"Discourse and Practice in International Commercial Arbitration"

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1. **(Ltd) Research so far on ‘cultural’ influences on awards / writing**
   a. Social psychology / experiments: focus on substantive outcomes
      i. Eg Friedman et al: Chinese (vs US) arbitrators make higher awards for inter-firm contract violations (*not* prone to attribute causes holistically / externally, when observing *group* behaviour)!  
   b. Socio-linguistics / discourse analysis: focus on form / process
      i. HK Research Grants Council project⁴ – eg (2012 book)³
         1. Gotti (et al): 20 commercial arb awards in Italy over last decade – lexical & syntactic style similar to court judgments (even when occasionally by non-lawyers)
         2. Bhatia et al: 18 ICC awards from its Bulletin (when?) – similar findings, but less reasons (Ltd appeal / ‘precedent’), save time for themselves and parties?)
         3. Breeze: ‘appraisal analysis’ of 6 dissenting & 2 concurring ICSID awards (in English) over 20 years: adjectives & adverbs reveal underlying value system where argument valued for *clarity, consistency & persuasiveness* (not ‘affect’); *normality* of understandings; *propriety* (of procedures); *veracity* (uncovering truth); authoritative ‘arbiters of importance’ (p125)

2. **Methodological challenges re each strand of prior research:**
   a. Representativeness?
      i. Subjects: actual arbitrators ✓; domestic vs int’l experience?
      ii. Scenarios: info types ✓; yet clear facts, how much detail?
      iii. Time constraints on subjects: exacerbate cultural biases ✓; yet most awards are written under less time pressure?
      iv. Interaction among (int’l) arbitrators (especially Chair)?
   b. Accessibility?
      i. Confidentiality of awards (including over time)
         1. Especially ICA (cf Bhatia et al: *redacted* ICC awards)
         2. Even ISA (ICSID, less so with UNCITRAL Rules)

ii. Sample bias – also more generally: eg ‘easier’ cases settle?
iii. (Second) language of the arbitration / award
iv. Type of dispute: eg Sales vs (more relational) long-term services contract
v. Type of arbitrator:
   1. Party-appointed: less role in drafting award (unless dissent etc ✓), may still see role still as more of an advocate (US?) especially if aggressive party (large PRC co – Australia’s TCL saga?)
   2. Vs sole or jointly-appointed arbitrator (maybe depends also on whether apt by parties or ‘their’ arbitrators, vs by arb institution)

3. **Further ways forward:**
   i. More qualitative research:
      1. Interviews of arbitrators, in-house / counsel, commercial (non-legal) users
      2. multi-lingual
      3. focused on sole arbitrators
      4. especially documents-only (and/or expedited) arbitrations (cf perhaps WIPO Domain Name DR?)
   ii. Including surveys, but:
      1. Primarily to elicit invitations for interviews! (Like Christian Buhring-Uhle’s PhD/book.)
      2. NB: even UCL / PwC survey respondents are not a representative / strictly generalisable sample!