The CMI and the harmonization of maritime law: achievements, partnerships and challenges.

Madam President,

Mr President of the Japanese Maritime law Association

Madam Secretary-General

Member of the CMI Executive Council,

Ladies and gentlemen,

Few names are so deeply linked with the development of maritime law as "Berlingieri". For more than a century has this prestigious Genovese family been at the centre of efforts to harmonize, codify and further develop maritime law and generations of maritime lawyers have learned from their handbooks and other publications. Being invited to deliver the Berlingieri lecture at the CMI annual conference following an impressive series of distinguished speakers is a great honour. I accepted this honour in humble gratitude for the years in which I had the privilege to cooperate with CMI representatives at various transport law projects at the United Nations Commission on International Trade Law (UNCITRAL), which I served until retiring late last year.

Of course, I have not met the first Francesco Berlingieri associated with the work of CMI or his son Giorgio, but I did have the privilege and pleasure of meeting both the second Francesco, your long-time President, and the second Giorgio Berlingieri, your Vice-President *honoris causae*, in the course of the projects UNCITRAL cooperated with the CMI. While the family earned its reputation for their outstanding intellectual qualities and vast legal knowledge, I was also deeply touched by their perfect manners and friendly nature. Famous dynasties don't always produce many kind people.

In respect for this assembly of maritime law experts and for the great scholar and practitioner in whose name this annual lecture is held, I will not dare to discuss substantive issues of maritime law, shortcomings in its day-to-day application or possible new topics for CMI work. What I instead would like to offer you is a look at the process of maritime law-making, in particular from the perspective of a CMI partner in the development of two of the latest maritime law treaties, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (known as the "Rotterdam Rules"), and the United Nations Convention on the International Effects of Judicial Sales of Ships (known as the "Beijing Convention") .

Before that, allow me first to quickly sketch the historical context.

CMI and maritime law-making

In their speeches this morning, the CMI President and the President of the Japanese MLA have reminded us of the origins and history of the CMI, and I won't gloss their comments. It is enough for now to recall that the CMI is one of the oldest international non-governmental organizations active in the legal field. It was established in 1897, at a time when very few intergovernmental organizations existed (the International Telegraph Union-1865, the Universal Postal Union-1874, the International Association of Railway Congresses -1884), and none with a general political mandate, let alone a mandate for legal harmonization. There was only one non-governmental organization active in the legal field: the Association for the Reform and Codification of the Law of Nations, which later became the International Law Association.

In its 125 years of history, CMI can look back with pride at a remarkable contribution to the unification and harmonization of maritime law.

And yet, each text emanating from the work of the CMI had to be finalized and formally adopted at a diplomatic conference convened by a national Government. As a non-governmental organization, the CMI has always depended on the convening power of States or international organizations for the political finalization and adoption of the standards it promotes as binding norms of public international law. For a long time, States – in particular Belgium as the host country – had convened diplomatic conferences for the adoption of various conventions initiated by the CMI. With the proliferation of international and regional intergovernmental organizations since the establishment of the United Nations and its specialized agencies after the end of the second world war, States have more and more withdrawn from this arena, relying increasingly on existing multilateral intergovernmental organizations, at the global or regional level, to provide the platform for negotiations of that nature.

The shift to international organizations has made the process much more complex, because of the need for a multilateral consensus on the usefulness of a topic to even start intergovernmental discussions about it.

And because international organizations have become large bureaucracies with intricate budget and reporting procedures, the cost implications, availability of resources and timeline of every project need to be assessed and justified ahead of time.

Changing environment and few actors in maritime law-making

In 1968, the International Maritime Organization (IMO) established its Legal Committee, taking the leading role as the venue for diplomatic negotiations in the field of maritime law. However, this did not diminish the significance of CMI, nor the respect it enjoys for its unmatched blend of expertise in maritime law. The CMI adjusted to IMO's new role, and we heard from the IMO Secretary-General this morning how many IMO Conventions have since been adopted on the basis of a CMI draft.

There is, however, one significant gap in the CMI/IMO cooperation.

The IMO Legal Committee has not tackled carriage of goods and has so far remained reluctant to consider other private law aspects of shipping. Thus, the entire system of the Hague Rules has remained "orphan" in the sense that it does not come under the umbrella of a specific intergovernmental organization with a standing general assembly empowered to negotiate updates of the relevant convention and use its leverage on member States to promote their ratifications. This remains a serious substantive and institutional weakness of the Hague system. It is enough to compare the situation of carriage by sea with the much higher degree of implementation of updates in the conventions governing carriage by air or rail, where the International Civil Aviation Organization (ICAO), the Intergovernmental

Organisation for International Carriage by Rail (OTIF) or the Organization for Co-operation between Railways (OSJD) act as driving forces in thei respective areas.

This leads us to another challenge faced in by the CMI it its pursuit of uniformity. Not only finding the appropriate negotiating venue has become more complex: the multilateral treaty, instrument of choice for the legal unification, increasingly showed its limitations.

Depending on the country, the process of ratification may require a number of formal steps, involve various authorities and take several years to conclude. This leads to a long interim period between the adoption of international conventions and their entry into force, as well as a very slow pace of domestic implementation. Another problem is that international conventions are difficult to amend in instances requiring accommodation to economic change or evolution of practice or technology. In most cases, an international treaty needs to be amended through the same procedure used for its adoption. Few instruments have a more efficient amendment procedure, as for example the tacit amendment procedures in the 1974 International Convention for the Safety of Life at Sea (SOLAS), allowing for amendments to enter into force at a particular time unless before that date, objections to the amendment are received from a specified number of Parties. Where no such procedure exists, there is a risk that, once amendments are agreed upon, the amending protocols may not be ratified by all the original signatory States, resulting in a sometimes complex patchwork of Contracting Parties, as we know well from the two protocols to the Hague Rules.

Some suggest that it would be better simply to allow companies to "elect in and out of national commercial law systems" so that "States thus could compete for legal business on the basis of the attractiveness of their rules and dispute resolution procedures, rather than coerce their subjects to follow any one system of commercial law." To some extent this already happens, but it is hardly a complete or sufficient alternative to uniform law, especially in areas governed by mandatory law, as traditionally has been the case with liability for personal injury or property damage.

This brings us back to the law of carriage and other areas of recent partnerships between CMI and UNCITRAL.

UNCITRAL and maritime law

The institutional changes I've just mentioned led to a more complex landscape for maritime law rulemaking. Industry and political shifts would bring more actors to the table and increase the need for the CMI to explore new working methods and partnerships in rulemaking.

CMI and UNCITRAL had been in contact since the early 1970s because the first work programme adopted by UNCITRAL already included carriage of goods by sea. The political landscape of those days was very different from the one context under which CMI and UNCITRAL were to embark in later cooperation projects, and it would be fair to say that there was initially some degree of mutual distance and suspicion. After all, while CMI had over the years learned to cooperate with the IMO, UNCITRAL was a new player with whom it still had to get acquainted, at a time of sharp East-West and North-South divide of the 1970s.

Those were days charged with ideological conflict and historical resentment. Between 1950 and 1973, the volume of oil and dry cargo carried by sea had increased at an yearly average of 5.4 percent. The world fleet had grown to five times its initial size between 1950 and 1980. Yet, regulatory changes affecting the shipping industry used to be agreed essentially among the same nations that traditionally controlled world shipping.

Developing countries complained that their newly created liners were excluded from conference membership, and that conferences harmed their economies due to high freight rates and indifference to shipper needs. They brough their grievances forward through the United Nations Conference on Development and Trade (UNCTAD), a forum in which developing countries felt they carried more weight, as opposed to older organizations specifically devoted to maritime affairs, especially the CMI. The result was the 1974 Convention on a Code of Conduct for Liner Conferences, which among other things established the controversial and economically inefficient 40:40:20 market-sharing formula for the bilateral trade between any two countries (each should be entitled to carry 40 percent of the trade, with the remaining 20 percent available to other third parties). With few exceptions, the Code of Conduct was strongly supported by the governments of most developing countries. Several OECD countries and the entire (then) European Economic Community (EEC) eventually adhered to the code. However, by the time the Code came into force in 1984, much liner shipping had become containerized, which altered pricing policies in a manner not originally contemplated. There had also been a rapid growth in shipping by carriers operating outside the conference system. The liberalization of the sector in the 1990s did the rest, and the Code was eventually abandoned" even though it remains officially in force.

In the eyes of the developing countries, cargo reservation and greater control over the conference system did only part of the job. They perceived the entire system of the Hague Rules as a product of a process dominated by Western carriers. Developing country shippers demanded higher liability limits, elimination of nautical fault and most of carrier exonerations under the Hague Rules, liability for delay, deck cargo coverage and other improvements. The work started at UNCTAD in 1968, but the project was eventually transferred to the newly established UNCITRAL, which many Western countries expected to be more technical and less politicized.

After several years of negotiation, a text draft was eventually adopted at a diplomatic conference held at Hamburg in 1978. The Hamburg Rules met most of the reform demands of developing countries, although not as radically as they might have wished.

It was no surprise that the CMI, having invested so much effort in developing the Hague-Visby Protocol and promoting its ratification, did not support the Hamburg Rules. In fact, shipowners, P&I Clubs and marine insurers feared that the application of the Hamburg Rules would lead to more cargo claims and higher carrier liability. The Hamburg Rules currently have 35 State Parties, but nearly all industrialized countries preferred to stick to the Hague-Visby Rules or their own version of it.

The Hamburg Rules eventually entered into force on 1 November 1992. By that time, technological and market changes had made shipping into quite a different industry from what it was when the rules were negotiated in the 1970s. Containerization, multimodality and a new competitive environment following the demise of the liner conference system and the abolition of their antitrust privileges had a dramatic impact on industry structure and business models. Increased use of information technology in transport logistics soon showed the weaknesses of an international regime conceived for printed documents.

Unfortunately, at time when globalization was increasing the demand for shipping and logistic developments, economies of scale in supply chains and IT technology were reducing costs and making shipment more accessible and efficient, the legal rules for carrier liability were more fragmented than ever, with the different membership to the Hague Rules and their protocols, a small group of Hamburg Rules countries and the various unimodal conventions.

If the CMI had been reluctant to engage in the process that led to the adoption of the Hamburg Rules, by the 1990s it was the CMI who took the lead in promoting a new go at shipping law harmonization. The IMO was not available as a venue for these negotiations and UNCITRAL – the odd newcomer back in the early 1970s – now appeared as an adequate venue for various reasons: firstly, it had recently completed work on the Model Law on Electronic Commerce, and the argument most ostensively invoked for embarking in a new project aimed at unifying the law of carriage of goods by sea was the need to offer a sound legal basis for electronic transport documents; secondly, UNCITRAL had in the meantime acquired a reputation for doing non-politicized, business-friendly legal work, for instance through the Model Law on International Commercial Arbitration and the UN Convention on Contracts for the International Sale of Goods; thirdly, having been the cradle of the Hamburg Rules, UNCITRAL would offer the best place for the CMI to put that dragon to rest.

The UNCITRAL Working Group on Transport Law held thirteen sessions between 2002 and 2008. Whereas the CMI had played a leading role in the preparatory work that led to the approval of the project, it acted as a discreet observer during the negotiations. This low profile was a wise strategic choice to avoid the perception that the process was outsourced to the CMI and not to antagonize the Hamburg-friendly delegations. In practice, the CMI voice in the room was nevertheless loud and clear, since most of the more active delegations included, as head delegate or at least as main expert, one or more distinguished maritime lawyers also active in the CMI (Finland, Japan, Netherlands, Norway, Spain, Sweeden, Italy, United States, to name but a few) and most of them also chaired the various clusters to which specific topics were assigned for inter-sessional work. The work was substantially concluded in January 2008, and the UN General Assembly adopted the Rotterdam Rules at its 63rd annual session, on 11 December 2008.

The Rotterdam Rules deal with a wide range of issues, and many of them are novelties. For example, no previous convention, offered detailed rules on delivery, right of control and transfer of rights in goods, or dealt in detail with transport documents. As regards matters already dealt with in earlier instruments, the Rotterdam Rules enhance legal certainty by codifying decades of case law and practice or clarifying earlier texts, where necessary. Therefore, they do much more than merely revising the liability regime for door-to-door carriage.

Admittedly, the technical content of the Rotterdam Rukes is not exactly a page-turner for legislators with a short attention span and eager to associate their names to a catchy headline on newspapers and social media. With their 96 articles, the Rotterdam Rules are an ambitious treaty, which is also one of the reasons for the slow pace of ratification, even among the 25 countries that have signed them so far.

UNCITRAL and the CMI remain confident that the time and effort invested in the Rotterdam Rules will eventually bear fruit. The Hague Rules themselves only became a success more than a decade after their adoption. We need, however, to increase our efforts to overcome the legislative inertia that has kept many countries actively engaged in the process from ratifying the Rotterdam Rules so far.

Judicial Sales of Ships and the lessons learned from Rotterdam

Let us now turn to the latest cooperation project between CMI and UNCITRAL, which was also very different in its dynamics: the Beijing Convention on the Judicial Sale of ships.

There is an acceptable degree of international uniformity of rules on arrest, but there has been much less progress in harmonizing rules on the judicial sale of ships. Each State has its own rules for the procedure and legal effect of judicial sales ordered by its courts. In many States the judicial sale has the legal effect of conferring "clean title" on the purchaser (for example, it extinguishes prior mortgages, maritime liens and other interests), but this is not the case everywhere.

After discussing the results of questionnaire on this topic at a Colloquium in Buenos Aires in 2010, the CMI set up a working group chaired by Professor Henry Li of China. The CMI prepared a draft International Convention on Foreign Judicial Sales of Ships and their Recognition (known as the "Beijing draft"), which the CMI Assembly adopted on 17 June 2014. The CMI General Assembly called for the text to be submitted to an "appropriate intergovernmental or international organisation" for consideration and adoption.

The three natural candidates were IMO, the Hague Conference on Private International Law (HCCH) and UNCITRAL. IMO was an obvious choice because of its mandate and its past involvement in the negotiation of the 1993 Convention on Maritime Liens and Mortgages and the 1999 Convention on Arrest of Ships. HCCH was not an organization with which the CMI had cooperated before, but it was at that time preparing what would eventually become the 2019 Hague Judgements Convention, dealing with recognition and enforcement of foreign judgments in civil or commercial matters. In favour of UNCITRAL spoke its mandate on international trade law and its cooperation with the CMI during the negotiation of the Rotterdam Rules.

Neither the IMO Legal Committee nor the HCCH were inclined to undertake the project. The IMO Legal Committee concluded in its meeting on 9 June 2016 that a compelling need had not been established at that time. The HCCH, in turn, was not persuaded that it would be the right forum for an industry-specific topic that might be better suited to UNCITRAL.

UNCITRAL eventually accepted the proposal in 2018, after it had asked the CMI to hold a colloquium to gather more information because States wanted to better assess its economic impact, industry interest and possible political difficulties. The colloquium took place in Malta, in February 2018 and confirmed that the lack of legal certainty in relation to the clean title led to problems in the de-registration process in the country of the former flag and created a risk of costly and lengthy proceedings. UNCITRAL member States were persuaded that those problems negatively affected trade and shipping and agreed to add the topic of judicial sale of ships to its work programme.

The Working Group held six one-week sessions on this project between May 2019 and February 2022, when it completed the draft convention. The UNCITRAL plenary approved the draft Convention on 30 June 2022 and submitted it to the General Assembly, which adopted its at 77th session on 7 December 2022. The General Assembly accepted an offer by the Chinese Government to host a ceremony for the opening for signature of the Convention as soon as practicable in 2023 in Beijing and recommended that the Convention be known as the "Beijing Convention on the Judicial Sale of Ships".

The Convention establishes a harmonized regime for the international effects of judicial sales, while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title. By ensuring legal certainty as to the purchaser's title in the ship, the Convention should help maximize the price that the ship can attract in the market and the proceeds available for distribution among creditors.

The basic rule of the Convention is that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party (article 6). The only reason for another State Party to deny effects to a foreign judicial sale is if the sale manifestly violates its public policy (article 10): a high threshold that requires a compelling reason as to why giving effect to the foreign judicial sale would be contrary to an identified matter of public policy.

The Convention ensures the effect of a judicial sale by requiring the ship registry to deregister the ship or transfer registration at the request of the purchaser (article 7) and prohibiting the arrest of the ship for a claim arising from a pre-existing right or interest (i.e., a right or interest extinguished by the sale) (article 8).

To support the operation of the regime and to safeguard the rights of parties with an interest in the ship, the Convention establishes an online repository of notices of prospective judicial sales and certificates of concluded judicial sales, which are freely accessible to any interested person or entity (article 11).

15 countries signed the Convention in the presence of representatives of more than 30 other States at the Beijing signing ceremony on 5 September 2023. Three more States and the EU signed the Convention at UN Headquarters between September 2023 and April 2024, and another seven States signed the Convention at a celebratory event held by the Ministry for Foreign and European Affairs and Trade of Malta, CMI and UNCITRAL on 19 June in Valletta, Malta. Eight more States have signed it since, and El Salvador became the first State party to ratify the Convention on 23 May 2024, followed by Barbados on last week on 8 May 2025.

The Convention was completed in record time for an international treaty. Also, 33 signatures and two ratifications within less than three years is another success, considering how slow the process of adhering to international treaties usually is. This is largely a result of the narrow and sharply defined scope of the Convention, and the excellent cooperation and division of labour between UNCITRAL and the CMI.

The cooperation between UNCITRAL and CMI

The partnership between UNCITRAL and the CMI involved an allocation of tasks that followed established United Nations practices in dealing with observer NGOs, but channelled efforts and contacts to the organisation best placed to handle them and allowed each organization to offer its unique skills or comparative advantages to advance the project.

Usually, when it includes a new topic on its work programme, UNCITRAL asks the secretariat to prepare a preliminary draft with the assistance of outside expert as a basis for its initial consideration of the proposed new instrument. In this case, however, the secretariat chose to transmit the Beijing draft to the Working Group as it had received it from the CMI.

We proceeded that way essentially for two reasons: firstly, to acknowledge the great work done by the CMI experts that participated in its working group; secondly, because we had identified a few provisions in the Beijing draft for which we anticipated political resistance from the ministerial officers who often represent member States at UNCITRAL deliberations and we wanted to avoid a back-and-forth with the CMI that might have delayed the start of a project in which CMI had already invested so much time. We were especially concerned, for example, by the provision in the original draft article 7(4) that limited the right to take any action challenging a judicial sale only to the "interested person" defined as such in draft article 1(g), that is, the owner of a ship immediately prior to its judicial sale or the holder of a registered mortgage or registered charge attached to the ship immediately prior to its judicial sale.

After receiving the initial reaction of member States to the first Beijing draft, UNCITRAL prepared all subsequent versions of the draft convention, always in the light of the discussions that had taken place at the previous session of the Working Group. Having the UNCITRAL secretariat prepare the new versions of the text made of the secretariat a natural "buffer" between delegations that avoided "authorship issues". Delegations could discuss and negotiate more freely, as no one needed to consider possible sensitivities of any given delegate that might be the author a formulation found to be infelicitous or inadequate.

It often happens that the majority in the room agrees on a change, only to realize that it wasn't such a good idea when they see it black and white with their eyes. Blaming the secretariat rather than your neighbour country for what now looks like poor drafting avoids embarrassments, and bearing such criticism is part of what UN officials are paid for.

Both UNCITRAL and the CMI also used the time between formal sessions to liaise with IMO, which has an important role to play under the new Convention. As I mentioned earlier, one of the pillars of the convention is the online repository of notices and certificates of judicial sale to give publicity and safeguard the rights of parties with an interest in the ship. As Secretary of the Working Group, I was keen at involving the IMO for basically two reasons: firstly, because it is the organization better known in the maritime field than UNCITRAL and the more likely place where mortgagees or lienholders might be looking for information on the whereabouts of a specific ship and whether it was up for sale and where; secondly, because if IMO were to accept to become the repository under a convention that it has discarded – perhaps too hastily – IMO would become a natural partner in the development and promotion of the convention. The consultations with the IMO being limited to that point, they were relatively straightforward.

The other organization that became a crucial partner in the process – even if an unofficial one – was the European Commission. Unlike the IMO, the EU was concerned with various substantive provisions. With 27 member States, many of which were actively involved in the negotiations from the beginning, the EU carried significant weight. It was important to find a way to gain EU support, and this required goodwill and strategic thinking on both sides, as well as revisiting some lessons learned from the Rotterdam Rules process.

Drawing the boundaries of legislative competence between the EU and its member States is a popular academic subject on which hundreds of PhD thesis are defended every year. Not all succeed, so I won't try. Leaving aside all legal and institution intricacies of this unique organization, it is enough for now to say that in areas in which the EU has passed a legislative act (a regulation or directive), member States are pre-empted from legislating independently. This also applies for the negotiation of international treaties. Of course, reality is not as clear cut as that, and in private law matters the lines between one and the other are blurred, and competences are often shared.

That was the case during the negotiations of the Rotterdam Rules, which contained a chapter on jurisdiction – a matter at that time regulated in the first Brussels Regulation, and for which the EU Commission claimed the exclusive right to negotiate on behalf of all its member States. However, the EU Commission could not claim the same exclusive competence – probably not even a shared competence – in respect of carrier liability and transport contracts, which was the subject of most of the convention, or arbitration, which was the subject of another sensitive chapter. The consequence was a somehow truncated negotiation process where the discussion would flow in the usual way on most topics, but the voices of the various EU member States and their high-level delegates would suddenly silence and be replaced by one single voice once we moved to jurisdiction. As jurisdiction itself was a sensitive topic and a valuable chip in the various bargaining baskets circulating among negotiating States, the switch from member States to a single EU representative did not make the negotiations easier. Professor Michael Sturley, last year's Berlingieri lecturer and leading expert at the US delegation during the negotiation of the Rotterdam Rules, and many others in the room today were witnesses of how difficult and sometimes frustrating those negotiations were.

This is not a specific problem of maritime law: it affects every international negotiation with EU member States on legal matters. Depending on the topic, you risk getting engulfed in a complex interpretation of the field of application of EU rules and the division of competences between the Union and its member States. So, you want to stay away as much as possible from EU law and you definitely want to avoid having at the last minute to insert a so-called disconnection clause in your treaty that gives precedence to EU law and watch with the rest of the world the EU member States argue with the EU Commission that there is in fact no EU law on the matter.

At the same time, we learned from our experience that, when the EU Commission believes that a particular international standard promotes free circulation of goods, services and capital within the EU common market or favours its position in international arena, the EU Commission can be a very effective partner in promoting the implementation of international texts within the Union. Skilful representatives of the EU Commission can also stimulate the discussions by coordinating the positions of EU member States, but letting them otherwise speak with their own voices, which amplifies their influence due to shared legal traditions and principles with countries beyond EU borders. We were fortunate that for most of the negotiations the EU representative showed an interest for the project, participated constructively, coordinated member States positions and EU interests in a sensible manner and has continued to support the implementation of the Convention after its adoption.

Finding a point of common interest that justifies the EU presence without forcing the Commission to have to defend every word of its own regulations and directives has become a tricky but crucial consideration when defining the scope of all recent legal harmonization projects.

The Beijing Convention was no different.

The UNCITRAL secretariat had identified various aspects of the project that touched upon elements of the "acquis communautaire", including the regulations on jurisdiction and the recognition and enforcement of judgments, on the service of judicial and extrajudicial documents and the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Our concern was to make sure that, from a substantive point of view, the new instrument should be compatible with or at the very least not affect the *acquis communautaire*, while at the same time avoiding to fall squarely within the confines of EU law, which might have raised the regulatory threshold of the draft instrument to a level much higher than non-EU negotiating States might be willing to accept.

This is why, from the beginning, the UNCITRAL secretariat insisted that the draft new instrument was not about the recognition and enforcements of judgements, but only about the effects that a consequential act (i.e. the sale of a ship) would have in countries other than the country where the sale was conducted. It took a little while for the working group – still thinking of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as a template for its work – to adhere to a more neutral terminology. The final text does not use the world "recognition" anywhere, acknowledging that transfer of ownership of physical assets are governed by the law of the country in which the transfer occurs. For foreign jurisdictions, a foreign title is a fact in no need of recognition.

Nevertheless, for the representatives of the EU and its member States, it was important to ensure that the process leading up to a judicial sale complied with basic due process requirements, especially proper and timely notification of the owner of the ship and of the right holders.

Addressing those concerns required extensive consultations with the EU Commission and coordination among the positions of EU member States. Internal EU coordination was particularly important with respect to the very sensitive issue of the relationship between notice requirements, finality and avoidance of the judicial sales and the conditions under which a foreign sale would not be given effect in a State Party. Several EU member States were reluctant to assume an obligation to give effect to foreign sales if they were not satisfied that the country from which the certificate emanated had duly notified the interested parties and afforded them an opportunity to participate in the proceedings leading to the judicial sale and protect their interests.

That issue remained a bone of contention until the very last session of the Working Group, which took place in New York from 7-11 February 2022, when the delegations present were finally able to agree on a compromise language for article

4, paragraph 1 during informal consultations held between two formal meetings. The compromise consisted in acknowledging that the judicial sale must be conducted in accordance with the law of the State of judicial sale, and that such State "shall also provide procedures for challenging the judicial sale prior to its completion" besides determining the time of the sale for the purposes of the Convention. The compromise takes account of the need for finality and legal certainty, while recognizing that appeal and review procedures are an integral part of the understanding of due process underlying the convention. The solution of the last significant point of disagreement among negotiating States, proved again the usefulness of the direct exchanges in a less formal setting, a possibility that all delegations had badly missed during the pandemic years. It also proves that blocks sustaining opposing views in a negotiating process sometimes overestimate the gap between their positions and may be helped by a fresh outsider look.

Final remarks

There has been a clear decline in multilateral treaty-making in the last twenty years. Fewer international conventions have been adopted as compared to previous decades and States have been slow in ratifying those that they eventually conclude. Diplomats talk about a "treaty fatigue" and mention various reasons for it. They include recent structural changes in the world political and economic order that emerged after the Second World War, with some countries feeling a lesser need to co-opt others through a web of international agreements. There is also a growing tendency to bilateral deals and resistance to being bound by international law. Where multilateral negotiations are necessary, there is a preference for more flexible, non-binding outcomes, such as guidelines, declarations or memoranda of understanding.

Of course, treaty-making is a complex and time-consuming process. Also, States ponder carefully their interest before embarking in international negotiations the outcome of which may at times be unpredictable. Yet, treaty-making remains a central tool of international relations and important treaties are still being negotiated at the United Nations. This is particularly true for treaties in more specialized and less politically controversial fields.

Contemplating an ideal world of complete uniformity may be a naïve quest for an intellectual paradise, or, as Stuart said, an "elusive panacea". If we accept, however, that uniformity is not an end by itself, but a means for solving real problems, it is clear that the solution is not to give up altogether and accept conflicting and inconsistent rules as the inevitable price of international shipping with the resulting high transaction costs, forum shopping and inefficiency.

Looking from the perspective of a CMI partner in two recent projects, I think that you can be proud of the flexibility of your organization in adapting to the significant changes in the landscape of maritime law rulemaking over time, to the new players in the field and the changing political background. The CMI has not become obsolete, as some might have feared at some point, but wiser and perhaps more pragmatic.

I believe that if CMI keeps a healthy dose of realism as to how much it can achieve, how it does it, by which means and with whom, and explores different synergies with different partners – including unexpected ones, like the EU Commission – it will still have plenty to do in the future.

It may be that uniformity will not be achieved in all matters, or that hard law may have to be combined with more soft law projects. I am reminded by the British poet Alexander Pope's beautiful impressions of Windsor Forest that there is something between chaos and full harmony:

> *"Here hills and vales, the woodland and the plain,*
> *Here earth and water seem to strive again,*
> *Not chaos-like together crush'd and bruis'd*
> *But, as the world harmoniously confus'd:*
> *Where order in variety we see,*
> *And where, though all things differ, all agree."*
> *(Alexander Pope, Windsor Forest [1713], l. 11)*

I thank you for your attention and wish you all a very successful conference!