

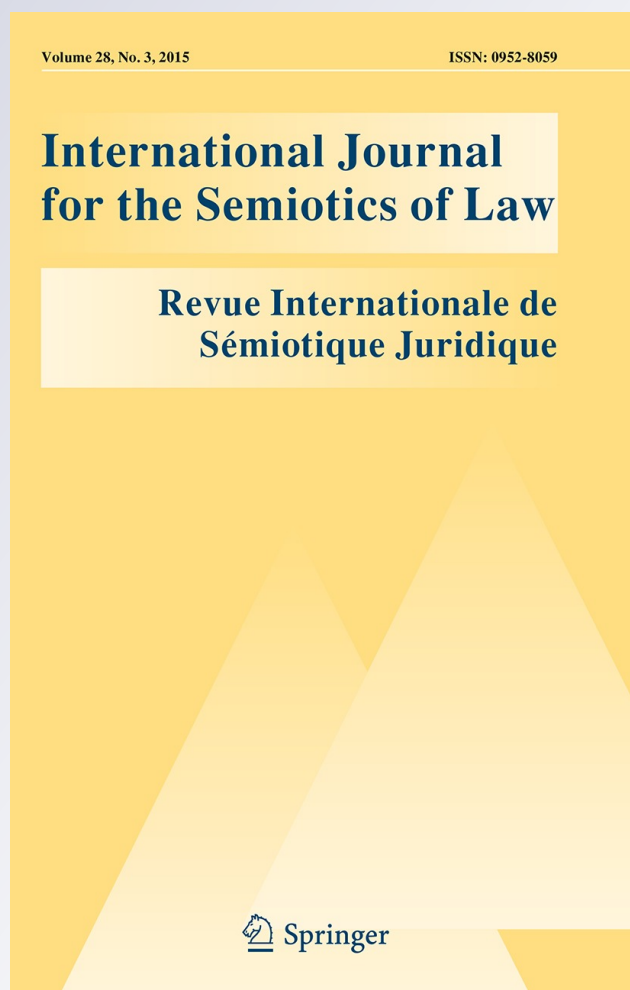
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Power and Complexity in Legal Genres: Unveiling Insurance Policies and Arbitration Rules

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Abstract The purpose of the present paper is to unveil whether the power distance/textual complexity duality attributed ordinarily to legal language applies to two different documents which are widely deployed, interpreted and applied in the global scope of commercial trade and communications, namely Lloyd's Institute Cargo Clauses and the London International Court of Arbitration Rules. In choosing two texts which are the direct product of the law-making machinery of the Common law system, but which are used internationally, we ultimately undertake to research whether opacity is really inherent to legal texts in English with an international scope of implementation. To scrutinise, illustrate and argue on the degree of difficulty and power distance (and the relationship between these two) in such legal instruments, the perspective of genre has been chosen as the most effective of instruments provided by current Applied Linguistics. Genre analysis permits to identify the genre or genres of a specialised professional community connected to the communicative group it comes from, the audience that receives it, the historical and cultural background and the extra-textual reality it aims to represent. The goal of our study, carried out through different levels: formal, discursive and, mainly, pragmatic, is to discern whether there exists any possible equation between power and textual complexity, and the consequences this entails for the understanding of the nature of these major international texts.

Keywords Legal language · Legal texts · Legal complexity · Legal power · Institute Cargo Clauses · LCIA Rules

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1 Introduction: The Purpose and Context of the Study

The present study is aimed at analysing, comparing and contrasting the degree of complexity of two English legal texts, namely Lloyd's Institute Cargo Clauses and the London International Arbitration Rules, which are widely deployed, applied and interpreted in the global context. We wish to demonstrate that their communicative and social purpose is directly connected to their intricacy, or lack of it, and that this intricacy is, in turn, connected to the attribution and expression of power in either text. Arbitration rules and their different linguistic nuances and translational difficulties have already been extensively studied by several authors [16, 17, 22, 23, 26, 27], and some studies have been carried out about the language of Lloyd's policies ([37] and, from the strictly legal perspective, [38]). However, the present study wishes to present both documents under a new light, regarding them as to their degree of complexity; contemplating their paradoxical nature as very different prescriptive texts. Indeed, the former constitute an arbitration code aimed at controlling the amicable settlement of conflicts in international business deals. As a regulatory text, it should reveal the natural asymmetries between the senders and receivers of legal rules. Nevertheless, arbitration rules differ from regular statutory provisions in that there is no sovereign issuer regulating society at large, but the focus is upon a specific activity being regulated by specific categories of human participants. Accordingly, even if the Rules under study here are not negotiable once the arbitration process has started, they do allocate some degree of power to those participants—namely, the parties to the dispute and the arbitration authority—at the different stages of the process of arbitration [17: 76–85]. In contrast, Lloyd's policies are ostensibly contractual clauses and their wording should be clear for the benefit of the parties, displaying some degree of equanimity between them. Instead, they constitute an obscure set of policies issued by an influential group of insurers, the Underwriters at Lloyd's, and addressed to the international community that undertakes overseas trade and transportation. Because of their ubiquitous character and their specific weight in the field, they are perceived as a powerfully prescriptive, monolithic, almost mandatory, set of provisions for the insurance of cargo worldwide [37: 186].

The complexity of legal language has been widely discussed by lawyers, linguists and translators over the years [1, 3, 8, 9, 12, 37, 45]. Law is an authoritative and complex institution that affects and influences every aspect of social life, and which is based upon the deployment and the possession of power. Several sociolinguists and linguists [15, 24] have even talked about a “conspiracy theory”. Such theory claims that the system is archaic, obsolete and purposefully opaque and pedantic because its communicative aim is to separate the ruler from the citizen and the legal message from its user, so as to perpetuate the social superiority and detachment of the legal class. And, precisely, since law is the most linguistic of institutions inseparable from language because documents and procedures are entirely linguistic [24], legal language is a product of the purpose it serves, necessarily involving technicality, power and written language. However, the relationship language-law is a two-way one: language being the vehicle of the law (an abstract construct), makes

it possible for the understanding and communication of legal concepts which could not be conveyed otherwise. On the other hand, the incomprehensibility of legal language amongst those who have a sophisticated knowledge of natural language implies that knowledge of the legal system is consequential for such a comprehension: it is lack of knowledge of the system, rather than lack of knowledge of language, which produces problems of cognitive processing and, as a result, an overall impression of complexity and opacity [31].

Against this background, there are both linguists and jurists who think that complexity and wordiness are features, not only intrinsic, but also essential to the drafting of universal laws [3, 31, 45]. The rigid and hackneyed nature of legal language is, in particular, attributed to its peculiar lexicon, its phraseology, its schematicity and the repetitiveness of certain textual elements. These, necessarily, separate legal language from ordinary language for the sake of precision and accuracy of meaning. Such traits are aids to the institutional character of legal discourse, its social detachment from the user and the hierarchical order it wishes to establish. At the same time, it greatly contributes to the perception of legal language as a “frozen genre” [5] or “fossilized language” [1: 9].

As we pointed out above, the present paper is aimed at discussing the relationship between the linguistic complexity and the communicative intentions of two different prescriptive texts: a set of legislative rules, on the one hand, and the general conditions of an insurance contract, on the other. We are poised at unveiling the unrevealed nuances of power and imposition that the structure of such documents belies, and the premise underneath our tenet is that prescriptions, as regulative speech acts, are not uniform. Searle ([40], in [10]: 2 and [47]: 35) outlines two major categories of regulative acts: directives—as in legislation, where the addresser tries to influence the behaviour of the addressee through the imposition of power—and commissives, as in contracts, where, according to Austin ([2], in [47]: 34), the whole point is to commit the speaker to a certain course of action. This study is aimed at discerning whether the power relationships attributed ordinarily to legislation apply to the London International Arbitration Rules (from now on, LCIA) and if, on the contrary, the bilateral commitment that should be present in contracts is, indeed, existent in the Institute Cargo Clauses (from now on, ICCs). This should ultimately reveal if there exists any possible equation between power and textual complexity, as we, indeed, hypothesise.

2 Some Reflections About the Nature of Complexity in English Legal Language: Lexis, Syntax and Discourse

The globalization of business activities and dispute resolution through arbitration between individuals and institutions has been accompanied by a process of legal internationalization [32]. But such a process requires a common language for legal officials and scholars to understand one another, and such language is, undeniably, English. Language being key to the construction of reality, the adoption of English as a *lingua franca* for law has also entailed the predominance of English logic, worldview and preferences [19: 93]. Indeed, the increasing global Anglo-

internationalization of transactions [50: 112] has had a huge impact in the last two decades, affecting the way in which legal texts are drafted, applied and translated. Specifically, one of the most important problems of the widespread use of legal English is that the juridical tradition it comes from, the Common Law of English-speaking countries, is very different in many aspects to the Civil Law tradition practiced in most part of Continental Europe and many other parts of the world, like Central and South America. The role of Common Law in our documents, and the differences between this and Civil Law systems is not a key topic in this paper. However, it is fair to emphasise that obscurity of language poses additional challenges when documents as widespread and central as the ones under analysis. These happen to be issued in the context of a very different legal system which is culturally marked and need a further comprehension effort on the part of the actors within the transnational communication processes.

In general, the common problems plaguing English legal language—from the stance of its analysis and translation—have been the focus of study of illustrious authors [1, 6, 12, 14, 26, 36, 44, 46], and they thoroughly cover the lexical, syntactic and discursive areas. Overall, the lexicon is more opaque and the sentences are longer and more complex than in the discourse of Civil law systems, showing a greater deal of explanation, qualification and limitation in language, and a much more profuse use of *legalese* [12: 97]. As instances, it is common the overuse of archaisms in Old English, Old French and Anglo French (the tongue spoken by jurists, long after French had disappeared as the official language in Britain) as well as Latin. Additionally, legal language has its own *terms of art* or specialized terms with a univocal nature of meaning, as well as common words with uncommon meanings, the latter leading to a tremendous amount of equivocal *faux amies*. Finally, ritualistic formulae are plentiful. As Lakoff has pointed out [33: 100], formality in the context of the courts serves to remind participants that this is an adversarial context. The ritual and formal parts of a legal document are, then, marked by the presence of often polysyllabic words and archaic or unusual grammatical forms.

Syntactically, English texts are fairly dense in construction, partly because of the customary practice to formulate subsections, and sometimes even entire sections, as a single complex sentence “built up from a dizzying number of subordinate and interpolated clauses and phrases, which are distributed over the paragraphs and subparagraphs” [28: 107]. Sentences around a hundred words long or more are common, when according to Garner [20: 19] the rule should be for lawyers to include 20–30 words per sentence at most, and when for some analysts the average length of legal sentences actually reaches 50–80 words per sentence [28, 30]. In what has been termed by Alcaraz and Hughes as the “anfractuosity of English legal syntax” [1: 19], complex structures are embedded into one another in an attempt to capture every possibility of regulation, conditionals being in abundance and connected with complex prepositional phrases [3: 101]. Nominalizations and passive structures obliterate the agent of the sentence and make prose heavy and unclear. Additionally, the focus is on exceptions and negatives, rather than on basic principles, setting the things that negate or form exceptions or limitations to the front of the sentence or paragraph which relegate the main principle to the back of the line. Finally, the absence of anaphora results in a high amount of unnecessary

lexical repetition that hinders a simple cognitive approach to meaning. All of this makes comprehension difficult and gives a negative, threatening connotation to the text [37: 457].

Taking a pragmatic perspective, legal texts, inasmuch as they are organized in genres, mainly constitute the stratified discourse of a very specific specialised community. This, generically speaking, is shown both in their external and internal organizational structuring and in their communicative function and sociopragmatic conventions. Additionally, legal genres may have an expository nature, inasmuch as they give information about the contingencies and exceptions ruling the rights and duties conferred. Still, the governing character of international treaties, constitutions, orders, regulations, insurance policies, wills and contracts is mainly prescriptive. Descriptive legal texts like text books, law journal articles and other texts presenting the doctrine have an important role in the cosmos of the law, but are less crucial to the everyday workings of a legally arranged society. Consequently, Salmi-Tolonen has recently described legal texts at large as institutional—which explains the lofty and formal tenor used by speakers, and the use of performative markers such as modals ‘may’ and ‘shall’ or performative verbs like ‘declare’, ‘promise’ or ‘enact’—; they are also functional or ‘cautioning’—forever connected to some part of the legal system, such as ruling, prescribing or adjudicating—and also irremediably normative, since they do not describe but they oblige, give instructions or confer rights [39: 64]. Hence, at the pragmatic, contextual or inter-relational level, prescriptions are, from the point of view of speech act theory, regulative acts: expressions of power used as a means of ‘ordering of social relations and the restoration of social order when it breaks down’ [15: 445].

In the sense described above, it may be inferred that legal language is addressed both to specialists and to laypeople, but is mainly based upon the operation of power from the former to the latter: complexity of language is, indeed, a weapon of imposition which exposes the asymmetries of authority and dominance between the users of the law. Obscurity in legal language has strengthened the role of rulers and citizens, and given the former the power they seek. Ostensibly, the impositive force of directives, i.e., rules and laws, has to show the asymmetry of power relationships between addressers over addressees, and such asymmetry is normally embodied in discursive obscurity, for the benefit of the former and in detriment of the latter. Contrarily, contracts are based upon bilateral commitment; this entails two things: first, that such impositive force is to be redressed with negative politeness strategies, that is, in the ‘avoidance of discord’ [11: 104], and second that the consensual nature of contracts should make them potentially more understandable, being as they are the expression of the intentions of the parties [18: 467]. The present study endeavours to prove that such equation does not always add up.

3 The Materials and Method of Our Study: Legal Complexity in a Global World

At the beginning of our previous section, we mentioned that complexity in legal language poses a substantial problem for the many countries where the language of the law is not the mother tongue of those involved in the legal process. We also

suggested that today's international business transactions are, for the most part, carried out in English, and this implies that international litigation and legal practice worldwide are conducted in English as well [25: 17]. Hence, dealing with legal language at an international scope implies taking a very important factor into account, i.e., the possibility of legal communication across barriers in a global world has to allow for what we discussed previously as the 'Anglo-internationalisation of business', with major impact over the last two decades and 'unlikely to change in the near future' [50: 13]. The economic, social and political pre-eminence of countries like USA or UK has made universal the usage of public and private legislation instruments like world agreements (UNCTAD, CISG and UNCITRAL conventions) as well as international contracts in the form of INCOTERMS. Indeed, globalization confronts both linguists and translators with the indisputable fact that English remains as the veritable *lingua franca* of international trade and international relations on the whole, despite the efforts to achieve a truly multilingual world with coordinated common meanings for legal instruments and treaties. In the particular context of Europe, English is, in fact, the working language for most of the institutional and financial bodies within the Continent despite the official status of the twenty-six remaining languages. This is particularly true of institutions such as the European Central Bank, which favour the use of English over all other languages. In a field such as the legal profession, linguistic phenomena coming from different cultural systems and structures are peculiar to each language and country, thus challenging the ability and skills of the translator, linguist and/or specialist in the area. The present work is, thus, partly aimed at meeting some of those challenges.

3.1 The Texts

In light of this panorama, Trosborg [48] speaks of two kinds of texts in the global context:

1. International texts are those generated within the framework of a single national legal system, most often a dominant culture. These texts normally resist change when translated to other cultures. Deploying Garzone's words [21: 6], despite their international character (i.e., the fact that they may have a transnational vocation and transcendence) these texts are nationally-enacted and theoretically lack extraterritoriality, their validity being ostensibly limited to the territory of the country where they are issued. This, as we will see, is the case of the Institute Cargo Clauses.
2. Hybrid texts constitute the result of cultures and languages being in contact. Such contacts are initiated for different common purposes and the texts are the outcome of negotiations between the different cultures involved and the conventions and norms expounded in those texts. The formulation of standardised treaties—such as the LCIA Rules, under scrutiny here—may entail the creation of a hybrid text, inasmuch as these are formulated in several languages, with several legal cultures involved. Nevertheless, hybrid documents do possess different degrees of hybridity, the highest being present in treaties

and conventions as the result of what Trosborg calls “a mutual impetus to contact due to internationalisation processes” [48: 147]. In this sense, the Rules of the LCIA constitute a particular kind of hybrid text, since they are less the product of a consensual final version than treaties and conventions. The Rules were drafted in English as the original, dominant language, but they have been translated to eight other languages, for the sake of the visibility of the body itself and its norms. Nevertheless, despite their Arabic, Chinese, Spanish, French, German, Portuguese, Russian and Italian versions, the English one is to prevail in the event of any discrepancy or inconsistency.

The present study, thus, analyses a text of each typology as described by Trosborg. On the one hand, the Institute Cargo Clauses (‘ICCs’), or Lloyd’s insurance policies for marine transportation are contractual terms and conditions issued by Lloyd’s, or, more specifically by the Institute of London Underwriters, to regulate the insurance of shipment and goods. They are open clauses, generally added to insurance policies or Bills of Lading, covering all the departing and arriving cargo under the shipper’s responsibility, who, as the assured, deals with the payment of premium on the total value of the transported merchandise over a period of time. The ICCs are not agreements per se, as they have to be attached to the policy which shows the parties to the operation, the premium to be paid, etc., but constitute the evidence of an agreement, since they contain the conditions under which the transaction takes place. As at the moment there are no uniform conditions internationally recognised, and due to the role that Lloyd’s plays in the landscape of marine business and insurance worldwide, these policies have become so widespread that they are de facto international insurance terms. Approximately two-thirds of the world uses these policies solely, or together with other local policies [38: 12]. Hence, they are basic tools of international marine trade, introduced in the London insurance market in 1912. They were aimed at substituting and trying to standardise a common insurance policy format which was used for insuring both the Ship and the Cargo, the so-called SG Policy Form. This had been in use until 1779, but its language was too cryptic and old-fashioned to be understood by modern users. A new edition of the clauses was made in 1963 (which relied still too much on the SG formulation) and the most recent was issued in 2009. The Institute of London’s Underwriters offers nine sets of clauses, but we will be focusing on five of them: the A (all risks), B, C, ‘War’ and ‘Strike’ sets of Clauses, as they are the ones that refer to Marine transport. B and C are identical, except for the risks covered, the scope of which is wider in the first one.

On the other hand, the London Court of International Arbitration (‘LCIA’) is one of the world’s leading dispute resolution institutions providing the service of international arbitration. It was born in 1892 as the London Chamber of Arbitration at the initiative of the Corporation of London, with the hope that it would expedite the resolution of business disputes. It became the London Court of Arbitration in 1903, and the adjective ‘International’ was added to remark upon its global vocation and ambition. The LCIA is incorporated in England and Wales, being in full compliance with English Company Law. Its Rules are in conformity with the English Arbitration Act, 1996, and many of its features reflecting mandatory

provisions of this Act [49: 25–30]. Consequently, we conceive them as a product of the Common Law machinery, since even if the LCIA itself has made a huge effort to internationalize its users, it is still ‘widely perceived as a very English institution’.¹ Despite this strong Common-law character, the Rule, do have a definite international reach. This is evident in the fact that the parties to the arbitration are seldom from the UK, which justifies the fact of their being translated into several other languages [49: 25]. Hence, the LCIA administers and provides a forum for dispute resolution proceedings for all parties, irrespective of their location or system of law. Because arbitration is a consensual procedure, the parties must mutually agree to LCIA arbitration before the Court becomes involved in any dispute. They are, therefore, like any ADR (Alternative Dispute Resolution) processes, voluntary procedures in which the participants seek a mutually acceptable resolution of their differences. It is important to emphasise at this point that there is not one, but many arbitration institutions worldwide, and that the parties have the liberty and independence to choose between the body which they deem more adequate for the resolution of a particular dispute, according to the language, the venue and the substantive and procedural law offered by the court in turn. This freedom is observed specifically in the LCIA Rules, since they “provide for the parties to derogate from them and shape their own procedure to a rather unprecedented degree, thus enabling the parties to adapt to the exigencies of the seat” [49: 31].

Therefore, unlike the ICCs (which have no competitors in the field and enjoy a free hand to impose themselves in the area of sea cargo and which can be as obscure as their addressers wish to make them), the LCIA rules are presented as one among many methods of arbitration, in competition with those offered by the rest of the arbitration institutions in the world. We will see below that this is a fact that has an incidence upon the clear and transparent drafting of the text itself.

3.2 The Method: Genre as a Tool for the Analysis of Power

To illustrate and argue about the reasons for difficulty in legal texts, we have chosen the perspective of genre for analysis as the most effective of instruments provided by current Applied Linguistics, and the level of text categorisation which we find theoretically and scientifically more effective to work with. A genre, here, is defined as a category assigned on the basis of external criteria such as intended audience, purpose, and activity type. That is, it refers to a conventional, culturally recognised grouping of texts based on properties that configure the internal (linguistic) criteria forming the basis of text type categories [7: 170].

Following the traditional definitions of the concept of specialized discourse community by Swales [41, 42 and 43] and Bhatia [3, 4] a genre may be defined as a very well-structured communicative event that is ultimately envisaged for a due community to legitimately attain its professional (and, sometimes, personal, according to Bhatia, [5: 7]) purposes. Genre theory explains the internal communicative mechanisms that take place among the members of a concrete

¹ As Turner and Mostashami state at the time of their writing [49: 30], 70 % of the cases at the LCIA are governed by English law and <1 % are conducted in a language other than English.

professional (and very specialised) community, as well as between these members and society as a whole. The more generic knowledge we have about a profession, the more inside expertise we possess about the social purposes that move it. Hence, genres are the different text types produced by the professional community to interact with society at large, and normally share features at lexical-syntactic, discursive and pragmatic levels. They are not monolithic systems, however, as each genre depends on the activity it is aimed at, its medium (oral or written), the scope it emanates from, as well as other contextual factors, and its features will develop in accordance with these issues.

We have chosen two texts which are the direct product of the law-making machinery of the Common law system, but which are used internationally; we are analysing them from the point of view of genre-theory as social constructions, communicative devices that operate within a specialized community (in our case the Institute of London Underwriters and the London International Court of Arbitration). Contemplating these texts as genres will allow us to see how they are aimed at fulfilling the communicative and social purposes of those communities, ultimately leading us to dillucidate whether opacity is always inherent to English legal texts.

We will make a brief account of the lexical-syntactic and discursive, or macrostructural, phenomena in either text, to go on and concentrate upon the pragmatic, contextual level at which inter-relational communication takes place, following Trosborg's taxonomy on regulative acts, which hopefully will allow us to verify the aim of complexity, or lack of it, in communicative terms.

3.2.1 *The Formal, Lexical-Syntactic Level*

The present level deals with the study of the surface elements [13: 201], or the substance, or raw material of the text, as well as the peculiar combinations of that substance which can develop into higher units. Taken in isolation, the presence or absence of certain formal traits is an unreliable indicator of analysis. However, when these formal traits are taken together and in their context they can supply very useful information about their discursive/pragmatic function.

Our analysis has a lexical part in which we will take into account those vocabulary elections which are carried out in terms of the type of the legal genre that ICCs and LCIA rules constitute as instances of legal discourse, namely the use of archaisms, of technical terms and of formal and ritual language. In the area of syntax and discourse of legal discourse in English, complexity will be studied in terms of sentence length, the type of syntactic embedding deployed, the presence of nominalizations and passive structures, exceptions and negatives. The existence of convoluted syntactical constructions will ostensibly render comprehension difficult, giving a negative, threatening meaning to the legal text in hand.

3.2.2 *The Discursive Level*

Once the formal analysis is concluded, both ICCs and the LCIA rules are to be analysed as instances of text or written discourse from the basic rules of linguistic organisation that make them work, and not just as a mere chain of words randomly

arranged. The textual elements of professional language at large are visible in its supra-organisation or macrostructure, which frames the textual segment, assisting the reader in its global comprehension. The macrostructure represents the dominion of the text in its functional level, revealing the way in which the elements of a textual typology operate. This textual structuring reflects the conventionalised social knowledge at the disposal of the discursive or professional community, Lloyd's insurers and LCIA arbitrators, besides the strategies or tactic choices used in general to render the discourse more effective for the communicative purpose of such communities.

3.2.3 *The Pragmatic Level*

Finally, genres are, mainly, the stratified discourse of a very specific specialised community. Looking at language from its communicative perspective implies introducing a description of language in use, the specification of its pragmatic discursive meaning, together with the sociocultural factors that integrate the text. At this pragmatic level, the ICCs and the LCIA rules will be studied from the point of view of speech act theory: as peculiar generic types of legal agreement where power and commitment between the parties is not established in the form of a symmetrical relationship [47: 33]. In fact, ICCs, as we will see, are established as, both, international texts (therefore, not susceptible to change) and a set of directives, i.e. obligations issued by a party—the powerful collective of Insurers as represented by Underwriters at Lloyd's, the profferer of these policies, in their various forms—over the other, namely that of the Assured, who in taking up their clauses is implicitly adhering to all the conditions and terms regarding exclusions and inclusions of risk. In contrast, the LCIA rules, are arbitration codes where consensus is sought between the parties, which are allowed some kind of “say” in the process, and, hence, some degree of power [17: 77].

4 Results and Discussion

4.1 Formal Aspects of ICCs and LCIA Rules

Results at this level have been gathered in different ways. Lexical frequencies have been obtained with MonoConc Pro and typologies of terms were classified with the aid of *Merriam Webster's Online Dictionary* and *Tetley's Dictionary of Maritime Terms*. Legal terms were classified according to *Black's Law Dictionary*. Manual tagging was used for syntactic analyses.

4.1.1 *Lexical Aspects of ICCs and LCIA Rules*

Generally speaking, the lexicon of both texts shares many of the terminological traits of legal discourse in different degrees, and more specifically of the lingo that characterizes legal texts in Common Law. Nevertheless, a thorough search of the corpus has rendered interesting results regarding its idiosyncrasy.

With the aid of MonoConc, we have discounted words of low-information value such as determiners, prepositions and the finite forms of 'be' and 'have', out of the 8000 words in the corpus. Overall, 340 lexical items have been processed, which are a reduced group of more or less definable categories within the world of insurance policies, such as the *dramatis personae* of the Assured, the Underwriters, the Carrier, the Shipowner, the document (the Clause) or their parts (sections), the words referring to maritime transport (stowage, vessel, affreightment or charter), or their risks (unseaworthiness, unfitness, capsize, wear and tear, loss, damage) and a very limited number of verbs in the legal world (deem, consider, exclude, include) or insurance (recover, insure, cause, claim), among others. Lexical multinomials, archaisms and technical terms abound, these being divided into several areas, such as:

1. Terms used in the insurance world, and more specifically, marine insurance, such as 'average', 'claim', 'seizure', 'insurrection', 'sacrifice', 'unseaworthiness' or 'warranty'.
2. Terms having to do with transport and maritime trade, such as 'adventure', 'affreightment', 'collision', 'distress', 'jettison', 'stowage', 'transshipment'.
3. Legal and, specifically, contractual terms, such as 'agent', 'breach', 'compliance', 'constructive', 'liability', 'wilful' or 'expiry'.
4. Terms of scientific language, including risks related to or excluded from the policy, such as 'fission', 'fusion', 'derailment' or 'explosion'.
5. Terms specific to insurance policies, usually general words with a peculiar meaning within the genre, such as 'avert', 'conveyance', 'institute' or 'inure'.

Formality and rituality, typical of contract language, is manifest in the occasional legal binomial like 'null and void' or 'wear and tear', the use of polysyllabic words of Latin origin ('disbursement', 'indemnify', 'commencement' or 'expiration'), in the uncommon combinations of here/there + preposition, typical of legal discourse, in the above-mentioned use of imperative 'shall', and in the usage of long connectors, such as 'notwithstanding', 'howsoever' and 'whatsoever'.

With 8266 words in the LCIA, 315 lexical tokens were detected with MonoConc, belonging to fewer categories than in the ICCs, namely the personalia in the text, or the parties to the process—such as the Claimant, the Respondent, the LCIA Court and the Tribunal of Arbitrators—, and the labels assigned to the different important parts of the process, such as the Request, the Arbitration Agreement, the Schedule of Costs and the Rules of the LCIA Court. The terms of art are crisp and intelligible, being restricted solely to two areas:

1. Legal words of usual appearance and little complexity such as 'advocate', 'claim', 'counterclaim', 'clause', 'costs', 'court', 'dispute', 'fee,' 'proceedings', 'registrar', 'waiver' and 'witness'.
2. Terms belonging to the scope of arbitration, like arbitrage like 'arbitration', 'arbitral', 'appointment', 'award', 'challenge', 'claimant', 'nomination', 'request' and 'tribunal'.

The corpus shows a general lack of lexical obscurity, with no combinations of here/there + preposition and, in general, scarce polysyllabic items, namely a Latinism like commencement and a couple of legal connectors identical to those in the ICCs: 'howsoever', 'whatsoever' and 'notwithstanding'.

4.1.2 The Syntax in ICCs and LCIA Rules

As we remarked upon above, sentence length and complexity is the distinctive seal of legal discourse. This is not an exception in the present texts, to different degrees. To begin with, each of the ICC types is, on average, made up of long and quite convoluted sentences, 142 in all, the average word/sentence ratio being 53–58, where the shortest sentence is made up of 9 words and the longest, the Exclusions Clause in Strikes reaches 238 words. These results are quite outstanding, if we think that in Gustaffson's seminal work on legislative texts [28] the longest sentence was made up by 179 words, with 48 words per sentence. More similar to the latter is the LCIA corpus, which is slightly longer in size, with 180 sentences and an average of 45.92 words per sentence. The longest sentence (276 words) is to be found in Article 1 concerning the terms under which the request for arbitration is to be made, but which is clearly segmented into paragraphs, and the shortest is made up of 8 words. As we can see, there is syntactic length and complexity at sentence level in both texts, the difference between them being the following:

- In the ICC there is a preference for subordinate constructions rather than coordinate ones. In contrast, the LCIA corpus shows very low levels of subordination, favouring coordinate sentences instead.
- Obliteration of the agent is a fundamental trait of the ICCs, as we will see below, at the pragmatic level, and this is carried out through an abundant use of passive constructions and nominalizations. On the contrary, the *dramatis personae* are always present in the LCIA corpus, since all the passives have an agent.
- If the ICC corpus shows an array of complex structures in the ICC, with postmodified nominals and truncated passives, real conditional sentences, and inclusive disjunctives. On the contrary, a simpler, narrower in scope syntactic structure is present in the LCIA, made up basically of conditionals linked by *if* and *unless*.

4.2 Discursive Aspects of ICCs and LCIA Rules

The perception that texts are linguistically coherent segments and not a collection of randomly arranged sentences is what makes us perceive how our corpus works at a structural level. The textual elements of professional language are visible in its supra-organisation or macrostructure, which frames the textual segments, assisting the reader in its global comprehension. It reveals the way in which the elements of a textual typology operate, reflecting the conventionalised social knowledge at the disposal of the discursive or professional community.

Both texts show the peculiar generic integrity that characterises legal texts, with very rigid internal and external macrostructures in both cases.

The five policy types, A, B, C, 'War' and 'Strikes' in the ICCs are organised in eight main blocks (risks covered, exclusions, duration, claims, benefit of insurance, minimising losses, avoidance of delay, law and practice) that group together 20 different clauses, defining the contingencies of risk, the standard practices to ameliorate hazards (like the 'General Average', the 'Constructive Total Loss' and the 'Both to Blame Collision' clauses, the 'Unseaworthiness and Unfitness Exclusion' clause, the 'War' and 'Strikes' Exclusion clauses) and other clauses having to do with transit, the termination or change of the voyage, despatch, value, exemptions and charges, the duty of the Assured and the forum and language of jurisdiction. All the clauses present clear subdivisions into sections and paragraphs and subparagraphs. As it is also the case in the LCIA, the arrangement of the text shows a visible, coherent organization of its terms and conditions by categorizing those provisions topically, including explicit headings dealing with each topic and arranging the categories in a proper sequence. Textualization is accomplished in each policy type through the logical connection between its textual segments or macro-utterances (the Sections), and their organization into subsegments or utterances (the Clauses) and paragraphs and subparagraphs, the longest and most subdivided ones being those having to do with the risks covered by the policy (Clause 1) and the exclusions of risk (Clause 2). However, notwithstanding the numbering in segments and paragraphs, cohesion is complex, mostly carried out through lexical repetition and conjunction with inclusive 'or' (this is particularly true of all the above-mentioned sub-segments that deal with risks and exclusions in all groups), with an example of sentence conjunction with 'and'. Clausal embedding in the shape of legal qualifications, mainly assigning temporal relations, event descriptions and textual authority, convey the overall impression of an extremely repetitive and dense discourse.

In its turn, the LCIA is made up of 32 Articles, divided into numbered sections, and these into subsections. The Articles reflect all the administrative details on the process: the request for arbitration of the initiating party and the response of the other party, the proceedings themselves (including details on the seat and language of the hearings) and the nature of the award. It also describes with detail the role of the LCIA court and those of the Registrar, the Arbitral Tribunal and the Arbitrators themselves, as well as the appointment, formation and potential revocation of the latter.

As we have pointed out above, each Article of the Rules is organised in numbered sub-articles, and these, especially in the case of Articles one and two—which specify the steps to be taken by the parties in dispute—are also organised in paragraphs preceded by a letter. Such graphetical disposition makes it very simple for the reader to process syntactically, since the paragraphs correspond to the different parts of a coordinated sentence. It also arranges cohesive devices neatly and displays the *dramatis personae* clearly. The presence of anaphora and the absence of unnecessary repetition also contribute to such clarity.





4.3 Pragmatic Aspects of ICCs and LCIA Rules

As Trosborg points out, the path that studies politeness strategies within specialised discourse, notably in institutional and political settings, is relatively untrodden [47: 31]. However, power is a significant determinant of strategic choice or lack of choice [29: 133] and pragmatic choices in institutional discourse are related to the modulation of the size of imposition and the social distance and relative powers of participants and their reciprocal rights and obligations. Citing Searle's taxonomy [39: 12], Trosborg states that regulative speech acts may have the illocutionary force of the law when an obligation is imposed on one party by another—thus constituting a 'directive'—or they may be 'commissive' acts, i.e., those which commit the participants in the interaction to do or refrain from doing *something*. Directives—as in statutes or regulations—are face-threatening acts (FTAs) with the utmost impositive force [34: 107]. Such an imposition may be redressed for 'avoidance of discord' with negative politeness or not, as in the case of bald-on record strategies [11: 74], thus emphasising the existing asymmetry between the legislative power and the citizens. On the contrary, in contracts parties have a symmetrical relationship between them, based upon a common interest ('promise' and 'consideration') [18]. Aiming at isolating the pragmalinguistic realization patterns of directives and commissives in statutory and contractual texts, Trosborg further develops a taxonomy of different categories in a scale that ranges between the direct directives of obligation and permission (with the subcategories 'assignment of rights' and 'limitation of liability' for the granting of benefits to the parties) to the unmarked character of constitutive rules (statements of legal effect with unidentifiable pragmatic realizations but unmarked illocutionary force), to commissives, as set out in Table 1 below.

The hypothesis that underlies the present work—which has been present throughout the rest of our scrutiny of the ICCs and the LCIA rules—is that the wording of the ICCs is complex, in harmony with the purpose the policies pursue. Belying their contractual nature, and due to their sociopragmatic peculiarities, the ICCs are a set of directives, a group of asymmetrical acts issued for the benefit of the profferer, the Underwriters at Lloyd's, and at the cost of the recipient, the Insured. The contrary happens in the LCIA rules, the directive nature of which is distributed among the different participants in the process. A faithful application of Trosborg's taxonomy through a manual tagging of the different speech acts contained in the two corpora have rendered the results in Tables 2 and 3 below, for the ICCs and the LCIA rules, respectively. Surprisingly enough, there is symmetry in the number of speech acts in either texts: 180 overall. Percentages have been calculated in order to assess (a) the most salient types of acts in both documents and (b) the party in each corpus where the weight of the speech act is allocated.

The results shown in Table 3 below are, indeed, as peculiar as the set of documents themselves. As can be seen, the parties to the contract are not only the Assured and the Insurers. In fact, the main character in the transaction is not human, but inanimate: the Policy itself. Out of the 180 speech acts in the ICCs, 72.2 % are allocated to such Policy (in fact, the instrument regulating the transaction), 22.2 % to the Assured and 5.5 % to the Insurers. The strategy of rendering human

Table 1 Regulatives in statutes and contracts, according to Trosborg [47]

CATEGORY	MEANING	FULFILMENT
DIRECT DIRECTIVES  OBLIGATION	ILLOCUTIONARY FORCE OF ORDER IMPOSITIVE, FACE-THREATENING ACTS	BALD-ON RECORD MUST/SHALL+VERB BE+TO, MUST, HAVE TO, OBLIGATE, OBLIGED, ORDER, DEMAND,
PROHIBITION		FACE REDRESS: SHALL +PASSIVE BALD-ON RECORD: MUST/SHALL+NEGATIVE (NOT, NOTHING, NO) FACE REDRESS: CAN/MAY/WILL+NEGATIVE
RIGHTS PERMISSION 	IN LEGISLATION: AUTHORITY IN CONTRACTS: SYMMETRICAL RELATIONSHIP 	CAN, MAY LEXICAL VERBS (<i>GRANT, GIVE, ALLOW</i>)
ASSIGNMENT OF RIGHTS/ LIMITATION OF LIABILITY	RIGHTS/EXEMPTIONS FOR EITHER PARTY PROMISES, UNDERTAKING ON THE PART OF THE PARTIES	SHALL+RIGHT SHALL +LIMITATION OF LIABILITY NEED NOT AGREE, UNDERTAKE, ACCEPT WARRANT , PROMISE, ACKNOWLEDGE
COMMISSIVES UNMARKED 	ESTABLISHING THE TERMS OF THE CONTRACT SPELLING OUT CONDITIONS AS TO DATES, CONDITIONS DEFINE EXPRESSIONS AND ESTABLISH APPLICATIONS	LEXICAL VERBS (<i>MEAN, APPLY, INCLUDE, EXCLUDE</i>) CONSTRUCTIONS BE+RESPONSIBLE, BE+DEEMED
CONSTITUTIVE RULES		

something that it is not is a clever scheme to conceal the lack of balance of the document: the Insurers are, indeed, in control, but the Policy is the decoy to pretend they are not so much so. Hence, under the power and control of the Insurers by virtue of this specific set of Clauses, the Insurance certificate acquires the stature of a *dramatis persona*, being given the animate qualities (as in the recurrent sentences like “this Insurance covers”, “this insurance indemnifies the Assured” or “in no case shall this insurance cover”), and, in this case, the power to assign prerogatives and duties, of a human being. Reification is not rare in legal instruments: it involves confusion between the natural world and the social world, where the very people who create and sustain a social construction treat their own product as something fixed and unchanging [35]. Therefore, in the act of reification, people mistakenly treat a non-thing, such as a set of Clauses, as a thing, an immutable part of the natural world; it is a mystification that blinds people to alternative legal arrangements by “naturalizing” the existing order of things (in this case, the Universe of inclusions and exclusions of risk created by virtue of the Policy itself) as inevitable. However, no directives or rights are granted to the insurance: only Limitations of Liability (mostly in the shape of exclusions of risk) are expressed, and Constitutive rules. The latter take different shapes, and are almost always used to explain or define words in the policy (as “for the purposes of these Clauses “packing” shall be deemed to include stowage”, in clause number 4, Exclusions) or to supply information concerning the application of the contract (as in “the subject-matter insured shall be deemed”, in Increased Value, Clause 14). The situation in

Table 2 Regulatives in ICCs

Regulative acts	Obligation	Obligation (redress)	Constitutives	Permission	Assignment of rights	Limitation liability	Prohibition	Prohibition (redress)	Commissives	Total speech acts
The policy	0	0	65 (100 %)	0	0	65 (93 %)	0	0	0	130 (72 %)
The assured	30 (100 %)	0	0	5 (100 %)	0	0	0	0	5 (100 %)	40 (22.2 %)
The insurers	0	0	0	0	5 (100 %)	5 (0,7 %)	0	0	0	10 (5.55 %)
Total	30	0	65	5	5	70	0	0	5	180

Table 3 Regulatives in LCIA rules

Regulative acts	Obligation	Obligation (redress)	Constitutives	Permission	Assignment of rights	Limitation of liability	Prohibition	Prohibition (redress)	Commissives	Total speech acts
The parties	18 (31.5 %)	11 (34.3 %)	12 (38.7 %)	10 (24.3 %)	3 (18.7 %)	0	0	0	0	54 (30 %)
The tribunal	16 (28 %)	10 (31.2 %)	13 (41.9 %)	18 (43.9 %)	9 (56.2 %)	0	1 (50 %)	0	0	66 (36.6 %)
The Icia	5 (8.7 %)	5 (15.6 %)	2 (6.45 %)	13 (31.7 %)	3 (18.7 %)	2 (100 %)	1 (50 %)	1 (100 %)	0	32 (17.7)
The claimant	10 (17.5 %)	3 (9.3 %)	1 (3.2 %)	0	0	0	0	0	0	14 (7.7 %)
The respondent	7 (12.2 %)	2 (6.2 %)	0	0	1 (6.25 %)	0	0	0	0	9 (5 %)
The registrar	1 (1.75 %)	1 (3.1 %)	3 (9.6 %)	0	0	0	0	0	0	5 (2.7 %)
Total	57	32	31	41	16	2	2	1	0	180

which they are placed indicates that norms are more explicatory in the world of the Policy, since no direct allusion to these rules are to be found as attributed to Assured or Insurers. There is also a patent unevenness in the granting of rights, with 100 % occurrences of Obligations being assigned to the Assured and 100 % occurrences of rights being assigned to the Insurers, the latter showing also a marginal, if meaningful, Limitation of Liability cases. Finally, the scarcity of commissives is striking, in a text that should be based upon the exchange of promises and which is, in fact, a compilation of indications to the client, the unknowing Assured.

Contrary to the irregular state of affairs in the ICC, the distribution of rights and obligations in the LCIA corpus involves six participants, namely the 'Parties' as a whole, the Claimant and the Respondent separately, plus the Tribunal of Arbitrators, the LCIA Court and the Registrar. Nevertheless, the truth is that the results in Table 3 assign most of the speech acts found to the Arbitrators (the Tribunal, with 36.6 % of the total speech acts), the Parties to the dispute (with 30 %) and the institution that issues the Rules, the LCIA (with 17.7 %), in that order. It is clear from the results that the Parties, either in combination or separately, bear the main weight of prescriptive expressions, mostly with *shall*, sometimes ameliorated with negative politeness strategies of redress (generally '*shall+passive*' constructions, more rarely with '*should*'), but the Tribunal is also assigned its fair share of impositives, always with *shall* or with lexical compositions like '*is obliged*'. Contrarily, direct directives of obligation are scarce—10 in all—in those cases where the LCIA is, directly or indirectly, the subject of the duty, even if the two sole expressions of prohibition in the corpus are referred to the institution. There is also a certain unevenness in the granting of rights and permission, the occurrences of which are mostly assigned to the Tribunal, even if again both the Parties and the LCIA have some share of these, with *may* and lexical expressions like '*is entitled*' or '*empowered*' to. Limitation of liability, with 3 cases, is allocated only for the Court. Constitutive rules in the text take almost always the same shape, that of a *shall* with an active ('*shall constitute*') or passive construction ('*shall be made*', '*shall be borne*') and are almost always used to explain or define words (as in '*the words...shall mean*') or to supply information concerning the application of the Rules ('*shall be in writing*', '*shall set out*'). The situation in which they are placed indicates that norms are equally explicatory for the arbitrators and parties to the dispute. All in all, the results are indication of several degrees of power and obligation being spread all over the corpus, as befits documents that have to satisfy both its issuers and its receivers in equal ways.

5 Conclusions

Stating that legal texts are complex or opaque is just a subjective judgement that should be argued in more scientific terms by lawyers, linguists and communication specialists. As remarked above, legal experts and linguists advocate for complexity, inasmuch as it guarantees precision and accuracy of meaning. What is more, genre theory explains what the purpose of complexity is in a given text. It permits to identify the genre or genres of a specialised professional community connected to

the communicative group it comes from, the audience that receives it, the historical and cultural background and the extra-textual reality it aims to represent.

Therefore, asserting that the ICC and LCIA rules, as legal genres, are abstruse by nature, sounds quite simplistic at this stage, and does not help to read between the lines of the communicative mechanisms that move the different activities of the legal profession. Discursive and contextual factors would have to be considered to analyse that difficulty. On the one hand, regarding the Clauses of the Institute, the parties are not at the same level in the communicative exchange, due to the authority of the sender—masked behind the illusion of the Insurance policy as a reality—and the vulnerability of the receiver as the insured part. That exchange is equitable in the LCIA case, however, as the contracting parties request impartiality and the sender has to take care when creating the possibilities of exercise of will by those parties. The nature of the linguistic complexity is not the same in both texts, either. The very authority of the community of Lloyd's and its solitude in the area of insurance ruling would explain the lack of cooperativeness as probably intentional, due to the yearning to articulate exhaustively the reality of marine transportation and its risks. By contrast, the LCIA is presented as a universal method for the resolution of disputes, in competition with many other institutions *and* at the user's service. Hence, though the tension between precision and flexibility is present to make the text as universally applicable as possible (a fact which would explain its relative complexity), readability and clarity are essential for the product to be really competitive as a neutral, quick and accessible way to solve contractual disagreements.

Both texts, as examples of genres within the legal community, constitute the manifestation of the communicative strategies of an institutional collectivity that produces a valid and appropriate legislation, feasible to apply when such a community operates professionally. But, within the context of the law, both institutions—the Committee of Insurers at Lloyd's and the London Court of International Arbitration—are not the same phenomenon; the former constitutes a very specialised and stratified community that imposes monolithically its complex and archaic insurance clauses worldwide from the perspective of Common law. These should be applied in case of litigation between the parties, no matter where the disagreement takes place, or the origin of those parties. The latter, in contrast, are part of the ADR (Alternative Dispute Resolution) system, which constitutes a first-rate method—swift, neutral and comparatively cheap—for the resolution of contractual disputes worldwide, no matter the cultural and legal differences between the parties involved.

Finally, the present paper constitutes a modest effort to address, and at some point alleviate, the challenges and unending problems of comprehension that major documents in international transactions pose, mainly for non-native lawyers, English for Specific Purposes practitioners and legal translators. Usual and major misunderstandings take place when these texts are deployed in multilingual and/or transnational contexts, and this work is aimed at shedding some light on that intricate panorama. As suggested at the beginning of our paper, epistemological and cultural asymmetries between the Civil and Common law systems exist that make texts in English more complex than their Continental counterparts. This paper has

tried to elucidate the reasons for other, additional, sources of opacity and complexity that specialists and laymen whose main language is not English must contend with, when dealing with these texts.

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