographical extension of the Asian continent and the cultural diversity which characterizes the different areas, this study has been limited to two macro-regions which, despite their diversity, share some important cultural elements (see Section 2) and host the most active arbitration centres. More specifically, the areas taken into account are East Asia (focusing on China, Hong Kong, Japan, Taiwan and Mongolia) and Southeast Asia (focusing on Malaysia, the Philippines, Singapore, Thailand and Vietnam [3]). For the sake of consistency, other regions such as South Asia, Central Asia and Western Asia are not subject to analysis in the present study.

2. Background

Some scholars describe the existence of an "Asian law" to intend "law that originates in Asia" (Antons 1995: 116). However, the legal systems present in Asia are numerous and heterogeneous and often come from very different legal traditions. Drawing on Taylor and Pryles (2006: 8), the overview in Table 1 can be offered.

The authors (*ibid.*) correctly underline that these nomenclatures are to some extent partial and at times inapplicable. On the one hand, these classifications offer some general guidelines to understand the historical and cultural background on which a certain system is based and potentially some information about the sociolinguistic aspects which may be related to the structure of a legal text. On the other hand, they are

[2] See Moser and Choong (2011) for a comprehensive overview of arbitration in the entire continent.

[3] Although generally accepted, this geographical distinction may also be subject to different interpretations. For instance, Moser and Choong (2011) categorize the different Asian areas as follows: Northern Asia, Central Asia, Southern Asia, Indian Subcontinent, Australasia.

Civil law systems	Common law systems	Islamic legal influence	Socialist legal systems	Hindu/Buddhist legal influence
Japan (G, F)	India	Pakistan	PRC	Indonesia
Korea (G, J)	Pakistan	Malaysia	Vietnam (F)	Malaysia
Indonesia (N)	Malaysia	Indonesia	Laos (F)	India
Taiwan (J)	Brunei	Brunei	Cambodia (F)	Pakistan
Philippines	Singapore		Mongolia	Brunei
(S/US)	Philippines		(until 1996)	Vietnam
Thailand	Hong Kong			Laos
	Australia			Cambodia
	New Zealand			Singapore
				Thailand

Table 1. Asian legal systems (N = Netherlands; G = Germany; F = France; J = Japan; S = Spain)

not sufficient to capture all the nuances of complex legal systems which often assume hybrid contours and are continuously evolving [4].

The Asian continent remains a very variegated region linguistically, culturally and legally. In particular, regarding legal cultures, the literature also shows that the traditional opposition between East and West and the existence of an Asian legal mindset opposed to a Western one are to a large extent oversimplifications, which have arisen through isolated anecdotes from which stereotyped generalizations have been drawn (Taylor and Pryles 2006).

However, Izor (2013: 4-5) identifies some factors which tend to emerge in dispute resolution processes either seated in Asia or involving Asian parties (particularly in the case of East and Southeast Asia) which make the approach to dispute resolution in this region very different from the Western Interest-based model [5]. The principal features may be summarized in three main themes:

(1) Confucianism
(2) Particularism
(3) Face concerns

[4] Different legal systems and their related legal cultures may plausibly have an impact on international arbitration practices. However, as will be illustrated, a trend towards convergence has long been observed, to the extent that some scholars have suggested the emergence of an 'international arbitration culture', which combines elements of different legal traditions (van den Berg 1998).

[5] The interest-based model aims to reach mutually beneficial agreements by observing the interests of all parties. For a comprehensive discussion of its applicability in Asia, see Lee and Hwee Hwee (2009).

2.1. *Confucianism*

According to Confucian principles, private disputes are seen as unwelcome disruptions to the social order, and thus people have been traditionally encouraged to avoid them (Lubman 1983: 199). In particular, litigation is "inconsistent with the Confucian ideal of moral self-cultivation, character formation, and personal growth" (Chen 2003: 261) in that it is based on material self-interest.

Confucianism is one of the factors which has customarily determined a preference for conciliatory tools in many Asian countries. Kim (2007) describes the Confucian tradition as characterized by the presence of the concept of *li* as a key factor to determine social norms. Indeed, "'li' is ethical and persuasive in nature, not compulsive and legalistic": this is opposed to the concept of 'law' which is "compulsive and punitive in nature, and below 'li' in importance," in that it is required for those considered unable to resolve disputes through the adoption of the ethical principles of *li* because of poor education (Kim 2007: 27-28).

2.2. *Particularism*

The East/West division is often seen as in line with the traditional particularist/universalist opposition, as universalist societies are customarily associated with the United States and most European countries, whereas Asian cultures are generally ascribed among the particularist ones. The concepts of universalism and particularism date back at least to the 1950s (Parsons and Shils 1951) and represent value standards which influence behavioural patterns (Smith, Dugan and Trompenaars 1996). Universalistic cultures assign high importance to laws and principles which are applied to virtually every situation. Conversely, in particularistic cultures attention is given to the obligations determined by specific relationships and unique circumstances.

The universalist/particularist distinction, where in turn abstract social codes or particular relationships are assigned a higher level of importance, also influences a specific legal culture. For instance, the desire to maintain harmonious relationships and avoid conflict, traditionally associated with Asian cultures, may be seen as in accordance with the particularist perspective. Indeed, within a dispute, the preservation of harmonious relations may assume greater importance than the actual facts (Macduff 2009: 215-216). However, the definition of local cultures in the Asian context is particularly complex because of the inherent multicultural nature of most nations, where different ethnic and religious backgrounds have coexisted for centuries.

2.3. *Prevalence of face concerns*

Losing face in some Asian countries has central social implications and can represent a sort of inner annihilation. Being involved in a dispute with the need to refer to a neutral third party can be equated to the inability to maintain harmony and cause a "loss of face." As Izor (2013: 5) stresses, "the idea of 'face' is reciprocal. Not only will parties try to preserve their own face, they will try to preserve the face of other parties as well." Indeed, the preservation of respect for a party's image is fundamental within one's reference group and so is the avoidance of potential forms of shame (*ibid.* 2013).

3. Dispute resolution in Asia

3.1. *An Asian style or Asian styles?*

International and intra-national diversity characterizes the Asian region from a cultural perspective, and this has a considerable influence on the legal culture. At the same time, certain Asian countries also display a number of commonalities. For example, it has been stated that "the customary law developed within ethnic groups that transcends national borders such as those of commercial networks in the Chinese Diaspora is a supra-national phenomenon" (*ibid*.: 7).

It is commonplace to affirm that ADR is a phenomenon which dates back to ancient times. This also holds true for Asia. In China for example, following the principles of Confucianism (see Section 2), conflict is generally seen as a means of potentially undermining the harmony of the community. Consequently, arbitration and in particular mediation [6] are considered more appropriate than litigation to minimize the risk of disharmony.

Traditionally, Asia has often opted for conciliatory procedures, as Taniguchi (1997: 31) remarks:

> Asia, especially East Asia is known for its emphasis on conciliation. For centuries, a conciliation culture comprising a variety of forms has flourished there […] Litigation was condemned as a moral wrongdoing to the society and to the other party. A good judge was not supposed to give a judgment but to try to bring about good conciliation.

Hybrid forms such as Med-Arb are considered more popular in Asia than in other regions and are gaining momentum across the continent (Weixia 2014). This may be seen as an attempt to reconcile the traditional mediatory approach with the procedures typical of modern internal commercial arbitration. However, there seems to be no unequivocal evidence for this preference (Greenberg, Kee and Weeramantry 2011: 47).

It has been argued that alternative methods are somehow the cornerstone of dispute resolution in Asia. Indeed, aspects such as confidentiality play a crucial role, in line with the idea of a sort of "traditional Asian inscrutability, where it is taboo to wash one's dirty linen in public" (Boo and Theng 1997: 240). However, this is often a form of oversimplification which does not take into account the individuality of a country and of the case in question.

Generalizations and myths regarding dispute resolution in Asia may be misleading during the decision-making processes of corporations. For instance, the idea that Asian dispute resolution is based on the traditional concept of consensus is in line with concrete, well-established cultural values, but may not be entirely applicable when dealing with multinational corporations operating in the new millennium (Taylor and Pryles 2006).

[6] Although the two processes may assume different forms (including hybrid ones), traditionally there exists a basic distinction between arbitration and mediation. Arbitration is the submission of a dispute by consensual agreement to an arbitrator for a binding decision. Conversely, the mediator tries to help the parties to reach a mediated solution for a dispute, but the process does not imply the presence of a binding agreement (see Garner 2011: 74).

Thus, the overarching question posed by Taylor and Pryles (*ibid*.: 1) in their seminal work, "Is there an 'Asian' style of dispute resolution?", remains open. Different Asian countries are characterized by a certain level of uniformity, at least from a Western perspective, but at the same time by considerable differences between various geographical areas. Certainly, thinking that there might be a single Asian way to resolve disputes is enticing (*ibid*.: 1). However, although certain common features may emerge in different Asian countries, each area has specific legal constraints as well as cultural values which determine how dispute resolution is carried out.

In other words, we may argue that each South and Southeast Asian country has traditionally developed its own approach to dispute resolution, yet a sort of *fil rouge* links them together in that there is a general reluctance to adopt litigative procedures (often seen as detrimental to the harmony of a community). Moreover, a growing interest in arbitration and mediation in the region may be seen as a return to the traditional community norms of many Asian cultures (Lee and Hwee Hwee 2009: 29).

3.2. *Mediation*

Litigation was only introduced to Asia in the late 17th century, while the majority of Asian cultures have traditionally employed some form of mediation (Yin 2014). In some countries, especially in East and Southeast Asia, it is generally considered undesirable to solve disputes litigiously (Anesa and Locatelli 2015) and a non-adversarial attitude traditionally prevails. Indeed, face concerns are particularly important and the ability to manage relationships is deemed essential. As such, the need to resort to solving a dispute through litigation in certain contexts is often seen as a source of shame, and an amicable resolution of disputes is usually considered necessary. Together with arbitration, the use of mediation has also undergone a process of reform, gaining gradual popularity, and institutions such as the Singapore International Mediation Centre and the Hong Kong Mediation Council are now internationally renowned.

Substantial similarities exist between Western and Eastern countries with regard to their attitudes towards mediation. As Paulsson (2012: 4) concisely states, all parties "desire – in principle – that justice come quickly, fairly, and effectively, at no cost to the deserving party." However, mediation in Asia may assume different contours to the extent that commentators have come to affirm that "mediation in the more formalistic Western sense has not been correctly institutionalized by the relevant bodies to appeal to its Asian audience as a viable alternative to litigation in resolving business disputes" (Yin 2014: 158). Indeed, mediation (and in particular private voluntary mediation) seems to lack a solid legislative framework to regulate it. Thus, although traditionally mediation may intuitively be regarded as a more desirable means of dispute resolution in Asia, at the same time it is often perceived as unreliable and defective (*ibid*.) both by Asian and foreign parties.

3.3. *Arbitration*

In the 1990s Taniguchi (1997) posited the existence of a sort of 'Arbitration craze' to highlight the rapid development of alternative procedures for dispute resolution, and the Asian-Pacific region has indeed experienced an exponential growth in the last few decades in the use of international arbitration (Greenberg, Kee and Weeramantry 2011: XVII).

Traditional values are of course not the only ones which determine a sort of disinclination towards litigative procedures. In the business world we cannot underestimate the role played by convenience, rationality and pragmatism. Taylor and Pryles (2006: 15) stress that "the perceived 'Asian' preference for non-court dispute is pragmatic, as much as cultural. In most of Asia, courts do not provide dispute resolution services that are market-responsive, reliable or reciprocal. For these reasons, commercial arbitration remains a default choice in most cross-border transactions in the region."

In recent years, arbitration has developed significantly in Asia; thus, the notion of a traditional preference for conciliatory procedures may be becoming less and less applicable. It has also been stated that it is not clear whether a cultural preference for softer, less adversarial procedures actually influences arbitration once that is chosen as a means to solve a dispute (Kim 2007: 26).

In Asia arbitration is likely to continue growing, following internationalization trends without neglecting the cultural specificity of a system. This situation is effectively described by Taniguchi (1997: 13), who states that internationalization "does not necessarily mean the abandonment of the traditional characteristics as long as they are agreeable with internationalization. If successful, an international commercial arbitration with an acceptable Asia flavor will enhance the use of Asian arbitration."

This concept cannot yet be applied in full to domestic court disputes, which maintain a high level of specificity varying from country to country. However, it can be stated that international commercial arbitration is also gradually influencing the culture of domestic courts and legal culture at large, within which the level of detailed knowledge of arbitration procedures is on the increase, and the respect towards ADR at large on the part of legal scholars and practitioners is growing constantly (Greenberg, *et al.*: 53).

The way in which procedures develop is determined to a large extent by the individual nature of the arbitrators [7] and lawyers. In particular, a good level of knowledge and cultural sensitivity in the conduct of proceedings may affect the entire process considerably. As Bao (2014: 51) affirms, "to the extent that counsels and arbitrators are familiar with certain cultural nuances associated with doing business in Asia, this will inevitably result in a swifter means to resolving disputes with Asian parties."

Kim (2007) insists on the importance of the behaviour and attitude of the arbitrator to ensure the smooth running of proceedings. Thus, the arbitrators themselves may be considered the most influencing cultural factor. An experienced arbitrator should also be familiar with different cultures and show sensitivity towards diversity. Of course, the arbitrator's individual cultural background cannot be ignored and certainly influences proceedings (*ibid.*: 19).

[7] Although the terms 'arbiter' and 'arbitrator' are sometimes used synonymously, Garner (2011: 75) points out that the former has a more general meaning and refers to anyone who is entitled to solve a dispute, while the latter has to be used in the case of legal arbitration. An old distinction which goes back to Roman Law is sometimes cause of misunderstanding. In Roman Law an arbiter had to make a decision according to specific rules, whereas the arbitrator could act according to his own judgment. Subsequently, this distinction lost its validity (Leff 1985: 2050), especially given the importance played by procedural and substantial rules in arbitration.

Kaplan (2002: 255) clearly posits that arbitrators play a key role, but at the same time stresses that lawyers also assume great importance in determining how the proceedings are conducted. In particular, he highlights that an experienced counsel "should not take on the assumed cultural attributes of his client." Providing the example of an American counsel representing an American client, the author suggests that the lawyer cross-examine in a polite and courteous way, which is antithetical to common expectations regarding American practices in this domain (*ibid.*).

With regard to arbitration, it may be argued that the American and European traditions continue to play a major role in the development of arbitration in Asia. Indeed, arbitration procedures seem to have been shaped according to Western principles, especially European. For instance, Greenberg *et al.* (2011) cite several factors which contribute to this influence. One is that the literature on arbitration has often been published by Western scholars, thus shaping, directly or indirectly, the arbitration culture in Asian countries (*ibid.*: 49). Moreover, Ali (2009: 26) stresses that the clear opposition between winner and loser typical of Western dispute resolution, in which there is also limited space for compromise, "has given rise to institutional bifurcation of conciliation and arbitration processes" also present in Asia.

Despite the widespread growth of arbitration in most of Asia, its use continues to be limited in some countries. This happens, for instance, in Japan (Anesa and Locatelli 2015; Nottage 2004) and traditionally this is attributed to a cultural desire to avoid conflict. Some scholars such as Cole (2007) insist that specific cultural aspects undermine the use of arbitration in Japan. However, it has to be pointed out that other reasons may be the lack of effort on the part of governmental policies to promote arbitration and the relatively small presence of foreign lawyers (Nottage 2004). However, the new arbitration law adopted in 2004 seems in line with an underlying desire to gradually align Japan with other countries in the use of arbitration procedures.

Countries such as Singapore and Hong Kong continue to be the preferred seat of arbitration. Drawing on Greenberg *et al.* (2011: 36), the following reasons may be listed:

- geographic convenience
- leading role as financial centres
- widespread use of English in business
- modern arbitration laws and efficient court system
- tradition and well-established reputation
- renowned international arbitrators and arbitration centres, e.g. Singapore International Arbitration Centre (SIAC) and Hong Kong International Arbitration Centre (HKIAC)
- development of curricula including arbitration courses at tertiary level education.

The application of international standards and procedures is also seen as a source of credibility. For example, the New York convention is one of the milestones of modern arbitration. The expression 'New York Convention Arbitration' is sometimes used to refer to modern international commercial arbitration in general, in that the majority of countries are signatories to the convention and the awards are thus enforced pursuant

to the principles set out in that seminal text. Over the years, numerous Asian countries have also become signatories to the convention [8].

4. Analysing the websites of arbitration centres in East and Southeast Asia

4.1. *Sample*

The acceptance of arbitration in Asia has matured over the years to the extent that it has now become an attractive method adopted to resolve disputes. Competition has grown in this field where traditional European or US centres have to vie with internationally renowned Asian centres such as HKIAC and SIAC. Beyond these well-established institutions, others across the continent are also experiencing growth.

Thus, several centres now operate in the Asian continent. This analysis has been restricted to those generally cited in the literature as the most popular. Other criteria for selection were:

- number of disputes per year
- seat in South and Southeast Asia
- website also available in English.

The following centres have therefore been selected:

1. Hong Kong International Arbitration Centre (HKIAC);
2. Singapore International Arbitration Centre (SIAC);
3. China International Economic and Trade Arbitration Commission (CIETAC);
4. Mongolian International and National Arbitration Center (MINAC);
5. Japan Commercial Arbitration Association (JCAA);
6. Korean Commercial Arbitration Board (KCAB);
7. Philippine Dispute Resolution Centre (PDRC);
8. Kuala Lumpur Regional Arbitration Centre for Arbitration (KLRCA);
9. Vietnam International Arbitration Centre (VIAC).

Broadly, the sample may be said to have been generated using a purposive sampling technique, i.e. the intentional selection of a sample which allows us to focus on specific issues (Patton 2015). This approach is particularly appropriate for the investigation of online material such as websites and web pages (Baran 2016: 220) given their fluid and dynamic nature.

Table 2 illustrates the websites analysed and the respective sections taken into account (first-level hyperlinks). This analysis is limited to the textual aspects of those webpages, as a multimodal approach would go beyond the scope of this paper. The sample amounts to approximately 290,000 tokens.

[8] Namely, they are (excluding Middle Eastern countries and Oceania): Afghanistan, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Hong Kong, India, Indonesia, Japan, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Republic of Korea, Russian Federation, Singapore, Sri Lanka, Tajikistan, Thailand, Uzbekistan, Vietnam (Source: New York arbitration Convention, http://www.newyorkconvention.org).

Centre	Website	Sections
HKIAC	http://www.hkiac.org/arbitration	Arbitration; Domain Name Disputes; Adjudication; Why HKIAC?; The Process; Model Clauses; Rules & Practice Notes; Guidelines; Fees; Arbitrators; Tribunal Secretary Service; What is Arbitration?; Costs & Duration
SIAC	http://www.siac.org.sg/	Home; About Us; Rules; Arbitrators; Model Clauses; Fees; Resources; Events; FAQs; YSIAC
CIETAC	http://www.cietac.org/?l=en	About Us; Rules; Guide; Arbitrators; Multi-Service; News; Activities; Data; Research
MINAC	http://en.mongolchamber.mn/eng/index.php?option=com_content&view=article&id=126:2011-12-21-114136&catid=30:departments-a-divisions&Itemid=91	MNCCI; History; Structure; Main goals; About Mongolia; Departments & Divisions; News
JCAA	http://www.jcaa.or.jp/e/	What's JCAA; History; Location; Member's Benefits; How to Apply; Japan As the Place of Arbitration; Rules & Regulations; Standard Arbitration Clause; Forms; Global Collaboration
KCAB	http://www.kcab.or.kr/jsp/kcab_eng/index.jsp	About KCAB; Arbitration; Arbitrators; Law/Rules; Mediation; Customer Center; International Arbitration; Rules (2016); Request for Arbitration; Arbitration Cost; Events
PDRC	http://www.pdrci.org/	Home; About us; Our Team; Services; Arbitrators; Rules; Fee Calculator; Library; Gallery; FAQs
KLRCA	http://klrca.org/	About KLRCA; Dispute resolution; Publications; Events
VIAC	http://eng.viac.vn/	Home; About us; Why VIAC; Arbitration; Mediation; Library; Contact; Model Clause; Rules of arbitration; List of arbitrators; Costs of Arbitration; Publications; FAQs; Media; News; Testimonials

Table 2. Sample

4.2. *Isomorphism*

Institutional websites allow arbitration centres to promote their image and encourage the use of their services globally. They also constitute a practical and resourceful communication tool and a dynamic construct. In other words, webpages play a crucial role in what can be defined as 'arbitration marketing', where different institutions try to advertise themselves to an international public.

It is plausible to assume that (new and existing) arbitration centres may follow isomorphic processes in order to acquire institutional legitimacy as, typically, similarity with other renowned institutions in a particular field may enhance acceptability and credibility. More specifically, in the era of globalization, international arbitration centres and associations seem to deal with a certain level of discursive isomorphism. By and large, the concept of isomorphism is traditionally intended in social sciences as a process in which "units subject to the same environmental conditions […] acquire a similar form of organization" (Hawley 1968: 334; see also DiMaggio and Powell 1983), but it is used in this study with a different approach, adopting a discursive viewpoint.

In particular, this analysis does not focus on the organizational or structural elements of different institutions, but rather on forms of 'discursive isomorphism' intended as a process of convergence of the discursive features which characterize specific types of organizations. In this usage the expression 'discursive isomorphism' does not imply any teleological overtone. On the contrary, it suggests that, inasmuch as certain forms of communication harbour similar discursive characteristics, those forms of convergence may belong to a single, broad process which may lead to uniformity and standardization.

The presence of elements such as conventionalized generic conventions, replicated stylistic choices and uniformity in content presentation are indicative of this form of isomorphism. This study observes to what extent this phenomenon emerges even in institutions operating in countries characterized by different legal systems. More specifically, the analysis is based on the identification of the predominant semantic fields (see Section 4.3) and a qualitative investigation of international and local elements emerging in the texts (Sections 4.4 and 4.5).

4.3. *Semantic fields*

Isomorphic processes in the promotional discourse of arbitral institutions may take place at different levels. For instance, replicable semantic patterns are intuitively present and this preliminary observation was verified using AlchemyLanguage [9]. The three most relevant fields were selected for each institution and Table 3 presents an overview of the semantic taxonomies [10] present in the webpages. The value indicates the "confidence score" [11]. Only the ones with a confidence score ≥ 0.3 were considered.

The taxonomy function categorizes content into a hierarchical taxonomy (up to five levels). It is based on over 1000 semantic categories which represent the extended version of Interactive Advertising Bureau Quality Assurance Guidelines Taxonomy [12].

'Law, government and politics' represent the most recurrent semantic field (as a general field or with specific subfields, e.g. 'legal issues' or 'government') across all webpages. Others such as 'business and industrial' or 'science/mathematics/statistics' are also present in different websites. A detailed semantic analysis does not represent the focus of this study, but the recurrence of specific fields across the sites seems to preliminarily confirm the presence of a form of convergence of the different texts towards isomorphic processes from a semantic perspective.

4.4. *Standardized features and cultural uniqueness*

The sample underwent a qualitative analysis in order to identify features related to processes of standardization or cultural localization. The texts were coded manually

[9] See http://www.alchemyapi.com/products/alchemylanguage.

[10] AlchemyLanguage service from IBM provides a set functions and APIs for natural language processing and analysis. In particular, the taxonomy function categorizes input into a hierarchical taxonomy, which is based on the Interactive Advertising Bureau Quality Assurance Guidelines Taxonomy and is extended to 1000 categories.

[11] Confidence scores are calculated between 0.0 and 1.0 and are assigned according to the relevance of textual elements in relation to the semantic categories. The higher the score, the higher the relevance of a word or a lexical bundle to a semantic category.

[12] The taxonomy is available at: https://www.iab.com/guidelines/iab-quality-assurance-guidelines-qag-taxonomy/?cm_mc_uid=87688354536814857852452&cm_mc_sid_50200000=1485785245.

	HKIAC	*SIAC*	*CIETA*	*KLRCA*	*MINAC*	*JCAA*	*KCAB*	*PDRC*	*VIAC*
/law, govt and politics	0.9997		0.8542	0.7985		0.9215	0.6215	0.9564	0.9125
/law, govt and politics/legal issues				0.9845					
/law, govt and politics/legal issues/international law		0.9998	0.9456			0.9547		0.9648	
law, govt and politics/legal issues/legislation/family laws							0.4236		
/law, govt and politics/government	07589	0.3946		0.7564	0.4598				
/business and industrial			0.4658		0.8518		0.6984		0.9845
/science/mathematics/statistics	0.4587				0.4598				
travel/tourist destinations/						0.8794		0.4587	
science/social science/history		0.3457							

Table 3. Semantic fields

using *QDA Miner Lite* and two different coders conducted the process separately. The level of intercoder agreement was taken into account and, in the case of discrepancy, a third coder was consulted.

4.4.1. *Standardization*

The webpages of the institutions analysed present a high level of uniformity with regard to structure and content. The discursive isomorphism mentioned above relates firstly to the visual organization of the text and their components. Moreover, recurrent patterns in terms of content are present and an emphasis is placed on a series of elements which allow the arbitration centres to enhance their credibility at an international level.

The most recurrent theme is related to the international character of the centres. All institutions emphasize their international profile and all the webpages analysed stress the importance of international cooperation. In particular, most centres clearly list the international networks or associations they belong to. This is evident, for instance, in the presentation of MINAC (Mongolian International and National Arbitration Center):

> The MINAC is an internationally recognized institution and is a member of several international arbitration organizations such as International Federation of Commercial Arbitration Institutes (IFCAI), Chartered Institute of Arbitrators and London Court of International Arbitration (LCIA). (*MINAC*)

Cooperation agreements are also referred to. For example, in the case of the MINAC, agreements with different centres and institutes are listed. No specific information is given regarding the nature and content of such agreements, but this simple reference is sufficient to convey an international appeal. The KCAB (Korean Commercial Arbitration Board) also presents a list of arbitration and cooperation agreements. Similarly, no links to the specific documents are provided, but the mention of robust relationships with countries ranging from Japan to Venezuela or from Denmark to China enhances the centre's legitimacy and international status. In other cases, such as the JCAA (Japanese Commercial Arbitration Association) site, the list of international agreements is accompanied by links to the actual agreements (usually in English). Along the same lines, the PDRCI (Philippine Dispute Resolution Centre) also stresses the importance of cooperation with other centres and emphasizes its presence in international networks and associations (such as APRAG, the Asia Pacific Regional Arbitration Group).

The reference to international legislation is also present across the websites. For instance, the UNCITRAL (United Nations Commission on International Trade Law) Model Law is specifically mentioned in the vast majority of websites as a form of guarantee of the observation of international standards. Similarly, pointing out that a country is signatory to the New York Convention (see Section 3) contributes to enhancing the credibility and value of the institutions operating in that area. For example, in its section listing the advantages of choosing Singapore as the seat of arbitration, the SIAC website reads:

> The UNCITRAL Model Law is the cornerstone of Singapore's legislation on international commercial arbitration which is regularly updated to incorporate internationally accepted codes and rules for arbitration.
> A party to the 1958 New York Convention (on enforcement of arbitration awards). Singapore arbitration awards are enforceable in over 150 countries worldwide.

The international character of the centres is also conveyed by the presence of eminent foreign arbitrators. Some websites (e.g. VIAC, Vietnam International Arbitration Centre) list national and foreign arbitrators in separate lists, while others allow the user to choose a specific nationality as a filter.

In most cases, information about the number of cases administered is also offered, which emphasizes the experience of the centre (e.g. "More than 300 arbitration cases and 900 mediation cases are administered by KCAB per year," *KCAB*).

On a practical note, two thirds of the websites also include a fee calculator tool which provides an estimate of costs. This contributes to conveying transparency and certainty about potential costs to be incurred.

For purely illustrative purposes, Table 4 summarizes the presence of the above-mentioned elements and shows their recurrence across the different websites.

Elements of standardization and internationalization emerge among centres located in different countries. With regard to centres operating within the same countries,

	HKIAC	*SIAC*	*CIETAC*	*KLRCA*	*MINAC*	*JCAA*	*KCAB*	*PDRC*	*VIAC*
International agreement	x	x	x	x	x	x	x	x	x
Specific reference to the nationality of foreign arbitrators	x	x		x					x
Reference to UNCITRAL Model Law	x	x	x	x	x	x	x	x	x
Reference to the NY Convention	x	x	x	x	x	x		x	x
Fee calculator	x	x	x	x			x	x	
Number of cases administered	x	x	x				x		x

Table 4. Standard elements across websites

uniformity is even more manifest. In some cases, centres clearly adapt their discursive practices to those most popularly used. This happens visibly in the case of Vietnam, where the most renowned centre is VIAC and, interestingly, a number of its webpages are to some extent replicated by other centres. Although not the specific object of this analysis, it is interesting to note that the arbitration rules of PIAC (Pacific International Arbitration Center) are to a large extent identical in their textual realization to those of VIAC.

4.4.2. *Local elements*

As discussed above, the promotional discourse of the arbitration centres analysed is characterized by growing efforts towards standardization of discursive practices and a prominent emphasis on internationalization processes. However, some textual elements which are indicative of a specific geographic area or a specific culture also emerge.

For instance, the role played by mediation in South and Southeast Asia emerges clearly and is related to a specific legal tradition. Reference to mediation practice is present in all websites, and seven websites describe the activities carried out by a specific mediation centre. This procedure is often encouraged and, for example, in the case of KCBA it is clearly mentioned that there is no cost involved (e.g. "In order to encourage mediation by various users from Korea and other countries, KCAB provides mediation services free of charge" *KCAB*).

	HKIAC	*SIAC*	*CIETAC*	*KLRCA*	*MINAC*	*JCAA*	*KCAB*	*PDRC*	*VIAC*
Mediation centre	x	x	x			x		x	x
Mediation in general	x	x	x	x	x	x	x	x	x

Table 5. Reference to mediation

An element which instead indicates the specificities of each country (rather than the macro-region) is the use of words in the local language. Such words have specific cultural implications and their translation may lead to imprecision. To illustrate, in the case of the Mongolian Arbitration Center, the word *aimag* occurs.

> MNCCI is also responsible for implementing some UNDP projects in regional *aimags* to support SMEs such as the Comprehensive community services to improve human security for the rural disadvantaged populations in Mongolia project.
> In arbitration court of *aimags*, the arbitration fee will be deemed as paid to the arbitration court of *aimag*.

Originally used to mean 'tribe', an *aimag* in this context is an administrative subdivision of the Mongolian territory, corresponding loosely to the concept of province. Given its specificity, the Mongolian term is preserved within the English text.

Another option for the introduction of culturally laden words is the juxtaposition of an English formulation accompanied by the word in the original language. For instance, one text on the JCAA websites presents the juxtaposition of English translations and Japanese words.

> By this amendment, a foreign lawyer practicing outside of Japan may represent a party to the proceedings of an arbitration case in regard to civil affairs where the place of arbitration is located in Japan and all or part of the parties have domicile (*jusho*) or principal place of business in a foreign country. A foreign law solicitors [*sic*] registered in Japan (*Gaikokuho-jimu-bengoshi*) may also represent a party in the above-mentioned case.

For instance, *jusho* broadly corresponds to the concept of domicile and should not be confused with the notion of *kyosho*, generally translated as residence, and a *Gaikokuho-jimu-bengoshi* is a foreign attorney who has obtained registration on the Register of *Gaikokuho-Jimu-Bengoshi* kept by the Japan Federation of Bar Associations.

As foreign parties may not be familiar with the Japanese terms, which have a very specific meaning whose translation may be problematic and generate interpretative issues, the linguistic choice adopted guarantees both precision and clarity.

5. Conclusions and implications

Given the considerable growth of Asian arbitration centres, some scholars have argued that we are witnessing the 'Asianization' of arbitration, with the increasing bargaining power of Asian parties (Lew 2014). In this respect, this study resonates with Bao (2014: 48), who affirms that an Asianization process may be proven if we consider where international arbitration is seated. On the other hand, a phenomenon of 'Universal Arbitration' is also emerging, and it may be defined as a form of "convergence of the way disputes are resolved so that disputants, advocates and arbitrators of any nationality can be found everywhere doing the same thing in the same way with an ever-decreasing number of linguistic barriers" (Paulsson 2012).

In recent years, relevant Asian legislation has undergone considerable changes generally aiming towards harmonization with international standards and the

reduction of discrepancies, especially in the field of international arbitration. Indeed, harmonization is fundamental in order to encourage foreign investment. Consequently, not only are legal reforms essential, but it is also important that ADR procedures be rendered clear and transparent.

The influence of Western arbitration on Asian dispute resolution advocated in some endeavours should not be seen as an eradication of local culture, but rather as a natural process linked to the need for harmonization in a world where business transactions are inevitably conducted on a global scale. Given the flexibility of arbitration procedures, it is up to the arbitrators and counsels to preserve local values and principles when conducting arbitration, without necessarily imposing a model which may be unfamiliar or distressing to (one of) the parties.

This paper has made an attempt to examine the interrelation between cultural peculiarities and commonly shared practices in promoting arbitration in Asia, and to investigate its local, national and global dimensions. Although it was plausible to hypothesize that the variegated Asian continent may embrace considerably different communicative and rhetorical strategies in the promotion of arbitration, the data show that this diversity, although present, is strongly mitigated by the need for uniformity. This is not to contend that cultural backgrounds have not greatly impacted our understanding of arbitration theory and its practice, but rather that cultural peculiarities also demonstrate trends towards standardization. In other words, as arbitration centres target the same potential clients worldwide, local specificities are encapsulated within a globalized approach.

Consequently, if new centres want to emerge within this competitive market, it seems manifest that they should maintain their local features and their defining character while, on the other hand, following the path so clearly indicated by the established centres. This does not merely imply an alignment in terms of arbitration rules, costs and timing but also the implementation of similar communicative strategies in promoting their services.

Despite evidence that specific cultures have an impact on Asian attitudes to law and dispute resolution, empirical analysis demonstrates that the discursive strategies employed in the different websites bear considerable similarities. Indeed, communicative practices in arbitration are being progressively influenced by standardization trends, as evidenced in the appropriation of textual resources. In this respect, observation of the websites investigated seems to confirm that the process of internationalization and standardization does not solely concern legislative developments but, in addition, the promotion of arbitration worldwide. Despite the vertiginous shifts which often characterize web design, arbitration centres show a high level of uniformity with regard to the discursive resources employed in their quest for competitive advantage. Indeed, the webpages of the institutions analysed, although inherently characterized by a dynamic and hybrid nature, display strong similarities.

Drawing on these observations, at a theoretical level the paper conceptualizes the notion of discursive isomorphism, a process which determines a clear tendency towards uniformity of standardized structures and content, to the extent that entire sections are replicated in exactly the same form. Discursive isomorphic processes particularly emerge in semantic fields and overarching themes. For instance, failing to discuss issues such as the expertise of the arbitrators or the international recognition of an

award may alter perceptions of legitimacy, thus being detrimental to the credibility of the centre in question.

However, it should also be pointed out that there are some potential conflicts when considering the promotion of East and Southeast Asian arbitration centres on a global scale. On the one hand, the focus is on the implementation of international standards and international cooperation, but on the other hand cultural specificities emerge. For instance, there is a tendency to focus on the role of mediation, yet some websites demonstrate the use of local elements, such as terms in the national tongue.

Beyond providing a description of the elements of arbitration procedures drawn upon in different countries, the reflections offered represent an initial step in pinpointing elements of comparison between the discursive features of webpages of different arbitration centres on the Asian continent, and provide an enhanced understanding of how their promotional strategies are developing.

In order to construct a more robust and encompassing depiction of arbitration promotional discourse, supplementary studies may focus on the perceptions and choices of the parties involved to better understand to what extent cultural elements may influence arbitration practice. Indeed, given the growth of Asian centres as seats of arbitration, further investigation into the reasons determining this advance is particularly necessary, not only from a legal and economic perspective, but also from a discursive viewpoint.

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