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RETHINKING THE NEW YORK CONVENTION

A Law and Economics Approach

Shen Wei
To my parents
FOREWORD

There has been a very large literature devoted to the law of arbitration, a considerable portion of which focuses upon the New York Convention. Much of this writing is practical in nature, directly contributing through exposition and commentary to the law and practice of international commercial arbitration.

Dr Shen argues in this book that contemporary scholarship can reasonably aspire to go beyond that, invoking appropriate strands of legal and socio-political theory. He is surely right, in that the present surge of pluralist scholarship offers us fresh opportunities to re-examine the legal regimes of international commerce in a broader light. The New York Convention is an important – and arguably a largely successful – feature of the contemporary global governance regime, so fifty-five years after the birth of the Convention, it is appropriate to re-examine the evolving operation of this instrument, self-consciously invoking a range of theoretical resources, including but going beyond jurisprudence, in doing so.

Any new attempt to analyse the New York Convention is a formidable challenge given the vast array of topics and issues touching international commercial arbitration in general and the New York Convention in particular – not to mention the diversity of judicial opinions in more than 145 Convention States.

Dr Shen meets this challenge by reducing the issues surrounding the application of the New York Convention into four key topics: the evolution of the treaty; the competition among various jurisdictions in the context of enforcing an annulled award; lex mercatoria and governing law in arbitration; and the doctrine of public policy. Dr Shen approaches this challenge in an extremely innovative way. From a perspective broadly informed by economics, he draws specifically upon both Darwinian evolutionary theory and game theory. This is a brave initiative, clearly marking off his analysis from existing research in the field.

Dr Shen is to be warmly congratulated on making a fresh and important contribution to this field; his book deserves every success and will surely become an essential work of reference.

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August 2012
ACKNOWLEDGMENTS

I am particularly grateful to Professor Simon Roberts for his guidance, support and encouragement, which made my PhD thesis, and now this book, an updated version, possible. I am indebted to Professor Michael Palmers and Professor Anthony Bradley who commented on an earlier draft of the manuscript. Special thanks also go to Trevor Goh and Yvonne Xu who read through the whole manuscript with great care and patience, and Dr Iris H.Y. Chiu for her insightful comments on Chapter 4. Certainly, responsibility for any error, defect or omission rests with me.

My interest in international commercial arbitration dates back to twenty years ago when I took a commercial arbitration course with Professor Chen Zhidong, who has become my mentor in many respects since then. I truly thank Professor Chen for his endless support, guidance and encouragement.

This book is a product of collective efforts. I want to thank two anonymous referees’ endorsement for the publication of this book in this series. My gratitude further extends to Rebecca Pound for her patient proofreading and editorial input, and to Ann-Christin Maak for publication support. They have done their job with great efforts and tolerance for my failings; without them, this book would be a mission impossible.

As always, my greatest debt and most heartfelt thanks are owed to my parents even though our cultural tradition may restrain me from expressing that in a refined manner. As a merely tiny token of appreciation, this book is dedicated to them.
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