INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

UNIDROIT Working Group on the
Legal Nature of Voluntary Carbon Credits
Second session (hybrid)
Rome, 22-24 April 2024

UNIDROIT 2024
Study LXXXVI – W.G.2 – Doc. 3 rev.
English only
June 2024

SUMMARY REPORT

OF THE SECOND SESSION

(22 – 24 April 2024)

TABLE OF CONTENTS

Item 1:	**Opening of the session and welcome**	**3**
Item 2:	**Update on the appointment of the Chair of the Working Group**	**3**
Item 3:	**Adoption of the agenda and organisation of the session**	**3**
Item 4:	**Consideration of matters identified in the Revised Issues Paper (Study LXXXVI – W.G.2 – Doc. 2)**	**3**
	(a) Preliminary matters	3
	(b) Structure of the future instrument	5
	(c) Content of the future instrument	5
	a. Main stages in the life cycle of VCCs	5
	b. Scope	8
	c. Definitions	9
	d. VCCs can be the subject of proprietary rights	11
	e. Conflicts of Law	16
	f. Recordation and issuance	20
	g. Transfer of title	21
	h. Fraud and innocent acquisition	22
	i. Retirement, reversal and cancellation	23
	j. Intermediation – VCC registries	27
Item 5:	**Presentations by representatives of independent carbon standard setters and registries**	**31**
	(a) Presentation by Puro Earth	31
	(b) Presentation by Verra	33
Item 6:	**Organisation of future work**	**36**
Item 7:	**Any other business**	**37**
Item 8:	**Closing of the session**	**37**
ANNEXE I	**AGENDA**	**38**
ANNEXE II	**LIST OF PARTICIPANTS**	**39**

1. The second session of the Working Group on the Legal Nature of Verified Carbon Credits (the "Working Group" or "Group") was held in hybrid format from 22 to 24 April 2024 at the seat of UNIDROIT in Rome. The Working Group was attended by nine members and 32 observers, including representatives from intergovernmental organisations, international development banks, industry associations, and non-governmental organisations (the list of participants is available in Annexe II).

Item 1: Opening of the session and welcome

2. *The Secretary-General* opened the session and welcomed all participants to the second meeting of the Working Group. He noted that new participants had joined the Working Group since the last session and thus opened the floor to a round of introductions.

Item 2: Update on the appointment of the Chair of the Working Group

3. *The Secretary-General* explained that, in accordance with UNIDROIT's methodology, Working Groups were chaired by a Member of the UNIDROIT Governing Council if possible. With a view to ensuring continuity with the work that had been done in the context of UNIDROIT's project on Digital Assets and Private Law, the Secretariat appointed Professor Hideki Kanda, a retired professor of law from the University of Tokyo, and a longstanding Governing Council Member. The Secretary-General noted that, due to prior commitments, Professor Kanda was unable to chair the meeting but would be present in person at the next session and thereafter.

Item 3: Adoption of the agenda and organisation of the session

4. *The Secretary-General* introduced the Annotated Draft Agenda and the organisation of the session. He noted that on 23 April the discussion would break to allow presentations by two independent carbon crediting programmes (ICCPs), Verra and Puro Earth.

5. *The Working Group adopted the Agenda (Study LXXXVI – W.G.2 – Doc.1, available in Annexe I) and agreed with the organisation of the session as proposed.*

Item 4: Consideration of matters identified in the Revised Issues Paper (Study LXXXVI – W.G.2 – Doc. 2)

(a) Preliminary matters

6. *The Secretary-General* clarified that the Revised Issues Paper was a guideline for the Working Group's discussion to show the progress being made through the different meetings. It was not necessary to include everything; some parts were designed to be there for discussion purposes only, other items needed to be added as progress was made by the Working Group.

7. Next, *the Secretary-General* addressed the joint work that had been conducted by UNIDROIT and UNCITRAL. He noted that UNCITRAL had a mandate from its Commission to perform a detailed but high-level analysis on verified carbon credits (VCCs), in coordination with other international organisations, including UNIDROIT. To that end, UNCITRAL representatives had joined prior meetings on VCCs, including the first session of the Working Group, and UNIDROIT and UNCITRAL had co-authored a joint paper on the legal nature of VCCs which had been published and shared with the Working Group as an Annexe to the Revised Issues Paper (the "UNIDROIT/UNCITRAL Joint Study"). The Secretary-General explained that the publication of the UNIDROIT/UNCITRAL Joint Study ended the current partnership with UNCITRAL, since that was the extent of UNCITRAL's mandate. The UNIDROIT/UNCITRAL Joint Study was to be presented to UNCITRAL's Commission in June 2024. For

the time being, without any change in mandate from UNCITRAL's Commission, UNIDROIT would carry forth with its instrument which would be a stand-alone, separate endeavour.

8. With respect to the partnership with the Hague Conference on Private International Law (HCCH), *the representative of the HCCH* stated that the HCCH received the mandate from its governing body in March 2024 to start doing work on private international law issues related to voluntary carbon markets and indicated that there would soon be a meeting with the UNIDROIT Secretariat on how to coordinate going forward. She observed that the HCCH looks forward to contributing to the work of UNIDROIT and that, to that end, the HCCH would start an in-depth examination of the applicable law and jurisdiction issues on voluntary carbon markets.

9. *A member of the UNIDROIT Secretariat* provided a brief summary of the intersessional work that had been carried out since the last meeting of the Working Group. She noted that at the meeting in Vienna in February 2024, the Working Group had discussed the type of instrument to be developed. Given the nature of the subject matter, the current lack of consensus, and especially the need for flexibility in this space, the Working Group had agreed to focus on the development of a soft-law instrument, most likely in the form of principles and commentary. The idea was to have black-letter principles and then to have room for commentary and explanations.

10. In addition, the Secretariat had held smaller intersessional group meetings, mainly to discuss the structure of the future instrument. She explained that the objective of the second session of the Working Group was to focus on the language of the instrument, and the Secretariat had tried to facilitate that discussion by including some suggested principles in the Revised Issues Paper for the Group's consideration.

11. *The representative of the World Bank* expressed excitement with the project moving forward. She stated that the President of the World Bank had announced a roadmap of the World Bank's engagement on carbon markets at the last COP and that the World Bank was pushing forward working with developing countries on carbon markets. According to the World Bank, providing legal certainty on the nature of carbon credits was necessary to bring strength and confidence and it would have an enormous impact on developing countries as they were getting ready to accede to the Paris Agreement. Thus, she stated, the discussion around carbon credits was not only an academic discussion, but it was a practical discussion that the World Bank hoped would have a direct impact on developing countries as they were accessing compliance markets.

12. *The Secretary-General* then sought opinions from the Working Group on the proposed change in the title for the project, from "voluntary" carbon credits to "verified" carbon credits. He explained that the Working Group was to have a discussion on the proposed title change and, if there was a common position, the proposed title change would then be submitted to UNIDROIT's Governing Council for approval. He noted that the proposed title change was the result of prior discussions, where it had been observed by experts that the legal nature of a carbon credit was established before its use was determined, meaning that it would be common to carbon credits which were issued and then used in either the voluntary market or in a compliance scheme.

13. Several participants agreed. It was observed that the term "verified" carbon credit was commonly used in the market and defined the difference between a type of unit which was issued by a governing body that was not project-based as opposed to a unit that was issued as a result of activities occurring within a project, and that had been verified as having been achieved by a third-party accredited verifier. A distinction was also drawn between a voluntary carbon credit and the voluntary carbon market (VCM), the latter describing the purchase of the unit. It was noted that the subject of the Working Group's discussion was the legal nature of the underlying unit itself rather than the market.

14. Other Working Group participants stressed the importance of the term "verified", as it underlined that a third party was verifying and thus brought an element of environmental integrity. It was also noted that it would be up to each jurisdiction to choose to implement legislation defining the unit for compliance purposes.

15. It was observed that what the unit was called and how it was defined in the instrument were two different things. Regarding what it was called, "verified" carbon credit seemed like a good term supported by the industry.

Conclusion

16. *The Working Group agreed to change the project title from "The Legal Nature of Voluntary Carbon Credits" to "The Legal Nature of Verified Carbon Credits".*

(b) Structure of the future instrument

17. *The representative of the World Bank* suggested that the instrument could be structured in three sections: (i) a first section addressing what the VCC is, meaning the nature of the VCC; (ii) a second section covering the minimum threshold components of the architecture required to achieve trust and transparency, and to have that VCC become a VCC; and (iii) a third section on a number of aspects around asset management, custody, insolvency.

18. *The Secretary-General* stressed the importance of the World Bank's perspective, noting that it was the World Bank that often took the standards to the countries for legal reform. The extent to which UNIDROIT's instruments would be used in part depended on the World Bank making them their own. Thus, if the World Bank believed that there was a need to consider a particular part of an instrument it was important to, at the very least, discuss that possibility. It was nonetheless noted that ultimately, it would be the Working Group and UNIDROIT's governing bodies that would decide. Yet, whenever a gap was identified by the World Bank in the course of their work with countries of operation, that meant that there is a need to fill that gap.

(c) Content of the future instrument

a. Main stages in the life cycle of VCCs

19. *The Secretary-General* brought the Group's attention to Section III.A.1 of the Revised Issues Paper, addressing the main stages in the life cycle of a VCC.

20. A question was raised as to whether "ownership" should be included in the topics listed for the Group's consideration. In response, it was observed that the term "ownership" was a loaded term in international law. Ownership of intangibles was an issue in many countries, especially in civil law jurisdictions. Thus, more general terms were typically used, like "proprietary rights", which were perhaps less definitional, but aided when it came to agreeing to a text which was palatable both for civil law and common law countries. It was thus noted that, although issues and elements related to the concept of ownership would be considered, the term "ownership" would not be used, as it would complicate the analysis.

21. A question was also raised as to whether it would be advisable to only refer to climate mitigation projects or whether adaptation projects should also be mentioned, on the basis that adaptation projects could be the source of VCCs in the future. It was suggested that a more general term be used than "climate mitigation project", such as "carbon offsetting project", in order to accommodate VCCs generated from different types of projects going forward.

22. Certain Working Group participants expressed hesitation about being too broad or delving into areas where, at present, there was not the same degree of historic experience to draw upon. *The Secretary-General* suggested keeping the comment in mind in case the Group wanted to revert to it, since it would entail an expansion of the analysis.

23. The Working Group next discussed whether to specify that VCCs could also come from programs, and not just from projects. It was explained that a program referred to the use of a baseline from a jurisdiction rather than from a single project. Participants noted the importance of not excluding program-based VCCs from the legal definition to be used in the instrument. It was suggested that, when describing what is meant by a project or the underlying activities, the instrument could indicate that underlying activities included project-based activities or programs, which may be jurisdictional and have projects within them.

24. It was observed that, from a drafting perspective, the Working Group should first determine how to define VCCs. That definition may refer to both projects and programs, in which case both terms would need to be defined since they would be part of the definition of VCCs.

25. A Working Group participant questioned whether independent carbon crediting programmes (ICCPs) were a fundamental element in the life cycle of a VCC, suggesting that VCCs could exist even in the absence of an ICCP. In response, it was noted that one had to distinguish the VCC from the standard that generated the methodologies upon which the counterfactual asset was created versus the verification and then its registration. Those three steps were critical, but they were not something that mandated a fundamental ICCP-nature conversation.

26. On the other hand, it was observed that to have a VCC there had to be verification and issuance of the registered instrument. The verification step was described as fundamental and one which did not work in the absence of an ICCP—either a private carbon crediting programme or a government-based one—and without a standard against which to verify the environmental benefit.

27. It was further clarified that while it was fundamental to have a standard upon which to measure and register the project, that standard was separate from the ICCP itself. The ICCP was a centralised governing body and custodian of the standard. However, though not yet necessarily prevalent, it was possible to have decentralised standards with the verification process carried out by way of an algorithm.

28. Moreover, it was noted that it would be worth keeping in mind the degree to which the instrument to be developed by the Group could be a way to indirectly regulate the substance of voluntary carbon markets (VCMs) by giving proprietary status to something with some regulatory features. This was something to consider when making choices regarding the contents of the rules and how prescriptive and selective the Working Group should be in defining what was within the scope of the instrument.

29. It was also observed that the market was currently young and evolving, and thus that the Working Group should caution against crystallising certain elements. For example, there may be decentralised ways of setting standards that should be considered because not all players may continue to be present in the future. However, *the Secretary-General* recalled that the purpose of the project was to help scale the VCMs, due to the positive externalities that they brought. Thus, although the Group should not be crystallising things that did not necessarily need to be crystallised, it should also consider those elements that were potentially beneficial for the scaling of the VCM.

30. A Working Group participant observed that as early as 1992 with the development of the first projects and then the Kyoto Protocol, there had always been the steps of project or activity, validation and registration and then, subsequently, verification of the outcome of that project. She urged the Group to not deviate from a standard practice for integrity and for the creation of the unit.

31. In response, it was noted that, due to the fast-moving market, the actual principles themselves should be drafted as neutrally as possible, keeping in mind that the instrument may actually drive the market and therefore might be a little bit more normative than expected. It was proposed that the principles be neutral, and that the commentary address the present situation, noting that the market could develop in a different way in the future.

32. Regarding the language in paragraph 52 of the Revised Issues Paper, it was clarified that the correct timeline involved first the outcome being verified and then the unit being issued and recorded in a registry. It was also noted that the unit did not exist until it was recorded in a registry. Administratively the unit was given a serial number and that serialised unit was then issued into a registry account. The combined process of the internal serialisation and the public recordation in the registry account was referred to as issuance. It was further clarified that the environmental benefit existed prior to the issuance, such that the monitoring, reporting and verification (MRV) data that substantiated the environmental benefit existed independently of its recordation on the registry.

33. With respect to verification, it was observed that the claimed emissions or reductions had to be verified by an approved independent third-party verifier before any VCC could be issued. Generally, verification entailed confirming that the climate mitigation project activity and outcome, as described in the project design document (PDD), conformed with the ICCP's approved methodology, and that the greenhouse gas (GHG) reductions or removals were real and measurable.

34. *The representative of the World Bank* noted that the environmental benefit existed regardless of whether or not it became a VCC. She explained that there was some data that pertained to the removal or to the reduction of the offset. That was the environmental benefit that would or would not become a credit. The ownership or the proprietary discussion around the legal nature of the VCC was independent from the environmental benefit that underlined the creation of the VCC. In response, however, it was observed that the environmental benefit, and the information that such benefit had occurred, could not be the subject of proprietary rights.

35. A query was raised as to whether, in addition to retirement and cancellation, the document should address voluntary cancellation of a credit, this being understood as the cancelling of a VCC without claiming the benefit. In response, it was noted that such a scenario seemed to simply refer to retirement of a VCC. It was reiterated that what was done with a VCC was not relevant to its legal nature. In addition, it was observed that in the Paris Agreement context, one referred to "voluntary cancellation", while in the VCM context the term "voluntary retirement" was used.

36. It was reiterated that the discussion centred on the nature of the VCC and not what could be done with it. If someone could make a statement saying something about the environmental benefit that did not involve retiring the credit, that would not necessarily change the nature of the credit. It was also observed that (i) results-based payments under Article 6 of the Paris Agreement were not credits; and (ii) the focus was on the VCC and not how it could be used towards a contribution claim.

Conclusions

37. *Although issues and elements related to the concept of ownership would be considered, the term "ownership" would not be used.*

38. *The Working Group agreed to refer to both projects and programs in the definition of VCC, and to define both terms.*

39. *It was agreed that the correct timeline involved first the environmental outcome being verified and then the unit being issued and recorded in a registry. The unit did not exist until it was recorded in a registry.*

b. Scope

40. *The Secretary-General* turned to Section III.B.1 of the Revised Issues Paper. He introduced draft Principle 1 concerning the scope of the instrument and providing that "*These Principles address the private law relating to verified carbon credits*".

41. A Working Group participant observed that it would be helpful to recognise that the Principle was intended to act as guidance, noting that, jurisdictionally, there were a significant number of differential treatments that were likely to come forward.

42. *The Secretary-General* explained that the approach would likely follow what had been done in the context of the UNIDROIT Project on Digital Assets and Private Law, meaning that the idea was not to reinvent the wheel but to provide some basic principles to help clarify the legal nature of the asset and what was needed for a country to trade with it. Thus, he noted, the instrument was not meant to substitute existing regulations, but rather to complement them and it must be compatible with all legal families and legal approaches. The intention was not to dictate to countries how they should trade with VCCs, but rather what they should be wary of when trading with them in light of the legal nature and the specific characteristics of the asset. Therefore, the scope was relatively modest, but at the same time it was likely to be the most useful approach.

43. Others agreed. It was further noted that, while not intended to produce a completely new code, the instrument would address areas where clarification in relation to this particular type of asset and this particular type of market was deemed helpful. In addition, the importance of specifying in the first principle that the instrument was about private law was emphasised, given that this was the scope of the mandate.

44. *The Deputy Secretary-General* reminded the Working Group that the instrument would have principles, but the principles would be accompanied by commentary, which could be very explanatory in terms of what was meant by the general principles. Therefore, she suggested, this should assuage some of the concerns and issues related to the scope, which would be treated in the introductory part allowing people reading the instrument to ascertain the contours of the instrument before reaching Principle 1, which was very broad.

45. *The Secretary-General* added that, while UNIDROIT did not produce regulatory instruments, he would not want to shy away at this stage from regulatory considerations if they were essential. He observed that regulatory matters were of particular importance in this area and the Secretariat was open to having the discussion.

46. The Working Group then discussed whether the instrument should cover VCCs issued by any third party, including State entities, or whether it should it be limited to ICCPs. Participants generally agreed that the instrument should cover all manner of verified units, whether they were issued by State entities or independent third parties. It was observed that, since the purpose was to give legal nature to the credit itself, where it was coming from should not be of great consequence. It was also noted that in some countries, only public entities could have the necessary resources to issue VCCs.

47. Working Group participants also agreed that unverified, *ex ante*, credits should not be addressed by the instrument, which was instead meant to cover the unit after issuance.

<u>Conclusions</u>

48. *The goal of the instrument was not to reinvent the wheel but to provide some basic principles to help clarify the legal nature of the asset and what was needed for a country to trade with it.*

49. *The Working Group agreed that the instrument should cover all manner of verified units, whether they were issued by State entities or independent third parties, but that it should not address unverified ex ante units.*

c. Definitions

50. The discussion moved to Section III.B.2 of the Revised Issues Paper addressing definitions. Working Group participants discussed the difference between an ICCP and a VCC registry. It was clarified that there were two different kinds of registrations—the registration of the project and the registration of the unit. Moreover, the importance of distinguishing between the entity that physically administered the registry and the ICCP was noted. It was observed that, in the future, the registry role may be taken on by market infrastructure players who performed that type of management role in the market already, while the ICCPs would remain separate entities more focused on the actual projects. It was emphasised that as registries grew and held significant value, they were likely to become regulated entities, just like other pieces of the financial market infrastructure. On the other hand, the ICCPs or standard setters would be separate from them, because they were not in the market to act as heavily regulated financial market infrastructure. Thus, even if an ICCP and a VCC registry could be currently run by the same entity, it was observed that it was critically important to distinguish between them as their roles differed.

51. It was further clarified that there were three separate entities: (i) the standard; (ii) the registry; and (iii) the standard or registry administrator. As to the registry, it was noted that it was not a record but an electronic platform with discrete accounts and records of information related to VCCs. The registry was operated by a legal entity which was the standard administrator or the ICCP administrator or government administrator. When questions arose as to whether or not something should or should not be removed from a registry, it was the standard administrator that would make that determination, and often the standard administrator would be the same entity as the registry administrator.

52. Moreover, it was emphasised that the registry did not validate projects. Rather, a project's validation was carried out by an independent validation and verification body, allowing for the project to be listed on a registry, and for credits to then eventually be issued from the registered project. There could not be a credit issued from a project that was not registered on a registry. The registering of an independently validated project the subsequent listing of the verified credits were actions carried out by the registry administrator.

53. *The Secretary-General* noted that, in the context of different types of registries, registry administrators were generally referred to as "registrars", because it was possible to have a registrar with different registries which could be administering them separately. He thus suggested using the term "registrar" unless the Working Group was of the idea that the term should be changed to "registry administrator".

54. The Working Group addressed whether it should consider minimum criteria for ICCPs and third-party verifiers. It was observed that such an effort might risk the Working Group engaging in substantive regulation and that it would create tension with the idea of letting the market define the quality of VCCs, basically leaving at the margin the projects that were not sufficiently good. On the other hand, it was noted that ensuring the existence of quality standards could be necessary to allow the markets to adequately scale. The question identified was whether market operators should be trusted to make the right judgments or whether there should be certain quality criteria in the rules.

55. However, even with rules in place, whether the market could trust the products would depend on enforcement, on how individual jurisdictions would apply those quality standards. One could state that there should be quality, but whether there would be quality would be a matter of supervision.

56. It was recalled that the quality issues tied in with the independent verification. The fact that VCCs were independently verified distinguished them from biodiversity, nature gains or other forms of financial participation in climate projects, such as results-based payments. It was generally observed and agreed that the approach to the drafting of definitions should focus on formulating the functionality of the unit or entity rather than establishing the quality-related aspects.

57. Nonetheless, it was noted that the above reasoning did not necessarily apply to the VCC registry or registrar. Given that the registry was a fundamental retiring institution, Working Group participants noted that it may make perfect sense to have quality criteria to define how these systems should operate. In terms of the quality or the type of standards to apply to the registries and the registry operators, it was observed that this went to the kind of parameters which defined whether the VCC could hold property rights, meaning whether there was sufficient control and individuation of the item which was being held within that registry.

58. It was further observed that, with respect to minimum quality criteria, a starting point would be the first four core carbon principles (CCPs) from the Integrity Council for the Voluntary Carbon Market (ICVCM). These addressed effective governance to ensure transparency, tracking, and robust independent third-party verification. The ICVCM's Assessment Framework provided further details that described what the ICVCM meant by those four CCPs. Working Group participants suggested incorporating by reference the ICVCM CCPs wherever possible in order to avoid creating distinctions without a difference.

59. On the other hand, it was suggested that the ICVCM CCPs were good governance prescriptions of quality of the asset rather than legal principles concerning the existence, registration, and recordation. The *Secretary-General* clarified that if there were standards that the market agreed upon, then the instrument could refer to those standards without revisiting them. In other words, the instrument would refer to the standards of external organisations when those standards referred to matters which were not going to be decided by the Working Group.

60. A distinction was noted between the achievement of a reduction or removal, the verification of that achievement, and then the VCC itself. It was explained that the environmental asset was created upon independent verification and was represented by the MRV data. That data did not create property rights—it was simply data. Instead, the VCC was the recordation of the property right to claim the environmental asset which was in the form of data. The VCC, it was observed, did not represent the achievement of a reduction or removal. It rather represented the right to claim the achievement of a reduction or removal as represented by the MRV data. In other words, the VCC was just the property right to claim the environmental asset, it was not the environmental asset's representation—that was the MRV data that substantiated the achievement. It was suggested that the relevant question was what the minimum requirements of the registry were to record the right to claim the MRV data and what were the minimum requirements to ensure the full chain auditability of that MRV data to the point of retirement.

61. Relatedly, it was observed that the registry was often operated by a private entity such as APX and that the distinction between the registry administrator, who decided what could be registered and what could not, and the registry operator, who operated the core of the electronics behind the registry, was quite important. APX was the registry operator of many of the registries, including the American Carbon Registry (ACR), Verra, and the Gold Standard. The ACR, Verra and Gold Standard were instead the administrators deciding what was registered.

62. As to what other terms should be defined, it was noted that the instrument would only define terms that were used within the principles. That would be the criteria for having a definition—that the term was going to form part of the text of another principle.

Conclusions

63. *The Working Group agreed that it was critically important to distinguish between ICCPs and VCC registries since their roles differed.*

64. *It was generally observed and agreed that the approach to the drafting of definitions should focus on formulating the functionality of the thing rather than establishing quality related aspects.*

65. *With respect to VCC registries, however, the Working Group observed that it may be desirable to have quality criteria to define how these systems should operate, focusing on the kind of parameters which defined whether the VCC could hold property rights.*

d. VCCs can be the subject of proprietary rights

66. *The Secretary-General* moved the discussion to Section III.B.3 of the Issues Paper and draft Principle 3, which provided that "*A verified carbon credit can be the subject of proprietary rights*".

67. It was explained that the drafting of proposed Principle 3 tracked what had been done in the UNIDROIT Principles on Digital Assets and Private Law. In that context, the word "subject" was used, but the word "object" could also be used. Moreover, the term "proprietary rights" was being used to be jurisdiction and legal culture neutral and it be included in the commentary that it included rights with proprietary effects.

68. It was proposed that the VCC was the property right to claim the underlying environmental benefit, which was represented by the MRV data. Thus, a VCC buyer purchased that exclusive claim of ownership, all rights, title and interest, as well as a license to access, use and claim the MRV data, this being the underlying asset.

69. In response it was noted that, in many jurisdictions, information could not be property, it was simply data. For that data to be property, there had to be some way of controlling the data or making it individuated. Thus, when a VCC was said to be capable of being the subject of proprietary rights, what was meant was that the data in the form of a VCC, the way it had been defined, could be the subject of proprietary rights. The mere fact that a tonne of carbon had come out of the ground in a particular way was not in itself the subject of proprietary rights. Rather, the conclusion that a VCC could be the subject of proprietary rights could be reached because of the issuance, the registration, the serial number and everything outlined in the Revised Issues Paper.

70. A Working Group participant suggested broadening the proposed Principle to read "*a verified carbon credit has proprietary rights associated with it*". It was noted that this was the kind of certainty the market needed, particularly in light of a recent adverse investor-State arbitration decision.[1] In particular, the enforceability against others, despite the fact that there were restrictions on the exclusive nature of the right, was quite important. It was further observed that the term "cause of action" was seen as controversial, but "enforceable against", as opposed to "cause of action" and "remedies", could be useful. Similarly, the importance of being able to transfer that proprietary right to someone else was of critical importance.

71. It was observed that that there was no uncertainty around the fact that a "legitimate" owner of a VCC should have some form of recourse in law against someone who interfered with their enjoyment of the VCC. However, it then became a jurisdiction-specific matter as to how this was done in practice and who had the right to sue whom, the measure of the recourse, and so on. It was

---

[1] See *Koch Industries, Inc and Koch Supply & Trading, LP v. Canada*, ICSID Case No. ARB/20/52, Award (13 March 2024), available at https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C9375/DS19498_En.pdf

suggested that, in the context of the instrument subject to discussion, it was the point of principle that mattered. Thus, the term "cause of action" might require some explanation in the commentary but went in the right direction. The need to be neutral was emphasised, as was the need to explain functionally what it was that the instrument was trying to achieve. Other Working Group participants agreed and suggested use of the term "legal recourse".

72. The discussion then turned to consideration of the essential features of things that had proprietary rights. The Working Group was reminded that, following the last session and subsequent intersessional work, the agreed approach was to say that if a VCC had some very basic characteristics that enabled it to be the subject of proprietary rights, meaning that it was individuated, that it could be controlled, and that there was rivalrousness, then it could be said that a VCC could be the subject of proprietary rights. It was added, however, that a useful analogy to patents had been suggested, patents being other things that were also registered and that, once registered, were seen as being able to be the subject of proprietary rights.

73. Other participants agreed with the patent analogy. It was noted that it would be good for the experts and those who did this in the market to contemplate whether it was appropriate to consider the moment of registration as the moment in which the VCC came into existence as a subject of property. If it turned out that the coming into existence was vitiated in some way, because of fraud or perhaps the applicable requirements were not met, that would be grounds for voiding the VCC and annulling it effectively. With patents, the moment when effectively a registration occurred was the moment when the law recognised the existence of the proprietary right.

74. Another analogy that was offered was to money or currency on the basis that, unlike patents, VCCs were standardised and money was also "registered" in a bank account. However, others cautioned against use of the analogy since, from a personal property point of view, money was either tangibles (such as notes and coins), or it was rights against another person, such as a bank. Even CBDCs, depending on how they were issued, could either be rights against another person or they could be digital assets. If, however, the Group was satisfied that VCCs could be the subject of proprietary rights on the basis of the essential features of property that they possessed, then there was no need to go any further. Instead, the Group would need to consider what flowed from that, such as when the property right arose, what happened when security was taken over it, and what needed to be said about registries.

75. Regarding the concepts of excludability and control, it was suggested that it be stipulated somewhere in the document that control did not have to be exhaustive, that there could be limits on that right of control as was provided by the ICCPs themselves, meaning that one had to do certain things to maintain those rights. For example, if there was fraud or gross negligence found in the process of creating the right, there was the possibility of revocation of that right.

76. The Working Group discussed the relevance of the *Ainsworth* test[2] and its inclusion of a permanence or stability element in the essential features of property. It was clarified that the *Ainsworth* test was a test of what was a proprietary right, not of what could be the object of a proprietary right. While it had some useful elements, it addressed something different—i.e., whether a short-term license could be a property right. With VCCs, while they were not permanent like land, they did possess a degree of permanence given that a VCC was something that existed until it was retired. Others challenged the notion that any degree of permanence was required, clarifying that the rules just required the time to be certain, not that it had to be long.

77. *The representative of the Asian Development Bank (ADB)* referred to work that the ADB was doing in Fiji, noting that in some jurisdictions it was difficult to separate what was called a carbon sequestration right, which was basically a title to the reduction that took place in a plot of land. This

[2] National Provincial Bank Ltd v Ainsworth [1965].

issue was specific to forestry and nature-based projects because in this category of projects the activity of effectively capturing the emissions occurred on the land itself. And in some jurisdictions, the title of land gave the owner a certain type of right and that type of right was restricted. By introducing a carbon sequestration right, a new type of right was created which was not necessarily recognised by the local jurisdiction. Thus, it was important to have a definition in the legislation so that it was clear to everybody who owned the right to sequestrate. And as an ancillary sort of benefit, the owner of the carbon sequestration right could register a lien over the land and impose restrictions on the use of the land, which helped in terms of the permanency.

78. *The representative of the ADB* further noted that, though not strictly addressing the legal nature of the VCCs, it would be advisable to mention this subset of projects in the instrument given that one of the purposes of the project was to create a security on ownership and clarity for the market and forestry projects were very important for a number of countries, particularly developing countries. He stated that Fiji already had a definition in the Climate Change Act and Australia also had legislation on this very point.

79. In response it was observed that carbon sequestration rights were a way of creating a right relating to land that was less than ownership, but which could be traded. It was opined that carbon sequestration rights could be relevant in two ways to the UNIDROIT VCCs project. First, it could be noted in the introduction that they were not VCCs, but something that one needed to think about. Second, it was questioned whether in the context of these types of projects there had to be some proof that one held a carbon sequestration right before one could obtain a VCC. If that was the case, then the details may not be so important because they just became part of the background to the VCC, as verified by an independent third party.

80. It was clarified that carbon removal rights were definitely VCCs, though contractually they were treated slightly differently. It was suggested that their relevance may be in relation to the criteria pertaining to exclusivity as it may be that some of the removal rights in and around sequestration, whether it be biological or geological, were conditional upon a government or landholder providing some form of concession. It was indicated that the definition of the proprietary elements to be included in the instrument should be broad enough to include such a non-100% exclusivity to accommodate removal types of VCCs, both nature-based and geological sequestration.

81. It was nonetheless observed that the discussions around nature-based projects had much more to do with the project than with the unit that came out of it. In other words, it was simply about what one needed to do in order to get the project off the ground, which might include obtaining consents and authorisations, whether governmental or private. It was further observed that these questions were not necessarily relevant to the exercise at hand if the focus was on VCCs once issued.

82. The importance of exclusivity was raised, since no one was going to invest unless they had the exclusive title to that carbon credit. It was emphasised that investments in conservation were hindered by uncertainties over ownership or title to VCCs, including the risk that the government was going to come in and say that the right belonged to the government because the responsibility of GHG abatement or climate mitigation was a government responsibility.

83. However, it was observed that the simple fact that there were government related or other conditions that applied to the project prior to it becoming a VCC should not mean that there was no proprietary right in the VCC. The problem, it was explained, was not that one does not exclusively hold the VCC but rather that in recent determinations in investor-State arbitration, the lack of 100%

unconditional exclusive rights was found to be determinative that there was no property right in the related emissions instrument.[3]

84. Other participants agreed, noting that exclusive right to something is different from the restricted use of that thing. Exclusivity only meant that the person with the proprietary rights had the right to direct exclusive right to the benefit—i.e., exclusive right to whatever those rights were within that thing. It was added that it would be helpful to clarify that, when referring to exclusivity, the instrument was referring to exclusivity from a purely private law perspective and therefore any public law restrictions did not affect the private law exclusivity. Thus, the fact that governments could expropriate one's land as a matter of public law did not mean that one had no exclusive control of that land as a matter of private law.

85. Working Group participants generally agreed that a VCC's capability of being retired was not essential to the VCC being considered rivalrous. It was noted that retirement was part of a VCC's life cycle. A holder was not compelled to retire a VCC—there was no deadline and, unlike compliance units in some compliance schemes, VCCs did not expire. The Working Group also agreed that the ability to independently sue irrespective of contractual privilege was not a necessary feature of property.

86. *The Secretary-General* noted that a question he had received was whether VCCs could be considered financial instruments or assets, in other words whether regulations applied. In response, Working Group participants observed that whether VCCs were financial instruments was usually a matter of regulatory law, and it depended on how they were defined in the particular jurisdiction.

87. *The representative of the World Bank* added that this was a matter being addressed by the International Organization of Securities Commissions (IOSCO), which was looking at drafting best practices for financial regulators. A Working Group participant shared that Brazil had created a national code of economic activity for the production of carbon, meaning that the production of carbon was now considered an economic activity recognised under the Brazilian law. It was observed that, although it was beyond the scope of the UNIDROIT VCCs project to determine whether a VCC was a financial instrument, if the Working Group stated that a VCC could be the subject of proprietary rights, then it could be a financial instrument, and then it was up to each jurisdiction to define it as such.

88. A question was raised concerning the interaction between the concept of rivalrousness (i.e., only one person being able to benefit from the unit) and the corresponding adjustments envisioned under Article 6 of the Paris Agreement. *The representative of the World Bank* supported the discussion, noting that Côte d'Ivoire had said that a transaction between Rabobank and Microsoft involving the transfer of VCCs was null because Côte d'Ivoire already had an agreement in place with the World Bank for forested credits.[4]

89. However, others stressed the need to distinguish between the specific issue in the Côte d'Ivoire case, which seemed to be related to property rights, and the broader concept of corresponding adjustments. It was noted that the problem in the Côte d'Ivoire case was about land ownership and the right to benefit from the property. This highlighted the importance of due diligence in projects to ensure that the appropriate parties had the rights to generate credits.

90. Several Working Group participants observed that, while an important feature of VCMs, corresponding adjustments did not necessarily bear on the private law characterisation of VCCs. It

---

[3] See *Koch Industries, Inc and Koch Supply & Trading, LP v. Canada*, ICSID Case No. ARB/20/52, Award (13 March 2024), available at https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C9375/DS19498_En.pdf

[4] See *Cote d'Ivoire asks Rabobank to suspend carbon credit activities in country amid numerous allegations*, Carbon Pulse, 21 April 2024, available at https://carbon-pulse.com/279909/.

was noted that the application of corresponding adjustments could be seen as just another question on the list of things to consider when entering into a sound purchase arrangement, but not something that went to the heart of the subject matter of that purchase because it did not actually impact the thing. It was rather just the environment in which the thing was traded.

91. On the other hand, it was noted that the corresponding adjustments system could be useful as a drafting matter and something which could be mentioned in the instrument at the end of the rivalrousness discussion, to underline that the whole framework, or a significant part of the framework around VCCs, was really built with the understanding that VCC were rivalrous. Indeed, the corresponding adjustments mechanism was premised on the idea that carbon credits were rivalrous assets, since the whole mechanism for corresponding adjustments was aimed at effectively avoiding double counting of carbon credits. Thus, the usefulness of mentioning Article 6 of the Paris Agreement and the adjustments mechanism would be after a discussion on rivalrousness as one of the key attributes for VCCs being capable of being property.

92. The operation of the corresponding adjustments mechanism was clarified. It was explained that VCCs could be issued by an independent platform like Verra, Puro, etc. but there were also platforms which were being developed under the Paris Agreement pursuant to Articles 6.4 and 6.2. In particular, Article 6.4 was a mechanism overseen by the United Nations, wherein a country could authorise a project to issue carbon credits from certain methodologies. Those methodologies were in the process of being approved, but they were likely to be similar to the kinds of methodologies that existed under the ICCPs. When those credits came into existence, anybody could buy them—it did not have to be another government.

93. With respect to the underlying project, the project was based within a host country. The question was then whether that project was of a type that fell within the current carbon accounting of that host country. If it was, then the reduction or removal of the carbon came off the host country's carbon account. The resulting VCC unit could be voluntarily bought by a private entity not for a compliance purpose, and what that purchase did was fund the reduction in the host country, and the host country would then take that carbon off its Nationally Determined Contributions (NDC).

94. However, that unit could also be bought and submitted against, for example, a compliance scheme in another country, in which case it would be used in the buyer's host country rather than in the project's host country. If that was the case, then the project's host country had to add it back—it had to make a corresponding adjustment to its own carbon account to ensure that two host countries did not both count the benefit of that carbon removal or reduction. The VCM, by definition, was not for the purpose of reducing the buyer's country's compliance obligations. However, it was possible to retrospectively get a corresponding adjustment on a unit. This was a process, and relevant protocols were currently being developed.

95. It was thus concluded that including the concept of corresponding adjustments in the instrument was important, as otherwise there was a risk of somebody stating that, if no corresponding adjustment was made, then the rivalrousness box was not being checked, which was incorrect.

96. The difference between double-claiming and double-counting was emphasised. Companies retired credits rather than countries. Thus, a company headquartered in a country could claim the same credit, but they were not necessarily counting it. It was further added that the distinction between double-counting and double-claiming was the difference between public international law in terms of the accounting for the environmental benefits, versus the property rights of the VCC. It was noted that corresponding adjustments were a government-to-government issue associated with publicly owned assets, in terms of a government's ability to claim the carbon reduction against its NDC versus another government's ability to claim it against their NDC. A VCC, on the other hand,

was a private instrument which was distinct from the environmental benefit that was being claimed. It did not have jurisdictional existence within the developing country in the VCM. The way that the VCM currently worked was that the jurisdiction of the VCC was the jurisdiction of the registry. From a government-to-government perspective, double-claiming versus double-counting was a very important distinction; however, for private international law purposes, the VCC was independent. It did not have a local jurisdictional existence. It existed wherever the registry was recording that property right. The environmental benefit was distinct, and to that point, when a private investor or a company was retiring the VCC, what they were retiring was that emission reduction or avoidance or removal that had been achieved within a particular country. They were not exporting the VCC from that country, they were rather claiming the right to own the achievement of the benefit that occurred in that country. That was the distinction between double-counting and double-claiming. There were two parties claiming the environmental benefit, but only one party could claim ownership of the environmental benefit—i.e., the private entity.

97. The meaning of the term "rivalrous" was further clarified. It was stressed that it did not refer to the use of the VCC, but it rather was about one person having it at a time. A question was raised to whether corresponding adjustments only applied to units issued by governments or also to units issued by private entities. In response, it was explained that, firstly, corresponding adjustments were a function and a requirement of the Paris Agreement and the parties to the Paris Agreement were countries. Secondly, it was possible for a private platform, i.e., an ICCP, to implement a project within a host country that was a party to the Paris Agreement and that host country accounted for that carbon within its NDC.

Conclusions

98. *Participants generally agreed that the control and exclusivity prong did not need to be exhaustive and that there could be limits on that right of control as stipulated by the ICCPs themselves. The exclusive right to something was different from the restricted use of that thing, and the instrument would refer to exclusivity from a private law perspective.*

99. *The Working Group generally agreed that a VCC's capability of being retired was not essential to the VCC being considered rivalrous.*

100. *The Working Group generally agreed that reference to the corresponding adjustments system could be useful as a drafting matter to underline the rivalrous nature of VCCs.*

e. Conflicts of Law

101. *The Secretary-General* shifted the discussion to Section III.C of the Revised Issues Paper, on Conflicts of Law.

102. *The representative of the HCCH* took the floor noting that an overriding discussion concerned the law applicable to determine the legal nature of VCCs. She encouraged the Working Group to review section III.G of the UNCITRAL/UNIDROIT Joint Study, which had been drafted by the HCCH Permanent Bureau (PB).[5] She noted that the specific conclusion that was reached by the HCCH PB following input from its Member States was that identifying the relevant objective connecting factors that could point to the applicable law for the various transactions occurring in the life cycle of VCCs would contribute to greater clarity and certainty in the VCMs. In addition, further work in this area could provide answers to these private international law questions, including those related to the party autonomy role, applicable law, and jurisdiction in the case of disputes arising from the creation

[5] See *UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits issued by independent carbon standard setters*, A/CN.9/1191, 14 March 2024, available at https://uncitral.un.org/sites/uncitral.un.org/files/1191_advance_copy_1.pdf.

and cross-border circulation of VCCs. Thus, she noted, the HCCH believed that considerable work remained to be done in this field to identify the relevant objective connecting factors specific to the VCMs from a private international law point of view. With respect to identifying solutions specifically on conflict of laws, the HCCH representative emphasised that it was indispensable to consult with the HCCH's membership so that objective connecting factors could be identified indicating common grounds that respected a diversity of legal systems.

103. *The representative of the HCCH*, in response to the question raised in the revised Issues Paper, observed that Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law aimed for a rule that applied broadly, while certain HCCH Member States had noted that it would be preferable to look at specific categories of assets, such as VCCs. Therefore, she noted that the HCCH's view as an institutional observer was that, while the approach to applicable law adopted in Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law could be a starting point as inspiration, at the moment it was of little guidance to the applicable law issues arising in relation to VCCs.

104. She recalled that the HCCH PB had sought and obtained a mandate to contribute to the work of UNIDROIT and referred the Working Group to the HCCH PB's preliminary document number 7 that was presented before the HCCH Council on General Affairs and Policy (CGAP),[6] and addressed the further work that could be performed by the HCCH. The HCCH representative reiterated the HCCH's availability to support the work of UNIDROIT and noted that, from the HCCH's perspective, the applicable law rule and private international law rules would need to be discussed in light of cross-border use cases that might be slightly different and not entirely dependent on the discussion on legal nature, and suggested that such work could carry on in parallel to the Working Group discussing the specific issues that would go into the principles being drafted.

105. *The Secretary-General* expressed gratitude for the HCCH's offer to collaborate. He agreed that significant work needed to be done on applicable law and on conflicts of laws in this area, and noted that the Working Group had taken no position at all at this stage. He encouraged the Working Group's discussion, noting the importance of applicable law matters especially given that VCCs would likely be traded across borders. *The Deputy Secretary-General* observed that both applicable law issues and jurisdiction would be important for this particular project, and both should be discussed in greater detail.

106. The difference between VCCs and digital assets was noted, in that the UNIDROIT Principles on Digital Assets and Private Law provided that traditional connecting factors would be futile in the absence of the issuer. However, in the context of VCCs, there were issuers. In digital assets there was an issue of anonymity of holders which was not present in VCCs.

107. It was also observed that VCCs raised a number of interesting questions in terms of applicable law because they were not necessarily all issued in the same format. While most VCCs were in central registries, some were on the blockchain, and some could even be in paper format. This raised a fundamental question: should the same rules apply to all types of VCCs, or should treatment be differentiated according to the way in which VCCs are recorded? If one were to look at central registries, then the place of the central registry could be identified as an objective connecting factor. However, that approach would not work for VCCs issued on a blockchain.

108. *The representative of the HCCH* referred the Group to the UK Law Commission Report issued in June 2023 and specifically to paragraph 4.74 which referred to the VCC market and how it

---

[6] HCCH, *Proposal for Exploratory Work: Private International Law Issues related to Carbon Markets*, Prel. Doc. No. 7 REV March 2024, available at https://assets.hcch.net/docs/155fc289-90a8-4a1c-8245-8202fd8f97f1.pdf.

matured[7]. She stated that the UK had come to the conclusion that VCCs may need to be considered on a case-by-case basis. Thus, she mentioned that even if the VCCs were issued only in digital or paper form, the location of the registry may not be the automatic determinant of the applicable law.

109. Another expert noted that the reference to paragraph 4.74 of the UK Law Commission Report was not about conflict of laws but rather about whether VCCs could be the subject of proprietary rights. The UK Law Commission had released a consultation paper on conflict of laws in relation to digital assets, which did not refer to VCCs. Experts in the room agreed that, reading the UK Law Commission report, it would be very useful to have more work done in relation to the law applicable to VCCs.

110. While others agreed that the location of the registry would not necessarily be the solution to all problems of applicable law, a question was raised as to whether, for example, the location of the project would be a better determinant since this appeared to be somewhat accidental. Other Working Group participants agreed that the location of the project would not be relevant to the determination of applicable law, since the host country was separate from the unit itself.

111. It was noted that the relevant focus should be on the law applicable to the perfection of the transfer of title which would entail determination of the actual physical location where the unit was sitting. With respect to the location of the registry, however, it was observed that registries could be anywhere and could be moved around to where electricity was cheap. Then there was the place of incorporation of the registry and the place of incorporation of the people who were operating the registry (such as data managers, etc.). Thus, it was asked, what was the location of the unit, and what was the law that affected the perfection of title transfer?

112. In response, it was noted that when discussing the registry, the focus was on the registrar—i.e., the entity that managed the registry and where they were located. It was observed that that could be a sensible choice at least where there was a centralised registry since it did not create the possibility of different legal systems giving different answers. Such a scenario would somewhat impact the concept of rivalrousness, as the same dispute could be litigated in two courts. If the two courts took different views of the connecting factors, and they pointed to different laws, then one could end up with the end result where court A said that A had the VCC and court B said that B had the VCC, in which case the VCC would not really be rivalrous anymore. In addition, it was noted that the discussion would also need to be linked to NDCs, because the private law decisions of certain courts might not carry over to the public international law realm.

113. It was recalled that sale purchase agreements were typically governed by English or New York law and, typically, as a matter of those laws, they would point to the location of the registrar, i.e., Washington, DC for Verra, or Switzerland for Gold Standard. In practice, one would look to the governing law of the arrangement first and then move from there as to which laws would be relevant in respect to the location of the asset that was being transferred. While recognizing that as more registries were coming online the discussion would become more complex, it was noted that, at the moment, the bulk of the volume was in only a certain handful of registries and the analysis was therefore fairly settled.

114. It was however emphasised that, while the market may have come up with an opinion and a possible solution by selecting English law and New York law, the point of private international law was that it was not possible to know whether these choices were of any relevance and valid for the purposes of the proprietary law analysis. If the Group concluded that one could have proprietary rights in VCCs, then, while quite unusual, it would be possible to choose the law that was applicable

---

[7] UK Law Commission, *Digital Assets: Final Report*,27 June 2023, available at https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2023/06/Final-digital-assets-report-FOR-WEBSITE-2.pdf.

to property rights, as was done in the context of the UNDIROIT Principles on Digital Assets and Private Law. It was indeed noted that the Hague Intermediated Securities Convention allowed a limited choice of law. It was further explained that the market may be wrong-footed by believing that their choice of law would be enforceable in court. In court, the question would be asked, when it came to who was the owner of a VCC, which law applies? And the fact that English law was chosen in the underlying documents did not necessarily mean that this choice of law was valid and recognised for the property law issues. For that, he noted, there was a need for a legal rule that acknowledged and allowed such a choice of law, a principle of party autonomy, and that was what was currently lacking; there was a big void that needed to be urgently filled.

115. A further distinction was drawn between the governing law of the document, which was a matter of choice, the location of the asset, and issues of perfection of title transfer. With respect to the former, there would be a document which would likely be governed by English or New York law, these being the two most common choices applicable to documents for international transactions. With respect to the latter, i.e., the law of where the unit was, with respect to VCCs issued by Verra it would be the place of the registrar, i.e., Washington, DC, and with respect to VCCs issued by Gold Standard it would be Switzerland. A query was raised as to would the alternative would be if not the place of the registrar.

116. In response, it was acknowledged that, while the place of the registrar may be the most important connecting factor, it might not be the only solution applicable in all instances. For example, one could opt for a full principle of party autonomy. However, it would need to be discussed and a rule would need to be developed; for example, a property right under English law could not be created simply by including a clause in a document that provided for the application of English law. It was also noted that there were many questions on where the registry actually was, and which precise point should be used, in addition to what would happen if there was no such registry but the VCC was on a blockchain.

117. It was suggested that it might be useful for purposes of the instrument to identify the applicable law for the various stages of the life cycle of a VCC. The Group had discussed the geospatial location of the project and its registration as well as the geospatial location of the achievement of the benefit, which was the project's location and the location and jurisdictional law of the MRV data, which was the host country. The Group had also discussed the potential location of the VCC, which was possibly the registrar, possibly the choice of law of the transaction or, alternately, the location of the holder, the original owner, in terms of its incorporation.

118. *The representative of the HCCH* confirmed that the approach being taken at the HCCH was to go step by step in the VCC life cycle. The HCCH had already received some feedback as to where to focus, that being the choice of law rules in specific areas, such as: (i) the issuance and creation of VCCs in accordance with relevant standards, and therefore the legal treatment of the nature of VCCs; (ii) where VCCs were traded in secondary markets; (iii) the reversals and cancellations of such VCCs; and (iv) the retirements of the VCCs at the appropriate registry. The HCCH representative also agreed that, based on the feedback received, whether the choice of law clause included in certain agreements would have bearing did not seem to have global consensus. The HCCH representative also stressed that the HCCH was the organisation with the mandate, and therefore, the constituency and the expertise to talk about this, and indeed, that was what they were trying to do with their members. She reiterated, whatever the outcome, that that exercise was intended to contribute to UNIDROIT's VCC project, as explicitly mandated by the HCCH CGAP.

Conclusions

119. *The Working Group agreed that identifying the relevant objective connecting factors that could point to the applicable law for the various transactions occurring in the life cycle of VCCs would contribute to greater clarity and certainty in the VCM.*

120. *The HCCH PB had sought and obtained a mandate to contribute to the work of UNIDROIT and this section of the instrument would be developed in close cooperation with the HCCH.*

f. Recordation and issuance

121. *The Deputy Secretary-General* turned the discussion to Section III.D of the Revised Issues Paper on recordation and issuance.

122. A Working Group participant opened the discussion by asking the Group (i) whether the serial number that was applied to VCCs was a unique serial number; and (ii) whether the Group needed to use the word "recordation" because it was used in the market and by the industry—if that was not the case, she suggested using the term "registration in the VCC registrar". The relationship between a transfer of a VCC in the books of the registry and the transfer of title or the transfer of proprietary rights was also raised for discussion. It was suggested that one way of looking at this would be to state that a transfer in the registry would give rise to a presumption of title. Another option would be to leave the determination of whether there was a transfer of title or transfer of proprietary rights to the applicable law. Consideration of these issues would be relevant to custody and situations where the person who was registered in the registry against whose name the VCC was registered might not be the person who had proprietary rights in the VCC.

123. With respect to the uniqueness of a VCC's serial number, it was noted that each unit was provided with a number that was unique within the registry where that unit sat. Even at a future date, should the registries be interconnected, like on the CAD Trust, one would be able to ascertain the origin of the unit. For example, the unit would be marked as a Verra unit with the identifier and it would also link back to the project so that one could identify where the unit came from.

124. As to use of the term "recordation" it was generally agreed that this was not a term used by the market or industry. A question was raised as to why there had to be a difference between recording and issuance, since these were steps that happened at the same time—when the unit was issued it was recorded on a registry.

125. In response, it was observed that the creation of the unit was the active issuance, but because it was a digital register or digital database, there was no evidence that the act of issuance had occurred until the serial numbered units were referred to in the relevant account balance. Thus, the act of issuance led to the serial numbers being applied to evidence the fact that issuance had happened. The serial numbers applied to VCCs were not standardised across all of the ICCPs. Rather, each ICCP had its own nomenclature and methodology. If, for example, a unit was going to be cancelled in the Verra registry and reissued through some kind of mutual recognition in the Gold Standard registry, then the Gold Standard would use their own numbering system.

126. It was also noted that, although the two things happened at essentially the same time, there was first an instruction to issue, and then there was the recording of the item within the registry account. It was asked whether the individualisation for the purposes of property would happen with the provision of the unique serial identification number. In response, it was observed that the issuance came from the ICCP as the issuer, and then the registration by the registrar, which may or may not be the same body, but it was a different act, and they happened at the same time. It was suggested that individualisation came from the serial number.

127. A participant recalled the purpose of the project—i.e., to analyse the legal nature of VCCs with the aim of harmonisation in order to support the flow of funding to sustainable projects globally. With that in mind, it was suggested that, from a trading and value perspective, one started caring about the unit the moment that it was reflected in a registry account, since this was when the account holder had the ability to either transfer or retire the VCC.

Conclusions

128. *The Working Group agreed not to use the term "recordation".*

129. *The Working Group agreed that the individualisation of the unit occurred with the provision of the unique serial identification number.*

g. Transfer of title

130. *The Secretary-General* introduced Section III.E.1 of the Revised Issues Paper on transfer of title, noting that the passage of title depended on the particular system and the applicable law.

131. It was queried when title would pass if the parties entered into a sale and purchase agreement where the buyer paid in advance for VCCs that would be delivered at a future date. Under English law it was possible to separate title, transfer, delivery, and risk into separate elements within the contract. The question was not whether title could be transferred, but whether it would be enforceable. One could say in the contract that title transferred at the moment of payment, but enforcing that right would likely be very difficult.

132. It was noted that, while the above applied to the sale of goods, it was less clear whether it would also apply to other types of assets like VCCs. Three possible approaches were suggested: (i) it could be possible to say that title could pass whenever the parties wanted, but it could not pass before the VCC had been registered in somebody else's name; (ii) if something was transferred in someone's name, that was *prima facie* evidence of title, but evidence could be brought to show otherwise; and (iii) the question of when title transferred could be left to the applicable law.

133. A fourth possible approach was suggested: what appeared on the face of a registry assumed the legal significance of a priority point or served to provide third-party effectiveness to whatever had happened. Thus, as an illustration, there could be a situation where the VCCs were in the account of Person A. Person A then entered into an agreement to sell those VCCs to Person B but did not actually transfer the VCCs to the account of Person B. Then Person A sold those same VCCs again to Person C, and this time they did transfer to Person C's account. On the face of the registry, the VCCs now appeared to have been transferred to Person C. A possibility in this scenario would be to not look to the registry as *prima facie* evidence but to say that the register served as public notice. Once Person C had the VCCs in their account, this made their right effective against any third parties, and they could defeat any competing claim from Person B.

134. Caution was urged in the way the term "title" was used. What was really meant by saying that a VCC registry was not a registry of title was that the VCC registry was not guaranteeing title. Likewise, when a registry said that registration was *prima facie* title, it was only *prima facie* title vis-à-vis themselves. The registry did not have the ability to tell anyone that their registration was *prima facie* title vis-à-vis the rest of the world. That was a matter of law.

135. In response, it was clarified that the term "title" was used as shorthand not to mean ownership in particular, or any specific type of proprietary right. Rather, the word "title" referred to the creation or transfer of a proprietary right, or a right with proprietary effect in the asset. This could be a security right, ownership, or another kind of proprietary right—in any case, rights with third-party effects.

h. Fraud and innocent acquisition

136. The discussion moved to Section III.E.2 of the Revised Issues Paper, covering fraud and innocent acquisition.

137. With respect to the innocent acquisition rule, it was observed that this was something the Group might consider recommending, even if the instrument left the question of when proprietary rights transferred to national law. The rule represented one way to help the markets scale since, in the absence of a title register, it would allow buyers to forego extensive investigations to find out whether the person who was selling the VCC owned it. It was suggested that one possible choice (as had been adopted in the context of the UNIDROIT Principles on Digital Assets and Private Law) was to say that a buyer would take free of any defects in title of the seller subject to various criteria, including that the buyer be a good faith buyer and be registered as the transferee.

138. However, doubts were expressed as to whether the innocent acquisition rule would facilitate trade and whether it was a desirable way of scaling the market. It was noted that there was no comparable approach to stolen goods and a question was raised as to whether treating VCCs more like negotiable instruments than receivables was appropriate. Further discussion was encouraged.

139. In response, it was explained that, in property law terms, one of two different forms of security could be favoured: (i) the true owner could be favoured, an approach called "static security"; or (ii) the *bona fide* purchaser could be favoured, known as "dynamic security". If the objective was a vibrant market with many transactions where buyers did not have to make a lot of checks, then the choice would be a rule that favoured dynamic security. It was further explained that such a rule would not be overly biased in favour of buyers and detrimental to true owners if there was the possibility of referring to an intermediary in the case of suspected fraud and requesting the suspension of trading pending a resolution. If, however, this was not possible, then perhaps the rule could go too far in facilitating transfers.

140. It was observed that, in practice, jurisdictions tended to adopt an approach that was somewhere in the middle of the two extremes that had been identified, depending on the type of asset and type of market. It was thus suggested that one approach was to consider a few possible innocent acquisition rules with different degrees, in order to strike a balance at different points of a spectrum, and to present them to market participants for their input. Indeed, the importance of having a strong dialogue with market participants, market makers and registries was underscored. It was opined that it was not possible to draft an innocent acquisition rule just based on pure theory. Rather, an innocent acquisition rule had to either reflect what the market was already doing or maybe in some cases be built to achieve future goals as to market development.

141. The issue of whether the instrument should address the buyer-seller contract was raised, including whether the Group should consider addressing what the buyer-seller contract should say or what terms in that contract should not be excludable, or whether instead these issues should be left to the market.

142. In response it was noted that perhaps a better approach would be to address it the other way around—rather than commenting on what should go into those contracts, perhaps the Group could address what was currently in the contracts. By way of example, it was explained that the contracts were phrased as sale and purchase agreements, as the seller transferring title, and they dealt with things like encumbrances, delivery, transfer.

Conclusion

143. *The Working Group agreed to consider a few possible innocent acquisition rules with different degrees and to present them to market participants for consideration.*

i. Retirement, reversal and cancellation

144. The discussion moved to Section III.F of the Revised Issues Paper, on retirement, reversal and cancellation.

145. It was observed that retirement was a very different concept with respect to reversal and cancellation. Retirement was part of the normal life cycle of the VCC and could also go towards some of the features of whether VCCs could be subject to proprietary rights, because through retirement the VCC could be consumed. On the other hand, the concepts of reversal and cancellation were governed by the terms and conditions of the register or the registry. They concerned the quality of the unit rather than the nature of the unit.

146. Reversal was linked to the physical nature of the underlying project and it happened after the VCC was issued. It was due to unintentional, usually natural *force majeure* events. The illustrative example was a unit issued in respect of a forest land, and then that forest burned down, meaning that the benefit reversed. The ICCPs and registries accommodated for this through what was known as a buffer pool—i.e., by holding back and not issuing a percentage of the VCCs. Thus, reversal was premised on something happening post-issuance resulting in more VCCs being issued than the benefit of the underlying project, so some of those VCCs would then be reversed.

147. On the other hand, cancellation usually occurred when there was fraud. It could happen if something transpired at a later date, which meant that the VCC would not have been issued in the first place, had it been known earlier.

148. A question was raised as to whether the instrument should address what would occur in the event that the buffer pool was exhausted. For example, whether there should be a rule that, in such a scenario, any reversals be shared pro rata or whether there was any industry practice of selling different priority-tier carbon credits. As to the consequences of a reversal or cancellation, it was noted that there would no longer be any proprietary rights, as the VCC no longer existed.

149. It was also suggested that one way of addressing reversal and cancellation would be to consider who held the responsibility for compensation. Some ICCPs, such as Verra, operated on the basis that a buyer could have a claim where at least the reversal or cancellation was the result of problems with the representations and warranties. But this seemed peculiar to Verra and not common among ICCPs. Doubts were expressed as to whether there should be a default compensation scheme and it was suggested that perhaps the market should work out for itself that some schemes were more valuable than others because, in the event of reversal or cancellation, there would be a right of recourse, and other schemes would instead operate on the basis of buyer beware.

150. It was further observed that the question of liability, or where did the person whose credit had been cancelled obtained compensation from, was a matter of contract. As to reversal, it was noted that it might be said that there was some kind of proprietary right in the buffer pool. If, however, that was not the case, then it would just be a matter of what was provided in the contract and the Group would have to carefully consider whether to provide a set of default contract rules in this respect. It was further noted that it would be important to clarify who performed the function of reversing or cancelling a credit (e.g., whether it was the registry operator, the ICCP, or a different entity).

151. In response, the distinction between reversal on the one hand and revocation or cancellation on the other, was recalled. It was noted that revocation (or cancellation) occurred predominantly in the case of fraud. It was explained that there had been instances where an external third party raised issues about a project or some aspect of the mitigation outcome itself and the verifier was then brought in to comment or address the issue. The registry administrator usually suspended the credits pending resolution. The issue would normally not be due to the science behind the methodology, but

rather to compliance with the methodology or bad environmental and social standards or conditions that had occurred in relation to the project.

152. It was further explained that, outside of the contract liability in the context of agreements between the users and the registries, there could be liability in tort if there were any rights against whom the holder of the VCC or the owner of the VCC was not in privity.

153. Indeed, it was emphasised that privity of contract was one of the main risk factors that VCC buyers and sellers contracted around. There were contractual remedies in the buy and sell contracts to address situations where the fault or harm occurred, not with the counterparty, but with someone behind the counterparty. There were specific covenants relating to issues where there could be a privity of contract issue. Specifically, if someone in the development chain was responsible for an action that did not occur, the onus was placed through covenant on the seller to address that. It was observed that there could be a significant delay between the occurrence of a reversal and access to the buffer pool—up to five years in certain instances—thus, there were contractual remedies to address this situation. Under the Verra rules, the tonnes that were subject to an involuntary reversal would be compensated through the buffer pool even if these were in excess of how much the seller had contributed to the buffer pool. However, in such a scenario, the seller would be required to contribute to the buffer pool in greater amounts in future years.

154. It was observed that the issues around cancellation were somewhat different, with the main question being who the holder had rights against for the destruction of the VCC. A comparison was made to theft, highlighting the limits of contract in addressing such a risk. If instead the holder had rights in property, then the holder would have a right against the person who committed the fraud or the malfeasance. Related questions arose in relation to a good faith purchaser and the allocation of loss and risk between the good faith purchaser and seller.

155. In response, it was clarified that, in the case of fraud, the question was no longer one of property rights. Rather, the relevant issue was who made the representation and to whom. And the problem with the VCC scheme was that unless the holder was the original buyer with privity to the person who made the representation, or unless the holder was in the Verra world where there was a deed that gave them privity, then they would have to claim against the fraudster.

156. It was added that it appeared that, when a buyer purchased a VCC, they took on the risk that it could be cancelled or reversed. It was therefore suggested that the Working Group may decide not to say much about liability, because liability would depend on national law on matters of fraud.

157. The potential liability of the independent verifier was noted. Oftentimes the project proponent was making certain representations and warranties at the project level, based on facts that the verifier may or may not have a fiduciary duty to identify as inauthentic or inaccurate. And whether there was recourse against the verifier was an issue that remained unresolved. It was added that the contract with the ICCP and the contract with the verifier were two critically important elements of the creation of the right. The *Secretary-General* observed that, while the Group should not get into details of sanctions and regulatory consequences of misbehaviour, civil liability was private law, and within the remit of the Group's work.

158. A question was raised as to what would happen in the event that the ICCP ceased to exist, this being the entity that generally initiated reversal or cancellation as a quality control matter. Would that mean that no one had the ability to reverse or cancel VCCs issued under those standards? With respect to the buffer pool, the question was raised again as to whether anybody had proprietary rights to VCCs under the buffer pool and whether that would be the ICCP. Moreover, it was queried whether the Group should address the scenario in which a VCC was retired, a claim was made by the holder, but that VCC was subsequently reversed or cancelled. Would the holder have to acknowledge that their claim was made an error?

159. In response, an analogy was drawn to financial instruments. When financial instruments were issued and then later cancelled because they had never existed, it was not a question of liability of the person who withdrew them from circulation but rather a question of who was liable for issuing them in the first place. When something was cancelled, it meant it had never existed legally. It was thus suggested that these issues could be deemed to be outside the scope of the instrument, which would be dealing with the property rights in existing VCCs, and not in cancelled VCCs.

160. Questions were again raised in relation to the buffer pool, querying whether holders with VCCs subject to reversal would receive different VCCs with different serial numbers, such that there would be a replacement, or whether the VCCs stayed the same but different claims would be used to buttress the VCCs. In the first case, there would be a replacement by a different object of property rights. In the second case, the underlying claim would be replaced but the property object would remain the same.

161. In response, it was clarified that the buffer pool tonnes did not have serial numbers. Effectively, what would likely happen in the event of a physical reversal was that the ICCP would reduce the buffer pool rather than reverse the issued VCCs. That is why the buffer pool VCCs did not have serial numbers.

162. Regarding the distinction between retirement versus voluntary cancellation or voluntary retirement without a claim, it was emphasised that one of the fundamental backbone elements of the market was that retirement was retirement. Once a VCC was retired, there was no coming back and it did not matter whether the VCC was retired voluntarily without a claim or used for some other purpose. When a unit was retired, it was taken off the market. The person retiring the unit was claiming permanent ownership to that asset and therefore, even if they did not make a subsequent disclosure of the environmental benefit, they were still making a claim.

163. It was also noted that the finality of retirement had been a very significant issue with digital ledger technologies (DLT), the use of the blockchain and the creation of "ghost credits" through tokenisation. Ghost credits referred to the creation of reference tokens—a digital version of underlying credits—which were not an asset. Such reference tokens took on a life of their own outside of the registry and there had been fraudulent activities with entities effectively trying to resell retired credits in the marketplace. In this case, Verra refused to recognise the tokenised units because the omnibus account holder was retiring the VCCs and then creating the reference tokens. Therefore, the reference tokens had no existence, because they had already been retired. Hence the term "ghost" or "zombie" credits.

164. It was noted that credits could be tokenised or the mitigation outcomes could be tokenised such that the credits themselves were created through tokenisation and, in such an instance, there would be no ICCP.

165. A distinction was made between reference tokens and native tokens. Reference tokens were described as effectively digitised bridges to an underlying physical asset—i.e., the VCC. The relevant question in that case was to what degree did the ICCP authorise a license to operate in terms of that two-way bridge and how much control did the ICCP have. On the other hand, native tokenisation referred to the instance where an ICCP or other standards body authorised the native issuance of a verified environmental claim. Contrary to reference tokens, there was no existing underlying asset in the case of a native token—the asset was the digitised claim. The only distinction between a native token and the current world of carbon credits was that in a native token environment the verified environmental claim was immutably linked to the serial number. With reference tokens, however, the ICCP is not disintermediated. Rather, new instruments were created that were tethered to an underlying physical class.

166. It was clarified that, historically speaking, native tokens did not represent a large segment of the VCM. However, some ICCPs were proceeding with used case demonstrations in partnership with digital asset platforms to issue native tokens and so it was likely that in 2024 there would be potentially more frequent native issuance through a prevailing ICCP. And, it was noted, the value proposition of the increased use of native tokens was the immutable linkage to the underlying MRV data that was being consumed by the end user.

167. The Group queried who would control the retirement, the reversal, and the cancellation, of tokenised VCCs. Would the ICCP still control the VCCs issued on a private blockchain and perform those functions? At least by definition, the blockchain, and any other DLT infrastructure was immutable. If a tokenised VCC was cancelled, who would be entitled to issue a new one, replacing perhaps the cancelled tokenised VCC?

168. It was confirmed that it would be the ICCP performing those functions. The ICCPs had issued related elements saying that there could be no digital reference unit or associated interest created without the oversight and control of the unit itself. It was indeed stressed that even native tokens were not issued in the absence of some underlying standard or ICCP. Rather, they were created in accordance with a set of rules and requirements that included retirement, even if they were issued as native tokens. In that regard, it was observed that the International Emissions Trading Association (IETA) had struck a digital carbon market task force and come up with principles that were agreed to by all entities in the tokenisation space to really help govern these issues.

169. It was also stressed that there had to be an independent verification process to create the unit, whether that existed on a blockchain in a digital form or in a registry. The blockchain was just a different method of recording something and the discussions currently underway concerned how the integrity of the VCC could be protected when it was placed on a blockchain. One way of doing that was by having private blockchains. It was stressed that the Group should only discuss independently verified units which may exist on a blockchain at some time in the future. And then the relevant question would be whether the fact that the VCC was sitting on a registry or on a blockchain would affect the ability to hold proprietary rights in the unit.

170. Participants generally agreed that the Group should treat separately the three distinct concepts of retirement, reversal and cancellation. It was queried, however, whether they should be treated separately within the same principle, or whether they should be addressed in different principles.

171. It was also suggested that the Group address the scenario in which a developer or seller had done everything right in accordance with the rules of the relevant ICCP and then a national government asserted dominion over effectively what was its natural resource carbon. It was noted that this remained a very significant risk in the marketplace, and effectively looked like nationalisation and expropriation.

<u>Conclusions</u>

172. *Participants generally agreed that the three distinct concepts of retirement, reversal and cancellation should be addressed separately in the instrument. It was queried, however, whether they should be treated separately within the same principle, or whether they should be addressed in different principles.*

j. Intermediation – VCC registries

173. The discussion moved to Section III.G.1 on intermediation and specifically on VCC registries.

174. A Working Group participant introduced the draft registry Principle. It was noted that the Group should first decide what to name the registry. The term "VCC registry" was suggested, which would then have to be defined. The inclusion of a principle on VCCs as digital assets was also suggested, to address the future development of VCCs.

175. As to the definitions section, it was explained that the approach was to define the minimum. A distinction was drawn between the registry as an electronic database and the registrar, that being the person who ran the registry. The account also needed to be defined, meaning the contractual relationship between a user and the registry, and a term needed to be identified for the person into whose registry account the VCC was credited. The term "registered holder" was suggested for discussion. It was noted that the term purposely did not indicate the relationship between the registry and the account holder—it was not meant to signify ownership, just to indicate that the VCC was in the person's account.

176. As to the actual draft principles, they partly tracked what had been done in the UNIDROIT Principles on Digital Assets and Private Law and the Geneva Securities Convention. The idea was to set out some very basic duties that the registrar owed to a registered holder complying with instructions to transfer and retire the VCC. In addition, the draft Principle made clear that the registry had no proprietary rights in the VCCs, meaning that if the registry went insolvent, then the creditors had no claims in relation to the VCCs on the registry. The proposed Principle also addressed the insolvency of the registry to indicate to an insolvency representative that they should take steps to move the VCCs registered in the accounts to another registry or otherwise take steps so that the VCCs were not lost.

177. It was suggested, and participants agreed, to delete the word "electronic" from the definition of VCC registry and to replace "serial number" with "unique identifier".

178. As for the inclusion of blockchains, it was suggested that they be left out of the proposed registry Principle and that they instead be considered for different sections of the instrument. The importance of drafting for what exists, and then trying to accommodate for what may exist, was emphasised. At the moment, the way the Group was trying to draft the instrument conceived of a registrar. This would be able to accommodate permissioned ledgers, because there would still be someone who could control the blockchain or the DLT. However, it would become significantly harder in the context of no registrar and it would be challenging to draft an instrument that was useful and that catered to both. Thus, it was suggested that it would be preferable to have a separate section for registries without registrars.

179. With respect to the proposed insolvency principle, it was indicated that it might be preferable, as an alternative or as a replacement, instead of transferring the VCCs out to another registry, to transfer the management of the registry to a different registrar. In such a scenario, control was basically surrendered to a new entity. When the registry was wound up, a new entity needed to take over the registry's function. If it was a takeover of function, then there was no transfer of the VCC. There was no extinction and creation. The VCCs remained in the account. It was just the registrar that was replaced.

180. The different legal entities in the mix were stressed, these being the standard and the standard operator or administrator, which might be one legal entity, as well as the registry administrator, which might be the same legal entity as the standard operator, and the registry operator, like APX, which was the guts of the electronic database or platform and a completely separate legal entity. It was noted that there was no transfer to another registry in the event of

insolvency and that the instrument should account for the insolvency of all three of entities: i.e., (i) the registry administrator; (ii) the standard administrator; and (iii) the registry operator. It should be clear that there would be no access to the account holdings in the event of an insolvency of any of those three entities.

181. In terms of a registrar's obligation to comply with the instructions given by the registered holder, it was suggested that it be specified that the registrar had only to be compliant with instructions that were in line with the ICCP's rules and requirements.

182. In response, it was clarified that the principles were not directed at what should go into contracts, but rather they were meant to indicate basic principles that a State law should. Thus, the purpose of setting out the duties owed by a registrar to a registered holder was to identify the very basic duties that a registrar should owe, which a State might want to prevent being excluded by the parties. Once there was a contract, the registry had to operate in accordance with that contract, and the registry rules were part of the contract. Thus, it was explained that the instrument did not need to address that, since it was just ordinary contract law. Another participant added that there must be a medium between what minimum instructions the registrar must comply with, even if the contractual document said otherwise.

183. It was also suggested that the term "registered account holder" be used instead of "registered holder". In response, it was noted that the instrument could certainly say that a registered account holder was a person who maintained an account with a registry. However, the instrument also needed to include a term for the relationship between that person and any individual VCC in their account.

184. It was recalled that the point and purpose of a registry was to record whoever had the VCCs and the unit, and to facilitate the transfer between one account and the other. Only the account holder could give instructions related to the VCCs in that account, which would also always be subject to the rules, regulations, and processes of the registry. Concerns were expressed with referring to registries in paper format, noting that, in some ways, the paper format could then become a tokenised version of something that was in the registry rather than the other way around. In any case, registries did not currently exist in paper format.

185. It was suggested that the instrument include a separate section addressing standards or the ICCPs, since it was the ICCP's role to issue instructions to the registrar to reverse or cancel VCCs. Other participants agreed. The Group also discussed whether it would be necessary to separately address the registry operator. It was observed that if the registry operator was simply a provider of services, then their insolvency would not affect the ownership of VCCs. It was further clarified that the registry operator had ultimate digital control of making the cogs work and was typically in a contractual relationship with the ICCP.

186. It was suggested that it was not necessary to distinguish in the instrument the liability to the ICCPs vis-à-vis the operator. There had been instances where the software glitched and a transfer was not affected within a period of time; in such instances, the ICCP rules provided that the transfer was consummated, even though the software did not execute it. A question was also raised as to whether it was necessary to get into specifics in relation to the registry operator or whether it made sense to treat it as an extension of the registrar, thus addressing the liability of the registrar were something to go wrong with the operation of the registry (for example, if the entire database was wiped out, there were no backups, or backups could not be recovered). In such an event, the claim would not be by the registered holder against the operator, because the operator only had a contractual relationship with the registrar. Instead, it would be a claim by the registered holder against the registrar, who could then have a claim against the operator. In response, it was noted that, in the absence of a contractual term excluding liability, there would be some liability. What the legislation would normally focus on would be whether the registry could limit or exclude liability. Attention was drawn to the ICVCM and its CCPs which also addressed registries.

187. Given the agreement to have a separate section addressing ICCPs, participants agreed that there should also be a separate section concerning independent third-party verifiers—at the very least the term should be defined.

188. Moreover, it was observed that the good faith purchase rule previously discussed by the Working Group was somewhat tied up with the registry, as whether the registry was one of title or not made a difference. In England, for example, for a buyer to satisfy the good faith purchase rule, they would have to buy from whoever was the current holder. Where someone pretended to be the legitimate account holder and the registrar acted on their instruction, the good faith purchase rule would not protect a purchaser under English law unless the registry was a registry of title.

189. A question was raised as to whether the instrument should address how public the information on the registry should be. It was explained that the issue was tied to the point about the *bona fide* purchaser rule. Any register of title would have to be searchable, or there would not be any relation between the registry and title.

190. In response, it was observed that, currently, the project information was searchable, but an individual's account holdings were not. It was suggested that it would be helpful to obtain the registries' viewpoints as to why some information was public and some was not. In addition, regulators had also gone through this process with the registries, in particular in California, and there may be a public record of those debates.

191. An analogy was drawn to bank accounts, denoting that what was in a bank account was not public information and people would not want that to be publicly accessible. However, certain information was currently voluntarily uploaded into the CAD Trust, so that it was possible to access details on units and volumes issued and in respect of which projects. Thus, it was explained, certain information that was valuable to be public for the integrity of the market was accessible, and certain information regarding individual holdings was private. Indeed, it was specified that everything in the chain of creation of the unit was publicly searchable. So, using the analogy to money, everything up to the printing of the dollar was public. What was not public was whose account the dollar went into, and how many dollars. It was reiterated that the issue of what information to disclose and what to keep private had been the subject of an exhaustive amount of discussion in any number of regulated and unregulated market systems.

192. In relation to the *bona fide* purchaser, it was observed that a *bona fide* purchaser without notice was without notice of an encumbrance on the title, not the purchase of something which the seller did not own. It was observed that the Group may want to draft different options for discussion.

193. It was emphasised that, from a private law perspective, whether the registry was searchable or not was a fundamental issue that needed to be addressed before any rules could be drafted and it was critical to engage extensively with the industry. If the industry position was that the registries should not be searchable, meaning that it would not be possible to determine how many VCCs an account holder held just by looking at the registry, then the private law rules to be built by the Group would be completely different.

194. A query was raised in respect of whether it was common in other registries to have provisions that required the registry or the registrar to maintain accurate records, and whether it was common or appropriate to have a duty to provide recourse or an opportunity to identify and remedy any errors in registrations. Specific to the carbon universe, it was noted that ICVCM CCP 6 touched on a process or a duty to prevent double registration, which could be appropriate to the principles.

195. It was added that, the broader transparency and publicity were defined in the instrument, more had to be said about the quality of information—for example, that information should not be

misleading, information should be correct. This would then mean that some of the guidance would become denser if information disclosure were required.

196. It was further clarified that, while disclosure did not necessarily change the legal nature of the VCCs, it did affect the way that the transfer of proprietary rights operated. Merely having an entry in the register did not necessarily mean that the VCC was owned by the holder. It could instead mean that either: (i) the holder obtained the VCC by "nefarious" means, for example it was transferred without the consent of the owner; or (ii) it may just be that the holder was acting as a custodian or trustee for somebody else. If that information was made public, then there could be a strict *bona fide* purchase rule, because people were expected to check that information. In such a case, almost nobody would ever be a *bona fide* purchaser. If, instead, there was no information available, then it could be desirable to have a loose *bona fide* purchaser rule, because there was no way that purchasers could find out anything about the person who was selling them the VCCs.

197. Moreover, it was added that, whether information could be viewed via the registry did not change the legal nature of the VCC, but it influenced, possibly even determined, the rules that could be established regarding the transfer of VCCs. Typically, in the world of pure intangibles, if there was no available public source of information, the response was to have no good faith purchaser exception and to instead favour completely the true owner.

198. It was suggested that this was an issue better left for the market. However, others disagreed. It was noted that it could not be left to the market to decide how and when a purchaser could acquire a VCC free from competing claims. There had to be a rule. If there were no rule, the market would chill, because when someone contemplated the possibility of buying a VCC, they would have to carry out an enormous amount of due diligence to be sure that they were purchasing from the right person. Thus, this was precisely the rule that had to be provided to market participants so that they could develop their practices.

199. Indeed, it was reiterated that one of the reasons why a title-based registry or good faith purchase rule should be introduced was to make the process cheaper, such that the market could scale. If no information was available, then buyers could not investigate, and nobody would buy anything. It could not be left to individual registries to decide whether to apply a good faith purchase rule, since the registries could not decide what the property rules were. Without a uniform rule, there would be uncertainty, as it would depend on where the site was and the applicable choice of law rules. This situation would create confusion and would not support transactions.

200. In addition, if the instrument did not recommend anything in this regard, and if in a particular jurisdiction there was no express rule dealing with the transfer of ownership or the transfer of other proprietary interests in VCCs, this did not mean that market participants or the registries got to make their own rules. Rather, this meant that, if the matter ended up in court, the court would apply to that transaction whatever property rules existed in that jurisdiction. Because VCCs were intangibles, in a very large number of jurisdictions, the rules governing transfer of ownership and proprietary interest would likely be subject to a strict *nemo dat* rule meaning that there would be no good faith purchaser exception. Therefore, if the instrument did not include any recommendation in this regard, it did not mean that this area would be left unaddressed. It would just mean that every jurisdiction would follow its own approach based on its own property rules which was likely to end up in severe international fragmentation.

201. Further clarification was sought as to what information was publicly available and how a prospective buyer would go about finding out who owned the VCCs and purchasing them. With respect to the publicly available information, it was noted that this was: (i) the information on the project; (ii) the arm's length independent validation of the project; and (iii) the verification statement, stipulating the amount or quantity of issued or created outcomes that would form the VCCs once issued by the registry. In terms of how a buyer would go about purchasing the VCCs, it

was suggested that the buyer could directly contact the project proponent, or deal with a broker or fund who could go and ascertain who had the VCCs on the basis of regular contact with market participants. As to transfer, the buyer and seller would enter into an agreement to have the issued VCCs transferred from one account to the other, which was known as delivery. Alternatively, they could enter into a contract providing that the seller would retire the VCCs in their account on the buyer's behalf, who could then make claims in relation to those VCCs.

202. The need to not tie the VCC definition to the existence of an ICCP was brought up. In response, it was observed that the asset was a counterfactual verification of an environmental benefit as measured against the standard. The standard could either be proprietary, i.e., the ICCP's standard, or it could be an open-source standard. Yet the governance of the standard, whether it was open-source or whether it was proprietary, was intrinsic to the existence of the asset.

Conclusions

203. *Participants agreed to delete the word "electronic" from the definition of VCC registry and to replace "serial number" with "unique identifier".*

204. *Participants tentatively agreed to leave out blockchains from proposed registry Principle and to consider them for different sections of the instrument.*

205. *The Working Group generally agreed to include a separate section addressing standards or the ICCPs, as well as a separate section concerning independent third-party verifiers.*

206. *Working Group participants generally agreed that the question of how and when a purchaser could acquire a VCC free from competing claims could not be left to the market to decide. There had to be a rule in order to prevent fragmentation and the chilling of VCMs. The Working Group would thus draft proposed alternatives to be discussed with market participants.*

Item 5: Presentations by representatives of independent carbon standard setters and registries

207. On 23 April 2024, representatives from Verra and Puro Earth, two leading ICCPs, delivered presentations to the Working Group, addressing, *inter alia*, how verified carbon credits were issued, evidenced, individualised, transferred, encumbered, retired or otherwise cancelled.

(a) Presentation by Puro Earth

208. *The representatives of Puro Earth* opened the presentation by noting that credits travelled from issuance to retirement and showing what retirement would look like in the public registry. The information in relation to retirement in the public registry would include: (i) the date when retirement happened; (ii) how many VCCs had been retired with their serial numbers; (iii) the relevant methodology; (iv) the beneficiary, meaning the user of the credit who claimed the retirement; and (v) the retirement purpose. It was clarified that the issuing body was the entity that made decisions with respect to when the relevant requirements were met and then the registry or registry operator was the technical operator that moved the credits in the registry.

209. *The representatives of Puro Earth* explained that they considered every account holder to have title to the VCCs in their account. Puro Earth was not the custodian or holder of credits. Puro Earth ran extensive KYC checks when an account was opened and when checking the origination of the carbon removal.

210. In response to questions from the Working Group, it was noted that the terminology used by Puro Earth largely came from the renewable energy world but was evolving as the industry evolved and had significantly aligned to Article 6 of the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA) as well as the ICVCM CCPs.

211. In terms of what would happen if the issuing body was liquidated, it was noted that Puro Earth had plans which included mechanisms for supporting the finding of a new home, and for transporting and exporting the credits. It was explained that CORSIA required applications to submit a Recovery and Orderly Dissolution (ROD) Plan, which Puro Earth had done on a confidential basis.

212. In the case of Puro Earth, the issuing body and the registry operator covered separate roles, but they were performed by the same legal entity.

213. With respect to how public the Puro Earth registry was, it was stated that the publicly available information included retirement, as well as a link to the origination page which included additional information about the origination of the project and its verification. It was also clarified that only credits issued by Puro Earth could be registered on the Puro Earth registry; likewise, no other registry would accept Puro Earth credits.

214. With respect to transfers, it was explained that account holders had online access to their own account, similarly to an online bank account. The account holders could transfer and retire credits. When effecting a transfer, account holders had to answer certain questions, including to whom they were transferring, how many VCCs they were transferring, and of what type and vintage. It was further specified that transfers could only occur between two accounts. On the other hand, an account holder could retire VCCs on behalf of a buyer.

215. As to the instances in which Puro Earth would act outside of the instructions of the account holder, the Puro Earth representatives referred to an action that the issuing body could undertake known as "withdrawal". Withdrawal required serious reasons as listed in the Puro Earth general rules. That could happen in the event of a material breach of Puro Earth's standard, or if an error had occurred and it was detected after issuance of the credits. There was also the possibility of credits being reversed. In such a case, the issuing body would investigate the scope of the reversal and withdraw VCCs corresponding to the amount of GHG that had been re-emitted into the atmosphere.

216. *The representatives of Puro Earth* referred to a specific situation in which the account holder would enter into a contract with a "sales channel". It was noted that the sales channel was not an omnibus account, but rather a segregated account paired to the original account such that the sales channel then became the custodian. In such a situation, title would not change to the sales channel; rather, the sales channel would be a custodian who could then offer the credits to buyers for sale and perform transactions, transfers, or retirements on behalf of the account holder. It was further confirmed that the sales channel account would not hold segregated accounts for all of the custodian's clients or customers. That would rather take the form of some sort of back-to-back arrangement that they would enter into with their customers, and Puro Earth would not be privy nor a party to those arrangements. Insofar as Puro Earth was concerned, their counterparty was just the sales channel partner. However, the sales channel customers would, in turn, be Puro Earth account holders and thus there would be two separate agreements—one with Puro Earth and one with the sales channel, asking the sales channel to represent and sell their credits. It was thus noted that the sales channel partner was, for all intents and purposes, effectively just an account administrator of the account holder. They were essentially an authorised user of the underlying customer. The VCCs of the account holder would move to the sales channel account and the sales channel partner could affect transfers and retirements for the customer who had its own account with Puro Earth.

217. Puro Earth also confirmed that it did not provide limitations on whether account holders could hold VCCs on behalf of others. It was noted that an account holder could open sub-accounts which

were considered the account holder's property. Puro Earth did not have requirements as to what the account holder did with them, other than the account holder had to use Puro Earth's transfer and retirement functionalities. It was also stated that, generally, Puro Earth would not be notified of account holders holding VCCs on behalf of a third party. However, credits held on the Puro Earth registry could not be retired without naming the beneficiary and the purpose of the retirement. The beneficiary could be a third party without an account with Puro Earth.

218. It was also noted that Puro Earth did not have the mechanisms or instruments to recognise encumbrances held in their registry. The actions that could be taken in relation to VCCs in the Puro Earth registry were spelled out in the Puro Earth General Rules and were limited to the transfer and retirement of credits.

(b) Presentation by Verra

219. *The representative of Verra* began the presentation by introducing the programs on the Verra registry. It was explained that Verra considered the registry to be a central repository of information and documentation that ensured the uniqueness of projects and credits in the system, including tracking and managing carbon emissions, reductions and environmental assets. Verra also facilitated the issuance, transfer and retirement of carbon credits. It allowed organisations to register activities that generated carbon credits which could then be bought and sold on carbon markets to offset emissions. As to the types of participants that submitted account application requests to Verra, these included project proponents or developers (i.e., the organisations that created projects targeting emissions reductions, energy efficiency or carbon sequestration projects) as well as brokers, traders, aggregators, developers, verification validation bodies, governmental bodies (including both national and subnational agencies), as well as consultants and service providers who provided services relating to GHG projects. Private individuals were not allowed to open Verra registry accounts.

220. In terms of how the registry operated, Verra was the issuer of the verified carbon units (VCUs), but it was also the operator of the Verra registry and the Verra registry was directly controlled by Verra. The Verra registry used a technology provided by APX, which was essentially providing the platform. In terms of the contractual arrangements, the Verra registry was administered and controlled by Verra directly. There were Terms of Use that every account holder had to accept. These were a direct agreement between Verra and each user (user being the term used by Verra to describe an account holder). As to definitions, a VCU was defined as a unit that was issued by, and held in, the Verra registry. It represented the right of an account holder to claim the achievement of a GHG emissions reduction or removal based on one tonne of CO2. As to "recordation" or "registration", that referred to a VCU in the account of the holder in the Verra registry, representing *prima facie* evidence to Verra of that holder's entitlement to that VCU.

221. *The representative of Verra* next described the steps that took place when a prospective account holder applied to Verra. First, the prospective account holder would have to review the program, guidelines and fees and determine what type of account was appropriate to them. Second, they would have to accept the Verra Terms of Use. Third, they would have to complete an account registration form and go through a KYC check.

222. In terms of the contractual arrangements between the Verra registry and the account holder, these were contained in the Terms of Use and discussed further in detail in the Verra Registry User Guide. The user was required to read and accept the Terms of Use as part of the account opening process. A VCU holder acquired several rights, including, for example, a right to bring a claim against a project proponent, or any other issuance representer, for breach of specific representations that the issuance representer made in the issuance deed, and Verra had a suite of deeds that had to be executed. Such deeds were subject to English law and reflected the overall life cycle of the credits starting with registration, issuance, but also going forward—there was a buffer deed, for example.

Importantly, in the issuance deed, there were representations, warranties, and undertakings which included specifically representations as to the truth and accuracy of the project documents. The deeds also provided an undertaking to abide by Verra's program rules, and those rules addressed some other requirements for a project, including, for example, ownership of the project area, which was part of the calculation of how many credits were issued that formed part of the baseline calculation. Each VCU had its unique serial number that allowed for its identification as that particular VCU. Those were specific to Verra—each standard or each registry would have its own type of serialisation.

223. It was explained that there were different types of Verra registry accounts:

- General account: the most common type of account allowing for the broadest spectrum of rights and activities. It allowed registration of projects issuing credits, transferring or exporting credits, receiving transfers and retiring credits, and credits to be retired on behalf of third parties.
- Project proponent account: permitting project registration and allowing credit issuance transfers and retirement. It however did not allow the user to receive credits, or to effect transfers or retire credits on behalf of third parties.
- Retail aggregation account: allowing the receipt of credit transfers and the retirement of credits on behalf of third parties, but within a set timeframe. It did not allow the transfer of credits to counterparties.
- End user account: only allowing the user to receive credit transfers for immediate retirement, solely on behalf of the account holder. It was not possible to export credits or hold active credits.

224. There were also two types of default sub-accounts for all accounts which were either active or retired. Additional sub-accounts could be created by all users, but users had to enter into the Terms of Use with Verra, meaning that all users were effectively a counterparty to Verra. Users needed to include unique sub-account names and those sub-accounts could not be closed when there were credits in the accounts. Each sub-account had its own unique sub-account identification number.

225. With respect to omnibus accounts, these were available on the Verra registry and were defined in the Terms of Use. They were essentially accounts for the purpose of holding instruments on behalf of corporate customers or to facilitate the users undertaking a business activity that was connected to the Verra registry and that had been approved by Verra. A user could also have one or more business sub-accounts.

226. In the absence of an approved sub-register which related to that omnibus account or of documentary evidence of legal or beneficial ownership rights, the default position was that Verra would assume that the VCUs were owned by the user of the omnibus account. In terms of approved sub-register accounts, the entitlement of the VCU in the relevant business sub-accounts was determined by reference to the approved sub-register account and it was directly connected to the user relating to that approved sub-register account. So effectively the default position was that Verra assumed that VCUs and the business sub-accounts were owned by the entities stated in the approved sub-register. That would be the only scenario in which there might be an entity that was not a user.

227. As to the operation of pooled accounts, Verra had a buffer deed of representation which was entered into for any project that contributed to the buffer pool.

228. It was clarified that Verra did not generally recognise third party interests in VCUs. Verra stated clearly in its Terms of Use that it had no obligation to verify or inquire into the validity of, or even legal title to, the instrument or any related instruments. Importantly, Verra did not recognise any interest in an instrument or any related instrument other than the interest of the entity that was

named as the holder in the registry or any approved sub-register account. The project proponent, as a user, could designate an authorised representative to act as an agent on their behalf with varying degrees of agency from very limited to full, but that related specifically to a project or a registered user account. By signing that communication agreement, they were essentially the entity that then communicated and gave instructions to Verra. The authorised representatives were the only entities that could then give instructions or have authority in relation to the user's account.

229. With respect to insolvency, it was noted that, in relation to security over VCUs, insolvency rules were going to differ across jurisdictions of the account holders. Verra did not in any way guarantee legal title to the instruments, and the user relied on any content obtained through the Verra registry at its own risk. Verra was incorporated in the United States. There was the insolvency of Verra and the insolvency of an account holder, and it was important to distinguish between those different scenarios. As a US incorporated entity, in an insolvency Verra would be subject to State and Federal bankruptcy laws. The Verra registry was an asset that was owned and operated by Verra, but it was not held by a bankruptcy, remote entity, or in trust in any way. The VCUs that were reflected or held in the Verra registry would be considered the property of the account holders, even in the instance of an insolvency for Verra. The issue might be whether the liquidator or other insolvency administrators of Verra would be able to realise the VCUs for the benefit of Verra's general creditors. In this respect, the Verra Terms of Use were clearly drafted on the basis that the account holders were entitled to the VCUs and their accounts, and that Verra as an entity or the Verra registry software provider did not act as buyer or seller. Verra did not hold any title to the instruments or products listed in the Verra registry—they completely belonged to the account holder. One way of understanding this was that Verra acted as a database recording the identity of the holder and the instruments. Verra or the Verra registry did not hold title of the instruments. Rather, they provided a service which included, amongst other things, the recording of the transfers.

230. *The representative of Verra* next addressed account authority, access and maintenance. She specified that it was the user generally who had login rights and privileges. Apart from rights to suspend the user's access to its account and to possibly cancel VCUs, Verra did not have any rights to intercept in any way or deal with VCUs without written instruction from the account holder. There were provisions that dealt with the nonpayment of fees or delinquent fees within 30 days of the due date. In the event of non-payment, Verra could freeze the user's access to its Verra registry account. However, in such a scenario the credits stayed in the account until the fees were all paid. There were certain circumstances where Verra could cancel credits without the consent of the VCU holder, for example, where there had been an account suspension. It was explained that, while Verra retained wide discretion when it came to account suspension, that decision was not taken lightly and Verra adhered to very descriptive grounds for suspension as listed in the Terms of Use. For example, such grounds included the engagement in fraudulent, unethical or illegal activity in connection with the Verra registry or where Verra had received an instruction to do so from a scheme regulator.

231. *The representative of Verra* discussed transfer and title. Apart from the example of an approved sub-register account, it was stated that all VCU transactions were performed or settled by the user and any third party, in accordance with such possibly separate agreements as might exist between the user and the relevant third party. The recordation of a VCU and the account of the holder of the VCUs in the Verra registry was, again, *prima facie* evidence of that holder's entitlement to those VCUs and, as a result, once the VCU had been transferred from one account to another, the holder of the second account was considered by Verra to be the *prima facie* owner of the VCU. It was reiterated that Verra did not guarantee legal title to the instruments. It was at the user's own risk to rely on the content and information in the Verra registry. However, it was explained that the signatory to the issuance deed representing that they had full legal and beneficial title to the removals and reductions was the starting point for who Verra considered as the owner of the VCUs.

232. In terms of taking security over VCUs or credits, it was explained that Verra did not at the moment recognise security interests or the interests of any third parties in VCUs. In addition, a user could not transfer, assign or even sub license in any way its rights or licenses including its accounts to any third party without Verra's prior written consent, which Verra could withhold. Verra did not recognise security interests, so usually that consent was withheld. Perfection of security was generally relevant where a user perhaps had become insolvent and there was an issue as to whether security was enforceable against a liquidator or other insolvency administrators. It was also relevant if there were competing claims between creditors of the user and it was necessary to determine some kind of priority between the competing claims. Again, Verra did not advise on the perfection of security, since these were legal matters and could differ between jurisdictions and the applicable rules governing perfection. Verra's account holders and projects were all over the world and, in each applicable jurisdiction, there would be a difference in terms of how VCUs were characterised under applicable law, which affected the type of security that could possibly be granted and what type of security the users might wish to perfect. It was emphasised that the work of the Working Group was critical in getting some more clarity in this respect.

233. *The representative of Verra* next addressed questions from the Working Group. With respect to whether Verra considered the project proponents to simply be holding the VCCs or whether Verra deemed them to have title, it was explained that, if the project proponent was the account holder or user, then they would be considered to have title. It was further clarified that when referring to the recognition of title, this was vis-à-vis Verra. It was also noted that, while there was nothing necessarily preventing a user from granting somebody else an interest in the VCC that they held, doing so without obtaining Verra's consent could be in breach of the agreement with Verra.

234. In terms of security rights, it was further explained that the signatory to the issuance deed represented that they had the legal and equitable title to the reductions and removals that were generated by that project, which then reflected the amount of carbon credits that were issued. However, the holder of the security rights might not have entered into a deed with Verra, meaning that Verra would have no direct contractual relationship with the security holder. Thus, if a security holder wished to implement or enforce their security right, it was presently unclear how that would work in relation to Verra. Verra was watching this space closely and welcomed suggestions from the Working Group. *The representative of Verra* also clarified that Verra did not recognise a security interest for the purposes of the Verra registry and who was deemed to be the account holder. However, that was not to say that the security interest did not exist, as that was a matter of national law.

235. Finally, in terms of the interoperability between registries, the Verra representative noted that this was an area that all the standards or registries were looking at.

Item 6: Organisation of future work

236. *The Secretary-General* closed the substantive discussion and moved to the organisation of future work. He observed that the discussion had been extremely vibrant, with more than one hundred interventions in a single day. He noted that the organisation of future work would be in the hands of the Chair of the Working Group, Professor Hideki Kanda. Professor Kanda had been unable to attend the Working Group session, but he had listened in and reviewed the documents. Next steps would likely include some degree of intersessional work, with Professor Kanda perhaps separately reaching out to Working Group participants to see whether they would like to join distinct discussion teams to advance the project.

Item 7: Any other business

237. *The Secretary-General* shared that the next session was scheduled to take place from 4 to 6 September 2024 and noted no objections to such dates from the Working Group participants.

Item 8: Closing of the session

238. *The Secretary-General* thanked the Working Group participants for their time and valuable contributions and adjourned the meeting.

ANNEXE I

AGENDA

1. Opening of the session and welcome

2. Update on the appointment of the Chair of the Working Group

3. Adoption of the agenda and organisation of the session

4. Consideration of matters identified in the Revised Issues Paper (Study LXXXVI – W.G.2 – Doc. 2)

    a. Preliminary matters;
    b. Structure of the future instrument; and
    c. Content of the future instrument

5. Presentations by representatives of independent carbon standard setters and registries

6. Organisation of future work

7. Any other business

8. Closing of the session

ANNEXE II

LIST OF PARTICIPANTS

CHAIR

Mr Ignacio TIRADO	UNIDROIT Secretary General Chair *Ad Interim*

MEMBERS

Ms Ipshita CHATURVEDI *(remotely)*	Partner Dentons Rodyk Singapore
Mr Luca ENRIQUES	Professor of Corporate Law University of Oxford United Kingdom
Ms Megumi HARA *(remotely)*	Professor of Law Chuo University Japan
Mr Matthias LEHMANN *(remotely)*	Professor of Private Law University of Vienna Austria
Mr Ludovino LOPES	Founder Partner Ludovino Lopes Sociedade de Advogados Brazil
Mr Kelvin LOW	Professor of Private Law National University of Singapore Singapore
Mr Andrea TOSATO *(remotely)*	Associate Professor of Commercial Law University of Nottingham United Kingdom Visiting Associate Professor in Law University of Pennsylvania United States of America
Mr Rolf H. WEBER	Professor University of Zurich Switzerland
Mr ZHANG Xiaoping	Associate Professor of Law Central University of Finance and Economics People’s Republic of China

INSTITUTIONAL PARTNERS

WORLD BANK GROUP

Ms Flavia ROSEMBUJ
Global Lead for Blended Finance, Climate Business and Trust Funds, IFC
United States of America

Ms Shreya RANGARAJAN
Consultant
Climate Finance and Economics Unit
United States of America
(remotely)

Mr Cameron PRELL
Managing Director
The dCarbon Group
United States of America
(remotely)

INSTITUTIONAL OBSERVERS

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH)

Ms Gérardine GOH ESCOLAR
Deputy Secretary General
The Netherlands

Ms Raquel SALINAS PEIXOTO
Legal Officer
The Netherlands
(remotely)

ASIA DEVELOPMENT BANK (ADB)

Ms Christina PAK
Principal Counsel
Team Leader, Law and Policy Reform
Philippines
(remotely)

Mr Daniele QUAGGIOTTO
Senior Counsel
Philippines

ENVIRONMENTAL DEFENSE FUND (EDF)

Ms Holly PEAREN
Lead Counsel, People and Nature
United States of America

INTERNATIONAL EMISSIONS TRADING ASSOCIATION (IETA)

Ms Belinda ELLINGTON
IETA Representative
United Kingdom

INTERNATIONAL LAW INSTITUTE (ILI)	Mr Marek DUBOVEC Director of Law Reform Programs International Law Institute United States of America *(remotely)*
	Mr Bob TROJAN Senior Advisor United States of America
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)	Ms Ana GOYTIA Policy Advisor Sustainable Finance Department Spain *(remotely)*
INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION (ISDA)	Mr Peter WERNER Senior Counsel United Kingdom
PURO.EARTH *(remotely)*	Ms Marianne TIKKANEN Head of Standard Finland
	Ms Helen BRAY Vice President Policy United Kingdom
SCOTIA GROUP *(remotely)*	Mr Gustavo ROCHETTE School of Law - Centre for Commercial Law Studies Queen Mary University of London United Kingdom
	Mr Sven SPENGEMANN UNOPS (on leave) United States of America
TOSCA RESEARCH GROUP, CENTRE FOR RESPONSIBLE DIGITALISATION *(remotely)*	Professor Dr. Dominik SKAURADSZUN Professor of civil law, civil procedure, and corporate law Fulda University of Applied Sciences Germany
	Mr Florian MÖSLEIN Deputy Director ZEVEDI Germany
	Mr Sebastian BOEHNING Research Assistant Germany

	Ms Frieda MAINKA Research Assistant Germany
VERRA	Ms Mary GILMORE-MAURER Interim Legal Director Legal, Policy, and Markets Department United States of America
WEST AFRICAN ALLIANCE ON CARBON MARKETS AND CLIMATE FINANCE *(remotely)*	Mr Bouna Manel FALL Legal Expert Senegal

INDIVIDUAL OBSERVERS

Mr Malik R. DAHLAN *(remotely)*	Emeritus Professor of International Law and Public Policy Queen Mary University of London United Kingdom
Ms Lisa DEMARCO *(remotely)*	Senior Partner and CEO Resilient LLP United States of America
Mr Reginald KARAWUSA *(remotely)*	Immediate Past Executive Commissioner Legal and Enforcement Nigerian Securities and Exchange Commission Nigeria
Ms Blanca LÓPEZ BASSA *(remotely)*	Chief Legal Officer Paskay Peru
Ms Marisa MARTIN *(remotely)*	Managing Director Pollination United States of America
Mr Jason NORMAN LEE *(remotely)*	Managing Director, Legal & Regulatory Temasek International Pte. Ltd Singapore
Mr Sergey SITNIKOV	Ph.D., expert in international carbon policies and markets Russian Federation
Ms Ingrid YORK	Partner White & Case LLP United Kingdom
Mr Peter ZAMAN *(remotely)*	Partner Holman Fenwick Willan LLP Singapore

UNIDROIT SECRETARIAT

Mr Ignacio TIRADO	Secretary-General
Ms Anna VENEZIANO	Deputy Secretary-General
Ms Giulia PREVITI	Legal Officer
Ms Priscila PEREIRA DE ANDRADE	Legal Officer
Mr Hideki KANDA	UNIDROIT Governing Council Member
Ms Louise GULLIFER	Senior Advisor to the Secretariat
Ms Suzanne HOWARTH *(remotely)*	UNIDROIT Correspondent
Ms Başak BAŞOĞLU KAPANCI	Sir Roy Goode Scholar
Ms Diletta LENZI	Former Sir Roy Goode Scholar
Ms Leokadia GROLMUS	UNIDROIT Intern
Ms Esther NYABUTO	UNIDROIT Intern
Ms ZHOU Yitong	UNIDROIT Intern