

CHAPTER REVIEW:

Compulsory Consolidation in Arbitral Proceedings: An Infringement on Party Autonomy



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Many may recall in the early months of 2021 a story as bizarre as it was disruptive. A 400-metre-long ship, the 'Ever Given', had lodged itself firmly in the pits of the Suez Canal, one of two of the world's most vital shipping corridors. Nothing could get past, and so its dislodgement became the most pressing maritime matter at that point. Nearly two years later, the ship's owners are still facing legal action. Just this February, for example, Maersk, a large Danish international container shipping company brought proceedings against the ship's management.

With the Suez Canal spectacle in mind, it is worth considering how disputes can work with so many parties and so many jurisdictions. "Compulsory Consolidation in Arbitral Proceedings: An

Infringement on Party Autonomy?" is a chapter in the new book *Commercial and Maritime Law in China and Europe*.¹ The nearly-300-page text details with efficiency a great number of the most topical dispute-resolution issues within the China – Europe shipping route, the bloodline of one of the world's largest trading zones. The chapter itself provides much needed consideration of how the consolidation of parallel proceedings by arbitration agreements occurs within the sphere of commercial and maritime law. Crucially, it seeks to answer fundamental questions about the tension between efficiency and party autonomy.

The chapter is co-authored by Dr Lijun Liz Zhao and Catherine Green, who both have a rich

history in arbitration. Dr Zhao is a Senior Lecturer in Corporate and Commercial Law at City, University of London. She has written extensively on topics related to global trade, such as the World Trade Organisation, the Belt and Road Initiative and, as is the case here, maritime disputes.

Catherine Green is an arbitrator and Executive Director of the [New Zealand International Arbitration Centre](#).² She has previous history in civil litigation working in New Zealand, London, and the Cayman Islands. Catherine has also written and presented extensively on arbitration practice and procedure and on diverse specialist arbitration topics covering international, commercial, construction and family law.

1 Shengnan Jia and Lijun Lin Zhao (ed) *Commercial and Maritime Law in China and Europe* (Informa Law from Routledge, Abingdon, 2023).

2 Catherine Green is the Editor of ReSolution.



Compulsory Consolidation in Arbitral Proceedings



Dr Lijun Liz Zhao and Catherine Green have written a comprehensive assessment on the matter of compulsory consolidation in arbitral proceedings.

The chapter firmly establishes both the benefits and disadvantages of mandated consolidation. Firstly, there is the cost and efficiency factor. Orders demanding consolidation from the court can easily create a convoluted web of various procedural disputes, stemming from questions around which arbitration rules should apply. On the other hand, mandated consolidation in theory has a better chance of producing consistent outcomes for parties.

Combing through the procedures of various jurisdictions and bodies, the chapter is able to illustrate the variety in which consolidation of proceedings are permitted, managed, and mandated. Fitting in with the book's overall theme of maritime arbitration and trade

between China and Europe, the chapter assesses how it looks between the two, with some jurisdictions being identified as having clearer rules than others.

One of the jurisdictions highlighted for its clarity on the issue is the Netherlands. The chapter notes that unless the parties to proceedings agree otherwise, the District Court in Amsterdam is empowered by the Dutch Arbitration Act 1986 to order the whole or partial consolidation of two or more connected arbitrations. This portion of the chapter then lists the conditions upon which this may occur. Following a thoughtful review of the Netherlands approach, recognition is then made of Hong Kong as having a similar system. It too may order consolidation in the

absence of an agreement. Through this direct comparison of these jurisdictions, the chapter offers an insight into how their neighbours may trend legislatively if the process proves itself successful.

For legal professionals involved in maritime arbitration, "Compulsory Consolidation in Arbitral Proceedings: An Infringement on Party Autonomy" is of course vital reading. Beyond that, it is highly recommended for anybody with a curiosity about the legal questions around party autonomy and arbitration. The chapter is topical, and as China re-emerges from its recent fight against Covid-19, it becomes clear that there has never been a more important time to understand its trade.