

**FORWARD TO THE SPECIAL ISSUE ON
“LANGUAGE AND LINGUISTIC CHALLENGES
IN INTERNATIONAL ARBITRATION AND
MEDIATION”**

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International arbitration is generally conducted in a multi-linguistic environment, where parties, counsel, experts, witnesses and arbitrators are from different linguistic or cultural backgrounds. This diversity in international arbitration highlights the special importance of language and linguistics. Language and linguistics issues are likely to arise from the negotiation and drafting of arbitration agreements to the whole arbitral proceedings, including parties’ and witnesses’ statements, the submitted documents, and even to the enforcement of an award. Major actors in international arbitration might be expected to have proficient skills in languages other than the language of arbitration. In certain instances, they may have to rely on translation and interpretation support to bridge a language gap.

The use of translation and interpretation is not uncommon in international arbitral proceedings. However, most people remain unaware of the complexities and challenges of translation and interpretation. Little serious attention is paid to the possible impact of mistranslation and inappropriate interpretation on the rights of parties in an arbitral process and the accuracy of arbitral awards. The lack of express provisions concerning various aspects of language and linguistic issues in current international arbitration rules is also under appreciated.

Unlike litigation, international arbitration is particularly sensitive to the risks caused by language and linguistic problems due to its multi-national

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and cultural-linguistic nature. Considering a high number of international arbitration cases and the significance of language usage, we believe that all practitioners should be aware of and be able to deal with challenges brought about by language issues as globalized markets become increasingly integrated and evolved.

Accordingly, we have decided to publish a special issue on “Language and Linguistic Challenges in International Arbitration and Mediation”. The current volume includes six peer-reviewed papers in relation to language issues.

A paper on “Linguistic and Language Issues in International Arbitration—Problems, Pitfalls and Paranoia” is written by Dr. Stephan Wilske. Dr. Wilske discusses various language and linguistic problems in international arbitral practices. He observes that the testimony of a non-native English speaking witness is just as prone to misunderstanding and miscommunication when delivered in English as it is when delivered in a native tongue and translated through an interpreter. He also identifies certain problematic attitudes that practitioners often hold in the face of language and linguistics issues. Examples include the ignorance of language issues, reluctance to budget sufficiently for interpreter services, complete reliance on English native-speakers or alternatively no use of English in arbitral proceedings. In his view, only a multi-lingual and multi-cultural approach can ensure a successful arbitration.

Professor Chang-fa Lo authors, “Beyond Semantics and Semiotics—Arguing for a Clearer Set of Arbitration Rules on the Issues of Translation and Language Interpreting”. He argues that translation and language interpreting involve legal issues of systemic importance. In order to avoid the distortion of meaning through language translation and interpreting, the introduction of relevant provisions in arbitration rules is desirable. In this regard, Professor Lo proposes some general principles to be included in arbitration rules, such as the requirement of good faith when making a translation and allowing parties to challenge a translation and interpreting. In addition, Professor Lo recommends some specific principles, such as requiring the submitting party to be liable for the translated outcome and prohibiting an interpreter or translator from correcting, modifying or distorting the party’s statement, the law, contract or evidence.

Professor Joshua Karton authors, “Reducing the Impact of Mistranslated Testimony in International Arbitral Hearings”. He argues that interpretation of live witness testimony is not simply a technical matter. Instead, mistranslation is likely to create serious legal problems. Professor Karton presents some practical steps to reduce mistranslations and its possible legal impacts. For instance, the tribunal should prepare written procedures to ensure good interpretation at hearings. Interpreters should be made aware of the issues to be interpreted in advance and be given proper amount of rest.

Dr. Rajesh Sharma authors, "Is There Any Role for Linguists Among Lawyers in Arbitration?". He discusses the possible role that linguists can play in the interpretation of multilingual treaties, including investment treaties. In his view, multilingual translations of such treaties would inevitably result in problems of authentication, translation and interpretation. In order to resolve the disputes in an efficient manner, Dr. Sharma suggests that there is a need to develop a framework for the interpretation of multilingual treaties in order to explore the dual role of law and language. By such means, it is expected to address the issues of inconsistent construction and interpretation of bilingual and multilingual treaties and their applications in the case of arbitrations.

The paper "Language in Arbitration Procedure: A Practical Approach for International Commercial Arbitration" is authored by Ms. Sally A. Harpole. Ms. Harpole points out that clarifications on the use and implementation of the arbitral language are always of high importance. In cases where international commercial arbitrations are conducted bilingually (*e.g.* both English and Chinese being used in an arbitral procedure), more complex issues and cultural-linguistic challenges may arise. Additional time and costs could be caused by translation practices of multi-versions of the same document. It is advisable that tribunals work with parties to develop a road map for the appropriate language usage throughout the course of the arbitration.

Professors Alexandra Carter and Shawn Watts jointly author a paper called, "The Role of Language Interpretation in Providing a Quality Mediation Process" to look at the role of language in mediation. In their view, language plays a central role in mediation given that the participants and the mediator should communicate and understand one another at each stage of mediation so as to ensure a sound process. They argue that in cases where language presents a barrier to mediation, the mediator assumes a more important role towards an ethical and effective process. Interpreters should serve as a neutral and impartial third party with proper training and expertise, and be fluent in both the formal and dialect spoken versions of the party's language so as to assist in mediation.

The above papers not only identify the significance and concerns arising from language and linguistic problems in international arbitration and mediation, but also propose or recommend ways to resolve problems and improve the rules. It is hoped that readers of the CAAJ will be interested to look more into these contributions and engage in further discussions or comments on the related issues. It is also hoped that cultural diversity through multi-lingual practice will continue to be an advantage, rather than a barrier, to the future development of international arbitration and mediation.

