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From mistranslation to material prejudice: The right to be heard in international commercial arbitration

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ABSTRACT

Errors in the translation and interpretation of evidence in international commercial arbitration may distort meaning without necessarily denying procedural fairness. This article asks when a linguistic discrepancy becomes a legally cognisable impairment of the right to be heard, rather than an impermissible invitation to revisit the merits of an award. It combines a doctrinal comparison of the New York Convention, the UNCITRAL Model Law, and English and Singaporean arbitration law with a discourse-sensitive analysis of evidentiary translation. The analysis distinguishes lexical and pragmatic distortion, procedural exclusion, and departure from an agreed linguistic procedure. It finds that the critical transition is not the presence of an alternative translation but the loss of a meaningful opportunity to understand, contest, or correct material used by the tribunal, followed by satisfaction of the applicable test of causation or prejudice. The article develops a four-stage framework requiring proof of a reliable linguistic discrepancy, identification of a protected procedural opportunity or independent procedural ground, demonstration of the legally required connection to the award, and selection of an available proportionate remedy. Unlike a universalised due-process test, the framework preserves differences between English substantial injustice, Singaporean prejudice, and Convention-based enforcement review. It also proposes targeted safeguards for source-language preservation, timely objections, expert clarification, and transparent use of machine translation. The contribution is a legally bounded method for evaluating linguistic unfairness without turning judicial review into a second arbitral hearing.

KEYWORDS: arbitral awards, forensic linguistics, international commercial arbitration, material prejudice, natural justice, right to be heard, translation error

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1. Introduction: The Missing Link Between Error and Invalidity

International arbitration routinely requires a tribunal to decide disputes on the basis of words that it does not receive in their original form. A witness speaks through an interpreter, a contract is presented in a translated version, and a technical report moves between languages before it reaches the decision-maker. The resulting English or other procedural-language text is often treated as the evidence, even though it is more accurately a mediated representation of the evidence. Zitawi and Abdel Wahab (2014) demonstrate why witness translation is particularly contested: counsel, witnesses, and interpreters may have different practical interests, while the linguistic features of testimony can affect its forensic significance. The concern is not confined to the accuracy of individual vocabulary choices. It extends to negation, qualification, reported speech, chronology, register, and the perceived confidence of a witness.

A relatively small linguistic change may have a large legal consequence. A statement that an equipment failure was 'possible' rather than 'probable' can change the apparent strength of causation evidence. An interpreter who presents indirect reported speech as a witness's direct observation may make a narrative seem stronger than the original utterance warranted. Lee (2010) documented this problem in interpreted Korean witness testimony, showing that the conversion of reported speech can affect what the adjudicator understands as evidence. In another setting, Lee (2015) examined the role of hedges and other metadiscursive devices in interpreted expert testimony. These studies explain the linguistic mechanism by which legal meaning may change; they do not establish that any particular arbitral award is judicially invalid.

That distinction is the legal problem of this article. Arbitration legislation generally protects an opportunity to present a case, not a judicially guaranteed right to have every piece of evidence translated flawlessly or assessed correctly. Article 18 of the UNCITRAL Model Law requires equality and a full opportunity to present a case, while Article 19(2) permits tribunals to determine the admissibility, relevance, materiality, and weight of evidence. Article 22 addresses the language of proceedings and the tribunal's power to order document translations. These provisions leave space for legitimate procedural discretion, but their combination creates an unresolved analytical question: when does a defect in the translation of evidence cross the boundary from an evidentiary problem into a denial of procedural opportunity? (United Nations Commission on International Trade Law [UNCITRAL], 2008, arts. 18, 19, 22).

This question differs from the choice of procedural language. Simões (2017) considers the implications of language selection for equality, tribunal composition, and interaction with courts. Alhasan (2025b) argues that disclosures about language proficiency can reduce foreseeable difficulties, while Alhasan (2026b) locates linguistic competence within arbitral fairness and efficiency. Alhasan and Burr (2025) develop a wider conception of linguistic due process with special attention to Jordanian arbitration law. Those contributions establish the background normative concern. The present article deliberately takes a narrower post-award perspective. Its object is the legal and evidentiary route by which an identified mistranslation may, or may not, establish grounds for judicial intervention after the award.

The integrated legal and IT governance framework advanced by Al-Freihat et al. (2026) addresses AI-supported online arbitration in Jordan. The present inquiry is distinct: it asks how proof of a particular linguistic distortion can establish a reviewable procedural defect after an award, without equating platform-governance deficiencies with grounds for annulment.

2. Research Design, Sources and Contribution

2.1 Method and selection of jurisdictions

This is a normative and doctrinal study, not a survey of arbitration outcomes or a corpus analysis of interpreting recordings. The sources are statutes and treaty provisions governing the right to present a case, reported English and Singaporean decisions on fair-hearing challenges, and legal and linguistic scholarship that supplies mechanisms for classifying error. Corpus-assisted and discourse-analytic techniques can make such classification more systematic, although they reduce rather than remove the analyst's interpretive bias (Haider, 2019). England is selected because sections 33, 34, and 68 distinguish procedural discretion from substantial injustice. Singapore is selected because its Court of Appeal has articulated a structured approach to natural justice, procedural context, and prejudice. The New York Convention and Model Law supply the relevant transnational legal architecture, but not a single global definition of prejudice.

2.2 Scope, analytical sequence and limits

The analysis moves from an identified source-language passage to the rendition relied upon by the tribunal; then to the party's opportunity to meet the disputed meaning; and finally to judicial review of the resulting procedural impairment. It tests that sequence against reasoned decisions rather than a sample of translation challenges. Most English and Singaporean cases considered concern natural justice and procedural management, not mistranslation itself. Their relevance is explicitly analogical. Fair-hearing comparisons in intellectual-property litigation (Massadeh & Alkrisheh, 2017) reinforce the need to identify procedural entitlements within their own governing regime. The study also separates the translation presented to an enforcement court from the translation through which the tribunal received evidence.

3. The Governing Law and the Problem of Classification

3.1 What the international instruments protect

The New York Convention is the starting point for an enforcement challenge. Article V(1)(b) permits refusal where the party against whom the award is invoked was not given proper notice of the arbitrator's appointment or the proceedings, or was otherwise unable to present its case. Article V(1)(d) separately addresses non-compliance with the agreed arbitral procedure or, failing agreement, the procedural law of the seat. The grounds are invoked and proved by the party resisting recognition; the Convention does not establish an autonomous appeal on linguistic correctness (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, art. V(1)(b), (d)). The Secretariat Guide identifies Article V(1)(b) as a due-process provision that is construed in light of the Convention's pro-enforcement structure (UNCITRAL, 2016, ch. on art. V(1)(b)). The Secretariat states that the Guide is not an official interpretation of the Convention. It is therefore used here as explanatory material, not as a source of binding legal obligations (UNCITRAL, 2016, introductory note).

The Model Law draws a related but not identical distinction. Article 34(2)(a)(ii) concerns the party's inability to present its case. Article 34(2)(a)(iv) concerns the composition of the tribunal or arbitral procedure being inconsistent with party agreement, subject to non-derogable rules, or with the Model Law in the absence of agreement. Article 34(4) allows the court, where appropriate and requested by a party, to suspend the annulment proceedings so that the tribunal can resume the arbitration or remove the grounds for setting aside. These provisions should not be collapsed into a general entitlement to a perfectly accurate translated record. Their language points instead to particular failures of process and particular judicial powers (UNCITRAL, 2008, arts. 34(2)(a)(ii), 34(2)(a)(iv), 34(4)).

The effect of Article 22 is frequently misunderstood. Its recognition that a tribunal may determine the procedural language and order translations of supporting material is an allocation of authority, not a declaration that the tribunal may ignore the fair-hearing guarantee. Conversely, the existence of that power does not mean that every document in another language must be translated, still less that every contested translation must be resolved through an independent expert. The tribunal must balance procedural need and proportionate cost. Godhe (2025) shows, in the analogous context of evidence exclusion, how fair-hearing obligations and procedural economy constrain one another without abolishing the tribunal's discretion.

An agreement to conduct an arbitration in one language does not guarantee bilingual proceedings, but it does not automatically make essential testimony intelligible. A tribunal must consider the practical quality of participation, not merely whether a participant can converse informally. The qualitative distinction between a formal language of record and language that makes proceedings accessible is also illustrated by Almanasra et al. (2025), whose study of judicial views in Jordan addresses comprehension and institutional legitimacy. That study concerns national courts rather than arbitration and cannot determine the arbitral standard; it usefully demonstrates why language choice and the capacity to respond are separate questions. The choice of register can itself shift what is conveyed, as Haider and Hussein (2022) show in their analysis of Modern Standard Arabic used to soften taboo content in intralingual subtitling. McEvoy (2023) similarly shows, in the criminal-trial context, why everyday linguistic proficiency should not be equated without inquiry with comprehension of legally consequential exchanges.

3.2 Three legally different forms of linguistic defect

The first category is translation error as evidentiary inaccuracy. It occurs where a translation misstates a term,

a witness qualification, or a chronology, but the original material was available and the parties had a fair opportunity to contest its rendering. An erroneous translation may lead a tribunal to reach a mistaken factual conclusion. That possibility is not, by itself, a basis for annulment. English and Singaporean arbitration law generally distinguish errors in assessing evidence from a denial of natural justice. Pauker (2020) explains why the boundaries between procedural and substantive matters in arbitration require context-specific analysis, which reinforces the need not to relabel an evidentiary disagreement as a procedural entitlement.

The second category is translation error as procedural exclusion. It arises when a party cannot understand an allegation, give comprehensible instructions, examine a witness effectively, or correct a consequential interpretation because of the way the proceedings are managed. The wrong is not simply that the translation was inaccurate. It is that the process denied a reasonable opportunity to deal with material relied upon by the tribunal. A party whose document was translated incorrectly without notice, whose request to verify the key passage was refused without reasonable justification, and whose case was then rejected by reference to that passage may be able to articulate a procedural complaint distinct from the merits. The precise result nevertheless depends on the law of the seat and the proven consequences.

The third category is a breach of an agreed linguistic procedure. Parties may provide in their arbitration agreement or procedural order that particular witness evidence will be interpreted consecutively, that specified original-language records will govern, or that certain translations must be agreed or certified before use. Non-compliance may engage a ground concerning procedural agreement even where an inability-to-present-the-case argument is weak. Under the Model Law this route requires attention to Article 34(2)(a)(iv); at the enforcement stage Article V(1)(d) may become relevant. The inquiry should not imply that every departure from an agreed logistical detail is necessarily sufficient to overturn an award. Waiver, mandatory rules, the governing national standard, and the significance of the departure remain material.

A fourth phenomenon must be kept analytically separate from all three. The translation that accompanies an award in enforcement proceedings is not automatically the translation through which the arbitrators heard evidence. Article IV(2) of the New York Convention regulates submission of a certified translation of an award or arbitration agreement where required. A mistranslation produced for the enforcement court can raise questions about the proof of the award's content, but it does not retroactively show that the arbitral tribunal denied a party an opportunity to present its case. Treating both types of translation as the same defect obscures the proper remedy, which may be the filing of a corrected certified translation rather than refusing enforcement (Convention, 1958, art. IV(2)).

3.3 What interpreting research does and does not establish

Interpreting is not a transparent conduit. Hale (1996) explained that literal word substitution may fail to convey the pragmatic force of courtroom speech. Liu and Hale (2018) later found in a training study that specialised legal-interpreter instruction improved aspects of pragmatic accuracy. These findings support the premise that legally significant information can be lost even where a translation appears lexically plausible. They do not prove that untrained interpreters always produce unreliable testimony, nor that an arbitral tribunal must adopt a particular interpreting method in every hearing.

Research on how decision-makers perceive testimony makes the evidentiary dimension more concrete. Yi (2025) addresses linguistic equity in mediated courtroom exchanges, while Hale et al. (2025) examine perceptions in simulated bilingual trials. Haider et al. (2022) show how the evaluative force of courtroom impact statements is carried by specific pragmatic and rhetorical choices, and Weld-Ali et al. (2023) document the difficulty of conveying religious and cultural expressions when Arabic court testimony is interpreted into English. From a different but relevant angle, Khater et al. (2026) analyse how semantic ambiguity and indirect threat formulation were treated in Jordanian criminal decisions. Their analysis is valuable here only for its demonstration that pragmatic form may matter to the legal interpretation of an utterance. Criminal judges, mock jurors, and commercial arbitral tribunals operate within different procedural structures; these studies identify plausible mechanisms of distortion, not proof of procedural prejudice in an arbitration.

The relevant scholarship also resists an unrealistically simple definition of accuracy. Lee (2015) shows that courtroom interpretation includes the interactive negotiation and evaluation of professional meaning. Mikkelson (1998) describes tensions between the court interpreter's institutional role and the linguistic needs of

participants. Both suggest why a reviewing court should not assume that every alternative phrasing offered by a party identifies an objectively established error. The applicant must explain what source-language utterance was made, what was rendered to the tribunal, why the difference is consequential, and why the asserted correct meaning is better supported. That is a proof question before it is a due-process question.

3.4 A discourse-sensitive taxonomy of linguistic risk

A legally meaningful discrepancy cannot always be reduced to a wrong dictionary equivalent. Four recurrent forms deserve separate attention: propositional alteration (for example, deletion of a negation); epistemic alteration (changing 'possibly' into 'probably' or omitting a qualification); attributional alteration (rendering reported information as a witness's direct knowledge); and interactional alteration (omitting a question, objection, or clarification that would enable a party to answer a point). The first three may affect the evidentiary content presented to the tribunal; the fourth can itself shape the opportunity to contest that content. These categories are analytic aids, not presumptions of legal prejudice (Hale, 1996; Lee, 2010, 2015; Zitawi & Abdel Wahab, 2014).

An illustrative, invented example makes the distinction clear. A witness says that an engineer 'may have inspected' a machine, while the interpreted transcript states that the engineer 'inspected' it. The omitted modal changes the proposition's evidentiary certainty. If counsel can obtain the original recording, tender a correction, and address the point, the risk is principally one of weight. If the tribunal refuses any practicable clarification and then treats direct observation as decisive proof of causation, the complaint concerns a restricted opportunity to confront a consequential proposition. These are hypothetical facts, not findings in a reported arbitral case.

The evidentiary relevance of nuanced formulation is consistent with Khater et al.'s (2026) forensic-linguistic account of ambiguity in judicial interpretation. It is also compatible with the distinction between formal and accessible courtroom language reported by Almanasra et al. (2025). Neither source demonstrates how a commercial arbitral award should be reviewed. Their limited relevance is to show why the source language, the semantic change, and the institutional context must be kept analytically distinct.

4. Proving a Linguistic Defect Without Reopening the Merits

4.1 The disputed translation must be identifiable

A court cannot assess a translation-based challenge by accepting the applicant's general assertion that the hearing was linguistically unfair. The essential object of proof is a specific discrepancy between the original communication and the version that became operative within the proceeding. In a witness-hearing dispute, the relevant materials may include the source-language audio, a contemporaneous interpretation, the official transcript, any corrections accepted during the hearing, and an independently prepared translation of the passage. In a documentary dispute, the central materials are the original instrument, the version tendered to the tribunal, the dispute over its meaning, and the procedural exchanges that show whether correction was possible. The practical difficulty is that the linguistic record is not always preserved in a form that permits subsequent verification.

Ng (2023) identifies an analogous problem in criminal court interpreting, where whispered simultaneous interpretation can leave no usable record for review. This finding does not establish a universal recording duty in arbitration. It does, however, identify an evidentiary asymmetry. Where the only retained record is a translated transcript, a challenger may be unable to prove the existence of the very misinterpretation that allegedly affected the hearing. Conversely, a tribunal should not presume that every retrospective expert opinion is reliable merely because the contemporaneous interpreter was not recorded. Translation is often context dependent; a detached quotation can make a defensible rendition appear demonstrably false.

Comparative scholarship on the protection of digital evidence in civil and criminal matters reinforces the practical importance of retaining a reliable record (Ehjelah, Zaitoun, et al., 2026). The analogy is evidentiary integrity, not the transposition of criminal-law protections into arbitration.

A credible translation challenge should therefore identify the source passage, the adopted rendering, the candidate correction, and the semantic difference with legal significance. These questions are distinct. A mistranslated date may be easy to prove but immaterial. A contested term such as 'reasonable' may be decisive but legitimately admit more than one rendering. Al-Abbas and Haider (2020) illustrate the difficulty in another

domain, showing how terms with overlapping meanings challenge both the accuracy and the consistency of their translation. An omitted negation can be both readily demonstrable and causally consequential. In each case, the applicant must move from linguistic comparison to legal relevance rather than relying on the intuition that inaccuracy means unfairness. Lee's (2010) analysis of reported speech is instructive because it identifies a kind of transformation that is not simply right or wrong at the lexical level: changing the grammatical status of an assertion may change whether the witness appears to report direct knowledge.

4.2 Professional disagreement is not automatically proof

Courts should distinguish three levels of asserted proof. At the lowest level is a party-commissioned alternative translation, with no access to the whole exchange or technical context. That may justify asking a question but is weak evidence of an established defect. A stronger showing identifies why the adopted translation conflicts with grammar, context, the surrounding transcript, or contemporaneous conduct. The strongest showing combines reliable source-language material with transparent expert reasoning and evidence that the proposed meaning was consistent with how the participants used the term throughout the dispute. No fixed number of experts is inherently required; the question is whether the record supports a dependable finding on the relevant linguistic difference.

Nor should expert translation be confused with the substantive interpretation of a contract. A bilingual technical phrase may carry a legal or trade meaning that cannot be resolved by linguistic competence alone. A tribunal may need expert evidence about industry usage, the law governing the contract, or the parties' course of dealing. The correct separation is between what the original words could reasonably mean and what legal effect the applicable substantive law assigns to them. Treating a party's preferred legal interpretation as a 'corrected translation' would permit challenges to the merits under another name. The methodological caution in Pauker (2020), concerning substantive and procedural classification, is especially pertinent here.

Miqdad et al. (2022), examining the term "wound" in Jordanian penal law, distinguish its linguistic, forensic and statutory meanings. Their analysis illustrates why lexical equivalence and legal classification require separate reasoning; it does not determine the meaning of any arbitral contract.

The problem is sharper when the complaint concerns tone, hesitations, confidence, or apparent consistency rather than propositional content. Yi (2026) reports differences in pragmatic accuracy according to interpreting mode and language direction in simulated remote court material. That evidence supports attention to whether stance markers were altered. It does not allow a court to infer prejudice from a numerical average, or to presume that witness credibility necessarily determined a particular award. A claimant would need to connect the specific mistranslated feature to the tribunal's expressed treatment of the witness, or to a demonstrable failure to permit testing of that testimony.

4.3 Preservation, objection, and the opportunity to cure

The timing of the challenge is central. A party that understands an inaccurate interpretation during a hearing may be expected to object promptly, request clarification, and preserve the relevant point. Under the English Arbitration Act 1996, section 73 provides a statutory mechanism for loss of the right to object where a party participates without timely objection to an irregularity it knows of, or could with reasonable diligence discover, subject to the provision's terms. The principle is not that every language problem is waived by silence; knowledge and reasonable discoverability matter. A non-fluent participant may not notice that a translated statement reverses a qualification, and a procedural order may provide no realistic opportunity to interrupt or correct simultaneous interpretation.

At the enforcement stage, an applicant's failure to object can also bear on whether it was truly 'unable' to present its case. The New York Convention's language is not satisfied merely because a party later regrets its evidentiary presentation. The conduct of the proceedings must be examined as a whole. A reasonable opportunity to identify and remedy an error matters more than whether the tribunal ultimately adopted the party's preferred text. Reed's (2017) distinction between ordinary procedural dissatisfaction and genuine due-process violations is useful in assessing attempts to transform avoidable, tactical silence into a post-award objection.

An objection must also be practicable. Suppose a party hears an interpreted answer that is plainly inconsistent with its witness's written statement. If counsel is prevented from obtaining a replay, asking a

follow-up question, or placing a correction on the record, the supposed opportunity to object may be illusory. By contrast, if the tribunal allows a revised translation, reopens a limited examination, and addresses the discrepancy before deciding the issue, a continuing denial of the right to be heard becomes harder to establish. The crucial inquiry is what procedural impairment remained after the available corrective steps, not whether an error once occurred.

The materials needed to examine these questions usually exist, or should have existed, before the court challenge. A procedural order, hearing transcript, objection email, rulings on translation, expert reports, and relevant passages of the award can show whether the complaint is genuinely procedural. A purely retrospective allegation, unsupported by a contemporaneous dispute or evidence explaining why the error could not have been discovered earlier, is typically less persuasive. This is an inference about proof, not an absolute rule. It would be wrong to require contemporaneous objection where the party had no realistic means to know that an interpreter was inaccurately conveying an opponent's evidence.

4.4 Attribution and the limits of technological explanations

Machine-assisted translation introduces a further layer of proof. A hallucinated or overconfident rendition may be produced by a tool selected by counsel, an institution, a witness, or the tribunal. The legal consequence cannot be resolved solely by establishing that software generated the words. It matters who chose to use the tool, whether the tribunal relied on its output, whether the parties could inspect and challenge the material, and whether the source text was preserved. Comparative evaluations show that the reliability of machine and AI translation varies with the type of text and terminology, including specialised research titles and legal acronyms (Al-Salman & Haider, 2024; Haider & AlKhatib, 2024). Haider (2026) further links the adoption of AI translation by business professionals to their trust in it, a factor that bears on whether commercial parties scrutinise automated renderings before relying on them. Alhasan (2025a) addresses the efficiency and fairness tension surrounding AI use in arbitration; Alhasan (2026a) proposes graduated transparency where algorithmic assistance may influence adjudicative reasoning. The present argument is narrower. An undisclosed tool becomes material to a translation complaint only if its use forms part of a provable procedural impairment or another applicable ground of challenge.

Al-Freihat et al. (2026) propose integrating legal safeguards with information-security governance, audit controls and human oversight in AI-enabled online arbitration. Applied cautiously to automated translation, those controls can assist in identifying the source file, tool output, responsible reviewer and material corrections. They provide an auditable factual record; they do not themselves establish a denial of the right to be heard or satisfy the governing prejudice threshold.

Consider first a party-prepared expert report translated with machine assistance. If its source text is on the record and the opponent can challenge the rendering, the technology alone is not a ground for setting aside. Contrast a tribunal that, without informing either party, uses an automated translation of a decisive email and bases liability on a meaning that neither side was invited to address. The legally important facts then concern disclosure, reliance, and opportunity to respond; a machine-error claim cannot dispense with proof of these facts. The broader difficulties of technologically mediated evidence have been explored in criminal adjudication by Altaani et al. (2024) and Ehjelah and Bani Amer (2023). Their findings about remote testimony and perceptions of confessions are not arbitral authority and cannot be generalised into a prohibition on technological assistance. They underscore, more modestly, the need to distinguish the reliability of an evidentiary representation from the fairness of the procedure in which it was received.

4.5 A worked illustration: when correction is possible

Assume an expert witness qualifies an answer about causation, but the interpreter omits the qualification. The respondent supplies source audio and a reasoned correction. If the tribunal admits both and invites submissions, acceptance of the firmer interpretation ordinarily concerns evidentiary weight, not lost opportunity. If the tribunal instead refuses a timely and credible request to examine the source and treats the altered answer as decisive, a genuine procedural complaint may arise. Even then, annulment depends on the applicable requirement of substantial injustice in England or prejudice in Singapore; no alternative translation establishes that connection by itself.

5. Judicial Control: England, Singapore, and Enforcement under the Convention

5.1 English law: serious irregularity and substantial injustice

English law offers a clear statutory distinction between procedural management and judicial intervention. Section 33(1)(a) of the Arbitration Act 1996 requires a fair and impartial tribunal and a reasonable opportunity for each party to put its case and meet its opponent's case. Section 34(2)(b), subject to party agreement, treats the language of the proceedings and the provision of translations as matters for the tribunal. Under section 68(2)(a), failure to comply with section 33 can amount to serious irregularity only if the irregularity has caused, or will cause, substantial injustice. The 2025 amendments did not replace this statutory structure; the Arbitration Act 2025, in force from 1 August 2025 subject to its transitional rules, added further procedural powers and constraints rather than a translation-specific ground of challenge (Arbitration Acts 1996 and 2025; Arbitration Act 2025 (Commencement) Regulations 2025, reg. 2).

The 2025 English reform also introduced section 39A, permitting summary awards in defined circumstances while requiring a reasonable opportunity for representations before the relevant procedural power is exercised. That provision is not about translation and is not relied on as a new right to interpretation; it illustrates that statutory efficiency measures continue to operate within procedural fairness safeguards (Arbitration Act 2025, s. 7). The analysis of any particular award must account for the Act's temporal application to arbitral proceedings and related court cases.

In Terna Bahrain Holding Co WLL v Al Shamsi [2012] EWHC 3283 (Comm), [85], Popplewell J drew together the requirements of a breach of section 33, a serious irregularity, and substantial injustice. His formulation recognises that a party need not establish that the outcome necessarily or probably would have differed. It must nevertheless provide a proper basis for concluding that the tribunal might well have taken a different view producing a significantly different outcome. The test is more exacting than asking whether an error occurred or whether an alternative decision was logically conceivable. This matters for language complaints because alternative translations are often available without demonstrating that the arbitral process was unfair. The English approach also requires careful identification of the party's lost opportunity. If an interpreter rendered an answer inaccurately but counsel had the original-language audio, obtained a correction, and cross-examined the witness on the corrected passage, the tribunal may still have made a factual mistake. That does not ordinarily establish a failure under section 33. If the tribunal excluded all meaningful attempts to correct an apparently decisive translation, the relevant complaint becomes its procedural refusal, linked to substantial injustice. The court must still assess whether a properly presented correction might well have made a significant difference; the question is not decided by labelling the defect 'linguistic'.

The statute also imposes remedial discipline. Under section 68(3), a court may remit the award for reconsideration, set it aside, or declare it of no effect, wholly or partly, with remission ordinarily preferred where appropriate. A translation defect limited to a separable finding may therefore call for reconsideration of that issue rather than nullification of the whole award. The procedural position also matters: section 70 regulates exhaustion and time limits, and the Arbitration Act 2025 made changes relevant to the timing of certain challenges. Neither such changes nor general powers of case management convert section 68 into an appeal on the merits. The governing version of the legislation must be determined by reference to commencement and transitional provisions.

5.2 Singapore: an effective opportunity, not a correct decision

Singapore's decisions make the distinction between merits and natural justice especially explicit. In Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] SGCA 28, [29], a domestic-arbitration case later relied on in the international arbitration context, the Court of Appeal identified four elements: the relevant rule of natural justice, the manner of breach, its connection with the making of the award, and prejudice to the applicant's rights. At [65] and [86]-[91], the court emphasised effective opportunities to address relevant issues while rejecting intervention for merely technical unfairness. The case is not a judgment on translation error and should not be represented as one. Its contribution is the structure of the judicial inquiry.

In China Machine New Energy Corp v Jaguar Energy Guatemala LLC [2020] SGCA 12, [86]-[104], the Court of Appeal considered how to assess complaints about procedural decisions taken during an international arbitration. The reasonable opportunity to present a case is contextual, and the court examines the procedural

decision against what a reasonable and fair-minded tribunal could have done on the information available at the time. An ex post assessment that another case-management choice would have been better does not establish a breach. Applied to translation, the decision cautions against judging a tribunal solely through a specialist report commissioned after the award without considering whether an error was knowable or correctable during the hearing.

The same jurisprudence requires a precise account of prejudice. In AKN v ALC [2015] SGCA 18, [37]-[46], the Court of Appeal insisted that a challenge must not become a disguised appeal on the merits. A tribunal's mistake about a party's argument is not necessarily proof that it failed to consider the argument at all. This is particularly important where an award adopts one of two plausible readings of an original-language commercial term. To infer a denial of natural justice merely from the decision's adoption of the supposedly inferior reading would make every translation disagreement potentially actionable. The court must identify a process failure, not merely an unconvincing linguistic or legal conclusion.

Conversely, CBS v CBP [2021] SGCA 4 illustrates that genuine deprivation of an opportunity to present evidence can justify intervention. The Court of Appeal considered the exclusion of witness evidence and reaffirmed that procedural discretion is not unlimited. At [46]-[51] and [61], it examined the fair-hearing rule and the relationship between case management and natural justice. The analogy to translation is not that every witness must be interpreted by a particular method. It is that a tribunal cannot invoke procedural efficiency to extinguish an otherwise material opportunity to test or present evidence where such exclusion crosses the applicable natural-justice threshold.

Singapore's approach is therefore instructive but not interchangeable with English law. Section 24(b) of the International Arbitration Act permits setting aside where a breach of natural justice in connection with making an award prejudiced a party's rights. English section 68 uses the distinct statutory expression 'substantial injustice'. Although courts in both jurisdictions reject technical objections detached from consequences, a comparative proposal must preserve differences in statutory formulation and judicial application. Berger and Jensen (2016) argue that arbitrators need room for confident procedural judgment; their suggested safe-harbour approach cannot be treated as an immunity from review where fundamental participation rights were actually denied.

5.3 The enforcement stage is not a substitute appeal

The New York Convention's Article V(1)(b) allows the party opposing recognition to resist enforcement where it was otherwise unable to present its case. That wording may accommodate a language-based exclusion of effective participation, but it does not create a generally applicable 'substantial injustice' formula identical to English section 68. Nor does the Convention specify a single evidentiary standard applicable in all contracting states. Domestic courts administer the Convention within their procedural systems, subject to the Convention's limits and pro-enforcement orientation. Tarawneh and Alhasan (2024) critically examine the implementation of Convention obligations in Jordan, illustrating why the distance between treaty commitment and domestic application matters.

An enforcement court should first ask whether the alleged mistranslation concerns a protected opportunity or the tribunal's evaluation of proof. It should then determine whether the party complaining had notice, access to the source material, and a reasonable chance to contest the translation. A court should not refuse enforcement simply because it would have preferred another interpretation of a disputed witness answer. The text of Article V(1)(b) protects the ability to present a case; it does not guarantee an award based on the most persuasive later translation (Convention, 1958, art. V(1)(b)). This reading is consistent with Reed's (2017) warning that due process should not become a weapon for ordinary litigation dissatisfaction.

The distinction between review at the seat and review at the enforcement forum also has remedial implications. A court at the seat may possess statutory powers to remit the matter for reconsideration. An enforcing court's immediate question is whether to recognise and enforce the foreign award under the Convention and applicable domestic law. The fact that an error might have been cured at the seat does not give every enforcement court an equivalent supervisory power. Equally, an enforcing court should not silently assume that a refusal to recognise an award is the only legally meaningful response to a correctable record dispute. It should identify the relief actually authorised by its national framework and by the Convention.

The comparison yields a narrow common denominator rather than a unified global rule. English, Singaporean, and Convention-based review each distinguish a genuine loss of procedural opportunity from dissatisfaction with factual findings; each resists objections disconnected from the outcome or legally relevant consequences. Yet their statutory terms, standards of proof, waiver rules, and available relief differ. Fortese (2026) rightly draws attention to the protection of natural justice in a system premised on finality, but the judicial response must remain anchored in the law of the seat or enforcement forum. The following framework accordingly organises legal analysis; it does not purport to replace the national requirements of standing, prejudice, remedy, or admissibility.

6. A Four-Stage Test for Translation-Based Challenges

The comparison supports a four-stage method for evaluating translation-based challenges, not an additional, self-standing ground for annulment. Its distinctive feature is the deliberate separation of linguistic proof, procedural entitlement, legally sufficient causal connection, and remedy. The stages are consecutive analytical questions, not a mechanical checklist under which every established mistake leads to setting aside. Where an applicant invokes non-compliance with an agreed linguistic procedure under Article 34(2)(a)(iv) or Article V(1)(d), the precise content of the procedural entitlement at stage two must be adapted to that independent ground. Stage one: establish the linguistic defect. The applicant should isolate the source-language communication, the contemporaneous rendition or translated document on which the tribunal proceeded, and the asserted discrepancy. Where the available record is incomplete, the court should identify that limitation rather than reconstruct an unknowable original utterance. A reasoned expert opinion can assist, but competing translations are not proof of a mistake merely by their coexistence. The probative inquiry should ask whether the alleged defect concerns omission, reversal of meaning, alteration of degree of certainty, mistaken attribution, or another legally intelligible difference. The distinction between linguistic accuracy and the material's substantive legal meaning must remain visible.

Stage two: identify the protected procedural opportunity. The applicant must explain what it could not reasonably do because of the defect: comprehend an allegation, prepare evidence, examine a witness, challenge an adverse translation, or respond to the proposition on which the tribunal relied. This second stage is the doctrinal pivot. An error that the party corrected in submissions generally remains within the tribunal's evidentiary evaluation; an error that the tribunal prevented it from correcting may raise a fair-hearing question. The analysis should consider what the tribunal knew at the time, the parties' language arrangements, the importance of the evidence, and the practicality of a corrective measure. Knuts (2012), although addressing the related context of a tribunal's independent legal reasoning, supplies a useful caution about foreseeability: procedural fairness is threatened most acutely where a decisive proposition is not reasonably available for adversarial response.

Stage three: apply the governing prejudice standard. The reviewing court must require a reasoned connection between the lost opportunity and the award. It should not infer that every omission mattered, and should not demand proof of a counterfactual result more stringent than its law requires. In England the statutory inquiry under section 68 involves substantial injustice, with the Terna Bahrain formulation concerning a significantly different outcome that might well have followed. In Singapore the inquiry is framed through breach, causal connection, and prejudice under the governing legislation and decisions such as Soh Beng Tee and China Machine. At the enforcement stage, the court must apply the Convention and its own applicable interpretive rules without simply borrowing either domestic formula. A plausible alternative translation is not a substitute for showing how the party's inability to address that issue could matter.

Stage four: select a legally available and proportionate remedy. A limited translation defect should not automatically invalidate unaffected parts of an award. A court at the seat may have power to remit a discrete issue for reconsideration; where such a remedy is authorised and adequate, it can better preserve procedural fairness and finality. The Singapore Court of Appeal's treatment of partial invalidity in AKN v ALC [2015] SGCA 18, [32]-[33], shows the importance of separating affected and unaffected matters. The decision does not prescribe the remedy for every linguistic defect. The proper result always depends on the applicable statute, the separability of the finding, and the stage at which relief is sought.

This framework addresses two opposed sources of error in post-award review. It limits tactical commissioning of alternative translations that merely repeat a losing party's evidentiary submissions (Metsch,

2020; Reed, 2017). It also avoids treating an unintelligible or uncorrectable translation as harmless simply because a tribunal labelled it procedural management. A significant limitation remains epistemic: a source-language exchange never recorded may be impossible to reconstruct with confidence. Uncertainty about what the witness actually said should be acknowledged as an evidentiary limitation, not concealed by automatic deference to either a retrospective expert or the disputed interpretation. The framework disciplines what must be shown; it cannot create a source record that no longer exists.

The stage-three inquiry should be anchored to the disputed finding, not phrased as a free-standing assertion that the outcome 'might have changed'. A claimant should identify the proposition in the award allegedly derived from the inaccurate rendition, the material it was prevented from presenting, and the significance of that response under the relevant statutory standard. Equally, the inquiry should not collapse distinct review grounds: a claim based on non-compliance with an agreed translation protocol may involve different proof from a fair-hearing claim. The framework's value lies in forcing the court to state which ground is invoked and which consequences are legally required.

7. Implications for Tribunal Procedure

Prevention should be risk-based, concentrating on evidence likely to affect liability, causation, credibility, or quantum rather than translating the entire file twice. At the first procedural conference, the tribunal can record the languages to be used in testimony, the translation responsibilities of the parties, the status of source-language documents, the treatment of competing versions, and the feasibility of recording the original audio. A short, workable route for oral clarification and written post-hearing corrections helps preserve an auditable record. Where a disputed passage later becomes central to the tribunal's reasoning, the parties should ordinarily be able to comment on the competing meanings before the award is issued. This is a recommendation for proportional case management, not an asserted universal duty to appoint independent interpreters.

These safeguards must not become an invitation to indefinite procedural reopening. Arbitrators may apply reasonable time limits, manage repetitive expert evidence, allocate translation costs, and reject immaterial objections within the applicable statutory and contractual constraints (Berger & Jensen, 2016). Where an important objection is rejected, a concise reasoned ruling should identify whether the source evidence is available, whether the asserted discrepancy is reasonably supported, and why a correction is unnecessary, already made, or immaterial. As machine-assisted translation becomes more common, parties benefit from preserving the source, recording material corrections, and making it clear when a linguistic rendering rather than the original has been relied upon (Alhasan, 2026a).

A practical procedural order could adopt four calibrated measures: preservation of important source-language audio or documents; a short route for objecting to specific passages rather than to an entire interpretation; a targeted expert or bilingual clarification procedure when the dispute concerns legally decisive content; and a recorded opportunity for both parties to address any corrected passage on which the tribunal may rely. None of these measures is necessarily required in every case. Costs, witness accessibility, the parties' agreement, data protection, and the materiality of the evidence should inform whether each measure is appropriate.

For electronic records, proportionate version control and traceable access may support this process. The treatment of digital-platform oversight and IT audit in Ehjelah, Obeidat, et al. (2026) provides a governance analogy, not an arbitral procedural rule.

8. Conclusion

A mistranslation does not itself justify setting aside or refusing enforcement of an arbitral award. Its significance depends on what was said in the source language, what the decision-maker received, whether an affected party could meaningfully understand and contest the relevant proposition, and what legal consequences the governing review regime attaches to that impairment. The article's four-stage method separates these issues while preserving the difference between error in weighing evidence and procedural exclusion. Its linguistic component gives operational content to the idea of an opportunity to be heard without claiming that arbitration must reproduce criminal-trial interpreter guarantees. A proportionate response should focus on preserving consequential source material, allowing practicable objections, and using such remedies as the applicable law permits. Further empirical work could test how often linguistic objections are raised, cured during hearings, and later invoked in court; the present analysis does not claim to answer those questions.

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