CAGP 2026

JANVIER 2026

DOC. PREL. NO 4

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| **Titre** | **Groupe d'experts sur les marchés du carbone : rapports des première, deuxième et troisième réunions** |
| **Document** | **Doc. prél. No 4 de janvier 2026** |
| **Auteur** | BP |
| **Point de l'ordre du jour** | Point II. 4 |
| **Mandat(s)** | C&D No 18 du CAGP de 2025 |
| **Objectif** | Rendre compte des travaux du Groupe d'experts au CAGP |
| **Mesures à prendre** | Pour décision ☒<br>Pour approbation ☐<br>Pour discussion ☐<br>Pour action / achèvement ☐<br>Pour information ☐ |
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| **Document(s) connexe(s)** | - Doc. prél. No 6 de novembre 2024 – Rapport : Aspects de droit international privé des marchés volontaires du carbone<br>- Doc. prél. No 7 REV REV de janvier 2024 – Proposition de travaux préparatoires : Questions de droit international privé relatives aux marchés du carbone |

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# Groupe d'experts sur les marchés du carbone : rapports des première, deuxième et troisième réunions

## I. Introduction

1 Le Groupe d'experts sur les marchés du carbone (le Groupe d'experts) a été créé, comme l'explique le Doc. prél. No 6 de novembre 2024[1], pour « étudier les questions de droit international privé découlant des marchés du carbone », en orientant ses travaux, dans un premier temps sur l'éventuelle inclusion d'une disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT sur les crédits d'émission de carbone vérifiés[2].

2 Conformément à ce mandat, le Secrétaire général a convoqué le Groupe d'experts par la Circulaire ciblée No 24(25) du 11 mars 2025, invitant les Membres à désigner leurs délégués respectifs au sein du Groupe. La Circulaire de convocation notait que puisque le sujet sur lequel le Groupe d'experts allait travailler comprend des considérations d'ordre public et des questions relatives aux lois de police en relation avec les marchés du carbone, les Membres étaient invités à désigner des délégués en mesure d'exprimer les vues politiques de l'État ou de l'Organisation qu'ils représentent. Le Bureau Permanent (BP) a en outre invité les Observateurs à désigner des participants, en application des articles II.B et II.J du Règlement intérieur de la HCCH[3].

3 Le Groupe d'experts compte actuellement 115 participants désignés par 25 Membres de la HCCH[4] et neuf organisations observatrices[5]. Il s'est réuni à trois reprises en 2025, ce qui témoigne d'un degré d'engagement exceptionnel à l'égard de la première partie de son mandat consistant à contribuer, dans les limites de ses attributions, à l'éventuelle inclusion d'une disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT. Ce programme de réunions exceptionnellement intensif a été entrepris pour s'adapter au calendrier d'UNIDROIT, qui envisageait d'achever les travaux sur le projet de Principes d'UNIDROIT sur les crédits d'émission de carbone vérifiés au premier semestre 2026[6]. Lors de sa deuxième réunion, le Groupe d'experts a nommé par consensus M. Eduardo Silva Besa, un délégué du Chili, à sa présidence.

## II. Compte rendu des réunions et développements intervenus en 2025

### A. Première réunion (13-15 mai 2025)

4 Du 13 au 15 mai 2025, le Groupe d'experts a tenu sa première réunion en présentiel dans les bureaux du BP de la HCCH à La Haye, avec possibilité de participation en ligne. Soixante délégués et autres experts nommés par 19 Membres et six Observateurs y ont participé. Afin de situer les travaux du Groupe d'experts dans le contexte des marchés mondiaux du carbone, cinq intervenants issus du secteur, d'organisations de la société civile et de gouvernements ont effectué des présentations lors d'une table ronde technique organisée en marge de la réunion. Le rapport de la

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1 « Rapport : Aspects de droit international privé des marchés volontaires du carbone, Doc. prél. No 6 de novembre 2024 (Doc. prél. No 6 CAGP 2025), disponible sur le site web de la HCCH, à l'adresse www.hcch.net, sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) ».

2 « Conclusions et Décisions du Conseil sur les affaires générales et la politique de la HCCH (du 4 au 7 mars 2025) », C&D No 18 (disponibles sur le site web de la HCCH (www.hcch.net) sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) »).

3 HCCH, Règlement intérieur, disponible à l'adresse : https://www.hcch.net/fr/governance/rules-of-procedure/

4 Allemagne, Argentine, Belgique, Brésil, Chili, Chine, El Salvador, Équateur, États-Unis d'Amérique, France, Inde, Israël, Japon, Malaisie, Maurice, Mexique, Panama, Paraguay, Portugal, République dominicaine, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, Singapour, Türkiye, Ukraine, Union européenne et Uruguay.

5 AAPrIL, ADB, ASADIP, CNUCC, CNUDCI, EAPIL, IBA, ISDA et UNIDROIT.

6 UNIDROIT, *Issues Paper*, Groupe de travail d'UNIDROIT sur la nature juridique des crédits carbone vérifiés, Quatrième session, du 15 au 17 janvier 2025, UNIDROIT 2025 Study LXXXVI – W.G. 2 rev. (janvier 2025), para. 30. Voir aussi : *Secretariat's Report*, Groupe de travail d'UNIDROIT sur la nature juridique des crédits carbone vérifiés, Sixième session, 10-12 septembre 2025, Study LXXXVI – W.G. 6 – Doc. 2 (septembre 2025), para. 16.

première réunion et de la table ronde technique et la liste des participants figurent respectivement à l'annexe I et à l'annexe II.

5 Conformément à la première partie du mandat du Groupe d'experts et compte tenu de la nécessité d'une prise en compte globale des questions de droit international privé dans le cadre de l'examen d'une règle relative à la loi applicable, l'ordre du jour de la première réunion a été structuré de manière à rapidement situer le Groupe d'experts dans le contexte plus large des questions émergentes sur les marchés mondiaux du carbone et à informer ses membres des travaux déjà entrepris par UNIDROIT[7]. À cet effet, le Groupe d'experts s'est vu remettre le texte du projet de Principes d'UNIDROIT, comprenant le projet de Principe 4 contenant la disposition relative à la loi applicable dans sa rédaction de mai 2025 et d'autres documents utiles.

6 Le Groupe d'experts a entendu des présentations effectuées par les représentants d'UNIDROIT et a engagé des discussions approfondies sur les documents présentés. La première présentation a donné des informations sur le mandat d'UNIDROIT et sur sa méthode de travail, en s'attachant plus particulièrement au projet d'UNIDROIT sur la nature juridique des crédits carbone vérifiés (CCV)[8]. Le Groupe d'experts a été informé qu'UNIDROIT est en train d'élaborer un instrument non contraignant sous forme de principes accompagnés de commentaires explicatifs, dont le but est de servir d'outil de référence pour déceler les vides juridiques et améliorer la sécurité du traitement des CCV en droit privé. La présentation comprenait un exposé général de la structure du projet d'instrument et un exposé détaillé des projets de principes, et expliquait que l'instrument part du principe que des droits de propriété peuvent être attachés aux CCV. Elle donnait aussi le calendrier indicatif du projet au sein d'UNIDROIT, avec un objectif d'adoption par les organes directeurs d'UNIDROIT en 2026. Le Groupe d'experts a ensuite débattu des éléments présentés.

7 Une deuxième présentation effectuée par les représentants d'UNIDROIT était consacrée au texte du projet de disposition relative à la loi applicable dans le projet de Principe 4. Il a été expliqué que cette disposition vise à déterminer la loi régissant les droits de propriété attachés aux CCV, en particulier dans les contextes de pré-insolvabilité. La présentation a abordé la structure et la portée du projet de Principe 4, ainsi que son approche des questions telles que l'octroi de sûretés et les dispositions relative à la conservation des CCV. Le Groupe d'experts a ensuite engagé une discussion approfondie du projet de Principe 4, portant entre autres sur la question de savoir si une loi unique devrait régir les droits de propriété attachés aux CCV, sur les questions liées à la fongibilité de ces crédits et sur la pertinence de démarches concertées en vertu de l'article 6.2 de l'Accord de Paris.

8 Le Groupe d'experts a également entendu des présentations sur les travaux précédemment entrepris dans le cadre de la HCCH, notamment les questions abordées dans le document de réflexion établi par le BP et diffusé en amont de la réunion, et en a débattu. Sur cette base, il a ensuite procédé à un échange de vues préliminaire sur les considérations à prendre en compte dans l'étude d'une règle relative à la loi applicable, telles que :

- les développements observés sur les marchés mondiaux du carbone et dans les cadres juridiques internationaux applicables,
- les types, la durée et le cycle de vie des projets carbone, y compris les phases amont, intermédiaires et aval,
- le cycle de vie et la qualification des crédits carbone aux fins de la loi applicable, en tenant compte de la diversité des systèmes juridiques et de la classification des droits,

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7 Les ordres du jour des trois réunions du Groupe d'experts de 2025 sont accessibles aux Membres de la HCCH sur le Portail sécurisé du site web de la HCCH.

8 Les présentations entendues par le Groupe d'experts et ses discussions sont décrites en détail à l'annexe I, le rapport de la première réunion.

- la structure des transactions internationales concernant les crédits carbone et les multiples niveaux et acteurs concernés,
- l'importance d'une prise en compte globale des questions de droit international privé, comprenant la compétence, la reconnaissance et l'exécution des jugements, et la coopération internationale, sur lesquelles se fonde la détermination de la loi applicable,
- l'utilisation et le sens du terme « droits de propriété »,
- les questions découlant de la diversité des modèles de registres,
- les garanties portant sur l'intégrité des crédits carbone et des marchés du carbone,
- les interactions entre les considérations de droit international privé et la mise en œuvre de l'article 6 de l'Accord de Paris.

9 Les membres du Groupe d'experts ont également échangé des informations sur les développements récents intervenus sur les marchés du carbone dans leurs États respectifs. Afin de structurer les discussions futures et de faciliter une analyse globale de droit international privé couvrant le cycle de vie des crédits carbone, le Groupe d'experts a demandé au BP de préparer des études de cas représentatives, comprenant une étude couvrant le cycle de vie total des crédits carbone, une étude permettant une analyse comparative de différents systèmes juridiques et une étude portant sur les projets terrestres.

## B. Deuxième réunion (8-10 octobre 2025)

10 Entre les deux premières réunions du Groupe d'experts, le Groupe de travail d'UNIDROIT a tenu sa sixième session, du 10 au 12 septembre 2025. Le comité de rédaction du Groupe de travail d'UNIDROIT a établi une version actualisée du projet de Principes d'UNIDROIT comprenant un projet de texte du Principe 4 qui a été communiquée au BP et diffusée au Groupe d'experts le 10 juillet 2025 pour étude, en amont de sa deuxième réunion[9]. Faisant suite à une demande exprimée par le BP au cours de la sixième session du Groupe de travail d'UNIDROIT le 23 septembre 2025, le Secrétariat d'UNIDROIT a également transmis au BP les commentaires anonymisés du Comité consultatif d'UNIDROIT sur le projet de Principe 4 sur les CCV dans sa version du 22 septembre 2025 pour diffusion au Groupe d'experts.

11 Du 8 au 10 octobre 2025, le Groupe d'experts a tenu sa deuxième réunion en présentiel dans les bureaux du BP de la HCCH à La Haye, avec possibilité de participation en ligne. Soixante-dix délégués et autres experts nommés par 22 Membres et six Observateurs y ont participé. Une table ronde technique a également été organisée en marge de la réunion. L'Aide-mémoire de la deuxième réunion rédigé par le Président et la liste des participants figurent respectivement à l'annexe III et à l'annexe IV.

12 Compte tenu de la première partie de son mandat et afin de formuler une proposition de texte révisé du projet de Principe 4 à transmettre au Groupe de travail d'UNIDROIT, l'ordre du jour de la deuxième réunion a été structuré de manière à inclure une discussion des questions préliminaires pertinentes pour l'examen du projet de Principe 4, suivie d'une discussion disposition par disposition de la version du projet de Principe 4 diffusée par UNIDROIT le 10 juillet 2025. En amont de la deuxième réunion et au cours de celle-ci, les membres du Groupe d'experts ont soumis plusieurs Documents de travail (conjoints), certains au nom de l'État membre ou de l'Organisation qui les avait désignés et d'autres à titre personnel, en vue d'éclairer les débats et de faciliter la

9 Le texte du projet de Principe 4 qui a été transmis au BP et diffusé au Groupe d'experts le 10 juillet 2025 pour étude en amont de sa deuxième réunion est disponible sur le site web d'UNIDROIT ; voir : Draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits, Study LXXXVI – W.G.6 – Doc. 3 (septembre 2025), disponible à l'adresse : Study-LXXXVI-W.G.6-Doc.-3-Draft-Principles-and-Commentary.pdf

recherche d'un consensus sur une révision intermédiaire du projet de texte du Principe 4 pour transmission au Groupe de travail d'UNIDROIT[10].

13 Lors de sa deuxième réunion, le Groupe d'experts a examiné le Document de travail No 1 (Doc. trav. No 1) contenant la proposition des délégations du Brésil, du Chili et de l'Union européenne (« *Proposal of Iteration of the Text of Draft Principle 4 of the UNIDROIT Principles on Verified Carbon Credits on Applicable Law as a basis for discussion* »). Le Groupe d'experts a étudié cette proposition en la comparant avec le texte du projet de Principe 4 diffusé par UNIDROIT le 10 juillet 2025. D'autres propositions ont été soumises par la délégation de Singapour (à titre personnel) dans le Document de travail No 2 et par la délégation de l'Union européenne (à titre personnel) dans le Document de travail No 3. Deux Documents de discussion contenant des propositions de membres du Groupe d'experts relatives aux commentaires sur le projet de Principe 4 et à de possibles révisions de celui-ci ont également été rédigés et diffusés au cours de la deuxième réunion.

14 À la conclusion de sa deuxième réunion, le Groupe d'experts s'est entendu sur des commentaires sur le projet de Principe 4 ainsi que sur un texte révisé à transmettre, à titre intermédiaire, au Groupe de travail d'UNIDROIT concernant la disposition relative à la loi applicable envisagée pour le projet de Principe 4. Cette entente du Groupe d'experts était conforme à l'orientation initiale de son mandat et sans préjudice d'un examen ultérieur des questions relevant du périmètre de son mandat[11].

15 La proposition de révision du projet de Principe 4 qui a été établie par consensus par le Groupe d'experts est à la suivante :

SECTION II: PRIVATE INTERNATIONAL LAW *(EG proposal of 10 October 2025)*

Principle 4

Applicable law

(1) This Principle applies to relevant proprietary [law] matters relating [directly] to—

a) the issuance (including its first creation or entry on the registry on which it is held) onto and the removal (through retirement or transfer) of that VCC from the registry on which it is held, including the content of proprietary rights in that VCC;

b) the circumstances in which a person may hold or use proprietary rights in [such a] VCC, including the circumstances in which [those] proprietary rights in [such a] VCC may be validly transferred to another person; and

c) the third-party effects of a transfer of such a proprietary right in a VCC.

(2) The relevant proprietary [law] matters are governed by—

a) [the law of the State expressly chosen in the registry agreement for the account on which the VCC is held; the registry operator and the holder of the VCC may at any time agree to choose a law other than that which previously governed the above proprietary [law] matters, whether as a result of an earlier choice made under this subparagraph or in accordance with subparagraph (b);

b) absent a choice in accordance with subparagraph (a),] [the law of the State where the registry operator for the registry on which the VCC held had its statutory seat or,

10 Les Documents de travail qui ont été discutés en séance publique sont accessibles aux Membres de la HCCH sur le portail sécurisé du site web de la HCCH.

11 Voir l'annexe III : Transmission à UNIDROIT : *Comments on and Intermediate Iteration of Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits* (octobre 2025).

in the absence of such a seat, its central place of administration, at the time of the issuance (*lex registri*).]

(3) This Principle is without prejudice to, and shall be applied in conformity with, the United Nations Framework Convention on Climate Change, the Paris Agreement, and their related instruments and outcomes.

(4) Courts [may][shall][must] refuse the application of a foreign law designated under this Principle where it violates their public policy (*ordre public*). Courts may also give effect to overriding mandatory rules of the forum, and [may][shall][must] give effect to overriding mandatory rules of other States, including, notably, the host State of the underlying carbon project, which apply independently of the otherwise governing law.

(5) The relevant proprietary [law] matters relating to a VCC subject to this Principle do not include—

a) those related to the carrying on of any underlying carbon mitigation project, including land-use, community rights, indigenous rights, or human rights, [related directly to that VCC];

b) the recognition of VCCs for compliance or regulatory purposes;

c) [applicable law in insolvency proceedings];

d) contractual rights and obligations arising from agreements relating to VCCs [, including sales or account agreements]; and

e) other matters not directly relevant to proprietary matters.

(6) This Principle is subject to other applicable international and supranational frameworks, for example, in relation to the law applicable to security rights.

(7) For the purposes of this Principle, "law" means the law of a State or the law of a territorial unit of a State. The application of such a law means the application of the rules of that law other than its rules of private international law.

16 Conformément aux dispositions pratiques convenues entre le BP et le Secrétariat d'UNIDROIT, le BP a transmis le texte ci-dessus, accompagné des commentaires du Groupe d'experts sur le projet de Principe 4 (« transmission intermédiaire du Groupe d'experts »), au Secrétariat d'UNIDROIT le 14 octobre 2025, demandant qu'il soit mis à la disposition du Groupe de travail d'UNIDROIT pour étude. La transmission intermédiaire du Groupe d'experts est présentée à l'annexe VIII. Le BP a en outre invité le Secrétariat d'UNIDROIT à lui transmettre tous commentaires ou questions du Groupe de travail d'UNIDROIT concernant les documents transmis afin qu'il les transmette au Groupe d'experts. Ces commentaires ou questions seraient examinés et discutés par le Groupe d'experts lors de sa troisième réunion, conformément à son mandat.

## C. Troisième réunion (2-4 décembre 2025)

17 Par lettre du 14 novembre 2025, le Secrétariat d'UNIDROIT a informé le BP qu'après réception de la transmission intermédiaire du Groupe d'experts, il avait convoqué une réunion du sous-groupe sur le droit international privé (« sous-groupe DIP ») du Groupe de travail d'UNIDROIT. Le Secrétariat d'UNIDROIT précisait qu'il avait invité le sous-groupe DIP à examiner et commenter le texte transmis par le Groupe d'experts et, sur la base de la contribution du Groupe d'experts, à réviser le projet de Principe 4. Le Secrétariat d'UNIDROIT notait qu'il avait ensuite transmis la transmission intermédiaire du Groupe d'experts ainsi que les commentaires et la proposition de nouvelle révision du projet de Principe 4 établie par son sous-groupe au Groupe de travail d'UNIDROIT pour examen et commentaires. Parallèlement, le Secrétariat d'UNIDROIT indiquait que les commentaires et la

proposition de nouvelle révision du sous-groupe avaient également été transmis au Comité consultatif d'UNIDROIT pour avis.

18 Conformément aux dispositions pratiques convenues entre le BP et le Secrétariat d'UNIDROIT, le Secrétariat d'UNIDROIT joignait les documents suivants à sa lettre du 14 novembre 2025, demandant qu'ils soient mis à la disposition du Groupe d'experts pour information et étude :

- commentaires du sous-groupe DIP sur la proposition du Groupe d'experts de la HCCH, qui comprenaient la révision par le sous-groupe DIP de la version du principe 4 établie par UNIDROIT sur la base du texte proposé par le Groupe d'experts de la HCCH, à la fois en suivi de modifications (par rapport au projet de Principe 4 discuté lors de la sixième session du Groupe de travail) et en modifications acceptées ;
- commentaires reçus jusque-là du Groupe de travail sur : i) les *Commentaires du Groupe d'experts de la HCCH sur le projet de Principes d'UNIDROIT sur les crédits carbone vérifiés et révision intermédiaire du Principe 4* (en anglais) et ii) les commentaires du sous-groupe DIP sur la proposition du Groupe d'experts de la HCCH, comprenant la révision par le sous-groupe DIP du texte du Principe 4 rédigé par UNIDROIT sur la base du texte proposé par le Groupe d'experts de la HCCH, sans mention de leurs auteurs ;
- commentaires reçus jusque-là du Comité consultatif sur la révision du Principe 4 établie par le sous-groupe DIP.

Le BP a transmis ces documents au Groupe d'experts et lui a demandé par courriel du 17 novembre 2025 d'étudier ces documents en amont de sa troisième réunion.

19 Afin de faciliter la consultation, le texte de la nouvelle version révisée du projet de Principe 4 établie par le sous-groupe DIP du Groupe de travail d'UNIDROIT communiquée le 14 novembre 2025 est le suivant :

**SECTION II: PRIVATE INTERNATIONAL LAW *(UNIDROIT WG subgroup iteration of 14 November 2025)***

**Principle 4**

**Applicable law (CLEAN TEXT)**

(1) The law designated as applicable by this Principle governs all questions pertaining to proprietary matters, in particular:

(a) creation and cancellation of a VCC;

(b) whether a person has a proprietary right in a VCC and the content of such right;

(c) the conditions and effects of a transfer of proprietary rights in a VCC;

(d) the requirements of any innocent acquisition and take-free rules with respect to proprietary rights in a VCC.

(2) The proprietary matters as per para (1) do not include:

(a) matters related to the carrying on of any underlying carbon mitigation project, including land use, community rights, indigenous rights, or human rights;

(b) the submission of VCCs for compliance or regulatory purposes;

(c) contractual rights and obligations arising from agreements relating to VCCs;

(d) substantive or procedural aspects of insolvency-related proceedings, such as the ranking of claims, the avoidance of a transaction, or the enforcement of rights to an asset. However, the law applicable under this Principle governs the existence of proprietary and security rights in a VCC in insolvency-related proceedings.

(3) Proprietary matters regarding VCCs are governed by the law of the registry (*lex registri*), which corresponds upon choice to one of the following laws:

(a) the law of the State under which the registry operator is incorporated or otherwise organised, or

(b) the law of the State in which the registry operator has its statutory seat, or

(c) the law of the State in which the registry operator has its central place of administration, or

(d) the law of the State from which the registry is maintained.

(4) The choice may be made in the general rules of the registry or in the account agreements. The existence and validity of the choice shall be determined by the same law chosen under this paragraph as if the choice were valid.

(5) In the absence of a choice, the law of registry shall be the law of the State where the registry operator has its statutory seat or, in the absence of such a seat, its central place of administration at the time of the creation of the VCC.

(6) The applicable law stays the same regardless of any change in the factors mentioned in paragraphs (3)(a)-(d) and (4). A change of the choice of law under paragraph (3) is effective only for the VCC holder recorded in the registry who has consented to it. Any change of the applicable law does not affect the right of a secured creditor that has not consented to it.

(7) The creation, perfection, priority, effects, and extinction of a security right in a VCC are governed by the law of the State in which the grantor is located.

(8) The proprietary rights in a VCC held by a custodian are governed by the law of the custody agreement. In the absence of a choice of law, this law is the law of the State where the custodian maintains the account in which the VCC is recorded.

(9) Nothing in this Principle prevents courts from refusing the application of a foreign law that is incompatible with their public policy (*ordre public*), and from applying overriding mandatory rules, which apply independently of the law otherwise applicable, including those of the host State of the underlying carbon project.

(10) For the purposes of this Principle, “law” means the law of a State or the law of a territorial unit of a State. The application of such a law means the application of the rules of law in force in that State other than its rules of private international law.

20 Du 2 au 4 décembre 2025, le Groupe d’experts a tenu sa troisième réunion en présentiel dans les bureaux du BP de la HCCH à La Haye, avec possibilité de participation en ligne. Cinquante délégués et autres experts nommés par 19 Membres et sept Observateurs y ont participé. Une table ronde technique a également été organisée en marge de la réunion. L’Aide-mémoire de la troisième réunion rédigé par le Président et la liste des participants figurent respectivement à l’annexe VI et à l’annexe VII.

21 À la demande de plusieurs membres du Groupe d’experts et en concertation avec le Président, l’ordre du jour de la troisième réunion a été structuré de manière à inclure : premièrement, une discussion consacrée aux questions et approches générales concernant la règle sur le droit applicable exposée dans le projet de Principe 4, deuxièmement, une discussion disposition par disposition de la version du projet de Principe 4 diffusée par UNIDROIT le 14 novembre 2025 et, troisièmement, une discussion préliminaire sur les autres questions de droit international privé qui relèvent du mandat du Groupe d’experts.

22 Dans le cadre de sa discussion consacrée aux questions et approches générales concernant la règle sur la loi applicable exposée dans le projet de Principe 4, le Groupe d'experts a procédé à un échange de vues portant notamment sur les questions suivantes :

- l'absence de référence expresse, dans le texte du projet de Principes, aux cadres législatifs internationaux sur le climat et l'environnement, aussi bien dans le Principe 4 qu'ailleurs. À cet égard, le Groupe d'experts a rappelé qu'il avait suggéré d'inclure de telles références dans sa soumission intermédiaire à UNIDROIT et s'est accordé sur la nécessité de reconnaître expressément, dans le projet de Principes, le rôle et les objectifs politiques sous-jacents des cadres de droit international public concernant le changement climatique et les autres lois sur l'environnement ;
- le lien entre les segments amont et aval des marchés du carbone, y compris la mesure dans laquelle un lien existe ou devrait exister entre le projet carbone en question et les crédits carbone résultant de ce projet, notant que les questions à considérer comprenaient la légalité du projet carbone considéré et les conséquences d'inversions, de révocations ou d'annulations des CCV ;
- les considérations politiques intéressant la conception d'une règle sur la loi applicable, notamment la conciliation des intérêts des différents acteurs concernés ; et
- le rôle et les limites de l'autonomie des parties.

23 À la demande de plusieurs membres et conformément au Règlement intérieur de la HCCH, il a été proposé que le Groupe d'experts se réunisse à huis clos pour déterminer sa position. Notant le soutien à cette demande et afin d'offrir un forum approprié pour l'expression des vues, le Groupe d'experts s'est réuni à huis clos.

24 Dans ce cadre, le Groupe d'experts a examiné deux documents de travail contenant des propositions conjointes soumises par certains de ses membres, certains au nom de l'État membre ou de l'Organisation qui les avait désignés, d'autres à titre personnel. Ces documents ont été examinés afin d'éclairer les débats et d'aider le Groupe d'experts à déterminer s'il était possible de trouver un consensus à ce stade de ses travaux.

25 Au cours de sa séance à huis clos et à la demande du Secrétaire général, le BP a donné des informations factuelles sur les récents échanges oraux entre les Secrétaires généraux de la HCCH et d'UNIDROIT. Le Groupe d'experts a été informé qu'UNIDROIT envisage actuellement que son projet de Principes sur les CCV soit adopté en mai 2026, mais que le Secrétaire général d'UNIDROIT avait indiqué qu'un délai supplémentaire pouvait être envisagé pour permettre d'autres contributions du Groupe d'experts sur le projet de Principe 4. Dans ce contexte, l'adoption pourrait si nécessaire être reportée à décembre 2026 afin de maintenir la coopération entre les deux Organisations et de trouver une solution mutuellement acceptable. Le Groupe d'experts a pris note de ces informations et exprimé son appréciation concernant les échanges entre les Secrétaires généraux et la flexibilité manifestée par UNIDROIT. Il a relevé que cette flexibilité ouvrait un espace pour la poursuite du dialogue dans le cas où UNIDROIT lui transmettrait une nouvelle révision du texte pour commentaires.

26 Travaillant à huis clos, les experts désignés par les Membres de la HCCH ont entrepris un examen ciblé du texte actuel de la disposition relative à la loi applicable contenue dans le projet de Principe 4. Après étude approfondie, le Groupe d'experts est convenu qu'à ce stade, il n'est pas en mesure d'apporter son soutien au texte actuel du projet de Principe 4 ni aux approches politiques qui le sous-tendent. Après une lecture ligne à ligne, le Groupe d'experts a arrêté une position de consensus sur le texte actuel de la disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT sur la nature juridique des crédits d'émission de carbone vérifiés (*Consensus position on the current text of the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits*) à soumettre à UNIDROIT. Il est également convenu de

transmettre à UNIDROIT les extraits pertinents de l'aide-mémoire de la troisième réunion établi par le Président, qui aborde les questions sensibles et les approches politiques sous-jacentes qui ont éclairé sa décision à titre de contributions et de commentaires concernant le texte actuel du projet de Principe 4.

27 Le Groupe d'experts est convenu de communiquer sa position à UNIDROIT à ce stade et de l'inviter à envisager, à titre provisoire, de remplacer le texte actuel du projet de Principe 4 ou toute autre règle sur la loi applicable par un espace réservé dans son projet de Principes sur les CCV. Il a également décidé par consensus d'inviter UNIDROIT à continuer à participer au Groupe d'experts en tant qu'Observateur. Il a décidé de poursuivre son étude globale des questions de droit international privé posées par les marchés du carbone sans être tenu par le calendrier interne d'UNIDROIT ni par aucune décision que celle-ci pourrait être amenée à prendre concernant le contenu, le texte ou l'approche de son projet de Principes sur les CCV. Il est également convenu que toute décision prise par UNIDROIT serait sans effet sur sa capacité à poursuivre ses propres travaux.

28 Le Groupe d'experts a ensuite entendu un rapport sur les résultats de la trentième session de la Conférence des Parties à la CCNUCC (COP 30), qui s'est tenue à Belém do Pará, au Brésil. Des informations ont été communiquées par le BP et par les membres du Groupe d'experts qui avaient pris part à la conférence, l'accent étant mis sur les développements pouvant intéresser le droit international privé et les travaux en cours du Groupe d'experts.

29 Le Groupe d'experts s'est ensuite tourné vers d'autres questions relevant de son mandat, parmi lesquelles l'examen d'une étude de cas traitant des questions de compétence, du rôle de la reconnaissance et de l'exécution des jugements affectant les droits attachés aux crédits carbone, des questions posées par l'illégalité de projets carbone sous-jacents et des effets possibles de cette illégalité sur les crédits carbone déjà émis et négociés sur les marchés carbone, ainsi que l'interaction entre les considérations de droit international privé et la mise en œuvre de mécanismes en vertu de l'article 6 de l'Accord de Paris. Dans ce contexte, le Groupe d'experts a souscrit à la remarque du Président selon laquelle ses travaux devraient viser à apporter une valeur ajoutée en traitant les questions de droit international privé propres aux marchés du carbone qui ne sont pas couvertes aujourd'hui par les instruments existants. À la suite d'interventions de plusieurs membres sur le rythme et la direction des développements intervenant sur les marchés du carbone, le Groupe d'experts a convenu qu'il est nécessaire de poursuivre les travaux en vue d'établir un cadre de droit international privé cohérent et applicable pour soutenir la sécurité juridique et une extensibilité responsable à mesure de l'évolution de ces marchés. Le Groupe de travail s'est par ailleurs accordé sur le fait que dans ses communications avec le CAGP, il serait approprié de signaler sa volonté de poursuivre ces travaux selon des modalités permettant des consultations multilatérales inclusives tout en maintenant l'accent sur les questions qui justifient d'être examinées à la lumière de l'évolution actuelle des marchés.

30 La position de consensus du Groupe d'experts sur le texte actuel de la disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT sur la nature juridique des crédits d'émission de carbone vérifiés et l'extrait de l'aide-mémoire de la troisième réunion du Groupe d'experts sur les marchés du carbone établi par le Président (4 décembre 2025, documents disponibles en anglais uniquement) ont été transmis par courrier postal au Secrétariat d'UNIDROIT le 11 décembre 2025, accompagnés d'une demande que ces documents soient diffusés au Groupe de travail d'UNIDROIT et au Comité consultatif. La position de consensus du Groupe d'experts et l'extrait de l'aide-mémoire sont repris à l'annexe VIII.

## III. Coopération avec UNIDROIT

31 Le Groupe de travail d'UNIDROIT a tenu sa septième session du 17 au 19 décembre 2025. À titre exceptionnel, le Secrétaire général et la Secrétaire générale adjointe de la HCCH ont tous deux assisté à cette réunion, ce qui témoigne de l'importance attachée par la HCCH à la coopération sur les questions de droit international privé dans le cadre de sa coopération avec UNIDROIT et de sa volonté de travailler de manière constructive avec celle-ci en vue de trouver une voie cohérente, mutuellement acceptable et consensuelle. Lors de cette session, le Secrétaire général a fait le point sur l'état d'avancement des travaux du Groupe d'experts sur la disposition relative à la loi applicable pour le projet de Principes d'UNIDROIT sur les CCV, rappelant la taille et la composition du Groupe d'experts, ses trois réunions tenues en 2025 et son engagement à l'égard du projet de Principe 4. Le Secrétaire général a expliqué qu'après la deuxième réunion du Groupe d'experts, des commentaires pointant des préoccupations avaient été transmis, en particulier concernant la souveraineté, l'État qui accueille le projet et les garanties, et que la version du projet de Principe 4 diffusée par la suite par UNIDROIT n'avait pas dissipé ces préoccupations. De ce fait, lors de sa troisième réunion, le Groupe d'experts s'est accordé à conclure qu'il n'était pas en mesure, à ce stade, d'apporter son soutien au texte actuel du projet de Principe 4, une position qui sera officiellement soumise au CAGP avec l'aide-mémoire du Président. Le Secrétaire général a également évoqué les échanges entre les Secrétaires généraux des deux Organisations, notamment les indications de flexibilité quant au calendrier au sein d'UNIDROIT données par le Secrétaire général d'UNIDROIT, et a relevé que cela permettait de poursuivre le dialogue et la coordination entre les Organisations, conformément à leurs mandats et structures de gouvernance respectifs. Le Secrétaire général a rappelé l'importance du maintien de la coopération entre les deux Organisations et noté l'entente entre les Secrétaires généraux sur le fait que les instruments respectifs de la HCCH et d'UNIDROIT ne doivent pas contenir de dispositions contradictoires sur les conflits de lois. Il a rappelé par ailleurs que le projet de la HCCH sur les marchés du carbone a un périmètre plus large, couvrant la compétence, la loi applicable, la reconnaissance et l'exécution et les mécanismes de coopération internationale sur l'ensemble du cycle de vie des marchés du carbone. Le Secrétaire général a souligné d'autre part que la position de consensus du Groupe d'experts indiquait seulement qu'il ne pouvait pas apporter son soutien au texte actuel du projet de Principe 4 à ce stade, mais que le Groupe d'experts avait indiqué qu'il reste prêt à examiner tout texte révisé du projet de Principe 4 qui pourrait être élaboré par le Groupe de travail d'UNIDROIT, tout en poursuivant indépendamment ses propres travaux conformément aux procédures de la HCCH.

32 Le 17 décembre 2025, le Secrétariat d'UNIDROIT a diffusé la position de consensus du Groupe d'experts et l'extrait de l'aide-mémoire du Président aux membres du Groupe de travail d'UNIDROIT. La septième session du Groupe de travail s'est donc déroulée sur la base de la révision du projet de Principe 4 datée du 14 novembre 2025, telle qu'établie par le sous-groupe DIP. Dans ces circonstances, le Groupe de travail d'UNIDROIT n'a pas entrepris d'examen technique au fond des considérations sur lesquelles se fondait la position de consensus du Groupe d'experts pendant la session. Le BP a néanmoins répondu aux questions soulevées par les membres du Groupe de travail d'UNIDROIT concernant les travaux du Groupe d'experts et les considérations sur lesquelles s'appuyaient ses conclusions sur le projet de Principe 4.

33 Par courriel daté du 12 janvier 2026, le Secrétariat d'UNIDROIT a transmis au BP une nouvelle révision du projet de Principe 4. Le BP a diffusé ce texte au Groupe d'experts le 13 janvier 2026 en l'invitant à transmettre ses commentaires par écrit pour le 27 février au plus tard.

## IV. Recommandations du Groupe d'experts

34 Au vu de l'avancement de ses travaux, le Groupe d'experts recommande :

- que le CAGP prenne acte que le Groupe d'experts s'est acquitté de la première partie de son mandat sur l'étude de l'inclusion possible d'une disposition relative à la loi applicable dans le projet de Principes UNIDROIT sur les crédits de carbone vérifiés, à travers les travaux conduits dans le cadre de trois réunions en 2025 et les travaux intersessions, la transmission intermédiaire à UNIDROIT des *Commentaires du Groupe d'experts de la HCCH sur le projet de Principes d'UNIDROIT sur les crédits carbone vérifiés et révision intermédiaire du Principe 4* et de la *Position de consensus du Groupe d'experts sur le texte actuel de la disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT sur la nature juridique des crédits carbone vérifiés (comprenant l'aide-mémoire associé)* ; et
- que le CAGP approuve la poursuite des travaux du Groupe d'experts, y compris la convocation de deux autres réunions, ainsi que des travaux intersessions en 2026 avant la réunion du CAGP de 2027, dans le cadre desquels l'étude des questions de droit international privé découlant des marchés du carbone sera poursuivie. Ces travaux comprendraient la cartographie des possibles lacunes présentes dans les instruments ou projets existants et des difficultés qu'ils posent ou des questions qu'ils ne couvrent pas actuellement. Cela afin de centrer l'étude sur les questions qui doivent être traitées à la lumière du rythme de développement du marché. Le Groupe d'experts présenterait un rapport au CAGP en 2027.

## V. Proposition soumise au CAGP

35 Compte tenu de ce qui précède et à la lumière de l'avancement des travaux du Groupe d'experts, le BP soumet les propositions de C&D suivantes :

- que le CAGP prenne acte que le Groupe d'experts s'est acquitté de la première partie de son mandat sur l'étude de l'inclusion possible d'une disposition relative à la loi applicable dans le projet de Principes UNIDROIT sur les crédits de carbone vérifiés, à travers les travaux conduits dans le cadre de trois réunions en 2025 et les travaux intersessions, la transmission intermédiaire à UNIDROIT des *Commentaires du Groupe d'experts de la HCCH sur le projet de Principes d'UNIDROIT sur les crédits carbone vérifiés et révision intermédiaire du Principe 4* et de la *Position de consensus du Groupe d'experts sur le texte actuel de la disposition relative à la loi applicable dans le projet de Principes d'UNIDROIT sur la nature juridique des crédits carbone vérifiés (comprenant l'aide-mémoire associé)* ; et
- que le CAGP approuve la poursuite des travaux du Groupe d'experts, y compris la convocation de deux autres réunions, ainsi que des travaux intersessions en 2026 avant la réunion du CAGP de 2027, dans le cadre desquels l'étude des questions de droit international privé découlant des marchés du carbone sera poursuivie. Ces travaux comprendraient la cartographie des possibles lacunes présentes dans les instruments ou projets existants et des difficultés qu'ils posent ou des questions qu'ils ne couvrent pas actuellement. Cela afin de centrer l'étude sur les questions qui doivent être traitées à la lumière du rythme de développement du marché. Le Groupe d'experts présenterait un rapport au CAGP en 2027.

# ANNEXES

# Annexe I

# HCCH Experts' Group on Carbon Markets: Report of the First Meeting (13-15 May 2025)

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# Report of the First Meeting of the Experts' Group on Carbon Markets 13-15 May 2025

## I. Introduction

1 From 13 to 15 May 2025, the first meeting of the Experts' Group on Carbon Markets (EG on Carbon Markets) was held at the premises of the Permanent Bureau (PB) of the HCCH in The Hague, the Netherlands and via videoconference. Sixty delegates and other experts nominated by 19 Members and five Observers participated in the meeting.[1] In addition, five speakers from industry, civil society organisations and government made presentations at a Technical Roundtable that was organised adjacent to the meeting. The report of the Technical Roundtable can be found in Annex I.

2 The EG on Carbon Markets was established by the Council on General Affairs and Policy (CGAP) in March 2025, which mandated in its Conclusions & Decisions:

> 18. "[T]he establishment of an EG to study the PIL [private international law] issues arising from carbon markets, as described in Prel. Doc. No 6 of November 2024, with an initial focus on the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on Verified Carbon Credits. The EG will report to CGAP 2026."

3 The Permanent Bureau (PB) of the HCCH prepared a bundle of documentation for the meeting and uploaded it to the Secure Portal page of the EG in the HCCH website, which comprised the following items:

a. *Issues Paper* (version 1 of May 2025)

b. Secretariat Note No. 1/2025 – Map of PIL questions

c. Secretariat Note No. 2/2025 – Case law on carbon credits

d. Secretariat Note No. 3/2025 – Selection of applicable law provision in HCCH instruments

e. Secretariat Note No. 4/2025 - Selection of public policy and overriding mandatory rules in HCCH instruments

f. [Confidential] Secretariat Note No. 5/2025 [renumbered] – Draft Principle 4 ("Applicable Law") of the draft UNIDROIT Principles on Verified Carbon Credits: Summary of the discussion at the 5th Session of the UNIDROIT Working Group, annexing the text of draft Principle 4 as of 28/03/2025

   i. Iterated draft Principle 4 ("Applicable Law") of the draft UNIDROIT Principles on Verified Carbon Credits, sent by the UNIDROIT Secretariat on Sunday, 11 May 2025:

g. Secretariat Note No. 6/2025 - List of Actors from the draft UNIDROIT Principles on Verified Carbon Credits

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1 The list of participants is available on the Secure Portal of the HCCH website at www.hcch.net under "Working / Experts Groups" then "Experts' Group on Carbon Markets". We note that participants of the following HCCH Members participated in the meeting: Argentina, Chile, China, El Salvador, European Union, France, Germany, India, Israel, Malaysia, Mexico, Panama, Portugal, Singapore, Türkiye, Ukraine, United Kingdom, Uruguay, United States of America. Participants of the following observer organisations participated in the meeting: ASADIP, Asian Development Bank, EAPIL, UNCITRAL and UNIDROIT.

h. Preliminary Report concerning the Inclusion of an Applicable Law Provision in the draft UNIDROIT Principles on VCCs, by Prof. Mary Keyes, Prof. Alex Mills, Prof. Pietro Franzina, Prof. Fabricio Polido and Amy Held, 14 November 2024

i. Links to documentation of the UNIDROIT WG on Legal Nature of Verified Carbon Credits

4 This Report summarises key points of the discussions that took place during the meeting, including:

a. prioritisation and scope of work of the EG;

b. the EG's considerations relating to the work to contribute to the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (draft UNIDROIT Principles);

c. the questions listed in the Issues Paper (version 1);

d. preliminary issues with impact on PIL considerations arising in the carbon markets, *inter alia*, types of credits, types of carbon projects, safeguards, actors and rights related to carbon credits, the characterisation of credits, and the impact of upstream project failures in transactions and rights within carbon market structures;

e. Article 6.2 and 6.4 of the Paris Agreement as a cross-cutting theme, informing deliberations across various PIL issues; and

f. project planning and next steps.

## II. Background

5 The PB made an introductory presentation on the work and methods of the HCCH and explained the unique mandate of the HCCH, which is to work for the progressive unification of private international law. The HCCH focuses on four key areas: jurisdiction, applicable law, recognition and enforcement, and international cooperation.

6 An expert expressed gratitude to the PB for compiling useful documentation ahead of the meeting, which is especially important given the limited literature on the topic. However, due to the volume and complexity of the materials, the need for internal consultations across various areas of expertise, and the recent release of the documentation, the expert noted that it would take time to digest the information. Despite these difficulties, the expert acknowledged the PB's efforts to make materials available in advance and appreciated the additional contributions from UNIDROIT. The expert concluded that while their delegation may not be able to provide meaningful input at this early stage, they were grateful for the opportunity to engage with the materials and upcoming discussions.

7 The representative of UNIDROIT expressed appreciation to the HCCH for accommodating UNIDROIT's expedited timeline, even if it deviated from the HCCH's usual working procedures. The representative of UNIDROIT commended this effort as an extraordinary example of cooperation and expressed hope that it will lead to further cooperation in the future.

## III. Scope and prioritisation of work

8 Participants were directed to the scope and prioritisation section (paragraph 23 onward) of the Issues Paper, which draws from Prel. Doc. No 6 of November 2024, submitted to the Council on General Affairs and Policy (CGAP) in March 2025.[1]

*Opening presentation by the PB*

9 The Deputy Secretary General of the HCCH (DSG) made a brief presentation on the mandate and scope of work as decided by CGAP upon the establishment of the EG. The DSG emphasised that the EG's mandate focuses solely on PIL issues and excludes substantive law. Moreover, the DSG noted that there is a clear distinction between the mandate of the work on carbon markets at the HCCH, which surveys carbon markets broadly and focuses on PIL issues, and that of the work at UNIDROIT, which concentrates on the legal nature of *verified carbon credits (VCCs)*. While the work of UNIDROIT addresses the substantive legal nature of VCCs, this EG is concerned with the legal relationships between parties involved in transactions of these credits within the carbon markets.

10 The DSG retraced the evolution of the HCCH study since its exploratory phase in 2024. Initially restricted to considering PIL issues relating to the *voluntary* carbon market, in recognition of the growing convergence between voluntary and compliance markets, CGAP decided to include a broader consideration of both voluntary and compliance markets in the work of the EG.

11 The DSG noted a "third"[2] category of carbon credits which are those able to be used for the purposes underlined under Article 6 of the Paris Agreement,[3] adding to the existing voluntary and compliance market credits, highlighting that it introduces further complexity, resulting in three distinct categories of credits. For PIL purposes, the key consideration would remain the cross-border nature of transactions involving these credits. Therefore, the legal cross-border relevance for PIL purposes arises not from the credit itself, but from the transactions and disputes that occur around it, such as issuance, transfer, and enforcement across jurisdictions. Building upon the research conducted to date, the DSG noted the importance of examining how credits function within markets, and the legal relationships that emerge from it, aligning with the broader scope of the EG's mandate.

12 The DSG also referred to the need to address PIL issues across the entire carbon credit lifecycle, as identified in the *Preliminary Report*[4] drafted by the five *pro bono* experts who sat in their individual capacities to support the PB during the exploratory phase. The Preliminary Report advocates a holistic approach, recognising the interdependence of each stage in the credit's lifecycle and the legal implications that arise at each stage. The Issues Paper reflects this integrated view, as well as the input from technical expert and that gained through extensive consultation with HCCH Members during the exploratory phase of the work

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1 "Report: Private International Law Aspects of Voluntary Carbon Markets", Prel. Doc. No 6 of November 2024 (Prel. Doc. No 6 CGAP 2025), available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy".

2 The first category would relate to credits circulating in compliance markets, the second to those in voluntary markets, and a "third" category of credits originating from voluntary markets that may be used for purposes outlined under Article 6 of the Paris Agreement. It should be noted that this was not reference to an official or universally agreed classification, but rather a conceptual framework intended to help frame the discussion within the context of evolving carbon market dynamics.

3 Paris Agreement to the UNFCCC, (UN, 2015) ("Paris Agreement"), 12 December 2015, TIAS No 16-1104.

4 Preliminary Report concerning the Inclusion of an Applicable Law Provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (Preliminary Report), by Professor Pietro Franzina (Italy), Amy Held (United Kingdom), Professor Mary Keyes (Australia), Professor Alex Mills (Australia and Ireland), and Professor Fabrício Bertini Pasquot Polido (Brazil), available in the Annex of Prel. Doc. No 6 CGAP 2025.

13 The DSG then turned to the mandated initial focus of this EG: contribution by the EG to the possible inclusion of an applicable law provision in the draft UNIDROIT Principles. This work would address the rules governing choice of law, including party autonomy and its limitations, with a view to contributing the expertise and positions of the HCCH to the work of UNIDROIT on VCCs. The DSG noted that, in this regard, the EG's mandate is strictly confined to PIL, particularly the rules that determine applicable law and the boundaries of contractual freedom.

14 Beyond the initial focus of this EG, the DSG noted that additional core PIL issues would include the consideration of jurisdictional grounds and choice of forum, including limitations on party autonomy in selecting a forum and the criteria for determining which court has jurisdiction. Concerning recognition and enforcement of foreign judgments, reference to the 2019 Judgments Convention was made and it was noted that the Convention has specific rules concerning rights *in rem*. Finally, the DSG acknowledged the importance of exploring the desirability and feasibility of international cooperation mechanisms in this domain, noting that this is an area of institutional strength at the HCCH.

15 The EG was encouraged to shape the scope and prioritisation of its work, with CGAP having recommended an initial focus on the possible applicable law provision in the draft UNIDROIT Principles. The DSG moreover drew the EG's attention to the interaction between the provisions relating to the scope and definitions to be adopted in the UNIDROIT Principles and the EG's contributions on the applicable law provision. It was recalled that the commentary of the draft UNIDROIT Principles suggests that draft Principle 4 on applicable law may cover a broader scope than the principles themselves, a point that could significantly influence the EG's ongoing work.

16 Finally, the DSG reminded the EG of its broader mandate beyond the initial focus on contributing to the possible inclusion of an applicable law provision in the draft UNIDROIT Principles. The EG's mandate includes the study of PIL issues arising from carbon markets including, for example, the potential development of a comprehensive PIL framework for carbon markets. Against this background, the EG was reminded that its initial work on applicable law to contribute to the draft UNIDROIT Principles would also inform and impact on its future work on jurisdiction, recognition and enforcement, and international cooperation mechanisms.

# IV. Applicable law

## A. Initial focus on the possible inclusion of an applicable law provision in the draft UNIDROIT Principles

### 1. Background on the UNIDROIT Working Group on the Legal Nature of Verified Carbon Credits

17 In fulfilment of the EG's mandate to study PIL issues arising from carbon markets, "with an initial focus on the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on Verified Carbon Credits", the PB requested that the representatives of UNIDROIT, sitting as Observers on the HCCH EG on Carbon Markets, provided overview presentations of the work of the UNIDROIT WG on VCCs. UNIDROIT is represented on the HCCH EG on Carbon Markets by Ms Giulia Stella Previti (Legal Officer, UNIDROIT Secretariat), and Mr. Antonio Leandro and Mr. Matthias Lehmann (both members of the UNIDROIT WG on VCCs and of the subgroup to the drafting committee who provided the initial text of draft Principle 4 of the draft UNIDROIT Principles).

#### *a. Presentation of Ms Giulia Stella Previti, Legal Officer at the UNIDROIT Secretariat*

18 Ms Previti, the representative of UNIDROIT sitting as an Observer on the EG, delivered a presentation on UNIDROIT and the "UNIDROIT Project on the Legal Nature of VCCs" (UNIDROIT VCCs

Project). Ms Previti introduced UNIDROIT as an independent intergovernmental organisation, originally established in 1926 and reconstituted in 1940. With 65 Member States from diverse legal and cultural backgrounds, UNIDROIT's mission is to modernise, harmonise, and coordinate international private and commercial law through the development of uniform legal instruments, principles and rules. She outlined UNIDROIT's working methodology, which involves the formation of expert working groups and consultative committees, public consultations, and regular oversight by its Governing Council, in order to ensure that the instruments developed are globally representative and practically applicable.

19 Focusing on the VCCs Project, Ms Previti explained that it was initiated in 2022 following a proposal by the International Swaps and Derivatives Association, with the support of the Government of Paraguay, and was included in UNIDROIT's 2023–2025 Work Programme with high priority. The VCCs Project aims to address the legal uncertainty surrounding VCCs, which was seen as a barrier to the growth and efficiency of carbon markets. Legal clarity in this area, she added, is essential for enabling secure transactions, supporting market participation, and ensuring proper treatment of VCCs in contexts such as insolvency.

20 Ms Previti explained that the UNIDROIT VCCs Project is being developed in close cooperation with the World Bank and involves a Working Group of experts in carbon trading, environmental and property law, secured transactions, and digital technologies (UNIDROIT WG on VCCs). At the time of this meeting, a Consultative Committee, composed of government and industry representatives nominated by UNIDROIT Member States, was about to be convened to review the draft Principles.

21 Ms Previti noted that the WG is developing a *soft law* instrument in the form of principles with explanatory commentary, a format chosen for its flexibility and suitability for a rapidly evolving and diverse legal landscape. The instrument is not intended to replace existing national laws but to serve as a reference tool for identifying legal gaps and enhancing certainty in the treatment of VCCs under private law. She provided an overview of the draft instrument's structure, which currently includes nine sections covering topics such as: 1. Scope and Definitions, 2. Private International Law, 3. Creation and Transfer, 4. Cancellation, 5. Registry, 6. Custody, 7. Secured Transactions, 8. Procedural Law Including Enforcement, and 9. Insolvency. She added that the instrument is being designed to be relevant across legal traditions and to support both developed and developing economies in accessing and participating in carbon markets.

22 Ms Previti explained that a key principle underpinning the instrument is the recognition that VCCs can be the subject of proprietary rights, enabling them to be transferred, used as collateral, and held in custody. She added that the UNIDROIT WG on VCCs identified that VCCs possess attributes common to property in most legal systems: they are individuated, controllable, rivalrous, and transferable. The draft UNIDROIT Principles does not prescribe specific acquisition requirements, leaving such matters to applicable domestic law, while offering guidance on how to adapt existing frameworks to accommodate the unique features of VCCs.

23 Ms Previti concluded by outlining the project's timeline. Five UNIDROIT WG sessions have already taken place, with three more planned through early 2026. A revised draft of the Principles will be submitted for UNIDROIT Member State consultation through the aforementioned Consultative Committee, with the goal of adoption by UNIDROIT's governing body in 2026. She emphasised the strong interest from stakeholders and the importance of legal certainty in unlocking the full potential of carbon markets. Ms Previti expressed appreciation for the ongoing cooperation with the HCCH and looked forward to continued engagement with the HCCH EG on Carbon Markets.

*Discussion*

24 Following the presentation by Ms Previti, the floor was opened for questions. An expert raised a question regarding the necessity of including a provision on applicable law within the draft UNIDROIT Principles. The expert asked Ms Previti to elaborate on the practical implications of omitting such a rule, beyond the concern for textual completeness. Ms Previti responded by noting that it is standard practice at UNIDROIT to include applicable law provisions in its instruments where relevant. She explained that while the instrument leaves several key issues to be governed by other laws—intentionally, to preserve flexibility for states—harmonisation remains the core objective. A conflict of laws provision, she noted, particularly one addressing proprietary issues, would therefore contribute to legal certainty and support market scalability.

25 The expert followed up by requesting a concrete example illustrating the practical necessity of such a rule. Ms Previti reiterated that several substantive issues, such as the existence of proprietary rights in certain assets, are left to other laws. She then invited another representative of UNIDROIT, Mr Leandro who, together with a third representative of UNIDROIT was part of the subgroup that drafted the current text of draft Principle 4, to elaborate further on this aspect. Mr Leandro suggested instead to proceed directly to a presentation of draft Principle 4, which addresses applicable law, in order to respond to the questions raised.

26 Another expert raised concerns regarding the terminology used in the draft UNIDROIT Principles, specifically the term "verified carbon credit" (VCC). He expressed difficulty in understanding the conceptual significance of the term "verified" in the context of proprietary rights and questioned the use of "carbon credit" as a general term, given the diversity of systems it encompasses (*e.g.,* cap-and-trade vs. baseline-and-credit). He noted that the historical evolution of carbon markets, particularly the issuance of allowances under cap-and-trade systems, may have contributed to confusion about the proprietary nature of such instruments. Ms Previti responded that these issues had been extensively discussed within the UNIDROIT WG. She explained that the term "verified carbon credit" was deliberately chosen to reflect the defining feature of the credit, namely, that the environmental benefit (emission reduction or removal) is verified by an independent third party and approved by a Carbon Crediting Body (CCB). This verification is what gives the credit its value and legal character. Ms Previti added that the focus of the draft UNIDROIT Principles is on the legal treatment of the VCC once it has been verified and becomes tradable, particularly in secondary markets. She noted that while the lifecycle of a VCC is outlined in the introduction to the draft UNIDROIT Principles, the draft Principles themselves do not address pre-verification processes or broader regulatory issues.

27 The expert followed up with a comment expressing continued uncertainty regarding the conceptual significance of the term "verified" in "verified carbon credit", particularly in relation to proprietary rights. He noted that many credit types are traded prior to verification and questioned how verification affects the legal classification of such credits. He also highlighted the contractual nature of voluntary carbon markets and suggested that the legal character of a credit may shift when it is accepted within a compliance system. The expert noted that these distinctions merit further exploration within the HCCH EG. Ms Previti acknowledged the importance of contractual issues, noting that while the focus of the draft UNIDROIT Principles is on proprietary rights, many matters are intentionally left to contractual agreement between parties. She explained that the UNIDROIT WG had considered whether VCCs represent rights and concluded that, although they may do so in some cases, this is not always the case. Therefore, the proprietary framework envisaged by the draft UNIDROIT Principles did not rely on that classification, though it did not preclude it either.

28 A third expert asked whether the draft UNIDROIT Principles apply exclusively to credits generated under baseline-and-credit systems, and not to allowances issued under cap-and-trade schemes. The expert also inquired about the rationale behind the 2026 target date for finalising the instrument, given the complexity of the issues involved. Ms Previti confirmed that the draft UNIDROIT Principles apply only to units that meet a specific functional definition, including verification by an independent third party, approval by a CCB, registration in a registry, and identification via a unique identifier. Credits/Units that do not meet these criteria, including government-issued allowances, fall outside the scope of the draft Principles. She explained that the definition is designed to align with the proprietary rights framework of the draft Principles and to ensure legal clarity. Turning to this experts' second question, she added that the timeline aligns with UNIDROIT's standard three-year work programme. While some projects may take longer, this Project has received strong support from both industry stakeholders and institutional partners, including the World Bank, who have emphasised the urgency of developing legal guidance in this area.

29 A fourth expert raised a drafting-related question regarding the definition of a "VCC" in the draft UNIDROIT Principles, particularly the phrase "a unit that represents the achievement of a reduction in or removal of emissions." The expert suggested that this language may exclude government-issued allowances, which do not necessarily represent a reduction in emissions. The expert asked whether this was the intention behind the drafting and whether such a definition might inadvertently include government systems that meet the criteria, thereby triggering considerations of mandatory rules and public policy under draft Principle 4. Ms Previti answered by indicating that she would consult with the UNIDROIT experts before providing a definitive response. The expert clarified that the concern behind their question was about the logical implications of the current drafting: if a government system meets the definition of a VCC, that "VCC" could fall within the scope of the Principles, potentially raising public policy issues.

30 The DSG noted the relevance of this observation for the consideration of the HCCH EG on Carbon Markets and invited comment from UNIDROIT colleagues. Ms Previti took the floor to clarify the intent behind the definition of VCCs within the scope of the draft UNIDROIT Principles. She emphasised that the definition was not crafted to exclude specific elements such as allowances, but rather to focus on what should be included to effectively support the scaling of the market. This approach was informed by extensive dialogue with industry stakeholders and practitioners. The goal was to identify VCCs that are issued by governmental bodies, international organisations, or private accrediting entities, and which possess characteristics that allow them to be treated as property, such as registrability and individuation. Ms Previti also addressed the role of public policy and mandatory rules, noting that while the continued applicability of public policy and mandatory rules is self-evident, they are explicitly acknowledged in draft Principle 4 for the sake of clarity and completeness.

31 Mr Leandro supported Ms Previti's intervention, noting that the UNIDROIT WG's efforts were directed at defining the scope of the carbon credits relevant to the UNIDROIT project, with an emphasis on creating a legal framework that ensures credibility, bankability, and transparency. He explained that broader issues, such as the characterisation of units within the carbon market, were considered preliminary and thus outside the scope of the work of UNIDROIT. Mr Leandro further noted that both the substantive and PIL principles are neutral with respect to public policy and mandatory provisions. In his view, the draft UNIDROIT Principles do not interfere with or override such rules but rather remain open and adaptable to them. This neutrality is intended to prevent duplication of substantive rules and to preserve the proper functioning of PIL, particularly in relation to overriding mandatory provisions and public policy considerations.

32 The fourth expert who spoke then expressed appreciation for the clarifications provided and highlighted that, as currently drafted, the scope of the draft UNIDROIT Principles appeared to include allowances or units within allowances, or at least the potential to do so, depending on how the functional definitions were applied. This suggested a broader application that could encompass obligations not directly tied to capital-raising or project finance, but rather to state-imposed emissions limits. The expert also raised a broader concern about how the draft UNIDROIT Principles might intersect with and impact on the HCCH work on carbon markets. In response, the DSG acknowledged the expert's points. She noted that the current draft of the commentary (paragraph 4.4) on draft Principle 4 of the draft UNIDROIT Principles indicated explicitly that draft Principle 4 was intended to have a broader scope than the other draft Principles.

33 The floor was then given to a fifth expert from the HCCH EG on Carbon Markets. This expert noted that he was taking the floor to speak in his capacity as a member of the UNIDROIT WG on VCCs. This expert explained that, from the early stages of the UNIDROIT Project, the UNIDROIT WG recognised two distinct legal narratives around allowances. Legally, allowances represent a government-authorised right to emit, whereas credits are earned through verified achievements in emission reductions or removals. These achievements are intangible and difficult to self-prove, which is why third-party verification was deemed essential. He emphasised that verification is the legal moment when a carbon credit is "born" and that, before that, any rights are likely contractual and not enforceable in the same way. This expert elaborated further that after verification, the nature of the right becomes more defined, though there was internal debate at UNIDROIT, which was eventually settled, about whether it is a right against a registry or a broader right enforceable against others. He referenced a 2023 comparative study on the legal nature of carbon credits across jurisdictions, conducted collaboratively by UNIDROIT and UNCITRAL.[1] The study revealed significant differences in national legislation, making harmonisation difficult. However, as a member of the HCCH EG, he suggested that because the VCC and allowance lifecycles share many similarities, it may be feasible to borrow elements from one framework to inform the other. This, he argued, is consistent with how PIL sometimes uses similar terms that function differently depending on context.

34 The DSG thanked this expert for recalling the work already done by the UNIDROIT WG on VCCs and for speaking in his capacity as a member of the UNIDROIT WG. The DSG further recalled that earlier drafts of Principle 2 of the UNIDROIT Principles had included references to "government", which were later removed. The DSG reminded the EG that, while the work already done by UNIDROIT may inform the EG's consideration, the HCCH EG on Carbon Markets is a separate group of experts with a distinct mandate that was convened by a different international organisation. Therefore, it remains entirely appropriate for member of the HCCH EG on Carbon Markets to discuss any and all foundational issues to ensure that all members of the HCCH EG are aligned and fully informed as to the context, background and considerations relating to the HCCH Carbon Markets Project.

35 Ms Previti reiterated UNIDROIT's willingness to share its experience with the HCCH EG, hoping that the exchange would be mutually enriching. Addressing the earlier point raised by the third and fourth experts who took the floor to ask questions for clarification, she confirmed that the intention was indeed for the instrument to cover units, whether issued by a government or not, provided they met the defined criteria. However, she stressed a crucial boundary: the scope of the UNIDROIT Principles is strictly limited to private law. It does not engage with regulatory frameworks, which are

1 The PB provided input to the part on PIL in the final report of the study, "UNCITRAL-UNIDROIT Study on the Legal Nature of Verified Carbon Credits Issued by Independent Carbon Standard Setters REV (August 2024) (see Section G: Issues of Applicable Law), latest version from August 2024 available at: http://undocs.org/en/A/CN.9/1191/Rev.1.

acknowledged to exist and evolve independently. These regulatory layers, she explained, sit "on top" of private law and are outside the remit of the UNIDROIT Principles.

36 Ms Previti then turned to respond to comments about draft Principle 4, noting that while it was about to be discussed in more detail later, it was important to interpret paragraph 4.4 of the commentary in conjunction with paragraph 4.2. Ms Previti noted that paragraph 4.2. clearly states that draft Principle 4 aimed to address only proprietary issues related to VCCs, excluding contractual, regulatory, or tax matters. Therefore, while the scope of the applicable law provision under Principle 4 is broader than in other principles, the breadth of Principle 4 is intended to address national law issues left open by the rest of the instrument. However, Principle 4 remained confined solely to property law questions. Finally, Ms Previti noted that the inclusion of an applicable law provision in UNIDROIT's instrument is a decision made by UNIDROIT's governing bodies and that, while the UNIDROIT Secretariat welcomed the input from and collaboration with the HCCH EG, the UNIDROIT WG must ultimately act in accordance with its own mandate and internal decision-making processes. She reaffirmed UNIDROIT's commitment to working toward the best possible technical and substantive applicable law rule, in coordination with the HCCH and other stakeholders.

37 The fourth expert who spoke earlier elaborated on the importance of the HCCH's EG understanding how the draft UNIDROIT Principles intersect with broader carbon market mechanisms. The expert gave the example of transferability or mutability of carbon units in secondary markets to illustrate the point. In such cases, the unit used to meet a government-imposed emissions cap might fall within the scope of the draft UNIDROIT Principles, particularly if it is issued in a way that aligns with the private law framework being developed. The expert clarified again that the intention was not to critique or influence the scope of the UNIDROIT Principles, but rather to understand how HCCH Members such as the United Kingdom should interpret and engage with them. The expert acknowledged that the commentary accompanying the draft Principles was helpful, particularly the limitation made to draft Principle 4 in paragraph 4.2 of the commentary, which limits its scope to proprietary issues. However, the expert noted that governments often prefer to address such matters proactively at the outset, rather than reactively at the point of legal application. The expert also emphasised that the UK government has its own views on whether instruments like allowances should be treated as property, especially when used within government systems, thus raising complex legal and policy questions.

38 The DSG thanked the expert for the thoughtful and respectful clarification, and affirmed that the HCCH would never presume to direct UNIDROIT's work, which is governed by its own Member States. The DSG welcomed the experts' efforts to understand the "lay of the land," noting that such inquiries are entirely appropriate and valuable to the EG's shared learning process. Ms. Previti briefly clarified that her earlier remarks were meant to support the DSG's explanation of the distinct roles of the two Organisations and were not intended to misinterpret the comments of the fourth expert who spoke. Ms Previti reiterated UNIDROIT's openness to providing any background or context that would support the EG's work. The DSG expressed appreciation for the collaborative spirit and reaffirmed that any conclusions that the HCCH might reach would be shared with UNIDROIT, for UNIDROIT to ultimately determine what would be useful for its own work.

*Consultative Committee and timeline for iterated versions*

39 Ms Previti provided a detailed explanation of the Consultative Committee process at UNIDROIT. She clarified that the Committee is composed of experts appointed by UNIDROIT Member States, with each State invited to nominate one or two individuals to provide input. The Committee is chaired

by Ms Sharon Ong of Singapore, a Member of the UNIDROIT Governing Council. As of the time of her remarks, the Consultative Committee was comprised of approximately 30 experts from 19 UNIDROIT Member States.

40 Ms Previti explained that the drafting committee of the UNIDROIT WG is currently revising the draft Principles based on feedback from the last WG session. These revisions were being prepared for distribution to the Consultative Committee in early June. Feedback received, along with a further revised draft, was envisaged to be presented to the UNIDROIT WG during its next session in September.

41 The DSG followed up with a question about whether the UNIDROIT Secretariat had any indication as to which provisions of the draft Principles were expected to undergo the most significant revisions in the upcoming June iteration. While Ms Previti noted that she could not speak on behalf of the drafting committee, she anticipated that the sections on cancellation and secured transactions would receive particular attention, as they had been the focus of extensive debate in the last session. Draft Principle 2, which defines key terms for the entire set of principles, would likely remain a central focus. She also mentioned that the registry-related draft principles might be adjusted to reflect discussions on interoperability and tokenisation. However, she stressed that the final scope of revisions would depend on the drafting committee's review and the written feedback received from WG members.

42 The DSG thanked Ms Previti for the clarity and transparency, noting that this information would help the EG align its own contributions with UNIDROIT's evolving work.

### *b. Overview of the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits: structure and concepts*

43 Ms Previti provided a presentation with an overview of the draft UNIDROIT Principles, beginning with draft Principle 1, which establishes the private law scope of the instrument, excluding public or administrative law. She explained that draft Principle 2 is foundational, offering key definitions such as "voluntary carbon credit" and "registry," which are critical for interpreting the rest of the document. Section III outlines the transfer of rights in VCCs, including rules on good faith acquisition and the role of registries. Ms Previti explained that the structure of the draft UNIDROIT VCC Principles mirrors that of UNIDROIT's Digital Assets Principles,[1] albeit tailored to the specific nature of VCCs.

44 Ms Previti further explained the sections on General Principles, which recognise VCCs as proprietary assets while deferring some issues to national law, and on Creation and Transfer, which tie creation to registry entries and incorporate legal doctrines such as *nemo dat* and shelter rules. The principle of innocent acquisition was highlighted as especially important, given that many jurisdictions do not provide such protections for intangibles. She noted that the principle leaves room for national good faith rules, reinforcing the need for a clear applicable law provision.

45 The *Cancellation* section addresses the "end-of-life" phase of VCCs, including concepts such as retirement (voluntary cancellation), reversal, and revocation. The *Registry* section clarifies the roles of registry systems and operators. She added that the *Registry* section was also central, given the role of registries in establishing proprietary rights. The draft Principles, she explained, distinguish between the technical registry system (the electronic database) and the registry operator (the managing entity).

1 UNIDROIT, UNIDROIT Principles on Digital Assets and Private Law (Rome, 2023) https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked-1.pdf accessed 14 July 2025.

46 Additional sections cover *Custody*, highlighting protections for clients using intermediaries, and *Secured Transactions*, adapting traditional secured transactions concepts to VCCs. Principles 23 and 24 are under development, presently incorporating placeholder language borrowed from the Digital Assets Project, with further discussions planned.

*Current text of the draft UNIDROIT Principles*

47 Ms Previti presented a detailed walkthrough of draft Principle 1, reiterating that it defines the scope of the instrument. She explained that the accompanying commentary clarifies that the purpose of the Principles is to provide guidance for States to align their private law frameworks with international best practices concerning VCCs, as defined within the instrument. The overarching aim, she emphasised, is to foster legal clarity and uniformity, thereby enhancing legal certainty in the market. The focus is specifically on proprietary rights, particularly in situations where VCCs are the object of dispositions and acquisitions, or where rights and interests in VCCs must be asserted against third parties. She reiterated that the Principles do not address regulatory law, nor do they cover areas such as intellectual property, consumer protection, or other legal domains that remain unaffected by the draft Principles. These boundaries are further clarified in paragraph 1.2 of the commentary and are reinforced later in draft Principle 3 (3).

48 Ms Previti noted that there was broad alignment within the UNIDROIT WG regarding the scope of draft Principle 1, although discussions had naturally focused on how this scope applies in practice, given the wide range of legal and technical issues involved in the VCC space.

49 Turning to draft Principle 2, Ms Previti explained that this Principle provides the definitions that support the rest of the instrument. She emphasised that the terms are defined functionally, meaning they are tailored to the scope of the UNIDROIT Principles and are not intended to serve as universal definitions for the broader carbon market. The definitions in draft Principle 2 help delineate what falls within the scope of the Principles and what does not. She noted that the definitions are still a work in progress, subject to further refinement by the drafting committee based on ongoing discussions and feedback. For example, the definition of a "VCC" was particularly important, as it would outline the constitutive elements that qualify as a verified carbon credit under the Principle. This definition has been the subject of extensive debate within the UNIDROIT WG.

50 Ms Previti highlighted two specific terms: a) "principles law" and b) "other law", which are defined in paragraphs 18 and 19. "Principles law" refers to any part of a State's law that implements or aligns with the Principles, while "other law" refers to the remainder of a State's private law that is not covered by the Principles. These distinctions are especially relevant for draft Principle 4 on applicable law.

*Discussion*

51 The floor was then opened for questions and discussion. An expert raised a question about the inclusion of emission avoidance. The expert noted that under ongoing Article 6 negotiations within the UNFCCC process, there is an unresolved debate about whether emission avoidance could be recognised as a valid mitigation activity eligible for verification and crediting. While this issue remains unsettled, the expert suggested that the UNIDROIT WG might consider whether the draft UNIDROIT Principles should be future-proofed to accommodate such developments, should they be adopted in international frameworks, stressing the relevance of this discussion also for the work of the HCCH EG. The DSG acknowledged the relevance of the point and suggested that it be taken back to the UNIDROIT WG for consideration.

52 Following the review of Principles 1 and 2, the EG turned its attention to Principle 3, which Ms. Previti described as the foundation upon which the rest of the draft Principles is built. She reiterated that Principle 3 affirms that a VCC can be the subject of proprietary rights. This assertion, she

explained, was not made lightly; the WG had spent considerable time analysing whether VCCs possess the characteristics typically associated with property. Ms. Previti outlined the rationale: VCCs can be individuated, controlled, rivalrous, and transferred, all traits that support their classification as property. These characteristics are detailed in the commentary accompanying Principle 3. She also referenced Principle 3 (2), which states that the Principles would take precedence over "other law" in cases of conflict, and Principle 3 (3), which clarifies that "other law" continues to apply to a range of issues not covered by the Principles. These include determining whether a person has a proprietary right in a VCC, whether such a right has been validly transferred, and whether a security interest has been properly created, among others.

53 Ms Previti emphasised that the draft Principles are not intended to override national law, but rather to provide a framework that complements it. The commentary, she noted, is especially important in this regard, offering detailed guidance to States considering adoption or alignment with the Principles.

54 A second expert asked for clarification as to the meaning and implications of "proprietary rights" within the context of the draft Principles. He noted that the concept of "proprietary rights" may vary across legal cultures and asked whether such rights are defined in the Principles as those that can be asserted against parties with whom the holder has no contractual relationship. Ms Previti confirmed this interpretation, directing the EG to paragraph 3.1 of the commentary, which explicitly states that the term "proprietary rights" is used in a broad, functional sense, including both proprietary interests and rights with proprietary effects, meaning they can be asserted against third parties.

55 The second expert who spoke followed up with a question asking for clarification on the relationship between draft Principle 3.1, which states that a VCC can be the subject of proprietary rights, and draft Principle 3 (3) (a), which indicates that whether a person actually has such a right depends on "other law". He noted that Principle 3.1 establishes a general conceptual framework, recognising that VCCs possess the basic elements of property. However, he noted that the specific determination of whether a proprietary right exists in a given case—and under what conditions—would be governed by national law. Ms Previti agreed with this interpretation, confirming that Principle 3.1 sets out the general premise that VCCs are capable of being subject to proprietary rights, while Principle 3 (3) (a) acknowledges that the actual application of those rights depends on the relevant domestic legal framework.

56 Ms Previti further elaborated on the matter of the scope of draft Principle 3.3(a) and the role of "other law" in determining whether a proprietary right in a VCC exists. She reiterated that the primary purpose of the UNIDROIT Principles is to clarify the legal nature of VCCs, particularly by affirming that they can be the subject of proprietary rights due to their inherent characteristics, such as being identifiable, transferable, and capable of control. Ms Previti stated that the market has long operated under the assumption that VCCs can be treated as property, but without a clear legal framework. She clarified that the draft Principles aimed to provide that clarity, while deliberately leaving the specific application of proprietary rights to national legal systems. For example, while a VCC may be capable of being owned, a jurisdiction might have specific rules, such as those prohibiting minors from owning such assets, that affect whether a particular person can hold a proprietary right. Thus, draft Principle 3.1 establishes the general eligibility of VCCs to be treated as property, while draft Principle 3 (3) (a) confirms that the existence and conditions of such rights are determined by the applicable law.

57 The second expert who spoke then sought clarification as to whether and how to distinguish between two possible interpretations of draft Principle 3 (3) (a): one where "other law" determines

whether a proprietary right exists at all, and another where it only determines whether a particular person holds such a right. He asked for clarification on the extent of discretion left to "other law" under the draft Principles. Ms Previti responded that the entire question of whether a proprietary right exists in a given context is intentionally left to "other law". The draft Principles, she clarified, were designed to fit within existing proprietary rights frameworks, not to displace them. She emphasised that this was a deliberate choice to ensure compatibility with the diversity of legal systems.

58 Mr Leandro described draft Principle 3.1 as a theoretical premise, or a foundational assumption that VCCs are capable of being the subject of proprietary rights. This premise would support the broader structure of the instrument and justify the need for a PIL rule (draft Principle 4) to determine which national law applies in any given case. Mr Leandro acknowledged that the wording of draft Principle 3.1 ("can be the subject") might seem ambiguous, but when read in conjunction with the scope and applicable law provisions, it would become clear that the Principles would not themselves create proprietary rights. Rather, they provide a framework within which national laws operate.

59 The second expert who spoke responded to summarise his understanding, noting that the interventions from the UNIDROIT representatives confirmed that the draft Principles establish a general eligibility for VCCs to be treated as property, but that the actual creation, recognition, and enforcement of proprietary rights is entirely governed by "other law", as would be specified under draft Principle 4.

60 Ms Previti took the floor to offer two clarifications. First, she directed the group's attention to the commentary on draft Principle 3 (3), particularly paragraphs 3.7 onward, which provide further detail on what is covered by this principle. Second, she noted that draft Principle 5 stated that a VCC comes into existence when it is recorded in a VCC registry and credited to an account. At that moment, the registered holder is recognised as having a proprietary right in the VCC, subject to further provisions, including the innocent acquisition rule in draft Principle 7. Ms Previti explained that this formulation was adopted because someone must be recognised as the initial holder of a proprietary right when a VCC is created. From that point forward, the question of whether a person has a proprietary right is governed by "other law", reinforcing the idea that the instrument provides a framework, not a full legal regime.

61 The clarification provided by Ms Previti prompted the second expert who spoke to revisit his earlier question. He noted that reading draft Principles 3 and 5 together seemed to suggest that the Principles themselves determine the conditions under which proprietary rights arise, while "other law" only determines whether a particular person *holds* such a right. He sought confirmation that this was indeed the intended interpretation, emphasising the importance of distinguishing between the existence of a proprietary right and the allocation of that right to a specific person.

62 The expert who first spoke in this discussion session raised a related concern. He highlighted the diversity of legal traditions and the implications of recognising proprietary rights in VCCs across different systems. In Chile, proprietary rights can only be asserted over tangible or intangible things, and most financial obligations come from contractual arrangements. Some interpretations in Chile consider carbon credits as financial instruments, which would not qualify as carrying proprietary rights under current law, regardless of whether a separate set of Principles specify that carbon credits "can" be the subject of proprietary rights. This expert pointed to paragraph 3.3 of the commentary, which recommended that States specify the category of asset a VCC falls under. He expressed concern that recognising that VCCs can be subject of proprietary rights might require amending national civil codes, which is a complex legislative process. He asked whether adopting

the Principles would automatically recognise VCCs as proprietary rights, even if national law does not currently do so, or whether domestic legal reform would still be necessary.

63 In response, Mr Leandro clarified that the draft UNIDROIT Principles are designed to be enacted by States, and through that enactment, States would determine how VCCs are treated within their legal systems. The Principles would not override national law; rather, they provide a source of inspiration and prompt a change in the legislation. Whether a VCC is considered a tangible or intangible asset, or whether it qualifies as an object of property, is ultimately a matter for domestic legal classification. Mr Leandro again acknowledged that the language of draft Principle 3.1, stating that a VCC "can be the subject" of proprietary rights, may appear ambiguous. However, when read in conjunction with the scope and applicable law provisions, it becomes clear that the principles are not self-executing. They require implementation through national legal systems, which retain the authority to define the legal nature of VCCs. Mr Leandro then offered a two-part response to the question raised. First, he explained that if a State's existing legal framework already provides for proprietary treatment of assets in a way that aligns with the UNIDROIT Principles, then the Principles may not need to be enacted in full or may only require partial implementation. Second, in jurisdictions where such proprietary treatment of VCCs does not yet exist, the Principles could serve as a source of inspiration for legal reform. Mr Leandro acknowledged that some jurisdictions already recognise proprietary rights in VCCs, while others do not. This variation is one reason why there is broad political support for the project, even as a soft law instrument, because it offers a flexible framework that can be adapted to different legal systems.

64 The expert who first spoke in this discussion responded by affirming that the explanation was clear. He emphasised, however, that the challenge in countries like Chile is not legal interpretation but political will. In Chile, introducing a new category of proprietary rights would require legislative reform, including amendments to the civil code – a complex and politically sensitive process. He noted that the lack of legal certainty around the legal status of VCCs creates challenges for investor confidence and the development of carbon markets.

65 Ms Previti thanked the EG for the rich discussion and noted that the concerns raised would be taken back to the UNIDROIT WG. She pointed out that the language in paragraph 3.3 of the commentary, which had been referenced during the discussion, is still in square brackets, indicating that it remains under consideration. Ms Previti noted that draft Principle 3 had not been the subject of recent WG discussions and might need to be revisited. She clarified that the recommendation in paragraph 3.3 is intended for jurisdictions that already classify assets into categories with different legal consequences. In such cases, it is helpful for the law to specify which category VCCs fall into. However, this would not imply that States must create a new category or classification. She explained that the draft Principles are designed as a soft law instrument, not a model law, and are intentionally drafted with a light touch to allow for flexibility and integration into existing legal frameworks. She reiterated that the WG approach has been to assess whether VCCs possess characteristics that are commonly recognised as indicative of property. If so, then States may be able to treat VCCs as property without major legal reform, using the Principles as a guide. Where necessary, the Principles would also serve to highlight areas where minor adjustments might be considered to accommodate the unique features of VCCs.

66 The expert who first spoke in this discussion responded that while the paragraph in question is still under discussion, its final clause (*i.e.,* suggesting that States may need to introduce a new category of assets) could impose a burden on certain legal systems. In Chile, for example, VCCs might be more naturally classified as financial instruments, which are typically governed by contractual obligations, not proprietary rights. This distinction has significant implications and is not easily resolved without legislative change.

67 The DSG thanked the expert for his insights, noting the importance of hearing directly from jurisdictions that play a key role in the carbon market.

### c. *Draft Applicable Law Provision (Principle 4)*

*Presentation of Mr Antonio Leandro, Member of the UNIDROIT WG on VCCs*

68 Mr Leandro presented the current draft of Principle 4. He began by clarifying that the principle is designed to determine the law governing proprietary rights in VCCs, particularly in the context of pre-insolvency situations. While insolvency proceedings themselves fall outside the scope of the Principle, the existence of proprietary or security rights in insolvency is governed by the law determined under draft Principle 4. Mr Leandro explained that draft Principle 4 presents a menu of four possible connecting factors that may be selected by the registry or through account agreements. These include:

a. The law of the State where the registry is maintained;

b. The law of the State under which the registry operator is incorporated or otherwise organised;

c. The law of the State where the registry operator has its statutory seat; or

d. The law of the State where the registry operator has its central place of administration.

69 Mr Leandro added that this selection is not a traditional party autonomy rule, but rather a unilateral choice made by the registry or embedded in account agreements. In the absence of such a choice, the applicable law defaults to the statutory seat or, failing that, the central place of administration of the registry operator. Mr Leandro noted that draft Principle 4 emphasises legal certainty by stating that the applicable law remains unchanged even if the connecting factor changes. A change in the applicable law is only effective for account holders or secured creditors who consent to it. This ensures that rights already established under one legal regime are not undermined by subsequent changes to the applicable law.

70 Referring to paragraph 4 of draft Principle 4, which outlines the scope of its applicability, and includes:

a. The creation and extinction of proprietary rights in VCCs;

b. The content and effects of such proprietary rights;

c. Whether a person holds a proprietary right in a VCC;

d. Whether a proprietary right in a VCC has been validly transferred to another person;

e. The rights as between a transferor and a transferee of a VCC;

f. The legal consequences of third-party effectiveness of a transfer of a VCC;

g. The requirements for innocent acquisition and take-free rules.

71 Mr Leandro stressed that this list was illustrative, not exhaustive, and that the draft Principle was intended to complement the substantive rules developed by UNIDROIT by providing a conflict-of-laws framework.

72 Mr Leandro noted that a separate rule would apply to security rights, which would be normally governed by the law of the State where the grantor is located, aligning with other instruments developed by UNCITRAL and UNIDROIT. However, this could result in multiple applicable laws for different rights over the same VCC. To address this, draft Principle 4 adopted a hybrid approach, giving priority to the right that becomes effective against third parties first, regardless of which law governs it.

73 Mr Leandro explained that draft Principle 4 would consider custody arrangements, offering two options:

a. Apply the general rule to property rights in VCCs held in custody, or

b. Link the applicable law to the custody agreement, with a fallback to the law of the State where the custodian maintains the account in which the VCC is recorded.

74 In matters of insolvency, Mr Leandro noted that draft Principle 4 would only govern the existence of proprietary and security rights, not their treatment in the proceedings. Paragraph 7 would allow courts to refuse application of the designated law on public policy grounds or to apply overriding mandatory provisions.

75 Mr Leandro clarified that the term "maintained" referred to the factual location where registry entries are made, and that this was based on the European Financial Collateral Directive. The "maintaining" entity was the one responsible for granting access and ensuring the integrity of the registry.

*Discussion*

76 The floor was open for questions. An expert clarified that at that stage, he and his delegation were not in a position to engage on a discussion on the merits of draft Principle 4, but that he wanted to check if his delegation's understanding of the draft was correct. He asked whether the expectation of industry was that a single law should govern proprietary rights in VCCs. He also sought clarification on the concept of fungibility as used in the commentary to draft Principle 4. Mr Leandro answered that the primary expectation was to achieve legal certainty and predictability through the application of a single law. However, he acknowledged that in practice, competing rights may arise under different laws, particularly in multi-tiered transactions. Draft Principle 4 would attempt to reconcile this through priority rules. On fungibility, Mr Leandro explained that the term referred to interchangeability of rights within a single registry, not across registries. Interoperability between registries was a separate issue and not addressed by the draft Principles.

77 Mr Lehmann emphasised that global registries like Verra and Gold Standard cannot feasibly apply different laws to each VCC based on project location. Mr Lehmann opined that a single law per registry was essential for market efficiency and legal clarity. He made an analogy to securities markets, where the law of the clearing system governs transfers, even if issuers are subject to different national laws. Ms Previti confirmed that registries currently operate as self-contained systems, and VCCs are not transferable between them, and that this reinforced the need for a single governing law within each registry.

78 A second expert raised a question about the applicability of draft Principle 4 against the background of the cooperative approaches under Article 6.2 of the Paris Agreement. His central concern was if a country participating in a cooperative approach uses a registry operated in another country, e.g., the UNFCCC registry located in Bonn, Germany, would German law govern the VCC and related proprietary rights? He noted this could have important legal implications, especially when registries are not domestically hosted. Mr Leandro responded by clarifying that the draft UNIDROIT Principles do not apply to state-to-state relations, which are governed by public international law. However, Mr Leandro noted that the Principles are relevant when private proprietary issues are triggered, especially when private actors are involved. As a follow-up, the second expert asked whether the

draft Principles would still apply when VCCs under Article 6.2 are used beyond NDC compliance,[1] such as in secondary markets by private entities and investors. He stressed that, although governments facilitate cooperation frameworks, the actual transactions are often carried out by private actors, hence involving private law. Mr Leandro clarified that his earlier point was not that the draft UNIDROIT Principles are irrelevant in cooperative approaches, but that State-to-State relations are not governed by private law. Mr Leandro noted that the UNIDROIT draft Principles are meant to support predictability and stability in carbon credit markets and can indirectly serve public international cooperation by ensuring a clear legal basis for private sector involvement.

79 A third expert sought clarification on the potential impact of draft Principle 4 on HCCH Members, in particular HCCH Members that are not Members of UNIDROIT. This expert noted that while Malaysia is not a member of UNIDROIT, it is a member of the HCCH and a party to various multilateral environmental agreements. The DSG responded that the HCCH has a distinct mandate from UNIDROIT. While the HCCH has over 90 Members, many of whom are not Members of UNIDROIT, it supports cooperation to avoid fragmentation and encourage coordination between institutions. Ms Previti asked for, and was given, the floor to indicate that while UNIDROIT is advancing its own transnational legal instrument in response to an urgent market need, the UNIDROIT WG welcomed the insights of the HCCH EG. She stressed that UNIDROIT is not attached to the text of its current draft and is eager to draw upon the collective expertise of both groups to develop the best possible applicable law provision.

### 2. Conclusion of next steps in relation to the work in cooperation with UNIDROIT concerning draft Principle 4

80 The DSG next invited the EG to consider the best way forward regarding the workstream of the EG focused on the applicable law provision to be included in the draft UNIDROIT Principles. The DSG recalled that the EG's mandate was to study PIL issues arising from carbon markets more broadly, but with an initial focus on contributing to Draft Principle 4 of the UNIDROIT Principles on VCCs. In this regard, the DSG noted that the UNIDROIT WG appeared to have already committed to including an applicable law provision in the draft Principles. The DSG stressed the role of the HCCH in contributing to that work.

81 Noting the discussions that had taken place earlier in relation to draft Principle 4, the DSG noted that members of the EG had indicated that there was a need for more time to form substantive positions on draft Principle 4, and that there was no consensus at that stage. The DSG acknowledged that several delegates had flagged the short turnaround for documentation as a challenge. The DSG noted that the delay in circulating documentation ahead of the meeting was due to necessary input being in a constant and rapid state of evolution. On behalf of the PB, the DSG regretted the inconvenience caused to members of the EG for the late circulation. The DSG reiterated that the HCCH, as always, intends to support and contributed to the work of the UNIDROIT WG on VCCs, and should not be viewed as critiquing it. She noted that this intention on the part of the HCCH should be clearly reflected in the meeting report.[…]

## V. Preliminary Report concerning the Inclusion of an Applicable Law Provision in the draft UNIDROIT Principles on VCCs (November 2024)

82 The DSG noted that, in 2024, the PB was invited by the UNIDROIT Secretariat to contribute to work on the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on Verified

[1] Nationally Determined Contributions (NDCs) are defined in Article 4(2) of the Paris Agreement as the climate action plans that each Party must prepare, communicate, and maintain. Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS No. 54113, art 4(2).

Carbon Credits, but lacked the mandate and resources to do so. Five *pro bono* experts, Pietro Franzina, Amy Held, Mary Keys, Alex Mills and Fabrizio Polido, volunteered their time and expertise from early 2024 until March 2025 to support the PB as consultants in their personal capacities. Their work culminated in a *Preliminary Report*,[2] which was submitted to UNIDROIT's WG and to HCCH Members. With the establishment of the HCCH EG on Carbon Markets, these five experts nominated by HCCH Members or Observer organisations to join the newly established EG, and no longer served in their personal capacities.

83 The DSG noted that some members of the HCCH EG had requested a walkthrough of the *Preliminary Report* at this first meeting of the EG, so that the EG could benefit from the expert work that had already been done at the HCCH last year. Given that all five experts are sitting on the EG, albeit now in different capacities, the PB requested that the walkthrough be presented by the authors of the *Preliminary Report*. Ms Amy Held would kindly be presenting the content and findings of the *Preliminary Report* in her personal capacity.

***Presentation by Ms Amy Held (sitting in her personal capacity as a pro bono consultant to the PB)***

84 Ms Held explained that the *Preliminary Report* was written based on the draft UNIDROIT Principles on VCCs circulated on 27 June 2024, which did not include an applicable law provision at the time. Ms. Held explained the following key points of the Report:

a. The Experts were specifically asked to exclusively focus on one aspect of PIL, applicable law.

b. The focus was limited to one stage of the VCC lifecycle, specifically the period between issuance and retirement, and only on the rights of the VCC holder when it has been issued by a registry. The experts considered proprietary and insolvency issues arising at that stage of the lifecycle.

c. Their analysis was based primarily on Draft Principle 3 (as of June 2024), since Draft Principle 4 did not yet exist.

85 Ms Held presented the four sections of the report: 1. General PIL considerations, 2. Issues specific to carbon markets, 3. Applicable law provisions for proprietary issues in VCCs, 4. Analogies.

86 On the first section on *General PIL considerations*, Ms Held explained that it addressed the request to focus exclusively on applicable law in the context of VCCs, while acknowledging that, in practice, applicable law could not be considered in isolation from other aspects of PIL such as jurisdiction, and recognition and enforcement. Ms Held explained that this section discussed the relationship between jurisdiction and applicable law, and policy considerations. She noted that the forum court decides three key things about applicable law:

a. Which country's applicable law rules apply? Ms Held explained that courts will always use their own domestic rule, whether purely national or implementing an international rule such as those in an HCCH Convention.

b. Which category of applicable law rule applies to the case? Ms Held explained that this is a process called characterisation, which is done under the court's own domestic law.

[2] Preliminary Report concerning the Inclusion of an Applicable Law Provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (Preliminary Report), by Professor Pietro Franzina (Italy), Amy Held (United Kingdom), Professor Mary Keyes (Australia), Professor Alex Mills (Australia and Ireland), and Professor Fabrício Bertini Pasquot Polido (Brazil), available in the Annex of Prel. Doc. No 6 CGAP 2025.

c. Should the applicable law rule be disapplied? Ms Held explained that the applicable law rule is disapplied if the result offends the court's public policy or overriding mandatory rules.

87 Ms Held explained that although jurisdiction may appear to be a separate question, it is critically important to the consideration of which rules would determine applicable law since it is the court that has jurisdiction which would decide how the applicable law rule will be applied.

88 Regarding policy considerations, Ms Held emphasised that a framework to determine the applicable law promotes cross-border legal certainty. However, she pointed out that it was also crucial to recognise that applicable law rules allocate authority over private law matters to a particular country. Therefore, she emphasised that applicable law rules should be informed by State consensus.

89 On the second section on *Issues Specific to Carbon Markets*, particularly the stage between issuance and retirement of a VCC, Ms Held emphasised two points: the interplay between public and private interests as well as the complex and competing private interests. Regarding the first point, Ms Held explained that while commercial actors may see the trading of credits as a self-contained environment of private interests, carbon markets ultimately emerge from a broader public context rooted in the UNFCCC. All carbon markets, whether compliance or voluntary, serve public goals like climate action, sustainability, and energy security. Regarding the second point, Ms Held explained that contractual relationships throughout the VCC lifecycle vary depending on the project type and stakeholders. While the contracts may be legally independent due to privity of contract, they are still interconnected within the overall value chain. Ms Held concluded that PIL issues arise at all stages of a VCC's lifecycle, making it unrealistic to isolate just one stage in the analysis. If applicable law rules are to focus on a specific moment, they must still consider how the rule fits that moment, how it interacts with rules for other lifecycle stages, and the broader implications of legal changes across the lifecycle. Because of these complexities, Ms Held explained that the *Preliminary Report* did not propose concrete solutions. Instead, the *Preliminary Report* aimed to illustrate key issues and recommended that policy implications be fully debated among States and ideally be agreed upon multilaterally.

90 On the third section on *Applicable law provisions for proprietary issues in VCCs*, Ms Held first noted that it was unclear whether the applicable law rule was meant to apply only to the issues excluded from the main principles (per Principle 3(3)) or to all issues involving VCCs. The *Preliminary Report* interpreted it as applying to the excluded proprietary and contractual issues. Second, Ms Held explained that *the pro* bono experts had understood that the objective of the draft Principle on applicable law would determine what kind of rights a VCC holder has at the moment of the issuance of the VCC. However, the findings in the *Preliminary Report* questioned whether this would be better addressed as substantive uniform law rather than through PIL to reduce uncertainty and conflict of laws risks. Third, the *Preliminary Report* highlighted the need to reconcile possible divergent outcomes between PIL and the UNIDROIT Principles' normative approach. If courts were to apply contractual PIL rules, this may undermine the intended proprietary status of VCCs.

91 On the fourth section on *Analogies*, Ms Held explained that the *Preliminary Report* used analogies to concretise the legal complexities around VCCs. The *Preliminary Report* explored different possible legal characterisations of VCCs and the PIL implications of each:

a. If VCCs were seen as rights arising under contract, then PIL rules on the assignment of claims might apply. However, Ms. Held explained that different jurisdictions interpret such claims differently, and therefore, this approach may not align with the goals of draft Principle 3(1).

b. If VCCs were tokenised, they could be compared to negotiable instruments (paper or digital), raising questions about the legal treatment of the token vis-a-vis the underlying right, especially if the underlying right is reversed but the token remains.

c. Another approach was to focus on VCCs as registered rights, depending on how the registry operates. This would require analysing user agreements, internal procedures and inter-registry transfers.

d. Since the majority of VCCs arise from nature-based projects, an analogy to rights in land was considered. While the choice-of-law rule here (*lex situs*) was clear, its application was difficult because land law is highly driven by public policy. Most jurisdictions treat it as overriding mandatory law, giving States full control over property within their territory.

92 The *Preliminary Report* concluded by acknowledging that while the *pro bono* experts originally did not expect PIL to be included in the UNIDROIT Principles, they understood the desire for such a provision. As a compromise, they suggested:

a. A standard clause clarifying that the UNIDROIT Principles would not affect PIL; or

b. A placeholder clause leaving room for future PIL provisions after more work was done at the HCCH.

*Discussion*

93 The floor was open for discussion. An expert commending the work that went into the *Preliminary Report*, commenting that he appreciated the inclusion of an applicable law provision as a starting point for discussion. However, he expressed some reservations, particularly with the term "VCC," which he found imprecise in his practical experience. He noted that more specific terms like "emission reduction" or "emission removal" would be better, since the term "VCC" could carry unclear assumptions, especially around double counting and exclusivity of claims. The expert also cautioned against treating VCCs as property-linked commodities (*e.g.*, tied to land or trees) since the value of a carbon credit depends on the effort or activity undertaken like planting trees or preserving forests, not merely on the ownership of land. He appreciated the suggestion to consider the full lifecycle of carbon credits and noted the relevance of pre-issuance actions. He also referenced the broader context of "carbon rights" and how these may or may not align with the legal frameworks being proposed.

94 Mr Alex Mills emphasised the need to consider not just the technical complexities of VCCs, but also the broader framing of the issues. On the one hand, VCCs could be viewed abstractly, like any other tradable asset in a registry. On the other hand, they are deeply tied to real-world interests and public policy, such as land use restrictions. A key challenge was determining how, and to what extent, applicable law rules should account for these public interests. He noted that UNIDROIT's current ambition appeared to be isolating the proprietary aspects of VCC trading in an abstract way. However, the broader mandate of the HCCH EG allows for a wider framing, so this expert encouraged the HCCH EG to reflect on this important point.

95 Another expert reflected on the broader purpose of the EG's work, emphasising the need for a holistic and practical approach to understanding carbon markets. Carbon credits, including VCCs, can take many forms and serve diverse functions. These varying use cases raise complex, interrelated legal and policy questions. This expert warned against narrowly focusing on individual aspects of the market without appreciating the bigger picture. He expressed a desire for the EG to stay open, flexible, and responsive to emerging insights, to effectively support the work of sister organisations and avoid premature conclusions.

96 The representative of UNIDROIT took the floor to state that, institutionally, UNIDROIT did not support the Preliminary Report. She further stated that she was under instructions not to discuss the contents of the Report, but welcomed the opportunity to focus on the now-available draft Principle 4 and to receive input on that draft. She emphasised that the mandate of the UNIDROIT WG was limited to developing an applicable law provision within the narrow context of their instrument, which specifically addresses proprietary rights and focuses on a particular point in the lifecycle of VCCs. She noted that the work at UNIDROIT did not necessarily override or displace several of the PIL and applicable law issues that arise at other stages of the lifecycle of carbon credits.

97 The DSG acknowledged the statement of the representative of UNIDROIT. The DSG noted that the Preliminary Report had been submitted to HCCH Members, and that the presentation had taken place in response to requests from the EG for a walkthrough of the Preliminary Report during the EG meeting. She acknowledged that UNIDROIT was entitled to decide whether they were in support of the Preliminary Report or not. As to the two institutions and how they work, and being respectful of each other's mandates and positions, the DSG emphasised that it was important to clarify that the HCCH understood, based on contemporary Secretariat-to-Secretariat exchanges, that the HCCH EG was not bound by the text of draft Principle 4 that was presented by UNIDROIT experts. The Permanent Bureau had been given to understand that, while consideration of the text of the draft Principle 4 was helpful, particularly in light of UNIDROIT's tight timeline, the UNIDROIT Secretariat had represented to the Permanent Bureau that the HCCH EG need not even take the draft text as a starting point if the HCCH EG preferred not to do so. The DSG requested clarification in case this understanding was incorrect.

98 The representative of UNIDROIT acknowledged that the HCCH EG was free to propose any tweaks to the UNIDROIT WG's proposed text of draft Principle 4, including by using different language or suggesting an alternative proposal. She welcomed any feedback from the HCCH EG. She emphasised, however, that any feedback from the HCCH WG would be relayed to UNIDROIT's constituents and governing bodies for consideration, and that UNIDROIT's governing bodies would be the ones to decide whether to accept the input from the HCCH. She reiterated that it was ultimately up to UNIDROIT to decide whether and how to proceed with input from the HCCH.

99 The DSG thanked the *pro bono* consultants, in particular Ms Amy Held for having presented the Preliminary Report. She noted the broad mandate conferred upon the HCCH EG by CGAP to study PIL issues arising in the carbon markets. She further noted that the initial focus of that mandate was for the EG to contribute to UNIDROIT's Project, assuming such contribution was acceptable to UNIDROIT. The DSG acknowledged the statement of the representative of UNIDROIT that the UNIDROIT representative was under instructions not to discuss the contents of the Preliminary Report. The DSG noted, however, that the HCCH EG was under no such restriction. Therefore, if HCCH Members or members of the EG intended to discuss the Preliminary Report, such a discussion would naturally take place within the work of the HCCH EG.

## VI. Issues Paper

100 The EG was referred to the Issues Paper circulated ahead of the meeting and the floor was opened to discuss the questions listed in the Issues Paper.

### A. General comments

101 The representative of UNIDROIT asked for, and took, the floor to comment on the Issues Paper prepared by the HCCH. First, he acknowledged that the Issues Paper raises many questions, some of which the UNIDROIT WG on VCCs did not intend to address, such as jurisdiction, which he agreed

were important questions. He stated, however, that the HCCH had been working on Jurisdiction for over 45 years without reaching a conclusion. He cautioned that jurisdiction remains a very tricky issue, especially given the diversity of cases and venues involved. He disagreed that harmonising PIL would be ineffective without addressing jurisdiction, arguing that harmonising applicable law rules alone is a valuable contribution to legal certainty. If jurisdictions apply the same method to determine applicable law, they will apply the same law regardless of where a case is brought. This, he said, is the core purpose of PIL harmonisation and has been successfully achieved in past HCCH Conventions, such as those on traffic accidents and product liability, even without jurisdiction rules.

102 Second, the representative of UNIDROIT elaborated on the scope of UNIDROIT's work, clarifying that UNIDROIT was tasked to provide legal certainty in the secondary market for VCCs, not to regulate project-level issues such as land rights or verification. He noted that these matters were complex and policy-heavy, and UNIDROIT did not consider itself competent to address them. Instead, the focus of the UNIDROIT WG's work was on title to VCCs: who owns them, what has been acquired, and whether they could be used as collateral or own funds. He noted that, without legal certainty on these questions, institutional investors may avoid the market, undermining its role in the fight against climate change.

103 Third, the representative of UNIDROIT noted that the approach taken in draft Principle 4, which focused on the law applicable to proprietary rights, was technical and modest. He acknowledged that different jurisdictions may treat title differently but emphasised that trying to tie VCCs to specific land would be impractical, especially for cross-border projects. He reiterated that UNIDROIT's focus was narrow and practical: to support the market by clarifying title and applicable law. He therefore noted that UNIDROIT welcomed contributions from the HCCH specifically on draft Principle 4 and suggested that, given the "strict timeline", the HCCH EG focuses on the text of this provision in its next two sessions. He opined that broader issues such as jurisdiction, contracts, and project-level concerns could be addressed separately by the HCCH, but should not distract from the immediate task at hand.

104 The DSG thanked the representative of UNIDROIT for reminding the EG of the different mandates of the HCCH and UNIDROIT, and of the work that the HCCH had done on issues relating to jurisdiction. However, she clarified that the representative of UNIDROIT was referring to the work of a separate HCCH Working Group – the HCCH Working Group on Jurisdiction. The DSG clarified that that Working Group was in fact considering issues arising in parallel proceedings and related actions. She also noted that that that project was progressing well and may advance soon to the Special Commission stage.

105 Turning back to the Project on Carbon Markets that was under consideration by this EG, the DSG agreed with the view of the representative of UNIDROIT of the value of harmonising PIL rules and thanked the representative of UNIDROIT for noting the continued relevance of the work of the HCCH. However, the DSG reiterated that, based on prior and ongoing communications with the UNIDROIT Secretariat, it is the Permanent Bureau's understanding that, while the HCCH could choose to provide input on the existing text of draft Principle 4 as currently presented, it was not bound to that proposed draft text. Nor did the UNIDROIT Secretariat consider itself bound by the text of draft Principle 4. Instead, the UNIDROIT Secretariat had affirmed, including in the previous day of the EG meeting, that the EG could of course consider alternative approaches to applicable law. This would be, in the HCCH's view, a natural part of the broader mandate of the EG. The DSG emphasised that if this understanding was incorrect, the Permanent Bureau would be happy to clarify the matter directly with the UNIDROIT Secretariat. This could take place informally or during the upcoming tripartite coordination meeting in June, which would provide an opportunity to align expectations and avoid burdening the EG with procedural questions. The DSG also noted that the broader mandate of the EG is reflected in the questions raised in the Issues Paper which,

unsurprisingly, includes questions beyond the EG's initial focus on contributing to the applicable law provision to be included in the draft UNIDROIT Principles.

## B. Carbon markets: preliminary considerations

106 An expert took the floor to provide a policy-oriented overview of the evolution of carbon markets since the Kyoto Protocol. He highlighted the shift from project-based mechanisms, such as the Clean Development Mechanism (CDM) and Joint Implementation (JI), to the Article 6.4 mechanism under the Paris Agreement. He emphasised the growing interplay between UNFCCC-created units and those issued by independent crediting standards such as Verra and Gold Standard. He noted that the UK was actively consulting on how to support the growth of high-integrity carbon markets, referencing frameworks like the Integrity Council for the Voluntary Carbon Market (ICVCM) and the Voluntary Carbon Market Integrity Initiative (VCMI). These initiatives aim to set benchmarks for both the quality of credits and their appropriate use. The expert also noted that UNIDROIT's definition of a verified carbon credit (VCC) recognised two end uses: voluntary action and compliance within emissions trading schemes. He acknowledged, however, that while there was some alignment between UNFCCC mechanisms and independent standards, significant variation remained in how credits were applied and interpreted.

107 Another expert took the floor and echoed the historical perspective just provided, noting that under the Kyoto Protocol, voluntary carbon markets primarily emerged in countries without emissions targets. In contrast, the Paris Agreement had changed the landscape by assigning targets to nearly all countries, prompting voluntary standards to reconsider their frameworks. He outlined the multi-layered nature of today's carbon markets, including: a) International transfers under Article 6 (Internationally Transferred Mitigation Outcomes, or "ITMOs"),[1] b) Voluntary markets with varying degrees of government authorisation, and c) Sector-specific schemes like the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This expert emphasised the proliferation of registries, especially in host countries, and the resulting complexity. Despite acknowledging the point made by the representative of UNIDROIT about the difficulty of identifying land-based project locations, he stressed that this fragmented registry landscape was a reality that must be addressed.

### 1. Overview of developments per jurisdiction

108 Following on the questions raised in the Issues Paper, members of the EG were asked to provide updates on developments in their respective jurisdictions.

109 An expert presented an overview of China's national carbon market, emphasising its dual structure and recent progress. The Chinese compliance market, launched in 2021, currently covers around 8 billion tons of emissions annually and has expanded from one to four industries, with plans to include eight. Entities emitting over 26,000 tons per year must surrender allowances via a centralised registry in Wuhan, while trading occurs in Shanghai. The voluntary carbon market (CCER) was officially launched in 2024, with trading beginning in March 2025, and allows compliance entities to use up to 5% of CCER credits for offsetting. This system operates through separate registries and trading platforms across three cities, reflecting a coordinated but

[1] Under Article 6 of the Paris Agreement, Internationally Transferred Mitigation Outcomes (ITMOs) are defined as units representing greenhouse gas (GHG) emission reductions or removals that can be transferred between countries to help meet their Nationally Determined Contributions (NDCs) or other climate-related objectives. See: UNFCCC, Overview of Article 6 of the Paris Agreement (Webinar I, 22 August 2023) https://unfccc.int/sites/default/files/resource/Webinar%20I_Overview%20of%20Art.6%20of%20the%20PA.pdf accessed 16 July 2025.

distributed infrastructure. The expert also noted that China was developing its regulatory framework for international carbon trading and considering its role under Articles 6.2 and 6.4 of the Paris Agreement.

110 Another expert explained that the country has explored establishing an emissions trading system (ETS), but its small market size limits its viability unless it is linked with regional or international markets. Despite years of work, including support from the World Bank, progress on a domestic ETS has been limited. However, Chile has advanced in bilateral cooperation under Article 6.2, signing implementation agreements with countries like Switzerland and Singapore, and is considering adapting its Joint Crediting Mechanism (JCM) with Japan. Looking ahead, Chile may also act as a buyer of carbon credits, potentially in collaboration with other Latin American countries.

### 2. Ex-ante credits and project lifecycle

111 The EG then turned to consider the treatment of ex-ante carbon credits (*i.e.*, units issued before emission reductions are verified). An expert emphasised that such credits, though not yet verified, are often developed under standards that ensure future verification, and excluding them outright may be premature. Another expert supported this view, citing the system in the UK of "pending issuance units" under the Woodland Carbon Code, which clearly indicates their provisional status. The expert also emphasised the importance of distinguishing between a project lifecycle (from planning to implementation) and a credit lifecycle (from issuance to retirement), noting that clarity in terminology was crucial.

### 3. Integrity of carbon credits: the discussion on safeguards

112 An expert emphasised the critical importance of environmental integrity in carbon market mechanisms, especially under the Paris Agreement framework, which differs from the Kyoto Protocol by relying on NDCs rather than binding targets. He warned that if carbon markets under Article 6 fail to uphold environmental integrity, it could undermine both the effectiveness and legitimacy of the Paris Agreement. Key concerns include avoiding double-counting, which can occur if corresponding adjustments are not ensured, and ensuring additionality, meaning that credited activities must go beyond existing national policies and actions. Without additionality, carbon markets offer no added value or climate benefit. The expert highlighted the role of environmental and human rights safeguards, noting that, for example, Chilean regulations allow for the revocation of authorisation for mitigation outcomes if courts find violations of environmental laws or human rights. This raises complex legal and traceability issues, especially when such credits circulate in secondary markets.

### 4. Actors and rights related to carbon credits

113 An expert outlined the multiple layers and actors involved in international carbon credit transactions. He described a typical scenario involving a host government (*e.g.*, Chile), which may issue letters of authorisation either through bilateral agreements or unilaterally – for instance, to supply credits to the international aviation market. A project developer operates a mitigation project, such as a restoration initiative, while a foreign airline, subject to compliance obligations, purchases credits to meet its requirements. These credits, often processed through the voluntary carbon market, must be recognised as ITMO-ready. The key actors in this system include the project developer, the purchasing entity (*e.g.*, the airline), the compliance system, the voluntary market infrastructure, and the host government.

114 Another expert outlined a range of upstream stakeholders involved in carbon credit systems, including governments, government agencies, project developers, investors, local communities

(especially in nature-based projects), and validators/verifiers. He emphasised that these actors are connected through various contractual and legal relationships, and that civil society groups may also play a role in holding developers accountable. He later added that these actors span both upstream and downstream roles, and that the UNFCCC Article 6.2 database, which is populated upstream, serves as a critical reference point for downstream activities.

115 A third expert expanded on this by highlighting the role of landowners, particularly in nature-based solutions where land rights are directly implicated. He also emphasised the role of international organisations, particularly the UNFCCC Secretariat, which manages the Article 6.2 database. While the Secretariat lacks legal enforcement powers, it can flag inconsistencies in reporting or corresponding adjustments, potentially triggering state-level legal consequences. This database acts as a centralised hub linking national registries and reports, helping to identify discrepancies and uphold environmental integrity. In response, the DSG acknowledged the importance of these contributions and confirmed that paragraph 84 of the Issues Paper, which lists relevant actors, would be updated to include landowners and the UNFCCC database. These additions would reflect the full complexity of actors involved in carbon markets and ensure that both legal and operational dimensions are properly captured.

116 A fourth expert reflected on the earlier exchanges and emphasised that the legal challenges in carbon markets went beyond determining the applicable law. From a PIL, issues such as the recognition of judgments, legal measures, and cross-border cooperation were equally important. For example, although the UNFCCC Article 6.2 database lacks binding authority, it played a crucial role in facilitating transparency and communication between states. The expert noted that such cooperative mechanisms were central to how international systems function, even when they don't carry binding legal force. This perspective supports a holistic approach to PIL in the context of carbon markets, recognising the importance of both legal frameworks and practical cooperation tools. The DSG referred the EG to mechanisms used in the HCCH, where cooperation networks are established through Conventions. These networks did not necessarily regulate PIL directly but provided platforms for information exchange and coordination, providing the example of the 1961 Apostille Convention, which simplified document authentication without altering the documents themselves.

117 The second expert who spoke on this point raised a point of clarification regarding conflict of laws. He expressed uncertainty about whether the conflict of laws issues discussed were directly related to the UNIDROIT Principles. He questioned whether the current discussions had clearly established the applicable law in contexts outside of insolvency and collateral. This expert highlighted concerns that downstream stakeholders might be disadvantaged if subject to the *lex registri,* the law of the jurisdiction where the registry is located, particularly if this did not adequately protect their interests. He noted that the issue warranted further consideration. The DSG thanked this expert for his thoughtful intervention, although it was noted that no further comments were raised in response. It was observed that several delegations were reserving their positions and that these matters could be revisited during intersessional work.

### 5. Types of carbon projects and the issue of characterisation

118 The DSG introduced this topic, referencing paragraphs 36-40 of the Issues Paper. The DSG noted that the PB had conducted a preliminary analysis of various project types that generate carbon credits, including their legal characteristics and the potential PIL implications. Particular attention had been given in this preliminary analysis to projects in the agriculture, forestry, and other land use (AFOLU) sector, which often involve buffer pools and raise questions of fungibility. The DSG moreover noted that if two credits within the same registry were subject to different applicable laws,

they may not be considered fungible, as parties may be unwilling to exchange credits governed by differing legal regimes. This was, therefore, one of several PIL issues that merited further exploration.

119 A non-exhaustive list of nine project types was presented, based on data from the Berkeley Voluntary Registry Offsets Database. It was noted that the majority of existing credits in the market originated from forestry and land use projects, followed by renewable energy initiatives. The DSG then introduced Questions 9 through 14 of the Issues Paper for the EG's consideration. These questions addressed:

a. The legal frameworks governing long-term commitments in nature-based versus non-nature-based projects;

b. Jurisdiction-dependent public policy concerns, particularly in relation to land use and property for carbon projects tied to land titles;

c. The legal distinctions between projects tied to land and those that are not;

d. Differences in contractual and legal relationships across project types and their implications for PIL;

e. Whether these differences justify special PIL rules or inclusions/exclusions from scope; and

f. Whether alternative typologies of carbon projects should be considered beyond those included in the Issues Paper.

120 The DSG invited input from the EG members on these questions, particularly regarding their relevance and completeness, and encouraged the EG Members to suggest additional questions or identify any that may not be pertinent.

121 An expert offered reflections on the typology distinguishing carbon projects tied to land from those that are not. He highlighted the relevance of this distinction in the context of Carbon Capture and Storage (CCS) projects, which, while technologically driven, are inherently linked to land in two key respects. First, the physical injection of $CO_2$ into underground formations, such as deserts or mountains, required consideration of land ownership and its impact on project operations. Second, CCS projects involved long-term liability for monitoring the stored $CO_2$, which typically extended beyond the lifespan of private entities. The expert noted that such liabilities were often transferred to governments after a period of approximately 100 years, underscoring the enduring nature of these commitments. He concluded that the land-based versus non-land-based typology may be a useful framework for analysing carbon projects from a PIL perspective.

122 Following this, another expert reiterated a previous point regarding the importance of aligning the scope of carbon projects with international scientific standards, particularly those established by the Intergovernmental Panel on Climate Change (IPCC). He emphasised the need for scientific soundness in the legal treatment of such projects.

123 A third expert addressed Question 9 of the Issues Paper, proposing a refinement to the question's wording to suggest a clearer separation between the two parts of the question. He argued that the duration of commitments was the most legally significant factor. Long-term obligations, he noted, were likely to affect proprietary rights and thus merited close attention in PIL analysis. He also advocated for a broad interpretation of "commitments and obligations", encompassing various forms of regulation, consultation processes, and administrative oversight. While he found the current language acceptable, he recommended considering broader terminology in future iterations of the document. The DSG clarified that the term "regulations" had been avoided to prevent confusion with mandatory rules but acknowledged the suggestion and agreed to revisit the language.

124 A fourth expert shared insights from her jurisdiction, noting that Malaysia was in the process of developing a national climate change bill and a carbon crediting programme for the forestry sector. These initiatives were being led by the Ministry of Natural Resources and Environmental Sustainability and the Malaysia Forest Fund. Given the evolving nature of these frameworks, Malaysia was not yet in a position to assess the full impact of the PIL issues discussed, particularly those related to proprietary rights. Nonetheless, the delegate expressed appreciation for the relevance of the discussions to Malaysia's ongoing policy development.

125 A fifth expert emphasised what he viewed as a central question in the discussions: the determination of the applicable law in the context of carbon credit projects. He emphasised that this issue was closely tied to the legal classification of rights associated with such projects, particularly in relation to property and non-property rights. In some legal systems, credits derived from land use were considered "fruits" of the land, inherently linked to the rights of the landowner. In others, the relationship may be purely contractual, with rights and obligations arising independently of land ownership. This expert stressed that these distinctions carried significant legal implications, especially as credits began to circulate across different markets. He noted that nature-based solution projects, such as forestry initiatives, presented more complex legal challenges than technology-based projects like renewable energy or carbon capture. He also raised the issue of indigenous peoples' rights and traditional knowledge, acknowledging that while the legal implications of these aspects may not be fully defined, they were nonetheless crucial in distinguishing nature-based projects from others.

126 A sixth expert suggested that the Issues Paper included examples of PIL considerations to help non-legal experts better understand the issues. He also echoed the Chilean delegate's point that legal contexts vary significantly across jurisdictions, with different rules applying to different types of projects. This expert reiterated his earlier concern about the UNIDROIT proposal, questioning whether its approach to defining "title", particularly in the context of collateral and security, might have unintended consequences for the broader carbon market. He acknowledged the need for a deeper understanding of how title was defined and applied in the UNIDROIT framework, especially in light of its potential impact on market functionality.

127 The DSG thanked the speakers and confirmed that these points had been recorded for inclusion in the meeting report and future iterations of the Issues Paper.

128 A seventh expert further reflected on the challenges surrounding the legal treatment of carbon rights, particularly from a PIL perspective. Building on earlier remarks from delegates from various jurisdictions, he noted that many countries hosting carbon projects were grappling with the definition and classification of carbon rights and credits. These concepts were often inconsistently treated, sometimes merged, sometimes separated, and the resulting legal landscape was frequently fragmented and unclear. This expert observed that non-land-based projects, such as those in the voluntary carbon credit sector, tend to operate smoothly under contractual arrangements, with few legal complications. In contrast, land-based and forestry-related projects consistently present legal challenges due to the complex interplay of rights and interests, including those of indigenous communities, landowners, and local stakeholders. He emphasised the importance of the pre-issuance phase, where concerns about ownership and rights were most pronounced. He explained that in many jurisdictions, the absence of clear legal provisions has led to *ad hoc* definitions of carbon rights, often embedded within sector-specific legislation such as forestry or climate change laws. These definitions may include title to carbon credits, but their connection to broader constitutional and legislative frameworks was often ambiguous. Moreover, the distinction between underlying rights and registry-based assets remained unclear, complicating efforts to establish a coherent legal approach.

129 The DSG acknowledged these observations and noted that similar concerns had been raised during the Technical Roundtable, particularly by industry stakeholders and investors. There was broad recognition that, while current practice is largely contractual, a need exists to bridge the gap between existing arrangements and aspirational legal frameworks. From a PIL standpoint, the characterisation of rights remained a critical issue that must be addressed to support the development of effective and equitable legal structures for carbon markets.

130 An eighth expert raised a question regarding the scope and prioritisation of issues under consideration, noting that defining the scope of a legal inquiry often comes down to resource constraints and prioritisation. She reflected on earlier comments from the seventh expert to take the floor in this discussion, observing that while some carbon projects, particularly those not tied to land, operated smoothly under contractual arrangements, land-based projects presented more pressing legal challenges due to unresolved questions around rights and ownership. This expert asked whether these land-based projects are prevalent enough to justify prioritising them in the EG's work. In response, the seventh expert to take the floor in this discussion confirmed that land-based projects are not a niche issue. He explained that while earlier mechanisms such as the Clean Development Mechanism (CDM) focused on industrial and energy-based projects, the voluntary carbon market has shifted significantly toward land-based and removal-focused projects. These now represent a substantial portion of the market and are central to the evolving standards and frameworks under the Paris Agreement. To support this point, the DSG presented data showing that, as of February 2025, over 814 million carbon credits had been issued from forestry and land use projects, making them by far the largest source of credits, followed by renewable energy.[1]

131 The third expert to take the floor in this discussion then returned to the earlier point on the diversity of legal systems and the classification of rights. Referring to the discussion of carbon credits as potential "fruits" of land, he highlighted the challenges of harmonising substantive private law across jurisdictions. However, he noted that from a PIL perspective, the situation was somewhat more manageable. He explained that instruments like the UNIDROIT Principles often began with broad definitions to accommodate diverse legal traditions. The term "proprietary rights," for instance, was intentionally flexible to capture a wide range of legal constructs. Under this approach, once a right was characterised as proprietary, the applicable law determined its specific nature, such as whether it constituted a "fruit" of the land under the relevant domestic law. He also noted that mandatory rules of the forum will apply regardless of the applicable law, based on the forum's own classification system. This technique, he suggested, helps navigate the complexity of legal diversity while maintaining coherence in PIL frameworks.

132 The fifth expert to take the floor in this discussion returned to the floor to raise a question regarding the use of the term "proprietary rights" in the draft UNIDROIT Principles. He expressed concern that, by characterising rights in carbon credits as proprietary, the document may be prejudging their legal classification under the substantive laws of different jurisdictions. He asked whether the term was intended to exclude contractual arrangements, or whether proprietary rights could also be derived from contracts, depending on the legal system. In response, the third expert to take the floor in this discussion acknowledged the complexity of the issue and offered a brief explanation. He noted that the interplay between contractual and proprietary rights is not new and arises in many legal contexts, for example, when purchasing a house or a car. While such transactions are initiated

[1] See para. 40 of the Issues Paper, which reads "According to the Berkeley Voluntary Registry Offsets Database, the majority of carbon credits issued worldwide to date originate from forestry and land use projects (est. 840,446,116), followed renewable energy projects (est. 729,776,730). Source: Barbara K Haya, Tyler Bernard, Aline Abayo, Xinyun Rong, Ivy S So, Micah Elias. (2025, March). Voluntary Registry Offsets Database v2025-02, Berkeley Carbon Trading Project, University of California, Berkeley. Retrieved from: https://gspp.berkeley.edu/faculty-and-impact/centers/cepp/projects/berkeley-carbon-trading-project/offsets-database

through contracts, they ultimately result in the acquisition of proprietary rights. He explained that, for legal analysis, it is often necessary to distinguish between contractual issues (e.g. validity, interpretation) and proprietary issues (e.g. ownership, transferability), which may be governed by different applicable laws.

133 The fifth expert to take the floor in this discussion reiterated his concern, suggesting that the draft UNIDROIT Principles' reference to "proprietary rights" might inadvertently impose a classification that conflicts with how carbon credits are treated under national laws, particularly in jurisdictions where such rights are considered contractual in nature.

134 The DSG then took the floor to provide historical context. She noted that similar challenges had arisen during the development of the HCCH 2006 Securities Convention, where early drafts focused on proprietary rights in securities held with intermediaries. However, due to the difficulty of drawing clear lines between property and contract, the drafters ultimately abandoned this terminology as a basis for defining the Convention's scope. The DSG also referenced more recent work on digital tokens, where the distinction between property-adjacent contractual rights and contract-adjacent property rights proved equally problematic. In that context, translation issues, particularly in French and Spanish, further complicated the use of the term "proprietary." For example, in Spanish, the term *propiedad* or *dominio* carries specific legal connotations that may not align with the broader English usage of "proprietary rights". The DSG encouraged the EG to remain mindful of comparative legal and linguistic challenges.

135 The sixth expert to take the floor in this discussion noted that the draft UNIDROIT Principles appeared to suggest that proprietary rights were created at the point of registration of a carbon credit. He questioned what exactly that right entails: whether it was limited to collateral and insolvency contexts, or whether it implied a broader form of ownership. He acknowledged the uncertainty surrounding this issue and its potential implications for market functionality.

136 The eight expert to take the floor in this discussion echoed these concerns, recalling earlier discussions about the difficulty of using "property" and "contract" language in international legal instruments. She emphasised the need for further reflection before attempting to resolve these issues at the international level. She also highlighted the potential conflict between national classifications, such as the treatment of carbon credits as "civil fruits", and the assumptions embedded in the draft UNIDROIT Principles. She encouraged further dialogue on how these different legal regimes would interact.

### 6. Clarification concerning the term "proprietary rights" in the context of the draft UNIDROIT Principles

137 The DSG acknowledged the importance of these contributions and noted that the representative of UNIDROIT had requested the floor to respond and to clarify the intended meaning and scope of the term "proprietary rights" as used in the draft UNIDROIT Principles. The representative of UNIDROIT noted that, while the distinction between contract and property could be complex, it was not unfamiliar. He referenced the HCCH 2006 Securities Convention, where similar issues were addressed by avoiding the term "property" and instead referring to "rights in respect of intermediated securities", which essentially referred to *title* rather than the rights arising from the securities themselves. The representative of UNIDROIT explained that the UNIDROIT WG on VCCs adopted a similar approach: the term "proprietary rights" was used to refer specifically to title to VCCs, not to any contractual claims or rights arising from the underlying projects. He emphasised that the scope of the UNIDROIT project was deliberately narrow, focusing exclusively on the secondary market, that is, the legal issues that arise after a VCC has been issued and registered, particularly when it is transferred between investors.

138 The representative of UNIDROIT clarified that the draft UNIDROIT Principles do not address the creation of VCCs, the underlying contractual arrangements, or the project-level relationships. Instead, the draft UNIDROIT Principles were concerned solely with determining which law applies to proprietary issues, specifically, the transfer of title between parties in the secondary market. He also noted that, according to industry input, VCCs did not necessarily represent a contractual claim but rather a representation of a verified reduction, removal, or avoidance of carbon dioxide. These credits were validated by standard-setting bodies and verifiers, but they did not inherently carry enforceable claims.

139 By way of clarification, the DSG asked the representative of UNIDROIT if the limited scope of the draft UNIDROIT Principles as he described would be explicitly described in the text of the Principles or in the commentary to the Principles. In response, the representative of UNIDROIT noted that this limited scope could be made more explicit in the commentary to draft Principle 4. While the broader explanatory materials already clarified this point, he acknowledged that further emphasis on this point in the commentary to draft Principle 4 would help avoid misunderstanding of the scope of the applicable law rule.

### 7. Upstream project failures and impact on carbon rights

140 An expert raised a practical question regarding the legal recourse available to credit holders when issues arise upstream in the carbon credit lifecycle. He described a scenario in which a project is later found to be flawed due to misconduct by the project developer or verifier, resulting in the downgrading or devaluation of the associated credit. In such cases, credit holders may suffer financial losses and seek to pursue legal action. The expert asked what avenues of recourse are available in such situations, particularly in terms of jurisdiction and applicable law.

141 The representative of UNIDROIT explained that, under the current text of the draft UNIDROIT Principles, there was no recourse available from the VCC itself in such cases. If a credit turned out to be of lower quality than expected, this affected its market value, but not the title to the credit. He drew an analogy to the purchase of a bond from an issuer later found to be financially unstable: while the bond's value may decline, the buyer's ownership (title) remains unaffected. The representative of UNIDROIT then noted that the more difficult legal question arose when an issuer cancelled or revoked a VCC after it had been issued. This scenario, in which a registered asset was later invalidated, did not find a clear precedent in the world of intermediated securities and presented a novel challenge. The UNIDROIT WG on VCCs was still considering how best to address this issue. For now, the working assumption was that the law of the registry should govern such matters, since the registry was the authoritative source of the credit's existence and status. However, the representative of UNIDROIT indicated that the UNIDROIT WG would be open to alternative proposals, particularly from the HCCH EG.

142 Several experts offered final reflections on the implications of upstream project failures and the legal status of retirement rights. One expert noted that credit holders appear to have limited legal recourse if a project is later found to be flawed, such as through misconduct by a developer or verifier. In such cases, the financial loss incurred by the credit holder may not be actionable through the credit itself. He acknowledged that while similar situations occur in bond markets where investors may suffer losses and pursue legal action, there is typically a clear legal pathway for such claims. He suggested that this area warranted further discussion. Another expert added that the bond analogy may not fully capture the complexity of land-based carbon projects, which involve different legal and factual considerations. She suggested that the comparison between corporate bond issuance and land-based credit generation may not be entirely appropriate, and that this distinction should be explored further.

143 A third expert sought clarification on Principle 11(1) of the draft UNIDROIT Principles, which stated that the registered holder of a VCC may instruct the registry to retire the credit. He asked whether this right to instruct retirement constituted a proprietary right. In response, the representative of UNIDROIT confirmed that it did, explaining that the power to retire a credit was an innate right of the holder. The third expert to speak during this discussion then raised a further concern: if the applicable law or registry rules determined that a credit is invalid due to issues with the underlying project, could this render the holder's right to retire the credit extinguished? The representative of UNIDROIT acknowledged the complexity of this question. He explained that if a credit is retired despite not representing a genuine carbon reduction, it could mislead stakeholders into believing that an environmental benefit has occurred. In such cases, some argue that the credit should be cancelled before retirement, while others maintain that once a credit is retired, it should be final and irrevocable to preserve legal certainty. He noted that this issue remains unresolved within the UNIDROIT WG on VCCs, with differing views among its participants. The representative of UNIDROIT noted that some members of the UNIDROIT WG believe that post-retirement revocation should be possible in cases of fraud or error, while others argue that this would undermine confidence in the system.

144 A fourth expert sought to clarify whether, under the logic of the draft UNIDROIT Principles, the cancellation of a VCC would extinguish the registered holder's right to retire it. The representative of UNIDROIT confirmed that this was indeed the case: once a VCC is cancelled, the proprietary right ceases to exist, and the holder can no longer instruct the registry to retire it. The fourth expert to speak in this discussion reflected on this in broader terms, suggesting that the draft UNIDROIT Principles could be understood as establishing a legal framework for the lifecycle of proprietary rights in VCCs, and how such rights are created, modified, and extinguished. He emphasised the importance of identifying the rules and legal systems that govern these transitions, particularly in determining whether a right to retire persists or is nullified by cancellation. This, he noted, was central to understanding the proprietary dimension of carbon credits.

145 A fifth expert raised the issue of corresponding adjustments under Article 6.2 of the Paris Agreement. He emphasised that such adjustments are a crucial component of ITMOs, as they prevent emission reductions from being double-counted across jurisdictions. He posed a hypothetical scenario in which a VCC is transferred and used by a country to meet its NDC, but the host country fails to apply the corresponding adjustment. This expert questioned the legal consequences of such a failure, particularly when the credit has already been used to demonstrate compliance under international climate obligations. He noted that this situation did not fall neatly under existing categories enumerated in the draft UNIDROIT Principles such as revocation or retirement, but nonetheless undermined the validity and legitimacy of the credit. He suggested that this could have implications not only for domestic legal systems but also for international law, especially in the context of transparency and accountability under the Paris Agreement.

146 The DSG thanked the speakers and acknowledged the importance of the issues raised, noting that they would require further discussion. She concluded the discussion on the topic by inviting EG members to share any relevant legal frameworks or regulations, particularly those concerning land rights, collective property, and indigenous communities, which may inform the EG's ongoing work.

### 8. Other considerations

147 An expert emphasised the importance of precision in legal and policy discussions around carbon markets. She encouraged experts to embrace detailed and careful language, noting that such rigour is essential for legal clarity, especially in PIL.

## C. Registries

148 Attention was then turned to the topic of registries in carbon markets as described in paragraphs 69-75 of the Issues Paper, focusing on the diversity of registry models, both national and private, and their potential impact on jurisdiction and applicable law.

149 An expert opened the discussion by expressing concern over the broad and imprecise use of the term "registry." She explained that registries could take many forms, ranging from title registries to information repositories and internal ledgers, each with distinct legal implications. She cautioned against conflating these models and stressed the importance of understanding what registries actually do in legal terms before assessing their relevance as connecting factors in PIL.

150 Another expert, speaking in his capacity as a member of the UNIDROIT WG on VCCs, contributed reflections from earlier UNIDROIT WG sessions, where the question as to whether a series of contractual arrangements could give rise to proprietary rights had arisen. He noted that while registries like Verra did not explicitly confer title, they may still afford certain rights, such as the ability to initiate claims, which suggested a form of "functional property." This, he argued, complicated the assumption that registries operated purely within a contractual framework.

151 A third expert added that carbon credit registries are neither mere trading platforms nor traditional title registries. He explained that the existence of a VCC was contingent upon its registration, making the registry a foundational element of the credit's legal identity. He described the evolution from centralised registries, such as Verra and the Gold Standard, to more complex systems involving national registries and mirroring arrangements under the Paris Agreement. These developments, he noted, introduced further legal complexity that warranted deeper exploration through case studies.

152 The first expert to speak in this discussion returned to the floor to draw analogies with banking ledgers and intermediary securities accounts, noting that while these systems record entitlements, they do not necessarily confer proprietary rights. She also highlighted the importance of publication and transparency in registries, particularly when rights are enforceable against third parties. A fourth speaker supported these observations and underscored the role of legislation in determining whether contractual arrangements could generate proprietary rights. He suggested obtaining written input from jurisdictions to better understand national approaches to registry design and legal effect.

153 A fifth speaker proposed examining Central Securities Depositories (CSDs) as a potentially useful analogue. While acknowledging that CSDs operate within the financial services sector and are subject to mandatory rules, he suggested that they might offer insights into how custody and title transfer could function in carbon markets.

154 The first expert to speak in this discussion further emphasised that the technological architecture of registries, such as the use of distributed ledger technology (DLT), could significantly influence the legal analysis. She urged the group to remain attentive to how these systems are deployed in practice.

155 The fourth expert to speak in this discussion reiterated the need for jurisdiction-specific information and highlighted the importance of understanding how different legal systems attach proprietary effects to registry entries. He identified this as a critical area for PIL analysis.

156 The discussion on this topic concluded with a consensus that the nature and function of registries are central to understanding the legal nature of carbon credits. The EG agreed that future case studies should explore these issues in depth, distinguishing between different types of registries and their implications for proprietary rights, jurisdiction, and applicable law.

### 1. Flow of credits between registries

157 The EG then turned to the legal implications of the flow of carbon credits between registries, particularly in relation to transitions, conversions, and interoperability. This topic was introduced through questions 23 to 26 in the Issues Paper, which highlighted the increasing complexity of registry systems and the potential cross-border legal consequences of carbon credit movement.

158 An expert initiated the discussion by asking what happens in commercial terms when credits are transitioned or converted between registries. She sought clarification on whether a credit retains its legal identity when moved from one registry to another, or whether it is effectively cancelled and reissued under a new legal framework.

159 Another expert responded by distinguishing between *project transitions* and *credit conversions*. He explained that under the Clean Development Mechanism (CDM), credits were issued by a central registry and could be transferred to other registries without changing their nature. However, when projects moved to voluntary standards like Gold Standard, the original credits were typically retired and new credits issued, indicating a legal discontinuity. He emphasised that this process is not merely a transfer but a reissuance, which has significant implications for proprietary rights and applicable law.

160 A third expert elaborated on the distinction between *transition* and *conversion*, noting that the former implied a change in location while maintaining legal identity, whereas the latter involved the termination of one legal object and the creation of another. He stressed that this distinction was crucial for interpreting draft Principle 4 of the draft UNIDROIT Principles, which tied proprietary rights to the law of the registry. If credits were converted, the applicable law may change, raising questions about legal continuity and recognition. In response, the representative of UNIDROIT added that terms like *conversion* and *transition* should be treated as factual descriptions that require legal qualification. He emphasised the need to determine whether the object of transfer was the credit itself or the rights attached to it, and whether a change in registry entails a change in applicable law.

161 A fourth expert proposed a conceptual model in which credits were custodied temporarily in a registry before being substituted with new credits. He suggested that this process resembled a custodial transfer, where the original credit was surrendered and replaced, rather than simply moved. He also raised the question of whether such backend processes have any commercial impact on trading practices.

162 A fifth expert supported this view, noting that such transitions often occur when moving between regulatory regimes, such as from compliance markets to voluntary markets. He cited the example of the California's Cap and Trade Program, where credits could be retired and converted into allowances. He also highlighted ongoing efforts to standardise registry protocols, including the use of unique identifiers to ensure traceability and prevent double-counting.

163 A sixth expert identified two models of registry interoperability: one based on institutional arrangements between registries, and another based on contractual agreements between the registry and the credit holder. He emphasised that understanding these models was essential for assessing the legal implications of using credits from voluntary markets to meet compliance obligations.

164 The EG agreed that the flow of credits between registries was a legally complex and technically nuanced issue that warranted further exploration through case studies. It was suggested that future work should distinguish clearly between *transitions*, *conversions*, and *inter-registry transfers*, and examine their respective impacts on proprietary rights, market integrity and PIL questions.

## VII. Organisation of future work and next steps

165 The EG discussed the planning of future work and document circulation timelines, emphasising the need for advance notice for documentation, with the suggestion of a minimum of two weeks in order to ensure proper consultation and coordination. The DSG acknowledged the challenges arising due to the short timeframe between documentation circulation and the meeting, and committed to improving coordination with the UNIDROIT Secretariat to enable the circulation of documents in advance. The representative of UNIDROIT from the UNIDROIT Secretariat also expressed willingness to coordinate more closely for that purpose.

166 The EG agreed that a few case studies should be developed to guide future meetings. Suggestions of case studies included:

a. A holistic case study covering the full lifecycle of carbon credits;

b. A case study contemplating the analysis across different legal systems; and

c. Focus on land-based projects.

167 The EG requested that the PB draft two or three case studies with the input from EG members during the intersessional period, including real-world examples and jurisdiction-specific legislation.

168 Over the course of the first meeting, the EG agreed on the following action items:

a. Participants of the EG would be invited to submit materials relevant to the discussions concerning private international law aspects related to carbon markets. These contributions will assist the PB in preparing the materials for future meetings, and in particular in developing case studies for discussion at the second meeting;

b. The PB would work on a few case studies to be presented for discussion at upcoming meetings;

c. The PB would aim to submit the materials for the next meetings at least two weeks in advance.

169 The EG agreed to retain the following dates for its second and third meetings:

a. 8–10 October 2025; and

b. 2–4 December 2025.

170 The DSG encouraged EG members to make efforts to attend the upcoming meetings in person in The Hague and, given the size of the EG, requested that in-person attendance be notified in advance to the PB for logistical purposes. The DSG also indicated that the second meeting in October would include the appointment of a Chair of the EG.

171 The first meeting of the EG on Carbon Markets was adjourned at 15 May, 17:05 CEST.

# Annex I - Report of the Technical Roundtable organised in conjunction with the First Working Meeting of the Experts' Group on Carbon Markets 13 May 2025

1 On 13 May 2025, the Permanent Bureau (PB) organised a technical roundtable in conjunction with the first working meeting of the Experts' Group (EG) on Carbon Markets, consisting of a series of presentations on carbon markets, from both industry and government experts, focusing on potential connections to questions of private international law (PIL). This report summarises the key points of the presentations and discussions that took place during the technical roundtable.

## D. *Developments in the scenario of the carbon market and possible implications to private international law,* by Bruno Carvalho Arruda, Deputy Head for Climate Action, Ministry of Foreign Affairs of Brazil

2 The presenter highlighted the immediate consequences of the conclusion of the Paris Rulebook,[1] which implements the Paris Agreement.[2] With the implementation of Article 6 of the Paris Agreement, the presenter outlined the emergence of three coexisting carbon credit ecosystems. The first ecosystem refers to the multilateral system established by Article 6, which derives most of its value from a country's commitment under the United Nations Framework Convention on Climate Change (UNFCCC)[3] and the Paris Agreement. This multilateral system is, according to the rules of the Paris Agreement, the only one capable of improving a country's performance in terms of greenhouse gas (GHG) emissions other than direct mitigation to be achieved by the country in its own territory. Within this multilateral system, the presenter discussed the benchmark for environmental integrity under Article 6.4 of the Paris Agreement, which can be used by stakeholders hoping to achieve the highest levels of credibility and integrity, even if the units generated are not authorised for international transfers.

3 The second ecosystem identified by the presenter was the jurisdictional compliance markets, which can be regional or national. The primary feature of these markets is that they are well-integrated into a legal system. Examples include the European Union Emissions Trading System (ETS), China National ETS, California ETS, and the recently approved Brazilian ETS. These markets derive their value from the caps imposed on specific industry sectors or activities.

4 The third ecosystem referred to the voluntary carbon markets (VCMs), which provide services of methodological benchmarking and supplies credits to the stakeholders interested in outsourcing their GHG emissions for whatever purposes. The presenter emphasised the need for international coordination in these ecosystems over the following issues:

a) Fungibility

b) Connecting factors in private international law (PIL)

c) Revocation of credits

5 On the issue of fungibility, the presenter asked the EG to consider the following questions:

1 The Katowice Climate Package (also known as the Paris Rulebook), (UN, 2018), 15 December 2018, FCCC/CP/2018/10/Add.1.

2 Paris Agreement to the UNFCCC, (UN, 2015) ("Paris Agreement"), 12 December 2015, TIAS No 16-1104.

3 United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.

a. Will voluntary market units be accepted in jurisdictional compliance markets or will they be traded as Internationally Transferred Mitigation Outcomes (ITMOs) and under what circumstances?

b. Under what conditions will national units be traded internationally and what could lead to a future integration of power markets?

6 On the issue of connecting factors in PIL, the presenter discussed three situations concerning the law applicable when fungibility exists. First, there is a law applicable to the assets which will be comparable to international financial law and which will need to consider the location where these assets are traded. Second, there is a law applicable to the content of the credit. In relation to this, the presenter shared the Brazilian experience which has safeguards that ensure the protection of indigenous peoples' rights. The presenter opined that only the host countries of carbon projects are in the position to provide assurance in relation to the protection of such rights. Finally, there is an international law applicable to each situation, either contained in multilateral texts, bilateral contracts for agreements, or memoranda of understanding.

7 The presenter then discussed the revocation of credits, focusing on balancing market stability with environmental and social integrity. One of the questions the presenter asked the EG to discuss is the extent to which international harmonisation of rules is possible and desirable. He opined that one approach that seemed to be sound and conservative, in his view, was to work with international principles which can be further developed into more concrete elements and eventually enshrined in international agreements or become customary international law.

8 The floor was open for discussion. A delegate from the European Union (EU) addressed a question to the EG, asking about the importance of the fungibility of carbon credits in the carbon markets. The presenter responded that fungibility is important because it interferes with the value of credits.

9 A delegate from the United Kingdom (UK) shared insights on fungibility and interoperability. He noted that "fungibility" refers to the ability to substitute token A for token B, while "interoperability" on the other hand refers to the ability to trade a token created on a registry on another registry. In such cases, the delegate highlighted that there may be multiple registries in play, which means there are different actors involved, giving rise to PIL issues. The presenter responded that "fungibility" refers to the acceptance of a credit in multiple systems, while "interoperability" extends beyond registry compatibility. The presented explained that "interoperability" may also refer to the same criteria for the distribution of allowances.

10 A delegate from the UK sought a clarification about inter-registry transfers, asking if the re-issue of a cancelled credit on the first registry is equivalent to the cancellation of a separate legal contract. The presenter responded that Article 6 is unclear on that point. However, in terms of transferring credits between national or regional registries, it would be an issue of public law for public registries, whereas it would be an issue of private law for private registries.

11 A delegate from Malaysia noted that the "secondary market" is not a general term in use in this field and that it is not defined in any carbon standard or crediting system. She inquired about the impact of the secondary market on the systems put by the UNFCCC. The presenter responded that there will be secondary markets whenever assets change hands, but it is very difficult to assess beforehand what their impact will be.

### E. *Private international law challenges in carbon credit markets: an investor's view,* by Ting Sim, Managing Director, GenZero

12 The presenter first provided an overview of the work of GenZero. She explained that GenZero's mandate is to deliver positive climate impact alongside long term sustainable financial returns. She emphasised that investors similarly seek not only to deliver climate impact but also to receive financial returns that are long term and potentially sustainable.

13 The presenter discussed the three investment focus areas of GenZero: First, nature-based solutions which aim to protect and restore natural ecosystems; second, technology-based solutions which have deep decarbonisation impact; and third, carbon ecosystem enablers that aim to provide effective, efficient, and credible carbon market ecosystems.

14 Regarding the VCM value chain, the presenter emphasised that there is a global financing gap that can be addressed by private financing through carbon markets. She expressed that carbon financing through private institutions needs to be enabled, and that this requires harmonisation of legal frameworks. The presenter explained that the problem on the legal side is the characterisation of carbon credits in terms of PIL. She opined that carbon credits should be considered property.

15 Moving onto the lifecycle of a carbon credit, the presenter highlighted that there are many steps before a carbon credit can be issued and which can take from three to five years. The presenter then discussed the profile of a hypothetical voluntary carbon credit (VCC) project, explaining that the risk that an investor takes is typically a long term one because there are many costs that need to be borne upfront and the payback period can be of up to 15 years. Without cover credit, the VCC project cannot be viable and bankable. Bankability refers to the cost of the project, returns profile, and regulatory social exposures. In terms of how the law can affect bankability, the presenter showed how a VCC value chain can be multi-jurisdictional and gave concrete examples of projects where different local communities are involved, explaining that local laws are important for that reason.

16 The presenter ended her presentation by highlighting specific challenges of investments in carbon market projects. First, for upstream transactions, the project proponent may have different financiers who may use different security agents holding the assets in trust format; thus, title and security are important. Meanwhile, the project proponent continues to work with the host country in terms of carbon law, land rights, environmental law, and indigenous people's rights. Another situation raised by the presenter in relation to upstream transactions was that some of the projects are held by one project proponent but with diverse projects in different countries. Therefore, the presenter concluded that it is useful for the project proponent and for the financiers to be able to choose the law that governs some of the financing transactions. Second, for trust and community benefit sharing arrangements, the presenter shared that the certainty that comes with the ability to agree to certain arrangements was also important.

17 Finally, in terms of downstream transactions, the presenter noted the suggestion to use the law of the registry as the applicable law. She, however, pointed out that many registries do not give title or recognise ownership. She cited Verra and Gold Standard as registries that do not recognise ownership and gave the example of the American Carbon Registry (ACR) as the only registry to her knowledge that has some terms regarding ownership. Another issue the presenter discussed for downstream transactions is that VCCs, as an intangible, do not have certificates that are transferred. To illustrate this, she explained that there are, potentially, marketing agents or exchanges that would sell the carbon credit to the buyers. The marketing agent and broker or the exchange would form the intermediary interaction. Sometimes, the broker or the marketing agent may not physically execute a transfer at the registry. It could hold the carbon credit in its name upon

the instructions of the buyer or retire it. This means that on the registry, the broker or the agent continues to be the holder. This may lead to issues when there is a situation of insolvency.

18 The presenter concluded that party autonomy helps the different parties in the whole value chain to determine with certainty what are the implications for investors from the outset. She pointed out that for a project to be bankable, the downstream transactions must have value and certainty so that it can support the economics of upstream transactions. On the question of regulatory regimes of host countries, the presenter held the view that the laws of the host countries continue to apply through their land, environmental, and carbon laws. The host countries' public policy considerations can still be imposed on the project proponent. The presenter also noted that party autonomy is consistent with Article 6 implementation because a host country can still impose taxes or require a letter of authorisation in relation to a project for the use of the carbon credit in another country. Party autonomy, in the presenter's view, was not inconsistent with the use of an applicable law that is different from the host country's law.

19 The floor was open for discussion. A delegate from the UK asked for clarification about whether the presenter considers the carbon credits themselves as one of the returns for the raising of capital finance. The presenter replied in the affirmative, explaining that usually the projects on their own are not bankable so there is a need to look at carbon credits to increase economic viability.

### F. *Overview of the Verra Registry and private law considerations,* by Mary Gilmore-Maurer, Ph.D, Legal Director of Legal, Risk and Governance Department, Verra

20 The presenter provided an overview of the Verra Registry. Verra is a *standard setting body* or an *independent carbon crediting* body, and a registry for climate action and sustainable development projects. Verra manages verified carbon standard programmes and certify that certain activities achieve a measurable high integrity outcome, including carbon reductions or removals, as verified and validated by an independent validation and verification body (VVB) which is an essential part of the lifecycle of a carbon credit. Once a project is certified through a third party, there is an internal approval process. After which, the project is registered.

21 The presenter explained that the Verra Registry is a central repository for all the information and documents that relate to projects and units which, in the Verra Registry, are called verified carbon units (VCU). The registry itself tracks and manages carbon emissions reductions and environmental assets across the programmes Verra facilitates. Credits that are represented or reflected in the registry can be bought and sold on carbon markets to offset emissions.

22 The presenter provided an overview of Verra's scope and scale of work. Verra has 3,400 active projects spanning over 125 countries. Against this background, the presenter highlighted the need for harmonisation to scale the market and ensure legal certainty.

23 The presenter then discussed the role of Verra as a registry operator. She explained that the key instrument between Verra and its account holders in the registry is the *Registry Terms of Use* (TOU). She provided an explanation as to how Verra understands the ownership of credits. A unit is issued by and held in the Verra Registry, and that in itself represents the right of an account holder and whose account that unit is recorded to claim the achievement of a GHG emissions reduction or removal in the requisite amount which is verified by a VVB in accordance with the Verra or voluntary carbon programme rules. The presenter explained that for Verra, the registration of the VCU in the account of the holder constitutes *prima facie* evidence of that holder's entitlement to that credit.

24 The presenter discussed the Registry TOU between Verra and the account holders. In opening an account in Verra, the party must agree to the TOU, so every account holder is, by definition, a user.

The presenter indicated that Verra does not provide legal advice on the nature of the right of the carbon credit holder; however, it is Verra's opinion that a VCU holder acquires several rights, including the right to bring a claim against the project proponent or any other "issuance representer" for a breach of certain representations, warranties, or undertakings that are made when a project is registered and when credits are issued. Because of this, Verra has a suite of deeds that enable these rights. The key one is the "issuance deed", which must be entered into before any carbon credits are issued into the account. This issuance deed includes representations as to the truth and the accuracy of project documents and the issuance representer's rights.

25 The presenter highlighted that the VCU holder has the right to claim the achievement of that GHG emissions reduction or removal. The recording of a VCU in the account of the holder at the Verra Registry is *prima facie* evidence of that holder's entitlement to that VCU.

26 The presenter discussed certain provisions in Verra's TOU that relate to account authority rights, access control, and encumbrance. Verra generally does not recognize any third-party interests in VCUs as Verra's relationship is with the account holder. Therefore, under Section 9.2 of the TOU, Verra is under no obligation to inquire into the validity of the legal title to the instruments or any related instruments. Verra likewise does not recognise any interest in an instrument other than the interest of the entity that is named as the holder of the instrument in its registry.

27 The presenter shared that the account holder can designate an authorised representative through a specific agreement which would be more of an agency agreement. The authorised representative must abide by the TOU. Depending on the degree of agency, the authorised representative takes on the role of the project proponent for that amount of time.

28 The presenter then discussed details on account authority. The account holder is the one with the controls and login rights and privileges unless there is an agent appointed. Apart from certain specific and narrowly defined rights to suspend a user's access to its account and to cancel VCUs, as set out in the TOU, Verra has no right to intercept or deal with VCUs without the written instructions of the account holder. There are specific circumstances in which Verra might cancel VCUs without the consent of the VCU holder, such as in the case of fraudulent or illegal activities. However, that type of suspension would follow from a review and assessment by the VVB. Another safety mechanism that Verra has is mandating that the project proponent is responsible for compensating excess credits that are issued where there has been a material or erroneous issuance of VCUs in relation to a project due to a fraudulent conduct, negligence, intentional act, recklessness, misrepresentation or mistake.

29 The presenter moved onto issues surrounding the insolvency of the registry operator. As Verra is incorporated in the U.S., an insolvency situation would be subject to state and federal bankruptcy laws. She noted that the registry itself is an asset that is owned and operated by Verra so the VCUs held in the registry, which Verra considers as a property right, would be considered the property of the account holder, not an asset that belongs to the registry. In sum, the presenter emphasised that Verra acts as a form of database, recording the identity of the holder of the instruments. It does not hold title to the instruments, neither does it guarantee title.

30 The presenter discussed how title is transferred between accounts. She reiterated that the recording of the VCU in the account of the holder is evidence of that holder's entitlement to the VCU. Thus, once the VCU has been transferred from one account to another, the holder of the other account is considered by Verra to be the *prima facie* owner entitled to that VCU.

31 The presenter thereafter discussed the challenges and opportunities for recognising security interests in VCUs. She explained that Verra does not presently recognise security interests in verified carbon credits. This is distinct from a recognition that verified carbon credits are capable

of being the object of property rights. On the issue of the perfection of security rights, the presenter pointed out that there is uncertainty across the jurisdictions where Verra operates as to whether a security has been perfected.

32 As a final note, the presenter emphasised the need to have consistency and joint understanding on issues like control, dispute, guarantee of title, the perfection of title, recognition of security interest, and conflict of laws.

33 The floor was open for discussion. A delegate from the UK asked for clarification about whether Verra is an issuance representor under its current terms and conditions. The presenter answered in the negative, explaining that the issuance representor tends to be the project proponent. It is the entity making representations and providing warranties as to the accuracy of the information provided in relation to a project, including the way it has been validated. The delegate from the UK further asked whether the issuance representor is also an account holder in a different account from which the credits are traded afterwards. The presenter explained that the said situation can be the case but, initially, after verification, the credits are issued into that issuance representor's account. The delegate from UK asked if Verra Registry has a role in a situation where a VCU holder sues the project proponent, for instance, due to an issue concerning the accuracy of representations before a credit is issued. The presenter answered that there is an approval process but that it is handled at the desk level, so Verra relies on the terms of the warranties and representations made and the positive validation and verification statement offered by a VVB before a project is approved and registered. The delegate from the UK clarified, and the presenter confirmed, that there are no rights of recourse against Verra's approval process. Rather, the recourse is against the project proponent.

34 A delegate from the EU asked about Verra's position in the situation in which a transfer between accounts is the object of a judicial proceeding and the enforcement of the judgment or arbitral award requires the registry record to be updated. In such case, the delegate asked whether such judgment would be recognisable and able to be enforced in Washington D.C. The presenter answered in the affirmative, explaining that Verra uses the enforceable judgment to review the project and consider whether it was validly represented and constituted. Further, the presenter explained that Verra considers a dispute between parties as a third-party dispute, but Verra would cooperate as far as possible in such cases.

35 A delegate from Chile raised the point that Verra does not recognise a property right when a VCU is recorded in the registry, yet the registry would be governed by U.S. laws as Verra is headquartered there. The delegate shared that, in Chile, their regulations consider the possibility that the registry for Article 6 transactions could be the registry overseen by the UNFCCC Secretariat - the registry of the Article 6.4 mechanism - which means that the registry will not be in Chile but in Germany. Thus, applying the same principle as applied by Verra, the UNFCCC's registry will be governed by German laws. For the delegate, this is the correct way to understand the link between a registry and an entity that operates the carbon project when they are both in different jurisdictions. The presenter answered that the issue raised by the delegate from Chile is still under consideration at Verra. She explained that Verra, as a non-profit organisation registered in Washington D.C., is subject to the laws of that state. She made a distinction between the Verra Registry and any registry created under the UNFCCC system because the latter is based in Bonn and deals with parties internationally.

36 A delegate from Malaysia sought the view of Verra on the Sharia approach to VCUs. The presenter acknowledged that Sharia is a critical component not just for Malaysia but for several jurisdictions in terms of transactional rules that attach to VCUs but explained that she is not able to advise on the matter. She however noted that under the rules of various voluntary carbon programmes,

projects themselves must adhere to the relevant legislation and regulations applicable in the jurisdiction of the project. Separately, issuance of carbon credits is subject to the rules applicable to the project proponent. However, underlying this is the fact that the project proponent has entered into a deed of issuance which is based in English law. Thus, the presenter opined that there would be some very interesting considerations of the applicability of different laws. The presenter from Resilient LLP, Ms. Lisa DeMarco, shared concepts that are important in the application of Sharia law to carbon markets. Environmental stewardship could be used to facilitate harmonisation between traditional approaches governed by local laws of the registry. She also made reference to the principles of *khalifah*[1] and *maslahah*[2].

37 A delegate from Germany noted that one of the most fascinating developments is the conclusion of bilateral agreements between institutions like Verra and certain jurisdictions. He encouraged Verra to share information on its negotiations with governments because there may be certain principles of law from these agreements that can respond to some of the questions of the EG. The presenter appreciated the insight of the delegate but noted that governments also wish to retain a certain amount of control over these proceedings. The presenter hoped that PIL principles would, sooner rather than later, be implemented on a national level and would reflect not just harmonisation but also specific legal characteristics of each jurisdiction, including the very relevant question asked by the delegate of Malaysia.

### G. *LACLIMA's experience in carbon markets in Latin America: key challenges and lessons learned,* by Juliana Coelho Marcussi, Manager of Climate Policies and Carbon Markets, LACLIMA – Latin American Climate Lawyers Initiative for Mobilizing Action

38 The presenter provided an overview of LACLIMA, an organisation that was created to strengthen legal capacity across Latin America to support the implementation of the Paris Agreement and other global climate commitments. LACLIMA operates currently as a regional network offering technical advice, legal research and advocacy in areas such as carbon markets, climate litigation, climate finance and new market approaches.

39 The presenter shared that LACLIMA followed the debates within the Brazilian Government and the National Congress during the development and approval of the law that created the national ETS, called the *Sistema Brasileiro de Comércio de Emissões de Gases de Efeito Estufa* (SBCE law), including the discussions on the legal nature of carbon credits. In addition, LACLIMA contributed to a project led by the Ministry of Finance of Brazil and funded by the World Bank to design a road map for the implementation of the Brazilian ETS which is currently underway.

40 The presenter gave an overview of the Brazilian carbon market landscape which is structured around three pillars. The first refers to the VCM which is operational since 2007. She explained that Brazil has mechanisms under Article 6 that still requires some national legal framework to be set.

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1 References to *Khalifah* can be found at the *Maqasid Al-Shariah Guidance*, Islamic Capital Market Malaysia, by the Securities Commission of Malaysia (on file at the PB). See also the reference to the concept of *Khalifah* in the following publication of the UN Environment Programme: *How Islam Can Represent a Model for Environmental Stewardship* (21 June 2018), UNEP, available at https://www.unep.org/news-and-stories/story/how-islam-can-represent-model-environmental-stewardship, accessed 9 July 2025.

2 References to *Maslahah* can be found at the *Maqasid Al-Shariah Guidance*, Islamic Capital Market Malaysia, by the Securities Commission of Malaysia (on file at the PB). The Economic and Social Commission for Western Asia references *Maslahah* as the "collective benefit of society or public interest". Economic and Social Commission for Western Asia, *Islamic Social Finance & Maslaha* (UN ESCWA Working Paper E/ESCWA/SDPD/2003/WG.4/3, 2003), available at https://digitallibrary.un.org/record/506581/files/E_ESCWA_SDPD_2003_WG.4_3-EN.pdf accessed 9 July 2025.

She reiterated that Brazil has a newly created ETS established in December 2024 with the new legislation.

41 The presenter explained that while establishing the Brazilian ETS, the SBCE law also addresses interactions with the VCM, especially regarding forest-based carbon credits, which remain the predominant type of credits issued in Brazil. This justified the decision to include some rules on voluntary market transactions within the framework of the ETS.

42 The SBCE law defines VCCs in Brazil as autonomous and tradable assets having legal existence in their own right. Thus, they may be bought, sold, or transferred independently of the land or project from which they originate. The law also limits its definitions to credits from forest preservation and reforestation projects, explicitly establishing that such credits have the legal nature of civil fruits. The presenter explained that under the Brazilian Civil Code, fruits are benefits derived from a principal good without consuming or altering it. Fruits include interest, rent, or other recurring benefits obtained through a legal relationship with the principal good. The presenter explained that this classification brings carbon credits closer to revenues derived from the land of forest, while still respecting their autonomy as assets. They are typically linked, in this case, to a legal or contractual arrangement such as a REDD+ project or public concessions, which are the most common in Brazil, and the principal asset, which will be in this case, the forest. The principal good remains intact while generating credits through carbon removal or avoided emissions. The presenter further shared that the Brazilian law explicitly excludes jurisdictional carbon credits from this classification, but it does not clearly define what the legal nature of this kind of credits will be.

43 The presenter discussed the concept of jurisdictional programmes which are common in the northern states of Brazil. These programmes are developed by public authorities and cover entire territories, not just specific properties, where mitigation outcomes are calculated and distributed on an aggregated level, not by individual project units. The most prominent example in Brazil is the state of Pará. Since jurisdictional carbon credits are not defined as civil fruits, they are not automatically tied to the principal good and may follow a distinct contractual logic. Their ownership may depend on public programme criteria, such as collective performance or state agreements, and they may fall outside the traditional Civil Code regime for fruits. She concluded that this would then affect issues on inheritance, shared ownership, and indirect possession.

44 The presenter discussed the two other pillars of the SBCE law other than VCCs. The first refers to the Brazilian emissions allowances (CBEs) and the second refers to the verified emission reduction or removal certificates (CRVs), the latter being carbon credits that are registered under the Brazilian ETS. According to the law, when traded in the financial and capital markets, CBEs, CRVs, and VCCs acquire the legal notion of securities.

45 The presenter then commented on the drafting process of the SBCE law. She indicated that the legal nature of carbon credits was one of the most debated issues during the development of the law. She identified concerns on the regulatory authority of the credits as well as enabling a secured framework for the traceability and issuance of carbon credits.

46 Finally, the presenter briefly outlined other measures introduced by the SBCE law that respond to non-legal gaps in carbon markets in Brazil. She shared that in recent years, the Amazon region has experienced a boom due to carbon credit projects. However, large portions of the Amazon are inhabited by traditional local communities, including indigenous peoples. Prior to the law, there were no clear legal rules on their ownership of carbon credits, and this resulted in exploitative practices as the Brazilian law did not require free, prior and informed consent (FPIC) in the past. With the SBCE law, there is now an express requirement for benefit sharing clauses to allocate a minimal percentage of the benefit to communities along with the obligation to conduct FPIC processes before contracts are signed.

47 The presenter also shared another major challenge in the region which is land tenure regularisation. There is a common saying in Brazil that the state of Pará "has four floors", meaning that there are more land titles than actual land there. Many major certification bodies conducting due diligence in Pará have done so based solely on documents while ignoring local realities. The SBCE law seeks to address this by requiring prior registration of methodologies used to generate credits and registration of certification bodies under the Brazilian law. Therefore, the SBCE law also introduces basic rules on credit ownership based on land title or possession which aims to help resolving disputes over ownership.

48 The presenter stated that these recent legal developments introduced by the SBCE law not only aim to strengthen the integrity and legal certainty of carbon markets at the national level but also offer valuable insights for international discussions by addressing long standing challenges such as community consent, benefit sharing, land tenure, and regulation of certification centres.

49 The floor was open for discussion. The presenter from Verra asked if there is content within the SBCE law on the regulation of VVBs. The presenter from LACLIMA responded that currently there is no specific regulation on the lifecycle or the certification and verification processes because the government is still trying to locate the governance system within the federal government entity that will take care of the SBCE, called the management body. This body will concentrate both executive and regulatory competencies so it is the management body that will bring on the regulation on the specificities mentioned by the presenter from Verra. The body will also be the one responsible for executing and monitoring all the system of certification and issuance of carbon credits.

50 A delegate from UK pointed out the difference in the treatment of VCCs which are classified as civil fruits under domestic law but which are considered as securities under the SBCE law. She asked the presenter from LACLIMA whether there were challenges caused by this difference. The presenter from LACLIMA shared that there are some specific points that will be regulated by Brazilian Exchange and Securities Commission and others will be dealt in the federal sphere by the National Congress as the legislative branch. She noted that the main challenge is how to divide issues that will be regulated by the Commission and the Congress respectively.

51 A delegate from Germany inquired whether the SBCE law affects international carbon credits. The presenter from LACLIMA answered in the affirmative, explaining that the ETS law provides that credit or certification reductions or removals in a cross-border transaction will be automatically considered as ITMOs. Thus, the Brazilian law takes the ITMOs system as one of the instruments for the carbon verification nationally. In the future, the plan is to link the SBCE or compliance market withing the same registry as the ITMOs. However, the presenter stated that there is still a need to wait for the regulatory framework that will come with the management body following the enactment of the Brazilian legislation.

52 A delegate from Chile noted that in the Brazilian regulations and framework discussed by the presenter of LACLIMA, emissions avoidance is included. He explained that emissions avoidance is discussed under Article 6 and that it has been a controversial issue during negotiations in the context of the UNFCCC mechanisms. The delegate asked about the recognition of emissions avoidance because there are many elements of a real reduction of emissions or mitigation outcomes of emission avoidance. He added that this issue was also important in relation to the elements of PIL related to revocation because if an emission avoidance is not fulfilling the essential elements of achieving a mitigation outcome, it could lead to a revocation. The presenter from LACLIMA answered that, when talking about the international regime, there should be a premise that carbon credits are included in the Paris Agreement Crediting Mechanism, and that such credits will also be subject to the generation of ITMOs. She further explained that there are currently no regulations clarifying the situation as described in the inquiry of the delegate from Chile. However,

in her opinion, considering that there is no legal provision against it, emissions avoidance will be one of the activities that will be subject to the issuance of forest carbon credits.

### H. *Disputes in carbon markets: what questions of private international law arise?*, by Lisa (Elizabeth) DeMarco, Senior Partner and CEO, Resilient LLP

53 The presenter opened her presentation with a discussion on choice of law by illustrating that there are various points of law in a typical project lifecycle. The first refers to the terms under which the project operates. The second one refers to the choice of law governing the contractual relationship between the project developer and the VVB. The third one refers to the choice of law governing the substance of the transactions itself, for examples, the purchase and sale of the VCU. The fourth one refers to the use of the units either upstream at the level of project finance or downstream in derivative trading for secondary market transactions, subject to the choice of applicable law.

54 The presenter shared that the issues that may come up in dispute resolution include the legal nature of the unit which, in her strong view, have many constructs including tradable licence, financial instrument, a form of security, a commodity, or a bundle of contractual rights. She emphasised that the key is that it is a series of enforceable rights that are conducive to property rights. She shared the example of an international dispute concerning the legal nature of a unit governed by an arbitration administered by the International Centre for Settlement of Investment Disputes. The presenter pointed out that there are several dispute resolution bodies stipulating very specific rules and requirements in the settlement of carbon related disputes. The most recent one is the International Chamber of Commerce.

55 In the settlement of carbon related disputes, the presenter shared that the problem is deciding whether the dispute should be litigated or arbitrated. The presenter, however, raised the issue that there is a paucity of legal experts with the requisite of carbon market and property expertise.

56 The presenter discussed that a key element in carbon disputes relates to the establishment of the appropriate forum that has or should have jurisdiction. Establishing jurisdiction such as *in rem* jurisdiction and temporal jurisdiction, while layering treaty law elements onto the private law elements, can be a point of evidence that can be determinative in some elements of private law transactions. She added that there can be restrictions imposed by the public international law aspects on PIL transactions which make it problematic.

57 The presenter also pointed out that another issue is the appropriate forum when the parties, project, project developer, and registry are all located in different jurisdictions. A further issue relates to legal standing, particularly whether registries have standing when they are significantly affected by the outcome of disputes.

58 Another consideration in applicable law discussed by the presenter is the constitutional right guarantees of local communities and indigenous peoples. These communities have been considered as guardians of the environment since time immemorial. Hence, their right to be heard, particularly in relation to the benefit sharing agreements and their impacts, is essential.

59 The presenter also noted that there are currency and foreign exchange risks that need to be considered carefully when it comes to enforcement issues and related crystallisation of the value of the carbon units that are being disputed and quantifying damages.

60 Finally, the presenter discussed enforcement challenges in carbon market disputes which include property rights in VCUs, political risks, nationalisation, and the state of enforcement of the rule of law.

61 The floor was open for discussion. A delegate from the UK asked whether claims in a dispute tend to be joined together in a single set of proceedings, or if they do tend to proceed on sort of individual contracts and parallel proceedings elsewhere. The presenter answered that while one contractual element is often the subject of a dispute, the other related contracts may be used as evidence in the dispute. Thus, it is not necessarily that the dispute involves several *loci* in different contracts. The delegate in the UK asked for clarification as to what extent the principle of privity is relevant. The presenter clarified that privity is a key issue, explaining that the contracts are quite distinct. As an example, the presenter explained the case of a VVB contract which is a contract between the project developer and a commercial entity that provides engineering quantification and verification services in accordance with an international standard. From that perspective, it is discrete. The parties are well known, and privity of contractors is established. The outcome of that contract and any challenges to what was done by the VVB might be the subject to the challenge of the legal nature or the veracity of the credit itself. The VVB is almost often not a party.

62 A delegate from Germany was of the view that not every carbon related dispute is arbitrated, and courts are quite active. He asked the presenter if there are trends in jurisprudence that the EG can build on. The presenter replied that there is no cost savings associated with arbitration. However, the concern in resorting to the courts stems from the level of expertise. Because of that, the presenter shared that about 90% of the contracts for the purchase and sale of emission reductions rely on arbitration.

63 A delegate from Chile shared that dispute resolution has been a delicate topic in their negotiations of agreements with other countries such as the recently signed implementation agreement of Chile with Singapore. In said agreement, one of the key responsibilities of the parties, in this case Chile as a host country, was to apply corresponding adjustments when an ITMO is transferred to another jurisdiction. This is an essential element to achieve one of the main purposes of the cooperation under Article 6.2 of the Paris Agreement. Under the agreement with Singapore, in the case that Chile does not apply the corresponding adjustment, the company affected can request the Government of Chile to start a process for dispute settlement under the agreement. However, if the dispute is not solved by the terms of the agreement, there is a loophole because a provision in the agreement provides that the dispute resolution process does not prevent the application of international or national laws. The delegate asked the presenter what the applicable law in this case would be, considering that there is no contract between the Government of Chile and the developer, or the entity that has the property rights over the credit. The delegate further clarified that in the agreements, there is no transfer of sovereignty to international arbitration courts or provision of any other remedy outside of the host country. The presenter acknowledge that she had no ready solution to the issue raised by the delegate, but would share a document from the World Bank that could be of help in the EG's discussions.

64 An expert from EAPIL asked if it was possible to find an all-encompassing answer to the question of who can litigate claims. The presenter responded that one of the key considerations in suability was the cost, noting that it might cost prohibitive for several key stakeholders. She further responded that there was no holistic answer to who could bring a suit.

65 A delegate from the UK question the extent to which it would be desirable for a judgement about the activities of a carbon standard, in relation to a set of contracts, to be considered final and binding for all other contracts that might relate to that standard. The presenter replied that it was possible that it would have a beneficial precedential effect. She opined that, while one would have to look at the contract in question to make that fact-specific determination, there may be value in having some *stare decisis.*

# Annexe II

# List of participants - HCCH Experts' Group on Carbon Markets

## First meeting - 13-15 May 2025

| Family name(s) | Name(s) | State or Organisation | Position | Status of attendance (online/on site) |
|---|---|---|---|---|
| Argerich | Guillermo | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| All | Paula María | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| Silva Besa | Eduardo | Chile | Deputy Director of the Environment, Climate Change and Oceans Division at the Ministry of Foreign Affairs of Chile | In person |
| Zhang | Xiaoping | China | Professor, Central University of Finance and Economics | In person |
| Gao | Yuan | China | Deputy Department Manager, CCER Trading Center, China Beijing Green Exchange | In person |
| Tan | Fei | China | Senior Officer, Economic and Technological Development Bureau, Macao SAR | In person |
| Leung Tsz Ying | Almaz | China | Principal Assistant Secretary for Financial Services and the Treasury, Hong Kong SAR | Online |
| Chow Koon Ying | Paul | China | Group General Counsel & Group Chief Sustainability Officer, Hong Kong Exchanges and Clearing Limited | Online |
| Hoi Kin | Lam | China | Department, Economic and Technological Development Bureau, Macao SAR | Online |
| Tsz Man | Lo | China | Division Head, External Trade Division, Economic and Technological Development Bureau, Macao SAR | Online |
| Weng Ian | Tang | China | Senior Officer, Economic and Technological Development Bureau, Macao SAR | Online |
| Tian | Ni | China | Legal Advisor, Embassy of China, The Hague | Online |

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|---|---|---|---|---|
| Hou | Chong | China | Senior Officer, Environmental Protection Bureau, Macao SAR | Online |
| Arévalo | Mirna Patricia | El Salvador | Legal Manager, Ministry of Environment | Online |
| Monterossa | Lilian Marcela | El Salvador | Legal Analyst, Ministry of Environment | Online |
| Salazar Hernández | Gabriela María | El Salvador | Sustainable Development Officer | Online |
| Echeverria | Eduardo | El Salvador | Mitigation Especialist | Online |
| Franzina | Pietro | EU | Full Professor of International Law - Università Cattolica del Sacro Cuore Milano | In person |
| de Luca | Patrizia | EU | Senior Expert - European Commission | Online |
| Sears Debono | Angele | EU | Legal and Policy Officer | Online |
| Krakovitch | Nicolas | France | Adjoint au chef du bureau Climat à la Direction générale du Trésor du Ministère de l'Economie, des Finances et de la Souveraineté industrielle et numérique | Online |
| Besançon | Kévin | France | Adjoint au chef du bureau Finance durable, droit des sociétés, comptabilité et audit des entreprises à la Direction générale du Trésor du Ministère de l'Economie, des Finances et de la Souveraineté industrielle et numérique | Online |
| Coudin | Gabrielle | France | Adjointe à la cheffe du département de l'entraide, du droit international privé et européen à la Direction des affaires civiles et du sceau du Ministère de la Justice | Online |
| Bousarghin | Fatiha | France | Rédactrice au sein du département de l'entraide, du droit international privé et européen à la Direction des affaires civiles et du sceau du Ministère de la Justice | Online |
| Palma | Tamara | Germany | Lawyer, German Environment Agency | In person |
| von Unger | Moritz | Germany | Attorney, Federal Ministry for Economic Affairs and Climate Action | In person |
| K.C. | Sowmya | India | Director - Legal and Treates Division, MEA | Online |

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|---|---|---|---|---|
| Saurabh | Diddi | India | Director, Ministry of Power | Online |
| Bendel | Netta | Israel | Law clerk at the Office of the Deputy Attorney General (International Law) | Online |
| Gilboa | Mattan | Israel | The Office of the Deputy Attorney General (International Law) | Online |
| Nurul binti Yahaya | Ainy | Malaysia | Legal Attaché for the Embassy of Malaysia | In person |
| Álvarez-Rendón | Martha Angélica | Mexico | Director of Private International Law, Office of the Legal Adviser, Mexican Ministry of Foreign Affairs | Online |
| Ureña | Ángel | Panama | Deputy Director for Climate Change of the Ministry of Environment of Panamá | Online |
| Afonso | Sónia | Portugal | Legal Adviser of the International Affairs Department/ European Affairs Coordination Unit from the General-Directorate for Justice Policy of the Portuguese Ministry of Justice | Online |
| Lim | Delphia | Singapore | Director, International Legal Division, Ministry of Law | Online |
| Wan | Wai Yee | Singapore | Senior State Counsel, Civil Division, Attorney-General's Chambers | Online |
| Lum | Qian Wei | Singapore | State Counsel, Civil Division, Attorney-General's Chambers | Online |
| Ünal | Emel | Türkiye | First Legal Advisor, Ministry of Environment, Urbanisation and Climate Change | Online |
| Kitura | Andriy | Ukraine | Head of the Green Transition Office at the Ministry of Economy of Ukraine | Online |
| Shlapak | Mykola | Ukraine | Senior Expert of the Green Transition Office at the Ministry of Economy of Ukraine | Online |
| Avramenko | Viacheslav | Ukraine | Leading Specialist of the Division on Conclusion of International Treaties on Legal Assistance of the International Legal Assistance Subdepartment of the International Law and Representation Department of the Ministry of Justice of Ukraine | Online |

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|---|---|---|---|---|
| Vincent | Keith | United Kingdom | Lawyer, His Majesty's Treasury | In person |
| Petley | Simon | United Kingdom | Department for Energy Security and Net Zero | In person |
| Held | Amy | United Kingdom | Law Commission | In person |
| Wilkinson | Kim | United Kingdom | Policy officer, His Majesty's Treasury | Online |
| Hamin | Moshin | United Kingdom | Policy officer, His Majesty's Treasury | Online |
| Reynolds | Tom | United Kingdom | Department for Environment, Food & Rural Affairs | Online |
| Iahel Rocca | André | Uruguay | Asesor Económico, Ministerio de Ambiente | Online |
| Fox | Anna | USA | Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State | Online |
| Ruiz Abou-Nigm | Verónica | ASADIP | President | Online |
| Albornoz | María Mercedes | ASADIP | Secretary General | Online |
| Quaggiotto | Daniele | Asian Development Bank | Principal Counsel at the Office of the General Counsel | Online |
| Mills | Alex | EAPIL | Professor of Public and Private International Law<br>Faculty of Laws, UCL | Online |
| Feigerlová | Monika | EAPIL | Centre for Climate Law and Sustainability Studies (CLASS) | Online |
| Juutilainen | Teemu | EAPIL | Professor of Private Law, University of Turku, Finland | Online |
| Marazopoulou | Vassiliki | EAPIL | Teaching Fellow & Post-Doctoral Researcher<br>National & Kapodistrian University of Athens | Online |
| Sung Lee | Jae | UNCITRAL | Senior Legal Officer | Online |
| Lehman | Matthias | UNIDROIT | University of Vienna | Online |

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|---|---|---|---|---|
| Leandro | Antonio | UNIDROIT | University of Bari Aldo Moro | Online |
| Previti | Giulia | UNIDROIT | Legal Officer | Online |
| Goh Escolar | Gérardine | HCCH | Deputy Secretary General of the HCCH | In person |
| Salinas Peixoto | Raquel | HCCH | Legal Officer | In person |
| Cheng | Harry | HCCH | Legal Officer | In person |
| Chiang | Melinda | HCCH | Secondee (Hong Kong SAR) | In person |
| Villanueva | Samantha | HCCH | Intern | In person |

# Annexe III

EG ON CARBON MARKETS

*AIDE-MÉMOIRE* OF THE SECOND MEETING

OCTOBER 2025

# *Aide-mémoire* of the second meeting of the Experts' Group on Carbon Markets prepared by the Chair

## I. Election of the Chair

1 The Permanent Bureau (PB) opened the meeting. The Experts' Group on Carbon Markets (EG), by consensus, appointed as its Chair Mr. Eduardo Silva Besa (Ministry of Foreign Affairs, Chile), a delegate representing Chile.

2 The EG adopted the draft Agenda.

## II. Discussion of Working Document No 1: the Proposal of the delegations of Brazil, Chile and the European Union ("Proposal of Iteration of the Text of Draft Principle 4 of the UNIDROIT Principles on Verified Carbon Credits on Applicable Law as a basis for discussion")

3 The delegates of Brazil, Chile, and the European Union presented the rationale behind the Work Doc No 1 proposal, which was submitted ahead of the second meeting for the EG's consideration and to provide a basis for discussion. The delegates emphasised that the proposal was a contribution for an open discussion, with an informal and constructive spirit, to support the EG's coming to consensus on a possible text as part of their contribution to the work of the UNIDROIT Working Group (WG) on Verified Carbon Credits (VCCs). The delegates noted that, in this spirit, the text proposed was, as far as was feasible, either taken or adapted from language already used in the current UNIDROIT draft of Principle 4, including its Commentary.

4 The proponents of Work Doc No 1 indicated that the proposal focused on the few issues that were of particular importance to their designating States. Moreover, the proponents indicated that the approach they took was to facilitate the discussion at the HCCH EG with awareness of the limitations resulting from time constraints as a result of the UNIDROIT WG's timeline and intent to complete work by mid-2026. The proposal further aimed to including a consideration of the broad range of policy issues in relation to carbon credits, including relevant project level considerations, the recognition of overriding mandatory rules and the alignment with the obligations under the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement and other related instruments, with the intention to provide a refined scope and a clearer focus on the downstream issues.

5 Several EG members thanked the proponents for the proposal and expressed support for the rationale behind it. While acknowledging that the document was a work in progress, several EG members considered that the proposal served as a robust basis for finding common ground within the EG. Some EG members highlighted, on the other hand, that the private international law (PIL)

issues being considered in the context of the carbon markets were complex, and that more time should be taken to properly consider these issues.

6 EG members agreed that the subject matter under discussion was solely the draft Principle 4. Nonetheless, it was recognised that any consensus arrived at in relation to a contribution to draft Principle 4 would be on the basis of the EG's understanding of certain concepts and definitions and that, were these definitions in the other draft UNIDROIT Principles be adapted or changed, such changes would necessarily impact on any contribution the EG makes on draft Principle 4. It was noted that it would be important, for the integrity of the process, to indicate that any proposal made by the EG to the UNIDROIT WG on draft Principle 4 be expressly premised on definitions that the EG understood at the time of any consensus arrived at on a proposed text.

7 The EG proceeded to consider, in a side-by-side comparison, the proposal contained in Work Doc. No 1 as an iteration to the text of draft Principle 4 that shared by UNIDROIT on 10 July 2024.

## A. Paragraphs 1 and 2 of the proposal of iteration of the text

8 The EG discussed at length the use of the terms "recognised" in relation to the registry, "maintained", and "secondary markets", noting that these terms were not defined and could cause confusion by their use in proposed paragraphs 1 and 2. There was also debate on what the intended scope of the applicable law rule in draft Principle 4 would comprise, including what precisely the term "secondary markets" within the carbon markets means, and whether the delimitation of the scope of draft Principle 4 to "secondary markets" was an accurate reflection of what the EG intended that draft Principle 4 should apply to.

9 There was agreement within the EG that the draft Principle on applicable law should be confined to the matters pertaining to downstream, in order to avoid unintentionally touching on matters that go beyond these transactions, such as those at the project level. In this regard, the EG discussed the text in paragraph 4.4. of the Commentary of the draft UNIDROIT Principles, which noted the UNIDROIT WG's intention to carve out project level issues from the scope of its final set of Principles.

10 Some EG members noted the proponents' choice of the connecting factor (i.e., *lex registri*) and queried the reason for choosing this connecting factor instead of others. One EG member voiced their designating State's policy position in relation to party autonomy, expressing the view that it should be possible to include, as an option, a choice of law clause. Another EG member also raised concerns in relation to the use of the term proprietary "law", noting that it was still within square brackets in the draft Principle 4 shared by UNIDROIT.

## B. Paragraph 3 of the proposal of iteration of the text

11 Concerning the term "creation" in the original text of draft Principle 4 as circulated by UNIDROIT, and the suggestion in Work Doc No 1 to remove the "creation and extinction of proprietary rights in VCCs" from the scope of applicable of draft Principle 4, the EG agreed that it was a broad concept that could unintentionally cover issues that are established from the beginning of the project.

12 EG members agreed that the examination of PIL issues encompassed a consideration and analysis of both public and private issues, including, for example, regulatory matters and matters relating to forum shopping. Some EG members also expressed the need to have PIL rules that are easy for courts and legal practitioners to apply.

13 The EG agreed on a preference for concentrating the applicable law rule in a single objective connecting factor, without prejudice to an option for party autonomy.

14 Some EG members expressed concerns about including the "content and effects" of proprietary rights in the scope of the draft Principle 4. One EG member gave an example concerning the circumstance in which a carbon project needed to be halted and the consequences of this circumstance on existing VCCs. A number of issues were raised in relation to the revocation of VCCs, and the EG agreed that there was a link between what happened in the project phase and its impact on the credit in such cases.

15 The EG also discussed the matter of cancellations, The EG questioned whether, particularly in the case of revocations, there was the possibility to compel a registry to conduct certain activities concerning VCCs. The EG noted that, at PIL, the issue could be addressed by using different techniques, either via the harmonisation of applicable law rules, or via rules relating to jurisdiction and enforcement. Draft Principle 23 on enforcement, which had been circulated for consideration by the UNIDROIT WG, was brought to the attention of the EG.

16 The participants from UNIDROIT indicated that several preliminary matters were excluded from draft Principle 4, including all project level considerations, and that matters such as revocations were being dealt with in separate draft Principles. The participants from UNIDROIT stated that the issue for discussion was solely in relation to private law and private parties, and that the discussion should be confined to that perspective.

17 The EG examined the definitions under draft Principle 2 of the UNIDROIT Principle and noted that those definitions were still subject to change. EG members expressed concerns about having different laws applicable to *ex ante* credits (which are excluded from the scope of the work of UNIDROIT) and as opposed to the law applicable to VCCs.

### C. Paragraph 4 of the proposal of iteration of the text

18 The EG discussed the proposed addition of a new provision to draft Principle 4 to expressly caveat any applicable law rule in draft Principle 4 to the overriding international obligations under the UNFCCC, the Paris Agreement and its related instruments and outcomes. Several EG members expressed their agreement with the importance of the inclusion of this provision and the EG agreed to do so.

19 The participants from UNIDROIT indicated that their work was premised on the distinction and separation between the compliance and voluntary carbon markets, and indicated that the draft UNIDROIT Principles only applied to credits in the voluntary markets. EG Members, however, highlighted the convergence between such markets, including within the mechanisms under the Article 6 of the Paris Agreement, as well as the use of credits from the voluntary markets in fulfilment of the international obligations arising from the UNFCCC and the Paris Agreement.

20 One EG member, speaking on behalf of their designating State, further noted that this provision constituted a non-negotiable safeguard to host States in the application of the draft Principles and emphasised States' obligations under international law. Other EG members, speaking on behalf of their designating States, expressed full support for this view. The participants from UNIDROIT reiterated that they consider that this was outside the scope of the project, which was agnostic to Article 6 of the Paris Agreement. The participants from UNIDROIT stated that it would not be coherent to include reference to the UNFCCC and the Paris Agreement mechanisms in the UNIDROIT Principles, given UNIDROIT's focus on the private schemes.

21 The Chair clarified that the private sector also contributes to the achievement of Paris Agreement goals. He brought the attention of the EG to the recent work of the UNFCCC Secretariat in which a taskforce was set up to study and review how voluntary markets are considered in the standards

of environmental accountability. He stressed that the private sector is a key player in climate mitigation strategies to advance Paris Agreement goals.

22 An Observer asked the EG which part of the Paris Agreement would have implications in relation to the scope of draft Principle 4, which was limited to proprietary law issues. In response to the question, the EG agreed that private law cannot be insulated from other areas of law. In that regard, another Observer noted that it was usual practice for HCCH work to include compatibility clauses and that such clauses were considered very helpful to ensure non-fragmentation with other applicable international law frameworks. An EG member raised the matter of authorisations for Article 6 of Paris Agreement purposes as an example for the necessity of considering the provisions of the Paris Agreements in the context of proprietary law issues. The EG, therefore, agreed that it was necessary to keep the proposal of text mentioning overriding international obligations under the UNFCCC and the Paris Agreement.

### D. Paragraph 5 of the proposal of iteration of the text

23 The EG expressed support for an express reference to the host State in relation to the text relating to a competent forum considering the public policy and overriding mandatory rules in making its decisions. One EG Member further indicated that stronger language in reference to the rules of the host State may be necessary, and proposed the replacement of the clause “may give effect” with “shall give effect”.

24 In the context of relevant overriding mandatory rules of the host State of the underlying carbon project, the proponents of the Work Doc No 1 also raised a number of domestic and international obligations, including regional Conventions and the ILO 169 Convention and obligations concerning Free, Prior and Informed Consent (FPIC).

### E. Paragraph 6 of the proposal of iteration of the text

25 After discussion, the EG agreed that, if connecting factors change, the applicable law would not change, but that this draft rule was not intended to have prospective effects.

26 In the context of this provision, EG members discussed the issue of party autonomy, which could, depending on how the drafting was structured, solve the matter of changes and allow the parties to choose whether to allow a change in the applicable law or not.

### F. Paragraph 7 of the proposal of iteration of the text

27 While agreeing that the scope of draft Principle 4 should be limited to downstream activities, one EG member expressed concerns about the exclusion under “c” (underlying project activities), noting that it could bring unintended consequences and possible fragmentation of the applicable law rules. This EG member also expressed concerns of conflicting provisions with the HCCH 2006 Securities Convention.

28 In relation to the exclusion of “insolvency”, the EG acknowledged the work of UNCITRAL in this area and the need to ensure no fragmentation of Principle 4 from other frameworks, either existing or currently under consideration.

29 The participants from UNIDROIT indicated that keeping security rights and insolvency within the scope of application of draft Principle 4 was crucial to the UNIDROIT Principles, in order to ensure that it would address all the proprietary issues arising from VCCs. The participants from UNIDROIT stated that, otherwise, the UNIDROIT Principles would have little value.

30 Another EG member raised the issue of custodians, and queried whether custody arrangements should be included in the scope of draft Principle 4. The EG member also asked whether both the common law and equitable doctrines of property would fall within the scope of "proprietary law" issues in the draft UNIDROIT Principles. This EG member further raised the issue of transactions in which VCCs are sold as a bundle, the consequences of such transfers, and whether a single law should apply. Another EG member noted that custody arrangements were complex and would raise many questions of PIL, noting that much more time would be necessary to discuss the matter.

31 One EG Member expressed that items "b. (entitlement to generate or claim VCCs)" and "c. (the law governing the underlying project activities, including land-use, community rights, indigenous rights, or human rights)" listed under the draft paragraph 7 of the proposal could be enhanced further in terms of drafting.

32 The EG agreed that, given the many and complex issues that must be discussed in relation to the principle on applicable law, including considerations relating to jurisdiction and recognition and enforcement, any submission made by the EG to the UNIDROIT WG should include in its text an express provision listing what it specifically does apply to, and what it does not. The principle on applicable law should take into account the fact that there are other international legal frameworks, including binding international and regional instruments in force, already established, for example, international contracts, secured transactions, collateralisation, securities, insolvency, agency etc.

## III. Proposal from the UK

33 Following the discussion on Work Doc. No 1, the delegation of the UK presented a proposal for further drafting iterations to the text initially proposed by the delegations of Brazil, Chile, and the European Union in Work Doc No 1.

34 The delegation of the UK presented the rationale for the drafting iterations being suggested, in particular regarding the option to allow the parties to a transaction the choice of law first and the reference to a "registry agreement for the account on which the VCC is held" in relation to that choice of law. The UK also presented the reasons for restructuring the order of the text in the draft under discussion.

35 One EG Member raised a question about using the term "domestic law" against the background of PIL drafting techniques and matters pertaining to *renvoi*. The UK delegation acknowledged the point being made and agreed to the deletion of the word "domestic".

36 The EG then engaged in a discussion about revocations. The EG agreed that this issue was crucial to understanding of the role of host States, the link between what happens on the ground and the impact of such events on the ground with the relevant credits, and that there should be a balance between the interests of private parties and the need for States to be reassured in relation to their public policies and applicable domestic legal frameworks.

37 The participants from UNIDROIT reiterated that their UNIDROIT Principles concerned purely private matters, and in respect to cancellations, only the proprietary effects of it. Therefore, to UNIDROIT, no considerations in relation to the UNFCCC or the Paris Agreement, or any public international law obligation on States, should be included in the text of the UNIDROIT Principles on VCCs.

38 The EG engaged on a discussion about whether the matter of revocations would be a substantive law issue (as opposed to a matter for PIL) and whether the link to the VCC would be direct or indirect. The EG noted that there were different techniques to address this issue. Some EG members suggested that the market would provide a solution for the issues raised by revocations (and so the issue of revocations may not need an applicable law rule to resolve it). According to these EG members, if industry stakeholders do not put in place a viable model to deal with such revocations,

their business model would not be viable (the "market approach"). Other EG members however indicated that any solution addressing revocations must also reflect the policy positions of States, and should go beyond the "market approach".

39 The EG also discussed practical issues as to how judgments rendered in a host State may travel across borders, including how these judgments could be recognised and enforced in another jurisdiction with frameworks to safeguard rights that the legislation of the host States had originally intended to protect. The EG agreed on the importance of this matter, and further agreed that any applicable law rule should not create a situation in which the regulatory or other aspects of national law could be circumvented.

## IV. Intermediate transmission from the HCCH Experts' Group on Carbon Markets to the UNIDROIT WG on VCCs

40 With a view to addressing several concerns discussed during the meeting, and with the aim of coming to a text that could be accepted by consensus, the delegations of Brazil, Chile, the EU, Malaysia and the UK proposed a proposed consolidated text. The proposed consolidated text was circulated to the EG as Discussion Doc No 2 of 9 October (p.m.).

41 The delegation of the EU (in their personal capacities) submitted text proposed as iterations to the text in Discussion Doc No 2 of 9 October (p.m.) and Work Doc No 2 (see Section V below). This text was circulated to the EG as Work Doc No 3. These proposals were discussed (and in some cases adopted) in a line-by-line reading of both documents by the EG.

42 The EG engaged in a line-by-line reading of the proposed consolidated text. Basing their discussions on the proposed consolidated text, the EG agreed by consensus on a text to be submitted as an intermediate transmission to the UNIDROIT WG in relation to the applicable law provision to be contained in draft Principle 4, in fulfilment of the initial focus of the EG's mandate.

43 The text that the EG agreed to by consensus reads as follows:

### SECTION II: PRIVATE INTERNATIONAL LAW

### Principle 4

### Applicable law

(1) This Principle applies to relevant proprietary [law] matters relating [directly] to—

a) the issuance (including its first creation or entry on the registry on which it is held) onto and the removal (through retirement or transfer) of that VCC from the registry on which it is held, including the content of proprietary rights in that VCC;

b) the circumstances in which a person may hold or use proprietary rights in [such a] VCC, including the circumstances in which [those] proprietary rights in [such a] VCC may be validly transferred to another person; and

c) the third-party effects of a transfer of such a proprietary right in a VCC.

(2) The relevant proprietary [law] matters are governed by—

a) [the law of the State expressly chosen in the registry agreement for the account on which the VCC is held; the registry operator and the holder of the VCC may at any time agree to choose a law other than that which previously governed the above proprietary [law] matters, whether as a result of an earlier choice made under this subparagraph or in accordance with subparagraph (b);

b) absent a choice in accordance with subparagraph (a),] [the law of the State where the registry operator for the registry on which the VCC held had its statutory seat or, in the absence of such a seat, its central place of administration, at the time of the issuance (*lex registri*).]

(3) This Principle is without prejudice to, and shall be applied in conformity with, the United Nations Framework Convention on Climate Change, the Paris Agreement, and their related instruments and outcomes.

(4) Courts [may][shall][must] refuse the application of a foreign law designated under this Principle where it violates their public policy (*ordre public*). Courts may also give effect to overriding mandatory rules of the forum, and [may][shall][must] give effect to overriding mandatory rules of other States, including, notably, the host State of the underlying carbon project, which apply independently of the otherwise governing law.

(5) The relevant proprietary [law] matters relating to a VCC subject to this Principle do not include—

a) those related to the carrying on of any underlying carbon mitigation project, including land-use, community rights, indigenous rights, or human rights, [related directly to that VCC];

b) the recognition of VCCs for compliance or regulatory purposes;

c) [applicable law in insolvency proceedings];

d) contractual rights and obligations arising from agreements relating to VCCs [, including sales or account agreements]; and

e) other matters not directly relevant to proprietary matters.

(6) This Principle is subject to other applicable international and supranational frameworks, for example, in relation to the law applicable to security rights.

(7) For the purposes of this Principle, "law" means the law of a State or the law of a territorial unit of a State. The application of such a law means the application of the rules of that law other than its rules of private international law.

44 The EG also agreed that, at the bottom of this text, an express statement should be made to specify that the terms as used in the iterated text presented above is based on the definitions contained in the 10 July 2025 text of the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits, as listed.

## V. Chapeau on the iterated text to be submitted to the UNIDROIT WG

45 The delegation of Singapore (in their personal capacities) proposed a suggested text for a chapeau to cover the iterated text of draft Principle 4 to be submitted to the UNIDROIT WG, which was circulated to the EG as Work Doc No 2. The delegation of Singapore (in their personal capacities) presented their proposal as contained in Work Doc No 2.

46 The delegation of Singapore (in their personal capacities) highlighted that several topics needed more time for multilateral consultation and in-depth discussion, including matters relating to party autonomy, the preference for one or more objective connecting factors, and any and which objective factors should be included in the applicable law rule. Some delegations supported this view, indicating that the topic of party autonomy included policy issues and was connected to the concern about asset fragmentation. The EG agreed on the need to consider limitations to party autonomy, particularly in light of potential issues that may arise from the underlying carbon project.

There was consensus in the EG that these topics needed to be carefully explored before the applicable law rule is adopted.

47 The EG agreed by consensus to the proposal to add the text suggested by the delegation of Singapore, with some language adjustments and the insertion of a non-exhaustive list of caveats (as outlined in the Section below). The text, which would be headed "Comments from the HCCH Experts' Group on Carbon Markets on Draft Principle 4", would serve as a reminder that the transmission to UNIDROIT was an intermediate work-in-progress at this stage, and expressly note that, for certain issues that require discussion and consultation at the multilateral level, more time is necessary for proper consideration before a final applicable law rule is arrived at.

## VI. Position of HCCH Members

48 EG Members agreed by consensus to submit the intermediate transmission to the UNIDROIT Secretariat, with the following non-exhaustive list of issues that will require more time for multilateral discussion and consultation:

a) whether the connecting factor(s) should be anchored on the registry, or on a different and broader conception of party autonomy. In that regard, paragraph (2)(a) of the Annex, which is square bracketed, prioritises party autonomy as a connecting factor, and reflects concerns including that, in a market where holders of VCCs are free to choose where their credits are held, the former may risk concentrating registry use within a limited number of jurisdictions, which could risk wider development and distribution of registry infrastructure and services. It is intended to be a place-holder for questions on (i) whether a choice of law should be given effect as the relevant applicable law, (ii) what limits, if any, should be placed on such a choice, (iii) the safeguards required to protect the interests of third parties, (iv) the effect of a supervening choice of law; and (v) the law to govern issues relating to the existence, validity and interpretation of a relevant choice of law;

b) if anchored on the registry, whether there should be only one connecting factor, or options for different connecting factors;

c) what connecting factor(s) should apply to proprietary rights in VCCs held by a custodian;

d) whether different applicable law rules are needed for the matters excluded under paragraph (5) of the proposed iterated text, and if so, what those should be; and

e) whether to address in draft Principle 4 the situation where the impossibility of the project to achieve its intended carbon mitigation benefits for reasons related to the host State law may result in the cancellation of the relevant VCCs, and/or whether it should be addressed through other private international law techniques or whether it should/can be addressed through other methods. This includes whether the following text should be included as a specific provision:

"The proprietary rights in a VCC are deemed to exist subject to the condition that the underlying carbon mitigation project remains in compliance with the overriding mandatory rules of the host State concerning land tenure and indigenous rights, as applied under Principle 4(4).".

49 EG members agreed to include several terms in square brackets in the iterated text. These square-bracketed terms represent terms and issues that would require further discussion within the EG, and are so indicated to expressly show that EG members did not have a position on the use of these terms as yet. The EG expressly noted that the inclusion of the various terms in square

brackets does not indicate that the EG accepts their use in the text that will comprise any Principle adopted in the UNIDROIT Principles. The term "proprietary *law*" was therefore left in square brackets, as well as the terms "may", "shall" and "must".

50 The EG agreed that, (a) in order to ensure non-fragmentation from other frameworks already established or ongoing work at other Organisations, and (b) in light of the close coordination and cooperation between the HCCH and UNCITRAL in particular, that the text it puts forward to UNIDROIT should exclude "applicable law in insolvency proceedings", as that work is currently being considered by UNCITRAL's Working Group V. Moreover, the EG also agreed to exclude from the text being put forward to UNIDROIT any asset-specific rules for VCCs where there is an established private international law framework in place, for example, where the HCCH 2006 Securities Convention, or UNCITRAL's Model Law of Secured Transactions, would apply.

51 The EG agreed that it would only submit a draft iterated text of Principle 4 as a basis for ongoing discussions, with the Comments as described in para 48 above, but without accompanying text by way of commentary on the draft iterated text.

52 The EG further agreed that it puts forward a possible alternative to the draft text of Principle 4 of the UNIDROIT Principles in an attempt to clarify as well as simplify, while noting that the EG will continue to discuss and work on the applicable law rule or rules for proprietary issues in respect of carbon credits. The EG moreover agreed that these are important issues to not only get right, but also to get buy-in for from HCCH Members and their stakeholders. This proposed iterated text is conveyed to UNIDROIT at this juncture so that UNIDROIT can take the preliminary suggestions into account in determining the way forward for its work on draft Principle 4.

## VII. Technical roundtable

53 The EG heard a presentation by Dr Wei-nee Chen, Head, Carbon Markets, Bursa Malaysia Bhd, on an "Introduction to Bursa Malaysia – Exchange". Together with Dr Chen, the following colleagues from Bursa Malaysia Bhd then took questions from the EG on the presentation: Karen Ong Su Wern (Corporate Legal), Ali Imran (Group Corporate Strategy), and Muhammad Sahel Nordin (Shariah & Governance).

## VIII. Next Steps

54 The EG agreed that text would be transmitted by the PB to the UNIDROIT WG on VCCs via the UNIDROIT Secretariat in mid-October. The UNIDROIT WG will be requested to provide any comments and / or questions that they may have to the HCCH EG's suggested text by mid-November.

55 If the UNIDROIT WG has comments and / or questions on the EG's suggested text, the HCCH EG will discuss these at its third meeting, scheduled to take place on Tuesday 2 to Thursday 4 December 2025. The EG will aim to come by consensus to a final suggested text for the draft UNIDROIT Principles at the end of its third meeting, which the PB will transmit to the UNIDROIT WG on VCCs for consideration ahead of its seventh session to take place from Wednesday 17 to Friday 19 December 2025. This final suggested text will constitute the HCCH's contribution to the possible inclusion of an applicable law provision in the draft UNIDROIT Principles, in line with the mandate of the HCCH EG.

The EG expressly noted that the extent to which the EG will be able to support the applicable law provision in the final version of the UNIDROIT Principles will depend on the reaction of the UNIDROIT WG to the text and concerns raised by the EG.

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# Annexe IV

# List of participants - HCCH Experts' Group on Carbon Markets

## 2nd meeting - 8-10 October 2025

| Family name(s) | Name(s) | State or Organisation | Position | Status of attendance (online/on site) |
|---|---|---|---|---|
| Paula María | All | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| Carolina | Harrington | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| Alejandro | Menicocci | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| De Meyer | Ine | Belgium | Legal Expert at the International Negotiations and Cooperation Unit | Online |
| Bertini Pasquot Polido | Fabricio | Brazil | Associate Professor of Private International Law, Comparative Law and New Technologies, University of Minas Gerais | Online |
| Bauer | Frederico | Brazil | Counsellor | Online/in person |
| Silva Besa | Eduardo | Chile | Deputy Director of the Environment, Climate Change and Oceans Division at the Ministry of Foreign Affairs of Chile | In person |
| Rodríguez Gómez de la Torre | Macarena | Chile | Coordinator of Private International Law Affairs, Attorney General Directorate of Legal Affairs Ministry of Foreign Affairs | Online |
| Leung Tsz Ying | Almaz | China | Principal Assistant Secretary for Financial Services and the Treasury, Hong Kong SAR | Online |
| Chow Koon Ying | Paul | China | Group General Counsel & Group Chief Sustainability Officer, Hong Kong Exchanges and Clearing Limited | Online |
| Wenqin | Xiong | China | Deputy Division Director, Department of Treaty and Law, Ministry of Foreign Affairs | Online |
| Yutong | Li | China | Attaché, Department of Treaty and Law, Ministry of Foreign Affairs | Online |
| Fei | Tan | China | Senior Officer, Economic and Technological Development Bureau, Macao SAR | Online |
| Jijie | Wang | China | deputy director, National Center for Climate Change Strategy and International Cooperation | Online |

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|---|---|---|---|---|
| Alcantara | Luz | Dominican Republic | Carbon Market Officer | Online |
| Llorca | Javier | Ecuador | Ministro | In person |
| Liévano Paz | Josué Roberto | El Salvador | Minister Counsellor | Online |
| Arévalo | Mirna Patricia | El Salvador | Legal Manager, Ministry of Environment | Online |
| Paniagua Meléndez | Miguel Armando | El Salvador | Minister Counsellor | In person |
| Monterossa | Lilian Marcela | El Salvador | Legal Analyst, Ministry of Environment | Online |
| Franzina | Pietro | EU | Full Professor of International Law - Università Cattolica del Sacro Cuore Milano | In person |
| de Luca | Patrizia | EU | Senior Expert - European Commission | Online |
| Sears Debono | Angele | EU | Legal and Policy Officer | Online |
| Bousarghin | Fatiha | France | Rédactrice au sein du département de l'entraide, du droit international privé et européen - Ministère de la Justice | Online |
| Coudin | Gabrielle | France | Adjointe à la cheffe du département de l'entraide, du droit international privé et européen - Ministère de la Justice | Online |
| Besançon | Kévin | France | Adjoint au chef du bureau Finance durable, droit des sociétés, comptabilité et audit des entreprises | Online |
| Krakovitch | Nicolas | France | Adjoint au chef du bureau Climat à la Direction générale du Trésor du Ministère de l'Economie | Online |
| Kleiner | Caroline | France | Professeure de droit à l'Université Paris Cité | Online |
| von Unger | Moritz | Germany | Attorney, Federal Ministry for Economic Affairs and Climate Action | In person |
| Palma | Tamara | Germany | Lawyer, German Environment Agency | In person |
| Srivastava | Dhiraj Kumar | India | Chief Engineer, Ministry of Power | Online |
| Diddi | Saurabh | India | Director, Ministry of Power | Online |
| K.C. | Sowmya | India | Director, Ministry of External Affairs | Online |
| Himanshu | Goenka | India | First Secretary | Online |

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|---|---|---|---|---|
| Ainy binti Yahaya | Nurul | Malaysia | Legal Attaché for the Embassy of Malaysia | In person |
| Chen | Wei-nee | Malaysia | Head of Carbon Market, Bursa Malaysia | Online |
| Ong | Karen | Malaysia | SVP Corporate Legal, Bursa Malaysia | Online |
| Imran | Ali | Malaysia | VP Strategic Business and Industry Development, Bursa Malaysia | Online |
| Mohd Naqib | Syed | Malaysia | Senior Manager, Strategic Business and Industry Development, Bursa Malaysia | Online |
| Sahel bin Nordin | Muhammad | Malaysia | Senior Manager, Shari'ah & Governance, Bursa | Online |
| Angad | Surekha | Mauritius | Deputy Chief State Attorney | Online |
| Álvarez-Rendón | Martha Angélica | Mexico | Director of Private International Law, Office of the Legal Adviser, Mexican Ministry of Foreign Affairs | Online |
| Rolon | Claudia | Paraguay | Asesoría Jurídica de Asuntos Internacionales Ministerio de Relaciones Exteriores | Online |
| Nunes de Almeida | Sara | Portugal | Deputy Coordinator for European Affairs | Online |
| Duarte Afonso | Sónia | Portugal | Affairs Coordination Unit from the General-Directorate for Justice Policy of the Portuguese Ministry of Justice | Online |
| Lim | Delphia | Singapore | Director, International Legal Division, Ministry of Law | In person |
| Wan | Wai Yee | Singapore | Senior State Counsel, Civil Division, Attorney-General's Chambers | Online |
| Lum | Qian Wei | Singapore | State Counsel, Civil Division, Attorney-General's Chambers | In person |
| Ünal | Emel | Türkiye | First Legal Advisor, Ministry of Environment, Urbanisation and Climate Change | In person |
| Gürel | Uğur | Türkiye | Carbon pricing advisor, Directorate of climate change | In person |
| Held | Amy | UK | Law Commission | Online |
| Vincent | Keith | UK | Lawyer, His Majesty's Treasury | In person |
| Petley | Simon | UK | Department for Energy Security and Net Zero | In person |
| Kitura | Andriy | Ukraine | Head of the Green Transition Office at the Ministry of Economy of Ukraine | Online |

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|---|---|---|---|---|
| Avramenko | Viacheslav | Ukraine | Leading Specialist of the Division on Conclusion of International Treaties on Legal Assistance - Ministry of Justice of Ukraine | Online |
| Dotta | Marcos | Uruguay | Director of International Law Affairs | Online |
| José Rodríguez | María | Uruguay | Advisor to the Directorate of International Law Affairs | Online |
| Maresca | Daniel | Uruguay | Directorate of the Environment | Online |
| André | Iahel Rocca | Uruguay | Asesor Económico, Ministerio de Ambiente | Online |
| Albornoz | María Mercedes | ASADIP | Chief Engineer, Ministry of Power | Online |
| Ruiz Abou-Nigm | Verónica | ASADIP | President | In person |
| Quaggiotto | Daniele | Asian Development Bank | Principal Counsel at the Office of the General Counsel | In person |
| Mills | Alex | EAPIL | Professor of Public and Private International Law<br>Faculty of Laws, UCL | In person |
| Feigerlová | Monika | EAPIL | Centre for Climate Law and Sustainability Studies (CLASS) | Online |
| Juutilainen | Teemu | EAPIL | Professor of Private Law, University of Turku, Finland | Online |
| Marazopoulou | Vasiliki | EAPIL | Dr. of Laws, Attorney-at-Law<br>Teaching Fellow & Post-Doctoral Researcher | Online |
| Werner | Peter | ISDA | Senior Counsel | In person |
| Kunzelmann | Alex | UNCITRAL | | Online |
| Leandro | Antonio | UNIDROIT | University of Bari Aldo Moro | In person |
| Previti | Giulia | UNIDROIT | Legal Officer | In person |
| Lehman | Matthias | UNIDROIT | University of Vienna | In person |
| Goh Escolar | Gérardine | HCCH | Deputy Secretary General of the HCCH | in-person |
| Cheng | Harry | HCCH | Legal Officer | in-person |
| Salinas Peixoto | Raquel | HCCH | Legal Officer | in-person |

| | | | | |
|---|---|---|---|---|
| Ho | Wendy | HCCH | Secondee (Hong Kong SAR) | in-person |
| Kang | Jisung | HCCH | Secondee (Korea) | in-person |
| Ahemai | Dilidaer | HCCH | Intern | in-person |
| Wen | Ying | HCCH | Intern | in-person |

# Annexe V

EG ON CARBON MARKETS

OCTOBER 2025

COMMENTS ON AND INTERMEDIATE ITERATION OF PRINCIPLE 4 OF THE DRAFT UNIDROIT PRINCIPLES ON VERIFIED CARBON CREDITS

# HCCH Experts' Group on Carbon Markets:

# Comments on and Intermediate Iteration of Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits (October 2025)

## Comments from the HCCH Experts' Group on Carbon Markets on Draft Principle 4

The EG on Carbon Markets has prepared a draft iterated text of Principle 4 (enclosed in the Annex). This draft is a work in progress. It seeks to clarify certain aspects of draft Principle 4, in particular, the scope of proprietary issues that should be governed by the same applicable law rule, and the appropriateness of addressing expressly what the provision is not meant to cover.

Other areas will require more time for the EG to consolidate its views. They include (non-exhaustively):

(a) whether the connecting factor(s) should be anchored on the registry, or on a different and broader conception of party autonomy. In that regard, paragraph (2)(a) of the Annex, which is square bracketed, prioritises party autonomy as a connecting factor, and reflects concerns including that, in a market where holders of VCCs are free to choose where their credits are held, the former may risk concentrating registry use within a limited number of jurisdictions, which could risk wider development and distribution of registry infrastructure and services. It is intended to be a place-holder for questions on (i) whether a choice of law should be given effect as the relevant applicable law, (ii) what limits, if any, should be placed on such a choice, (iii) the safeguards required to protect the interests of third parties, (iv) the effect of a supervening choice of law; and (v) the law to govern issues relating to the existence, validity and interpretation of a relevant choice of law;

(b) if anchored on the registry, whether there should be only one connecting factor, or options for different connecting factors;

(c) what connecting factor(s) should apply to proprietary rights in VCCs held by a custodian;

(d) whether different applicable law rules are needed for the matters excluded under paragraph (5) of the proposed iterated text, and if so, what those should be; and

(e) whether to address in draft Principle 4 the situation where the impossibility of the project to achieve its intended carbon mitigation benefits for reasons related to the host State law may result in the cancellation of the relevant VCCs, and/or whether it should be addressed through other private international law techniques or whether it should/can be addressed through other methods. This includes whether the following text should be included as a specific provision:
"The proprietary rights in a VCC are deemed to exist subject to the condition that the underlying carbon mitigation project remains in compliance with the overriding mandatory rules of the host State concerning land tenure and indigenous rights, as applied under Principle 4(4).".

The EG puts forward a possible alternative to the draft text of Principle 4 of the UNIDROIT Principles in an attempt to clarify as well as simplify, while noting that the EG will continue to discuss and work on the applicable law rule or rules for proprietary issues in respect of carbon credits. These are important issues to not only get right, but also to get buy-in for from our Members and their stakeholders. This proposed iterated text is conveyed to UNIDROIT at this juncture so that UNIDROIT can take the preliminary suggestions into account in determining the way forward for its work on draft Principle 4.

# Annex

## Draft Iterated Text of Principle 4 – Intermediate Transmission from the HCCH Experts' Group on Carbon Markets to the UNIDROIT WG on VCCs

### SECTION II: PRIVATE INTERNATIONAL LAW

### Principle 4

### Applicable law

(1) This Principle applies to relevant proprietary [law] matters relating [directly] to—

a) the issuance (including its first creation or entry on the registry on which it is held) onto and the removal (through retirement or transfer) of that VCC from the registry on which it is held, including the content of proprietary rights in that VCC;

b) the circumstances in which a person may hold or use proprietary rights in [such a] VCC, including the circumstances in which [those] proprietary rights in [such a] VCC may be validly transferred to another person; and

c) the third-party effects of a transfer of such a proprietary right in a VCC.

(2) The relevant proprietary [law] matters are governed by—

a) [the law of the State expressly chosen in the registry agreement for the account on which the VCC is held; the registry operator and the holder of the VCC may at any time agree to choose a law other than that which previously governed the above proprietary [law] matters, whether as a result of an earlier choice made under this subparagraph or in accordance with subparagraph (b);

b) absent a choice in accordance with subparagraph (a),] [the law of the State where the registry operator for the registry on which the VCC held had its statutory seat or, in the absence of such a seat, its central place of administration, at the time of the issuance (*lex registri*).]

(3) This Principle is without prejudice to, and shall be applied in conformity with, the United Nations Framework Convention on Climate Change, the Paris Agreement, and their related instruments and outcomes.

(4) Courts [may][shall][must] refuse the application of a foreign law designated under this Principle where it violates their public policy (*ordre public*). Courts may also give effect to overriding mandatory rules of the forum, and [may][shall][must] give effect to overriding mandatory rules of other States, including, notably, the host State of the underlying carbon project, which apply independently of the otherwise governing law.

(5) The relevant proprietary [law] matters relating to a VCC subject to this Principle do not include—

a) those related to the carrying on of any underlying carbon mitigation project, including land-use, community rights, indigenous rights, or human rights, [related directly to that VCC];

b) the recognition of VCCs for compliance or regulatory purposes;

c) [applicable law in insolvency proceedings];

d) contractual rights and obligations arising from agreements relating to VCCs [, including sales or account agreements]; and

e) other matters not directly relevant to proprietary matters.

(6) This Principle is subject to other applicable international and supranational frameworks, for example, in relation to the law applicable to security rights.

(7) For the purposes of this Principle, "law" means the law of a State or the law of a territorial unit of a State. The application of such a law means the application of the rules of that law other than its rules of private international law.

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**NOTE:** The terms as used in the iterated text presented above is based on the following definitions contained in the 10 July 2025 text of the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits:

## "Principle 2

## Definitions

(1) **'Verified carbon credit' or 'VCC'** means a unit that represents the achievement of a reduction in, or removal of, emission into the atmosphere of greenhouse gases equivalent to one tonne of CO2 equivalent as a result of a carbon mitigation project if
- (a) The achievement of the reduction or removal is verified by a positive verification statement;
- (b) The positive verification statement is approved by a CCB;
- (c) The unit is credited to an account in a VCC registry; and
- (d) The unit is individuated using a unique identifier.

(2) **'Unit'** means an intangible asset.
**[...]**

(6) **'Unique identifier'** means a number or other unique means of identification that relates to one VCC, or to a block of more than one VCC if a single record in a VCC registry relates to that block.

(7) **'Verified'** means, in relation to an achievement of a reduction or removal, that a VVB has carried out a verification process resulting in a positive verification statement.

(8) **'Verification statement'**, in relation to a VCC, can be either positive or negative. A positive verification statement means a statement that there has been an achievement of a reduction or removal as a result of the relevant carbon mitigation project in accordance with the applicable methodology. A negative verification report means a statement that there has not been such an achievement.
**[...]**

(10) **'VVB' (validation and verification body)** means a legal person that, in respect of a verification process, [is [approved][appointed] by the relevant CCB to carry out that verification process] and
- (a) is independent of any other natural or legal person
  - (i) who has undertaken the relevant carbon mitigation project or
  - (ii) who is to become or does become the first registered holder of the VCC and
- (b) produces a verification statement as a result of that verification process.

(11) **(a) 'Carbon mitigation project'** means a project aimed at the achievement of a reduction or removal operating under the rules of an ICCP.
- (b) **'Relevant carbon mitigation project'** means, in relation to a VCC, the carbon mitigation project from which the achievement represented by that VCC results.

(12) **'CCB' (carbon crediting body)** means a legal person, a governmental body or an inter-governmental body, that, in relation to a VCC, performs [one or more of] [most or all of] the following functions:
- (a) administration of the crediting programme under the rules of which the relevant carbon project operates;

(b) specification of the methodology applying to the relevant carbon mitigation project;
(c) [in relation to the relevant carbon mitigation project, registration of that project in [ ];]
(d) appointment of the VVB that carries out the verification process relating to that VCC;
(e) specification of the methodology to be applied by the VVB in the verification process relating to that VCC;
(f) approval of a positive verification statement resulting from the verification process relating to that VCC;
(g) [instruction of the VCC registry to credit the VCC in a registry account.

(13) **'ICCP' (independent carbon crediting programme)** means a programme of carbon mitigation activities governed by rules established by a CCB.
**[...]**

(15) In relation to **a transfer of a VCC:**
(a) 'transfer' of a VCC means the change of a proprietary right in the VCC from a transferor to a transferee;
(b) the term 'transfer' includes the acquisition of a proprietary right in a VCC;
(c) 'transferor' means a person that initiates a transfer of a proprietary right in the VCC;
(d) 'transferee' means a person to which a proprietary right in a VCC is transferred;
(e) the term 'transfer' includes the grant of a security right in favour of a secured creditor, and 'transferee' includes a secured creditor.
**[...]**

(16) **'Retirement'** means the voluntary cancellation of a VCC on the instruction of its registered holder.
**[...]**

(21) **'Insolvency-related proceeding'** means a collective judicial or administrative proceeding, including an interim proceeding, in which, for the purpose of reorganisation or liquidation, at least one of the following applies to the assets and affairs of the debtor:
(a) they are subject to control or supervision by a court or other competent authority;
(b) the debtor's ability to administer or dispose of them is limited by law;
(c) the debtor's creditors' ability to enforce on them is limited by law.

[...]."

## "Principle 3
## General principles

[...]
(2) **'Proprietary rights'** includes both proprietary interests and rights with proprietary effects.
[...]"

## "Principle 5
## Creation

(1) **A VCC comes into existence** when it is recorded in the VCC Registry that the VCC or a block of VCCs has been credited to an account in the VCC Registry.

(a) Subject to paragraph (b) the registered holder of a VCC at the moment it comes into existence has a proprietary right in that VCC;
(b) (b) If, at the moment that a VCC comes into existence, the registered holder maintains the VCC for a client, that client has a proprietary right in that VCC.

(2) After that moment, subject to Principle 7 the question of whether a person has a proprietary right in a VCC is a matter for other law."

# Annexe VI

EG ON CARBON MARKETS

*AIDE-MÉMOIRE* OF THE THIRD MEETING

DECEMBER 2025

# *Aide-mémoire* of the third meeting of the Experts' Group on Carbon Markets prepared by the Chair

## I. Opening of the meeting

1 The Permanent Bureau (PB) opened the meeting. The Chair had informed the PB in advance that he would be unable to attend the session due to a delay in his travel and had recommended to the Experts' Group (EG) that the Deputy Secretary General (DSG) be invited to serve as Chair *pro tempore*. The EG agreed by consensus to appoint the DSG as Chair *pro tempore* for the sessions in which the Chair was absent.

2 The EG adopted the draft Agenda.

## II. General Issues and Approaches Underpinning an Applicable Law Rule in draft Principle 4

### A. Integration with the international climate regime

3 The EG raised concerns about UNIDROIT's decision not to expressly include text relating to international climate regimes in the black-letter text of the draft Principles (whether in Principle 4 or elsewhere), as the EG had suggested in its intermediate submission to UNIDROIT. The EG by consensus agreed on the need to acknowledge expressly in the draft Principles the role and underlying policy objectives of the public international law frameworks established in relation to climate change and other environmental law. One EG member raised the question of whether the starting point of any applicable law rule that is drafted should be based upon by the public international law treaties relating to climate change and environmental law. Other members underscored the value of a high-quality and inclusive multilateral exchange on this matter. The EG highlighted that sufficient time will be essential to enable an in-depth and comprehensive consideration of the issues, and that such deliberations should not be compressed into an unduly accelerated timeline.

### B. Link between the carbon project and the carbon credits issued from that project, including any proprietary rights to those carbon credits

4 The EG proceeded to discuss the link between the upstream and downstream segments of carbon markets, including whether, and to what extent, there is or should be a link between the carbon project in question and the carbon credits issued from that project, including any proprietary rights to those carbon credits. While the EG acknowledged that such a link exists, some EG members queried whether private international law (PIL) would be the appropriate vehicle to address issues arising about this link. One participant questioned whether the applicable law rule could, as a matter of scope, govern this issue. Other participants, however, emphasised that PIL rules cannot be viewed in isolation from the international regimes and public policy frameworks within which

carbon markets operate, recalling that carbon credits are not simply regular commodities or financial instruments, but instruments designed to advance the climate objectives reflected in the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and related public international law instruments. As such, these participants noted that any carbon credits issued from a project, including the proprietary rights to those credits, would be inextricably linked to factors relating to the carbon project upstream. In light of the divergent views expressed and the complexity of the matters to be examined, the EG agreed by consensus that additional time would be required for further discussion.

### 1. Legality of a carbon project

5 The EG turned to examine the potential implications, if any, that a determination of illegality of a carbon project by a court or other competent authority, for example, a finding that the project infringes human rights, environmental rights, land rights, or the rights of indigenous peoples or local communities, or is otherwise inconsistent with the mandatory rules of the host State, may have for proprietary rights in a carbon credit. For the purposes of this discussion, the EG proceeded on the assumption that, depending on the law governing proprietary rights in a credit, the illegality of the underlying project could, in principle, constitute a basis for revoking, and thus cancelling, the credit.

6 From a PIL perspective, the EG identified several questions raised by this scenario, including:

a. **Jurisdiction:** which State or States have courts or other competent authorities empowered to determine the legality of a project;

b. **Applicable law:** which law governs the assessment of a project's legality, and how that law interacts with the law applicable to proprietary rights in credits derived from the project;

c. **Recognition and enforcement:** under what conditions a judgment or administrative determination on project illegality should be given effect in another State, including where a party were to rely on the judgment or determination to seek the cancellation of the credits concerned.

7 The EG also noted that additional matters may arise in connection with the above, such as: how parallel proceedings in two or more States concerning the legality of the same project or the implications for the related credits should be managed so as to avoid conflicting outcomes; and whether, and in what form, cooperation, for instance through the exchange of information, may be facilitated between authorities in different States seised of proceedings concerning the same project and/or credits.

### 2. Reversals/revocations/cancellations

8 The EG then returned to the question of revocation in the context of the link between a carbon project and the credits it generates. Participants highlighted the importance of considering issues such as fraud, project illegality and invalidity claims, and their interaction with other elements of the draft UNIDROIT Principles. UNIDROIT provided clarifications on the processes of reversal and revocation as conceived in the draft UNIDROIT Principles, drawing particular attention to draft Principle 10, and noted that draft Principle 4 addresses only the proprietary aspects of the verified carbon credit (VCC) as defined and does not extend to the grounds for revocation, the application of which, in UNIDROIT's view, will likely be based on factual determinations.

9 The EG noted, from an applicable law perspective, that the discussion gives rise to two separate but interconnected issues: first, which law governs the grounds for revocation, and second, which law governs the effects of revocation on proprietary rights. It was observed that the former issue precedes the latter, and it would therefore be important to focus initially on the grounds for

revocation. It was also noted that the resolution of these issues will depend on the domestic laws and regulatory frameworks of different States. The EG agreed that priority should be given to examining the PIL questions concerning grounds for revocation as a preliminary matter, although some members expressed reservations regarding this approach.

10 One participant referred to the potential revocation of an ITMO authorisation under Article 6.2 of the Paris Agreement and raised questions about the subsequent effects on the credit in light of draft Principle 4 of the UNIDROIT Principles. The EG's discussion focused on how such a revocation would safeguard the sovereignty of the host State concerned. It was recalled that the overarching purpose of the draft UNIDROIT Principles is to support the mobilisation of climate finance, and the EG considered whether the proprietary rights recognised under the draft UNIDROIT Principles would reinforce international obligations arising under Article 6.2. A critical question was whether the withdrawal of an ITMO authorisation by a State would automatically affect the proprietary status of the associated carbon credit.

11 The EG also considered the challenges that may arise from the differing approaches to revocation and proprietary rights taken by host States, registries, and holders of carbon credits, particularly in situations where these actors do not share the same view. Participants noted that such divergences in approaches could generate tensions between State sovereignty and the expectations of buyers, registries, and other market participants, giving rise to classic PIL questions concerning conflicting applicable laws. After discussion, no solution was identified at this stage by the EG. The examples discussed by the EG illustrated that each actor may act under its own jurisdiction, resulting in a lack of global uniformity and, in turn, limiting the potential for decisions to be recognised and enforced across borders.

### C. Policy values on the applicable law rule and the balance between actors

12 One EG member invited the EG to reflect on the type of legal infrastructure that would be necessary to support the responsible growth of carbon markets. Some EG members expressed caution about espousing a solely market-growth approach and questioned how such an approach could be reconciled with the broader objectives of the Paris Agreement, underscoring the need for a holistic approach. It was noted that failure to consider these concerns could create confusion, conflict, and undermine legal certainty, generate questions about the integrity of the credits on the carbon markets, and ultimately impede the growth of the carbon markets. Another EG member highlighted the need for clarity on the extent to which the concerns of project host States should be taken into account.

13 On one hand, some EG members emphasised the importance of features such as transferability and fungibility of credits in enabling the carbon markets to scale effectively. On the other hand, other EG members noted the need to balance these considerations with situations where an underlying project is found to be non-compliant, and to ensure appropriate regard be given to the role and interests of the States in which the projects are located. The EG agreed by consensus that these policy questions require careful and inclusive multilateral discussion. Members emphasised that achieving an appropriate balance among the various actors and stakeholders in carbon markets is essential not only for scaling the markets, but for ensuring that such scaling takes place with integrity and responsibility.

### D. Party autonomy

14 One EG member suggested that greater emphasis could be placed on party autonomy, noting that many of the issues under discussion are likely to arise in a contractual rather than a proprietary context. Another EG member expressed a preference for the applicable law rule on proprietary matters to rely on a single connecting factor based on the place of the registry. A third EG member

indicated reservations regarding this approach and indicated that additional time would be required to consider this matter in appropriate depth.

## E. Consensus position of the EG (closed session)

15 The Chair *pro tempore* conveyed the request of several EG members, made pursuant to the HCCH Rules of Procedure, to move to a decision-making process in closed session (limited to members designated by HCCH Members). The EG, acknowledging that other members supported the request, and wishing to allow members to express their views and concerns, proceeded to a closed session.

16 In closed session, the experts designated by HCCH Members discussed the consensus position on the current text of the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits. The EG concluded by consensus that, at this juncture, it is not in a position to support the current text of draft Principle 4, or its underlying policy approaches. After a line-by-line reading, the EG agreed by consensus on a text for transmission to UNIDROIT. The transmission will include this *Aide-Mémoire*, that discusses the sensitive issues and the underlying policy approaches that informed the decision of the EG.

## F. Discussion on the way forward

17 The EG discussed its next steps with respect to the two principal deliverables at this stage; first, the preparation of input to be transmitted to UNIDROIT; and second, formulating a recommendation to CGAP on the future work of the EG.

18 At the request of the Secretary General of the HCCH, the PB provided an update on recent oral discussions between the Secretaries General of the HCCH and UNIDROIT. The Secretary General of UNIDROIT indicated that, although UNIDROIT currently envisages adopting its draft Principles on VCCs in May 2026, additional time could be considered, if necessary, to enable the EG to provide further input on draft Principle 4. In that event, the adoption date could be postponed to December 2026, in the interests of continuing cooperation between the two Organisations and working toward a solution acceptable to both.

19 The EG agreed by consensus to respond to UNIDROIT at this stage and also to invite UNIDROIT to consider replacing the current text of draft Principle 4, or any applicable law rule, with a placeholder provision in its draft Principles on VCCs, and to invite UNIDROIT to continue participating in the EG as an Observer. The EG further agreed by consensus to pursue its holistic study of PIL issues arising in the carbon markets, without being bound either by UNIDROIT's internal timeline or by any decision UNIDROIT may take in relation to the content, text or approach to its draft Principles on VCCs. The EG also agreed by consensus that any decision taken by UNIDROIT would not affect the EG's continued ability to advance its work.

## G. Reopening of the session to Observers

20 At the instructions of the Chair, the PB read the paragraph reflecting the conclusion of the closed session (para. 16 above), as agreed by the EG, for the benefit of all the Observers who had rejoined the meeting.

21 Following the reading, UNIDROIT sought clarification on whether the EG intended to provide further feedback to the UNIDROIT Working Group on VCCs or whether cooperation was coming to an end. The Chair clarified that, by consensus, the EG suggested that the PB should step back from its current role in UNIDROIT's work on the applicable law provision. The Chair noted that the EG's text that will be transmitted to UNIDROIT leaves open the possibility of future engagement. The Chair further explained that this *Aide-Mémoire* would reflect the substantive and policy considerations

underpinning the EG's conclusion that it is not, at this stage, able to support the current text of draft Principle 4.

## H. EG members' input and comments to UNIDROIT in relation to the current text of draft Principle 4

22 The EG agreed by consensus that it could be helpful to share comments with UNIDROIT which, at that point, had not been included in the Aide-Mémoire by discussing them in the room and, where appropriate, reflecting them in this *Aide-Mémoire*, without prejudice to the EG's earlier consensus that it is not able to support the current text of draft Principle 4 or its underlying policy approaches.

23 In this context, one EG Member noted the following four points relating to the current text of draft Principle 4:

a. Concerning VCCs held by custodians, this EG Member had reservations about the law of the custody agreement applying to all questions of proprietary rights in a VCC held by a custodian. For proprietary issues affecting third parties, this EG Member's view was that the *lex registri*-based rule seemed more appropriate.

b. Concerning security rights, this EG Member expressed a preference for the approach proposed by the EG and transmitted to UNIDROIT in the EG's intermediate transmission of October 2025. This approach would subject the proposed *lex registri*-based rule to applicable international and supranational frameworks in relation to the law applicable to security rights. It was further noted that where the VCCs are held by a custodian and security interest is taken over such VCCs, it is not clear whether the applicable law in paragraph (8) of UNIDROIT's current draft Principle 4 would prevail over paragraph (7) of the same.

c. Concerning insolvency-related proceedings, it was noted that issues of priority and the extinction of security rights in insolvency-related proceedings should be governed by the *lex fori concursus* and not paragraph (7) of UNIDROIT's current draft Principle 4. This EG member's understanding was that this outcome is achieved by the scope exclusion in paragraph (2)(d) of the current draft Principle 4.

d. On the scope of proprietary issues governed by draft Principle 4, in lieu of the catch-all approach in paragraph (1) of the current text of draft Principle 4, this EG member suggested that a 'white-list' approach would avoid inadvertently capturing proprietary issues that should be governed by a different applicable law rule. Equitable interests under common-law legal systems were cited as one example.

24 Another EG member requested clarification from UNIDROIT on whether, under draft Principle 4, the priority of claims would be determined in a situation where a project developer becomes insolvent before a credit is formally registered, or whether proprietary rights arise only after the credit had been issued and registered. Another EG member noted that, under the current formulation of the draft UNIDROIT Principles, proprietary rights could not arise in the situation described since for the purposes of the Principles the VCC only exists upon its issuance on a registry. UNIDROIT provided comments on both the questions and the feedback described in paras 23 and 23d.

25 At the request of the UNCITRAL Secretariat, the PB conveyed a message noting that UNCITRAL Working Group V's current project on applicable law in insolvency-related proceedings will also cover issues relating to VCCs. UNCITRAL then took the floor to confirm that the colleagues servicing UNCITRAL Working Group V remained ready to discuss any insolvency-related questions with the EG delegates.

## III. UNIDROIT's statement on day 3 of the meeting (4 December 2025), and the EG's discussion

*This part of the Aide-Mémoire reflects statements and discussions that took place chronologically after the conclusion of the Technical Roundtable.*

26 The Chair gave the floor to the representative of UNIDROIT, who made the following statement (in full transcript below):

> I wanted to greet all of you for the discussion and also in agreement with our Secretariat, to reiterate that we fully understand the importance of the Paris Agreement and the other international agreement frameworks. At the same time, I must acknowledge that we may have underestimated their importance for this group, perhaps because within the UNIDROIT we are working on a soft law instrument, not even a model law or guidelines, and therefore, assuming that binding state obligations would remain intact and unaffected by our project. Our draft clearly states that the principles are intended to provide guidance for states wishing to align their private laws with best practice and international standards on verified carbon credits, of course. Consequently cannot, even conceptually, affect the framework or binding obligation for enacted state. We ensure that drafting committee at the Working Group of the project are deeply sensitive to this matter. We fully recognise that the international climate framework is the indispensable context for understanding the precise meaning of mitigation, adaptation and cooperation as they relate to state obligation. We share the concern raised, raised by some states here and elsewhere that the private law framework must be coherent with the public international law framework, therefore I'm here to reiterate that the Working Group of UNIDROIT will address this matter explicitly by incorporating the references to these instruments in the principles in a manner suggested by you, by this expert group, namely I quote "These principles are without prejudice to, and shall be applied in conformity with United Nation Framework Convention on Climate Change, the Paris Agreement and their related instruments and outcomes." I am quoting the iterated principle furnished by you at the end of the last session. This allows an actual state to have a general guideline, strike a balance between the public and private interest in carbon market financing and transaction. Regarding the specifically the drafting of Principle 4, we originally felt it necessary to preserve coherence and balance across the entire set of principles. Once it was understood that the compliance and subordination close to the Paris Agreement and so forth would be emphasised at the outset of the principle, principle one or the introduction, we considered slightly redundant to repeat. But, nevertheless, this approach remains open to reconsideration by the Working Group, even when it comes to Principle 4. This, ultimately, is the approach we intend to pursue as our works move on. As regards the grounds for revocation, for instance, and I suppose that we will touch upon those issues and why, and the potential illegality associated with them, we consider that these issues are already implied to the reference of mandatory provisions, mandatory rules, consistent with the doctrine of illegality of performance. But again, still, we are prepared to say something more, in this respect, to make issues clearer, in this respect. I cannot repeat what you heard yesterday. Hearing of your withdrawal was bad news for us, of course, but we sincerely hope you may reconsider your position in the cooperative spirit, reflected in my, this, qualification, the qualification coming from the Secretariat. In any event, UNIDROIT project will move on and with a sort of this revision approach that I have just explained. Thank you so much."

27 The EG broadly welcomed the update and the shift in UNIDROIT's position as stated in para 26 above. EG members noted that the update usefully recognises the need to align PIL concerns with the evolving international climate and environmental law framework. Several EG members underlined the importance of reflecting this need in the Aide-Mémoire and in any future iterations of the text of the draft UNIDROIT Principles on VCCs.

28 The EG also reaffirmed that the consensus decision taken in relation to the current text of draft Principle 4, and its underlying approaches, remains unchanged. The EG appreciated the flexibility shown by UNIDROIT and noted that this flexibility provided space for continued dialogue once UNIDROIT is able to make a revised text available.

29 The EG underscored a number of critical issues, such as the potential implications of project illegality on proprietary interests in carbon credits, require deeper examination across the full range of PIL considerations. The EG agreed to keep channels of communication with UNIDROIT open by reiterating its invitation to UNIDROIT to continue participating in the EG's work. The EG concluded that it would continue to advance its outstanding agenda items in accordance with its prior conclusions.

## IV. Oral report of the outcomes and next steps of COP30

30 The PB provided a report of its participation in COP30 in Belém do Pará, Brazil.

31 The PB first presented the key developments from COP30 relevant to the EG's work. The PB noted three overarching themes: first, that all initial Article 6.2 cooperative approaches reviewed to date exhibited reporting inconsistencies, leading COP30 to emphasise corrective action, clearer technical review processes and the need to strengthen the international infrastructure for tracking ITMOs. Second, COP30 advanced the operationalisation of the Article 6.4 mechanism, including recognition of the first methodology, enhanced stakeholder consultation requirements and confirmation of the planned closure of the CDM by end-2026. Third, broader initiatives, such as Brazil's Open Coalition on Carbon Markets and increased attention to Indigenous peoples and local communities, reflect the continued evolution of governance structures around market mechanisms.

32 The PB highlighted that these developments carry several implications for PIL. These include the need for clarity on the legal characterisation of ITMOs and Article 6.4 units, particularly in registry-based environments; the likelihood that disputes arising from reporting inconsistencies, host-State authorisations or contractual performance may trigger cross-border questions of jurisdiction, applicable law and recognition of judgments; and the importance of understanding how dematerialised units are "located" for purposes of priority, security interests and insolvency, especially in the context of the CDM–Article 6.4 transition. The PB also observed that strengthened consultation requirements for Indigenous and local communities may intersect with domestic and transnational remedies, with PIL rules mediating interactions between domestic litigation, transnational tort claims and contractual or arbitral proceedings linked to Article 6 projects.

33 The Chair, who attended COP30 as Deputy Head of the Chilean delegation and participated in HCCH-related events, emphasised the importance of raising the visibility of HCCH's work on this topic within COP30 discussions. The Chair highlighted the contributions that this EG could make by providing legal certainty and predictability for private actors, while offering a holistic view of public policy issues. The Chair also noted the positive reactions from and constructive interactions with participants during HCCH side events at COP30. The PB indicated its participation in three side events, which raised awareness and visibility of the essential role of PIL in strengthening legal infrastructure for transnational carbon markets. The event held at the Chile-ICCI-Iceland pavilion[1] discussed the recent work of the EG, touching upon the main pressing issues concerning carbon markets and PIL more generally, but focused in particular on the operationalisation of Article 6 mechanisms under the Paris Agreement and the questions that are being raised for its implementation in relation to private parties.

1 LACLIMA-HCCH Side Event: "The Role of Private International Law in Strengthening Legal Infrastructure for Transnational Carbon Markets" held at the Blue Zone Chile-ICCI-Iceland pavilion.

34 The PB also reported on the outcomes of two other events that had been co-organised with public legal institutions of Brazil,[2] focusing on the safeguarding of rights in the context of cross-border carbon market transactions with an emphasis on access to justice to vulnerable communities. The Chair noted that carbon markets, either voluntary or any other kind, are critical instruments to achieve the goals of the Paris Agreement and the Convention on Climate Change, highlighting the importance of the framework where those markets operate and hence, on the work of the EG. The Chair reiterated that it was particularly relevant and positive to provide visibility of the work of the EG during COP30.

35 One EG member followed on this report with interest, noting their concerns on indigenous land rights in the operation of carbon markets in their territory, and highlighting the importance of making host State protection mandatory as an essential way to safeguard communities and ensure fair benefit sharing. The EG member noted that benefit sharing frameworks are a key policy objective to ensure that local and indigenous communities, who are often the true custodians of the carbon sink, receive tangible, proportionate rewards. The EG member concluded by highlighting that their goal is to balance economic needs with social environmental concerns, recalling that their text proposals in relation to draft Principle 4 discussed in the previous meeting of the EG, and the use of the terms "shall" or "must", had reflected this position.

36 Several EG members took the floor to commend the work of the PB in participating at COP30 and noted the importance of engaging the work of the EG with the broader COP discussions.. One EG member in particular emphasised the value of the events held in the Green Zone, noting that they enhanced the transparency of the EG's work and engagement with civil society. The EG member further remarked that, for a long time, certain legal issues concerning carbon markets have not received sufficient attention or discussion, making the event both illuminating and very well received. The Chair also noted the variety of actors, representing different groups of interests beyond experts and lawyers, who were made aware of the EG's work through these events. Another EG member additionally stressed the importance of the EG being connected to broader COP conversations in order to widen their perspective and thanked the PB for the sharing of the findings of the mission, which were a great help in identifying the practical issues requiring further reflection by the EG.

## V. Technical Roundtable

### 1. *Carbon mechanisms and local communities: learning from case studies in the Brazilian Amazon*, by Gabriela Russo Lopes, Postdoctoral Researcher, Center for Latin American Research and Documentation, University of Amsterdam (CEDLA-UvA)

37 Ms Russo Lopes provided an overview of forest-related carbon mechanisms in Brazil, followed by an overview of the experiences of local communities and the complexity of land tenure regimes. Ms Russo Lopes described the extraordinary diversity of indigenous peoples and local communities, a category which includes 391 indigenous ethnicities, as well as 28 legally-recognised local community different identities. She also described land tenure regimes in Brazil, noting that they are multiple and overlapping, resulting in a mosaic of differentiated rights, governance systems as well as protection needs and mechanisms. This complexity makes the implementation of carbon mechanisms difficult because communities fall under different legal frameworks, rights, and land-

[2] The LACLIMA-HCCH Side Event "Roundtable Carbon Markets and Private International Law – Access to Justice and International Disputes in the Context of Carbon Markets" was held at the Green Zone Pavillion of the Defensoria Pública da União (DPU) of Brazil. The recording is available at: https://www.youtube.com/watch?v=HxrJErtVBA0&list=PLRPvEDKI0_6II8CHNGIEd5ep_c7QRuVPp&index=26.
The event "Salvaguardas jurídicas nos mercados de carbono: a atuação do MPF e o trabalho em curso na Conferência da Haia de Direito Internacional Privado (HCCH)" was held at the Green Zone Pavilion of the Ministério Público Federal (MPF) of Brazil, in Portuguese only. The recording is available at: https://www.youtube.com/watch?v=4D5kBQ0I9mA .

management regimes, all intersecting with deforestation hotspots across the Amazon. She explained that in the case of these indigenous territories, there is collective, permanent, and exclusive usufruct rights of land and natural resources, with strong constitutional protection and community-defined management plans.

38 Two real-world case studies were presented by Ms Russo Lopes to illustrate the main issues that arise in relation to land rights, financial incentives and the scope of action within communities. In her conclusion, Ms Russo Lopes emphasised that carbon markets should be guided by the concept of socioenvironmental justice to ensure fair treatment, non-discrimination, and substantive and procedural rights in decision-making as well as a fair distribution of environmental burdens and benefits. For carbon markets, Ms Russo Lopes emphasised that it is essential to formulate ethical contracts, which must be understandable and accessible, reduce power and information asymmetries, and produce concrete social and environmental gains (additionality) that genuinely improve community livelihoods rather than increase vulnerabilities.

39 The floor was then open to questions from the EG. EG participants asked how ethical-contract principles, clearer standards, and lessons from past failures could improve community protection and address predictable risks across varied land-right contexts. The discussion indicated that misclassifying community practices and neglecting land-rights complexities – which could be translated as a lack of contextualisation - can harm project viability and produce "ghost" or devalued credits. The discussion clarified how indigenous peoples' and local communities' rights protection is essential for carbon market integrity.

### *2. Ghana's Carbon Market,* by Ransford Nii Adjiri Sackey, Technical Officer, Environment, Kasa Initiative Ghana

40 Mr Sackey provided a background to Ghana's carbon market, indicating that Ghana's carbonmarket system operates through a multilayered institutional structure led by the Ministry of Environment as the Article 6 [of the Paris Agreement] authorising entity, supported by the Environmental Protection Authority (EPA)-hosted CMO (Carbon Market Office). Ghana currently has bilateral Article 6 agreements with Liechtenstein, Singapore, South Korea, Sweden, and Switzerland, covering roughly 84 mitigation activities across technologies such as biomass stoves, nature-based solutions, solar photovoltaic (PV), electric mobility, waste and hydrofluorocarbon (HFC) cooling. As of 2023, clean-cooking projects account for 40% of all activities, followed by biomass energy (20%), nature-based solutions (17%), solar/transport (5.7%), and HFC-related projects (2.9%).

41 Mr Sackey presented four different cases where the Kasa Initiative Ghana monitored the impact of carbon projects on local communities and their livelihoods, with an aim of identifying common issues and potential safeguarding solutions. Mr Sackey indicated that in those cases there was a pattern of issues that have arisen: a) lack of free, prior and informed consent (FPIC); b) issues in relation to customary land and resource rights; c) unequal benefits; d) gendered impacts; and e) tension between conservation and survival. Restrictions in relation to the use of the land have often revealed deep tensions between carbon-market objectives and local livelihoods.

### *3. Commentary of Daniel Eggleston, Research Specialist, International Development Law Organisation (IDLO)*

42 Mr Eggleston was invited to share comments from IDLO's perspective, given their work programmes in this area. Mr Eggleston explained that IDLO supports law-and-justice reforms in over forty countries across Africa, Asia and Latin America. Mr Eggleston pointed to the issue of weak land-tenure security, now affecting an estimated 23% of adults driven by land commodification, corruption, and land or green grabbing, which resonates in the realities presented during the

technical roundtable. Against this background, customary land tenure often lacks the protection needed, creating risks when land is sold or allocated to private actors and leading to protracted legal conflicts. The interplay between customary law and statutory law is a specific question of the framework relating to applicable law, which has an impact on the enforcement of correlated rights. This risk is increased in relation to indigenous peoples and local communities, and has a gendered component. Mr Eggleston commented that safeguarding tools such as FPIC remain fragile, given their non-binding nature, and the fact that it has only been ratified by 24 States. Mr Eggleston concluded that strong safeguards, inclusive processes, and social-justice approaches can create conditions for building societies that are more peaceful and harmonious and that create the conditions for long term investment as well.

## VI. Review and Approval by the EG of the portion of the *Aide-Mémoire* in relation to the workstream concerning the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of VCCs

43 Following the conclusion of the technical roundtable and of the discussions that had taken place as reported in paras. 3-29 of this *Aide-Mémoire*, the EG proceeded to a line-by-line read through, review and approval of the text of the portion of the *Aide-Mémoire* in relation to the workstream concerning the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of VCCs.

44 *Note from the PB: The UNIDROIT Secretariat requested that the full transcript of the intervention made by its representative on the re-opening of the session to Observers on 3 December be annexed to this Aide-Mémoire. With the approval of the Chair, this transcript has been annexed to this Aide-Mémoire as Annex I. This intervention, and the response of the EG to this intervention, are reported in this Aide-Mémoire at para. 21 above.*

## VII. Jurisdiction and scope of the EG's future work

45 The Chair invited the EG to consider the meeting's other agenda items in the time remaining.

46 The EG discussed case scenario no. 2, which had been developed by the PB upon request of the EG and presented in the Secretariat Note 8/2025 for its second meeting in October. That Note had not been discussed at the second meeting due to the decision of the EG, per its mandate, to progress work on the initial focus of its mandate. Case scenario no. 2 raised several questions concerning competent courts in a hypothetical case involving the unlawful issuance and sale of carbon credits. The EG discussed the need to identify the specific remedy sought – such as compensation, a declaration of nullity, or the revocation and/or cancellation of carbon credits – as each option would engage distinct legal issues. These considerations also relate to the EG's earlier discussions on decisions by national courts concerning project illegality and the impact of such illegality on carbon credits that have been issued and transacted with.

47 One EG member observed that if a community files a claim in its home State, the courts of that State would have jurisdiction. However, another member noted that multiple States may simultaneously have jurisdiction in such cases, raising the challenge of managing parallel proceedings across jurisdictions. The EG emphasised that analysing the actors involved, such as registries, would be essential to ensure the effectiveness of certain remedies and would be central to resolving jurisdictional issues. The Chair highlighted the matter of cross-border enforcement of decisions affecting proprietary rights in carbon credits and suggested that developing guidance on this topic could provide an alternative approach to addressing applicable law issues related to revocations and cancellations.

48 Regarding the scope of the EG's future work, EG members emphasised the importance of considering other HCCH instruments and ongoing projects that address jurisdictional issues. While some EG members expressed concern that the EG's mandate might be too broad, others cautioned that an overly narrow focus could also be problematic, given the need to consider the wider carbon projects and carbon markets ecosystem. One EG member stressed that the EG's work should not be limited to voluntary markets but should maintain a comprehensive approach to carbon markets. Another member suggested that the way forward should strike a balance between these perspectives by adopting a broad outlook while prioritising issues unique to carbon markets and not addressed by existing legal instruments.

49 Following a discussion on the importance of examining credits circulating under current and future Article 6 labels of the Paris Agreement, and accounting for overlaps and hybrid forms of credits, the Chair clarified that while Article 6.2 trade between States falls outside the EG's scope, the Article 6.4 registry infrastructure and methodologies used by private actors to generate credits are comparable to those from voluntary markets. These credits can be utilised both for Nationally Determined Contributions (NDC) compliance and voluntary retirement. Therefore, Article 6.4 mechanisms should be considered, as they intersect meaningfully with the EG's work on PIL.

50 The EG agreed to strike a balance between breadth and focus in its work, ensuring that efforts on voluntary carbon markets, community-rights impact, and hybrid Article 6 systems remain coherent, targeted, and aligned with real-world market structures and public policy needs.

51 EG members also identified several issues requiring further study, including through a mapping exercise, as well as the need to address both liability and additional applicable law questions. The EG agreed with the Chair's conclusion that its work should deliver genuine added value beyond existing instruments by tackling PIL issues specific to carbon markets that currently remain unaddressed. Against this background, and reflecting several member interventions on the rapidly evolving carbon market landscape, the EG agreed that it is necessary and urgent to develop a coherent and workable PIL framework to ensure legal certainty and responsible scalability in the carbon markets. The EG moreover agreed that it is imperative to signal, in their recommendations to CGAP, the EG's commitment to developing this framework, and to taking the time necessary for multilateral consultations to ensure inclusive input while keeping the focus on matters that are necessary to address with the rapid evolution of the carbon markets in mind.

## VIII. Recommendations to CGAP

52 In light of the progress made in its work, the EG recommends as follows:

- that CGAP note the fulfilment by the EG of the initial focus of its mandate on the study of the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on Verified Carbon Credits, through the work of the EG over three meetings in 2025 and its intersessional work, the intermediate transmission to UNIDROIT of the *EG's Comments on and Intermediate Iteration of Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits*, and the *EG's Consensus Position on the Current Text of the Applicable Law Provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (incl. the associated Aide-Mémoire)*; and

- that CGAP approve the continuation of the EG's work, including the convening of two further meetings, as well as intersessional work, in 2026 prior to CGAP's meeting in 2027, during which private international law issues arising from carbon markets will continue to be studied. This would include the mapping of both possible gaps in and difficulties with existing instruments or projects, or matters that are not currently covered by them. This is in order to focus the study on those matters that are necessary to address in light of the rate of development of the market. The EG would report to CGAP in 2027.

# *Annex I to the Aide-mémoire* of the third meeting of the Experts' Group on Carbon Markets prepared by the Chair

## Intervention of the representative of UNIDROIT on Wednesday, 3 December 2025, on the re-opening of the session to Observers, annexed as requested by the UNIDROIT Secretariat

"Thank you, Chair. Very nice to see you and, first of all, congratulations on your work at COP 30. It sounds like really meaningful work with impact on the ground. So, congratulations on that. Sorry, with your indulgence. I just wanted to take us a step back on the agenda and make two points. First of all, I kindly ask for clarification on the position of this Experts' Group. Is it that we will be getting some feedback to bring to our Working Group or is the position that we can work on and then continue this very fruitful dialogue from our perspective; or is this, from this Experts' Group and the PB's perspective, then, the end of this cooperation? I should just note that from the Secretariat's perspective, we are extremely grateful, as I've said before to the PB and to this Experts' Group, for the input, the time, the thought that has been dedicated to Principle 4, which we very much appreciate. We remain very open to taking it on board and, in fact, Principle 4 remains open. We have two more Working Group sessions scheduled: one from 17 to 19 December, and one from 15 to 17 April. Our aim is to go before our governing bodies to seek approval of the instrument by the end of 2026. So, there is essentially all of 2026, to keep this dialogue open and to really pursue best efforts to reach a common solution. And I really stress that from the Secretariat's perspective, we have found this dialogue to be invaluable, and we would very keen to continue this cooperation in the hope of reaching a common solution, and we're happy to go ahead with the rest of the instrument while we keep this conversation open on Principle 4, with this more extended time frame that I've explained. Thank you for giving me the opportunity to make that request. Thanks."

# Annexe VII

# List of participants - HCCH Experts' Group on Carbon Markets

## Third meeting - 2 - 4 December 2025

| Family name(s) | Name(s) | State or Organisation | Position | Status of attendance (online/on site) |
|---|---|---|---|---|
| HARRINGTON | Carolina | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| ALL | Paula María | Argentina | Miembro de la Comisión Asesora en materia de derecho internacional privado del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto | Online |
| POLIDO | Fabricio | Brazil | Associate Professor of Private International Law, Comparative Law and New Technologies, University of Minas Gerais | Online |
| SILVA BESA | Eduardo | Chile **(CHAIR)** | Deputy Director of the Environment, Climate Change and Oceans Division at the Ministry of Foreign Affairs of Chile | in-person |
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# Annexe VIII

EG ON CARBON MARKETS

DECEMBER 2025

EXPERTS' GROUP CONSENSUS POSITION ON THE CURRENT TEXT OF THE APPLICABLE LAW PROVISION IN THE DRAFT UNIDROIT PRINCIPLES ON THE LEGAL NATURE OF VERIFIED CARBON CREDITS

HCCH
Connecter Protéger Coopérer Depuis 1893
Connecting Protecting Cooperating Since 1893
Conectando Protegiendo Cooperando Desde 1893

# HCCH Experts' Group on Carbon Markets:

# Experts' Group consensus position on the current text of the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits

1 The Experts' Group (EG) expresses its appreciation to UNIDROIT for its valuable work and engagement and for the transmission of the Comments and the iteration of draft Principle 4 prepared in response to the EG's October 2025 intermediate transmission.

2 In the spirit of engagement and having discussed the proposals from UNIDROIT, recalling that the EG's mandate covers private international law issues arising across the upstream, midstream, and downstream segments of the carbon markets, the EG considered a number of sensitive issues. The EG concluded, by consensus, that at this juncture, it is not in a position to support the current text of draft Principle 4, or its underlying policy approaches. The sensitive issues discussed, and also the underlying policy approaches considered, are set out in the Aide-Mémoire. Further, the EG considers that the issues raised, and the discussion set out in the Aide-Mémoire will require additional in-depth and inclusive multilateral consideration and consultation.

3 The EG considers that with this statement, it has fulfilled its mandate in respect of its initial focus on the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits. The EG has thus asked the Permanent Bureau (PB) to convey this position in a formal and public manner, both in writing and through a brief statement at the next meeting of the UNIDROIT Working Group. Thereafter, the EG has suggested that the PB step back from its current role in the work with UNIDROIT on this issue.

4 The EG considers there is value in continuing its work on the holistic study of private international law issues arising in the carbon markets, including on jurisdiction, recognition and enforcement, international cooperation mechanisms, as well as applicable law rules. The EG will recommend to CGAP the continuation of its study, with the participation of relevant international organisations, including UNIDROIT.

EG ON CARBON MARKETS

*AIDE-MÉMOIRE* OF THE THIRD MEETING

DECEMBER 2025

# *[Extract from]*
# *Aide-mémoire*
# of the third meeting of the Experts' Group on Carbon Markets prepared by the Chair

[...]

## II. General Issues and Approaches Underpinning an Applicable Law Rule in draft Principle 4

### A. Integration with the international climate regime

3 The EG raised concerns about UNIDROIT's decision not to expressly include text relating to international climate regimes in the black-letter text of the draft Principles (whether in Principle 4 or elsewhere), as the EG had suggested in its intermediate submission to UNIDROIT. The EG by consensus agreed on the need to acknowledge expressly in the draft Principles the role and underlying policy objectives of the public international law frameworks established in relation to climate change and other environmental law. One EG member raised the question of whether the starting point of any applicable law rule that is drafted should be based upon by the public international law treaties relating to climate change and environmental law. Other members underscored the value of a high-quality and inclusive multilateral exchange on this matter. The EG highlighted that sufficient time will be essential to enable an in-depth and comprehensive consideration of the issues, and that such deliberations should not be compressed into an unduly accelerated timeline.

### B. Link between the carbon project and the carbon credits issued from that project, including any proprietary rights to those carbon credits

4 The EG proceeded to discuss the link between the upstream and downstream segments of carbon markets, including whether, and to what extent, there is or should be a link between the carbon project in question and the carbon credits issued from that project, including any proprietary rights to those carbon credits. While the EG acknowledged that such a link exists, some EG members queried whether private international law (PIL) would be the appropriate vehicle to address issues arising about this link. One participant questioned whether the applicable law rule could, as a matter of scope, govern this issue. Other participants, however, emphasised that PIL rules cannot be viewed in isolation from the international regimes and public policy frameworks within which carbon markets operate, recalling that carbon credits are not simply regular commodities or financial instruments, but instruments designed to advance the climate objectives reflected in the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and related public international law instruments. As such, these participants noted that any carbon credits issued from a project, including the proprietary rights to those credits, would be inextricably linked to factors relating to the carbon project upstream. In light of the divergent views expressed and the complexity of the matters to be examined, the EG agreed by consensus that additional time would be required for further discussion.

### 1. Legality of a carbon project

5 The EG turned to examine the potential implications, if any, that a determination of illegality of a carbon project by a court or other competent authority, for example, a finding that the project infringes human rights, environmental rights, land rights, or the rights of indigenous peoples or local communities, or is otherwise inconsistent with the mandatory rules of the host State, may have for proprietary rights in a carbon credit. For the purposes of this discussion, the EG proceeded on the assumption that, depending on the law governing proprietary rights in a credit, the illegality of the underlying project could, in principle, constitute a basis for revoking, and thus cancelling, the credit.

6 From a private international law perspective, the EG identified several questions raised by this scenario, including:

a. **Jurisdiction:** which State or States have courts or other competent authorities empowered to determine the legality of a project;

b. **Applicable law:** which law governs the assessment of a project's legality, and how that law interacts with the law applicable to proprietary rights in credits derived from the project;

c. **Recognition and enforcement:** under what conditions a judgment or administrative determination on project illegality should be given effect in another State, including where a party were to rely on the judgment or determination to seek the cancellation of the credits concerned.

7 The EG also noted that additional matters may arise in connection with the above, such as: how parallel proceedings in two or more States concerning the legality of the same project or the implications for the related credits should be managed so as to avoid conflicting outcomes; and whether, and in what form, cooperation, for instance through the exchange of information, may be facilitated between authorities in different States seised of proceedings concerning the same project and/or credits.

### 2. Reversals/revocations/cancellations

8 The EG then returned to the question of revocation in the context of the link between a carbon project and the credits it generates. Participants highlighted the importance of considering issues such as fraud, project illegality and invalidity claims, and their interaction with other elements of the draft UNIDROIT Principles. UNIDROIT provided clarifications on the processes of reversal and revocation as conceived in the draft UNIDROIT Principles, drawing particular attention to draft Principle 10, and noted that draft Principle 4 addresses only the proprietary aspects of the verified carbon credit (VCC) as defined and does not extend to the grounds for revocation, the application of which, in UNIDROIT's view, will likely be based on factual determinations.

9 The EG noted, from an applicable law perspective, that the discussion gives rise to two separate but interconnected issues: first, which law governs the grounds for revocation, and second, which law governs the effects of revocation on proprietary rights. It was observed that the former issue precedes the latter, and it would therefore be important to focus initially on the grounds for revocation. It was also noted that the resolution of these issues will depend on the domestic laws and regulatory frameworks of different States. The EG agreed that priority should be given to examining the PIL questions concerning grounds for revocation as a preliminary matter, although some members expressed reservations regarding this approach.

10 One participant referred to the potential revocation of an ITMO authorisation under Article 6.2 of the Paris Agreement and raised questions about the subsequent effects on the credit in light of draft Principle 4 of the UNIDROIT Principles. The EG's discussion focused on how such a revocation

would safeguard the sovereignty of the host State concerned. It was recalled that the overarching purpose of the draft UNIDROIT Principles is to support the mobilisation of climate finance, and the EG considered whether the proprietary rights recognised under the draft UNIDROIT Principles would reinforce international obligations arising under Article 6.2. A critical question was whether the withdrawal of an ITMO authorisation by a State would automatically affect the proprietary status of the associated carbon credit.

11 The EG also considered the challenges that may arise from the differing approaches to revocation and proprietary rights taken by host States, registries, and holders of carbon credits, particularly in situations where these actors do not share the same view. Participants noted that such divergences in approaches could generate tensions between State sovereignty and the expectations of buyers, registries, and other market participants, giving rise to classic PIL questions concerning conflicting applicable laws. After discussion, no solution was identified at this stage by the EG. The examples discussed by the EG illustrated that each actor may act under its own jurisdiction, resulting in a lack of global uniformity and, in turn, limiting the potential for decisions to be recognised and enforced across borders.

### C. Policy values on the applicable law rule and the balance between actors

12 One EG member invited the EG to reflect on the type of legal infrastructure that would be necessary to support the responsible growth of carbon markets. Some EG members expressed caution about espousing a solely market-growth approach and questioned how such an approach could be reconciled with the broader objectives of the Paris Agreement, underscoring the need for a holistic approach. It was noted that failure to consider these concerns could create confusion, conflict, and undermine legal certainty, generate questions about the integrity of the credits on the carbon markets, and ultimately impede the growth of the carbon markets. Another EG member highlighted the need for clarity on the extent to which the concerns of project host States should be taken into account.

13 On one hand, some EG members emphasised the importance of features such as transferability and fungibility of credits in enabling the carbon markets to scale effectively. On the other hand, other EG members noted the need to balance these considerations with situations where an underlying project is found to be non-compliant, and to ensure appropriate regard be given to the role and interests of the States in which the projects are located. The EG agreed by consensus that these policy questions require careful and inclusive multilateral discussion. Members emphasised that achieving an appropriate balance among the various actors and stakeholders in carbon markets is essential not only for scaling the markets, but for ensuring that such scaling takes place with integrity and responsibility.

### D. Party autonomy

14 One EG member suggested that greater emphasis could be placed on party autonomy, noting that many of the issues under discussion are likely to arise in a contractual rather than a proprietary context. Another EG member expressed a preference for the applicable law rule on proprietary matters to rely on a single connecting factor based on the place of the registry. A third EG member indicated reservations regarding this approach and indicated that additional time would be required to consider this matter in appropriate depth.

### E. Consensus position of the EG (closed session)

15 The Chair *pro tempore* conveyed the request of several EG members, made pursuant to the HCCH Rules of Procedure, to move to a decision-making process in closed session (limited to members

designated by HCCH Members). The EG, acknowledging that other members supported the request, and wishing to allow members to express their views and concerns, proceeded to a closed session.

16 In closed session, the experts designated by HCCH Members discussed the consensus position on the current text of the applicable law provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits. The EG concluded by consensus that, at this juncture, it is not in a position to support the current text of draft Principle 4, or its underlying policy approaches. After a line-by-line reading, the EG agreed by consensus on a text for transmission to UNIDROIT. The transmission will include this *Aide-Mémoire*, that discusses the sensitive issues and the underlying policy approaches that informed the decision of the EG.

## F. Discussion on the way forward

17 The EG discussed its next steps with respect to the two principal deliverables at this stage; first, the preparation of input to be transmitted to UNIDROIT; and second, formulating a recommendation to CGAP on the future work of the EG.

18 At the request of the Secretary General of the HCCH, the PB provided an update on recent oral discussions between the Secretaries General of the HCCH and UNIDROIT. The Secretary General of UNIDROIT indicated that, although UNIDROIT currently envisages adopting its draft Principles on VCCs in May 2026, additional time could be considered, if necessary, to enable the EG to provide further input on draft Principle 4. In that event, the adoption date could be postponed to December 2026, in the interests of continuing cooperation between the two Organisations and working toward a solution acceptable to both.

19 The EG agreed by consensus to respond to UNIDROIT at this stage and also to invite UNIDROIT to consider replacing the current text of draft Principle 4, or any applicable law rule, with a placeholder provision in its draft Principles on VCCs, and to invite UNIDROIT to continue participating in the EG as an Observer. The EG further agreed by consensus to pursue its holistic study of PIL issues arising in the carbon markets, without being bound either by UNIDROIT's internal timeline or by any decision UNIDROIT may take in relation to the content, text or approach to its draft Principles on VCCs. The EG also agreed by consensus that any decision taken by UNIDROIT would not affect the EG's continued ability to advance its work.

## G. Reopening of the session to Observers

20 At the instructions of the Chair, the PB read the paragraph reflecting the conclusion of the closed session (para. 16 above), as agreed by the EG, for the benefit of all the Observers who had rejoined the meeting.

21 Following the reading, UNIDROIT sought clarification on whether the EG intended to provide further feedback to the UNIDROIT Working Group on VCCs or whether cooperation was coming to an end. The Chair clarified that, by consensus, the EG suggested that the PB should step back from its current role in UNIDROIT's work on the applicable law provision. The Chair noted that the EG's text that will be transmitted to UNIDROIT leaves open the possibility of future engagement. The Chair further explained that this *Aide-Mémoire* would reflect the substantive and policy considerations underpinning the EG's conclusion that it is not, at this stage, able to support the current text of draft Principle 4.

## H. EG members' input and comments to UNIDROIT in relation to the current text of draft Principle 4

22 The EG agreed by consensus that it could be helpful to share comments with UNIDROIT which, at that point, had not been included in the Aide-Mémoire by discussing them in the room and, where

appropriate, reflecting them in this *Aide-Mémoire*, without prejudice to the EG's earlier consensus that it is not able to support the current text of draft Principle 4 or its underlying policy approaches.

23 In this context, one EG Member noted the following four points relating to the current text of draft Principle 4:

a. Concerning VCCs held by custodians, this EG Member had reservations about the law of the custody agreement applying to all questions of proprietary rights in a VCC held by a custodian. For proprietary issues affecting third parties, this EG Member's view was that the *lex registri*-based rule seemed more appropriate.

b. Concerning security rights, this EG Member expressed a preference for the approach proposed by the EG and transmitted to UNIDROIT in the EG's intermediate transmission of October 2025. This approach would subject the proposed *lex registri*-based rule to applicable international and supranational frameworks in relation to the law applicable to security rights. It was further noted that where the VCCs are held by a custodian and security interest is taken over such VCCs, it is not clear whether the applicable law in paragraph (8) of UNIDROIT's current draft Principle 4 would prevail over paragraph (7) of the same.

c. Concerning insolvency-related proceedings, it was noted that issues of priority and the extinction of security rights in insolvency-related proceedings should be governed by the *lex fori concursus* and not paragraph (7) of UNIDROIT's current draft Principle 4. This EG member's understanding was that this outcome is achieved by the scope exclusion in paragraph (2)(d) of the current draft Principle 4.

d. On the scope of proprietary issues governed by draft Principle 4, in lieu of the catch-all approach in paragraph (1) of the current text of draft Principle 4, this EG member suggested that a 'white-list' approach would avoid inadvertently capturing proprietary issues that should be governed by a different applicable law rule. Equitable interests under common-law legal systems were cited as one example.

24 Another EG member requested clarification from UNIDROIT on whether, under draft Principle 4, the priority of claims would be determined in a situation where a project developer becomes insolvent before a credit is formally registered, or whether proprietary rights arise only after the credit had been issued and registered. Another EG member noted that, under the current formulation of the draft UNIDROIT Principles, proprietary rights could not arise in the situation described since for the purposes of the Principles the VCC only exists upon its issuance on a registry. UNIDROIT provided comments on both the questions and the feedback described in paras 23 and 23d.

25 At the request of the UNCITRAL Secretariat, the PB conveyed a message noting that UNCITRAL Working Group V's current project on applicable law in insolvency-related proceedings will also cover issues relating to VCCs. UNCITRAL then took the floor to confirm that the colleagues servicing UNCITRAL Working Group V remained ready to discuss any insolvency-related questions with the EG delegates.

## III. UNIDROIT's statement on day 3 of the meeting (4 December 2025), and the EG's discussion

*This part of the Aide-Mémoire reflects statements and discussions that took place chronologically after the conclusion of the Technical Roundtable.*

26 The Chair gave the floor to the representative of UNIDROIT, who made the following statement (in full transcript below):

> [...] I wanted to greet all of you for the discussion and also in agreement with our Secretariat, to reiterate that we fully understand the importance of the Paris Agreement

and the other international agreement frameworks. At the same time, I must acknowledge that we may have underestimated their importance for this group, perhaps because within the UNIDROIT we are working on a soft law instrument, not even a model law or guidelines, and therefore, assuming that binding state obligations would remain intact and unaffected by our project. Our draft clearly states that the principles are intended to provide guidance for states wishing to align their private laws with best practice and international standards on verified carbon credits, of course. Consequently cannot, even conceptually, affect the framework or binding obligation for enacted state. We ensure that drafting committee at the Working Group of the project are deeply sensitive to this matter. We fully recognise that the international climate framework is the indispensable context for understanding the precise meaning of mitigation, adaptation and cooperation as they relate to state obligation. We share the concern raised, raised by some states here and elsewhere that the private law framework must be coherent with the public international law framework, therefore I'm here to reiterate that the Working Group of UNIDROIT will address this matter explicitly by incorporating the references to these instruments in the principles in a manner suggested by you, by this expert group, namely I quote "These principles are without prejudice to, and shall be applied in conformity with United Nation Framework Convention on Climate Change, the Paris Agreement and their related instruments and outcomes." I am quoting the iterated principle furnished by you at the end of the last session. This allows an actual state to have a general guideline, strike a balance between the public and private interest in carbon market financing and transaction. Regarding the specifically the drafting of Principle 4, we originally felt it necessary to preserve coherence and balance across the entire set of principles. Once it was understood that the compliance and subordination close to the Paris Agreement and so forth would be emphasised at the outset of the principle, principle one or the introduction, we considered slightly redundant to repeat. But, nevertheless, this approach remains open to reconsideration by the Working Group, even when it comes to Principle 4. This, ultimately, is the approach we intend to pursue as our works move on. As regards the grounds for revocation, for instance, and I suppose that we will touch upon those issues and why, and the potential illegality associated with them, we consider that these issues are already implied to the reference of mandatory provisions, mandatory rules, consistent with the doctrine of illegality of performance. But again, still, we are prepared to say something more, in this respect, to make issues clearer, in this respect. I cannot repeat what you heard yesterday. Hearing of your withdrawal was bad news for us, of course, but we sincerely hope you may reconsider your position in the cooperative spirit, reflected in my, this, qualification, the qualification coming from the Secretariat. In any event, UNIDROIT project will move on and with a sort of this revision approach that I have just explained. Thank you so much." [...]

27 The EG broadly welcomed the update and the shift in UNIDROIT's position as stated in para 26 above. EG members noted that the update usefully recognises the need to align PIL concerns with the evolving international climate and environmental law framework. Several EG members underlined the importance of reflecting this need in the Aide-Mémoire and in any future iterations of the text of the draft UNIDROIT Principles on VCCs.

28 The EG also reaffirmed that the consensus decision taken in relation to the current text of draft Principle 4, and its underlying approaches, remains unchanged. The EG appreciated the flexibility shown by UNIDROIT and noted that this flexibility provided space for continued dialogue once UNIDROIT is able to make a revised text available.

29 The EG underscored a number of critical issues, such as the potential implications of project illegality on proprietary interests in carbon credits, require deeper examination across the full range of PIL considerations. The EG agreed to keep channels of communication with UNIDROIT open by reiterating its invitation to UNIDROIT to continue participating in the EG's work. The EG concluded

that it would continue to advance its outstanding agenda items in accordance with its prior conclusions.

30 […]