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Legal Nature of Verified Carbon Credits
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SUMMARY REPORT

OF THE EIGHTH SESSION

(15 – 17 April 2026)

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1. The eighth session of the Working Group on the Legal Nature of Verified Carbon Credits (the 'Working Group') was held in hybrid form from 15 to 17 April 2026 at the seat of UNIDROIT in Rome. The Working Group was attended by a total of 57 participants, including individual experts as well as representatives from government agencies, 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. *UNIDROIT Secretary-General, Professor Ignacio Tirado* opened the eighth session of the Working Group and welcomed the in-person and online participants. He stressed the importance of the meeting; although it would not be the final session of the Working Group, it was expected to lead to a final text which could be subject to public consultation. The Secretary-General noted that Professor Hideki Kanda could not join the meeting in person and had asked that the Secretary-General chair the session in his stead. The Secretary-General thanked Professor Kanda for joining the meeting online and welcomed two new institutional observers to the Working Group: the Gold Standard Foundation and Climate Action Reserve.

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

3. *The Secretary-General* introduced the Annotated Draft Agenda and the organisation of the session. *The Working Group adopted the Agenda* (*Study LXXXVI – W.G.8 – Doc. 1*, available in Annexe I).

Item 3: Consideration of the iterated draft Principles and Commentary and of the comments provided by the Working Group and the Consultative Committee

4. *The Secretary-General* gave the floor to Ms Sharon Ong, Member of the UNIDROIT Governing Council and Chair of the Consultative Committee for the UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (the 'Consultative Committee').

5. *The Chair of the Consultative Committee* introduced document *Study LXXXVI – W.G.8 – Doc. 5 rev.3 – Consultative Committee Comments*. She explained that on 16 February 2026 the Secretariat conveyed, on behalf of the Secretary-General, a letter inviting all members of the Consultative Committee to provide comments on the latest iteration of the draft Principles, which the Working Group had developed over the course of seven sessions and extensive intersessional work. The Consultative Committee Chair thanked everyone involved in the project, including the Chair of the Working Group Professor Kanda, the Drafting Committee, chaired by Professor Louise Gullifer, as well as the UNIDROIT Secretariat.

6. *The Chair of the Consultative Committee* further noted that the comments presented to the Working Group at this eighth session were the result of the third round of consultations with the Consultative Committee, following two earlier rounds in September and November of 2025. This latest round of consultations was based on the iteration of the Principles as amended by the Drafting Committee following the seventh session of the Working Group, and in response to the Consultative Committee's comments. The Chair thanked all the members of the Consultative Committee and, in particular, the nominated representatives from Brazil, Canada, China, Saudi Arabia, and Singapore, for their interest and invaluable input and contributions. She explained that the comments of the Consultative Committee had been submitted to the Working Group in advance of this session, and would be discussed during the session. She concluded by inviting all members and observers of the Working Group to consider and provide their comments in response to the feedback and suggestions of the members of the Consultative Committee.

7. *The Secretary-General* stated that the comments of the Consultative Committee would be raised throughout the discussion and stressed that it was absolutely key that the Working Group consider and provide sufficient feedback to the Consultative Committee on the comments received.

(a) Registry (Principles 12 and 13)

8. *The Secretary-General* began the discussion of the instrument by turning to Section V concerning the VCC Registry. He gave the floor to the Chair of the Drafting Committee.

9. *The Chair of the Drafting Committee* started by thanking the Working Group and the Consultative Committee members for the valuable feedback they had provided on the draft instrument. As to the registry principles, she explained that it had become evident that the registry was critical to the project, since it provided the centre of the way in which the VCC system—including VCC creation, movement between accounts, and retirement of VCCs—worked, and the VCC system worked only if the registries worked.

10. *The Chair of the Drafting Committee* explained that Principle 12 was definitional. She raised for discussion a question that had been posed on the precise definition of a registered holder and how it related to beneficial ownership. She explained that the definition of registered holder was included in Principle 12(6) which provided that a registered holder meant a registry account holder, which was in turn defined in Principle 12(4) as the person to whose registry account a VCC was credited. Commentary 12.7 made it clear that, just because someone was a registered holder, that did not necessarily mean they were the beneficial owner. Whether a registered holder was a beneficial owner depended on both the factual situation and the applicable law. Commentary 12.7 and 12.8 provided examples of custodianship. In certain jurisdictions the custodian would not own the VCCs; in others, the custodian might own them legally but not beneficially.

11. *A Working Group participant* questioned the appropriateness of referring to a block of VCCs in Principle 12, noting that a block of VCCs was not a VCC as defined within the instrument and the reference should be taken out of the Principles.

12. With respect to Principle 13, *the Chair of the Drafting Committee* indicated that there were two major points for the Working Group to consider. The first point concerned the extent to which the Principles could mandate duties owed by the registry under private law. It was explained that the registry's private law duties could be found in the account agreement between the registry and the account holder. However, there were additional duties which were not specifically about complying with instructions from the account holder, but rather concerned other matters such as creating a VCC or performing other actions in relation to the creation of a VCC. These duties could not be owed to the registered account holder because there was no registered account holder before the time at which the VCC was created.

13. *The Chair of the Drafting Committee* further explained that the duties covered by Principle 13 were those duties that could not be contractually excluded—they were duties that were required to make the VCC system work effectively. There could be other duties in the account agreement which could be modified or contractually excluded; those duties were addressed in the commentary and not in the Principle. She suggested that Principle 13 could be redrafted to provide that: (i) the registry rules must provide certain enumerated duties, which could not be contractually excluded; and (ii) the registry rules must be incorporated in the account agreement, because the account holder needed those duties to be there for the system to work, even if they were not duties that related to the activities of the account holder.

14. It was stressed that the duties outlined in Principle 13 were minimum duties. The account agreement could—and indeed normally would—include several other duties. An issue was raised with the language providing that a registry operator had to comply with a court order, on the basis that

it stated the obvious. In response, however, it was recalled that the registry representatives had indicated that it would be useful to have a list of who could instruct the registry to do certain things. It was suggested that perhaps the wording be revised to note that the instruction would come from the crediting body (CB), who could be acting upon the instruction of a court or other authority.

15. However, it was observed that such language would raise the issue of determining what court had the authority to instruct the CB and the registry, potentially leaving registry operators in a difficult position should they be faced with competing court orders. It was thus suggested that the provision be left out. *The Secretary-General* stressed that jurisdiction was out of scope. Questions of jurisdiction were strictly outside UNIDROIT's mandate and were instead within the purview of the Hague Conference on Private International Law (HCCH). He explained that referring to the jurisdiction that was competent was fine—what was outside the mandate was to determine the competent jurisdiction.

16. *A participant* thus suggested the following wording: '*An order of a court or competent authority with jurisdiction over the registry operator in accordance with other law*'. *Other participants* agreed, noting that all the Principles would say was that it was a competent court determined by other law and it would then be left to the adopting States to determine the competent courts for the purposes of their registries—this would not be addressed in the Principles.

17. *Others* however, continued to note that such provisions did not concern private law and should not be included in the Principle. It was further observed that most of the Principles, with the exception of Principle 4, were drafted on the assumption that there was a single jurisdiction and no choice of law, such that one should not read too much into the word 'court' to suggest that one could go forum shopping and find any court to make a favourable order and bind the registry.

18. In response, it was noted that the language was there to indicate that the registry did not have to comply with an instruction from anyone. It was further clarified that it was often the registered holder who directly provided the registry with instructions concerning reversal; thus the account holder should be included in the list. However, it was queried whether the account holder would provide such a reversal instruction directly or whether the account holder would communicate with the CB who would then instruct the registry.

19. It was reiterated that it would be useful for registries to know when they could take certain actions because such actions could entail interfering with the asset, and it was therefore important to know that the instruction that was being acted upon was valid. It was also recalled that the Principles were being drafted on the assumption that the CB and the registry would be two different entities, even if presently they were often the same entity.

20. The second point for discussion in relation to Principle 13 referred to the decision of the Working Group, at its seventh session, to remove a principle that said that the registry operator had to have a recovery and dissolution plan, since that was a regulatory provision. However, the Principle as currently drafted included provisions meant to address the situation in which a registry stopped working and the credits had to be moved to a different registry. It was pointed out that, if the credits were to be governed by a different CB, then they would be reissued as new credits. The Working Group was asked to discuss whether such provisions were needed in Principle 13.

21. In response, *a Working Group participant* stressed that what was important was that the VCC continued to exist in the event that the registry ceased to exist. There was thus agreement to remove the sentence in the Commentary that said that if the registry did not exist, then the VCC might not exist, though it was noted that the language served to emphasise the importance of the registry being reconstituted in the event of an insolvency or if it decided to cease operations.

22. Differing views were expressed in relation to the need for provisions concerning the movement of credits from one registry to another. One view was that it was not necessary to address these scenarios in the Principles since the practice could evolve. Others however noted that movement between registries was not possible without the credit being reissued under the rules of the new CB, and thus the provisions should be maintained. It was clarified that, usually, the credit would be cancelled—i.e., it would cease to exist—and it would then be reissued in the new registry. The reissued credit may be subject to the same CB rules or to different CB rules. If subject to different CB rules, then the credit would no longer be the same asset.

23. *A participant* stressed the importance of not creating rules which might prevent a future where there could be interoperability across registries. Others agreed. It was noted that the movement of credits across registries was not fundamental to how a VCC existed and operated and that the systems could change in the future. It was thus suggested that the CBs and registries could be allowed to make that decision without it being set in law.

24. It was nonetheless observed that there were instances in which credits were cancelled and then reissued into new accounts with different registries and CBs. It was stressed that a rule was needed in order to address the problem of credits potentially existing in both registries, especially as the number of new registries increased. It was also observed that the cancelling and reissuing of a VCC in another registry went to the heart of the proprietary right in a VCC since it would restart the creation process as set out in the Principles.

25. *Participants* noted that the proper term to use in such instances was '*cancellation*' rather than '*retirement*' since the mitigation outcome continued to exist and was not consumed. It was also observed that using the word '*retirement*' to cover instances of cancellation for purposes of reissuance would cause confusion in the market. A query was then raised as to whether the cancellation section needed to provide for an additional principle to address such circumstances. It was recalled that the reason why this scenario was being considered was to: (i) establish that the credit existed; and (ii) avoid the double issuance of credits—i.e., ensure that the credit could not exist in respect of the same mitigation outcome in two places. It was suggested that, rather than delving deep into the process, the Principle simply provide that a CB should make all reasonable efforts to ensure that any credits issued were not already in existence elsewhere. There could then be different ways of achieving this, including for example through use of blockchain technology.

26. A suggestion was made to remove the word '*move*', since this could incorrectly imply that the same asset was being moved.

27. *A participant* viewed there to be an inconsistency in the way that the impact of dissolution and the impact of transfer on the existence of a credit had been explained. The effect of a transfer had been explained as the extinguishment and recreation of a new credit, since credits were so dependent on the operation and rules of each CB or registry. While the proprietary interest in that credit might be transferred contractually, the credit itself did not transfer. When discussing dissolution, however, it was articulated that the credit would survive dissolution of a CB or registry. Thus, it was suggested that, if the intent was to clarify the impact on proprietary rights or the nature of the credit, then it could be made an obligation or duty of the CB to cancel a credit upon dissolution, or make that an automatic function that would preserve the right of the account holder or credit holder to request reissuance in a new registry upon dissolution.

28. *The Secretary-General* observed that general principles of corporate and insolvency law would address the consequences of a dissolution or insolvency of the registry operator. Generally, it would not be possible to destroy a registry simply by dissolving the company responsible for managing that registry. In the case of a registry becoming insolvent, insolvency law would not allow harm to the property of the insolvency estate. What instead was different and needed to be considered was what happened to the credits.

29. In response, however, it was noted that it was not just a matter of insolvency; there remained the possibility of a registry operator just deciding that it would not keep operating and that it would not sell the registry to someone else. It was posited that the Principles needed to account for that eventuality. Nonetheless, *the Secretary-General* explained that, if a company was dissolved, corporate law would require the payment of creditors and the only way to do that would likely be to sell the main asset of the business (i.e., the registry) or transfer it elsewhere. He agreed, however, that a solution needed to be provided for the extreme cases, especially where the registry was destroyed not as a consequence of an insolvency or voluntary dissolution.

30. *Participants* generally agreed on the removal from Principle 13 of the reference to dissolution plans, since this would amount to a regulatory rule. A recommendation concerning dissolution plans was instead kept in the commentary. A suggestion was made to include reference to information rights, access to data and to certain codes and protocols in the event that the registry was in the process of disappearing. It was noted that the commentary could include a suggestion that national legislation include technical requirements on the preservation of information.

31. It was suggested that the Principle include express reference to sub-accounts. It was clarified that not all sub-accounts were custody accounts.

Conclusions and recommendations

Principle 12

32. *It was suggested that the Principles clarify that a registered holder was not necessarily the beneficial owner*.

33. *With respect to registry account, it was suggested that the definition expressly include sub-accounts. It was noted that not all sub-accounts were custody accounts*.

Principle 13(1) – duties of the registry operator

34. *A proposal was made to restructure Principle 13 to state that that the registry rules must provide certain specified minimum duties which could not be contractually excluded and then provide in the commentary or in the principle that the registry rules must be incorporated in the account agreement. This because the account holder needed those duties to be there for the system to function, even if the duties did not concern what the activities of the account holder*.

35. *In terms of the minimum duties to be included in the rules, it was suggested that these include essentially everything currently included in Principle 13 and that the commentary then specify that there were many additional duties that could also be included*.

Principle 13(2)–(4) – Proprietary rights and insolvency

36. *It was observed that Principle 13(3) may overlap with Principle 13(2)(a), raising the question whether it was strictly necessary. One suggestion was to move this point to the commentary. Others noted, however, that the rule performed an important clarificatory function regarding the proprietary position of VCCs vis-à-vis the registry operator*.

37. *With respect to insolvency, caution was expressed against introducing detailed rules, particularly in light of the possibility that the market would scale and the architecture would change*.

38. *It was considered important to clarify that just because the registry ceased to operate, that did not mean that the VCC ceased to exist. There was agreement to take out the sentence which stated that if the registry did not exist, then the VCC might not exist*.

39. *There was general agreement that requirements relating to recovery plans, reorganisation or orderly dissolution, would fall within the domain of regulation rather than private law principles. Such matters were therefore considered more appropriate for inclusion in the commentary and left to national regulatory frameworks*.

40. *It was suggested that the commentary could elaborate on various scenarios, including insolvency, voluntary discontinuation, destruction of records, or the need to reconstitute a registry*.

Principle 13(5)–(6) – Movement between registries

41. *A number of participants questioned whether provisions on movement between registries or CBs were necessary given that the market could evolve and these were not fundamental questions in relation to how a VCC existed and operated*.

42. *The use of the term 'move' was questioned, since it could imply continuity of the same asset*.

43. *Questions were raised as to whether the concept of retirement could be interpreted broadly enough to cover such cases. The possible introduction of an additional category, such as cancellation for reissuance, was suggested.*

44. *It was observed that, in practice, what occurs is typically a cancellation followed by re-issuance. On that basis, it was suggested that the drafting should reflect that cancellation terminates the original VCC, and any subsequent credit constitutes as a new asset, particularly where different CB rules apply. In such cases, the creation process would effectively restart*.

45. *Some participants suggested that the Principle should focus on the underlying objective, namely to prevent the same mitigation outcome from being represented in multiple places. In that regard, it was proposed that crediting bodies should be required to make reasonable efforts to avoid such duplication*.

46. *It was agreed that the Principles did not need to address the migration of VCCs from one registry platform to another. A distinction was made between a straight data transfer and the cancellation and reissuance of a VCC under the rules and regulations of a different CB. It was agreed that Principle 13(6) would not be amended but the commentary could be revised to clarify the distinction and the instances in which either scenario might arise*.

Principle 13(7): instructions to cancel

47. *Rather than stating that a registry had to comply with a court order, it was suggested that the provision be redrafted to say that a registry had to comply with an instruction from a CB, which could be acting in accordance with a court order or on its own volition. The following wording was suggested: 'In accordance with the rules of the CB, or by the CB on a legally binding order of a court or other competent authority with jurisdiction over the CB in accordance with other law'*.

48. *It was also noted that the Principle should include that an account holder could also issue an instruction to cancel credits (other than the CB)*.

49. *It was agreed that the Principles should not address questions of jurisdiction, which were outside the scope of the instrument*.

Principle 13(8): record of cancellation

50. *It was observed that this provision duplicated elements already addressed in the cancellation principles. Nevertheless, it was suggested that retaining it could improve clarity by grouping registry-related duties in one place*.

(b) Procedural law including enforcement (Principle 23)

51. *The Drafting Committee* explained that Principle 23 had been included to address any special enforcement-related rules that were thought appropriate in relation to this particular asset class. The Principle was a placeholder and was only necessary if there was something specific to say. It currently provided that anything that was not addressed in the Principles was left to other law. The only substantive principle on enforcement was draft Principle 23(2) which was a provision equivalent to Principle 22(2) covering enforcement of security rights. Draft Principle 23(2) applied the same rule in relation to other types of proprietary claims. For example, if a VCC was stolen in a jurisdiction that allowed actions to get the VCC back, then Principle 23(2) would apply to that situation.

52. It was further noted that, in the context of the UNIDROIT Principles on Digital Assets and Private Law (the DAPL Principles), an equivalent provision was used as a vehicle to include commentary addressing enforcement difficulties in relation to a particular asset class. The Working Group was asked to consider whether such a principle was necessary in relation to VCCs. If the principle only said that enforcement was addressed by other law then there was no need to include it in the instrument (since the instrument already provided that everything not included in the Principles was dealt with by the applicable law). The Working Group was asked whether there were any other problems likely to arise in the enforcement of a proprietary claim against a VCC, which were not going to arise in relation to other asset classes, and therefore not likely to be part of the general enforcement rules of a State.

53. *The Chair of the Consultative Committee* shared States' comments for the Working Group's consideration. One member questioned whether the scope of the term '*proprietary claim*' could be further clarified and asked confirmation of whether the operation of this provision remained subject to applicable domestic law, including rules on enforcement and recognition of foreign decisions. Another member also questioned the need for Principle 23(2) noting that, generally, the registry was obliged under Principle 13 to comply with any instruction given by a registered holder, who would presumably then instruct the registry not to move the VCCs, despite any instruction by the person enforcing a proprietary claim.

54. *Working Group participants* expressed agreement with the comments and supported removal of the draft Principle on enforcement. Indeed, it was observed that if the Principles provided that a registry had to comply with what the registered holder said and the registered holder said that it was fine to transfer the VCC, then that fell within Principle 13 and the registry would have to comply with the registered holder's instruction. There thus was a degree of overlap between Principle 23(2) and Principle 13(7).

Conclusions and recommendations

55. *It was agreed that Principle 23 on enforcement would be removed*.

(c) Creation (Principle 5)

56. *The Drafting Committee* introduced Principle 5 on creation which provided that a VCC came into existence at the moment in which the registry recorded that the VCC has been credited to an account. It was explained that Principle 5 was the only provision in the instrument, aside from Principle 7 on innocent acquisition, which indicated when somebody owned something. The first

person to be the registered holder held a proprietary right in the VCC. The commentary noted that, in practice, this was usually the project proponent; however, the commentary could be amended to reflect that it could also be a key project financier.

57. *The Chair of the Consultative Committee* introduced the comments received from two members of the Consultative Committee. One comment suggested that the Principle could also usefully clarify that the nature of registration did not replace any additional publicity or enforceability requirements under domestic law, particularly in jurisdictions that may characterise VCCs as civil fruits linked or derived from property rights. The Principle could also indicate that, where applicable, the enforceability of rights over VCCs against third parties may depend on their connection with other registration systems. Another member queried whether use of the term '*client*' in Principle 5(1)(b) was appropriate or optimal and, with respect to Commentary 5.3, suggested the following language and a cross-reference to the Introduction: '*in practice, that person may be the project proponent, the project developer or investor, who's then able to sell the VCC and can use the price to fund its financing of the GHG mitigation project*'.

58. With respect to use of the word '*client*' it was noted that this was defined in the custody principle and should thus be discussed within that framework rather than as part of Principle 5. With respect to the comment noting that the enforceability of rights over VCCs against third parties may depend on their connection with other registration systems, it was observed that, at least in relation to security rights, this was acknowledged in Principle 18(2).

59. *Certain participants* queried whether the comment concerning 'civil fruits' referred to the fruits of other property—i.e., if the project was being conducted on land, the property fruits of the land. It was noted that the Principles thought of creation as completely independent and not as the fruit of any property. *Other participants* agreed, adding that the comment might possibly be suggesting that, if under the applicable law, the VCC was classified as civil fruits, then there could be an issue with the rule determining who was the first owner. Under such a framework, the first owner should not be identified as the person in whose account the VCC had been credited, because if the VCCs were civil fruits, the owner had to be the person who was under applicable law entitled to those fruits.

60. *A participant* suggested that the more fundamental point was that the comment noted that the State had its domestic law and was going to continue operating in accordance with that law, which of course was their choice. In response, *the Secretary-General* stated that UNIDROIT, like other transnational law organisations active in the rule of law, produced instruments of soft and hard law which, once finalised, were available to the international legal community and legislators were free to determine whether to adopt the instruments. UNIDROIT could not impose its Principles on any national government. The purpose of the instrument was to help countries harmonise. If a number of countries adopted the Principles, then there was harmonisation; if there was harmonisation, there would be fewer transaction costs. Nothing would be a part of the legal system of a country unless that country voluntarily decided to adopt it.

61. *Another participant* clarified that the comment underscored States' concerns that people might be taking advantage of the financial benefit of a climate mitigation project without that benefit being distributed correctly amongst the local populations, including for example Indigenous communities. It was suggested that the instrument expressly recognise in the commentary or in the Introduction that jurisdictions may have their own domestic laws addressing how the credits were created and that the Principles were not meant to override but to fill any gaps in local legislation. The instrument should be cognizant that host countries wanted to ensure that project developers and other parties involved in the making of a project, such as CBs, recognised that there was a benefit in the project that belonged to the country. It was stressed that the instrument should be very clear that these were issues that arose prior to creation, recognising that countries had or were developing their own frameworks about the distribution of benefits and authority for creating a

project. The Principles did not deal with the host countries' project requirements, but only addressed VCCs once they came into existence.

62. *Other participants* agreed. It was added that the pre-issuance rules of CBs already addressed issues such as requirements on land rights and title to carbon credits, including who may hold such rights and the means by which they were to be demonstrated.

Conclusions and recommendations

63. *It was agreed that the comment from the member of the Consultative Committee concerning the fact that there might be other frameworks in place and that the Principles did not intend to interfere with those frameworks would be addressed in the Introduction*.

64. *The Working Group agreed not to address illegality in Principle 5*.

(d) Transfer (Principle 6)

65. *The Drafting Committee* explained that Principle 6 had not changed significantly. Principle 6(1) enshrined the *nemo dat* rule—i.e., a person could only transfer proprietary rights that it had in a VCC, and no greater proprietary rights. Principle 6(2) enshrined the shelter rule. These provisions were consistent with the DAPL Principles and other UNIDROIT instruments.

66. *The Chair of the Consultative Committee* shared a comment by a State concerning Principle 6(2). The comment noted that the application of the shelter rule could be further specified to ensure that it did not absolve acquirers, whether primary or subsequent, from their duty of diligence. The comment further provided that it would be important to indicate that the protection afforded by the rule not be understood as an automatic exemption from liability where the acquirer failed to meet reasonable verification standards, especially in cases involving indications of irregularity, illegality of the underlying project, or inconsistencies in the registry.

67. In response, it was clarified that acquirers did not always have a duty of diligence; regardless, that was something that sat outside the scope of the Principles. Principle 6 was simply addressing fundamental tenets of transfer of property rights. Nothing in the Principles would interfere with a State legislating in this area, including by providing that the acquirer had certain duties and that the shelter rule did not provide protection from such duties and the consequences of breaching them.

68. *A participant* added that the comment indicated a concern that the shelter rule would annihilate rights in the credits provided by domestic law. It was noted, however, that this was not what the shelter rule was about—the shelter rule was about acquiring proprietary rights. It was not trying to superimpose any rights and obligations in respect of project activity or benefits that should be attributed to local communities. It was suggested that the Principles be clear in recognising that domestic frameworks could dictate how a project was implemented and that the Principles did not intend to override that.

69. *Another participant* stressed that the discussion around due diligence had nothing to do with the creation or transfer of the VCC and that it would be extremely problematic to say that a duty of due diligence existed in the acquirer—this was a matter that should be left to other law. While primary market acquirers did usually carry out a level of diligence, this decreased along the chain of purchases in the secondary market.

70. *Other participants* generally agreed. It was suggested that the commentary explain that, for the market to scale, the registries and the accreditation schemes had to be trusted by acquirers. The importance of using the commentary to address legitimate concerns from stakeholders was stressed, noting that it increased the chance of uptake of the instrument.

71. *Participants* generally agreed. It was observed, however, that these issues should be addressed elsewhere and earlier in the instrument since the shelter rule only concerned a purchaser acquiring a VCC from someone who was an innocent acquirer and obtaining whatever the innocent acquirer gave them. Indeed, Principle 6 only concerned the mechanics of a transfer of proprietary rights. Principle 6(1) addressed the perspective of the transferor—one can only transfer the proprietary rights that one has. Principle 6(2) instead provided the perspective of the transferee—one can only acquire things that have been transferred by the transferor. The Principles did not define what counted as power to transfer, which was instead left to applicable law.

72. With respect to the shelter rule, *the Secretary-General* noted that many countries did not have such a rule and therefore it was important to include it in the Principles if deemed necessary. He also clarified that Principle 7 on innocent acquisition addressed the concern that had been raised by the member of the Consultative Committee since the provision stated that *bona fide* acquisition depended on what the *bona fide* requirements were in each particular country.

Conclusions and recommendations

73. *In response to comments a member of the Consultative Committee, it was noted that the Principles should be clear in recognising that there may be domestic frameworks which dictated how a project should be implemented, and that that was not something which the Principles were intent on overriding. It was, however, agreed, that the appropriate place to include any such commentary was not Principle 6*.

(e) Innocent acquisition (Principle 7)

74. *The Drafting Committee* provided the Working Group with an introduction to Principle 7, recalling that, as a general principle, in the vast majority of jurisdictions and legal traditions, intangible assets did not benefit from a good faith purchaser protection rule, or a take-free rule. This meant that that if there was some defect or vitiating element in a transaction across a long chain, that defect was never cured along the chain, regardless of the state of mind or objective position of an acquirer along that chain. This made trading such assets in a market highly expensive, because it required enormous due diligence, requiring acquirers to investigate the whole chain of title and the preceding chain of transfers, in knowledge of the fact that if they found a defect, or the possibility of a defect in any transfer, this would affect them as well, regardless of their position, subjectively and objectively. Thus, for several intangible assets, it was generally felt that the better rule, from a proprietary perspective, was one that included some kind of innocent acquisition protection.

75. Principle 7 embodied this and tried to strike a balance between what the Principles suggested and the interface with the law of an enacting State. One of the requirements for an innocent acquisition under Principle 7 was that the acquirer was in good faith. Therefore, what was meant by good faith was effectively left to the law of the enacting State, which would bring in its body of rules. In this respect, the rule maintained an interface with the legal tradition and notions of the enacting State.

76. On the other hand, the Principle also contained some requirements to become an innocent acquirer and benefit from this protection that were endogenous to the Principles themselves, this being that: (i) in the ambit of the transfer, the innocent acquirer was acquiring from a transferor that was the registered holder of the VCC; and (ii) in turn, the innocent acquirer had the VCC credited to their registry account.

77. *The Chair of the Consultative Committee* flagged several drafting comments from a State and suggested that these be provided to the Drafting Committee to follow up. With respect to Commentary 7.6 on account holdings, there was a comment noting that the language needed to be cognizant of the fact that the registry account information was not public writ large. There was a

suggestion to revise the language to provide that '*This requirement serves as a critical mechanism that makes the transfer visible to the parties to the transaction*'.

78. In response to comments suggesting that it be made clear that registration was not going to serve a public notice function, it was noted that the Commentary was attempting to strike a balance between acknowledging that trading positions should not be publicly visible and the fact that there was a notice function performed by the innocent acquisition requirement that the transferor had to be the registered holder. It was suggested that the Commentary to Principle 7 cross-reference to Commentary 12.4 which provided that '*A registry account holder can authorize the registry to release information about that account to any person, such as prospective purchasers of VCCs*'.

79. It was further clarified that registries had rules on who could access information in the account and would always seek the account holder's permission to make anything available that was not already public.

80. Another comment provided by a member of the Consultative Committee concerned Commentary 7.11. The Working Group was asked to consider whether peppercorn transfers were to be considered gratuitous transfers or whether they should be protected by the Principle. Finally, in relation to Commentary 7.13 it was queried whether it should provide that '*The innocent acquisition rule in Principle 7 does not address issues related to the substance of a VCC. It is not intended to rectify defects that would result in cancellation by a means other than retirement*'.

81. With respect to the reference to 'take-free rules', *a participant* noted that these only existed in Australia and the United States and could not find an equivalent for civil law countries. It was thus queried whether the reference should be maintained. In response, it was noted that the instrument amounted to principles and the language in the provisions was not intended to be enacted as such—it was up to the enacting States to look at the language and determine how to best apply it within their system.

82. With respect to security holders, it was noted that it was highly possible that they would not have the VCC credited to their registry account but rather the VCC would likely stay in the transferor's account. It was suggested that the innocent acquisition rule thus apply independently of whether the transferee had the VCCs in their registered account, and whether, in turn, the VCCs were registered to their account. It was explained that it was common for a security interest to exist when the transferee—the beneficiary of that security interest—did not hold the asset which was subject to the security interest. The asset might sit in the transferor's account, the transferee may take security over it, and there might be an overlay of an account control agreement.

83. In response, it was observed that such types of security arrangements were permissible but they would not benefit from the take-free rules. This was consistent with what happened with respect to securities—such structures existed, but the property rights-based take free rules would not apply. It was further added that secured creditors who perfected their interest via a control agreement obtained super priority via Principle 20 and would thus defeat possible competing claims from other secured creditors. Because they were securing their interest through a control agreement, their benefit came from the priority rule.

84. However, *other participants* noted that there was a difference between priority of security interests and the concept of an innocent acquirer. It was suggested that the issue that had been raised concerned good faith acquisition of a security right and whether somebody could acquire, in good faith, a security right from somebody who was actually not the owner but pretended to be the owner and where everything indicated they were the owner, by taking control over the asset without having it credited to their account. It was observed that in several jurisdictions there was such a thing as a good faith acquisition of a security right which was conceptually different from a take-free rule.

85. *The Drafting Committee* clarified that the Principles addressed transfers of proprietary rights and a security interest was a proprietary right, meaning that the rule about being an innocent acquirer covered someone who was acquiring a security interest only. Further, it was noted that under the Geneva Securities Convention an acquirer, for the purpose of satisfying the requirement of an innocent acquisition, could have the securities either credited to their account, or they could still satisfy their requirements for becoming an innocent acquirer if they acquired a property interest in the securities effectively through a control agreement.

Conclusions and recommendations

86. *A suggestion was made to amend the commentary to account for the fact that the registry account information was not public writ large*.

87. *Working Group participants generally agreed with expanding the innocent acquisition rule in Principle 7 to match the scope of the innocent acquisition rule in the Geneva Securities Convention. It was decided that the proposal would be taken on board and then re-discussed should anyone raise any issues*.

(f) Definitions (Principle 2)

88. *The Drafting Committee* introduced Principle 2, starting with Principle 2(1) concerning the definition of a VCC. It was recalled that the definition of a VCC had been very carefully crafted to define something which could be seen as capable of being the subject of proprietary rights. In order for a VCC to be capable of being the subject of proprietary rights, there were certain characteristics that the VCC needed to possess in order for it to be individuated and rivalrous. Once a VCC could be the subject of proprietary rights, then several other beneficial matters flowed from this. For example, the person who had proprietary rights in the VCC could protect against other people who interfered with those rights, to some extent depending on applicable law. Most importantly, a person with proprietary rights in a VCC was protected against the insolvency of other people, such as custodians.

89. It was further explained that, if something was subject to proprietary rights, then the normal rules of property would apply to it. Thus, if a VCC was the subject of proprietary rights, and if the Principles were implemented in any given State, then that State's property law applied. The property law would apply subject to the rest of the Principles that either replaced, expanded on, or were consistent with that country's property law.

90. The importance of the definition was stressed. The definition set out the criteria for a VCC to be a VCC; if it subsequently turned out that any of those criteria were not present, then the VCC did not exist. This was where revocation came into play. It was thus critical that Principle 2(1) be very clear. The Principles defined the VCC as an individuated intangible asset. The crediting to the account of the VCC registry account was also very important since it was what made the VCC rivalrous and prevented double counting, at least in relation to creation, transfer, and retirement. The other elements of the definition were important because they addressed the trust in the market that had been previously referred to. These included that the mitigation achievement was verified by a verification statement and that the verification statement was approved by a CB. These were important conditions because they enabled the setting of a system that people could trust. It was suggested that the issues previously raised in the context of the Principle 6 discussion could be better placed here.

91. *A participant* suggested that the reference to carbon mitigation project be changed to greenhouse gas (GHG) mitigation project throughout, in order to capture methane. The need to include Principle 2(1)(a) regarding the achievement of the mitigation outcome was stressed. *Participants*, however, suggested combining 2(1)(a) and 2(1)(b) and referring to the achievement of a mitigation outcome.

92. *The Working Group* next discussed draft Principle 2(1)(f) which provided as a condition of a VCC that the carrying out of the underlying project was not illegal. If the project was illegal, then there was no VCC.

93. *A participant* queried whether Principle 2(1)(f) was the right place for this provision and whether the substance of the proposed provision, which was tied to the revocation principle, was correct. It was noted that the provision did not belong in the definition because if the mitigation project was carried out illegally but a VCC was issued anyway, it was still a VCC—just one that violated in some way the law of the host country. Commentary 2.4 stated that the definition listed only those facts and events that were necessary as a matter of Principles law for a VCC to exist and that was not the case with respect to Principle 2(1)(f).

94. In terms of substance, a question was raised as to what would happen if, after the VCC was issued, it was later discovered that the project was carried out illegally. In response, it was posited that this was the wrong question to ask—in the case of a project that had been carried out illegally the remedy under the law of the host country could be that the developer had to pay a fine or rectify the illegality and it would not affect the VCC. The relevant question, it was offered, was whether the creation of the VCC was illegal under the law of the host country. It was further noted that this could be very dangerous for the market, since there could be host countries where VCCs were issued under one government but then a new government came in and for purely political reasons would declare illegal everything done by the prior government. There could also be *de minimis* illegalities, or things that could be corrected, or all kinds of circumstances beyond what could be addressed in a simple provision in the Principles. It was observed that addressing the question of illegality in the Principles was not necessary since there were other remedies for illegality.

95. *Others* agreed that the inclusion of legality as a constituent element of the definition of a VCC felt like the wrong answer to the problem of project illegality. VCCs created from a project that became illegal during its life would drop out of the scope of the Principles; thereby the possibility of addressing the issue of legality through other provisions would not be available. The Working Group was also cautioned against building into the Principles how the market looked presently, as opposed to how the market might adjust.

96. *Other participants* noted that illegality could be seen differently by different people and different courts and the Principles purposely abstained from including a competent court rule, since this could lead to scenarios in which a VCC would exist for some States but not for others, creating jurisdictional chaos. The need for a rule that was legally certain would be completely undermined if a criterion was built into the system that could be disputed and whose meaning was not clear. It was thus noted that, if it was deemed that illegality should have the consequence that the VCC was eventually cancelled, then that should be left to the process of cancellation—i.e., revocation—rather than having it as a criterion on which the existence of the VCC depended. *Other participants* agreed and suggested that the issue of illegality could possibly go to whether there was a proprietary right in the VCC and not whether there was a VCC. If there was an illegality, the VCC would still be created and the consequences would be dealt with practically by the registries through cancellation. Principle 2(1)(f) was thus deemed very problematic from a registry perspective.

97. It was further added that the question of legality was a significant issue that raised other important questions such as which law could determine illegality and what would be the sanction for a determination of illegality. The definition was not considered the appropriate place to address these questions.

98. *A participant* added the perspective of insurance and specifically political risk insurance. It was noted that political risk insurance was available in the market and was designed to cover a number of different risks including regulatory change, changes in law, and issues of illegality of the project. It was stressed that making the host State legality of the project a condition of the asset

itself was problematic from a political risk perspective, since it would create coverage uncertainty. Indeed, if legality was a condition for the existence of a VCC, and there subsequently was an issue with the legality of the project, insurers would argue that no valid VCC ever existed and therefore there was no covered loss.

99. It was suggested that the concept of legality be included in the commentary to Principle 5 concerning creation. *Others*, however, raised concerns with this approach, including by querying what would be the private law consequence of the registry creating the VCC despite it being illegal under the law of the host country.

100. Caution was urged in drawing metaphors with tangible property—while tangible property existed despite its creation being illegal, the same did not necessarily hold true with respect to intangibles which instead were purely what the law allowed them to be.

101. It was observed that Principle 4(10) concerning applicable law was neutral with respect to the inclusion of a requirement of legality in the definition. It was noted, however, that if legality was considered part of the definition, and if domestic courts or other authorities were free to state that the VCC or its creation were not legal, then they could avoid application of the Principles as a whole. Further, it was pointed out that there were two very different things that could possibly be illegal: (i) the project; and (ii) the issuance of the VCCs. *Others* noted that the appropriate way to address illegality of the underlying project was for Principle 4 to say that the Principles did not address the illegality of the underlying project.

102. *The Chair of the Consultative Committee* referenced a comment from a State which noted that the provision on legality could benefit from clarifying that subsequent legislative or regulatory changes should not, in themselves, affect the validity of VCCs that had been established under the legal framework that was in force at the time they were created. In addition, where the original illegality of the mitigation project was established, even if discovered at a later stage, the relevant provisions of the Principles should continue to remain applicable.

103. *The Secretary-General* recalled that the reason why the illegality provision was included was to be responsive to comments from the experts of the HCCH Experts' Group on Carbon Markets (the HCCH EG) who had stressed how important this was from a national perspective.

104. In response, *a participant* stated that the inclusion of Principle 2(1)(f) was not necessarily the way to reflect the concerns of the HCCH EG. It was suggested that the commentary could instead address some of the concerns raised in those discussions.

105. *The Deputy Secretary-General of the HCCH* thanked the Drafting Committee for seeking to reflect and take into account the comments of the HCCH EG in this respect. However, she clarified that the HCCH EG did not intend to provide any input on definitions, and to the extent that the definitions appeared in the current text, then the drafting choices of the Working Group and Drafting Committee were very much appreciated. The question of illegality, as considered by the HCCH EG, arose in the context of private international law, specifically the interaction between potentially conflicting legal regimes captured by draft Principle 4 and whether the proposed connecting factors, in particular the *lex registri*, were capable of capturing the range of issues that could arise, including those linked to illegality and the potential consequences for VCCs, such as cancellation or revocation. She noted that the issue currently being discussed by the Working Group appeared to be of a different nature since it concerned other situations in which projects may be subsequently found to have violated certain applicable local laws, including after the VCC had already been issued. That scenario raised distinct questions which were not the focus of the HCCH EG's analysis. Therefore, with great thanks to UNIDROIT, the Working Group, and the Drafting Committee for seeking to reflect the comments of the HCCH EG, it was offered that perhaps the definition was actually not where the HCCH EG had intended to provide input.

106. On the basis of the discussion, it was agreed that Principle 2(1)(f) would be removed and the Working Group would continue discussing the consequences of illegality and the best way to address these within the instrument.

107. *Several participants* suggested that illegality be addressed in the commentary and possibly also in the Introduction, but not in the Principles. The language would address the importance of the issue and acknowledge the concerns of States. It would also explain that the legality of the underlying project and of the creation of the VCC was one of the criteria applied by the CBs in deciding whether to approve a verification statement.

108. A query was raised as to whether the Principles would be addressing the private law consequences (i.e., the effects on the rights of an acquirer of a VCC) of a valid finding of illegality.

109. *The Secretary-General* agreed that, from an institutional perspective, this was an issue that had to be considered by the Working Group.

110. While acknowledging the importance of the issue, *a participant* stressed that providing in the instrument that a VCC held by an innocent party would be cancelled if it was subsequently discovered that the VCC's creation was illegal would destroy the market. Under the current structure of the Principles—which provided in Principle 4 for proprietary matters to be governed by the law of the registry, without prejudice to mandatory laws and public policy—it would be up to the courts of the place of the registry to decide whether or not to give effect to a project host country law providing that a VCC was void, with reference to the facts of the particular case. It was thus suggested that the question of illegality be addressed through a combination of discussion in the commentary and the reference in Principle 4 to mandatory laws.

111. *Participants* agreed that this was a highly complex question that could not be determined in advance in the Principles. The issue could be highlighted in the commentary without the Principles providing a conclusion. There was no universally accepted rule identifying the private law consequence of a finding of illegality. It depended on the nature of the illegality and the nature of the law that determined the illegality. Drafting something in this respect would be beyond the remit of the Working Group and would unlikely be something that could be the subject of harmonisation across States. It was recalled that the Principles were being drafted as an instrument that could be enacted by a country as domestic law; thus, the Principles could only include property rules that would apply as a matter of domestic law.

112. *The Secretary-General* queried whether it could be reasonable to state that it was a best practice for the verification to also consider the legality of the VCC issuance. *Participants* agreed that this should be noted in the Introduction and clarified that legality was usually addressed through an independent third-party verification which would make the assessment in accordance with the rules of the relevant CB. The assessment would include not only land rights, land ownership and project area, but also entitlement to the credits. The assessment would then be submitted to the CB—there was no independent, separate assessment by the CB on these issues. This was important to avoid inherent conflicts and preserve market confidence—the CBs wrote the rules, and the VVBs performed the audit to make sure those rules were followed.

113. *A participant* observed that specifying the time at which illegality was determined for purposes of credit issuance and creation—this being at the time of creation or VVB assessment—could be protective and address some of the concerns raised in relation to subsequent changes of law. In response, it was noted that any principle addressing this topic would not apply to retrospective illegality. However, there could be an instance of an *ex ante* statute making it illegal which was then interpreted *ex post* to cover this particular situation.

114. It was agreed that the issue of illegality would be fleshed out in the commentary to provide guidance without being too prescriptive and by referencing as best practice the role of the verification process in the assessment of legality prior to the issuance of the VCC.

115. It was observed that what the Working Group was trying to do with the instrument was to put together, as a matter of private law, a system in which, when somebody bought a VCC, they bought into the system itself. It was the system—through steps such as verification, the approval process, registration—that provided market participants with trust. However, it was noted that private law could only go so far and regulation may be needed to build a truly trustworthy system.

116. It was further clarified that there were three possible outcomes of a verification: (i) a negative verification statement which meant that the VCCs were not verified because they did not meet certain criteria; (ii) a verification statement with corrective action requests (CARs) providing that, if certain elements were remediated, then the verifier would be in a position to issue a positive verification statement; and (iii) a positive verification statement which was required for the CB to issue the VCC. *Participants* therefore supported reintroducing the concept of a positive verification statement.

117. *The Working Group* discussed the definition of a VCC and the concept of remediation as used in the market. As drafted, the VCC resulted from a particular project. If a remediation was done by swapping in another VCC then it would result in a new VCC. However, it was clarified that what was being swapped was not another VCC, but rather another mitigation outcome behind the VCC. It was stressed that this was a critical feature of the market—if something happened to the original mitigation outcome, it would be remediated.

118. *Participants* discussed whether the Principles should also refer to a '*programme*', in addition to a GHG project. It was observed that the verification was carried out in relation to a project.

119. With respect to the CB, it was explained that this was currently defined by reference to a minimum set of functions: (i) it administered the CCP; (ii) it approved the methodology; (iii) it approved or authorised the VVB that carried out the verification process; (iii) it approved the methodology to be applied by the VVB; and (iv) it approved the verification statement. If an entity performed all of these functions then it was a CB under the Principles.

120. In response it was clarified that CBs: (i) approved the different methodologies; (ii) approved or authorised the VVBs; and (iii) approved, accepted and communicated the positive verification statement.

121. *The Working Group* was asked to consider whether independence of the CB should be included as a definitional point, meaning that if an entity was not independent then it was not a CB within the Principles, or whether independence of the CB should instead be addressed in the commentary. If references to independence were to be maintained, then the Working Group was also asked to clarify from whom the CB should be independent.

122. In response, it was noted that the concept of independence of a CB was critical, because a CB could not undertake an activity and then also benefit directly from that activity through the credits. It was thus fundamental that the CB be independent from the activity (rather than from the first registered holder). The benefit of the activity could not go to the same entity that was approving the verification.

123. *A participant* noted that the Principles' definition of a CB only covered a portion of the market and that Commonwealth of Independent States (CIS) and Eastern European countries could raise concerns since their legislations and regulations deviated from the approach as embodied in the Principles.

124. *The Secretary-General* thanked the participant for the valuable input, which offered a different perspective for the consideration of the Working Group. He recalled that the work of the Working Group was based on a mandate received from UNIDROIT's Governing Council and General Assembly, which reflected UNIDROIT's 65 Member States from across the globe. The objective of the project was to help scale markets so that the Paris Agreement could be implemented to the greatest extent possible—this was something that was non-negotiable for the Working Group. To achieve that, the Secretariat had engaged many observers from different backgrounds to provide a global perspective to the Working Group. Such observers were in a position to weigh in; the issues would then be discussed by the Working Group and a majority would decide. It was not about Western or Eastern approaches, but rather about who was in the Working Group and the sensitivities represented therein.

125. *The Secretary-General* also emphasised that there would be a further request for the feedback of the Consultative Committee during which comments could be submitted and countries could share any diverging views for the discussion of the Working Group. Further, the instrument would be subject to a public consultation, where any fundamental discrepancies could also be discussed. These were the mechanisms through which the project was framed, in accordance with UNIDROIT's methodology. It was finally recalled that the instrument was a best practice instrument—it was not trying to accommodate every possible system, but rather those that were deemed adequate for purposes of the mandate.

126. *A participant* noted that there was precedent for the requirement of independence from the International Civil Aviation Organization (ICAO), which was a UN body. In March 2019, ICAO created a document called the Emissions Unit Criteria, which formed the foundation upon which ICAO approved CBs to supply VCCs to the first regulated global carbon market in the world, CORSIA. Those principles included the requirement that there had to be a CB and that the CB had to be independent and free of conflicts of interest. On that basis, the ICAO approved certain government crediting programmes, such as that of the Government of Thailand, and declined to evaluate government programmes that did not have any kind of independent CB associated with them.

127. On the basis of the discussion, it was offered that independence be maintained as a definitional criterion for a CB and that it be clarified that the CB must be independent from any natural or legal person who undertook the relevant GHG mitigation project. The language on independence from the first registered holder would be removed. In response to concerns raised from certain Working Group participants, the commentary would explain that the independence requirement did not prevent two different parts of a government from being involved.

128. *Certain participants*, however, were of the view that, despite independence of the CB being desirable, a VCC should still be a VCC under the Principles if issued by a CB that was not independent. It was suggested that, rather than making independence a definitional criterion, it be addressed in the commentary where it could be noted that jurisdictions may want to adopt regulatory requirements of independence and that this would likely be best practices. It was noted that the Principles were not trying to create good-quality VCCs but rather trying to identify the legal qualification of VCCs and explain how VCCs worked as a legal matter.

129. *The Secretary-General* noted that it could nonetheless be argued that the instrument was devoted to a particular type of VCC, which carried with it certain requirements. He stressed that this was a matter for the Working Group to decide and thanked the participants for the valuable comments.

130. *Participants* noted that if independence were made a definitional criterion for a CB, then a credit issued by a non-independent CB would not be a VCC as defined within the Principles and would thus be outside the scope of the instrument. The question for the Working Group was thus whether

to proceed this way, and include independence in the Principle, or whether to instead address it in the commentary.

131. *A participant* observed that the Working Group was trying to establish best practices with the instrument. It was recalled that there had been instances of very poor quality credits being issued in the market without independence, which were self-labelled as VCCs, and this had been very disruptive to the market. One of the objectives of the Working Group was to help scale the market with integrity and that was why the point of independence was important.

132. While recognising the importance of independence, *another participant* observed that lack of independence was likely something that would be discovered after the fact. If this were to happen, then the consequence, under the definitional approach, would be that whatever had been issued was no longer covered by the Principles and the treatment of those credits would be left to the applicable national law.

133. *The Secretary-General* asked the Working Group whether facilitating the trading of carbon credits issued by a non-independent institution helped scale the Paris Agreement. If it did not, then there was a good reason to provide that such credits were not covered by the Principles. If instead it did, albeit in a poor manner, then perhaps the Working Group had to consider them.

134. *Several participants* stressed that requiring independence of the CB was a condition for moving ahead in compliance with the Paris Agreement and furthering its objectives. It was noted that the confusion created by credits issued by non-independent bodies actually hindered achievement of the Paris Agreement.

135. It was thus agreed that independence of both the VVB and the CB would be included in the Principles as definitional criteria. *The Secretary-General* summarised the discussion by noting that there seemed to be a majority in the room that believed the instrument should focus on those VCCs that helped scale the market and assist the better implementation of the Paris Agreement. Therefore, in principle, the instrument was not covering all possible credits, though national law and national property law would still apply to those credits and a State may decide that its national law aligned with the Principles in various respects.

Conclusions and recommendations

Principle 2(1): VCC

136. *The Working Group agreed to take out Principle 2(1)(f) concerning illegality*.

137. *It was suggested to refer to 'mitigation outcome' rather than 'mitigation achievement'* and to state that '*the achievement of the mitigation outcome is verified by a verification statement*'.

138. *Several participants supported combining paragraphs (1)(a) and (1)(b), since the mitigation outcome was not considered achieved until it had been verified to have been achieved by a VVB*.

Principle 2(6)-(8): Verification

139. *It was agreed that the three possible outcomes of a verification would be included in the draft and that the definition would specify the need for a positive verification statement*.

Principle 2(9): Carbon mitigation project

140. *It was noted that the reference to 'carbon' project excluded methane which represented an important class of projects. It was agreed that instead* of '*carbon mitigation project*' the Principles would refer to '*GHG mitigation project*' or '*greenhouse gas mitigation project*'.

141. *It was suggested that the definition of project specify that it included jurisdictional programmes. It was agreed to say in the definition that a GHG mitigation project included 'a project or programme', and to explain this further in the commentary*.

Principle 2(10): CB

142. *With respect to the definition of a CB, it was agreed to refer to the 'approval or authorisation' of the VVB*.

143. *Based on feedback from the industry experts, it was suggested to delete paragraph 10(a)(iii) and to provide details in the commentary*.

144. *It was suggested that the commentary mention that a CB should also follow its own rules and regulations, which were distinct from the rules and regulations that the CB administered in relation to projects or programmes*.

145. *With respect to paragraph 10(b), it was suggested that the Principle provide that the CB was independent of the activity it engaged in (rather than of the first registered holder, since this could be the CB itself, for example in the case of buffer pools). The benefit from the activity could not be to the same entity that was approving the verification. It was thus agreed that the Principle provide that the CB had to be independent from: (i) any other natural or legal person who had undertaken the relevant GHG mitigation project, without referring to the first registered holder; and (ii) the VVB. The commentary would then explain that the requirement of independence would not stop two different parts of a government from, on the one hand creating the VCC and, on the other, holding the VCC*.

Principle 2(11): CCP

146. *It was suggested to delete reference to 'programme' and just refer 'rules and requirements' of the CB*.

(g) Cancellation (Principles 8-11)

147. *The Drafting Committee* provided an overview of the section on cancellation. It currently comprised four principles. The first, Principle 8, set out the reasons why a VCC could be cancelled—i.e., for (i) reversal, (ii) revocation, and (iii) retirement. Under Principle 8, a cancelled VCC was no longer the subject of a property right. The Principles only addressed the proprietary consequences of cancellation and the parties remained free to contract around those consequences in terms of compensation, substitution, etc.

148. With respect to reversal and revocation, it was explained that these were tied to the definitions. Revocation referred to instances where a definitional element was never there, leading the VCC to be void *ab initio*, meaning it was never the subject of property rights. Reversal referred instead to instances where, although present initially, those attributes were at some point lost. Retirement, on the other hand, was basically voluntary cancellation.

149. The Working Group was asked whether additional reasons for cancellation needed to be added. For example, whether the term retirement could also encompass voluntary cancellation for

the purpose of reissuance or whether a separate provision was needed. It was proposed that one option was to rename Principle 11 from '*Retirement*' to '*Voluntary Cancellation*' and have retirement be just one form of voluntary cancellation.

150. *A participant* noted the use of terms that had a particular established industry meaning and raised distinctions between the terms '*retirement*' and '*cancellation*'. While the outcome of cancellation and retirement was the same—i.e., the credit's permanent removal from circulation—the terms underscored different scenarios. The industry understanding of the term '*cancellation*' denoted that something had gone wrong with the credit—for example, there had been an excess issuance and the overissued credits needed to be taken out of circulation. Retirement, on the other hand, was carried out to fulfil a claim, or for a particular purpose. In other words, cancellation signified something problematic, whilst retirement was the fulfilment of the natural life cycle of the credit.

151. *Other participants* agreed and added that the notion of retirement was a fundamental part of the VCC such that a principle directly addressing it was necessary. It was suggested that retirement was indeed the defining legal feature of a VCC from a market operating perspective. Retirement, unlike cancellation, was not the destruction of the credit, but rather a permanent banking of that VCC as rivalrous against the world for environmental claims purposes.

152. With respect to voluntary cancellation for purposes of reissuance, it was suggested that the date of creation for purposes of revocation be made retroactive to the date of issuance of the first credit, rather than restarting the clock at the second issuance. Otherwise, what would normally be a reversal event would risk becoming a revocation event that would make the credit void *ab initio*.

153. In response, however, it was noted that, currently, certain registries would not accept the transfer of any credit that had the potential to be reversed. It was further stressed that a credit could not be reissued on a different registry without there being a new verification. That process would verify whether a reversal had occurred prior to the credit being reissued. If there had been no reversal, the credits would then be reissued and the responsibility to monitor, report and compensate for reversals would be on the new entity. Thus, the process of reissuance would essentially start the creation process anew, including verification, and was designed to catch any existing issues with the credits. It was further noted that the process did not entail a like-for-like transfer of credits. Rather, it entailed cancelling and reissuing under different rules. The amount of credits transferred could also change, as it would depend on the environmental benefit that was verified under the new CB rules.

154. A distinction was drawn between the technical transfer of credits cross registry 'platforms'—e.g., from APX to ICE—and the transfer of credits across registry systems—e.g., from Verra to Gold Standard. It was noted that the former scenario did not need to be addressed by the Principles because it did not concern the unit itself but was rather about choice of service provider. The question instead was whether there was a need to have a system whereby a VCC could be transferred from one registry to another without it being cancelled. This was relevant not just in a potential bankruptcy scenario, but also in the context of a future in which the CBs might be separate from the registries.

155. In response, it was observed that there were two possibilities envisioned. One possibility, addressed in the commentary, was that the registry was completely blown up. While the data disappeared, it had been written down somewhere and it could be reconstituted. Another situation, also addressed in the commentary, concerned instances where the registry knew it was insolvent and had to move the credits to a different registry operator if so instructed. The relevant distinction, it was noted, was whether there was a change not just in registry, but in CB. If the credit moved from one CB to another, there would be a new credit. This was also addressed in the current draft.

156. On the basis of the comments received, it was suggested that voluntary cancellation could be drafted as its own principle separate from retirement.

157. *The Working Group* was urged to address the critical issue concerning the backfilling of the environmental benefit that sat behind the credit. It was posited that until the Working Group thoroughly addressed this issue, it could not deal correctly with cancellation.

158. *A member of the Drafting Committee* reiterated that there was no known property rule that allowed one to sacrifice one property in favour of another. It was recalled that VCCs had been defined as being capable of being the subject of proprietary rights because they were individuated and tied to projects. The commentary specified that it was perfectly acceptable to sacrifice non-issued VCCs from the same project. However, sacrificing non-issued VCCs from Project B in order not to cancel VCCs from project A, even though it was Project A that was affected, was problematic from a property law perspective.

159. In response, it was clarified that a credit represented a mitigation outcome of one tonne equivalent which originated from, and was tied to, a project. If, however, the project became compromised, the tonne could be remediated such that the credit could continue to exist. It was acknowledged that, as currently drafted, should something happen to the underlying mitigation benefit, the credit died. That, however, was very destructive to the market. It was stressed that the market operated on the basis that a reversal of the mitigation outcome in respect of a project could be remediated and the Principles, if they were to be useful, had to be able to accommodate for that—there had to be a window open for remediation, which was meant to allow a credit to continue existing in instances where the actual tonne of GHG which was mitigated in order to give rise to the VCC either escaped back into the atmosphere or in fact never occurred. The mitigation outcome behind the credit would be backfilled to ensure that the credit remained a viable, living piece of property. It was stressed that what was being substituted through remediation was not one VCC for another, but rather one mitigation outcome for another. In addition, remediation could also occur through compensation or the replacement of credits through credits that were obtained and cancelled. It was, however, the replacement credits that were cancelled, not the original credits.

160. *A participant* recalled that, although problematic from a property law perspective, it was agreed that the remediation of credits from project A with credits from project B could be arranged as a contractual matter within the CB rules. It was noted, however, that this was not necessarily clear from the current wording of the commentary and could perhaps be addressed by revising the language.

161. In response, however, it was clarified that it was not new VCCs that were being accepted contractually in the context of a remediation; rather, it was the underlying mitigation outcome. It was observed that this created issues from a property law perspective because if the credit was no longer tied to a specific project it potentially undermined the individuation of the credit. Mitigation outcomes were not property and could not be transferred as property.

162. In response it was noted that, despite the substitution of the underlying mitigation outcome, the serial number did not change. It was observed that the market treated the serial number as the embodiment of the 'thing'. *Other participants* added that the 'thing' had three main elements: (i) a unique identifier; (ii) representing the reduction or removal of one tonne of CO2 equivalent; and (iii) backed by a verification statement that such reduction or removal had been achieved. These, it was posited, were the three items that created the piece of property. Once created, that piece of property could be transferred in the same way a barrel of oil could carry different oil than that which it carried when the original share certificate was originally bought.

163. It was also underscored that what was being established by the Principles were things which would eventually be transposed into law by governments. It would then be the transposing government who would be creating the VCC. Thus, it was suggested that the Working Group not be too limited in terms of what property could do, because eventually property was whatever a State

said it was, within a certain set of confines. It was observed that the Working Group should therefore focus on what the thing looked like.

164. *The Chair of the Drafting Committee* observed that analogies to the thing that the Principles were trying to create were very difficult to find. Normally, when a tradable asset was created what was being traded was some form of right. With shares, for example, one was trading rights against the company, participation rights in the company, and often other rights. With VCCs, however, there were no rights against the CB and the rights against the registry were under contract—buyers and sellers of VCCs were not trading rights against the registry, or any other rights. Under property law, nothing was being traded—VCCs were not rights and they were not tangibles. It was thus suggested that it could be said that what one was trading was the container—akin to a piece of paper—or an alternative was to say that what was being done was creating a new form of property, similarly to what had been done in the case of patents. Patents were a new form of property created to give monetary value to an idea. However, if it turned out that the idea behind the registered patent did not exist, it was not possible to take some other idea and include it in the patent. It would not work because the patent was the idea.

165. *The Chair of the Drafting Committee* acknowledged that the problem seemed to be in the definition. What was being traded in the market was mitigation outcomes. Although facts could not be traded, what was being traded were facts packaged in a particular way. It was posited that it could perhaps be said that a VCC, rather than representing a mitigation outcome irrevocably tied to one project, could instead be said to represent a mitigation outcome tied to all the projects in the buffer pool. It was noted that there would be problems if the Principles defined a VCC as representing any mitigation outcomes. And one of the reasons for this was to avoid the double counting of mitigation outcomes, which was something the system as a whole was meant to avoid.

166. A suggestion was made to define reversal as an unmitigated—or uncured, unamended—loss of a definitional characteristic, in order to allow the market to cure or replace and replenish. It was also suggested that the definition of a VCC not be tied to a buffer pool since that was an option available to a limited universe of credits and there was a wider variety of financial and contractual remedies becoming available. It was also stressed that the more the definition could reflect the existence and achievement of a mitigation outcome and keep this as an essential characteristic of the definition, the more likely it was that a VCC remained a unique and desirable asset. It was noted that the reason why the Working Group was not taking the easy path and defining VCCs within the category of digital assets was because there was a unique demand case and that demand case was entirely based on the relationship to an equivalent metric tonne of CO_2e.

167. *Another member of the Drafting Committee* underscored the limits of analogies to tangibles. As to the analogy to patents, while useful, it was stressed that the point with patents was that each idea was by definition unique. On the other hand, it seemed like participants to the Working Group were describing the mitigation outcomes behind a VCC as fungible. It was observed that this would likely be a bridge too far in terms of property law conception. In order to obtain the benefits of VCCs under a property law framework—and thus enjoy clear rules on transfers, use as collateral, take-free, etc.—a certain degree of standardisation and rigidity was necessary in terms of the asset that was being traded. Recalling that one of the key aims of the Working Group was to be able to build, construct, and present VCCs as property, the Working Group was asked whether perhaps the advantages that one received from property law exceeded the loss of some of the current market practices that were in great tension with the concept of property.

168. *A participant* observed that, from a market perspective, the serial number was effectively a container and what it contained was evidenced by the verification report and the MRV data. With respect to fungibility, it was observed that it was a limited fungibility, since the market distinguished, for example, between nature-based credits and technology-based credits.

169. *Another participant* underscored that, from a market perspective, it would be extremely helpful if the nature of the credit did not change. If the nature of the VCC changed during its life from an item of property to a bundle of contractual rights, then creditors would likely have to take two types of security over the instrument, creating issues for the scaling of the market. The Working Group was urged to try and facilitate, to the extent possible, the market as it currently existed. If the nature of the VCC changed during its life, that would have the potential to undo the benefits being achieved by the instrument under development.

170. *Others* agreed, noting that no forest ecosystem or agricultural soils around the world would benefit from climate finance unless the issues raised were addressed by the Working Group. It was suggested that if the serial number did not change, there was no problem with unique individuation.

171. *A participant* observed that, if the issue with the current structure concerned secured transactions, these could be addressed separately. It was explained that secured transactions could be quite flexible. Security interests, because they covered an underlying monetary obligation, could be explained as covering value. So if there was equivalent value moving from one asset to another, this could be replaced. Such replacement could be easily explained in any civil law country—including Japan—even when there was a fixed charge. Even if the security interest was over an individualised VCC and a new VCC needed to be covered following for example a cancellation or a reissuance, it would be possible to still have exactly the same right and exactly the same priority.

172. In response, it was observed that the cornerstone for solving many of those problems being raised was to create a form of property that reflected the actual thing, instead of forcing the thing to change in order to fit existing concepts of property. The goal of the Working Group was to create something that could be bought and sold in a market. That was the intention of the Paris Agreement—to create market mechanisms that allowed things to be exchanged in order to channel finance into climate mitigation projects. The fact that the climate mitigation outcome itself may later be compromised was simply something which could not be avoided, and which was trying to be addressed by the Working Group through the creation of a new type of product.

173. *Working Group participants* underscored that the item that was being considered was something completely new. There thus was a need to be more imaginative with respect to the rules under development.

174. *The World Bank representative* recalled that the Principles were supposed to provide country guidance in relation to carbon markets. It was noted, however, that the carbon market was very fragmented and suffered from a lack of trust. The Principles thus needed to provide legal certainty in order to make the market stronger. Deviating from market practice, it was observed, would not be in furtherance of that goal because what was being referred to as market practice were currently different registries and practitioners pushing for buyers and sellers to come together. Moreover, stakeholders were trying to help developing countries come up with clear rules and developing countries were at very different stages in terms of their engagement with carbon markets. It was urged, therefore, that the Principles needed to bring clarity, make things as easy as possible, without undermining property law principles. There was a need for flexibility in order to avoid developing an instrument that would be impossible to implement on the ground.

175. *The Chair of the Drafting Committee* observed that the challenges and issues raised would have to be addressed in the definition and be a part of the VCC when the VCC was created. What was required was that there was a verified mitigation outcome, as approved under the rules of the relevant CB. Buyers were buying into a system and were buying a mitigation outcome that, under the rules of the CB, could in very limited circumstances be replaced by another mitigation outcome. It was thus suggested that what was being bought be redrafted to reflect that it was a unit that represented a mitigation outcome or any other mitigation outcome that the system said could be replaced in certain circumstances.

176. While agreeing that the Working Group was considering a new type of asset, *a participant* observed that the fundamental characteristic of property rights was exclusivity; without exclusivity there could not be legal clarity or certainty and it would be challenging to persuade a jurisdiction with traditional property law notions to apply the instrument. It was further clarified that exclusivity referred to having a certain right against one asset and it could not be said that one had a right against a buffer pool, since there would not be any exclusivity in such a scenario. It was queried whether the same desired outcome could be achieved by providing that the buyer had two rights at the outset: (i) one property right against the specific VCC; and (ii) a beneficial interest against the buffer pool, which was a trust asset and which kicked in whenever it was necessary or conditioned by the contract with the registry.

177. In response it was noted that, while potentially feasible, it would be a very unusual scenario for the VCC to be property at one point in time and then be something different at a later date. From a trading perspective, this would be very problematic, including because it would not be possible to take security on day one for all potential outcomes along the chain or life of the asset, since these would not necessarily be known at the outset.

178. *A Secretariat representative* queried how important it was that the specific project be identified from a property law perspective and from an exclusivity perspective. It was noted that the current definition of a VCC required a unique identification and a mitigation outcome backed by a verification statement. The current definition did not refer to the '*relevant carbon mitigation project*', but rather to '*a carbon mitigation project*'.

179. *A member of the Drafting Committee* noted that if the requirements of property were listed and one of those requirements was missing, then the property never existed; if one of the requirements went away, then the property disappeared from that point in time. These were general rules applicable to every form of property. Changing these rules for VCCs would create a form of property that behaved like no other and this would potentially affect States' uptake of the instrument. Further, concerns were raised with how not tying a VCC to a specific mitigation outcome would affect future cancellation events.

180. In response, it was clarified that not all tonnes were reversible. Indeed, buffer pools included non reversible tonnes. It was further observed that the serial number met all the indicia of property—i.e., exclusivity, uniqueness, rivalrousness. Support was expressed for the proposed solution allowing for the substitution of a mitigation outcome. *Participants* stressed that the VCC represented a mitigation outcome whose validity and continued existence throughout its lifecycle depended on system rules, and such rules could provide for the use of a buffer pool which was a pre-committed risk reserve, a sort of self-insurance mechanism that was set aside for an intended purpose and could be drawn upon when needed. It was thus suggested that the language at Commentary 9.3 be reframed as not sacrificing A's property to sustain B's property, but rather to convey the notion that behind every VCC there were the system rules that governed it, which included the use of a common reserve under the collective rules of the programme to help maintain the integrity of the system.

181. *A participant* agreed and noted that the VCC was something new and it did not necessarily have to be tied to something very specific in the same way that the DAPL Principles accepted property in bitcoin with bitcoin not actually representing anything. If a VCC was individuated, it could itself be an object of property without having to be backed by any claim, so long as double-counting was avoided. It was further noted that property law was able to accommodate and develop specific rules when needed; there was no reason why that should not be possible in the present case, especially if the proposed solution was supported by UNIDROIT.

182. *A member of the Drafting Committee* agreed that it was possible to create the VCC as an object of property and sever it completely from the mitigation outcome. However, it was recalled that members of the Working Group had deemed retaining such a connection important, since the

connection to the environmental benefit appeared to be the selling proposition behind VCCs. It was thus understood that the will of the Working Group was to maintain a connection between the VCC as an object of property and the mitigation outcome while bringing in extra flexibility by expanding the connection between the VCC and the mitigation outcome and providing that, so long as the system of rules governing that particular mitigation outcome and its verification allowed for some kind of substitution if certain events occurred, then the VCC did not go away as property. However, the Working Group was cautioned that such an approach could result in greater fragmentation, because every system would likely have different rules, such that the standardisation of VCCs would effectively be lost.

183. *A participant* specified that buffer pools were not used identically across CBs—some had individuated units in their buffer, while others did not. The Working Group was thus cautioned against tying the definition to buffer pools. Further, buffer pools were not used for all types of projects. It was thus suggested that the Working Group focus on the replacement aspect—which could be through a buffer. It was further explained that, usually, there would be an initial assessment of a project's reversal risk through the methodology and on that basis a certain buffer volume would be placed in the pool to address the potential reversal risk. In the event that additional credits were needed because of an overissuance, it could be that the project proponent or account holder had to obtain credits in other ways and then get them into the account, and those credits would then be cancelled as a replacement.

184. On the basis of the discussion, *the Chair of the Drafting Committee* noted the importance of incorporating the rules of the CB, which could be done by providing that the rules of the CB were contractual rights that were transferred with the credit. Further, the importance of maintaining the link to the environmental benefit was underscored, since what most buyers intended to do was to be able to 'claim' that underlying environmental benefit.

185. *A member of the Drafting Committee* observed that the new proposed approach would link the VCC to potentially anything—almost as a floating charge over a group of mitigation outcomes—and that created problems from a property law perspective. It was further noted that certain buyers might care what specific project was tied to the VCC they bought.

186. *The Chair of the Drafting Committee* clarified that, for the revised approach to work, it had to be set up so that it was part of the VCC from the outset. It was suggested that the VCC be defined as representing either a particular mitigation outcome or, under certain defined circumstances, another mitigation outcome that had also been verified in accordance with the rules of the CB. It was noted that it was akin to holding property in trust, where the trustee could substitute in other property. It was stressed that the rules of the CB were of critical importance to, among other things, avoid any double-counting.

187. *A participant* agreed and added that a VCC could be considered to represent an undivided interest in the fungible pool of mitigation outcomes that resulted from projects that had been verified by the CB and that the CB could then allocate various attributes to individual VCCs or group of VCCs. But the property right was essentially an undivided or differentiated interest in the entire pool that was administered by the CB from time to time. *Another participant* clarified that the link was to a verified mitigation outcome rather than to a particular mitigation outcome from a particular project. The necessary elements were: (i) the project verification had to occur; (ii) there was a pool of mitigation outcomes; and (iii) the associated rules of the CB had to allow for substitution. The critical point was that there was no double-counting.

188. It was noted, however, that reliance on remedies offered by the CB to solve the mitigation outcome characteristic of the VCC was insufficient. It was thus queried whether the changes being discussed needed to occur in the definition of a VCC or rather in the definitions of reversal and revocation.

189. *The Chair of the Drafting Committee* queried what was the nature of the right that the owner of the VCC had against the CB in relation to the mitigation replacement or buffer pool and whether the VCC holder could, for example, sue the CB for breach of contract should the CB refuse to provide any replacement credit. In response, it was noted that, with respect to Verra credits, the obligation to replace was included in deeds of issuance as well as in the registry terms of use—it was both a programmatic obligation as well a registry terms-of-use obligation. The account holder, project proponent, was responsible for compensation or replacement were there was an overissuance. With respect to ACR credits, the obligation was in the Terms of Use Agreement. Further, the ACR had a legal agreement called the Reversal Risk Mitigation Agreement which compelled the project proponent to report reversals and provided that reversals would be compensated either through buffer pools or otherwise, for example with other ACR units.

190. *A member of the Drafting Committee* observed that the market currently did something different from property and addressed buffer pools issues on the basis of contractual rights—what was currently going on in the market was reflected in the current draft of the Principles. It was suggested that this struck the right balance. Instead, if the claim into the buffer pool were made proprietary in nature, this meant that whomever had control over the buffer pool was effectively a trustee or quasi-trustee for the holders of the VCC because they were custodians of their property. This, it was posited, would inject unforeseen problematics into the market.

191. *Other participants*, however, disagreed with this characterisation. It was reiterated that keeping the VCC as a unit of carbon issued against the rules—which would include the continuation of that VCC in accordance with those rules—was not inconsistent with property law.

192. *Another member of the Drafting Committee* underscored that the problem was that the mitigation outcome was not property—only the VCC was property. A mitigation outcome could not be transferred and substitution of the mitigation outcome was not akin to replacing something within the VCC that was broken. *Others*, however disagreed, noting that the mitigation outcome was a critical component—i.e., the 'heart' of the VCC.

193. It was observed that the only point of disagreement concerned the retention of the same serial number. As things currently existed, buffer pools operated on a contractual basis and the current draft of the Principles allowed for that. The only point of departure seemed to be that, currently, when the buffer pool mechanisms were brought into play on the basis of contractual arrangements, the beneficiary of the mechanism was able to effectively retain a VCC with the original serial number, whereas, under the current draft of the Principles it would result in substitution of the original VCC with a new VCC with a new serial number.

194. In response, however, it was reiterated that replacement for reversed mitigation outcomes was not necessarily through the buffer pool. It could be in the form of a replacement mitigation outcome that had been verified and was equivalent, because it had been created by the same CB.

195. *The Working Group* considered a revised draft definition that attempted to preserve the conceptual element of property in the different legal systems while seeking to achieve functionally the outcome called for by the market. The proposed language provided that the VCC represented either the mitigation outcome it represented at the time of its creation or, if certain circumstances applied, another mitigation outcome that was identified, stipulated or nominated by the relevant CB in accordance with the rules of that CB. The revised language further provided that: (i) this would only apply if the VCC carried with it the benefit and the obligations under the rules of the CB; (ii) the replacement mitigation outcome had to be verified and approved by the CB, i.e., the same criteria applied to the replacement mitigation outcome as to the original mitigation outcome; and (iii) the rules had to provide that there could not be double counting of mitigation outcomes, meaning that the replacement mitigation outcome had to be a new mitigation outcome that had not been

previously represented by a VCC or the VCC that represented that mitigation outcome had to be cancelled.

196. The proposed revised language, it was explained, attempted to make the ability to substitute as limited as possible. Further, because one could not own a mitigation outcome, it was possible to have a VCC that represented one mitigation outcome or another mitigation outcome, because what was being swapped was not one piece of property for another but rather just what that piece of property represented.

197. *A member of the Drafting Committee* questioned whether legal systems would accept this as property. It was observed that, even if it was accepted as a floating charge, many civil law jurisdictions would have difficulty with the idea of a floating charge and this would affect uptake. *Others*, however, disagreed. It was observed that Spain, for example, accepted property over future assets and accepted property that replaced itself by way of real surrogation in several cases.

198. In response to a query, it was clarified that the replacement mitigation outcome could be nominated at any point during the life cycle of the VCC, but under very specific circumstances as set out in the CB rules. The language in the new draft definition provided that the replacement mitigation outcome had occurred at the time of the nomination. Further, the replacement mitigation outcome needed to be verified, and a positive verification statement would only be issued if the mitigation outcome had indeed occurred. *Participants* noted that fungibility of mitigation outcomes was desirable; there would be a flight to reputable CBs that provided clear guidance or clear rules that transparently identified the universe of mitigation outcomes that could be tied to a VCC.

199. *A member of the Drafting Committee* observed that there were several jurisdictions in which rotational structures of this kind were not admitted in terms of property. For example, Italy had struck down any attempts at proprietary rights on attaching to rotational pools of assets.

200. *The Secretary-General* sought the views of experts from other civil law jurisdictions.

201. *An expert from France* was of the view that the proposed approach could work from a civil law perspective and underscored the need to innovate given the inability to use traditional categories of property law.

202. *An expert from Germany* shared that German law allowed, for example, security over warehouses, as well as property rights in things like water and electricity. It was acknowledged that German law currently provided that substitution was not automatic and a concrete rule was needed, but it was noted that the Principles could introduce such a rule. It was added that what was being replaced was not the object of property—the VCC was the object of property rather than the mitigation outcome. The mitigation outcome itself was a quantity rather than an individuated object.

203. *An expert from Switzerland* agreed with the need to be innovative. As in the case of Germany, it was observed that the Swiss legislator would likely not have difficulties in accepting a non-directly property-related approach in the Principles, since Switzerland introduced a new category of digital assets. It was added that Austria and Germany were also considering new forms of property rules. Further, it was observed that, for the last thirty years, electricity was considered a good under WTO law, despite it never being individuated. The only reason electricity was considered a good was that it could be measured.

204. *An expert from the People's Republic of China* shared that the substitution of the subject matter of property rights was difficult to accept under Chinese civil law, because only individuated items could be the object of property rights—things that were not individuated could only be the object of obligations. It was further clarified that the Chinese version of VCCs—namely CCERs—did not currently have a buffer pool. Instead, the risk of reversal was addressed by applying a risk

reduction—if a verification confirmed a project had reversed 100 tonnes of CO_2e, the project may only receive 90 tonnes worth of credit. The remaining 10 percent would be deducted as non-permanence risk. If, after issuance, something later happened that caused a reversal event, the seller—whether the project proponent or developer—would then have buy new CCERs to compensate for the loss.

205. *A participant from the United Kingdom* emphasised that VCCs were a new type of thing—it was suggested that the Working Group should identify what this new type of thing should look like and how it worked and it would then be up to the legislatures of the enacting States to pick up the pieces and make it work should they so wish. Indeed, the UK Digital Assets Act provided that it did not really matter whether something was A or B—it could still be the object of personal property. In that case, the problem was solved because there was a desire to make the market work. It was posited that the key thing in the present case was to define what worked for the market. The market needed fungibility in order to scale, and this was limited by a VCC being tied to a specific project.

206. *Another participant* also supported the current redraft and suggested that the language be revised to not only capture CB-run mechanisms, but also CB-approved mechanisms that identified the replacement mitigation outcomes.

207. With respect to the concerns that had been raised about uptake, it was noted that the Paris Agreement contemplated doing essentially the same thing on reversals and it was added that the fact that the whole market was intended to further the goals of the Paris Agreement may help making some jurisdictions more comfortable innovating than they otherwise would be.

208. *A participant* queried whether the proposed approach would be consistent with Islamic finance. In response, it was recalled that the draft was being prepared to be shared for public consultation, during which interested jurisdictions would have the opportunity to comment.

209. *The Secretary-General* summarised the discussion noting that, at the moment, there seemed to be acceptance of the new proposed approach from a number of civil law and common law jurisdictions, on the understanding that it required a certain degree of imagination, goodwill and likely express legislation in many cases.

210. *A member of the Drafting Committee* observed that, even if the proposed approach were to be adopted, the provisions on reversal and revocation would need to stay in place because there could be situations where nobody stepped up to replace the affected VCCs. Thus, the provisions on reversal and revocation would have to provide that, if the situation was not remediated in the way contemplated by the definition, then the reversal and revocation provisions would continue to apply. It was further noted that certain additional aspects needed to be clarified under the new proposed approach, including the application of Principle 4(10) providing that illegality was to be determined by the host State law.

211. *The Chair of the Drafting Committee* acknowledged that the new proposed approach placed great importance on the CBs. One of the issues raised was how to avoid the risk that a CB would simply have a blanket ability to substitute one mitigation outcome for another. It was suggested that there were two possible answers: (i) the market itself would self-regulate, because people would only use CBs they trusted; and (ii) States would regulate market participants, including CBs, this likely being the only real long-term solution to support the scaling of the market. It was noted that whatever was drafted now for what was essentially a market-regulated system could become less important once there was a State-regulated or financially regulated system in place.

212. *A member of the Drafting Committee* suggested that the only advantage of the new proposal was that is allowed the original VCC to continue existing and avoided questions as to whether the nature of the VCC changed when there had been a reversal event. This, however, raised difficult

questions such as what prevented a CB from cancelling a VCC from a lower-value project in order to sustain a higher-value VCC.

213. *The Chair of the Consultative Committee* thanked the Drafting Committee and the Working Group participants for their efforts and clarifications on the new proposed draft and queried what the process would be going forward, including whether the members of the Consultative Committee would be consulted again given that the new provision was definitional.

214. *The Secretary-General* confirmed that the Secretariat would seek again the input of the Consultative Committee, likely in parallel to the public consultation. The Secretary-General also clarified that whether the document was submitted to public consultation was the decision of the Governing Council, but whether it was proposed to the Governing Council that the document be the subject of public consultation was a decision of the Working Group—not of the Secretariat.

215. *A member of the Drafting Committee* explained that, even with the new proposed definition, a principle on revocation was necessary as a last resort. It was clarified that, while the innocent acquisition rule protected good faith purchasers from defects in title, there was no legal system that protected a good faith purchaser from the non-existence of the property—regardless of whether the property was a contractual right, a patent or a copyright.

216. *Participants* noted that the provision allowing cancellation for illegality after VCCs were issued should be removed and the issue of illegality should be addressed in the commentary, where it would be explained that the rules of the relevant CB and the verification process would deal with the illegality point. In the event that such rules and processes failed to address illegality, the commentary would note that it would be a complex question between the law of the host country, the law of the registry, and the law of the place where the holder was located such that it would be difficult, if not impossible, to draft a rule as to exactly what the outcome should be. Indeed, should one country's court say the VCCs were cancelled and another country's court have jurisdiction over the VCCs, it would be a question of whether the second court would give effect to the first country's decision and that was not something which could be addressed in the Principles.

217. It was nonetheless suggested that the commentary should note that the selection of the verifier would have to take into consideration that it would have to perform a legal analysis, among other things.

218. On the other hand, *a participant* recalled a comment by a member of the Consultative Committee noting that the issue of illegality was better addressed through a substantive principle rather than through the principle on applicable law. It was agreed that if the Principles provided for the non-existence of the VCC in the event of project illegality then nobody would buy VCCs and that would destroy the market—nobody would take the risk of purchasing a VCC that years later could become void because of the decision of, for example, a new government declaring illegal everything done by the previous government. It was thus suggested that the Principles could provide that the illegality of the project would have no effect on the existence of the VCC and that this would be a decision left to the competent jurisdiction. *Others* agreed, underscoring that the illegality of the project should not impact the proprietary nature of the credit itself and that this should be clarified in the instrument. It was added that the concept of illegality included very subtle nuances.

219. In response it was suggested that, if the issue of illegality was to be included in a principle, then it should be addressed in a separate provision rather than in Principle 10 on revocation.

220. *Another participant* noted that illegality of the project was just one of many different forms of illegality which could also include, for example, illegality in the host State of the registry. It was thus suggested that, in order to avoid the drafting being too specific and looking like an exhaustive

list, this issue should be addressed in the commentary to Principle 8 on cancellation rather than through Principle 10 on revocation.

221. *A member of the Drafting Committee* suggested that a fourth reason for cancellation—'*or in accordance with other law*'—could be added to act as a catch-all for when a court of competent jurisdiction ordered cancellation for none of the expressly stated grounds. This could cover illegality as well as other reasons for cancellation.

222. *Another member of the Drafting Committee* observed that, if illegality were to be addressed in the commentary, then it no longer made sense to have a specific provision in Principle 4 on applicable law referring to the law of the project host State. Alternatively, it was suggested that a separate principle be added providing that the legality of the project should be governed by the law of the project host State.

223. In response, it was observed that it would be legitimate and helpful for Principle 4 to state that nothing in the principles affected the development or the law appropriately applying to the project. *Others* added that it would be important to mention the host State or the host jurisdiction of the project and what fell within the competence of the host State, since this related to State sovereignty and what could be done within a State's territory.

224. It was thus proposed that a new provision be added that would simply provide that the effect of illegality was a matter for other law. This would then provide the hook necessary for Principle 4(10) to apply, which would give substance to that 'other law'. It was also noted that, with the exception of Principle 4, the instrument was drafted for a single domestic law. It thus appeared odd when provisions other than Principle 4 pointed to other laws. The suggestion was made to clarify in the instrument that, with the exception of Principle 4, the entire set of Principles was meant to apply to a single domestic jurisdiction. Therefore, references to '*court of competent jurisdiction*' simply referred to the domestic courts of the enacting States. *Another participant* however added that the Introduction must also acknowledge that, in practice, there would be cross-border issues.

225. *The Working Group* considered a comment from a member of the Consultative Committee in relation to Commentary 9.10, which suggested that allowing VCCs to be issued in tranches of varying seniority could introduce financial structuring and add complexity, as different credits would carry different levels of reversal risk and pricing. It was noted that, rather than pertaining to the waterfall structure in the Principle, the comment was directed at the language in Commentary 9.10 which indicated that the waterfall effectively allowed subordination or tranching. It was agreed that the language at Commentary 9.10 be deleted but that the waterfall structure in the Principle be maintained, as this was something useful and necessary to have.

Conclusions and recommendations

Principle 9: Reversal

226. *Members of the Working Group raised the need to amend the definition of a credit to account for the way in which the market operated when it came to the reversal of a mitigation outcome which could be remediated. It was stressed that, rather than providing for the cancellation of the credit, the Principles needed to allow for remediation—including the backfilling or substitution of the mitigation outcome behind the credit. It was explained that, in practice, when there was excess issuance of credits, whether because of reversal or revocation, it was the replacement credits that were cancelled rather than the original VCC*.

227. *The Working Group agreed that there could not be double counting and any revised definition should account for that. It was suggested that this could be achieved by specifying that the project verification had to occur and the associated rules of the CB had to allow for substitution*.

228. *There was consensus to proceed on the basis of the new proposed definition*.

229. *The Working Group discussed whether paragraph 6 should come out. It was agreed that the language should be kept in the draft for purposes of the public consultation to allow more CBs to comment, since approaches across CBs varied*.

230. *In response to a comment a member of the Consultative Committee, it was agreed to take out the sentence at Commentary 9.10 referring to tranches*.

Principle 10: Revocation

231. *The Working Group agreed to remove alternative draft Principle 10(1) concerning illegality*.

232. *It was agreed that illegality would be addressed in the commentary, which would state that the proprietary consequences were a matter of the applicable law rather than Principles law, as indicated by Principle 4. The commentary would also highlight the complexity of the question (i.e., that it depended on a number of factors, including what the outcome was in terms of property, which law applied, what that law provided, what the illegality was) without offering conclusions*.

233. *In the Introduction and/or commentary, when describing the role of a VVB, it would be specified that legality was addressed as part of the verification process. The verification statement must address whether the creation was contrary to law, or whether the project was prohibited by law. It was specified, however, that the Principles should not get into the weeds of a full regulatory principle on how verification should take place—rather, the instrument should offer guidance without being too prescriptive*.

234. *A suggestion was made to introduce in Principle 8 a fourth reason for cancellation 'in accordance with other law', this being a catch-all for when a court of competent jurisdiction ordered cancellation for reasons other than those stated in Principle 8. This could deal with illegality and other possible grounds for cancellation*.

Principle 11: Retirement

235. *It was proposed that Principle 11 on retirement be taken out of the section on cancellation and included in a separate section. Principle 11 would then become 'voluntary cancellation' to address the cancellation of VCCs for the purposes of re-issuance (see above), though the Principle would not be so limited*.

(h) Applicable law (Principle 4)

236. *The Secretary-General* introduced the topic of applicable law. He recalled that a subgroup of the Working Group had been engaged in a dialogue with a group of experts from the Hague Conference on Private International Law (the HCCH EG). The HCCH EG had issued an opinion in which they stated that they were not in a position to support Principle 4 on the basis of the drafting as of December 2025. Further iterations of Principle 4 had been shared with the HCCH EG since December 2025, and comments from individual members of the HCCH EG had been shared with the Working Group for consideration.

237. *The Deputy Secretary-General of the HCCH* read a statement, enclosed to this Summary Report as Annexe III. She also reiterated the position reflected in the Conclusions and Decisions of the HCCH Council on General Affairs and Policy (CGAP) which recorded that, at that time, there was no alignment or agreement of views between the HCCH EG and the UNIDROIT Working Group on Principle 4 while also emphasising the importance of maintaining ongoing cooperation and coordination with UNIDROIT.

238. *The Secretary-General* thanked the HCCH for the cooperation and asked that the Secretariat's formal thanks be extended to the experts of the HCCH EG. He emphasised that the success of the HCCH EG would further the success of the UNIDROIT Working Group. While UNIDROIT would proceed in the execution of its mandate, the Secretariat and the Working Group remained available for cooperation and coordination.

239. *A member of the Drafting Committee* introduced the iterated Principle 4. It was underscored that the cooperation with the HCCH had been very helpful and that best efforts were made to align Principle 4 with the work of the HCCH EG, including a complete reformulation of the draft provision to account for the feedback received from the HCCH EG.

240. The comments provided by the members of the Consultative Committee were then presented and addressed in turn. These included:

- An observation on the complexity introduced by the differentiation between the law of the registry and the law of the custody arrangement. In response, it was suggested that this be maintained notwithstanding the added complexity that it entailed.

- A warning on the legal influence that could be concentrated in the law of the registry, noting that it should remain without prejudice to mandatory domestic law. In response, it was noted that Principle 4 included a public policy exception to address such a concern.

- Several invitations to interpret Principle 4(12) referring to the UNFCCC carefully, so as not to expand the scope of the Principle. In response, it was recalled that the reference was added in response to requests from the HCCH EG. It was queried whether this provision was better suited for the preamble rather than Principle 4.

- An observation that a number of matters excluded in paragraph 2(a) were part of the creation of a VCC under paragraph 1(a)—such as land use, community rights, Indigenous people's rights. In response, it was observed that that was precisely why such matters were excluded; they were covered by paragraph 1 and subject to carve-out.

- A suggestion was made to address the management of conflicts between the *lex registri* and the domestic rules governing the submission of VCCs for compliance under national emissions trading systems. In response, it was noted that further information would be needed on this, including on whether the registries were administered under a different, perhaps outsourced, law.

- A comment that linking to the law of registry could incentivise registries to establish themselves in jurisdictions with more favourable legal systems. In response, the comment was acknowledged, but it was noted that ultimately investors would choose registries they trusted; if a jurisdiction was not chosen it could reform its laws to make it more reliable and attractive to investors.

- A comment noting that, while VCCs did not have a physical location, project boundaries existed for MRV purposes. However, in response it was observed that MRV data was entirely different from the VCC itself and should not affect the applicable law.

- A proposal to adopt a 'whitelist' approach—i.e., enumerating specific proprietary issues instead of using a general formula such as '*all questions pertaining to proprietary matters*'. It was observed, however, that such an approach would create the problem of omission.

- A question concerning equitable interests not being proprietary. In response it was noted that this appeared to be a common law concern perhaps related to trusts, which were not covered by the Principle.

- A suggestion to remove the exception to the insolvency exclusion. Principle 4(2)(d) stated that proprietary matters did not include substantive or procedural aspects of insolvency-related proceedings, such as the ranking of claims, avoidance of transactions, enforcement, or rights to an asset. However, there was an exception, since Principle 4 also provided that the applicable law governed the existence of proprietary and security rights in a VCC in insolvency-related proceedings. It was observed that the exception provided greater certainty for transactions in VCCs, whether administered by the debtor or by the insolvency practitioner. Insolvency-related proceedings, it was recalled, was a catch-all notion since it referred to liquidation, restructuring, out of court proceedings, and so on. Thus VCCs, as elements of the insolvency estate, could be used by the insolvency practitioner or by the debtor in possession in transactions within the insolvency proceedings. Principle 4 thus aligned what happened after the opening of insolvency proceedings with what happened before.

- A suggestion to align the Principle with UNCITRAL's Model Law on Secured Transactions. In response, it was noted that the same connecting factors were used, such that there was no conflict.

- A suggestion to distinguish proprietary issues between parties to a custody agreement and those affecting third parties, with the application of different rules. The Drafting Committee cautioned against this, since splitting proprietary issues in this way was both conceptually confusing, especially for civil law systems, and highly complex in practice.

- An indication to say '*jurisdiction*' instead of '*State*' in Principle 4(10). The point was acknowledged and it was proposed that the language be amended to provide that, for the purpose of this Principle, '*State*' meant a State or a territorial unit of a State with separate rules of private law.

- A query as to whether Principle 4(10) on illegality was necessary.

- A recommendation to remove reference to '*secondary markets*', which the Drafting Committee members agreed with.

- A comment bringing attention to the fact that letters of authorisation were required for compliance purposes, and that these were governed by local law. Reference was made to cook stove litigation in Kenya, where a start-up tried to translate mitigation outcomes into VCCs but Kenya refused to provide the letter of authorisation on the basis that the project was exceeding what should be issued for compliance purposes, and demanding that the project stop issuing VCCs. In response, it was observed that this was not the problem being addressed by Principle 4, which concerned who owned the VCC—a distinct question from whether one was allowed to issue more VCCs. It was explained that, even if issuance was contested, the question of ownership remained distinct. If VCCs had already been issued, they still existed as assets which, even if not available for compliance purposes, could still be available for other uses. It was thus maintained that proprietary issues should be governed by the law of the registry and that law should determine the consequences. The letter of authorisation and the law governing it should not directly affect the proprietary status of the VCC itself. It was agreed that the issue could be addressed by specifying that references to the registry throughout the Principles, including Principle 4, referred to the operator being the controller, and not to the platform or service provider.

241. In terms of the relationship between the Principles and the Paris Agreement, it was observed that the Principles addressed VCCs as intangible assets in the context of private-to-private transactions. The Principles were not intended to affect compliance systems or State-to-State relationships under the Paris Agreement mechanisms.

242. In relation to the discussion on illegality, *a participant* observed that it was important to at least acknowledge in the Principle that the application of the law of the registry to the VCC was, in a way, preconditioned on the fact that the project was in accordance with the law of the host State or jurisdiction.

243. In response, *members of the Drafting Committee* noted that the comments received from the Consultative Committee and others suggested not including a conflict-of-laws rule for illegality, but rather asking States to take the law of the project host State into account—for example by providing that, in relation to the legal consequences of illegality, regard should be given to the law of the project host State. This, it was posited, raised concerns in light of the discussion on the definition of a VCC since, under the proposed revised approach, a VCC was no longer connected to one specific project but to potentially multiple projects throughout its lifetime. A suggestion was made to state in the commentary that preliminary issues or the legal consequences of illegality may refer to another law, and indicate that this law was the law of the host State of the project in question. It was reiterated, however, that if there was no black-letter provision concerning illegality then it made little sense to have a specific conflict-of-laws rule on illegality.

244. *A participant* spoke in favour of removing Principle 4(10) concerning illegality and instead referring to the situation in the commentary. The difference between the project and the credit was stressed. If the project reached up to the credits, then the credits would actually not be fungible, because they would reflect wherever the underlying project was. This became even more complex and problematic in the event that the underlying mitigation outcome were to be substituted. It was thus suggested that it be specified in the commentary that nothing in the applicable law provision affected anything at the project level, but rather the provision concerned proprietary issues in the VCC.

245. On the issue of party autonomy, *a participant* noted that Principle 4 did not really allow free choice since it provided only one connecting factor and then indications on how to localise the registry. It was queried why the Principle limited the registries' ability to choose the applicable law.

246. *A member of the Drafting Committee* explained that there were two reasons. Firstly, the Principle addressed property law, and there was an iron doctrine in property law that the applicable property law could not be chosen. Therefore the Principle already went a step further by allowing a limited choice. Secondly, there was some precedent in the form of the Hague Securities Convention on the provision of a limited choice of law. The Hague Securities Convention allowed for a limited choice of law only among certain connecting factors—namely the place of incorporation of the intermediary or the place where the intermediary had a branch. Yet, even this limited form of freedom was rejected by a big European country, on the basis that it would lead to every major bank opening up an office in London or New York and they would always only choose English or New York law and strengthen the role of those laws. Thus, the Hague Securities Convention was not signed by the European Union precisely because this choice was built in. By including a limited choice in Principle 4 it was thus hoped that the Principles would be more appetising for States than a completely free choice. It was further noted that a total freedom to choose the applicable law, combined with the account agreement, could result in the application of many different laws, which was not something that should be encouraged.

247. *The Chair of the Consultative Committee* thanked the members of the Drafting Committee for taking the Working Group through, and addressing most of the comments from, the members of

the Consultative Committee, noting that further comments could be received when the Consultative Committee was consulted on the revised text.

Conclusions and recommendations

248. *It was agreed that if illegality were to be solely addressed in the Introduction and/or commentary then Principle 4(10) would be deleted. Principle 4(10) would only be maintained if there was a black-letter substantive principle addressing illegality*.

249. *In response to a comment from a member of the Consultative Committee, it was agreed to change the language in Principle 4(11) to provide that 'for the purpose of this Principle, State means a State or a territorial unit of a State with separate rules of private law'*.

250. *The Working Group agreed to take out the reference to 'secondary' markets from the commentary*.

251. *The commentary to Principle 4 on cancellation would need to be revised on the basis of the agreed amendments to the cancellation section (see above)*.

252. *With respect to the reference to 'land use' in Principle 4(2)(a), it was agreed that it would be preferable to refer instead to 'rights and interests in the land and the natural resources', as suggested by a member of the HCCH EG*.

253. *There was a suggestion to separate Principle 4(9) into two paragraphs —one paragraph addressing public policy and one addressing mandatory rules*.

254. *It was agreed to delete the words 'in particular' from commentary 4.3*.

255. *It was suggested that the reference to Indigenous peoples' rights be addressed in the commentary rather than in Principle 4(2) as this could send the wrong signal*.

256. *It was noted that the commentary or the Introduction should make it clear that the Principles did not apply to ITMOs under the Paris Agreement*.

257. *It was suggested that the Principles include as a precondition that the project was in compliance with host State law*.

258. *It was agreed to incorporate wholly the feedback received from the UNFCCC concerning Principle 4(11)*.

(i) Tokenisation

259. *The Secretary-General* turned the discussion to the topic of tokenisation, asking *the Drafting Committee* to present the document titled *Study LXXXVI – W.G.8 – Doc. 6 – Tokenisation Annexe Memo*. *The Secretary-General* clarified that the Tokenisation Annexe would not be submitted to the upcoming consultation together with the draft Principles.

260. *The Drafting Committee* explained that the Tokenisation Annexe Memo was being presented to the Working Group as a starting point for discussion. The idea was to give the Working Group an opportunity to consider what should be covered by the proposed Tokenisation Annexe. It was explained that the Tokenisation Annexe Memo began by presenting certain key observations, the first being that the Principles had so far been drafted as being technology neutral, thus lending themselves very well to possible additional consideration about certain technological instruments. The desire for consistency with the DAPL Principles was also noted. It was explained that the DAPL Principles were concerned primarily, if not exclusively, with proprietary issues concerning the token

itself, recognising in DAPL Principle 4 that tokens could be linked to other assets. Under the DAPL Principles, how that link worked from a private law perspective and the legal implications of that link were left to 'other law', meaning the law of the linked asset. Thus, with respect to VCCs, that law would, in principle, be the VCC Principles.

261. The Tokenisation Annexe Memo set forth four possible tokenisation scenarios that could be addressed by the Tokenisation Annexe, as follows:

- The first scenario concerned pure technological implementation and could be easily accommodated by the Principles by way of commentary which would explain that such an implementation of distributed ledger technology and tokens was purely a technological choice which changed nothing of the substantive law principles.

- The second scenario was one in which tokens were used to represent contractual rights. This too could easily be accommodated in the Principles with the commentary noting that nothing in the instrument prevented this.

- The third scenario concerned instead the creation of tokens that represented proprietary interests in a VCC and could potentially be used to transfer proprietary rights in a VCC (e.g., transfer ownership, create security interests, etc.). To address this scenario, new principles would be needed to cover the requirements for such tokenisation and the rules that would apply to the transfer of proprietary rights when the VCC had been tokenised. If the Working Group were to decide to address this scenario, then it was suggested that the Tokenisation Annexe have an operative role to ensure there was no substantive discrepancy between what was provided in the Principles for non-tokenised VCCs and what was established for tokenised VCCs. This would entail the introduction of a substantive rule in the Principles to allow tokenisation in the sense of a digital asset representing a proprietary interest in a VCC, and to allow the transfer of those proprietary rights by transferring the token.

- The fourth scenario was one in which the relevant technology would be used not simply to attempt to represent property rights in a VCC. Rather, the technology would be used to disintermediate VCCs—i.e., to replace some or all of the intermediaries so far contemplated in the Principles with smart contracts, automated software, or DAOs. It was posited that the fourth scenario sat outside of the Principles, because the Principles required intermediaries that were legal or natural persons that played a certain role, undertook certain responsibilities and had certain obligations. It was proposed that the Tokenisation Annex would describe this fourth scenario and explain why it sat outside the scope and intended aims of the Principles.

262. *A representative of the World Bank* recalled what had been previously stated about the purpose of the Principles as buttressing and strengthening the marketplace, as well as a country's ability to implement and scale both carbon finance and the voluntary carbon market. It was noted that the ability to encode the evidentiary record of a VCC into an asset or linked asset allowed, *inter alia*, the end user to have an auditable evidentiary record together with the asset itself such that there was a full accounting. In that context, tokenisation was seen as an innovation and potentially something to be mentioned in a model architecture annexe.

263. *Participants to the Working Group* agreed with the description of the four scenarios and the proposed treatment in the Principles. In relation to scenario four, it was added that the tokens should not be referred to as VCCs, since they likely would not meet the Principles' definition of a VCC.

264. A question was raised as to whether the second scenario would sufficiently address the situation in which a right against a pool of VCCs was tokenised. In particular, a concern was expressed as to whether token holders could exclude the issuer's creditors in that case.

265. Relatedly, it was observed that there could be situations where a smart contract was used to execute instructions and it was queried whether this was a scenario that needed to be addressed by the Principles.

266. *The Secretary-General* asked the experts to weigh in on whether tokenisation was expected to increase in the future. In response, it was observed that tokenisation was likely the direction in which the market was heading, but it was also a matter of the registries better understanding the relevant technologies, mechanisms, and how they related to the role and responsibilities of the registry operators. *Others* added that the third scenario embodied where the market was going. At least six, potentially ten, developing countries were implementing their NDCs and their national registries in a manner that required the voluntary carbon market to adapt to a digital environment consistent with the third scenario.

Conclusions and recommendations

267. *The Working Group generally agreed with the framework as set out in the Tokenisation Annexe Memo, which would be subject to further discussion*.

268. *It was generally agreed that the fourth scenario fell outside the scope of the Principles because it cut out the very intermediaries upon which much of the structure of the Principles was built upon. It was further suggested that the products developed under the fourth scenario not be referred to as 'VCCs', since they did not meet the Principles' definition of a VCC. It was agreed that the fourth scenario would be described in the Annexe, which would also explain the reasons why it fell outside the scope of the Principles*.

Item 4: Organisation of future work

269. *The Secretary-General* noted that the purpose of the session was to be able to complete a first full draft of the Principles independently of tokenisation, to be taken to UNIDROIT's Governing Council for authorisation to proceed to public consultation. He observed that the discussion over the three days of the Working Group session had been particularly beneficial as well as useful in terms of reaching a compromise and taking the text forward. He explained that a document would be most likely presented to the Governing Council, which would be asked to assess the state of the project and allow additional time to further refine the text before it was taken to public consultation.

270. *The Secretary-General* underscored that the final aim was to have the instrument approved in December 2026. Following the public consultation, there would be a further meeting of the Working Group to consider the input received, after which the instrument would be finalised and submitted for the consideration and approval of UNIDROIT's Governing Council. With respect to tokenisation, it was noted that this work would move forward in parallel, but it was not envisaged it would be completed in December 2026.

271. *The Secretariat* recalled that a Working Group session was scheduled from 14 to 16 October 2026.

Item 5: Closing of the session

272. *The Secretary-General* expressed his deep appreciation to the Working Group participants and closed the session.

ANNEXE I

AGENDA

1. Opening of the session and welcome

2. Adoption of the agenda and organisation of the session

3. Consideration of the iterated draft Principles and Commentary and of the comments provided by the Working Group and the Consultative Committee

4. Organisation of future work

5. Closing of the session

ANNEXE II

LIST OF PARTICIPANTS

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CHAIR OF THE CONSULTATIVE COMMITTEE

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UNIDROIT SECRETARIAT

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Ms Anna VENEZIANO	Deputy Secretary-General
Ms Giulia PREVITI	Legal Officer
Ms Suzanne HOWARTH *(remotely)*	UNIDROIT Correspondent
Ms Phoebe SUEN	Legal Officer (on secondment)
Ms Daijun GU	UNIDROIT Intern
Mr Shiv NEDIYARA SALIL	UNIDROIT Intern
Ms Xinran LI	UNIDROIT Intern

ANNEXE III

STATEMENT OF THE DEPUTY SECRETARY-GENERAL OF THE HCCH

Statement of the Deputy Secretary General, HCCH
at the Eighth Session of the UNIDROIT WG on the Legal Nature of VCCs
15-17 April 2026, UNIDROIT, Rome, ITA/Online

Chair, Secretary General, distinguished members of the WG, Colleagues

1. At the previous session of this Working Group, in December 2025, the position of the HCCH Experts' Group on Carbon Markets in relation to the applicable law provision, or draft Principle 4 in the UNIDROIT Principles, was conveyed, in light of the importance that the HCCH attaches to effective cooperation and coordination with UNIDROIT, and more broadly among international organisations, in matters that raise private international law issues. As indicated at that time, the Experts' Group had concluded, by consensus, that it was not in a position to support the proposed text of draft Principle 4, or its underlying policy approaches. That consensus position was transmitted by the Permanent Bureau to the UNIDROIT Secretariat on 11 December 2025, together with the substantive feedback of the Experts' Group on draft Principle 4 as reported in an extract of the Chair's *Aide-Mémoire*.

2. Against that background, and taking account of the report on the Experts' Group's work in 2025, the governing body of the HCCH, the Council on General Affairs and Policy, at its meeting in March 2026, adopted the following Conclusions and Decisions:

   "11. CGAP noted the fulfilment by the Experts' Group of the initial focus of its mandate on the study of the possible inclusion of an applicable law provision in the draft UNIDROIT Principles on Verified Carbon Credits, through the work of the Experts' Group over three meetings in 2025 and its intersessional work, the intermediate transmission to UNIDROIT of the Experts' Group's Comments on and Intermediate Iteration of Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits, and the Experts' Group's Consensus Position on the Current Text of the Applicable Law Provision in the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (incl. the associated Aide-Mémoire). CGAP noted the ongoing exchanges between the Experts' Group and the UNIDROIT Working Group on Verified Carbon Credits, and that there was, at this time, no alignment or agreement of views between the two Groups on the applicable law rule in Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits. CGAP also emphasised the importance of maintaining this ongoing cooperation and coordination with UNIDROIT.

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

3. These Conclusions and Decisions provide the governing framework for the continuation of the HCCH work in this area. They record expressly that, at this time, there is no alignment or

agreement of views between the HCCH Experts' Group and this Working Group on the applicable law rule in draft Principle 4.

4. During the CGAP meeting, HCCH Members attached importance to ensuring that the draft applicable law provision not be presented in a manner suggesting alignment or agreement between the two Groups where none exists. In that connection, I note, with appreciation, that the reference previously contained in Commentary 4.1 in the version circulated on 19 February 2026 has now been removed.

5. In accordance with this mandate, the HCCH Experts' Group will continue its work on the broader and holistic study of the private international law issues arising in carbon markets, including possible gaps in, and difficulties with, existing instruments or projects, as well as matters not currently covered by them. The Experts' Group will focus in particular on safeguards and jurisdictional issues.

6. Since the meeting in December, an updated iteration of the complete set of draft Principles and Commentary was circulated by the Permanent Bureau to the HCCH Experts' Group for comment, at the request of the UNIDROIT Secretariat. Some members of the Experts' Group submitted observations in their individual capacities.

7. The Permanent Bureau consolidated and, at the request of several members of the HCCH Experts' Group, anonymised the submissions received, and transmitted the compilation to the UNIDROIT Secretariat on 17 March 2026. The compilation also included a technical submission from the UNFCCC Secretariat, provided in its observer capacity, for which anonymisation was lifted with its agreement. As reflected in the cover note at the request of the UNFCCC Secretariat, that technical input does not constitute an official interpretation and does not reflect the views of UNFCCC Parties. An addendum reflecting one additional submission received after the initial transmission was subsequently transmitted to the UNIDROIT Secretariat on 15 April 2026.

8. In accordance with the mandate given by CGAP, and the position of the Experts' Group as previously conveyed, as the Experts' Group has not considered these comments in plenary, they do not constitute, in any respect, the position of the HCCH Experts' Group on Carbon Markets.

9. Although the present statement has been confined to Principle 4, a number of issues discussed over the course of this eighth session touch upon related matters. These include host State considerations, including the definition and treatment of carbon credits, as well as safeguards, under national legislation that reflect specific public policy objectives, such as the protection of the rights and interests of local communities, which are informed by the diverse lived realities of carbon markets across jurisdictions. At the same time, much of the discussion in this session has focused on questions of jurisdiction and on the need for a holistic treatment of the different stages of carbon market transactions, from project development and implementation through registry and issuance arrangements, subsequent trading, and retirement or possible revocation, with due regard to the interaction between jurisdiction, applicable law, and recognition and enforcement. The HCCH Experts' Group has consistently, and from the beginning of its discussions, underscored that these issues bear directly on applicable law considerations.

10. These elements form part of a broader and integrated analysis of the private international law issues arising in carbon markets, which extends beyond the applicable law rule alone and includes,

in particular, safeguards beyond the usual public policy exceptions and overriding mandatory rules, as well as jurisdictional questions, including parallel or potentially conflicting proceedings and the authority of courts in relation to registries or market infrastructures located in other jurisdictions.

11. In this context, and as reflected in the mandate given by CGAP, the HCCH Experts' Group will continue to advance its work within its mandate, working methods, and institutional processes, and on the basis of its own analysis, as a self-standing programme of work. To the extent that convergence on Principle 4 is not achieved, that work will proceed on that basis, in accordance with its mandate.

12. The Permanent Bureau will transmit a copy of this statement in writing, and respectfully requests that it be appended to the official records of this meeting. Thank you.
