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

I. Opening of the meeting

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

2 The EG adopted the draft Agenda.

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

A. Integration with the international climate regime

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

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

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

financial instruments, but instruments designed to advance the climate objectives reflected in the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and related public international law instruments. As such, these participants noted that any carbon credits issued from a project, including the proprietary rights to those credits, would be inextricably linked to factors relating to the carbon project upstream. In light of the divergent views expressed and the complexity of the matters to be examined, the EG agreed by consensus that additional time would be required for further discussion.

1. Legality of a carbon project

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

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

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

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

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

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

2. Reversals/revocations/cancellations

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

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

examining the PIL questions concerning grounds for revocation as a preliminary matter, although some members expressed reservations regarding this approach.

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

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

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

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

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

D. Party autonomy

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

E. Consensus position of the EG (closed session)

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

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

F. Discussion on the way forward

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

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

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

G. Reopening of the session to Observers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 The PB also reported on the outcomes of two other events that had been co-organised with public legal institutions of Brazil,[2] focusing on the safeguarding of rights in the context of cross-border

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

2 The LACLIMA-HCCH Side Event "Roundtable Carbon Markets and Private International Law – Access to Justice and International Disputes in the Context of Carbon Markets" was held at the Green Zone Pavillion of the Defensoria Pública da União (DPU) of Brazil. The recording is available at:

carbon market transactions with an emphasis on access to justice to vulnerable communities. The Chair noted that carbon markets, either voluntary or any other kind, are critical instruments to achieve the goals of the Paris Agreement and the Convention on Climate Change, highlighting the importance of the framework where those markets operate and hence, on the work of the EG. The Chair reiterated that it was particularly relevant and positive to provide visibility of the work of the EG during COP30.

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

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

V. Technical Roundtable

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

37 Ms Russo Lopes provided an overview of forest-related carbon mechanisms in Brazil, followed by an overview of the experiences of local communities and the complexity of land tenure regimes. Ms Russo Lopes described the extraordinary diversity of indigenous peoples and local communities, a category which includes 391 indigenous ethnicities, as well as 28 legally-recognised local community different identities. She also described land tenure regimes in Brazil, noting that they are multiple and overlapping, resulting in a mosaic of differentiated rights, governance systems as well as protection needs and mechanisms. This complexity makes the implementation of carbon mechanisms difficult because communities fall under different legal frameworks, rights, and land-management regimes, all intersecting with deforestation hotspots across the Amazon. She explained that in the case of these indigenous territories, there is collective, permanent, and exclusive usufruct rights of land and natural resources, with strong constitutional protection and community-defined management plans.

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https://www.youtube.com/watch?v=HxrJErtVBA0&list=PLRPvEDKI0_6II8CHNGIEd5ep_c7QRuVPp&index=26.
The event "Salvaguardas jurídicas nos mercados de carbono: a atuação do MPF e o trabalho em curso na Conferência da Haia de Direito Internacional Privado (HCCH)" was held at the Green Zone Pavilion of the Ministério Público Federal (MPF) of Brazil, in Portuguese only. The recording is available at: https://www.youtube.com/watch?v=4D5kBQ0I9mA .

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

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

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

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

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

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

42 Mr Eggleston was invited to share comments from IDLO's perspective, given their work programmes in this area. Mr Eggleston explained that IDLO supports law-and-justice reforms in over forty countries across Africa, Asia and Latin America. Mr Eggleston pointed to the issue of weak land-tenure security, now affecting an estimated 23% of adults driven by land commodification, corruption, and land or green grabbing, which resonates in the realities presented during the technical roundtable. Against this background, customary land tenure often lacks the protection needed, creating risks when land is sold or allocated to private actors and leading to protracted legal conflicts. The interplay between customary law and statutory law is a specific question of the framework relating to applicable law, which has an impact on the enforcement of correlated rights. This risk is increased in relation to indigenous peoples and local communities, and has a gendered component. Mr Eggleston commented that safeguarding tools such as FPIC remain fragile, given

their non-binding nature, and the fact that it has only been ratified by 24 States. Mr Eggleston concluded that strong safeguards, inclusive processes, and social-justice approaches can create conditions for building societies that are more peaceful and harmonious and that create the conditions for long term investment as well.

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

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

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

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

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

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

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

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

perspectives by adopting a broad outlook while prioritising issues unique to carbon markets and not addressed by existing legal instruments.

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

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

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

VIII. Recommendations to CGAP

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

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

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

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

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

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