



International Oil Pollution
Compensation Funds

Agenda Item 1	IOPC/MAR21/1/2/1	
Date	29 March 2021	
Original	English	
1992 Fund Assembly	92AES24	●
1992 Fund Executive Committee	92EC75	●
Supplementary Fund Assembly	SAES8	●

EXAMINATION OF CREDENTIALS

INTERIM REPORT OF THE CREDENTIALS COMMITTEE

(As at 3:00 pm on 29 March 2021)

Note by the Credentials Committee

Summary:	The Credentials Committee has examined the credentials of delegations of 1992 Fund Member States and submits the following interim report.
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <ul style="list-style-type: none"> (a) take note of the interim report of the Credentials Committee; and (b) decide which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the governing bodies of the IOPC Funds. <p><u>1992 Fund Executive Committee and Supplementary Fund Assembly</u></p> <ul style="list-style-type: none"> (a) take note of the interim report of the Credentials Committee; and (b) take note of the decision of the 1992 Fund Assembly in respect of which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the governing bodies of the IOPC Funds.

1 Introduction

- 1.1 In accordance with Rule 10 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly and Rule 9 of the 1992 Fund Executive Committee, the 1992 Fund Assembly appointed a Credentials Committee consisting of the following five members and their representatives:

Germany (Mr Volker Schöfisch)
 Japan (Mr Yuji Okugawa)
 Malaysia (Mr Kanagalingam Selvarasah)
 Mexico (Ms Aideé Saucedo)
 Russian Federation (Mr Yury Melenas)

- 1.2 The Committee met remotely on 29 March 2021 under the chairmanship of Mr Kanagalingam Selvarasah.

- 1.3 The Credentials Committee presents this interim report in accordance with Rule 10 of the Rules of Procedure of the 1992 Fund Assembly.

2 Examination of credentials

- 2.1 The credentials of delegations of 71 Member States of the 1992 Fund, including States members of the 1992 Fund Executive Committee and of the Supplementary Fund, were examined.
- 2.2 The Committee based its deliberations on Rules 9 and 11 of the Rules of Procedure of the 1992 Fund Assembly and on the guidelines given in circular IOPC/2015/Circ.4.
- 2.3 Credentials received in respect of the following Member States were found to be in order as at 3:00 pm on 29 March 2021:

1992 Fund Executive Committee Members

Canada	Italy	Netherlands
Ecuador	Liberia	Philippines
Germany	Malaysia	Republic of Korea
Ghana	Marshall Islands	Spain
India	Morocco	Thailand

Other 1992 Fund Member States

Algeria	Finland	Panama
Angola	France	Poland
Antigua and Barbuda	Georgia	Portugal
Argentina	Greece	Russian Federation
Australia	Guyana	Saint Kitts and Nevis
Bahamas	Iran (Islamic Republic of)	Saint Vincent and the Grenadines
Belgium	Israel	Singapore
Brunei Darussalam	Jamaica	Sri Lanka
Bulgaria	Japan	Sweden
Cambodia	Latvia	Trinidad and Tobago
Cameroon	Luxembourg	Turkey
China ^{<1>}	Madagascar	United Arab Emirates
Colombia	Malta	United Kingdom
Cook Islands	Mexico	Uruguay
Côte d'Ivoire	Mozambique	Vanuatu
Croatia	New Zealand	Venezuela (Bolivarian Republic of)
Cyprus	Nicaragua	
Denmark	Nigeria	
Dominica	Norway	
Estonia	Palau	

- 2.4 After having examined the letter of credentials of 70 Member States, the Committee examined the two letters of credentials of the Bolivarian Republic of Venezuela (Venezuela).

^{<1>} The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only as did the 1971 Fund Convention previously.

- 2.5 In respect of the credentials of Venezuela, the Credentials Committee held a separate discussion as set out in section 3 below. The legal opinion provided by Professor Antonios Tzanakopoulos is attached at the Annex to this document.

3 Credentials of the Bolivarian Republic of Venezuela

Considerations at previous sessions of the governing bodies

October 2019 sessions of the governing bodies

- 3.1 In October 2019, the Director received two letters of credentials for two separate delegations claiming to represent Venezuela – one signed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to the International Maritime Organization (IMO) and other international organisations headquartered in London, appointed by President Nicolas Maduro); and the other one signed by President Juan Guaidó (President of the National Assembly, and President (E) of Venezuela).
- 3.2 Given the complexity of the issue, the Director invited Dr Rosalie Balkin AO, former Assistant Secretary General and Director of Legal Affairs and External Relations Division of IMO, to provide assistance to the Credentials Committee during its deliberations. He also requested the advice of Professor Dan Sarooshi Q.C., the 1992 Fund's legal counsel in public international law.
- 3.3 The Credentials Committee recommended that the *status quo* should continue and that the letter of credentials issued by Ambassador Maneiro should be accepted as the official representatives for the October 2019 sessions of the governing bodies. The Credentials Committee noted, however, that this position was applicable to that meeting only and it could be susceptible to change in the coming months depending on future developments. This recommendation was accepted by the 1992 Fund Assembly and the Assembly's decision was noted by the 1992 Fund Executive Committee and Supplementary Fund Assembly (see document IOPC/OCT19/1/2/1).

December 2020 sessions of the governing bodies

- 3.4 At the time of the December 2020 sessions of the governing bodies, again the Director received letters of credentials from two delegations claiming to represent Venezuela. The Director sought the advice of Dr Rosalie Balkin AO and requested Professor Antonios Tzanakopoulos, Associate Professor of Public International Law of the Faculty of Law in the University of Oxford, to provide a legal opinion on this matter.
- 3.5 The Credentials Committee recommended again that the *status quo* should continue and that the letter of credentials issued by Ambassador Maneiro should be accepted at that meeting as the official representatives for the December 2020 sessions of the governing bodies. This recommendation was accepted by the 1992 Fund Assembly (see document IOPC/NOV20/1/2/1).

March 2021 sessions of the governing bodies

- 3.6 The same situation occurred at the March 2021 sessions of the governing bodies, in that the Director received letters of credentials from the same two delegations claiming to represent Venezuela. Once again, the Director invited Dr Rosalie Balkin AO to advise the Credentials Committee and requested Professor Antonios Tzanakopoulos to provide an updated legal opinion on this matter.

- 3.7 The Credentials Committee reviewed the new legal opinion provided by Professor Tzanakopoulos (see Annex). It was noted that since the last meeting of the IOPC Funds' governing bodies in December 2020, the United Nations General Assembly (UNGA) had continued to maintain the *status quo* regarding the credentials presented by the Maduro Government. It was also noted that on 1 December 2020, UNGA had decided to accept the credentials submitted by the Maduro representative on behalf of Venezuela.
- 3.8 The Credentials Committee was unanimous in its view that it is not the function of the IOPC Funds to decide which is the legitimate government of Venezuela, since it considered that to be a political question to be decided in another forum, namely the political organs of the United Nations (UNGA and the UN Security Council). The Committee concluded that the role of the Credentials Committee and the 1992 Fund Assembly is simply to decide which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the Funds' governing bodies and make its recommendation to the 1992 Fund Assembly.
- 3.9 In considering this matter and the legal advice received by Professor Tzanakopoulos on 24 March 2021, the Credentials Committee recommends that the *status quo* should continue and that the letter of credentials of the current delegation of Venezuela issued by Ambassador Maneiro, appointed by President Maduro, should be accepted and that the named individuals therein be deemed the official representatives for the March 2021 sessions of the governing bodies. The Committee also notes, however, that this position is applicable to this meeting only and it could be susceptible to change in the coming months depending on future developments.

4 Action to be taken

4.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the interim report of the Credentials Committee; and
- (b) decide which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the governing bodies of the IOPC Funds.

4.2 1992 Fund Executive Committee and Supplementary Fund Assembly

The 1992 Fund Executive Committee and Supplementary Fund Assembly are invited to:

- (a) take note of the interim report of the Credentials Committee; and
- (b) take note of the decision of the 1992 Fund Assembly in respect of which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the governing bodies of the IOPC Funds.

LEGAL OPINION

submitted to the

International Oil Pollution Compensation Funds

concerning

the representation of the Bolivarian Republic of Venezuela at the United Nations

Professor Antonios Tzanakopoulos, Three Stone Chambers and the University of Oxford

24 March 2021

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I. INTRODUCTION

1. The International Oil Pollution Compensation Funds ('IOPC Funds') have received two sets of competing letters of credentials for representatives of the Bolivarian Republic of Venezuela to the IOPC Funds for the purpose of the sessions of the governing bodies from 29 to 31 March 2021. The IOPC Funds will have to decide which representative should be accredited as the official representative of the State at these sessions of the governing bodies.

2. I am asked to give an opinion on 'which delegation of the Republic of Venezuela has been recognised by the United Nations and by United Nations agencies in the last months', ie since late November 2020, when the IOPC Funds last solicited and obtained a legal opinion on these matters by me, having previously also obtained an opinion by Professor Dan Sarooshi, QC. As in my last opinion on these matters, which is to a large extent reproduced here, parts II and III set out the practice of the United Nations ('UN'), its specialised agencies and conferences on credentials, and on the Bolivarian Republic of Venezuela specifically. Part IV discusses – and distinguishes – the practice in other international organisations. Part V discusses the issue from the perspective of the IOPC Funds and sets out my response on the question that has been posed to me.

3. For the purposes of preparing this Opinion, I have taken into account the 1992 Fund Assembly / 1992 Fund Executive Committee / Supplementary Fund Rules of Procedure, the United Nations General Assembly Rules of Procedure, and the practice of the UN and its specialised agencies and conferences, in particular as set out in the United Nations Juridical Yearbook, which contains opinions of the UN Office of Legal Affairs on matters of credentials. I have also considered the practice of other international organisations on these matters. I have finally drawn on my own previous opinion of 25 November 2020, on the opinion of Professor Dan Sarooshi, QC of 6 October 2019, and on a range of primary and secondary legal sources. A full list of documents and authorities is set out in Appendix 1. My biographical information is set out in Appendix 2.

II. UN PRACTICE REGARDING CREDENTIALS

4. The practice of the United Nations regarding credentials continues to be that which Professor Sarooshi set out eloquently in his opinion of 6 October 2019. In summary, each UN organ establishes its own Credentials Committee in order to approve the credentials of delegations. However, the General Assembly's ('GA') decisions on credentials, on the basis of the report of the GA Credentials Committee, are considered in accordance with the UN Office of Legal Affairs ('OLA') as providing 'authoritative guidance' to other UN organs, even though they are not binding.¹ In fact, this also applies, beyond UN organs, also to UN conferences. In an opinion to such a UN conference in 2011, the OLA recommended that, should a question of a State's participation be raised at the conference, 'you recall that the General Assembly has accepted the State's credentials for the 65th session and that it is the practice of UN conferences to follow the guidance of the General Assembly on decisions relating to credentials'.²

5. That the same applies to specialised agencies of the UN follows from para 3 of General Assembly Resolution 396 (V) regarding 'Recognition by the United Nations of the representation of a Member State'. In that resolution, the GA, '[c]onsidering that it is in the interest of the Organisation that there should be uniformity in the procedure applicable whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations', and that 'in virtue of its composition, the General Assembly is the organ of the United Nations in which consideration can be best given to the views of all Member States', '[r]ecommends that the attitude adopted by the General Assembly [...] should be taken into account in other organs of the United Nations *and in the specialised agencies*'.³

6. The GA Credentials Committee, which is composed of nine members proposed by the President of the GA and appointed by the GA at the beginning of each session,⁴ submits a report to the General Assembly, which then decides on credentials by means of a resolution, based on the Committee's report. In practice, the GA usually merely adopts a resolution approving the report of the Credentials Committee.⁵ Until the Committee has submitted its report

¹ See United Nations Juridical Yearbook 1985, 129 and cf Sarooshi Opinion of 6 October 2019, para 7.

² United Nations Juridical Yearbook 2011, 495 para 6. For a reiteration of the OLA view referred to in the text in n 1 above, see *ibid* para 5.

³ UN Doc A/RES/396(V) of 14 December 1950, para 3 (emphasis added).

⁴ Rule 28 General Assembly Rules of Procedure.

⁵ See for example for the last session of the GA (74th): UN Doc A/RES/74/179 of 18 December 2019.

and the GA has decided on the issue of credentials, State representatives are entitled to fully participate in the work of the Assembly, including by exercising the right to vote, even when an objection to their credentials has been raised—in the latter instance on a provisional basis.⁶

7. There are two instances in which the practice of the UN regarding representation and approval of credentials⁷ becomes crucial for present purposes: (a) when there are more than one authorities issuing credentials of delegations of the same State, in which case the Credentials Committee and the GA must decide which set of credentials will be approved; and (b) when, even though there is only one authority issuing credentials of a delegation, the Credentials Committee and the GA decide to reject those credentials, and even not to allow the relevant representatives to participate in the work of the Assembly.

8. As to the former instance, Professor Sarooshi's opinion clearly sets out the legal position in paragraphs 9 and 10: 'it is clear that when the GA decides that certain representatives are the "only lawful representatives of a Member State" then "it follows automatically that the authorities accrediting those representatives constitute in the view of the General Assembly – again for its purposes – the only lawful Government of that Member State".'⁸ Further, 'there is no settled legal criteria that has consistently been applied by the UN in making such determinations. There was a tendency in a number of earlier cases (eg Iraq in 1958 and China in 1971) to use what is referred to as the "principle of effectiveness" – ie, whichever an authority can be said to exercise "effective control" throughout the territory of the State and is "habitually obeyed by the bulk of the population",'⁹ but in practice the Credentials Committee and the General Assembly have actually relied also on other considerations, including whether the relevant authority had come into power by constitutional means and the degree of international recognition it enjoyed.¹⁰ In fact, while the principle of effectiveness had been included as an 'objective' criterion in the draft of what became General Assembly Resolution 396 (V), it was

⁶ Rule 29 General Assembly Rules of Procedure. See also Sarooshi Opinion of 6 October 2019, para 8.

⁷ The question whether representation of a State and approval of the credentials issued by the State's government are two sides of the same coin, whether the power to decide over one is implied in the power to decide over the other, etc, is interesting but not crucial for present purposes. For a discussion see Dan Ciobanu, 'Credentials of Delegations and Representation of Member States at the United Nations' (1976) 25 ICLQ 351.

⁸ Referring to United Nations Juridical Yearbook 1972, 155 para 8.

⁹ Referring to Memorandum on the Legal Aspects of the Problem of Representation in the United Nations, UN Doc S/1466 of 9 March 1950.

¹⁰ See Sarooshi Opinion of 6 October 2019, para 10.

finally deleted, leaving only a reference to the purposes and principles of the UN and the circumstances of each case.¹¹ A leading commentator wrote, accordingly, that ‘in testing the representativeness of a government, the political organs of the United Nations, like individuals governments in bilateral relations, render *an essentially political judgment*’.¹²

9. As to the latter instance, it is possible, and it has happened, eg with respect to South Africa from 1970 onwards and until normalisation with the fall of Apartheid in 1994, that the Credentials Committee and the GA reject the credentials of a delegation even in the absence of a competing claim by another authority to issue credentials for the State’s delegation.¹³ This, however, appears to be extremely rare and is certainly not the issue with which the IOPC Funds are faced in the present instance. As such, a more detailed discussion is beyond the scope of the present Opinion.

¹¹ UN Doc A/RES/396(V) of 14 December 1950, para 1.

¹² See Ciobanu, n 7, 370–371 (emphasis added).

¹³ A similar situation arose in the League of Nations in 1936, when the League considered whether to approve the credentials issued by Selassie on behalf of Ethiopia, given questions as to the extent of effective control he exercised over the territory, and notwithstanding the fact that there was no competing authority claiming the power to issue such credentials.

III. UN PRACTICE REGARDING THE REPRESENTATION OF VENEZUELA

10. In his opinion of 6 October 2019, Professor Sarooshi noted that ‘delegates from Maduro’s Government continue to represent Venezuela at the United Nations’.¹⁴ In my previous opinion of 25 November 2020, I confirmed that this was the case. I noted that there appeared to have been no submission of credentials of a delegation by the Guaidó authority, or at least none was noted in the report of the GA Credentials Committee, which held its single meeting for the 74th session of the GA on 10 December 2019.¹⁵ As such, the Credentials Committee accepted the credentials of all representatives of the Member States as submitted, including those of the Maduro Government on behalf of the Bolivarian Republic of Venezuela, in a resolution that was adopted without a vote.¹⁶ The Committee did note that ‘[t]he representative of the United States of America dissociated from the adoption of the Committee’s resolution, solely with respect to the acceptance of the credentials submitted by the Maduro representative on behalf of the Bolivarian Republic of Venezuela’,¹⁷ but it does not appear that the US raised a formal objection.

11. In any event, the Credentials Committee recommended to the General Assembly that it adopt a resolution merely approving the Credentials Committee’s report,¹⁸ which the General Assembly duly adopted on 18 December 2019.¹⁹ It appears from the Official Records of the 51st Plenary Meeting of the General Assembly that that resolution was also adopted without a vote,²⁰ even though some delegations then took the floor to express their position that the adoption of the report of the Credentials Committee did not signify a tacit recognition by the relevant States of the Maduro Government.²¹ This is done out of an abundance of caution, and was done in that context also by some States with regard to State other than Venezuela. Other delegations also took the floor to express their support for the Maduro Government.²²

12. As such, it was the Maduro Government that represented the Bolivarian Republic of Venezuela during the last (74th) session of the United Nations General Assembly in 2019. This

¹⁴ See Sarooshi Opinion of 6 October 2019, para 12.

¹⁵ See UN Doc A/74/572 of 4 December 2019 [sic], paras 5–6.

¹⁶ *Ibid*, paras 7–8.

¹⁷ *Ibid*, para 9.

¹⁸ *Ibid*, para 12.

¹⁹ UN Doc A/RES/74/179.

²⁰ UN Doc A/74/PV.51 of 18 December 2019, 1.

²¹ *Ibid*, 1–2.

²² *Ibid*, 2–4.

is also the situation during the current 75th session of the General Assembly in 2020(-21). In fact, Maduro himself addressed the 75th session of the GA (though virtually, due to restrictions imposed as a consequence of the Covid-19 pandemic) on behalf of the Bolivarian Republic of Venezuela on 23 September 2020.²³ There was no submission of competing credentials on behalf of the Guaidó authority during this session. The Credentials Committee met on 23 November 2020 and made a recommendation to the GA that was almost identical to that of 2019, recommending adoption of a resolution merely approving the Credentials Committee's report.²⁴ The GA also adopted a decision that is similar to that of 2019 on 1 December 2020.²⁵ The resolution was adopted without a vote and, while the meeting record has not yet been published, it appears that again some delegations took the floor to indicate that the adoption of the report of the Credentials Committee did not signify a tacit recognition by the relevant States of the Maduro Government, while others also took the floor to express their support for the Maduro Government.²⁶

13. It should be noted, finally, that even before the decisions of the GA based on the reports of the Credentials Committee in December 2019 and November 2020, UN conferences had followed the guidance of the GA in accepting the credentials issued by the Maduro Government for the 73rd session in December 2018,²⁷ even though Guaidó declared himself interim President on 23 January 2019. The Second High-level United Nations Conference on South-South Cooperation convened in Buenos Aires on 20–22 March 2019, ie after the declaration by Guaidó, approved the report of the Credentials Committee established for that conference, and which had accepted the credentials submitted by the Maduro Government in a resolution adopted without a vote (though again with some 'dissociations').²⁸ Both Russia and China noted, in that connection, that the GA had accepted the credentials issued by the Maduro Government for the 73rd session of the GA,²⁹ implicitly pointing to the 'authoritative guidance' discussed above, in Part II of this Opinion.

²³ See <<https://news.un.org/en/story/2020/09/1073382>> and <https://estatements.unmeetings.org/estatements/10.0010/20200923/aCaK5IQSX0PR/KAwodvEAAVpK_en.pdf> (both accessed 22 November 2020).

²⁴ UN Doc A/RES/75/606 of 23 November 2020, paras 8, 13.

²⁵ UN Doc A/RES/75/19 of 7 December 2020.

²⁶ See <<https://www.un.org/press/en/2020/ga12291.doc.htm>> (accessed 21 March 2021).

²⁷ See UN Doc A/RES/73/193 of 17 December 2018, approving the report of the Credentials Committee in UN Doc A/73/600 of 28 November 2018.

²⁸ See UN Doc A/CONF.235/5 of 20 March 2019, paras 10–14.

²⁹ Ibid, paras 15–16.

14. What follows from this practice is that (a) the Maduro Government continues to represent and appoint representatives of the Bolivarian Republic of Venezuela in the United Nations, its specialised agencies, and conferences; (b) the Maduro Government is likely to continue to do so given the ‘authoritative guidance’ already given by the General Assembly in 2018, 2019, and 2020; (c) it appears that the Guaidó authority has not sought to challenge this position through the submission of competing credentials.

IV. PRACTICE IN OTHER INTERNATIONAL ORGANISATIONS

15. Beyond the UN system, discussed in Parts II and III of this Opinion, I am not aware of any global international organisation having switched its accreditation from representatives appointed by the Maduro Government to representatives appointed by the Guaidó authority. However, two regional organisations, namely the Inter-American Development Bank ('IDB') and the Organisation of American States ('OAS') did accept the appointment of representatives put forward by the Guaidó authority in 2019 and, in the case of OAS, also in 2020.

16. The IDB (and the Inter-American Investment Corporation) adopted resolution AG-1/19 and CII/AG-1/19, entitled 'Governor and Executive Director for the Bolivarian Republic of Venezuela' on 15 March 2019. In it, they 'take note that the Bolivarian Republic of Venezuela has designated Mr. Ricardo Hausmann as Governor of the Bank and the Corporation and that prior designations by the Bolivarian Republic of Venezuela to such position have been revoked.'³⁰ The Agreement establishing the Inter-American Development Bank simply provides in Article VIII(2)(a) that 'each member country of the Bank shall appoint a governor who shall serve at the pleasure of the appointing member.' The IDB does not set up a credentials committee, nor had it ever before faced a situation where two competing authorities were claiming the power to appoint Governors, according to the IDB's in-house counsel, writing in his personal capacity.³¹ Given that '[a]ll the powers of the Bank shall be vested in the Board of Governors' according to the same provision noted above, the Board simply 'took note' of the designation by the Guaidó authority and of the revocation of any previous designations by the Maduro Government. There is no record of any vote, or of any relevant discussion in the Board. There are no further relevant resolutions for 2020 or 2021.

17. The OAS also does not provide for a credentials committee. Rather, under Rule 27 of the OAS General Assembly Rules of Procedure, the Secretary-General receives credentials (as per Rule 3) and submits a report to the General Assembly of the Organisation. The General Assembly approved the appointment on 28 June 2019.³² The relevant session did give rise to

³⁰ Doc AG-1/19 and CII/AG-1/19 of 15 March 2019, para 1.

³¹ Félix A Quintero Vollmer, 'International Law or International Politics? The Guaidó v Maduro Conundrum at the Inter-American Development Bank' (2019) 51 U Miami Inter-American LR 118, 138.

³² 2019 resolutions are not yet available on the OAS website, but a provisional version of the resolution is available as a Press Release on the website: <https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-013/19> (accessed 24 November 2020).

serious disagreements, with the Uruguayan delegation reportedly leaving the session in protest, and with eight other States voting against the decision, which was finally passed by 19 affirmative votes, there being also 6 abstentions.³³ A similar situation appears to continue in 2020-21.³⁴

18. The first thing to note regarding this practice is that the two organisations discussed above are organisations that, to quote the IDB in-house counsel ‘share almost the same regional membership’.³⁵ The second thing to note is that the organisations that are closest to the structure and function of the IDB on a global level are the World Bank and the International Monetary Fund, which however have no Governors that have been appointed for Venezuela—the positions appear to be vacant.³⁶ This means that the Guaidó authority has either not sought, or not yet managed, to make similar appointments in these global international organisations. The organisation that is closest to the structure and function of the OAS on the global level is the United Nations, which – as discussed in Part III of this Opinion – has not switched its accreditation from the Maduro appointees to Guaidó appointees. The third and most important thing to note for present purposes is that the IOPC Funds are not particularly similar to either the IDB or the OAS. In particular, the IOPC Funds are global treaty bodies, established by treaties adopted under the auspices of the International Maritime Organisation, a UN specialised agency. Their global reference and clear – if not direct – relationship with the broader UN system would militate against aligning with practice that appears to be outlying and limited to organisations with reference to the Americas, and rather in favour of falling in with the practice of the United Nations, its specialised agencies, and its conferences. An overview of the relevant provisions regarding accreditation in the IOPC Funds, in Part V below, further confirms this by demonstrating the close relationships of those provisions with the applicable provisions in the UN system.

³³ See Federica Paddeu and Alonso Gurmendi Dunkelberg, ‘Recognition of Governments: Legitimacy and Control Six Months after Guaidó’ [2019] *Opinio Juris* (18 July), available at: <<http://opiniojuris.org/2019/07/18/recognition-of-governments-legitimacy-and-control-six-months-after-guaido/>> (accessed 24 November 2020); see also Quintero Vollmer, n 31, 135.

³⁴ See Doc AG/RES. 2963 (L-O/20) of 21 October 2020, para 11.

³⁵ Quintero Vollmer, n 31, 133.

³⁶ See <<http://pubdocs.worldbank.org/en/627731541108831255/BankGovernors.pdf>> and <<https://www.imf.org/external/np/sec/memdir/members.aspx>> (both accessed 21 March 2021).

V. THE IOPC FUNDS

19. The Rules of Procedure of the 1992 Fund Assembly, the 1992 Fund Executive Committee, and the Fund Supplementary Assembly are very similar to those of the General Assembly of the UN regarding the establishment and operation of Credentials Committee(s). They provide for the establishment at each session of a Credentials Committee. The 1992 Fund Assembly Credentials Committee, composed of five members elected by the Assembly at the proposal of the Chair, examines the credentials of delegations of Member States and reports to the Assembly.³⁷ Even if an objection is made to the admission of a representative, the representative is allowed to sit provisionally with the same rights as other representatives until the Credentials Committee has reported and the Assembly has made its decision.³⁸

20. The Rules of Procedure of the 1992 Fund Executive Committee and the Fund Supplementary Assembly are almost identical, except for providing for fewer (three) members of the relevant Credentials Committees.³⁹ However, when these two bodies are holding sessions in conjunction with the Assembly, then the 1992 Fund Assembly Credentials Committee is the one that undertakes to examine credentials for all bodies.⁴⁰

21. In the present instance, the 1992 Fund Assembly Credentials Committee will examine thus credentials for the purpose of the meetings of the other bodies as well. It has received competing credentials by the Venezuelan Ambassador to the United Kingdom, Mrs Rocío Maneiro, who indicates that she is acting as authorised by the Minister of Foreign Affairs of the Bolivarian Republic of Venezuela, as well as by Juan Guaidó as President of the National Assembly and Interim President of the Bolivarian Republic of Venezuela.

22. Ambassador Maneiro continues to be the Ambassador accredited to the United Kingdom, where the Headquarters of the IOPC Funds are located, as required by Rule 9 of the 1992 Fund Assembly Rules of Procedure. This is clear from the London Diplomatic List available through the UK Government,⁴¹ and was acknowledged by the Court of Appeal of England and

³⁷ Rule 10 1992 Fund Assembly Rules of Procedure.

³⁸ Rule 11 1992 Fund Assembly Rules of Procedure.

³⁹ Rules 9–10 1992 Fund Executive Committee Rules of Procedure; Rules 10–11 Supplementary Fund Rules of Procedure.

⁴⁰ See Doc 92FUND/A/ES.9/28 of March 2005, paras 24.5–24.7.

⁴¹ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969497/London_Diplomatic_List_-_March_2021.odt > (accessed 21 March 2021).

Wales as recently as October 2020.⁴² Juan Guaidó claims to be the interim Head of Government. In the instance, then, the credentials submitted by Ambassador Maneiro clearly conform to Rule 9 of the 1992 Fund Assembly Rules of Procedure. On the other hand, for the credentials submitted by Mr Guaidó to conform to the same rule of the Rules of Procedure, the IOPC Funds would have to decide that Mr Guaidó is the Head of Government of the Bolivarian Republic of Venezuela. If the IOPC Funds were to follow UN practice in that respect, they would have to consider that, at the moment at least, this is not the case, and thus to accept the credentials submitted by Ambassador Maneiro and reject those submitted by Mr Guaidó.



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⁴² *The 'Maduro Board' of the Central Bank of Venezuela v The 'Guaidó Board' of the Central Bank of Venezuela* [2020] EWCA Civ 1249, para 34: 'It is not disputed that HMG has continued to maintain diplomatic relations with Mr Maduro's representatives by continuing to receive at the Court of St James the Ambassador appointed by Mr Maduro and by continuing to maintain an Embassy in Venezuela with an Ambassador accredited to Mr Maduro. The Venezuelan Ambassador to the United Kingdom is Mrs Maneiro, who was appointed in November 2014 and presented her credentials to Her Majesty the Queen, and who has continued in post (and in occupation of the Venezuelan Embassy) to the present date.'

APPENDIX 1

Table of Authorities

List of Documents

Rules of Procedure of the United Nations General Assembly
 United Nations General Assembly Resolution 396 (V) of 14 December 1950
 United Nations General Assembly Resolution 73/193 of 17 December 2018
 United Nations General Assembly Resolution 74/179 of 18 December 2019
 United Nations General Assembly Resolution 75/19 of 1 December 2020
 Report of the Credentials Committee, UN Doc A/73/600 of 28 November 2018
 Report of the Credentials Committee, UN Doc A/74/572 of 4 December 2019
 Report of the Credentials Committee, UN Doc A/RES/75/606 of 23 November 2020
 51st Plenary Meeting Procès-Verbaux, UN Doc A/74/PV.51 of 18 December 2019
 Report of the Credentials Committee [of the Second High-level United Nations Conference on South-South Cooperation], UN Doc A/CONF.235/5 of 20 March 2019
 [IDB] Resolution AG-1/19 and CII/AG-1/19 of 15 March 2019
 [OAS] Doc AG/RES. 2963 (L-O/20) of 21 October 2020
 [IOPC Funds] Doc 92FUND/A/ES.9/28 of March 2005

List of Cases

The ‘Maduro Board’ of the Central Bank of Venezuela v The ‘Guaidó Board’ of the Central Bank of Venezuela [2020] EWCA Civ 1249

List of Other Authorities

Dan Ciobanu, ‘Credentials of Delegations and Representation of Member States at the United Nations’ (1976) 25 ICLQ 351
 Federica Paddeu and Alonso Gurmendi Dunkelberg, ‘Recognition of Governments: Legitimacy and Control Six Months after Guaidó’ [2019] *Opinio Juris* (18 July), available at: <<http://opiniojuris.org/2019/07/18/recognition-of-governments-legitimacy-and-control-six-months-after-guaido/>>
 Félix A Quintero Vollmer, ‘International Law or International Politics? The Guaidó v Maduro Conundrum at the Inter-American Development Bank’ (2019) 51 *U Miami Inter-American LR* 118

United Nations Juridical Yearbook 1972

United Nations Juridical Yearbook 1985

United Nations Juridical Yearbook 2011

APPENDIX 2**Biographical Information**

Antonios Tzanakopoulos is Associate Professor of Public International Law at the University of Oxford, a Fellow of St Anne's College, and door tenant at Three Stone Chambers in Lincoln's Inn. He advises States, international organisations, and other actors on matters of international law and has acted as counsel before the International Court of Justice and international arbitral tribunals. His publications include *Disobeying the Security Council – Countermeasures Against Wrongful Sanctions* (Oxford 2011), the leading treatise on reactions to illegal acts by international organisations.
