



United Nations

Report of the United Nations Commission on International Trade Law

**Fiftieth session
(3-21 July 2017)**

General Assembly

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452. It was explained that the proposal sought to support the current work of Working Group I on business registration and the creation of a simplified business entity. The proposal envisaged research into ways to allow business activity prior to the creation of a legal personality and into the determination of corporate structure, allowing businesses to access credit and government facilities. The objective would be to allow such businesses to form networks and contract with larger companies in supply chains as a network. The proponents stated that the intention was to conduct further research to identify solutions, with initial results to be presented to the Commission at its fifty-first session, in 2018.

453. Support was expressed for the proposal as set out in document [A/CN.9/925](#), recognizing the importance of the topic to micro, small and medium-sized enterprises in particular, and it was suggested that Working Group I could undertake the research set out in the proposal.

454. An alternative view was that, while the proposal was supported in principle, it was not currently appropriate to refer the work concerned to Working Group I. In support of that view, it was stated that further study and a consideration of the many questions that the proposal raised should first be undertaken, and that the solutions should not necessarily be confined to micro, small and medium-sized enterprises (and consequently, if referred to a working group, need not be undertaken necessarily by Working Group I).

455. The Commission expressed its thanks to the Government of Italy for the proposal. It also welcomed the willingness of the proponents to conduct additional research to develop the proposal further, so that it could come before the Commission in 2018 for decisions on whether the work should go forward and, if so, in what capacity.

456. CMI presented a proposal on possible future work on cross-border issues related to the judicial sale of ships ([A/CN.9/923](#)).

457. The proponents explained the nature of judicial sales addressed in the proposal, and issues that were preventing the transfer of vessels with clean title. Recalling that over 95 per cent of world trade took place using transport by sea and that, in current times of financial difficulty, there were increasing failures by ship owners, unable to obtain additional financing, to pay debts as they fell due. In addition, the scale and worldwide nature of the concerns were highlighted.

458. It was explained that a variety of debts would arise as a result of the operation of a ship, and that non-payment thereof would give rise to maritime claims that enabled creditors to arrest a vessel for non-payment, with an eventual order for judicial sale of the vessel. The outcome of such a sale should be to transfer clean title to the purchaser of the vessel, but in some jurisdictions, courts did not recognize and enforce that outcome when the order for the judicial sale emanated from another jurisdiction. The consequences of that failure included difficulties for the purchaser in re-registering such vessels and trading freely with them, as well as the exposure of such purchasers to claims against prior owners for undisclosed liabilities. The risks of a failure to obtain clean title depressed the price fetched by vessels through judicial sale by as much as half their value and led to a cascading set of problems in a number of sectors, including reluctance by financial institutions to lend, lower repayments to creditors and an inability for ship owners to obtain funding. Those problems resulted

in serious loss in economic value and a reduction in the state and maintenance of the world fleet.

459. The proponents also explained that a short, self-contained instrument along the lines of the New York Convention could provide a solution to those issues. In essence, it would ensure that prior claimants would look to ship sale proceeds and previous ship owners to settle their claims, and clean title to vessels would be transferred and recognized across borders.

460. It was observed, in considering the proposal, that the concerns were highly relevant to UNCITRAL and to world trade. The pernicious consequences of the current situation included the hindering of the flow of cargo, the destruction of value and assets and unnecessary legal action, which compromised the industry and world trade because vessels unable to trade clogged ports. For all those reasons, and those set out in document [A/CN.9/923](#), UNCITRAL was requested to take up the proposal.

461. A view was expressed that the proposal might be better addressed in an organization specializing in maritime matters, such as the International Maritime Organization (IMO). The view was further expressed that the problem, while a legitimate concern, might not have broad enough support from enough States in UNCITRAL and that it should not be taken up by a working group at the present time in the light of the full complement of issues currently assigned to those groups.

462. It was recalled that CMI had also presented its proposal to IMO and the Hague Conference on Private International Law, but that neither organization had placed it on its work programme. However, CMI had been invited to present additional information in respect of the matter for possible future discussion in those organizations in due course.

463. There was support for the view that UNCITRAL was well placed to resolve the private international law issues raised by the proposal in a technical and non-politicized environment and it was observed that, in discussions at the Hague Conference on Private International Law, a number of delegations had expressed the view that the proposal would be best taken up by UNCITRAL. It was also considered doubtful that the proposal fell within the mandate of IMO, given its focus on public international law and on more technical issues relating to safety and the protection of the environment.

464. A number of delegations supported the proposal and expressed their interest in taking it up, subject to the availability of working group resources and any necessary consultation with other organizations. While swift resolution of the questions raised by the proposal was encouraged, the Commission agreed that additional information in respect of the breadth of the problem would be useful and that the proposal could be reconsidered by the Commission at a future session. It was therefore suggested that CMI might seek to develop and advance the proposal by holding a colloquium so as to provide additional information to the Commission and allow it to take an informed decision in due course.

465. The Commission thanked CMI for its proposal and noted the importance of the issues raised. It decided not to refer the proposal to a working group at the present time but agreed that UNCITRAL, through its secretariat, and States would support and participate in a colloquium to be initiated by CMI to discuss and advance the proposal. The Commission agreed to revisit the matter at a future session.