



Fonds internationaux
d'indemnisation pour
les dommages dus
à la pollution par les
hydrocarbures

Point 1 de l'ordre du jour	IOPC/MAR21/1/2/1	
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Comité exécutif du Fonds de 1992	92EC75	●
Assemblée du Fonds complémentaire	SAES8	●

EXAMEN DES POUVOIRS

RAPPORT INTERMÉDIAIRE DE LA COMMISSION DE VÉRIFICATION DES POUVOIRS

(À la date du 29 mars 2021 à 15 heures)

Note de la Commission de vérification des pouvoirs

Résumé:	La Commission de vérification des pouvoirs a examiné les pouvoirs des délégations des États Membres du Fonds de 1992 et soumet le rapport intermédiaire ci-après.
Mesures à prendre:	<u>Assemblée du Fonds de 1992</u> a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs; et b) décider lequel des deux représentants doit être accrédité comme représentant officiel du Venezuela à ces sessions particulières des organes directeurs des FIPOL. <u>Comité exécutif du Fonds de 1992 et Assemblée du Fonds complémentaire</u> a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs; et b) prendre note de la décision de l'Assemblée du Fonds de 1992 concernant celui des deux représentants qui devrait être accrédité en tant que représentant officiel du Venezuela à ces sessions particulières des organes directeurs des FIPOL.

1 Introduction

- 1.1 En application de l'article 10 du Règlement intérieur de l'Assemblée du Fonds de 1992 et de l'Assemblée du Fonds complémentaire et de l'article 9 du Règlement intérieur du Comité exécutif du Fonds de 1992, l'Assemblée du Fonds de 1992 a nommé une commission de vérification des pouvoirs composée des cinq membres suivants et de leurs représentants:

Allemagne (M. Volker Schöfisch)
Fédération de Russie (M. Yury Melenas)
Japon (M. Yuji Okugawa)
Malaisie (M. Kanagalingam Selvarasah)
Mexique (Mme Aideé Saucedo)

- 1.2 La Commission de vérification des pouvoirs s'est réunie à distance le 29 mars 2021 sous la présidence de M. Kanagalingam Selvarasah.
- 1.3 La Commission de vérification des pouvoirs présente son rapport intermédiaire en application de l'article 10 du Règlement intérieur de l'Assemblée du Fonds de 1992.

2 Examen des pouvoirs

- 2.1 Les pouvoirs des délégations de 71 États Membres du Fonds de 1992, y compris les États Membres du Comité exécutif du Fonds de 1992 et du Fonds complémentaire, ont été examinés.
- 2.2 La Commission a fondé ses délibérations sur les articles 9 et 11 du Règlement intérieur de l'Assemblée du Fonds de 1992 et sur les lignes directrices fournies dans la circulaire [IOPC/2015/Circ.4](#).
- 2.3 Les pouvoirs reçus concernant les États Membres suivants ont été jugés en bonne et due forme à 15 heures le 29 mars 2021:

Membres du Comité exécutif du Fonds de 1992

Allemagne	Îles Marshall	Maroc
Canada	Inde	Pays-Bas
Équateur	Italie	Philippines
Espagne	Libéria	République de Corée
Ghana	Malaisie	Thaïlande

Autres États Membres du Fonds de 1992

Algérie	Estonie	Nigéria
Angola	Fédération de Russie	Norvège
Antigua-et-Barbuda	Finlande	Nouvelle-Zélande
Argentine	France	Palaos
Australie	Géorgie	Panama
Bahamas	Grèce	Pologne
Belgique	Guyana	Portugal
Brunei Darussalam	Îles Cook	Royaume-Uni
Bulgarie	Iran (islamique république d')	Saint-Kitts-et-Nevis
Cambodge	Israël	Saint-Vincent-et-les Grenadines
Cameroun	Jamaïque	Singapour
Chine ^{<1>}	Japon	Sri Lanka
Chypre	Lettonie	Suède
Colombie	Luxembourg	Trinité et Tobago
Côte d'Ivoire	Madagascar	Turquie
Croatie	Malte	Uruguay
Danemark	Mexique	Vanuatu
Dominique	Mozambique	Venezuela (République
Émirats arabes unis	Nicaragua	bolivarienne du)

- 2.4 Après avoir examiné les lettres conférant des pouvoirs aux délégations de 70 États Membres, la Commission a examiné les deux lettres conférant des pouvoirs de la République bolivarienne du Venezuela (Venezuela).

^{<1>} La Convention de 1992 portant création du Fonds s'applique uniquement à la Région administrative spéciale de Hong Kong comme c'était le cas de la Convention de 1971 portant création du Fonds.

- 2.5 En ce qui concerne les pouvoirs de la République bolivarienne du Venezuela, la Commission de vérification des pouvoirs a tenu un débat séparé comme indiqué dans la section 3 ci-dessous. L'avis juridique fourni par M. Antonios Tzanakopoulos est joint en annexe I du présent document (disponible en anglais seulement).

3 Pouvoirs de la République bolivarienne du Venezuela

Considérations exprimées lors des sessions antérieures des organes directeurs

Sessions d'octobre 2019 des organes directeurs

- 3.1 En octobre 2019, l'Administrateur a reçu deux lettres conférant des pouvoirs à deux délégations distinctes qui soutenaient représenter le Venezuela – l'une signée par Mme Rocío Maneiro (Ambassadrice, Représentante permanente auprès de l'Organisation maritime internationale (OMI) et d'autres organisations internationales ayant leur siège à Londres, nommée par le Président Nicolas Maduro) et l'autre signée par le Président Juan Guaidó (Président de l'Assemblée nationale et Président (E) du Venezuela).
- 3.2 Vu la complexité de la question, l'Administrateur a invité Mme Rosalie Balkin, ancienne Sous-Secrétaire générale et directrice de la Division des affaires juridiques et des relations extérieures de l'OMI, à apporter son concours à la Commission de vérification des pouvoirs pendant ses délibérations. L'Administrateur a également sollicité l'avis de M. Dan Sarooshi (Queen's Counsel), l'avocat en droit international public que consulte le Fonds de 1992.
- 3.3 La Commission de vérification des pouvoirs a recommandé que le *statu quo* soit maintenu et que la lettre conférant des pouvoirs délivrée par l'Ambassadrice Maneiro soit acceptée comme désignant les représentants officiels du Venezuela pour les sessions d'octobre 2019 des organes directeurs. La Commission a toutefois relevé que cette position n'était applicable qu'à la réunion en cours et qu'elle était susceptible de changer dans les mois à venir si la situation évoluait. Cette recommandation a été acceptée par l'Assemblée du Fonds de 1992. Le Comité exécutif du Fonds de 1992 et l'Assemblée du Fonds complémentaire ont pris note de la décision de l'Assemblée (voir le document IOPC/OCT19/1/2/1).

Sessions de décembre 2020 des organes directeurs

- 3.4 À l'époque des sessions de décembre 2020 des organes directeurs, l'Administrateur a également reçu deux lettres conférant des pouvoirs à deux délégations soutenant représenter le Venezuela. L'Administrateur a demandé conseil à Mme Rosalie Balkin et a également demandé l'avis juridique sur cette question de M. Antonios Tzanakopoulos, professeur associé de droit international public à la faculté de droit de l'Université d'Oxford.
- 3.5 La Commission de vérification des pouvoirs a recommandé à nouveau que le *statu quo* soit maintenu et que la lettre conférant des pouvoirs émise par l'Ambassadrice Maneiro soit acceptée à cette réunion comme désignant les représentants officiels du Venezuela pour les sessions de décembre 2020 des organes directeurs. Cette recommandation a été acceptée par l'Assemblée du Fonds de 1992 (voir le document IOPC/NOV20/1/2/1).

Sessions de mars 2021 des organes directeurs

- 3.6 La même situation s'était produite lors des sessions de mars 2021 des organes directeurs, puisque l'Administrateur avait reçu des lettres conférant des pouvoirs aux deux mêmes délégations soutenant représenter le Venezuela. L'Administrateur avait de nouveau invité Mme Rosalie Balkin à donner ses conseils à la Commission de vérification des pouvoirs et avait demandé à M. Antonios Tzanakopoulos d'apporter un avis juridique actualisé sur cette question.

- 3.7 La Commission de vérification des pouvoirs a examiné le nouvel avis juridique fourni par M. Tzanakopoulos (voir l'annexe). Il a été noté que depuis la dernière réunion des organes directeurs des FIPOL en décembre 2020, l'Assemblée générale des Nations Unies avait continué de maintenir le *statu quo* en ce qui concerne les pouvoirs présentés par le gouvernement Maduro. Il a également été noté que le 1er décembre 2020, cette assemblée avait décidé d'accepter les pouvoirs présentés par le représentant de Maduro au nom du Venezuela.
- 3.8 La Commission de vérification des pouvoirs a estimé à l'unanimité qu'il n'appartient pas aux FIPOL de décider quel est le gouvernement légitime du Venezuela, car elle considère qu'il s'agit là d'une question politique qui doit être tranchée dans une autre enceinte, à savoir les organes politiques des Nations Unies (Assemblée générale et Conseil de sécurité). La Commission a conclu que son rôle et celui de l'Assemblée du Fonds de 1992 étaient simplement de décider lequel des deux représentants devait être accrédité en tant que représentant officiel du Venezuela à ces sessions particulières des organes directeurs des Fonds et d'adresser sa recommandation à l'Assemblée du Fonds de 1992.
- 3.9 Après avoir examiné cette question et l'avis juridique fourni par M. Tzanakopoulos le 24 mars 2021, la Commission de vérification des pouvoirs recommande de maintenir le *statu quo* et d'accepter la lettre conférant des pouvoirs à la délégation actuelle du Venezuela émise par l'Ambassadrice Maneiro, nommée par le Président Maduro, et de considérer les personnes nommées dans cette lettre comme les représentants officiels pour les sessions de mars 2021 des organes directeurs. La Commission souligne cependant que cette position ne s'applique qu'à cette réunion et qu'elle pourrait être susceptible d'être modifiée dans les mois à venir si la situation évolue.

4 Mesures à prendre

4.1 Assemblée du Fonds de 1992

L'Assemblée du Fonds de 1992 est invitée à:

- a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs; et
- b) décider lequel des deux représentants doit être accrédité comme représentant officiel du Venezuela à ces sessions particulières des organes directeurs des FIPOL.

4.2 Comité exécutif du Fonds de 1992 et Assemblée du Fonds complémentaire

Le Comité exécutif du Fonds de 1992 et l'Assemblée du Fonds complémentaire sont invités à:

- a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs; et
- b) prendre note de la décision de l'Assemblée du Fonds de 1992 concernant celui des deux représentants qui devrait être accrédité en tant que représentant officiel du Venezuela à ces sessions particulières des organes directeurs des FIPOL.

* * *

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://estatemnts.unmeetings.org/estatemnts/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.



Professor Antonios Tzanakopoulos

St Anne's College, Oxford, OX2 6HS
 Tel: +447733092510 - +441864284734
 Email: Antonios.tzanakopoulos@law.ox.ac.uk

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.
