

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

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.

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
 - 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 2025.²

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"³ category of carbon credits which are those able to be used for the purposes underlined under Article 6 of the Paris Agreement,⁴ 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*⁵ 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.
- 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

² "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".

³ 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.

⁴ Paris Agreement to the UNFCCC, (UN, 2015) ("Paris Agreement"), 12 December 2015, TIAS No 16-1104.

⁵ 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 Pasquol Polido (Brazil), available in the Annex of Prel. Doc. No 6 CGAP 2025.

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.⁶ 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 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

⁶ 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>.

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,⁷ 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).

- 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

⁷ 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.

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,⁸ 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.

⁸ 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).

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 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*,⁹ 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:

⁹ 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 Pasqueto Polido (Brazil), available in the Annex of Prel. Doc. No 6 CGAP 2025.

- 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.
- 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 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"),¹⁰ 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

¹⁰ 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.

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 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 CO₂ 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 CO₂, 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.¹¹

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.

¹¹ 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>

- 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 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 eighth 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)

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.

c) Revocation of credits

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

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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. DRAFT
- 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*⁴ and *maslahah*⁵.

- 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. 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.

⁴ 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.

⁵ 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.

- 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 with 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*.