

Aide-mémoire **of the fourth meeting of the Experts' Group on Carbon Markets**

I. Opening of the meeting

- 1 The Chair opened the meeting. A *tour de table* was conducted to allow experts to briefly introduce themselves.
- 2 The Experts' Group (EG) on Carbon Markets adopted the draft Agenda.

II. Updates from the Council on General Affairs and Policy (CGAP) 2026

- 3 The Chair recalled that, at the March 2026 meeting of CGAP, he had reported on the progress of the EG, noting its diverse composition, its engagement with UNIDROIT on Draft Principle 4, and its work on cross-border carbon market structures and the role of safeguards in preserving integrity. He further noted that CGAP had approved the continuation of the EG's work, including two additional meetings in 2026 and intersessional work.
- 4 The Deputy Secretary General (DSG) reported on the CGAP 2026 discussions. The DSG summarised the interventions made by Members of the HCCH and Observers, noting the broad support for the continuation of the work of the EG. Members and Observers recognised the significant progress made by the EG on fulfilling the initial focus of its mandate in relation to its work, namely the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits. There was broad support for the continuation of the EG's work beyond this initial focus, to further study the private international law (PIL) issues arising from carbon markets, including possible gaps in and difficulties with existing instruments or projects, or matters that are not currently covered by them, in order to focus the study on those matters that are necessary to address in light of the rate of development of the market.

III. Safeguards

A. Presentation by the PB on the Secretariat Notes 9-11/2026

- 5 Legal Officer Ms Raquel Salinas Peixoto presented Secretariat Note No. 9/2026, which examines the role of safeguards within PIL and sets out an analytical framework for the EG's discussions. She explained that the Note clarifies how safeguards may operate within PIL methodology, building on prior discussions on the social and environmental integrity of carbon markets. She emphasised that safeguards and legal certainty are complementary objectives, and that the effectiveness and credibility of carbon markets depend not only on the existence of safeguards but also on the ability of legal frameworks to give effect to them across borders. She noted that the approach is consistent with existing HCCH practice, in which PIL techniques, while technical in nature, are framed around broader public policy objectives. The Note identified possible roles of safeguards in PIL, including structuring, coordination, recognition, and harmonisation, as well as a non-exhaustive list of items to be considered under the umbrella of safeguards. Ms Salinas Peixoto noted that Secretariat Notes Nos 10–12 build on the framework established in Note No. 9, and invited the EG to reflect on the importance of engaging with a broad range of stakeholders, including civil society, with a view to ensuring an inclusive and well-informed process.

B. The role of safeguards in PIL instruments

- 6 EG members highlighted the need for a holistic approach to PIL issues arising across carbon market lifecycles, encompassing safeguards such as environmental protection, human rights, and stakeholder asymmetries. Several participants underscored that the PIL frameworks should be inclusive and capable of addressing these concerns. Some EG members noted that a number of substantive issues remain under examination within other international frameworks, particularly under the UNFCCC, and that the EG's work should focus on areas where PIL can enhance legal certainty in cross-border transactions.
- 7 The EG discussed the conceptual distinction between safeguards and traditional PIL mechanisms such as public policy and overriding mandatory rules. It was noted that, in HCCH practice, safeguards may operate not merely as exceptions but principles shaping the design and orientation of PIL frameworks. Drawing from existing HCCH instruments, it was observed that safeguards may serve as overarching objectives shaping the structure and application of PIL rules, rather than being confined to the traditional "public policy" or "mandatory rules" exceptions. Several EG members emphasised that, in the context of carbon markets, safeguards reflect core policy priorities, including environmental integrity, protection of vulnerable stakeholders, and market trust, that should guide the development of PIL solutions, rather than serving solely as carve-outs.
- 8 The EG further examined the distinction between technical and methodological safeguards and legal safeguards. It was noted that technical safeguards are typically embedded in carbon market standards and methodologies, including those developed within international frameworks, and operate across project design and implementation. By contrast, legal safeguards are reflected in domestic and international legal frameworks, including environmental protection, human rights, and other public policy considerations. The PB clarified that this distinction does not draw a strict boundary, but serves to highlight that safeguards are not solely as technical features of carbon market methodologies, and that their interaction with legal frameworks raises important considerations for PIL.

C. List of considerations protected by safeguards

1. General discussion on the integrity of carbon markets

- 9 The EG identified market integrity as a central objective of its work, noting that market integrity, trust, and environmental effectiveness of carbon markets are essential for market functioning and acceptance. Relevant elements include the protection of host State interests, indigenous and local communities' rights, and consistency with existing international obligations. The EG further noted that consistency, transparency, and confidence in cross-border transactions are key components of market integrity, particularly given the increasingly international, digital, and interconnected nature of carbon markets and the diversity of actors involved.
- 10 Some EG members advocated for a broader focus on "integrity-related" elements across the carbon credit lifecycle, including double counting, leakage, additionality, and permanence, and their potential implications for jurisdiction, applicable law, and enforcement. Other EG members stressed the need to distinguish between elements necessary for a well-functioning market and issues that PIL can or should address. Some EG members emphasised that integrity considerations should inform the overall design and operation of carbon markets, while remaining distinct from how PIL addresses specific issues in practice.
- 11 The EG further noted that integrity concerns may arise at different stages of the carbon market lifecycle, with varying implications for legal certainty and cross-border coordination. The EG considered cross-cutting issues relating to the lifecycle of carbon markets and the point of credit issuance. It was noted that distinctions may be drawn between the project phase (including validation and verification) and the post-issuance stage of credits, including transfer and retirement. The EG noted the diversity of market structures, including project-based and

jurisdictional approaches, and the importance of consistency with existing international frameworks, particularly under the Paris Agreement. The EG agreed on the need for a focused and pragmatic approach within its mandate.

2. No double-counting and preventing carbon leakage

- 12 The EG discussed whether issues such as double-counting and carbon leakage should be characterised as safeguards and whether they raise questions appropriately addressed through PIL. Divergent views were expressed. Some EG members considered these issues to form part of broader environmental integrity concerns arising primarily at the level of international frameworks and project design, rather than as safeguards in the PIL sense. In particular, it was noted that double-counting, particularly under Article 6 of the Paris Agreement, is largely addressed through accounting mechanisms and international coordination, while carbon leakage was described as a broader concern linked to environmental integrity and cross-border coordination. A representative of the Integrity Council for the Voluntary Carbon Markets (ICVCM) emphasised that both double-counting and leakage are generally addressed through existing accounting rules, verification processes, and contractual arrangements, and suggested that they are better understood as elements of project design rather than safeguards. The PB clarified that carbon leakage was included in the Secretariat Note as a general integrity-related issue and noting that no specific PIL implications had yet been identified, inviting the EG to consider whether further work in this area would be warranted.
- 13 The EG further examined whether, and in what circumstances, double-counting may give rise to PIL questions falling within the EG's mandate. Some EG members distinguished between the international public law dimension of double-counting and private law scenarios, such as duplicate issuance across registries or defects in verification processes, where PIL issues relating to applicable law, recognition, or remedies could arise. It was observed that failures in registry systems or verification processes could give rise to disputes concerning the validity or existence of credits. Other members emphasised that existing international and market-based mechanisms address these concerns and questioned the added value of PIL intervention. A representative of the ICVCM noted that such issues in the market are typically resolved within existing frameworks and had not, to date, given rise to disputes requiring additional PIL solutions.
- 14 The EG agreed to identify concrete dispute scenarios and define the scope of its work, including whether to focus on credits as such or on legal relationships between parties and associated remedies. The EG acknowledged the need to further clarify the role, if any, of PIL in addressing these issues, while remaining attentive to other international frameworks and avoiding duplication. The EG agreed, however, that this item should remain on the list of considerations guiding its work.

3. Protecting environmental rights and fundamental rights, including livelihoods; protecting land rights: collective property, customary tenure, rights *in rem* and rights of use; protecting indigenous peoples and local communities' rights, including ensuring free, prior and informed consent (FPIC)

- 15 The Chair invited discussion on the protection of environmental and fundamental rights in the context of safeguards. The discussion was guided by Secretariat Note 12/2026, in particular whether such rights are recognised in carbon market activities and reflected in private law relationships, how they may affect the determination of jurisdiction, applicable law, and the recognition and enforcement of decisions, and whether they may operate as overriding mandatory rules or as elements of public policy.
- 16 A member of the EG explained that, in practice, environmental and social safeguards are embedded in the project development cycle and constitute a necessary element of the standard rules for the creation of carbon credits. In voluntary carbon markets, such safeguards are incorporated into the rules of the relevant standards – VERA rules, ACR rules, Gold Standard rules – and at a local level.

Where such rules are adopted to create Paris related ITMOs or other Paris units, specifically Article 6.4 emission reductions that are not authorised for external use, they would again form part of the project development cycle and be subject to local jurisdiction requirements. Therefore, for this EG member, a transaction cannot take place in a unit because such unit cannot be created absent environmental and social safeguards. Another EG member noted that, while safeguards are crucial at the project development stage, questions of PIL may arise beyond that stage. Attention was drawn in particular to situations where compliance may be called into question after the issuance of credits.

- 17 Another member of the EG identified different forms of litigation: private law actions may arise where a holder alleges that a credit is invalid, defective, or affected by fraud, giving rise to claims of damages or similar remedies. Public law actions may be brought against a State, for example through judicial review, on the basis that it has failed to comply with its obligations under climate-related frameworks, including by inadequately regulating the carbon market or by failing to prevent the circulation of invalid credits. It was further noted that such actions may have a transnational dimension, particularly where credits are generated in one jurisdiction but traded or used in another. Proceedings may be initiated not in the host State of the project, but in a State with a significant secondary or financial market, and may seek to prompt regulatory or policy change rather than obtaining monetary compensation.
- 18 A representative of the ICVCM clarified, in response to the question concerning human rights breaches discovered after credits issuance, that project compliance is subject to ongoing monitoring throughout the life of the project. Where human rights concerns arise during project operation, they generally lead to suspension of projects and termination of projects as a whole, rather than measures targeting credits. Serious concerns generally lead to the suspension of further issuance pending resolution, though resolution may not always be achieved. Unlike baseline setting errors or over-crediting, which may be directly linked to the volume of credits issued, human rights concerns are less readily correlated with specific quantities of credits, which may explain the limited precedents on consequences for issued units. Current remedies tend to operate at the project level, including contractual remedies vis-à-vis buyers and regulatory or administrative enforcement measures by competent authorities.
- 19 The Chair observed that this distinction highlights two different dimensions: consequences affect the ongoing capacity of a project to continue issuing credits, including suspension or termination following the identification of breaches; and the legal status and treatment of credits already issued prior to such findings. The latter issue, on which practice appears limited, may be particularly relevant from a PIL perspective, including identifying possible gaps and appropriate solutions.
- 20 A member of the EG emphasised that human rights issues in carbon markets are not confined to specific sectors such as forestry or conservation, but arise across a broader range of activities, including waste management, hydropower, and renewable energy projects. It was observed that, as carbon market activities scale up, such issues will become increasingly relevant. At the same time, carbon market mechanisms have contributed to strengthening governance frameworks, including through the development of institutional arrangements, grievance mechanisms, and increased attention to benefit-sharing and human rights considerations in both international standards and domestic regulatory initiatives. Existing practice in relation to post-issuance human rights violations has focused on project-level measures, including suspension and, in some cases, reinstatement. Unlike technical breaches such as baseline-setting errors or over-crediting, which may lead to adjustments or compensation mechanisms, limited practice exists on remedies directly affecting issued credits in cases involving human rights concerns. In particular, no consistent examples were identified of measures such as freezing, confiscation, or compensation specifically linked to issued credits in this context, although such developments were not excluded.
- 21 A member of the EG sought further clarification of the notion of suspension from a private law perspective. It was queried whether suspension constitutes a legal duty, and if so, on whom such

a duty would be imposed. It was suggested that, if a duty to suspend exists and is not complied with, legal proceedings could be initiated to compel such suspension. Conversely, if suspension is not mandatory but is nevertheless implemented, questions may arise as to the legal basis for such a decision and whether it could give rise to compensation claims if the grounds for suspension are found insufficient. Additional questions were raised in relation to benefit-sharing mechanisms, including their legal characterisation, identification of claimants and respondents, and the extent to which such claims could be adjudicated by courts under existing legal frameworks.

- 22 A member of the EG provided an overview of the legal framework in their jurisdiction, noting that environmental and fundamental rights are embedded in the design and implementation of carbon credit projects under both constitutional law and applicable legislation. Such rights, including those of indigenous and traditional communities, are protected through an interplay of domestic law and international instruments, which may have direct effect in private legal relationships. Failure to comply with such requirements may lead to the nullity of the project, with retroactive effect from the outset of the project. In such cases, judicial decisions declaring a project void may call into question the legal status of activities and transactions associated with that project, including the issuance of carbon credits. Domestic courts have begun to address disputes involving allegations of non-compliance, including the unlawful sale of future credits, the use of land in violation of constitutional protections, and the failure to fulfil consultation requirements with affected communities. These cases often involve cross-border elements and multiple actors, including States, private entities, and foreign investors and/or buyers, thereby raising complex issues for PIL.
- 23 The Chair noted that these examples illustrate the complexity of the issues that carbon market transactions cannot be viewed solely as commercial or financial in nature. Rather, they involve public interests, international commitments, and a range of regulatory considerations. The Chair further observed that the distinction between consequences such as suspension or termination of projects and declarations of nullity, may be particularly relevant. While suspension or termination primarily affects the future issuance of credits, nullity may have broader implications for credits already issued.
- 24 A member of the EG recalled that, in practice, cases have arisen where human rights breaches were identified after project validation and credit issuance. In such situations, while verification processes may prevent further issuance, uncertainties remain regarding the legal treatment of credits already issued during the affected period. It was noted that available responses have generally operated at the project level, including suspension, while approaches to issued credits remain less clearly developed in practice. The EG member raised a concern about the interaction between safeguard frameworks and existing domestic protections, noting specifically that safeguards should not dilute the level of protection afforded under national law.
- 25 Discussion continued on litigation in domestic courts and benefit-sharing mechanisms, described as tools to ensure community participation and revenue allocation. Reference was made to domestic approaches, including examples from Tanzania and Madagascar, where specific quotas or shares are reserved for communities. On local law, a member of the EG highlighted that, in certain legal systems, including those influenced by Islamic law, land rights may be subject to collective ownership structures arising from inheritance rules. In such cases, property is divided among multiple beneficiaries according to predetermined shares, which may require the consent of all co-owners for participation in carbon projects affecting the land.
- 26 A member of the EG suggested that, rather than enumerating all possible project-level factors, a more general criterion could be considered based on the legitimacy of the mitigation outcome. In this view, the assessment would focus on whether the project was developed and operated in accordance with applicable domestic law, including requirements relating to land use, environmental protection, and the rights of affected communities.

- 27 On land rights, another member of the EG recalled that, in certain jurisdictions, these are subject to constitutional protection and governed by specific private international law rules. This may include exclusive jurisdiction of domestic courts over immovable property and the application of the law of the place where the land is situated to property-related transactions and rights. It was noted that these elements may interact with safeguard frameworks and with the development of carbon market activities.
- 28 Emphasis was placed on the conceptual role of safeguards. It was observed that safeguards should be understood as the opposite of “safe havens”. While safe havens typically refer to jurisdictions with less stringent regulation, safeguards were described as mechanisms establishing parameters to ensure that relevant rights and interests, including environmental and social considerations, are respected in carbon market projects.
- 29 A member of the EG indicated that an exhaustive list of safeguards would be difficult to establish, and instead stressed the importance of transparency, in particular clarity for market participants on the legal frameworks and public policy considerations that may apply. It was suggested that a future instrument could be to provide a mechanism through which States may identify and communicate overriding mandatory rules and relevant public policy considerations, thereby enhancing predictability without requiring agreement on a comprehensive set of safeguards.
- 30 Another member of the EG noted that disputes affecting land rights and related matters, including indigenous rights and land use, would fall under the exclusive jurisdiction of the courts of the host State. Further discussion highlighted the close interaction between safeguards and PIL. It was observed that, while safeguards are often framed in regulatory or public law terms, they may have direct implications for issues such as validity, liability, and contractual relations, illustrating the intersection between regulatory considerations and PIL. It was recalled that safeguards, as understood in the EG’s work, are broader in scope than traditional notions such as public policy or overriding mandatory rules, as they may inform the design and operation of PIL rules. A member of the EG emphasised that PIL offers a degree of flexibility and creativity in accommodating different legal systems and objectives. It was observed that, through its techniques, PIL can combine and give effect to multiple sets of norms, including legal and technical standards, depending on the circumstances of the case. Effectiveness depends on clearly identifying the underlying objectives to be protected, with safeguards expressing these core concerns and therefore relevant not only as a “corrective” tool, but also in the initial design of the applicable framework.
- 31 A representative of the ICVCM provided an overview of the role of validation and verification bodies in carbon markets. It was explained that these functions are carried out by independent third-party entities that assess both the design of projects and the achievement of emission reductions in practice. These entities operate under contractual arrangements with project developers and are subject to requirements relating to competence, independence, and conflicts of interest. They are accredited under national accreditation systems and participate in international accreditation frameworks, while being supervised by carbon crediting programmes and, in some cases, by international-level bodies. It was further noted that concerns regarding their performance may be addressed through a range of mechanisms, including contractual remedies, complaints to standard-setting bodies, and procedures within accreditation systems.
- 32 An EG member drew attention to the role of States and to the distinction between public and private elements in this framework. It was observed that validation and verification processes are largely organised through private standards and contractual structures and therefore do not necessarily carry the same legal status as rules established by States. At the same time, accrediting bodies operate under domestic legal systems, and States may, in principle, intervene at various stages, including accreditation, verification criteria, or conditions governing project implementation within their territory. It was further noted that, from the perspective of national courts, the treatment of standards may differ depending on whether they are incorporated into domestic law or remain private in nature.

- 33 Several interventions referred to the development of hybrid frameworks, in which private standard-setting coexists with elements of public regulation or endorsement. It was noted that contractual arrangements play a central role in the functioning of the system, while their effects may be limited in situations involving third parties. Reference was also made to emerging domestic regulatory approaches, including the establishment of national registries and statutory requirements governing carbon projects, which may condition the legal existence of credits and reflect considerations of public policy.
- 34 The Deputy Secretary General (DSG) clarified that the notion of “safeguards” may have different meanings in practice, including technical standards under specific frameworks and operational policies linked to project financing. In the context of the EG’s work, however, safeguards were described as general protective considerations within PIL. The DSG emphasised that PIL does not regulate substantive matters such as environmental or human rights standards, but it plays an important role in determining how legal effects circulate across borders through rules on jurisdiction, applicable law, and recognition and enforcement. Safeguards differ from public policy and overriding mandatory rules, which operate as exceptions after the application of PIL rules. By contrast, safeguards inform the design of those rules from the outset, identifying minimum conditions under which cross-border legal effects should be recognised. Finally, the DSG noted that safeguards are to be understood as establishing a minimum level of protection, not a maximum one. They are not intended to dilute, limit or replace stronger protections under domestic law, but to ensure that cross-border activities do not operate below a certain threshold.

IV. Structural Questions

A. Presentation by the PB on Secretariat Note 12/2026

- 35 The DSG explained that Secretariat Note No 12/2026 was intended as a structured tool to guide the EG’s discussion across the traditional pillars of PIL, namely jurisdiction, applicable law, recognition and enforcement, and international cooperation. She suggested that the EG first consider the interplay between jurisdiction and applicable law, in particular how issues such as the illegality of a project, typically governed by the law of the host State, interact with rights and obligations relating to the resulting credits. The Note adopts a structured, question-based approach, presenting different possible models and options for each issue, including alternative bases for jurisdiction and approaches to classification of disputes. It follows the methodological sequence whereby the appropriate forum is first identified, that forum then classifies the dispute according to its own law, and subsequently determines the applicable law. The purpose of this framework was to help the EG systematically explore possible approaches, including hybrid models, and to anchor the earlier discussion on safeguards within the core analytical tools of PIL.

V. Interplay of jurisdiction and applicable law

A. Issues in relation to the illegality of a project

- 36 A member of the EG emphasised the value of analysing the relationship between project illegality and disputes concerning credits through the concept of incidental (or preliminary) questions. It was explained that, in a dispute concerning, for example, the existence or validity of a carbon credit, the illegality of the project may arise as a preliminary issue for the court’s determination of the main claim. In such an approach, the court’s determination on the illegality of the project would be limited to dispute before it, without necessarily producing effects beyond those proceedings.
- 37 Another member of the EG approached the issue from a different perspective, suggesting that credits may, in certain circumstances, develop a degree of autonomy from the underlying project. The EG member referred to possible market practices, such as substitution mechanisms, under which the continuity and value of a credit may be maintained even if the original project is no longer

operational. It was suggested that the existence and treatment of credits may not always depend fully on the ongoing legality or viability of the original project, which may affect the identification of the applicable law, potentially pointing towards the law governing the registry or system in which the credit is issued and circulates.

- 38 A member of the EG questioned whether the detachment of credits from the underlying project accurately reflects current market practice, noting instead that carbon credits are generally results-based and remain linked to specific projects. Reference was made to buffer pool mechanisms, described as a risk management tool whereby a portion of issued credits is set aside to compensate for potential reversals. Another member of the EG similarly referred to buffer pools as operating like insurance, reserving credits to address unforeseen events.
- 39 A representative of the ICVCM provided clarification that buffer pools function by requiring project developers to contribute a share of issued credits to a common reserve, which may be drawn upon or supplemented where reversals occur. Where necessary, additional credits may be acquired from the market and cancelled to compensate for losses. Credits were described as functionally interchangeable, although individually identifiable through serial numbers. The management of buffer pools, including decisions on replenishment and allocation, is governed by the rules of the relevant standard or, in some cases, by regulatory frameworks, and often reflects contractual arrangements between project developers and standard-setting bodies.
- 40 A member of the EG observed that the legal landscape of carbon markets is inherently fragmented and unlikely to achieve full substantive uniformity. It was emphasised that PIL plays a central role in ensuring legal certainty by enabling market participants to anticipate which courts may have jurisdiction, which law may apply, and whether decisions will be recognised across borders. It was also underlined that contractual arrangements, including choice of law and jurisdiction clauses, are important but limited in their effects, as they do not bind third parties.
- 41 A member of the EG emphasised that, given the diversity of legal systems and factual scenarios, it may be difficult to identify a single jurisdictional or applicable law solution for all situations. It was suggested instead that a future instrument could adopt a flexible and descriptive approach, identifying relevant connecting factors and allowing courts to weigh them, without imposing uniform solutions.
- 42 Finally, a member of the EG emphasised the central role of the host State courts, in particular in determining jurisdiction and in triggering the application of public policy and overriding mandatory rules. Expressing a preference for Model 3 in Secretariat Note 10/2026, the member suggested that, in matters affecting sovereignty-related interests, including land rights, environmental assets, and national registries, the courts of the host State should retain jurisdictional competence.

VI. Jurisdiction

A. Initial reflections

- 43 The Acting Chair¹ opened the discussion on jurisdiction, recalling the progress made on safeguards and the interplay between jurisdiction and applicable law. She invited the EG to continue the discussions, focusing on how the illegality of a project, typically governed by the law of the host State, may arise as a preliminary or incidental issue in disputes concerning credits and their downstream legal effects from a PIL perspective.
- 44 A member of the EG emphasised that discussions should be grounded in concrete scenarios, noting that disputes concerning project illegality may arise before courts in other States, for example in contractual claims relating to obligations to compensate for reversals, as illustrated by earlier contributions from the representative of the ICVCM. The same member sought confirmation that

¹ The sessions of Wednesday 17 June 2026 was chaired by the DSG in the absence of the Chair.

such scenarios arise in practice. EG members responded by identifying multiple contexts in which project illegality may arise as a prior question, including contractual disputes, tort liability, property claims, enforcement proceedings, and insolvency contexts. Across these scenarios, project illegality was described as a recurring issue for the determination of the main dispute. Another member of the EG provided a practical example, noting that such cases have arisen in connection with disputes concerning the chain of title of carbon credits, with potential PIL implications.

- 45 Further interventions addressed how such situations are managed under existing PIL frameworks. A member of the EG noted that, in practice, courts may stay proceedings where preliminary issues relating to land or other sovereignty-sensitive matters fall within the jurisdiction of the project State, while noting that this raises questions where no proceedings are pending in that State. Another member of the EG emphasised the importance of determining the applicable law alongside jurisdiction, particularly in complex situations involving multiple legal relationships, such as contractual, property, or insolvency claims.
- 46 A member of the EG recalled that PIL analysis often begins with jurisdiction and identified three key questions: whether jurisdiction exists, whether a court may consider issues outside its jurisdiction as prior questions, and how parallel proceedings in different States may be coordinated. These elements were described as relevant tools for addressing situations where project illegality arises in conjunction with other claims. Another member of the EG supported an approach based on primary jurisdiction of the project State for issues closely linked to the project, while allowing for subsequent or parallel proceedings in other jurisdictions.
- 47 A member of the EG stressed that disputes in carbon markets are fact-specific and may arise at different stages of the lifecycle, not only in relation to project illegality. The member suggested that PIL solutions should not be designed solely around illegality scenarios but should accommodate the broader range of disputes that may arise. The Acting Chair recalled that Secretariat Note 12/2026 proposes distinguishing between general jurisdictional rules and specific “disruption events”, such as illegality or revocation, and invited reflections on whether such events require special treatment.
- 48 A member of the EG proposed an analytical framework distinguishing between three categories of issues: (1) disputes relating to land, (2) disputes relating to project development and contractual arrangements, and (3) disputes relating to credits as assets. These categories may involve different jurisdictional bases and raise coordination challenges in cross-border situations. Other members of the EG supported the structure set out in Secretariat Note 12/2026, including a hybrid approach combining connecting factors depending on the lifecycle stage or dispute type, and highlighted the role of protective jurisdiction in relation to affected communities.
- 49 The discussion also addressed broader methodological questions. One member of the EG observed that PIL should focus on identifying the underlying policy objectives, including market integrity, protection of State interests, and legal certainty, rather than on technical classifications alone. It was suggested that types of matters, rather than a lifecycle approach, may provide a more practical basis for determining jurisdiction and applicable law. Another member of the EG questioned the appropriateness and feasibility of introducing new grounds of exclusive jurisdiction, noting that existing jurisdictional rules dealing with preliminary questions affecting sovereignty of other States have already been crafted by courts.
- 50 The EG agreed that closely project-related issues may justify a central role for the courts of the host State, while allowing other courts to consider such issues where necessary, subject to the application of the law of the project State and, where appropriate, control at the recognition and enforcement stage. The discussion highlighted the importance of approaching jurisdiction, applicable law, and recognition and enforcement in an integrated manner.

B. Primary basis for jurisdiction, the role of protective jurisdiction, and the treatment of disruption events – Possible approaches

- 51 A member of the EG emphasised that the determination of jurisdiction should be guided by the subject matter of the claim. The member suggested that, for claims closely connected to the project and the territory of the host State, there may be a basis for primary jurisdiction in that State, while recognising that extending this approach to all categories of disputes could interfere with existing frameworks.
- 52 The discussion also clarified the distinction between reversals and revocations. It was explained that reversals refer to loss of climate benefits after the issue of the credits affecting the performance of the project, while revocations relate to legal or procedural defects, such as illegality or misrepresentation, that may affect the validity of issuance. This distinction was noted as potentially relevant for analysing jurisdiction and legal effects, although its precise role within PIL remained to be determined.
- 53 Several members of the EG addressed the relationship between jurisdiction and applicable law. It was emphasised that PIL does not determine substantive outcomes, but that different techniques could be used to accommodate competing interests. These include distinguishing between the law governing the effects attaching to credits and the law governing the legal grounds giving rise to those effects, as well as allowing courts, in certain approaches, to take into account overriding mandatory provisions of the project State when assessing illegality issues.
- 54 One member of the EG expressed caution against approaches that would require or direct courts to apply or give effect to the overriding mandatory provisions of another State. The EG member expressed a preference for a more flexible approach, based on a non-exhaustive list of relevant connecting factors that courts may take into account. Such an approach was considered to enhance transparency and predictability while preserving judicial discretion and avoiding encroachment into substantive public policy matters.
- 55 In this respect, a member of the EG recalled that PIL offers different techniques that may be combined to address such situations, including: (1) allocating distinct issues to different courts; (2) allowing courts to consider, but not adjudicate, issues falling outside their jurisdiction; and (3) facilitating coordination of parallel proceedings in different States. It was further suggested that these techniques could form part of a broader “safety net” approach, under which existing jurisdictional rules would largely be maintained, while ensuring that courts without jurisdiction over project-related illegality would only consider, and not finally determine, such matters. This could be complemented by controls at the recognition and enforcement, notably by preventing determinations made outside the appropriate forum from producing cross-border effects. Such an approach was presented as a way to balance the protection of project State interests with the need to avoid undue constraints on the functioning of the market.
- 56 The Acting Chair noted the EG’s agreement that the project State had primary jurisdiction over matters pertaining to the legality/illegality of the carbon project, as well as that the law of the project State would apply to such matters.

VII. Applicable law

A. Initial reflections

1. Lifecycle stages and types of matters²

- 57 The Acting Chair resumed the discussion on the interplay between jurisdiction and applicable law, recalling that the EG had agreed that the lifecycle of carbon market activities may require differentiated treatment. She noted that the EG agreed on distinguishing between the project phase and the downstream market phase, with different PIL approaches potentially applying at each stage. It was broadly acknowledged by the EG that project matters, in particular compliance with applicable laws, would generally be governed by the law of the host State.
- 58 Several members of the EG emphasised, however, that this understanding should be treated with caution and subject to further specification. It was observed that the notion of “project matters” requires clarification, particularly as to whether it encompasses all aspects of a project or only to specific elements such as land, environmental, or community-related issues. It was further noted that, in practice, the allocation of jurisdiction and applicable law may be influenced by, among other factors, the circumstances of the case and the availability of proceedings in the project State.
- 59 A representative of the ICVCM supported the distinction between project-related matters and downstream activities, drawing a functional differentiation between project compliance with applicable domestic law and the creation of carbon credits within a registry system. In this view, project compliance would fall under the law of the host State, while the creation and operation of credits would be governed by the law of the registry. Other members of the EG noted that such a distinction may be difficult to apply in practice, particularly where issuance and registration cannot be easily separated from the underlying project.
- 60 Several interventions suggested that the subject matter of the dispute, rather than its position in a linear lifecycle, may provide a clearer basis for determining both jurisdiction and applicable law.

2. Interaction with the discussion on safeguards

- 61 The discussion then turned to the role of safeguards in shaping applicable law considerations. Members of the EG generally agreed that safeguards should be understood as policy-sensitive considerations that inform the design of PIL rules, rather than independent substantive requirements. Safeguards highlight integrity concerns that PIL should not ignore, including, for example, the protection of local communities. At the same time, some EG members cautioned against framing safeguards in ways that could create unintended legal effects, such as expanding the range of available fora or diluting existing domestic legal protections, as previously noted.
- 62 Diverging views were expressed as to the scope and function of certain safeguards. In particular, one member of the EG questioned whether elements such as the prevention of double-counting and carbon leakage should be treated as safeguards, suggesting that they constitute fundamental preconditions for the existence of carbon credits rather than policy considerations for PIL design. Other members considered that such elements could still be relevant as part of broader integrity considerations guiding the framework. In this regard, it was acknowledged that differences in terminology and conceptual approaches may need to be clarified in future work.
- 63 Those EG members concerned with the specific safeguard of double-counting and carbon leakage were amenable to retaining it as a matter of the general integrity of the market. The Acting Chair noted that, notwithstanding the differences, there was agreement that safeguards, however defined, constitute relevant considerations for the development of a PIL framework, and that they

² Please note, as discussed during the meeting, the work of the PB in Issues Paper V.2 (lifecycle representations) and Secretariat Note 2/2025, with selected case law in the context of carbon markets, as well as ongoing PB work on case law per lifecycle stage. See also para. 128 item “a” in the list of action items for intersessional work.

may operate across different stages of the lifecycle, albeit in different ways. It was also observed that certain safeguards may be more readily localised in the project State, while others may have a cross-border or global dimension, requiring different treatment.

3. Interplay between applicable law and jurisdiction

- 64 EG members noted that, while jurisdiction may determine the forum, applicable law mechanisms may accommodate the interests of the project State, for example by allowing courts in other jurisdictions to consider relevant rules or standards. At the same time, caution was expressed against overly complex or overlapping applicable law rules that could undermine predictability for market participants.
- 65 Discussion continued on jurisdiction, in particular on the interaction between different bases of jurisdiction and the role of party autonomy. A member of the EG noted that, in practice, parties often anticipate disputes and structure their contractual relationships accordingly, including by selecting jurisdiction and applicable law. This raised the question whether party autonomy should prevail in all cases, or whether considerations, such as safeguards or public interests, might justify overriding jurisdictional choices, for example where the rights of local communities are affected.
- 66 Several members emphasised the complexity of jurisdictional analysis, noting that different approaches were discussed, including differentiation by lifecycle stage, subject matter of disputes, and the nature of legal relationships. It was suggested that these approaches may overlap and that future work may need to clarify their interaction. The possibility of limits to party autonomy was again raised, particularly in situations involving locally anchored rights or regulatory concerns.

B. Possible approaches to applicable law (Secretariat Note 12/2026)

- 67 An EG member supported the hybrid approach (Option C to Question 4) reflected in Secretariat Note 12/2026 as broadly reflecting current market practice, while clarifying that credit issuance is closely linked to registry operation rather than to the project State. It was emphasised that projects, registries, and verification bodies are governed by distinct legal and contractual relationships, and that the credit itself, as a unit representing the impact of the project, is subject to the rules of the registry. This reinforced the distinction between upstream project-related matters and downstream credit-related issues. The EG member further noted that most disputes arise not from price issues but from questions relating to chain of title, compliance with applicable law, and project integrity. Contractual arrangements typically include dispute resolution clauses specifying jurisdiction and applicable law, and that existing practices have largely provided workable solutions. It was suggested that any future PIL framework should reflect these practices, while identifying possible gaps.
- 68 Another EG member provided an overview of disputes arising at the project stage, identifying three broad categories: regulatory compliance disputes, project governance and execution disputes, and disputes relating to participation and rights of affected communities. These categories often combine public regulatory elements with private law aspects, reinforcing the need for careful classification of claims when determining jurisdiction and applicable law. Another member of the EG supported the use of concrete case examples as a basis for analysis, suggesting that future work should be grounded in practical scenarios rather than abstract models.
- 69 Views differed on the usefulness of a strict lifecycle-based approach. While some members considered the hybrid model as a helpful organisational tool, others expressed difficulty in identifying clear boundaries between stages, particularly regarding issuance and its connection to both project and registry frameworks. It was reiterated that lifecycle stages may not always provide a sufficiently precise basis for determining jurisdiction and applicable law, and that a subject matter approach may offer greater clarity.

70 The Acting Chair concluded that two main analytical approaches had emerged: one based on differentiation along lifecycle stages, and another based on classification of disputes according to their legal nature. Both approaches may need to be explored in parallel. Members of the EG were invited to provide concrete case examples, which could be mapped both along lifecycle stages and by type of dispute to support further analysis.

1. Party autonomy

71 The role of party autonomy in contractual matters was discussed. While it was recognised that choice of law is commonly used and generally effective in practice, such choices were noted to bind only the parties to the agreement and do not extend to third parties. This raised questions about claims brought by non-contracting parties, including affected communities or other stakeholders. Some EG members highlighted the relevance of *standing*, noting that such issues may not fall neatly within traditional PIL categories but may nonetheless affect both jurisdiction and applicable law.

72 An EG member provided a concrete example of a case that arose in the context of Guyana and was reported as an appeal to the Environmental Resources Trusts, which involved a third party non-governmental organisation attempting to intervene in proceedings on behalf of indigenous peoples, despite the fact that they were not authorised by such indigenous peoples to do so. It was noted that such cases may blur the boundaries between contractual, regulatory, and procedural frameworks, and may not fit neatly into existing doctrinal categories. This prompted further discussion on the classification of *standing*, with one member of the EG noting that it is typically addressed under procedural law but may have broader implications depending on how claims are framed.

73 The Acting Chair concluded that the EG had largely confirmed the applicability of general PIL principles, particularly in relation to contracts, while identifying areas requiring further reflection, including the treatment of third-party claims, the interaction between applicable law and safeguards, and the possible role of overriding mandatory provisions. It was noted that, for contractual disputes, party autonomy remains the default rule, subject to limitations such as public policy and overriding mandatory rules, including those of the project State. The question of whether additional adjustments are necessary in carbon markets was left open.

2. Structured Questions – Secretariat Note 12/2026³

74 Several members of the EG suggested that the discussion should not focus exclusively on connecting factors but should also consider other techniques available within PIL. In particular, it was proposed that the concerns identified as safeguards could be addressed through mechanisms such as overriding mandatory provisions or public policy exceptions. Under this approach, certain issues, such as land rights, environmental compliance, and the protection of indigenous peoples and local communities, could be governed by the law of the project State irrespective of the generally applicable law.

75 A member of the EG emphasised that this approach would allow for targeted, or “surgical”, intervention, by identifying specific issues and assigning them to the law of the project State, while leaving the broader conflict of laws framework intact. This could ensure that key interests of the project State are preserved without requiring a redesign of existing applicable law systems. In support of this line of reasoning, another member of the EG highlighted two principal techniques: first, splitting the applicable law so that different aspects of the same legal situation are governed by different laws; and second, the use of overriding mandatory provisions, which would allow or require courts to apply certain rules of the project State regardless of the otherwise applicable law.

³ The Chair resumed the chair from the morning session of Thursday 18 June 2026.

- 76 At the same time, a member of the EG reiterated the importance of maintaining flexibility, cautioning against rigid rules based on a single connecting factor. It was suggested that courts should retain the ability to assess applicable law on a case-by-case basis, taking into account the circumstances of each dispute, while allowing for a preference for the law of the project State in certain situations.
- 77 The discussion also addressed the need to ground the analysis in practical experience. Several EG members emphasised the importance of concrete examples to identify where existing PIL frameworks are effective and where additional guidance may be required. It was suggested that such examples could help to determine the limits of party autonomy and identify situations where non-contractual claims may arise.
- 78 The discussion turned to non-contractual claims, including benefit-sharing and unjust enrichment. It was observed that, where parties derive benefits from the use of land or resources without adequate compensation, claims may arise outside contractual or tort frameworks. Unjust enrichment could be particularly relevant in situations involving local communities or indigenous peoples, where claims may be brought to seek a share of the benefits generated by a project.
- 79 Several members of the EG noted that such claims raise complex questions for the determination of applicable law, as they do not fall neatly within traditional contractual or tort categories. Existing conflict of laws rules on unjust enrichment could provide a starting point, but that additional mechanisms, such as overriding mandatory provisions, may be necessary to ensure that the law of the project State is taken into account, particularly for rights over land or resources.
- 80 The discussion further highlighted that, while existing PIL frameworks provide well-established rules for contracts, torts, and unjust enrichment, the situation may differ for proprietary rights in carbon credits. In this area, clear PIL rules may be lacking, requiring further analysis before considering the application of corrective mechanisms such as overriding mandatory provisions.
- 81 The Chair observed that discussions had focused on the role of safeguards and identifying appropriate PIL tools to address them. Overriding mandatory provisions could serve as a central mechanism to protect key interests of the project State, possibly complemented by guidance tailored to carbon markets. Further work would be needed to identify priority areas and ensure that proposed solutions are grounded in practical scenarios and responsive to the needs of market actors.

3. Possible approaches

- 82 The EG discussed connecting factors across the lifecycle of carbon markets and the role of party autonomy. While contractual arrangements govern a significant part of carbon market activity, several EG members highlighted possible limits to party autonomy where broader policy considerations arise. Applicable law solutions should balance legal certainty with the need to ensure that public policy interests are not undermined.
- 83 A member of the EG observed that party autonomy operates not only in contracts but, in certain legal systems, also for non-contractual obligations such as tort and unjust enrichment. Two possible approaches were identified. The first would limit party autonomy directly, for example by restricting the range of laws that may be chosen. The second would preserve party autonomy while correcting its effects through the overriding mandatory provisions of the project State. This second approach was considered less disruptive, building on existing frameworks through targeted adjustments rather than structural reform.
- 84 One EG member explained that a contract governed by a law chosen by the parties could nonetheless be subject to overriding mandatory provisions of the project State for issues such as validity, including where compliance with participation requirements or regulatory conditions is at stake. This would allow courts to take into account the law of the project State for specific purposes, while maintaining the general rule governing the contractual relationship (*dépeçage*). This

approach may, however, increase complexity by requiring the concurrent application of multiple legal systems.

- 85 The EG noted that overriding mandatory provisions, given their exceptional nature, must be carefully circumscribed. Overly broad use could undermine predictability and legal certainty and lead to inconsistent application. This is particularly relevant where the overriding mandatory provisions are those of a State other than the forum, namely the project State. While certain legal systems allow courts to take such rules into account, this is often discretionary rather than mandatory. This raised the question whether a future framework should permit or require courts to give effect to such provisions.
- 86 The Chair invited reflections on how such mechanisms might be framed in practice, including whether to provide courts with general discretion or identify a limited set of issues subject to special treatment. Any such categories would need to be narrowly defined and linked to clearly identifiable policy concerns, in order to limit disruption to the general system of applicable law.
- 87 Some EG members cautioned against moving prematurely towards concrete solutions. The analysis should be grounded in practical experience and real-world cases. EG members indicated that existing contractual and regulatory frameworks already address many issues and that further work should focus on identifying specific gaps.
- 88 The discussion then returned to safeguards. One EG member emphasised that safeguards are primarily a matter of domestic law and policy and should remain within the competence of States. Rather than defining or harmonising safeguards, the focus could be on transparency, ensuring that relevant national rules are accessible to courts and market participants.
- 89 In response, it was clarified that the objective of the discussion was not to define the substantive content of safeguards, but rather to identify the types of issues that may be relevant for the PIL analysis. Differences between domestic legal systems are the starting point of PIL, and that the EG's task is to determine how such differences should be managed in cross-border situations.

4. Participation of representatives of indigenous peoples and other traditional communities

- 90 A representative of the ICVCM emphasised that safeguards related to indigenous peoples and other traditional communities cannot be meaningfully discussed in their absence and that their perspectives and experiences should inform any consideration of applicable law in this area. Further engagement with representatives of indigenous communities would be necessary to ensure their concerns are adequately reflected.
- 91 The Chair acknowledged that substantial efforts had been made in previous meetings to engage a wide range of stakeholders, including through presentations, roundtables, and case studies involving local communities. The DSG emphasised that this engagement remains ongoing and forms a core part of the process. The Permanent Bureau (PB) has actively participated in international fora, including COP processes, and collaborated with organisations such as the ICVCM and others to capture diverse perspectives. While acknowledging the importance of incorporating the voices of indigenous peoples, it was underlined that the structure of the EG must operate within the HCCH Rules of Procedure. The PB remains committed to deepening such engagement, including through targeted input from affected communities and their representatives on relevant PIL questions.
- 92 Several members also emphasised the need to better understand the practical legal challenges faced by such communities, including cross-border disputes, access to justice, and the identification of applicable law. Clarifying these challenges would help determine whether PIL tools can provide meaningful solutions.

- 93 In concluding, the Chair emphasised that the EG remains in an exploratory phase. The objective at this stage is not to adopt definitive solutions but to identify possible approaches, clarify key concepts, and determine areas of priority.

VIII. Discussion of recent developments relating to draft Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits (VCCs)

- 94 The Chair opened the discussion by inviting the UNIDROIT representatives to present the latest iteration of the draft Principle 4 (as of 18 June 2026) and invited the EG to engage in an open exchange of views.
- 95 The UNIDROIT representative thanked the EG and the HCCH for their ongoing work and emphasised the value of continued cooperation. She stated that comments transmitted in the context of the HCCH process had been taken into account in the latest iteration of draft Principle 4 and the broader set of draft Principles. She further stated that the latest iteration of Principle 4 reflected comments from individual members of the EG transmitted by the PB, including the removal of any reference to the text being a result of “close coordination”, so as to avoid any implication of endorsement of draft Principle 4 by the EG, the replacement of “land use” with “rights and interests in land and natural resources,” and the incorporation of the language suggested by the UNFCCC Secretariat.
- 96 The UNIDROIT representative explained that provisions addressing the illegality of underlying carbon mitigation projects have been removed from Principle 4. Instead, illegality is addressed in a separate principle providing that its effects on carbon credits are governed by “other law”, which under the UNIDROIT Principles referred to the applicable domestic law.
- 97 Another UNIDROIT representative explained that the basic approach to Principle 4 had not changed, as Principle 4 remained strictly confined to proprietary rights, and therefore does not address the underlying carbon mitigation project or “rights and interests in land and natural resources,” which are expressly outside its scope. He further highlighted that the conflict-of-laws rule remains limited and continues to rely primarily on the *lex registri* as the general connecting factor. He explained that special connecting factors are retained for alignment with existing instruments: for security rights, the law of the State where the grantor is located (consistent with the UNCITRAL Model Law on Secured Transactions), and for custody, the rule is aligned with the HCCH 2006 Securities Convention. He added that revisions made to draft Principle 4 were: separating public policy and overriding mandatory rules into distinct provisions, incorporating technical refinements such as the exclusion of *renvoi* and clarification of the definition of “state” for States with multiple legal units, and maintaining updated references to obligations under the UNFCCC, the Paris Agreement, and related instruments.
- 98 Another representative designated by UNIDROIT explained that, in the view of the UNIDROIT Working Group, illegality falls outside the scope of Principle 4 and the broader Principles, and that this was a matter of verification and compliance with domestic law. He stated that, as a matter of best practice, validation and verification bodies are expected to assess whether the creation of credits complies with the applicable law of the host State, with the outcome reflected in verification processes. He emphasised that cross-border legal consequences of illegality were deliberately set aside by the UNIDROIT Working Group and that this did not affect the proprietary issues addressed within Principle 4. The representative of UNIDROIT then addressed the treatment of insolvency proceedings under the Principles, clarifying that, as a general rule, insolvency proceedings are dealt with separately because they are governed by a well established PIL framework and therefore would not require treatment in the UNIDROIT Principles. However, he added that in order to scale and improve the scaling of carbon markets, a decision was made to maintain Principle 4 and the *lex registri* approach individuated for the existence of security rights and proprietary rights. The representative explained that there were two reasons for this approach. First, it would be consistent with the general idea that insolvency proceedings in the UNIDROIT Principles are not only liquidation

proceedings, but may be also restructuring proceedings or out of Court proceedings, reason why insolvency related proceedings was being defined in a broad way. Second, because in order to use the VCC for getting new financing or trading new financing, rules outside insolvency proceedings could be relied upon in order to get consistency in carbon market transactions.

- 99 The Chair invited EG members to provide their reflections, recalling that at the previous meeting the EG had reached a consensus position on draft Principle 4. The Chair noted that the EG remained open to continued cooperation with UNIDROIT and to considering revised texts and developments, without prejudice to the EG's mandate or its earlier conclusions.
- 100 EG members welcomed the cooperation with UNIDROIT, while noting that the EG's mandate extends beyond proprietary issues to encompass the broader lifecycle of carbon credits. In this context, EG members emphasised that the EG would therefore continue its broader analysis, taking UNIDROIT's work into account where relevant and maintaining ongoing dialogue.
- 101 The Chair asked the UNIDROIT representatives to clarify the relationship between the illegality of an underlying carbon mitigation project and the proprietary consequences for holders of carbon credits. He noted that, under the current iteration of the draft Principles, the legality or illegality of the project is governed by "other law," in particular the law of the host State, whereas issues such as cancellation of credits fall under the law of the registry. He highlighted the complexity arising where a declaration of illegality by a host-State court may lead to revocation or cancellation of credits, thereby directly affecting proprietary rights. The Chair therefore sought clarification on how UNIDROIT conceptualises this interplay between the law governing project legality and the law governing the proprietary consequences of cancellation, including the role of recognition and enforcement of such court decisions and how the distinction between these two legal spheres can be maintained.
- 102 A UNIDROIT representative responded that, in his view, there is a clear distinction between the illegality of the underlying project and the legal status of the carbon credit itself. He stated that while legality must be governed by the host State's law, there should be "no automaticity" and "no direct impact" of host-State illegality on the validity of the credit. Instead, he explained that it is for the law of the registry to determine whether an illegality is sufficiently serious to affect the validity or cancellation of the credit, with a view to ensuring legal certainty and protecting investors, whom he described as having limited ability to monitor project legality. He emphasised that requiring investors to assess illegality risks across projects would undermine tradability and market functioning.
- 103 A representative of the ICVCM, while acknowledging that credit-by-credit due diligence would be impractical and harmful to market efficiency, emphasised that VCCs remain traceable to specific projects, countries, and issuance blocks through serial numbers. She noted that, even in cross-border contexts, emissions reductions are allocated to identifiable project activities and locations through monitoring and reporting processes, such that the relevant host State can generally still be determined.
- 104 An EG member observed that, while the argument that extensive due diligence may be burdensome for investors is persuasive, its implications remain unclear if the possibility that illegality may lead to cancellation is retained. He noted that, even if such cases are exceptional or subject to a high threshold, the mere existence of this possibility implies that investors cannot entirely avoid conducting some level of due diligence. In his view, the issue is therefore one of degree rather than principle: once it is accepted that illegality may in certain cases result in cancellation, a corresponding due diligence burden necessarily arises.
- 105 A UNIDROIT representative explained that, while illegality may lead to cancellation, the UNIDROIT Working Group's approach is that the "first line of defence" lies with standard-setting bodies and the registry system under the law of the registry State. In his view, investors need only assess cancellation risks within this single legal framework (*lex registri*), rather than conducting due

diligence across multiple host-State laws, which would be impractical given the diversity of jurisdictions represented in registries. This approach was presented as preserving legal certainty while still allowing serious host-State illegality to be taken into account through registry-based cancellation mechanisms. One EG member stressed that the issue is not binary, noting that due diligence should focus on what is necessary to build trust rather than full verification. He emphasised that a functioning carbon market relies on trust in institutions, while still requiring a reasonable level of investor awareness, and that project illegality should have consequences without undermining market functionality.

- 106 An EG member stated that the EG's mandate conferred by CGAP requires a broader, holistic examination of PIL issues across the full lifecycle of carbon markets, including the cross-border effects of illegality. While welcoming continued cooperation with UNIDROIT, the EG member noted the UNIDROIT Working Group's policy choice to separate proprietary rights from project illegality. The EG member further noted that the most recent revisions had not altered the underlying policy considerations on which draft Principle 4 was based. As such, the concerns identified at the previous meeting remained relevant, and the consensus position reached by the EG in December 2025 on draft Principle 4 remained unchanged. The EG member stressed the need for the HCCH EG to continue its independent analysis of these issues, particularly in light of their implications for stakeholders.
- 107 The Chair asked the representatives of UNIDROIT to confirm whether the effects of a declaration of illegality of an underlying project, specifically the impact on proprietary rights in carbon credits, are governed by the law of the registry. One of the representatives of UNIDROIT clarified that while the determination of whether conduct in a project is illegal is governed by the law of the host State, the legal consequences of that illegality for carbon credits are governed by the law of the registry State. The UNIDROIT representative explained that this approach reflects differences across national laws as to what constitutes a violation and its effects, and presented the approach aiming to provide investors with a single, predictable standard. Reliance on the law of the registry, in this view, allows investors to understand the conditions under which credits may be invalidated without having to assess the laws of multiple jurisdictions.
- 108 A representative of the ICVCM clarified that a distinction should be drawn between investors and secondary buyers when assessing due diligence and information costs. The representative noted that investors typically know the projects in which they invest and conduct project-specific due diligence, whereas secondary buyers, particularly those acquiring credits on exchanges, may, in certain limited circumstances, not know the underlying project or its location. She emphasised that this distinction is important for assessing risk and due diligence expectations.
- 109 A representative of UNIDROIT clarified that the draft UNIDROIT Principles are primarily concerned with protecting buyers in the secondary market. He explained that while primary investors can and should conduct project-specific due diligence, secondary buyers often do not know the underlying project or relevant jurisdiction and face the risk that credits "could fall away" under unfamiliar laws. For this reason, he emphasised that UNIDROIT's approach anchors secondary buyers' rights to the law of the registry State, with a view to ensuring that the conditions for cancellation are defined by a single and predictable legal framework, thereby reducing uncertainty for secondary market participants.
- 110 The Chair thanked the UNIDROIT representatives for their presentation and acknowledged that the revised text sought to take into account certain concerns raised in the context of the EG's discussions. He noted that many of the issues discussed in this session would continue to be examined in the course of the EG's work on its broader mandate. He observed that EG members wished at this stage to focus on advancing the general mandate conferred by CGAP, while indicating that the EG could return to the discussion of the revised text of draft Principle 4 at an appropriate juncture. The Chair reiterated to the UNIDROIT representatives the EG's continuing willingness to cooperate with UNIDROIT as a sister organisation on these matters.

IX. Recognition and Enforcement issues

- 111 A member of the EG observed that the existing HCCH framework, in particular the 2019 Judgments Convention and the 2005 Choice of Court Convention, provides a significant basis for the cross-border circulation of judgments. These instruments rely on general jurisdictional filters, such as the habitual residence of the defendant, as well as more specific bases in certain areas, such as contractual disputes. However, these regimes may not fully capture all situations arising in carbon markets. In particular, it was noted that while contractual claims may often fall within established jurisdictional bases, other types of claims, such as those relating to unjust enrichment or proprietary interests, may not be addressed with sufficient specificity. Moreover, certain jurisdictional bases under the existing framework, such as those relating to torts, were observed to be relatively narrow and potentially ill-suited to the types of harm that may arise in carbon market disputes. Accordingly, existing instruments provide a useful starting point, but there may be scope for complementary or more tailored approaches in carbon market scenarios.
- 112 A member of the EG further clarified that the Judgments Convention concerns the recognition and enforcement of judgments as such, rather than the underlying substantive legal relationships. However, decisions addressing issues such as the validity or existence of carbon credits may fall within its scope, provided that the jurisdictional requirements of the Convention are met. The EG discussed Article 6 of the Judgments Convention, which establishes a special regime for judgments concerning rights *in rem* in immovable property. While carbon credits themselves would not qualify as immovable property, disputes connected to land, including rights and interests relating to project sites, may trigger the application of this provision.
- 113 Another member of the EG emphasised the importance of Article 6 in cases involving land-related disputes arising from carbon projects. In such cases, the Convention requires that judgments originate from the State where the immovable property is situated to be eligible for recognition and enforcement. This approach reflects the convergence between jurisdiction and applicable law in respect of immovable property and may be particularly relevant in disputes involving land rights, tenure systems, or associated claims by local or indigenous communities. These situations are, however, only one category within a broader range of disputes, many of which would fall outside this specific framework.
- 114 The EG also discussed the role of existing jurisdictional filters under the Judgments Convention, including those based on contractual performance or the operation of a branch. Such bases may be useful in certain project-related disputes, although their applicability may vary depending on the circumstances of each case. Further analysis would be needed to assess how these mechanisms operate in carbon markets and whether additional guidance or clarification would be beneficial.
- 115 The Chair observed that the discussion had identified both the relevance of existing HCCH instruments and the possibility that they may not fully address all aspects of carbon market disputes. Further work would be required to determine whether and where gaps exist and how these might be addressed in a manner consistent with the existing framework.
- 116 The Chair drew attention to Structural Question 8 of Secretariat Note 12/2026, and its connection to the earlier discussion on applicable law. He recalled that some EG members had indicated that the PIL consequences of illegality could be addressed through the recognition and enforcement of court orders related to revocation, rather than solely through applicable law mechanisms, and noted that this had also arisen in the discussions with UNIDROIT, where it was stated by UNIDROIT that the effects of host-State court decisions declaring the illegality of an underlying project would, in its view, be governed by the law of the registry. The Chair underlined the interplay between recognition and enforcement, applicable law, and jurisdiction as an integrated set of PIL questions and invited EG members to provide their reflections.
- 117 A representative of the ICVCM offered a practitioner's perspective, noting the existence of thousands of contractual arrangements already operating in carbon markets and observing that,

to the extent recognition and enforcement questions arise in practice, existing frameworks are already being drawn upon. She advocated a minimalist approach: assessing first whether existing instruments are adequate before considering new solutions, while acknowledging cross-border enforcement challenges, in particular where a project is located on privately owned land, operated by an international company, and the buyer is also international. The Chair acknowledged that cases of inadequate access to justice do arise in this context, reinforcing the relevance of the EG's work.

- 118 A member of the EG supported a minimalist approach, suggesting the 2019 Judgments Convention as the starting point, with attention directed to specific elements that may not be adequately covered, such as the exclusive jurisdiction rule in Article 6, rather than developing a framework from scratch. The Chair noted the value of developing, for future sessions, a shared mapping of the Convention's scope and application in the carbon market context. Several members of the EG echoed these positions. One EG member characterised the exercise as gap-filling, drawing on existing instruments and materials as an educational and reference tool, with new solutions developed only where genuine gaps are identified, so as to minimise confusion in an already strained market. Another EG member similarly supported the minimalist approach, identifying categories of potential gaps, including those arising from the identity of parties, the signatory status of States, or the underrepresentation of particular stakeholder groups, and noted the distinction between enforcing a court judgment and using a grievance or ombudsman scheme, observing that courts generally provide a backstop where ombudsman processes cannot resolve a matter.
- 119 A representative of the ICVCM elaborated on the access to justice dimension. She observed that while carbon market transactions generate extensive contractual documentation, the relevant gap is in the non-contractual sphere where affected stakeholders may lack enforceable rights. She described the escalating structure of grievance mechanisms in the market, including recourse to the ICVCM in an ombudsman function for private crediting programmes, as identifying an area that may be relevant for further PIL analysis. The ICVCM offered to compile anonymised real-life examples for the EG's consideration, noting that Brazil had already offered a list of relevant cases, and offered to facilitate engagement with practitioners through its own fora.
- 120 The Chair summarised that the EG agreed on a minimalist approach of building on existing instruments and identifying genuine gaps rather than developing a framework from scratch, and that further analytical work would be required to assess the adequacy of existing regimes in the carbon market context.
- 121 An EG member asked whether decisions issued by private voluntary standard-setting bodies and registries, which are not State entities, would ordinarily qualify for recognition and enforcement in the PIL sense, and questioned whether revocation is sufficiently developed in practice to give rise to the kind of justiciable decisions that PIL instruments address.
- 122 A representative of the ICVCM noted that revocation presents significant practical challenges. She noted that revocation does not currently feature meaningfully in carbon market practice, which has developed primarily through contractual frameworks, and expressed uncertainty as to the number of existing cases that would raise revocation questions in a PIL sense. She observed that, in the absence of demonstrated real-world cases requiring PIL-level solutions, markets and States are unlikely to move quickly to adopt revocation as a standard mechanism, notwithstanding developments in other international processes, given its potentially significant consequences for market confidence. She suggested setting the concept of revocation aside pending further practical development, drawing a parallel with tokenisation, which is widely discussed as a concept but subject to few concrete market examples at present.
- 123 The Chair recalled that the California compliance market had been referenced as a system providing for the invalidation of offset credits on grounds including overstatement, over-issuance, and non-compliance with applicable law. A member of the EG confirmed the features of the California regime, noting it operates primarily with respect to domestic credits. A representative of

the ICVCM added that while registry terms and conditions typically reserve the right to cancel credits, such powers are rarely exercised in practice given the potential market impact, noting a significant gap between written rules and practice.

124 The Chair clarified that the discussion in this EG was focused on decisions of national courts, as distinct from administrative or regulatory processes under specific standards or national regulations. A representative of the ICVCM elaborated on the sequence of conditions required for a recognition and enforcement question to arise: a finding of illegality, a formal ruling, a consequential judgment ordering cancellation, and registry non-compliance. She raised the practical question of how realistic such scenarios are in the current market. Following a brief exchange in which uncertainty was noted as to whether major standards bodies have applied formal cancellation rules in practice, a representative of the ICVCM indicated that real-world examples do exist, including within certain registry frameworks, and offered to compile and share these with the EG.

X. International Cooperation Mechanisms

125 The Chair opened the discussion on international cooperation mechanisms, noting that the topic was new to the EG's engagement. Members of the EG indicated that it may be premature to engage substantively at this stage, as cooperation mechanisms are typically designed in conjunction with, or following the determination of the form of instrument to be developed, which had not yet been discussed by the EG. The EG agreed that the topic should be taken up in greater depth at a later meeting. The Chair noted this agreement and adjourned the session, inviting EG members to review the partial draft of the *Aide-mémoire* that had been circulated that morning.

XI. Action Items for Intersessional Work

126 Permanent Bureau

- a. **Note on the 2019 Judgments Convention.** The EG requests the PB to prepare a focused analytical note on the application of the 2019 Judgments Convention to decisions arising in the context of carbon market activities. The note should examine the Convention's potential application and its limitations of scope across different types of disputes, including contractual, proprietary, and tort and liability claims, and at different stages of the project and credit lifecycle. It should identify with precision the circumstances in which the Convention would not apply to decisions in carbon market disputes, with a view to helping the EG determine whether complementary or more targeted solutions are required.
- b. **Note on grievance mechanisms and access to justice.** The EG requests the PB to prepare a research note on grievance mechanisms operating in carbon markets, covering their availability, structure, and functioning, and drawing on relevant guides and good practices, including those developed in the context of UNFCCC instruments and outcomes. The note should focus on collecting available information and identifying areas of interaction or lack of interaction with PIL..
- c. **Note on revocation and cancellation cases, and pending decisions.** The EG requests the PB to compile research on existing cases and pending decisions concerning the revocation and cancellation of carbon credits, including those under national and regional regulatory regimes or frameworks. This work should draw on the list of cases already submitted by a member of the EG, as well as the examples to be provided by the ICVCM.
- d. **Note on the relationship between PIL frameworks and other private law instruments.** The PB is requested, resources permitting, to prepare a short analytical note clarifying the boundary between PIL frameworks and substantive private law instruments operating in the carbon market space, and identifying the PIL questions that arise from their interaction, including where choices made at the substantive private law level create constraints or gaps within the

PIL framework. This note would assist the EG in situating its work in relation to other international instruments and in identifying where its framework must address questions that fall outside the scope of those instruments.

- e. **Engagement with representatives of indigenous peoples, traditional and local communities.** In preparation for future sessions, the PB is invited to identify representatives of indigenous peoples, traditional and local communities who could provide input on the legal problems encountered in connection with carbon projects, including the specific difficulties arising in cross-border disputes and the question of whether and how PIL tools can address those challenges. These representatives could be invited to contribute to the discussion at the next EG meeting. This work should build on the PB's existing programme of stakeholder engagement, including through relevant international fora.

127 ICVCM

- a. **Anonymised examples of enforcement challenges.** The ICVCM offered to compile anonymised real-life examples of challenges encountered in enforcing decisions relating to carbon credits, including in the context of revocation, and to share these with the EG and the PB for consideration in future sessions.

128 EG Members

- a. **Concrete case examples.** EG members are invited to provide concrete case examples, mapped both along lifecycle stages and by type of dispute, to support the EG's further analysis of PIL questions. The PB will incorporate these case examples in the update of the Secretariat Note 2/2025 to reflect recent developments in domestic legislation relevant to the PIL questions under examination, including provisions on revocation, cancellation, and the applicability of host State law to project-related matters, in project-host and registry jurisdictions.
- b. **Written intersessional input from EG members.** The EG members are invited to submit written comments on the structural decisions addressed at this meeting, to inform its preparatory work for future sessions.
- c. **International cooperation mechanisms.** The EG agreed that international cooperation mechanisms require more detailed consideration and should be addressed substantively at a future meeting, once the EG has further developed its analysis of the form of instrument to be developed.

XII. Conclusions

129 The Chair recorded the following conclusions of the fourth meeting of the EG:

- a. The EG recalled that its CGAP-conferred mandate extends across the lifecycle of carbon market activities and is not confined to proprietary issues or to the secondary market transactions relating to carbon units. The EG will proceed on a focused and pragmatic basis, concentrating on areas where PIL may enhance legal certainty in cross-border carbon market transactions.
- b. The EG agreed that safeguards, however defined, are relevant to the consideration of a PIL framework for carbon markets. They may inform the design and operation of PIL rules, but are not intended to regulate substantive standards or dilute stronger protections under domestic law.
- c. The EG agreed that jurisdiction, applicable law, and recognition and enforcement should be approached in an integrated and holistic manner. Project-related matters, particularly those involving land and natural resources, national registries, and other sovereignty-related interests, may justify a central role for the courts and law of the project State.
- d. The EG agreed that different PIL approaches may be required depending on the nature of the dispute and/or the relevant stages of the lifecycle of the carbon project, including whether it

concerns land and natural resources, project development, contractual arrangements, or carbon units. Further work should test these approaches against concrete scenarios.

- e. The EG recognised the role of party autonomy as the default rule for contractual disputes, subject to applicable limits where relevant, including public policy and overriding mandatory rules. Further analysis is required on non-contractual claims (such as tortious claims or claims in unjust enrichment), proprietary rights in carbon credits, and the possible targeted use of overriding mandatory provisions.
- f. On recognition and enforcement, the EG favoured a minimalist, gap-filling approach based on first looking to existing HCCH instruments, in particular the 2019 Judgments Convention, before considering any new solutions.
- g. The EG agreed that the following matters would be considered at future meetings: (i) access to justice; (ii) the possible cross-border implications for issued units of a finding that safeguards applicable to the underlying project had been breached; (iii) international cooperation mechanisms; and (iv) the possible form and output of the EG's work.