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Legal Nature of Verified Carbon Credits
Sixth session (hybrid)
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**SUMMARY REPORT
OF THE SIXTH SESSION
(10 – 12 September 2025)**

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1. The sixth session of the Working Group on the Legal Nature of Verified Carbon Credits (the 'Working Group' or 'Group') was held in hybrid form from 10 to 12 September 2025 at the seat of UNIDROIT in Rome. The Working Group was attended by a total of 58 participants, including 12 members and 46 observers, with representatives from intergovernmental organisations, industry associations, and non-governmental organisations (the list of participants is available in Annexe II).

Item 1: Opening of the session and welcome

2. *The Chair of the Working Group, Professor Hideki Kanda* welcomed the participants to the Sixth Session of the Working Group.

Item 2: Adoption of the agenda and organisation of the session

3. *The Chair* introduced the revised Annotated Draft Agenda and the organisation of the session.

4. *The Working Group adopted the revised Agenda (Study LXXXVI – W.G.6 – Doc. 1 rev., available in Annexe I) and agreed with the organisation of the session as proposed.*

Item 3: Consideration of written comments provided by the Consultative Committee

5. *The Chair* gave the floor to Ms Sharon Ong, UNIDROIT Governing Council Member and Chair of the Consultative Committee, to provide the Working Group with an overview of the input received from the Consultative Committee.¹

6. *The Chair of the Consultative Committee* began by thanking the members of the Consultative Committee, in particular those who had shared their comments on the draft instrument, for their valuable contributions. She expressed her gratitude to the UNIDROIT Secretariat for supporting the work of the Consultative Committee so ably, and her appreciation to the Chair and experts of the Working Group, and in particular, the Drafting Committee, for producing an excellent set of draft Principles.

7. *The Chair of the Consultative Committee* provided a recap on the background and role of the Consultative Committee. She recalled that, in light of the broad interest generated by the VCC project, the UNIDROIT Governing Council had, at its 103rd session in May 2024, mandated the establishment of a Consultative Committee. The role of the Consultative Committee was threefold: (i) to provide the Working Group with advice, comments, and information from a national and/or regional perspective as the work on the future instrument evolved; (ii) to ensure a balanced geographic, legal systems and gender representation; and (iii) to allow for wider participation, increased transparency, and enhanced provision of expert input to the Working Group. *The Chair of the Consultative Committee* explained that the 30 members of the Consultative Committee who were nominated by 19 UNIDROIT Member States included government representatives and experts who were not government officials. The structure of the Consultative Committee offered a useful channel to raise awareness of the VCC project among policymakers and legislatures, as well as to disseminate the instrument to the wider global community.

8. The work of the Consultative Committee was kick-started on 10 July 2025, when the draft instrument was shared with the Committee for its input. *The Chair of the Consultative Committee*

¹ Consistent with the mandate sought from its Governing Council in May 2024, in August 2024 the UNIDROIT Secretariat invited the Institute's Member States to each nominate a maximum of two participants to the Consultative Committee for the VCC project. On 10 July 2025, the UNIDROIT Secretariat shared the revised draft VCC Principles with the Consultative Committee, inviting the Committee members to provide their input in written form by way of comments and amendment proposals. For additional information see [Study LXXXVI – W.G.6 – Doc. 2](#) – Secretariat's Report.

noted that, in the Secretariat's letter to the Consultative Committee, the Committee members were informed that the draft VCC Principles were an instrument of soft law that was intended not just to reflect the current operation of the industry, but to also set out a legal framework that could be used in the future. For this reason, the draft VCC Principles were at a reasonably high level of generality, with the Commentary instead allowing for a detailed explanation of relevant market and industry practices.

9. In terms of work methodology, *the Chair of the Consultative Committee* explained that as a general rule, the Consultative Committee would provide its input to the Working Group in written form, in either English or in French by way of comments and suggestions to documents presented for its consideration. As of the start of the Working Group's sixth session, the Secretariat had received 11 sets of comments submitted by the appointees of 10 Member States: Austria, Canada, Chile, Finland, Italy, Pakistan, the Russian Federation, Saudi Arabia, Singapore, and Türkiye.

10. *The Chair of the Consultative Committee* explained that the late circulation of the Consultative Committee's comments to the Working Group was largely to accommodate the requests from several members for more time, and assured the Working Group that strong efforts will be made to ensure timely circulation of additional comments from the Consultative Committee to the Working Group in the future. *The Chair of the Consultative Committee* then proceeded to sketch out a brief summary of the comments that had been received from the Consultative Committee thus far, focusing on the matters on the agenda for the present Working Group session.

11. *The Chair of the Consultative Committee* noted that, generally, the Consultative Committee members welcomed and expressed appreciation for the work of the Working Group and for the draft instrument. One member had observed that it was important to help the carbon markets community understand these important legal issues and foster legal certainty, while another member had stated that the draft instrument served as a useful guide for the development of the carbon market ecosystem. One member had noted that, given the evolving nature of the regulatory and legal landscape in this field, it may be more appropriate to refer to the work as a contribution to the ongoing study and understanding of the legal dimensions of transactions involving VCCs, rather than suggesting that the instrument provided guidance for practitioners, courts, or legislators. That member had noted that the draft Principles did not, at this stage, serve as authoritative or quasi-normative references. Another member had no comments on the draft Principles and Commentary.

12. The Principles and Commentary which generated the most comments were: (i) the introduction, in particular paragraph 4(a) on jurisdictional compliance markets and paragraph 5; (ii) Principle 2 on definitions and paragraphs 2.6 and 2.15 of the Commentary; (iii) Principle 4 on applicable law, with two members noting the work of the Experts Group on Carbon Markets of the Hague Conference on Private International Law (the 'HCCH Experts Group') and that the text may be developed further depending on the HCCH Experts Group's input, which should be given consideration; (iv) Principle 7 on innocent acquisition; (v) Principle 10 on revocation; (vi) Principle 12 on the VCC registry; and (vii) Principle 15 on the duties owed by a custodian to its client. One member had observed that the draft Principles were designed to provide a flexible model so that they could be implemented by both common law and civil law systems with minimal friction and proposed 11 recommendations to refine the draft Principles, including things like flexible, neutral, and accessible dispute resolution mechanisms such as arbitration or mediation, a technical assistance mechanism for developing countries adopting these Principles, and others. Three members had made reference to Article 6 of the Paris Agreement, which sets up how countries could pursue voluntary cooperation to reach their climate targets. *The Chair of the Consultative Committee* shared that there were also several drafting suggestions, such as introducing the abbreviation of a word or phrase the first time that word or phrase was used, or alternatively, to include an index of abbreviations, as well as proposals to restructure the text. She concluded by noting that the comments of the Consultative Committee would be shared with the Drafting Committee, and encouraged the Working

Group to address any of the comments of the Consultative Committee at the meeting, and raise any issues which they would like the input of the Consultative Committee.

13. *The Chair* drew the Working Group's attention to documents Study LXXXVI – W.G.6 – Doc. 4 rev. and Study LXXXVI – W.G.6 – Doc. 4 add., which had been shared with the Working Group and compiled the comments received from the Consultative Committee. He opened the floor to any general comments, reminding the participants that the Consultative Committee's specific feedback would be raised during the discussion of the related provisions.

Item 4: Consideration of the iterated draft Principles and Commentary

(a) Scope of the instrument

14. *A Working Group participant* queried whether the Working Group was to consider as VCCs carbon assets which had not been approved by Verra-like organisations, cautioning that if such assets were to be excluded from the Principles this would leave out a significant portion of the market and undermine the goal of harmonisation. He suggested that the rules applicable to 'bad' VCCs should be the same as those applicable to 'good' VCCs, with the market differentiating between the two. He further explained that certain jurisdictions were approaching VCCs in a manner that was not consistent with the framework being established under the Principles and were considering use of such VCCs under the Paris Agreement. He thus warned that this could result in there being VCCs used for Paris Agreement purposes that would not fall within the scope of the Principles.

15. *Another participant* observed that the current draft was not entirely consistent with the initial idea that the instrument would concern private law rather than the regulation of voluntary carbon credits, especially where it provided the requirements for the various actors to be able to provide the certifications that were needed, or the characteristics of registries. He opined that there were a number of rules that were much more part of regulation than private law. In response, Professor Louise Gullifer, *the Chair of the Drafting Committee*, explained that, with respect to the definitions of certain actors, the intention was not to draft regulatory rules, but rather to limit the scope of the Principles by defining what was meant by certain terms. She suggested that, although the Principles did not provide for regulation, the Commentary could indicate to States where a regulatory rule might be desirable.

16. With respect to the scope, *the Chair* indicated that the intention was not to limit the instrument to any particular system, with the exception of two constraints. First, the focus was on *verified* rather than voluntary carbon credits and, second, the instrument addressed systems, using registries in a broader sense. Systems that operated without a registry were outside the scope. He asked the Working Group for their views.

17. *A Working Group participant* framed the mandate of the Working Group as determining how to characterise from a private law perspective the product that presently existed on the market. He observed that there were a number of issues with characterising the existing product under an intangible asset framework, as demonstrated also from the comments received by the Consultative Committee. He urged the Group to avoid having the Principles address what the product must be. *Another participant* observed that the scope of the instrument had been defined quite intentionally in order to create Principles that functioned in the market as it presently stood. That did not mean that in the future the instrument would not be updated as the market changed and shifted.

18. *The Chair of the Drafting Committee* recalled that certain things had to be as they were in order to achieve the private law conclusion that VCCs could be the subject of proprietary rights. She explained that the private law rules were essentially non-negotiable given the difficulty of fitting VCCs within existing categories of private law. For this reason, the Principles had to be reasonably prescriptive; it was difficult to change things that related to the private law and proprietary aspects

of VCCs without losing the coherence of law needed for the Principles to work. She also reiterated that the terms used in the instrument needed to be defined. She noted, however, that for everything else—and in particular in relation as to how things worked in the market—the Drafting Committee was in the hands of the experts in the Working Group both in terms of describing what was currently happening and what needed to be included in the instrument.

19. *A Working Group participant* suggested that the Principles had to address, first, the market as it presently existed. In that market having an independent body where the projects were registered was extremely important. The participant acknowledged that the market was changing but recalled that the Principles had to be implemented by States and jurisdictions could therefore choose to determine what kinds of units their particular legislation would cover. She observed that the scope of the Principles should not be opened up in an effort to meet Article 6.

20. *Another participant* cautioned against trying to capture every type of credit used in the market because (i) this was constantly subject to change; and (ii) providing standards by definition meant that some things would be covered by the instrument and others would be excluded.

21. However, it was observed that digital infrastructures, mostly blockchain-based, were increasingly issuing credits without reference to standards, and simply using verification reports, pointing towards the emergence of a self-regulated market. In response, it was recalled that the Principles were purposely trying to draw boundaries around what fell within their scope to both safeguard integrity in the market and create legal frameworks. The example was brought up of an organisation which had decided to issue its own credits, causing confusion in the market and raising integrity concerns.

22. *A Drafting Committee member* stressed that the VCCs as defined and covered within the Principles were being provided with certain special attributes under private law, such as in terms of the negotiability rule which allowed a good faith purchaser to take free of competing claims. This meant that a perimeter needed to be established. Whatever fell outside of this perimeter was not outside of the law—it would be covered by the property law principles of the applicable jurisdiction. *A Working Group participant* noted that the situation in the market was currently bad, with few buyers and little money in conservation efforts. She stated that there were several projects and studies that were adding to the confusion and observed that, on the other hand, the present project was trying to provide clarity and offer solutions. She thus supported the scope of the Principles as presently defined regardless of whether the market would change, observing that it was a very well-drafted scope and that providing guidelines given the current lack of standards was extremely helpful. She agreed with other participants that specific concerns as to the scope could be addressed by discussing the definitions included in Principle 2. *Other participants* agreed with maintaining the current scope. It was observed that the market was changing and developing and there was an urgency in finalising the instrument to inform what was happening.

23. It was observed that the [UNIDROIT Principles on Digital Assets and Private Law](#) (the 'DAPL Principles') were future-proofed by defining the objects functionally. It was thus suggested that the VCC Principles be aligned to the DAPL Principles to ensure their durability.

Conclusions

24. *The Chair summarised the discussion on scope noting the agreement to proceed on the basis of the current draft while being mindful of the direction of the market.*

(b) Principle 4 (Applicable law)

25. *The Chair* then turned the Working Group's attention to draft Principle 4 on private international law and gave the floor to the Drafting Committee.

26. *A member of the Drafting Committee* introduced draft Principle 4 specifying that the foremost issue to agree on was the choice of connecting factor to determine the law applicable to proprietary issues or rights concerning a VCC. He reiterated that contractual aspects and tort liability were outside the scope of Principle 4, just as they were outside the scope of the Principles. Thus, Principle 4, even in terms of private international law, only referred to proprietary issues, though it remained an open question whether to use the term 'issues' or 'rights'. It was also stressed that the ongoing coordination with the HCCH was very important and that Principle 4 was going to be shaped in accordance with the HCCH Experts Group that had been set up for this purpose. This was because, notwithstanding the fact that Principle 4 was limited to proprietary issues, VCC markets raised concerns related to other aspects such as indigenous people's rights, land rights, contractual aspects and the problem of overlapping rights with respect to the same VCC. With this background in mind, he stressed that the primary objective of Principle 4 was to provide clarity and legal certainty to the market, focusing on the VCC as an asset eligible to be the subject of proprietary rights.

27. He explained that draft Principle 4(1) provided a certain 'menu' of connecting factors very closely tied to the registry which could be selected by parties in a court agreement or unilaterally proposed by the registry. He further noted that the draft language did not provide a proper choice of law, but rather a choice of connecting factors among which parties could select the law. In the absence of a choice of law, he stressed the need for an objective connecting factor. Principle 4 provided for the seat of the registry and, in the absence of the seat, the central place of administration of the registry. He reiterated that the main aspect of the draft Principle was not to provide a conflict of law solution concerning carbon markets but rather a conflict of law principle consistent with the substantive Principles relating to the VCC as an asset and limited to proprietary aspects.

28. Turning to the list of proprietary rights or issues covered by Principle 4(3), the Drafting Committee member noted that the list was not exhaustive and that it included the subjects and issues to which the substantive Principles applied, but not only those. And that was because the first principles in the project made it clear that proprietary rights were not completely covered by the Principles and a private international rule was needed to identify the law applicable to those proprietary issues as well.

29. It was indicated that the Working Group had to address two questions. First, in relation to VCCs maintained through a custodian, with respect to which the text provided two options. Second, in relation to whether to treat security rights as property rights or whether to carve them out for purposes of the applicable law rule. The Group's attention was brought to Principle 4(7) providing that the law applicable stayed the same regardless of a change in the factors listed in Principle 4(1). The Drafting Committee member explained that this was a rule aimed at providing certainty in proprietary rights in VCCs and referenced comments received by the Consultative Committee on this issue. He suggested that draft Principle 4(1) include a critical date as of which the determination of applicable law should be assessed. Finally, addressing the public policy issues raised by certain Consultative Committee members, he noted that Principle 4(6) was an attempt to find a solution; the draft provision made it possible for arbitrators, courts, and authorities in general to apply overriding mandatory provisions of their country or even of a third country. He observed that draft Principle 4(6) stated the obvious—it was a general rule of private international law that courts could refuse the application of a foreign law when it came to the presence of an overriding mandatory provision or public policy.

30. *Another Drafting Committee member* stressed that draft Principle 4 was only concerned with proprietary law issues and did not cover contract law questions. For example, the law governing a contract for the sale of a VCC was an entirely different matter that Principle 4 did not address. Principle 4 also did not treat anything related to the underlying project or the law applicable to the underlying project. He reiterated that the Group was to decide whether to include a special custody principle as part of the conflict of laws rule. He explained that one option was to provide that when

a VCC was maintained by a custodian, questions relating to the proprietary rights in that VCC would be submitted to the law of the registry. However, it had been observed that this solution may not be practical from the point of view of the custodian, who would then have to administer VCCs under different laws. So the second option followed the principle usually applied in the intermediated securities industry and provided that proprietary rights in a VCC maintained by a custodian were governed by the law of the custody agreement. While the first option was perhaps simpler, the second option was more supportive of a growing industry with custody potentially playing a larger role.

31. *A Working Group participant* congratulated the drafters on an extremely well-drafted Principle. He then queried what exactly was covered by proprietary law within the meaning of Principle 4. He agreed that all the issues listed in the draft Principle should be covered. He further noted that there were issues, such as creation, cancellation, retirement, reversal and revocation that were not necessarily just proprietary in nature but were of tremendous importance. He posited that there was a need to clarify whether those issues were covered under Principle 4. He suggested that the default should be that they were all covered unless there was a particular reason not to cover something that was addressed in the Principles.

32. *The HCCH Deputy Secretary General* read a statement made on behalf of the HCCH Experts Group and the HCCH Permanent Bureau (PB). The statement is enclosed in its entirety as Annexe III.

33. *A Working Group participant* noted the tremendous effort of the Drafting Committee in confining the applicable law principle, stating that the provision had shaped out really well. He observed that the draft Principle did not need to solve everything and suggested that the instrument make a reference to the HCCH's ongoing project. *Another participant* agreed that Principle 4 should include a reference to the ongoing work of the HCCH and stressed the importance of there being consistency between the solutions offered by the HCCH and UNIDROIT.

34. In response to the statement made by the HCCH Deputy Secretary General (see Annexe III, para 15) *a Drafting Committee member* emphasised that Principle 4 was meant to address certain proprietary issues concerning VCCs and was not meant to cover everything. Thus, questions relating to whether the registry was structured as a form of DAO with distributed tokens could be addressed by the applicable law to that matter in the relevant jurisdiction—it was not for the Principles to determine, for example, the legal status of a DAO.

35. *Participants* discussed whether the scope of Principle 4 should be limited to transactions in the secondary market as suggested by the HCCH Deputy Secretary General (see, e.g., Annexe III, para 11), as well as the meaning of 'secondary market.' It was observed that there was no intention for the Principles to override any national laws which could apply to a carbon market or to the rights over particular credits issued within a host country. It was also suggested that the Group be very clear about the definition of 'secondary market' since that changed from one market to another. The reference to 'primary market' in the carbon world was usually used in reference to the first purchase. The project developer would need to buy subject to all relevant authorisations in the host country and nothing in the draft Principle was intended to infringe upon that. The term 'secondary market' was used to refer to the then ensuing market, meaning any subsequent transfers, and the intention was to create a liquid secondary market.

36. *The Chair of the Drafting Committee* recalled that Principle 4 was not a free-standing principle and that the words used therein were defined terms in the instrument. For example: the term 'transfer' was defined in Principle 2(15) as the transfer of proprietary rights; the term 'proprietary rights' was defined in Principle 3(2); and the registry was, at the moment, defined as something that was run by a legal person who was a registry operator, meaning that a DAO might not fall within that definition. As to the scope of Principle 4, she noted that this was the same as the scope of the Principles and that it was confined to VCCs as defined in the instrument—i.e., essentially as anything

that happened after the VCCs were issued and had nothing to do with pre-issuance. She suggested that there might be a need for a definition of 'security rights', which referred to rights that arose when somebody took proprietary rights in an asset in order to secure an obligation (e.g., charges, mortgages) and did not instead concern security as in a share or bond.

37. *A Working Group participant* observed that it was not currently clear what was covered and what was outside the scope of Principle 4. She suggested that the term 'proprietary law' not be used, as it would not be clear what it related to. Referencing the comments of the Consultative Committee, she proposed that the Commentary clearly address what Principle 4 was not intended to supersede.

38. On the question of whether issues relating to the creation of a VCC should be covered, *a participant* queried what would happen if a host country determined that VCCs relating to projects in that country would only come into existence when approved by the Ministry of the Environment and the country where the registry was located had instead adopted the Principles which, under Principle 5, provided that a VCC was created when recorded on the VCC registry. In relation to the potential conflict between these two positions it was suggested that the host country should be saying that a project proponent relating to a project in that country could not create a VCC unless the Ministry of Environment approved it; then, once the project proponent secured that approval, they could contact a registry and have the VCC created through registration onto that registry. It was noted that the choice of law should point to the law of the registry not for whether the VCC could be created, but for whether it had, in fact, been created. Thus, somebody who managed to register a VCC with a registry despite not having the right to do so would potentially be subject to fines or penalties in the host country, but that did not mean that the VCC itself did not exist. In response, it was observed that the example recalled existing situations in private international law, such as the fact that a couple may be married under one legal order but not under another. Similarly, a host State remained free to refuse recognition of a VCC and it was important to consider how such a conflict could be resolved.

39. *Another participant* recalled that the Principles' goal was to provide certainty and there was a need for a clear statement of what were the applicable proprietary rights and instances where courts could and could not effectively overrule what was provided in the draft rule. In response, it was suggested that it in many legal orders a court retained the power to invoke public policy and all of the HCCH conventions included a specific provision stating that the law applicable as established by the conventions would not be applied in case of violation of public policy. It was proposed that the word 'manifestly' be added, making the requirement of violation stricter, but, in any event, even if not written in Principle 4(6) the public policy exception would exist. It was suggested that the relevant language in the Principle be separated into two different paragraphs—one addressing mandatory rules and one concerning public policy. *A Drafting Committee member* agreed that public policy around the interpretation of the *lex fori* was a general principle of private international law. He noted, however, that the rule according to which the courts may give effect to the rules of other States was instead not so common and it had been an intentional choice to include it in Principle 4 because it could be found in Article 9 of the Rome Regulation, but not in the private international law system.

40. *A member of the Drafting Committee* again stressed that not every court was going to reach the same outcome; the goal was to minimise the differences. He pointed out that the Commentary clearly stated that creation, transfer, and cancellation were all intended to be covered by the draft Principle. *A participant* raised the issue of custody and shared that the market was currently drawing from the securities practice and would look to the location of the account of the custodian both when considering the rights that attached to the instrument and how to take security over the instrument.

41. *The HCCH Deputy Secretary General* clarified that her statement referenced the limited responses received to date; the vast majority of experts had not responded since they understood that the Principle was going to be discussed during the October meeting of the HCCH Experts Group.

With respect to definitions, she shared that some experts did not find them sufficiently clear, particularly with respect to the definition of proprietary law issues which meant different things to different people. She also shared a concern that the Principles would be difficult to adopt because of the challenges in translating 'proprietary law issues' into local languages. The HCCH Deputy Secretary General noted that the HCCH Experts Group was pointing towards the development of an instrument and that the HCCH Permanent Bureau (PB) was trying to ensure that the work at the HCCH PB did not fragment from the work of UNIDROIT. With respect to the application by courts of the mandatory rules and/or public policy of third countries, she explained that the jurisdictions that hosted the projects, and in particular land-based projects, would like their public policies and mandatory rules also possibly considered by the courts of jurisdiction. If the connecting factor were by consensus to reach to the law of the registry, then there was a concern that the public policy rules of the host country would not be taken into account, because not all courts would do this. Thus, certain experts wanted at least a reference that the public policy of the host State may be taken into consideration. It was specified that these issues would be further ventilated during the October HCCH Experts Group meeting.

42. *A participant* raised a concern that the applicable law would change over the course of the lifecycle of the VCC since it would become also a matter of contract law tied to the transfers of the VCC. In response, *a Drafting Committee member* clarified that while the VCC may be the object of different contractual relationships, it was *mutatis mutandis* the same thing as other *res*, other assets, other securities. He reiterated that only proprietary aspects were covered by Principle 4. *Another Drafting Committee member* further clarified that Principle 4 did not refer to the CCB but only to the registry, in recognition of the fact that there may be a self-standing registry not connected to a CCB. It was stressed that what was needed was a single law under which the registry functioned; either of the four options provided in draft Principle 4 would provide a stable framework for the registry to operate in. It was also emphasised that the registry could not be allowed to choose the application of any law without a connection. That was why Principle 4 provided four connecting factors and limited the available choice of law to a real connection with the registry. Further, it was posited that if there were no registries and if the registries did not operate under a single law, that would do considerable damage to developing countries, who would struggle to obtain financing for projects in their jurisdictions.

43. *A participant* suggested that, in order to make developing countries where most of the underlying climate mitigation projects were based comfortable, the Principles be express that their goal was to put money into host countries and that issues such as compliance with local regulations were outside the scope of the instrument.

44. It was observed that, for example, Verra's deeds referred to English law. In response, *a Drafting Committee member* urged the Group to distinguish between contractual and proprietary law issues, as laid out in Commentary 4.2. Principle 4 only identified the law applicable to proprietary issues related to VCCs and did not concern other aspects, such as contractual matters. It was observed that courts addressing disputes concerning, for example, ownership over a VCC would not simply go by the contractual choice of law and determine that that choice covered property law as well. It was a well-established principle in private international law that contractual matters may be governed, and often were governed, by a different law than property matters. While contract was a matter for choice, property typically was matter of *situs*. Where was the thing? And the drafting in Principle 4 attempted to provide greater clarity over the *situs* of VCCs.

45. *Participants* noted the diverging practices of registries in the current vacuum, observing that the historical practices were going to be very difficult to reconcile with the forward-going approach. *The HCCH Deputy Secretary General* suggested that it may be preferable to state in the Principle upfront what the provision was intended to cover, including what was meant by proprietary.

46. *The Chair* concluded the discussion on draft Principle 4 noting that the current drafting, including the two options for custody situations, would currently be maintained pending comments from the HCCH Experts Group. He asked the Working Group to read and consider the comments from the Consultative Committee and share any reactions with the UNIDROIT Secretariat.

47. *UNIDROIT Secretary-General Professor Ignacio Tirado* thanked the HCCH Deputy Secretary General and the HCCH PB for their very constructive comments, as well as their experts for the input provided. With respect to the matter concerning what was to be addressed in the Principles and what was instead to be included in the Commentary, he urged the Working Group to reach an objective decision based on the functional use of the instrument and stressed that it should not be assumed that the Commentary would not be read—indeed quite the opposite as without the Commentary the instrument would be very difficult to understand.

Conclusions

48. *Principle 4 would not be iterated pending receipt of comments from the HCCH Experts Group following its October meeting.*

49. *The Working Group encouraged the Drafting Committee to clearly define what was meant by proprietary rights and be explicit about what was covered by Principle 4.*

(c) Principle 8 (Cancellation) and Principle 2 (related definitions)

50. *The Chair* gave the floor to the Drafting Committee to introduce the changes to the Cancellation Principle (Principle 8) and related definitions in Principle 2.

51. *A member of the Drafting Committee* noted that the definition of ‘reversal’ now included the term ‘environmental benefits’, which was a new defined term meaning as in relation to a carbon mitigation project, the reduction or removal achieved as a result of that project. The definition of ‘revocation’ had been changed to refer to retrospective cancellation, irrespective of the consent of the registered owner and without reference to the achievement of benefits. The definition of ‘retirement’ had not been changed.

52. With respect to draft Principle 8, Principle 8(1) had been beefed up to refer to the definition of VCC. The main change was with the introduction of Principle 8(3) which provided that ‘*a VCC can only be cancelled wholly and not in part*’. It was explained that this change was introduced in response to feedback from the last Working Group session and that it had implications in relation to reversal and revocation since it would imply that more VCCs could be cancelled than necessary. The other significant change was in the text of Principle 8(4) which now simply referred to ‘*cancel for retirement*’ rather than to the moving of a VCC into the account of another person.

53. Referring to the Consultative Committee comments from the representatives of Saudi Arabia, a *participant* observed that the definition of reversal was tied directly to the cancellation of a VCC and could thus create a mismatch with practice because registries might not cancel a buyer’s VCC after reversal but they may instead cancel buffer units or use other tools. Because cancellation was just one possible mechanism to deal with reversal it was suggested that the definition of reversal leave out the reference to cancellation of the VCC. *The Chair of the Drafting Committee* agreed and suggested that the issue be addressed by either ending the definition of ‘reversal’ after ‘issuance’ or saying that reversal could lead to cancellation.

54. *A Working Group participant* raised the issue of blocks of VCCs, suggesting that it be specified in Principle 2(1) that a VCC included a block of units, since a block of VCCs could be cancelled in part. *The Drafting Committee* agreed to address this issue throughout the draft. *Another participant,*

however, voiced strong objection to the notion of blocks, noting that blocks were the creation of only certain market players and were something entirely different to the VCCs defined in the Principles.

55. In response to queries raised concerning use of the term ‘existence’ in Principle 8, it was suggested that it be changed to ‘prior existence’. It was also suggested that the Commentary be updated to reflect that Principle 8 only referred to the causes for cancellation mentioned in the Principles. *The Working Group* thus discussed whether there were additional causes for cancellation other than the three addressed in the Principles (reversal, revocation, and retirement). *The Verra representative* agreed that the three mechanisms identified in the Principles covered the causes for cancellation. She noted that, at least in Verra’s program, the term ‘cancellation’ was not used in relation to retirement. Nonetheless, she recognised that the term was used more broadly in the Principles to refer to VCCs taken out of circulation because of retirement, reversal, or revocation.

56. To provide indication of where the authority to cancel lay, a *Working Group participant* proposed that it be clarified in the Commentary that cancellation could occur on the instruction of CCBs, registries, courts, or regulators depending on the program rules. He referenced the Consultative Committee comments provided by Saudi Arabia, Singapore, and Canada to observe that States were concerned that the Commentary did not reflect current practice and that there was a tension between private law and sovereignty. He suggested that risky defaults be shifted out of the Commentary and framed as illustrative, while keeping black-letter law lean and market-aligned. He noted that Article 6 seemed to be informing a lot of the States’ comments and that should be kept in mind.

57. *The Drafting Committee* underscored the limits of how the Principles could match up to current market practice, since some of the current practices could not fit within principles of property law. In terms of vocabulary, it was noted that this could be changed on the basis of the direction and agreement of the Working Group. *Participants* generally agreed with using an omnibus term to refer to the three concepts of reversal, revocation, and retirement, but disagreed on the most appropriate term to use. The Working Group discussed using the term ‘extinction’ instead of ‘cancellation’. Several participants expressed support for use of the word cancellation to refer to reversal, revocation, and retirement. Among other things, it was suggested that use of the word ‘extinction’ in relation to cancellation could cause confusion given that the term ‘extinction’ was used in Principle 4. However, in support of the word ‘extinction’ it was observed that the main distinction between cancellation and retirement was the underlying claim—a cancelled VCC had no environmental claim backing it, whereas a retired VCC signaled that there had been an environmental objective that had been achieved. Thus, the term ‘cancellation’ implied that something bad had happened, while with the retirement of credits something positive had happened. It was noted that the term cancellation was used in the market to refer to reversal and revocation but was not used to refer to retirement. What is more, *the Verra representative* noted that having the term cancellation cover all three concepts could prove problematic in practice since a retired credit could be subsequently subject to cancellation if it was later discovered that that retired credit needed to be revoked or reversed. She suggested that what was needed was a concept that referred to the VCC’s permanent removal from circulation.

58. A *participant* recalled that the Principles would also be available in French and noted that the word cancellation would likely be translated to *annulation* or *nullité*, which would not be the most appropriate terms since they would imply that the VCC never existed. It was indicated that the term used in the French market was *retrait*, which translated to ‘withdrawal’. Acknowledging the attention that should be given to translation of the instrument, the *UNIDROIT Secretary-General* urged the Working Group to focus presently on the English draft and not to change English terms based on their possible translations. He stressed that what mattered was that the effect and meaning of any wording used be clearly addressed. The most appropriate terms in different languages could then subsequently be identified.

59. The Working Group was asked to provide a steer in relation to the limits on who could cancel for retirement, reversal, or revocation, since this was a point of differentiation amongst the three causes for cancellation. In response, *participants* expressed support for the CCB being the *agent provocateur* of cancellation events—even if the instruction to cancel came from a court order, it would be the CCB implementing that instruction.

60. A *participant* suggested drafting changes to address the problem of the fraudulent creation of digital twins that allowed for double claiming of credits. In response, *the Drafting Committee* urged caution in altering the language of the Principles on this basis, noting that the issue might be best addressed by making it very clear that digital twins should have no private law effect unless there was something in the law that supported that. It was suggested that the Group investigate what happened and try and find a wholesale principled solution, or address more broadly the concept of tokenisation and twins, rather than making spot changes to the draft.

61. With respect to the definition of a VCC, it was stressed that the tonne underlying the credit was absolutely fundamental to the market—people were paying for the activity that either would occur or had occurred.

Conclusions

62. *The definition of 'reversal' would be updated so to not be tied directly to the cancellation of a VCC.*

63. *The Working Group agreed on use of an omnibus term to refer to retirement, revocation, and reversal, though views differed as to the most appropriate term to use.*

64. *Participants expressed support for the CCB being the agent provocateur of cancellation events, since even if the instruction to cancel came from a court order or other body, it would be the CCB implementing that instruction.*

65. *The Working Group would investigate and try and find a wholesale principled solution to the concerns raised by digital twins.*

(d) Principle 9 (Reversal)

66. *The Drafting Committee* introduced the revised Principle 9 on reversal. Principle 9(2) had been updated to refer to CCBs in accordance with the rules of the ICCP on the basis of prior feedback from the Working Group. Principle 9(4) had been revised to accommodate VCCs that carried rights, such as those issued by Verra. The main change was at Principle 9(5) which now included a redrafted waterfall provision with three layers: layer (a) referred to agreements between registered owners which would supersede the CCB's rule; layer (b) established the priorities in accordance with the CCB at the time of issuance; and layer (c) included three alternatives for the Working Group's consideration—(i) the standard default property rule whereby barring an agreement all losses would be shared *pro rata* amongst the parties, with potentially more VCCs having to be cancelled because of the inability to partially cancel VCCs; (ii) first in, first out (FIFO); and (iii) last in, first out (LIFO). With respect to the latter two options it was observed that they may result in less overall cancellation but would impact fungibility since the VCCs carrying the greater risk of cancellation would be priced differently by the market.

67. With respect to level (a), *participants* discussed the possibility of there being an agreement between two or more account holders. It was clarified that there likely would be one account holder but potentially multiple project proponents. In such scenarios, if a problem surfaced in relation to a VCC, one of the proponents could volunteer to have their VCC cancelled to, for example, maintain their reputation in the market. If that proponent was a direct account holder, then that proponent

would give the instruction. If not, it would get whoever was the account holder to give that instruction. But the point, it was stressed, was that it should be possible for one holder to give an instruction to cancel their VCC.

68. In relation to level (b), it was queried whether the priorities would be established by the project proponent or whether they would instead be established in the rules of the CCB, which every project proponent would be deemed to have accepted upon registration of their project with that CCB. It was thus suggested that the wording be amended to say '*in accordance with any priorities established by the CCB or accepted by the project proponents*'.

69. In relation to the alternatives suggested at level (c) it was proposed that *pro rata* would be the preferred option since it would only raise issues upon a reversal, whereas FIFO or LIFO would affect fungibility from the start with VCCs bearing different risks.

70. *The Chair of the Drafting Committee* queried whether the term 'project proponent' should be defined in the Principles. *The Drafting Committee* also asked the Working Group to consider whether additional layers should be added to the waterfall provision and to consider the proposed ranking amongst the layers. A suggestion was made to include the default rule at the beginning of the waterfall rather than at the end. However, it was noted that the sequencing did not substantively matter, since the default rule remained such whether it was included at the beginning or at the end of the waterfall. Layers (a) and (b) were differentiated on the basis that (a) was meant to concern agreements between account holders rather than at the project level. It was going to be redrafted to account for the suggestion that if one person wanted to subordinate itself to everyone, then that person did not need everyone's consent to do so. *The Working Group* further discussed what was meant by 'subordination'. It was clarified that VCCs could be 'tranchéd' as was done in the securitisation context.

71. In discussing the reasons for reversal, *participants* noted that a VCC could be reversed because of failure to achieve the underlying project's environmental benefits as well as failure to achieve social benefits; a VCC could be reversed for failing to meet the ICCP criteria being implemented. *The Verra representative* added that if proper diligence had not been conducted and if the relevant land and prior informed consents had not been obtained as outlined in the rules of the ICCP, then the project proponents would not technically have the claimed project area on which basis the credit volumes would be calculated. In other words, failure to properly secure land rights would affect the volume of credits related to that project. A question was raised as to whether such a scenario would affect the existing verification statement (for example, with the CCB disapproving the verification statement or the VVB amending their verification report) such that it would affect the definition of VCC in Principle 2(1)(a) and 2(1)(b). *The Verra representative* explained that there was a process that would be followed in such situations called a quality control review. This was a very specific review process that referred back to the verification body to require any underlying issues to be addressed and potentially seek compensation for the difference in resulting credit volumes. In particular, Verra would raise with the VVB who had verified the credit volume any issues that had arisen in relation to, for example, whether proper land rights consents had been obtained.² Verra could then reject a verification on that basis and require compensation based on future issuances and potentially also cancel previously issued credits depending on the particular monitoring period. This process could result in either a reversal or a revocation of credits depending on the point in time during which the issues occurred. If the events happened subsequent to the original validation, they would result in a reversal. If it was determined that those activities were already ongoing before or during validation, that would result in a revocation.

² The Verra representative clarified that the verification statement related to a particular monitoring period during the lifetime of a project.

72. It was added that a project must achieve the climate mitigation in accordance with the Project Design Document (PDD) and the rules of the ICCP. The PDD and ICCP rules would outline how the project was going to be performed and included a number of criteria including in relation to social benefits—such as the obtaining of informed consent, the securing of land rights, the use of safeguards which could include, for example, co-benefits relating to education. Thus, it was explained, verification was not just the verification of the reduction or removal; it was rather verification that the project had been carried out as a process in accordance with the PDD and the ICCP rules. Revocation or reversal referred to the revocation or reversing of the approval of the verification, which would then result in the unit being removed from circulation.

73. Following this discussion, a *participant* proposed that the reference in Principle 9(1) to the VCC no longer representing the achievement of a reduction or removal of one tonne be amended to reflect that the provision referred not to the mitigation outcome, but to the claim. If reversal was linked to the mitigation outcome, then the process would become relevant and this was something that differed across registries.

74. Another *participant* queried whether some of the dialogue around reversal could be resolved by reconciling the tension between Principle 9(1) and Principle 2(16). Principle 9(1) specifically referred to the event where the credit no longer met the definition of a VCC. The definition of VCC included elements of the environmental outcome, the engagement of the CCB, and the registration. Thus, Principle 2(16) did not need to refer exclusively to the loss or diminution of the environmental benefits—it could simply refer back to the unit not meeting the definition of a VCC. *The Drafting Committee* agreed that the definition of reversal needed to be redrafted in light of the feedback from the Working Group and would be less descriptive, though it needed to maintain the reference to events following either issuance or creation, in order to not lose the difference between reversal and revocation.

75. A point was raised that the events being described were more likely to amount to revocation rather than reversal events, on the basis that they occurred after the project was set up but before the VCCs were created. *Others*, however, queried whether such events could also happen after the creation of a VCC. *The Verra representative* explained that issuance would not happen until after the monitoring report and the verification report confirmed what had indeed happened in relation to a particular time period or vintage. A *participant* argued that the Principles should only address environmental benefits and not social benefits more generally. In response, another *participant* reiterated that a credit could be revoked because the project had not been performed in accordance with the rules, and those rules incorporated other elements apart from just environmental benefits. In relation to reversal, the Working Group was asked to provide input as to whether the definition should refer to environmental benefits or whether it should simply provide that reversal meant the prospective cancellation of a VCC irrespective of the consent of its registered holder. A suggestion was made to add the word 'material' before 'loss or diminution'; however, a query was raised as to what would count as *de minimis* and it was observed that this seemed potentially inconsistent with the notion that there could not be fractional VCCs. Another *participant* cautioned against getting into the determination of what would count as *de minimis*, noting that the Principles were not addressing as a normative matter when a reversal should occur—this depended on the rules of the CCB. It was suggested that to avoid the tension coming from the different definitions in Principle 9 and Principle 2(16), Principle 2(16) be amended in line with Principle 2(17) on revocation, having the primary distinction between reversal and revocation being post versus prior events. It was further clarified that a reversal was not a 'prospective cancellation' but rather could lead to cancellation due to the occurrence of an event that took place after issuance.

76. It was suggested that 'environmental benefits' not be defined and instead that the Principles defer to the methodology and the CCB. It was posited that the importance of the Principles was to the proprietary nature; thus, reference could be made to the impact on the proprietary nature due to events happening after issuance in the case of reversal and prior to issuance in the case of

revocation and then tie this to whether the VCC met the characteristics defined in Principle 2(1) which ultimately allowed for the methodology in the CCB to define technical terms around reversal of the environmental benefit. *The Drafting Committee* thus proposed that either Principle 9(1) be redrafted to say that 'a VCC can be cancelled for reversal where it no longer meets the definition of a VCC because of events subsequent to creation', or Principle 9(1) be amended to provide that 'a VCC can be cancelled because of a reversal' with Principle 2(16) then defining reversal to mean 'that a VCC no longer meets the definition of a VCC because of events after creation'. Working Group participants agreed with the substance of either proposal.

77. *The Drafting Committee* was encouraged to review and amend the Commentary to Principle 9 with a view to determining whether the language supported the Principle or whether it expressed an opinion that helped explain the Principle, which was not always correct. It was suggested that the word 'unscrupulously' at Commentary 9.3 be removed, since retirement before reversal could happen inadvertently and the same situation would have to be addressed whether it occurred scrupulously or not.

78. *A Working Group participant* referred back to taxonomy, noting the importance of the differentiation between public and private international law. Referencing Internationally Transferred Mitigation Outcomes (ITMOs) and the Consultative Committee's comments, he noted a concern about confusing the vocabulary used in Article 6, such as revocation, and what the Principles were meant to address. He suggested that it would perhaps be helpful to adopt a new set of terminology to avoid there being confusion with what States were trying to do under the Paris Agreement. He noted that, from a private law perspective, the taxonomy was clear: cancellation was the legal act, while reversal and revocation were the drivers. On the other hand, under Article 6, revocation had a different meaning and belonged entirely to the parties.

79. *The Drafting Committee* asked the carbon markets experts in the Working Group to provide clarity on the entities responsible for triggering a cancellation for reversal. *A Drafting Committee member* suggested that, if the matter was sensitive, it could be elevated to a regulatory point with the Principles stating that regulatory authorities would identify the bodies whose terms would have this proprietary effect. *The Verra representative* noted that Principle 9(2) should not refer to the rules of the ICCP, but rather suggested that it refer to the rules of the CCB. She also noted that it was projects that were 'registered' and VCCs were instead 'credited' or 'transferred'. *The Chair of the Drafting Committee* noted that the Principles would not address the registration of the project, since this occurred prior to the issuance of the VCC and was thus outside the scope of the Principles.

80. *A Working Group participant* raised the concern that there were certain practices that existed in the market but which seemed to be materially inconsistent with the Principles. This included buffer pools. He explained that, in relation to a project that, for example, eliminated 1,000 tonnes of greenhouse gases, only 900 credits would be issued. The practice was the VCC equivalent of overcollateralisation to address a potential future problem. Such overcollateralisation was not in the form of a VCC and was one big pool for multiple projects. Referencing the Consultative Committee comments of the Russian Federation, he further explained that a problem in Project A could be compensated by the reduction of credits in Project B. He cautioned that if the Principles were to preclude such practices then either (i) the Principles would not be adopted in full or would be amended by implementing States such that the goal of harmonisation would not be achieved; or (ii) the Principles would be adopted but operators would not comply with them. He recognised that an intangible asset was the best legal characterisation for the existing product and that it was nevertheless challenging because VCCs did not quite fit into what was normally understood as an intangible asset. He nonetheless urged the Working Group to minimise the risk that an innocent purchaser in the market would have their VCC disappear because of a problem they were not able to diligence and that they were not expecting to bear as a risk. In practice, he noted, such risk was absorbed by the overcollateralisation or by project proponents through compensation mechanisms. He noted that the current definition of VCC tied the VCC to a tonne of carbon. However, he posited

that the proper definition of VCC was that a carbon mitigation project produced environmental benefits and the number of VCCs that could be issued in relation to that project could be no more than the sum of those environmental benefits. Thus, if there were 1,000 environmental benefits, there could be 1,000 VCCs but also 900 VCCs issued. With respect to reversal and revocation, Principles 9(1) and 10(1) provided that a VCC was subject to reversal or revocation if it no longer met the definition of a VCC. The problem, he explained, was that in a situation of overcollateralisation, a VCC did not fail to meet the definition, so long as the number of VCCs allocated through a project was not higher than the environmental benefits from that project. He suggested fixing this issue by providing that a VCC was subject to reversal when, as a result of a subsequent event, the environmental benefits were reduced to a level that fell below the total number of VCCs relating to that project.

81. In response, *the Chair of the Drafting Committee* observed that there was currently nothing in the definition of a VCC that would hinder the process which had been described—so long as no more VCCs were issued than the amount of environmental benefits, then each VCC still represented one tonne of carbon.

82. *The Verra representative* clarified that the volumes in the buffer pool were not VCCs because they were not issued and that, at least for Verra's projects, the buffer pool did not amount to a massive compensation bank account for any and all types of projects. Rather, the buffer pool was specific to AFOLU (Agriculture, Forestry and Other Land Use) projects. She further noted that, if issued, the units from the buffer pool would be given a new serial number to underscore that there had been a replacement and avoid double-counting, among other reasons.

83. *A Drafting Committee member* recalled that the intention of the Principles was to bring certainty to a space that was currently unclear. He suggested that a more helpful frame of reference could be to consider whether any particular Principles were preventing the market from doing certain things rather than asking whether the Principles were aligned with current market practices since market practices were not uniform and were based on freedom of contract. He stressed that the Principles as currently drafted did not impede the buffer pool or contractual arrangements. While the Principles should make it clear that one could enter into contractual arrangements and build workarounds, he cautioned against undermining fundamental principles of property because otherwise the certainty being sought would be lost. He recalled that one of the uncertainties in the market presently was whether VCCs were property.

84. In response, it was observed that the concern was precisely that the Principles as drafted would preclude not just buffer pools, but other types of compensation arrangements that might develop in the future. If the market scaled to be an impersonal, exchange-traded market, then having individually negotiated private arrangements would be challenging. At a minimum, it was suggested that the sentence in the Commentary providing that it was not possible to compensate Project A with credits from Project B be eliminated. It was also noted that linking Principles 9(1) and 10(1) to the definition created a risk of confusion and a risk of blocking the kinds of compensation mechanisms that existed today and could exist in the future.

85. Recognising the tension between the current market practice and the aim of the Principles, *a participant* proposed that the Commentary for Principle 9 emphasise the property law coherence message and be very clear in terms of the limitations of property law. The Commentary should not imply that registries must adopt a single model; there were currently different replacement mechanisms being tested, including insurance, a permanence trust, or a form of guarantee. From a property law perspective, what mattered was the existence of an agreed mechanism that ensured that the holder received a replacement right, whether that was another VCC or an equivalent entitlement; it mattered less where that replacement came from. It was thus suggested that paragraph 9.6 in the Commentary be updated to reflect a more market-sensitive appreciation of the reversal discussions taking place in the policy sphere.

86. In response, *the Drafting Committee* noted that the Commentary made clear that the market was encouraged to come up with solutions that worked within private law principles. Contractual arrangements whereby the VCC purchasers agreed to accept replacement VCCs from other projects or agreed to other replacement or compensation mechanisms were not precluded. Yet, the *Working Group* encouraged the Drafting Committee to revise Commentary 9.6 to make it clear that parties could agree to such replacement mechanisms whether through bilateral contracts or by accepting the rules of the program.

Conclusion

87. *The definition of reversal was to be redrafted in accordance with the above discussion.*

88. *Level (a) of the waterfall at Principle 9(5) was to be redrafted to account for the suggestion that if one person wanted to subordinate itself to everyone, then that person did not need everyone's consent to do so.*

89. *In relation to the alternatives suggested at level (c) of the waterfall at Principle 9(5), pro rata was the preferred option.*

90. *The Commentary to Principle 9 was to be amended in accordance with the above discussion, including (i) the word 'unscrupulously' at Commentary 9.3 was to be removed; and (ii) Commentary 9.6 was to be revised to make it clear that parties could agree to replacement mechanisms whether through bilateral contracts or by accepting the rules of the program.*

(e) Principle 10 (Revocation)

91. *The Chair* turned the discussion to draft Principle 10 and invited *a member of the Drafting Committee* to introduce the revisions.

92. It was explained that, as with reversal, the possibility of cancellation in part had been removed from the principle. Contrary to reversal, revocation made the VCC void *ab initio*, consistent with intangible property principles. It was suggested that a standalone provision be included in the section on Cancellation providing that the cancellation principles addressed proprietary issues and did not deal with contractual issues; thus, any contractual allocation of risk was subject to the applicable contract law and not covered by the instrument. Principle 10 included the same waterfall as Principle 9 and would be amended consistent with the discussion concerning Principle 9, including the removal of the LIFO and FIFO alternatives. The most substantive proposed change was at Principle 10(7) which included language to address the concerns with a VCC becoming void *ab initio* due to evolving methodologies. Draft Principle 10(7) thus provided a carve-out for revocation—revocation was usually *ab initio* unless it was revocation for the specific purpose outlined in Principle 10(7), i.e., as a result of the ICCP's abandonment or changes to its relevant methodology in response to evolving scientific knowledge.

93. *A participant* applauded draft Principle 10(7) and queried whether it could go further and perhaps be reversed to provide that that was the general rule, except in extreme cases of fraud or the like. He explained that there could be other relevant scenarios in addition to evolving scientific knowledge, such as, for example, a host country's change in legislation affecting the additionality calculation. *The Drafting Committee chair* noted that this had been considered by the Drafting Committee, but it had been found very hard to draft. This was why the Drafting Committee had focused on addressing what they had understood to be the most egregious example.

94. However, *other participants* questioned whether Principle 10(7) was correct. It was explained that, while methodologies did evolve because of changing science, that would unlikely result in a revocation of credits that had already been issued. Rather, the credits would simply be labeled as

having been issued under the prior methodology and their market price could be effected. In fact, it was noted, the offsetting world was premised on there being continuously improving methodologies. The edge of additionality, which was needed for an offset project, was constantly shifting because things became commonplace and could no longer be credited. The whole idea of methodologies was that they changed over time and became more stringent. Thus, including a provision such as Principle 10(7) could cause confusion in the market and discourage standard bodies from engaging in the current practice.

95. It was further noted that the above scenario was in contrast to jurisdictions enacting legislation and frameworks to guide how projects could or could not be implemented within the host country, which often did apply retrospectively to existing credits. An example was Brazil, where the government was currently reviewing and withdrawing authorisations for projects that were deemed to not have the necessary land rights. These examples, contrary to the evolving methodology cases, related to the criteria for the project itself, since the project was supposed to have all applicable rights and consents.

96. *The Verra representative* added that the standard would consider whether a methodology needed to be updated but she explained that it was never retrospective. Credits were only ever verified to the methodology that was in place at the time, meaning that credits issued on the basis of a previous methodology were still valid to that methodology.

97. *Others* agreed, noting that it was extremely rare for there to be fraud in the methodology; rather, there could be instances of fraud in adhering to a particular methodology. An example was provided concerning the cook stove litigation. In that case, the methodology was valid and approved by the CCB. An entity had been, however, fraudulent in its adherence to that methodology. The methodology was subsequently updated to be more scientifically conservative, but that did not entail the retrospective revocation of the credits that had been issued under the original methodology.

98. *The Drafting Committee* recalled the history of Principle 10(7). It was noted that the language had been drafted to provide a softer solution addressing the concern expressed previously by the Working Group in relation to cases where there had been no fraud or other wrongdoing but rather the scientific understanding had changed and it became known that a reduction that was thought to have happened had not, in fact, occurred. It was reiterated that the draft provision represented a concession and did not represent how intangible property usually worked.

99. *Participants*, however, argued that no methodological change should, *per se*, trigger Principle 10. A *member of the Drafting Committee* suggested that the wording in the safe harbour provided by Principle 10(7) be changed to refer to a change in scientific understanding rather than in methodology. In response, it was suggested that the language be made to apply in any revocation scenario that did not have elements of fraud to cover, for instance, measurement mistakes or other human errors. It was also suggested that the Principle mention the VVB in addition to the CCB since, even though reputationally the risk of revocation currently lay primarily with the CCB and the project proponent, without the report of the VVB revocation could not happen. *Others*, however, disagreed and indicated that it should only be the CCB.

100. *Other participants* queried whether science could be divorced from methodology, since the methodology was the scientific basis by which the VCC was generated. It was suggested that the provision be amended to cover the instance of somebody essentially taking a 'second look' at what was done initially, which should not trigger the penalty of retrospective revocation. A proposal was made to include the words '*at the time it was created*' in Principle 10(1), to account for evolving scientific standards.

101. *The Drafting Committee* recalled that if the existence of a VCC was predicated on A, B, and C occurring and it was later determined that B did not occur, then the VCC could no longer exist—

that was a point from which it was not possible to depart. What Principle 10(7) was trying to do was to soften the impact of this conclusion in certain instances. It was further explained that the Drafting Committee had attempted to draft a provision that limited Principle 10 to instances of fraud, but that had proved difficult because (i) it seemed undesirable from a policy point of view; and (ii) it required defining fraud. The Drafting Committee had therefore proposed the carve-out at Principle 10(7). However, it was noted that guidance was needed from the Working Group in terms of where to draw the line in order to provide the market with sufficient certainty. In response, the need was raised to put some hard edges on 'science' and identify who could demonstrate that a VCC never existed—presumably, it would be the CCB making that determination in accordance with its rules. It was further noted that cancellation was a technical execution of a function and it was thus queried whether a regulatory body or a court had the authority or ability to actually cancel. The suggestion was made to consider regulatory bodies or courts as entities that could help in the determination of whether there was, for example, fraud, and therefore the characteristics of the VCC were never in existence, but it was unlikely that these entities could actually cancel the VCC.

102. *A participant* shared that, presently, revocation and reversals were being addressed in the same way between parties to a trade with a contractual allocation of risk usually resulting in an obligation on the seller to deliver alternative credits. *The Drafting Committee* reiterated that contractual allocations of risk remained entirely unaffected by the Principles and that that would be made clearer in the instrument.

Conclusions

103. *The waterfall at Principle 10(6) would be amended consistent with the discussion concerning Principle 9, including the removal of the LIFO and FIFO alternatives.*

104. *The Working Group agreed that Principle 10(7) should not refer to methodologies. While agreeing that a carve-out was desirable, the Working Group expressed different views as to its scope.*

105. *A proposal was made to include the words 'at the time it was created' in Principle 10(1), to account for evolving scientific standards.*

(f) Principle 11 (Retirement)

106. *The Chair* turned the discussion to Principle 11 (retirement). *The Drafting Committee* explained that the only substantive change that had been made was, for consistency with the registry principles, to allow a user authorised by the registered owner to instruct the registry to retire the VCC. It was also observed that the provision had to be amended to reflect the understanding that a retired VCC could still be revoked or reversed.

107. *A participant* raised concerns with allowing retired credits to be retrospectively cancelled, arguing that it would make the market even more precarious and further discourage buyers. A counterpoint was raised on the basis that it could instead create more confidence in the market, since it would stop people from retiring credits they knew could be subject to reversal or revocation. However, it was noted that credits that could be subject to cancellation would normally be frozen pending review, meaning that they could not be retired. *Another participant* observed that whether a credit was revoked or reversed before or after it was retired would make little practical difference in the market. *A Drafting Committee member* recalled that the Principles only addressed the private law framework. From a property law perspective, the result of retirement was that the VCC ceased to be—if something ceased to be, it could not cease to be again. This did not mean that there could not be other consequences outside of the property law framework.

108. *A participant* clarified that once a credit was retired it was transferred to a cancellation account and it no longer existed. If, subsequent to the retirement, there were issues with the vintage,

the credit would not come back to life. It would remain dead, or non-existent. Yet, all aspects of the credits would be called into question and would typically be addressed in the contracts between the parties who bought and sold the credit. It was thus suggested that Principle 11 not be amended since, as a factual matter, the VCC was no longer in existence; the Commentary could instead be revised to include examples of the kinds of issues that could arise.

Conclusions

109. *It was agreed that Principle 11 not be amended but the Commentary be revised to include examples of the kinds of issues that could arise following a VCC's retirement.*

(g) Principle 2 (Definitions)

110. *The Chair* invited the Working Group to discuss Principle 2. *The Drafting Committee* brought the Group's attention to the main changes that had been made to the definitions and sought feedback primarily in relation to the definitions of: (i) CCB (Principle 2(12)); (ii) ICCP (Principle 2(13)); and (iii) methodology (Principle 2(14)).

111. With respect to Principle 2(12), a question for the Working Group concerned whether the CCB was a body that performed *at least one* of the enumerated functions, or whether it had to perform *all of* the enumerated functions. It was observed that the definition of CCB had to support the various functions that were then attributed to the CCB throughout the rest of the Principles. A proposal was made to separately identify the essential and the optional elements of a CCB. On the basis of separating the legal functions of the CCB, registry and VVB, it was suggested that the essential functions of a CCB would include: (i) the co-development, or approval, or review of the methodology; (ii) administration; and (iii) instruction of the VCC registry. The optional elements would instead include: (i) registration of the carbon mitigation project; (ii) appointment of the VVB; and (iii) approval of the methodology applying to the relevant carbon mitigation project. *The Chair of the Drafting Committee* underlined, however, that approval of the verification statement was perhaps the most important function to be performed by a CCB, since this formed part of the definition of a VCC.

112. In response to a participant's suggestion that a project proponent should be able to act as the CCB, it was observed that this could prove problematic under the current structure of the Principles, since the CCB carried out several functions including directing the registry to revoke a credit. It was thus proposed that it be acknowledged in the Commentary that there could exist carbon credit instruments that did not use the CCB and that the Working Group considered that the mechanical aspects of those products were different and therefore were not covered by the Principles.

113. With respect to a CCB's role in relation to methodology, it was suggested that the language be updated to reflect '*specification or development*' of the methodology. *Others* suggested that it should instead be '*development and approval*', though it was clarified that the CCB did not determine which methodology should apply. *A participant* stated that one of the core functions of a CCB was to provide some type of oversight and approval of eligible methodologies. *Another participant* suggested the words '*co-develop*' and '*review*', noting that CCBs did not come up with the methodology on their own but they definitely reviewed all methodologies.

114. In relation to a CCB's relationship with a VVB, *the Verra representative* clarified that a CCB would not appoint a VVB for a specific project but rather the contractual relationship between a CCB and a VVB would be in relation to a specific scope of methodologies that the VVB would be allowed to validate and verify. *Others* agreed and added that, usually, a CCB would determine the VVBs from whom the CCB would accept verification reports in relation to certain types of methodologies. It was suggested that '*approval*' be used instead of '*appointment*'. With respect to Principle 2(12)(g), *the Verra representative* further explained that the CCB would not instruct the registry to credit the VCC.

It was rather the CCB who agreed that all of the rules had been met such that the VCC could be registered and the project proponent would then go to the registry asking that the credit be issued. Further, it was added that, once the credits were verified and the CCB approved the verification, it was usually the project proponent who specified to the CCB how many of the approved VCCs to issue. *The Chair of the Drafting Committee* noted the difficulties in using the word 'issue' since it seemed to mean different things in different contexts. She explained that she had therefore tried to split up the various components of 'issuance', one of which was instructing the registry. *A participant* suggested that the word 'confirms' be used: '*confirms to a VCC that such VCC registry may credit the VCC into a registry account*'. The suggestion was made in order to underscore that there did not need to be a hierarchical relationship between the CCB and the registry. However, *another participant* disagreed, arguing that the word 'instruct' should be used because (i) the draft language in Principle 13 referred to the *obligations* of a VCC registry; and (ii) it had to be clear that the legal risk lay with the CCB and not with the project proponent.

115. *The Chair of the Drafting Committee* however noted that the registry Principle currently did not address the initial registration—it was rather all about how the registry was to comply with instructions by the registered holder. It could be amended, but two things needed to be addressed: (i) the question of 'issuance'; and (ii) for there to be a VCC, there had to be a link between the verification statement and the crediting of somebody's account in the registry.

116. *The Working Group* discussed whether the CCB had to be independent of the project proponent. Some participants argued in favour, noting that approving own's own credits would amount to a serious conflict of interest. However, *the Drafting Committee* reminded the Group that the Principles concerned private law and not regulation. The definitions were concerned with delineating what was covered by the Principles; not whether it was normatively desirable for the CCB to be independent. Thus the question was whether the Group wanted to say that a VCC created by a CCB that was not independent was not a VCC under the Principles. It was suggested that instead of including independence as part of the definition it could be stated in the Commentary that regulators could require independence.

117. In response to feedback from the Working Group, Principle 2(12) was iterated to define the CCB as '*independent of any other natural or legal person who has undertaken the relevant carbon mitigation project or who is to become or does become the first registered holder of the VCC*'. *A participant* objected to the proposed language reiterating that the Principles should not only cover credits issued via CCBs and that a project proponent should not be precluded from performing the functions of a CCB—i.e., choosing a methodology, seeking verification from a VVB, and registering the credits onto a registry. He noted that if the goal was to safeguard the quality or integrity of the VCCs by mandating the inclusion of the CCB, there had been ample instances of fraud affecting credits issued by major standard setters in the market. *Others* disagreed, arguing that the presence of an independent CCB was a necessity from a governance perspective.

118. It was suggested that the Principles simply provide that a CCB was a legal entity that administered the carbon credit programme. The operative sections of the Principles could then refer to the functions performed by a CCB, for example, in relation to instructing the registry to create a VCC. It was also proposed that the instrument acknowledge in the introduction or in the Commentary that, out of necessity and efficiency, the Principles covered a specific type of product and that States, either immediately or in the future could choose to apply these same Principles to other products or other types of VCCs.

119. In relation to Principle 2(13), the ICCP had been defined as a program of carbon mitigation activities governed by rules established by a CCB. ICCP appeared in several instances throughout the Principles on the basis that it was understood to be where the rules sat. However, it was noted that the interaction between the CCB and the ICCP was not clear. It was suggested that a reference be made to the methodology instead of the rules of the ICCP. *The Verra representative* explained

that the CCB was the legal entity that managed the ICCP and the ICCP was a set of program rules across various programs not limited to carbon programs. It was proposed that reference be made to 'a set of rules and requirements' relating to 'projects from which VCCs are generated' and administered by the CCB. It was noted that the methodologies then fell in the 'requirements' part.

120. As to Principle 2(14) concerning methodology, *the Drafting Committee* asked the Group to help clarify what should be included as a factual matter; the definition was not going to raise private law implications.

121. As to the verification statement defined at Principle 2(8), it was agreed that the concept of a negative verification statement would be removed from the Principles and referred to instead in the Commentary.

122. *A participant* proposed that the Principles either address avoidance or explain why avoidance was not covered by the instrument. In the current iteration of the instrument, avoidance was mentioned in relation to 'removal', which was indicated to cover both the removal and the avoidance of an increase in greenhouse gases. It was suggested that this was not the preferred approach, since avoidance and removals were different things. Rather, avoidance was more akin to reduction. Relatedly, *another participant* raised for discussion a comment by the Consultative Committee that related to scope and which suggested that the carbon mitigation projects referenced in Principle 2(1) should include mitigation projects as well as co-benefits from adaptation projects, in order to align with Article 6. *Other participants* observed that the topic of avoidance was controversial given that it meant different things in different contexts and in light of the potential overlap between reduction and avoidance. It was explained that the controversy over avoidance was usually about baselines. An example was provided of the decommissioning of a coal power station. A claim that emissions had been avoided could only be made if the power station had a continuing life of more than, say, 10 years—if the station was going to be decommissioned anyway, then nothing could be claimed to have been reduced or avoided. The Group was asked to consider whether it made sense to include avoidance as a standalone concept or whether it would be encompassed within reduction. *A participant* added that the Paris Agreement entities were still unsure as to whether to include avoidance within the context of mitigation activities and had agreed to revisit the issue in 2028. This, it was argued, evidenced that the issue was a live one. The Group was encouraged to address it in the Principles, at a minimum referencing the current status. *Others* agreed on the appropriateness to address avoidance given that it constituted a significant part of the market and amounted to the same product. It was explained that avoidance credits were presently available at low prices because disfavoured; however, a few years ago they represented the biggest segment of the market. Their legal nature was noted to be the same as that relating to other types of VCCs; however, there were uncertainties associated with avoidance credits because of the difficulties in determining what would have happened absence the avoidance. *A participant* raised concerns with respect to the difficulties in defining avoidance given the current controversies.

123. It was suggested that, because the legal nature of the credits was the same, the terms 'reduction' and 'removal' be taken out of the definition of VCC and not included in the definitions since their meaning would vary across jurisdictions. *Others* agreed and suggested that the VCC definition simply refer to 'mitigation outcome' or 'greenhouse gas mitigation outcome' or 'mitigation of emission into the atmosphere of greenhouse gases', with 'mitigation' then defined to mean 'a reduction, a removal, or the avoidance of emission to the atmosphere of greenhouse gases'.

124. *A participant* queried whether it was necessary to define 'mitigation'. She noted that, in practice, the type of mitigation would be defined and articulated by the applicable methodology. Thus, by using the term 'mitigation', both CCBs and jurisdictions would be allowed to evolve their methodologies and use their preferred terminology without the Principles wading into the current reduction, removal, and avoidance debate. *The Group* also discussed referring to 'outcome' instead of 'achievement'. *The Drafting Committee chair* raised concerns, however, with including the term

'mitigation' without it being defined in the Principles. *A participant* argued against use of the term 'mitigation', explaining that in the climate space it was not used in a manner consistent with its plain use in the English language. She stressed that the Principles should only concern VCCs and the Commentary should specify that the Principles did not address how the VCCs were generated or created—they only pertained to the legal nature of the credit and not what that credit was backed on, whether a reduction, removal, avoidance, or mitigation outcome or something else that may be developed in the future. She also cautioned that the term 'environmental benefits' could confuse the market as it usually did not relate to the primary reduction or removal achieved but to add-on benefits that affected the price of the credit.

125. Referencing the input from the Consultative Committee, *a participant* suggested that the definition of a VCC be drafted such that the scope of the Principles include both mitigation projects and co-benefits from adaptation projects. In response, *a Drafting Committee member* clarified that he understood the comments from the Consultative Committee to concern definitional alignment rather than scope, meaning that the suggestion was to more closely align the definition of VCC to that in Article 6 of the Paris Agreement. He stressed that scope of the work being carried out at UNIDROIT was different to the framework laid out by the Paris Agreement.

126. In relation to the revised definition of VVB at Principle 2(10) *a participant* expressed agreement with use of the term 'approved' rather than 'appointed'.

127. It was suggested that defined terms be capitalised throughout the draft.

128. *A participant* argued that the definition of a VCC was problematic because it tied the credit directly to one metric tonne of carbon. He observed that while that detail reflected current market convention, it was methodological and not legal. He posited that the black-letter rule must be durable while methodologies and accounting metrics evolved. He thus suggested that the black-letter definition be kept functional with reference to an intangible unit of verified mitigation benefit credited to the registry, and that the one tonne reference be included in the Commentary which could track practice without freezing the law. *The Chair of the Drafting Committee* welcomed guidance on this point and noted that, from the point of view of private law, it likely did not make a difference if the Principles provided that a unit represented one or more tonnes, so long as each unit was individually individuated with a serial number. *Another member of the Drafting Committee* agreed, stating that, from a private law perspective, it could be simply said that the unit represented a predetermined amount of CO₂ equivalent—it just had to be fixed in some way, it could not be variable. However, *another member of the Drafting Committee* noted that it could raise issues in relation to the revocation and reversal Principles where a unit of account was needed in relation to the provision that VCCs could not be cancelled in part.

129. *A participant* strongly recommended that the Group maintain the one tonne in the definition of a VCC. As an example, if a project and its mitigation outcomes were tokenised and somebody stated that the entire project as tokenized and all of its mitigation outcomes were a VCC, chaos would be introduced into the space—that was not how the market operated or wanted to operate.

130. *Another participant* urged the Working Group to pare back the level of detail in the Principles in order to avoid limiting the applicability of the Principles across jurisdictions and into the future. She observed that the Group was trying to get to an intangible tradable unit to which proprietary rights attached, rather than defining exactly the specifics of how the market worked presently. *Others agreed*. It was added that the Working Group should limit itself to what was necessary for the functioning and existence of the market and be careful not to expand the scope of the project.

131. *The Chair of the Drafting Committee* recalled that the Group was drafting private law rules that enabled something that was in many respects unlike any other type of personal property to be intangible property. And the Group was not drafting many rules that applied, but was drafting real

rules such as the innocent acquirer rule. If the definition of VCC were cast too wide, then the Principles could be seen as overreaching, since they would be providing special rules for something that was very contentious from a property law perspective. Thus, she argued, the more boxed in and tied to things that were considered of significant importance in the real world, the better. That was why there was a focus on the characteristics of individuation, rivalrousness, controllability, and so on. It was also why it was desirable to limit the Principles to things that did good from a climate point of view, to be able to argue that such a particular kind of property was necessary. She added that the Principles had to put together a scheme that held together.

Conclusions

132. *Working Group members were to send proposals to the Drafting Committee for consideration, which would iterate the draft Principles in accordance with the discussion.*

(h) Principle 23 (Procedural law including enforcement)

133. *The HCCH Deputy Secretary General* asked for the floor indicating she was under instruction to make a statement in relation to the draft of Principle 23 that was circulated on the morning of 12 September 2025 (see Annexe IV). With respect to draft Principle 23(2) she noted that these types of judgments were governed by the 2019 HCCH Judgments Convention and that a court from a contracting party would need to apply that Convention when deciding whether to recognise and enforce a VCC-related judgment. She noted that the UNIDROIT text could become relevant for execution matters relating to that judgment, but that the 2019 HCCH Judgments Convention should be considered ahead of time. Secondly, the HCCH Deputy Secretary General recalled that the HCCH Experts Group had a much wider mandate than the contribution to the UNIDROIT Working Group. This included the mandate to discuss ‘the private international law issues arising from carbon markets’. She explained that, according to the HCCH, this included issues relating to recognition and enforcement. She asked that the comments of the Consultative Committee members in relation to taking the work at the HCCH into account with respect to Principle 4 also be considered in relation to Principle 23.

134. She then flagged, by way of preliminary content, that the way in which Principle 23(2) was currently drafted would run into trouble in terms of private international law processes relating to the recognition and enforcement of judgments. The question concerned how such recognition and enforcement would carry itself across the border. She concluded by noting that the HCCH wished to reserve comment on draft Principle 23(2) pending the HCCH Experts Group’s meeting in October and requested that the UNIDROIT Working Group wait until then in addressing the draft.

135. *The Chair of the Drafting Committee* clarified that she had drafted Principle 23 because she wanted to put language before the Working Group for its consideration. She explained that the Group had three choices: (i) the draft provision could be taken out altogether; (ii) only the first paragraph of draft Principle 23 could be included, as had been done in the DAPL Principles, and then details would be added to the Commentary; or (iii) the Group could try to give the provision a little bit more content, and this could include noting that if one was to enforce against a VCC, there needed to be the ability to instruct the registry. She specified that draft Principle 23(2) was not intended to cut across anything and was just a suggestion for the Working Group’s consideration. *A member of the Drafting Committee* added draft Principle 23(2) was just intended to flesh out a particular type of remedy that could be triggered at the enforcement stage. He queried how this intrinsically triggered a private international law issue.

136. *The HCCH Deputy Secretary General* stated that she was not under instruction to answer that question because she was not sitting in a personal capacity and institutionally could not answer that question. She noted that the specific technical question had to do with whether a court in one jurisdiction could instruct a registry in a second jurisdiction to do something in execution of an order

in that jurisdiction. She noted that this was within the mandate of the HCCH Experts Group and requested one month's leave so that the HCCH Expert Group could discuss the provision.

137. *The Drafting Committee* clarified that they did not have in mind a cross-border context and just thought it might be helpful to identify effectively a new type of enforcement. A *participant* suggested that the draft provision was, however, unhelpful. She agreed that it could trigger some coordination with the HCCH's work and thus suggested that it not be addressed.

(i) Principles 12 and 13 (VCC registry)

138. *The Chair* turned the discussion to registries and gave the floor to the Drafting Committee.

139. With respect to Principle 12, *the Drafting Committee* noted that it pertained to definitions, some of which might be moved into Principle 2. With respect to Principle 12(1bis) the Working Group needed to determine how public the registries should be. It was recalled that the Group felt that registries need not be public, but there were two things that needed to be publicly available: (i) whether there was a VCC credited to an account; and (ii) whether the VCC was identified by a unique identifier. A *participant* stressed that it was extremely important that the actual owner of a credit was not a public issue and queried whether Principle 12(1bis) was clear enough. It was posited that no specific information at the VCC level was required to be publicly available; what was important to be public was the volume of credits that had been issued from a project. *The Drafting Committee*, however, underscored that what the Principles were interested in was whether a VCC was capable of being the subject of a proprietary right. To that end, it was important to be able to know that the VCC existed, that it had been created; without knowing that, it was not possible to have a proprietary right. It was further recalled that the Principles were trying to build a new form of property that was controversial and one of the elements giving VCCs their proprietary status was the unique identifier.

140. *Another participant* added that if two parties wanted to trade a VCC, it was up to the buyer to satisfy him or herself that the VCC existed. The Principles did not have to regulate how the buyer satisfied him or herself that that was the case. Rather, that was a private contractual matter between the buyer and the seller and perhaps the registry, which offered certain services to provide certainty. It was recommended that Principle 12(1bis) be taken out. A *Drafting Committee member* however noted that without the provision there was no way for a buyer to know whether he or she was entering into a contract for the sale and purchase of existing or future property.

141. A *participant* supported having registry information be public not only for the property law aspects but also for integrity purposes. She noted that part of the purpose of the Principles was to support international best practices and integrity of the market and having certain information be public on the registries was important and consistent with market practice. This information included, in particular, volumes issuances which would not include current holdings of credits. It was also noted that certain Consultative Committee comments concerned having the registries be public and this went to how the Principles intersected with Article 6. It was observed that several countries were using third-party registries because they did not presently have their own registries. For instance, Ghana was using third-party registries. If a project was authorised under Article 6.2, that authorisation became effectuated upon first transfer. Thus, having that visibility as to the issuance of credits into an account and the transfer would be important for the voluntary market and for its convergence with Article 6.2 in particular.

142. A *member of the Drafting Committee* expressed concerns, noting that of all the elements included in the definitions, the requirement of publicity was the one that could not be pinned to a private law relationship. That was not to say that it was unimportant; the question was whether it belonged where it currently was. A *participant* noted that the carbon market registries had been divided into two categories: (i) transaction registries such as those operated by Verra or Gold Standard; and (ii) accounting registries, such as the CAD Trust. The latter did not represent a record

of the transaction itself but rather collected information from the various registries to, for example, avoid double counting and raise the integrity of the market. He thus indicated that maintaining the registries as totally private and decentralised could lead to shortcomings.

143. *Another participant* recalled that the Group was considering whether to make public certain elements so that the parties in the market knew that proprietary rights could attach to VCCs. She expressed support for having to make public information essential to the identification of the characteristics allowing VCCs to be the subject of proprietary rights. While acknowledging that it was possible to contract around this, the purpose of having Principles was to be able to avoid relying on bilateral boutique contracting.

144. Principle 13, on the other hand, concerned the registry obligations, setting out the minimum level of obligations that a VCC registry owed in relation to a VCC to the person who was registered as the holder of that VCC in that registry. It was noted that the Principle at the moment did not include anything on creation; it did not provide that the registry had to make the first registration.

145. The Group's feedback was sought in particular in relation to Principle 13(5) which concerned a registry's obligation to have a Recovery and Orderly Dissolution Plan and upon which the Consultative Committee had provided input. The question, it was explained, was not whether having such a plan was desirable, but whether the provision belonged in the Principles since it was really a regulatory rule. It was thus suggested that it could be put in the Commentary noting to States that it would be desirable to provide for regulation addressing this.

146. *A participant* argued against listing all the duties of the VCC registry towards the registered holder, since there was a contractual relationship between the two entities and the duties would be defined in the contract. She cautioned that including too many details would endanger the Principles' adoption in certain jurisdictions. If a particular registry provided unpalatable contract terms, the market would adjust accordingly. In response, it was observed that the Principle was drafted to include a set of minimum obligations a registry must owe and which could not be excluded or limited by contract—otherwise the entity was not a registry but just a contracting party. One of the reasons this had been done was because it was clear at the outset that a VCC was only going to fit within a proprietary rights framework if there was a robust registration system. Thus the impetus was to set out duties in private law, since the Group could not set out regulatory duties.

147. Others noted that, while many of the elements listed in Principle 13 were contractual or regulatory, they were absolutely necessary. *A member of the Drafting Committee* noted that all legal traditions recognised certain private law relationships that would not be left to unfettered freedom of contract and market dynamics because doing so would raise certain extremely problematic externalities from a systemic point of view. For example, there were a number of EU directives—such as the EU Directive on Commercial Agents—that looked at private law relationships and provided certain mandatory obligations. *Another Drafting Committee member* agreed and suggested that perhaps the provision be redrafted to state that these were the minimum obligations necessary to be a VCC registry. He noted that it was important to mention a bare minimum, recalling that the revocation and reversal Principles only worked if the registry had to take instructions from the CCB.

148. *A participant* suggested that Principle 13(1)(a) be amended to state '*an obligation to comply with the rules of the registry*' rather than '*the rules of the registry and the CCB*'. With respect to any duties in relation to the creation of a VCC, it was suggested that a provision be included providing that a registry operator must comply '*with any valid instruction to create, reverse a VCC in accordance with Principle 9, or to cancel a VCC in accordance with Principle 10*'. It was observed that, while it was difficult to know where such an obligation came from, the system would not work without such a provision.

149. *The Drafting Committee* concluded that it would amend the provision to be an absolute core list of things that could not be excluded because without them there would be no registry. Thus the current list at Principle 13(1) would be shortened, with several items being moved to the Commentary (such as the duty to keep adequate records) and only keeping in those items necessary for the system to work—first and foremost the duty to comply with instructions to move credits and particularly to cancel for retirement because without that the system being built by the Principles would not work.

150. *The Chair* recalled the approach taken in the DAPL Principles in relation to custody. In that case, the DAPL Principles split the duties owed by a custodian into the minimum required duties and elective duties (see DAPL Principle 11). *The UNCITRAL representative* queried to what extent a VCC was different to a digital asset. In response, *a Drafting Committee member* explained that VCCs were not digital assets as defined within the DAPL Principles. While digital assets were an electronic record that could be subject to control, as defined, a VCC was an intangible asset that represented the achievement of a reduction in or removal of emission into the atmosphere of greenhouse gases and was then subject to four conditions for coming into existence—including that the VCC was credited into an account. However, it was explained, this had nothing to do with the VCC being an electronic record and thus digital assets and VCCs were entirely distinct. A VCC was not a digital asset. A separate yet adjacent question was whether a VCC might be represented by a digital asset. This was a question that had not yet been fully addressed by the Working Group and remained to be considered at a future point in time.

151. It was observed that the elements of rivalrousness and uniqueness in market terms meant that the same VCC could not exist in two registries at the same time. It was queried whether this was reflected in the Principles. In response, it was noted that Principle 13(1)(b) included an obligation to have a unique identifier and only one registry entry in relation to the VCC. It was suggested that language be added to the definition of a VCC providing '*has not been created in another VCC registry*'. It was noted, however, that the language should not unintentionally preclude the reissuance of VCCs onto another registry—the real crux was that the VCC did not exist *contemporaneously* on multiple registries. It was also suggested that the issue could be avoided by making the retirement or cancellation a public element. *Others* observed that the simultaneous registering of the same VCC onto more than one registry was only possible through fraud. It was further noted that one could have two VCCs created in two different registries and representing the same mitigation outcome from the same project—this did not stop the two VCCs from being proprietary, but it meant that one of them could probably be revoked. *Others* agreed noting that it was the mitigation that had been duplicated rather than the credit—there were two credits, and one of them represented a double count of the mitigation. Concerns were raised with modifying the definition of a VCC on this basis; it would create confusion and the definition already provided that a VCC had to be individuated.

152. *A member of the Drafting Committee* pushed back against the idea that there could be the same mitigation outcome in two registries with both credits being the subject of proprietary rights since this was going to cut into the rivalrousness point. He suggested that another way of addressing the problem was by putting in the Commentary that if a VCC had been created in respect of a particular outcome then a second attempt to do the same in respect of the same mitigation outcome would mean there simply was no mitigation outcome. He noted that this would not fall within cancellation as understood within the Principles.

153. *The representative from UNCITRAL* suggested clarifying the notion of individuatedness. He noted that UNCITRAL's experience indicated that the notion of uniqueness was challenging in a legal sense. He queried whether the actual requirement for a unique identifier could be too much and whether it could be left at the idea of individuation which at UNCITRAL was done through the notion of singularity. Relatedly, he enquired as to the interaction and nature of the obligations set forth in Principle 13(1), and in particular whether they arose out of the registry account agreement and whether they were read into the agreement or whether they were contractual in nature. He noted

that seeing the legal relationship between these obligations and contract would be useful for UNCITRAL because UNCITRAL had a new project on the private law aspects of platforms.

154. In response, *the Chair of the Drafting Committee* explained that, to be able to say that VCCs could be subject of proprietary rights, the Principles relied on three characteristics: (i) individuation; (ii) rivalrousness; and (iii) a loosely determined concept of control, referring to the fact that VCCs could be moved from one person to another by having the VCCs credited to accounts in a VCC registry. Thus, a VCC registry needed to have a certain level of robustness to ensure that the VCCs were individuated and rivalrous and that one could be the holder and thus control them. With respect to the interaction and nature of the obligations set forth in Principle 13(1), she observed that the only way to achieve this under private law was to say that these were a set of minimum obligations that had to be included in the account agreement. These were needed to preserve rivalrousness and to maintain the system. For example, if a registry did not have to comply with an instruction to retire or cancel for retirement, the whole market would collapse since without the ability to retire the credits no one would purchase them and the system would not work.

155. *A participant* raised the issue of blocks of VCCs, which appeared in Principles 12 and 13. He urged the Group to accept that a block of VCCs bore no relation to a VCC—and that a VCC only appeared when the elements in the definition of a VCC were met, including that a VCC represented one tonne of CO₂ mitigated. He stated that including blocks added no value to the Principles and it was a practice that was engaged in by only some CCBs. *A participant* observed that if the definition of a VCC was to be amended to not refer to the one tonne mitigation outcome then there was no need to refer to blocks. *The Drafting Committee* reiterated that while it did not matter whether the individuated thing represented 900 tonnes or one tonne, it could not represent an unidentified amount because that would jeopardise the proprietary effects.

Conclusions

156. *Principle 13(1) would be amended to include a core list of duties that could not be contractually excluded because without them there would be no registry.*

Item 5: Organisation of future work

157. *The Chair* asked the Working Group to submit in writing two things (i) any relevant examples to be included in the Commentary; and (ii) any comments, questions or reactions to the input provided to date by the Consultative Committee, which was addressed to the Working Group and was thus for the Working Group to respond to.

158. *The Chair* further noted that there were two more scheduled sessions of the Working Group: the seventh session was to take place in Rome and online from 17 to 19 December 2025 and the eighth session from 15 to 17 of April 2026.

Item 6: Closing of the session

159. *The Chair* thanked the Working Group participants for their time and the valuable, constructive, and lively discussions. He also thanked *the Chair of the Consultative Committee* for joining the Working Group session in person to present the input of the Consultative Committee and expressed gratitude for the work of the Secretariat in organising the session.

160. *The Secretary-General* thanked the Working Group for three days of excellent discussions and encouraged participants to attend the December session in person. He also extended his thanks to Governing Council Member Ms Ong for being present in person to relay the feedback of the Consultative Committee and noted that the Secretariat would try to obtain as much regional and

national input as possible on the instrument. He concluded by thanking the Chair. The session was closed.

ANNEXE I**REVISED AGENDA**

1. Opening of the session and welcome
2. Adoption of the agenda and organisation of the session
3. Consideration of written comments provided by the Consultative Committee
4. Consideration of the iterated draft Principles and Commentary
5. Organisation of future work
6. Closing of the session

ANNEXE II**LIST OF PARTICIPANTS****CHAIR**

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UNIDROIT Governing Council Member
Emeritus Professor, University of Tokyo
Japan

CHAIR OF THE CONSULTATIVE COMMITTEE

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INSTITUTIONAL PARTNER

WORLD BANK GROUP <i>(remotely)</i>	Mr Cameron PRELL Managing Director The dCarbon Group United States of America
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Ms Anna VENEZIANO	Deputy Secretary-General
Ms Giulia PREVITI	Legal Officer
Ms Priscila PEREIRA DE ANDRADE (<i>remotely</i>)	Legal Officer
Ms Qianqian LIU	Junior Professional Officer
Ms Suzanne HOWARTH (<i>remotely</i>)	UNIDROIT Correspondent
Ms Phoebe SUEN	Legal Officer (on secondment)
Ms Yusha CHANG (<i>remotely</i>)	UNIDROIT Intern
Ms Juliana GÓRECKA	UNIDROIT Intern

ANNEXE III

**STATEMENT OF THE DEPUTY SECRETARY GENERAL, HCCH
ON BEHALF OF THE HCCH EXPERTS' GROUP ON CARBON MARKETS AND THE
PERMANENT BUREAU
AT THE SIXTH SESSION OF THE UNIDROIT WG ON THE LEGAL NATURE OF VCCS**

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**Statement of the Deputy Secretary General, HCCH
on behalf of the HCCH Experts' Group on Carbon Markets and the Permanent Bureau at the
Sixth Session of the UNIDROIT WG on the Legal Nature of VCCs**

10-12 September 2025, UNIDROIT, Rome, ITA

1. Good afternoon, and thank you very much for the floor, Chair. On behalf of the HCCH Experts' Group on Carbon Markets and the Permanent Bureau (PB), I thank our sister Secretariat at UNIDROIT for the preparations undertaken for the Sixth Meeting of this Working Group, including its preparatory documents.

Points concerning the HCCH mandate, EG's status and discussions during the 1st EG meeting

2. I address this Working Group today on behalf of the HCCH Experts' Group on Carbon Markets ("HCCH Experts' Group"), which was established by our Council on General Affairs and Policy at its 2025 meeting in March, to "*study the Private International Law issues arising from carbon markets*". Testament to the close cooperation and coordination between the HCCH and UNIDROIT, the mandate of the Experts' Group is, "*with an initial focus on the possible inclusion of an applicable law provision in the Draft UNIDROIT Principles on Verified Carbon Credits.*"

3. Following its convocation by our Secretary General on 11 March 2025, the first meeting of the HCCH Experts' Group took place from 13 to 15 May 2025. The Experts' Group on Carbon Markets has broken all records at the HCCH – it currently comprises nearly 100 experts, representing close to 30 States and the European Union, and nine Observer organisations. All continents are represented, as well as, for example, countries representing Small Island Developing States (SIDS) and the Group of Latin American and Caribbean States (GRULAC). Jurisdictions represented include those from the civil law, common law, Islamic Law, traditional law, and mixed or hybrid legal traditions. The convocation of the Experts' Group specifically requested the designation of experts who speak to the policy views of the State or Organisation that they represent in order to ensure multilateral consultation and the full ventilation of policy issues by all stakeholders. With the establishment of the Experts' Group on Carbon Markets, the PB now sits on this Working Group as the liaison from the HCCH Experts' Group to this UNIDROIT Working Group.

4. For today's purposes, in fulfilment of the initial focus of the Experts' Group's mandate to contribute to the work of the UNIDROIT WG on VCCs, the majority of the Experts' Group's first meeting was dedicated to an exposition of the work already carried out by this Working Group. This included presentations by the representatives of UNIDROIT on the draft Principles, with a specific focus on the iteration of draft Principle 4 as it then stood as of 11 May 2025. On behalf of our Experts' Group and the PB, I thank UNIDROIT for its active participation and engagement during the meeting. Our warmest thanks in particular to Ms Giulia Previti, Legal Officer at the UNIDROIT Secretariat, as well as to Mr Antonio Leandro and Mr Matthias Lehmann, members of the subgroup to the drafting committee who provided the initial text of draft Principle 4.

5. The HCCH Experts' Group also discussed the following issues in direct relation to draft Principle 4, *inter alia*:

- a. The intersection of the draft UNIDROIT Principles with broader carbon market mechanisms, including its application to the transferability or mutability of carbon units in secondary markets;

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- b. Inter-registry transfers, including transfers of credits that circulate under UNFCCC mechanisms;
- c. The views of States concerning the classification or characterisation of carbon allowances as property or otherwise, taking into consideration the convergence between compliance and voluntary carbon markets;
- d. The impact of draft Principle 4 in arrangements implementing Articles 6.2 and 6.4 of the Paris Agreement, including where such arrangements are used for purposes beyond compliance with Nationally Determined Contributions (“NDCs”) in secondary markets by private entities and investors;
- e. The role of private actors;
- f. Agreements between governments in relation to carbon credits transactions; and
- g. Concerns relating to safeguards for environmental and human rights (which of course include the rights of indigenous peoples and local communities connected to carbon projects and credits), including in the cases of revocations, reversals, and authorisations, and the impact of these safeguards on secondary markets.

The HCCH Experts’ Group agreed that all these issues raise important private international law concerns in which the interplay between jurisdiction and applicable law will be crucial to achieve a balance between the different interests and the protection and enforceability of rights of the different stakeholders involved. The HCCH Experts’ Group is, of course, comprised of members from the regulators and other authorities as well, with their participation being intended to ensure that the UNIDROIT Principles, when finalised, will be received into the largest number of jurisdictions possible, in fulfillment of the goal of harmonising the private law in this field.

6. It may also interest this Working Group to be informed that, at the first meeting of the HCCH Experts’ Group, an Issues Paper listing other matters relating to carbon markets in general was also put forward for the consideration of the experts. The Issues Paper included discussions on the project lifespan and carbon credit lifecycle, types of credits, types of projects, the impact of upstream project failures on transactions and rights within carbon market structures safeguards, market integrity, as well as other internationally applicable legal frameworks. Given the short turnaround from convocation to its first meeting, however, the HCCH Experts’ Group agreed to postpone detailed consideration of the text of draft Principle 4 and its commentary to its next meeting in October 2025.

7. On 10 July, the PB received an iteration of the draft Principles from the UNIDROIT Secretariat, including the current text of draft Principle 4 and its commentary. The HCCH Experts’ Group notes that several points from their meeting in May were taken into consideration in this iteration, including, for example considerations of indicating more precisely that the scope of the draft was aimed at transactions in the secondary market¹. The HCCH Experts’ Group wishes to express its appreciation to the drafting committee for having considered these points in the current iteration.

Comments on draft Principle 4

¹ See para. 139 of the Draft Report of the 1st Meeting of the EG on Carbon Markets.

8. Now turning to the specific comments on the current text of draft Principle 4, as circulated on 10 July 2025:

9. Several members of the HCCH Experts' Group reached out to the PB in the week between the circulation of the Secretariat Report last Wednesday 3 September, some with initial substantive reactions, and all requesting that full comment on the current draft be reserved until the Experts' Group has had the opportunity to fully discuss and debate the text at its second meeting, which is planned for 8-10 October 2025. On behalf of the HCCH Experts' Group therefore, we reserve full comment on the current version of the draft Principles bar the preliminary observations to follow. The expectation is that, following its October meeting, the HCCH Experts' Group will reach consensus on comments and input to the draft Principles. The PB undertakes to submit this input to the UNIDROIT Secretariat and this Working Group as quickly as feasible thereafter.

10. With this caveat, the following is offered by way of preliminary comment. I reiterate this as it has been said that there are only a couple of decisions to be taken, but from the view of the HCCH this draft Principle will be discussed in detail in October, and we intend to then provide our input to this Working Group as soon as possible after. There are six preliminary comments on current draft Principle 4.

11. First, all members of the Experts' Group who have so far reacted with comments have indicated that the scope of draft Principle 4 should be expressly stated in the provision. The experts suggest that this Working Group may want to consider specifying that the applicable law rule in draft Principle 4 applies to the acquisition and transfer of VCCs on the secondary market, after they have been validly issued and registered as defined. This description of the scope of application of draft Principle 4 was discussed at the first meeting of our Experts' Group.

12. Second, in relation to the first line of draft Principle 4(1) and in response to the first question in paragraph 59 of the Secretariat Report, experts who have responded have made various suggestions as to drafting, but so far all have indicated that the word "law" currently in square brackets should be removed. There are concerns about the possible misalignment of the provision with international frameworks in place (such as those under the auspices of the Organization of American States), civil codes, and legislation in force, should the word "law" be included. The Experts' Group however reserves final comment on this matter. The Experts' Group also intends to discuss the connecting factors listed in draft Principle 4(1) in its October meeting.

13. Third, in relation to draft Principle 4(3) and following on the intention for draft Principle 4 to focus on property rights, experts who have responded have noted that some of the relationships and transactions provided for in subparagraphs (a) – (h) may involve contractual considerations rather than property matters. There are concerns that some of these subparagraphs, in particular subparagraph (a), would touch on the earlier part of the project lifecycle prior to the issuance and registration of the unit for acquisition and transfer on the secondary market. Experts' who responded also noted that, as it currently stands, draft Principle 4(3) is made subject to paragraphs 4 and 5. The suggestion is for this Working Group to consider also subjecting it to paragraph 6, which stipulates a court's general authority to decide to disapply certain rules and laws on the basis of the jurisdiction's public policy and mandatory overriding rules. This may be important to take the discourse relating to the law of the place of the project into account. The Experts' Group has also requested that I make it known that they reserve final comment on draft Principle 4(3).

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14. Fourth, in relation to draft Principles 4(4) and (5), experts have noted that, where a security right over the VCC is created as an intermediated security – that is, where it is not the VCC that is the security itself, but that a security is created over the VCC – the HCCH 2006 Securities Convention may come into play. The suggestion is that this Working Group consider, where there is a clash in the hierarchy of norms, express reference be made to the HCCH 2006 Securities Convention where applicable. This comment was particularly thought cogent to bring forward to this Working Group as at least two of the three Contracting Parties to the 2006 Convention host active VCC registries.

15. Fifth, experts raised the matter of the non- or de-localisation of registries, including the possible use of distributed ledgers and decentralised autonomous organisations by registries. Where these structures are in use, the question that was raised was, what fall backs are there should none of the factors listed in draft Principle 4(1) be met? There have been requests to discuss this matter at length at the October meeting of the HCCH Experts' Group.

16. Sixth, and last, in relation to draft Principle 4(7), experts raised the question of how this would apply in practice where there is a purported change in the applicable law in relation to the VCCs issued from land-based projects, where there is a buffer pool and which constitutes the majority of current VCCs. Where there are two holders, one of whom agrees to the change and one who does not, would registries be obliged to create two separate buffer pools? The question is asked because holders may not consider a VCC with a certain law applicable to it as equivalent to another that is subject to a different applicable law. Another question that was asked by experts is whether registries may have VCCs then that have varying applicable laws, and the practical impact of such an arrangement on the markets.

17. These issues I have just listed, together with others relating to the text of draft Principle 4, will be discussed at length at the second meeting of the HCCH Experts' Group on Carbon Markets in October, including with the consideration of case scenarios, as requested by several delegations during the 1st meeting in May.

18. The HCCH Experts' Group requests the UNIDROIT Working Group not interpret the observations and commentary expressed in this statement as limiting, prejudicing, or otherwise constraining the full opinion, mandate or authority of the Experts' Group, which retains full autonomy and discretion to evaluate and agree on its input and recommendations concerning the draft provision on applicable law, in accordance with the mandate established by the HCCH Council of General Affairs and Policy.

19. I take this opportunity to also note with thanks the input received in the documentation from the Consultative Committee, in particular UNIDROIT Members who provided input to draft Principle 4 – Austria, Canada, the Russian Federation, Saudi Arabia, Singapore, and Türkiye - and that, with the agreement of this WG, the PB will also bring the relevant information that impact on the considerations of draft Principle 4 to the attention of our Experts' Group.

20. The HCCH, including its Experts' Group on Carbon Markets and the PB, continues to invest all efforts in support of this work at UNIDROIT. Thank you.

ANNEXE IV

DRAFT PRINCIPLE 23

*Principle 23**Procedural law including enforcement*

- (1) Unless otherwise provided for in these Principles, other law applies in respect of procedural matters, including enforcement, relating to VCCs.**
- (2) In the course of enforcement of a court order requiring a VCC to be [delivered up][transferred to] a person, or execution by way of authority in relation to a VCC, a court or other authority can direct the VCC registry to move a VCC credited to the account of the registered holder of that VCC to the account of another accountholder.**

Commentary

23.1 Principle 23(1) makes it clear that the ordinary procedural law of a State, will apply to (i) any court proceedings concerning non-enforcement matters involving VCCs, (ii) any procedures for the enforcement of court orders involving VCCs, or (iii) execution by way of authority with respect to digital assets. The first category includes proceedings which are not enforcement proceedings: such proceedings would include priority contests. Category (ii) is self-explanatory. What is meant by category (iii) is explained in the rest of this paragraph. Execution is the process through which a creditor can obtain satisfaction of its claim against an obligor, by reaching and applying the value of an asset of the obligor or by a public authority obtaining rights in, or control over, such an asset. Depending on the jurisdiction (and the situation), this process can be triggered by various means including a court judgment or court order, an enforceable arbitral award, an out-of-court settlement which is given effect by law other than the law of contract or by an authentic document such as a document issued by a notary or other public authority, or another enforceable instrument as defined by law. The process is carried out by a public authority or a private actor under the supervision of a public authority.

23.2 However, depending on the content of the procedural law of a particular State, some adaptations either to the law or the way the law operates in practice may be advisable in order to take account of the distinctive features of VCCs. Commentary [] sets out some examples of features, or combinations of features, which might make adaptations advisable.

23.3 Commentary on 23(2).