



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

|  |                  |   |
|--|------------------|---|
| <b>Point 1 de l'ordre du jour</b>                | IOPC/OCT22/1/2/1 |   |
| <b>Date</b>                                      | 26 octobre 2022  |   |
| <b>Original</b>                                  | Anglais          |   |
| <b>Conseil d'administration du Fonds de 1992</b> | 92A27            | ● |
| <b>Comité exécutif du Fonds de 1992</b>          | 92EC79           | ● |
| <b>Assemblée du Fonds complémentaire</b>         | SA19             | ● |

## EXAMEN DES POUVOIRS

### RAPPORT INTERMÉDIAIRE DE LA COMMISSION DE VÉRIFICATION DES POUVOIRS

(À la date du 25 octobre 2022 à 14 heures)

#### Note de la Commission de vérification des pouvoirs

|                            |   |
|----------------------------|---|
| <b>Résumé :</b>            | La Commission de vérification des pouvoirs a examiné les pouvoirs des délégations des États Membres du Fonds de 1992, y compris les États Membres du Comité exécutif du Fonds de 1992 et les États Membres du Fonds complémentaire, et soumet le rapport intermédiaire ci-après.  |
| <b>Mesures à prendre :</b> | <p><u>Conseil d'administration du Fonds de 1992</u><sup>&lt;1&gt;</sup></p> <p>a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs ; et</p> <p>b) décider lequel des deux représentants doit être accrédité comme représentant officiel du Venezuela à ces sessions particulières des organes directeurs des FIPOL.</p> <p><u>Comité exécutif du Fonds de 1992 et Assemblée du Fonds complémentaire</u></p> <p>a) prendre note du rapport intermédiaire de la Commission de vérification des pouvoirs ; et</p> <p>b) prendre note de la décision du Conseil d'administration 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.</p> |

## 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, le Conseil d'administration du Fonds de 1992 a nommé une commission de vérification des pouvoirs composée des cinq membres suivants et de leurs représentants :

Algérie (M. Mohamed Khelifi)  
Nigéria (M. Abdulmumuni Dirisu)  
Panama (Mme Jacqueline Da Luz)  
Pologne (Mme Małgorzata Buszyńska)  
Thaïlande (M. Watchara Chiemanukulkit)

<1> Dorénavant, toute référence au « Conseil d'administration du Fonds de 1992 » doit être lue comme signifiant « Conseil d'administration du Fonds de 1992, agissant au nom de l'Assemblée du Fonds de 1992 ».

- 1.2 La Commission de vérification des pouvoirs s'est réunie en présentiel le 25 octobre 2022 sous la présidence de M. Watchara Chiemanukulkit et a rédigé le présent rapport intermédiaire.
- 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 61 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 de vérification 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 60 États Membres suivants ont été jugés en bonne et due forme à 14 heures le 25 octobre 2022 :

### **Membres du Comité exécutif du Fonds de 1992**

|           |               |             |
|-----------|---------------|-------------|
| Allemagne | Îles Marshall | Malaisie    |
| Équateur  | Italie        | Maroc       |
| Espagne   | Japon         | Pays-Bas    |
| France    | Libéria       | Philippines |
|           |               | Singapour   |

### **Autres États Membres du Fonds de 1992**

|                            |                      |  |
|----------------------------|----------------------|--|
| Algérie                    | Émirats arabes unis  | Panama                                 |
| Angola                     | Fédération de Russie | Pologne                                |
| Antigua-et-Barbuda         | Finlande             | Portugal                               |
| Argentine                  | Géorgie              | République de Corée                    |
| Australie                  | Ghana                | Royaume-Uni                            |
| Bahamas                    | Grèce                | Saint-Kitts-et-Nevis                   |
| Brunéi Darussalam          | Irlande              | Saint-Marin                            |
| Bulgarie                   | Kenya                | Sri Lanka                              |
| Cameroun                   | Lettonie             | Suède                                  |
| Canada                     | Malte                | Suisse                                 |
| Chine <sup>&lt;2&gt;</sup> | Mexique              | Thaïlande                              |
| Chypre                     | Monténégro           | Trinité-et-Tobago                      |
| Colombie                   | Mozambique           | Türkiye                                |
| Congo                      | Namibie              | Uruguay                                |
| Croatie                    | Nigéria              | Venezuela (République bolivarienne du) |
| Danemark                   | Norvège              |  |

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<sup><2></sup> La Convention de 1992 portant création du Fonds s'applique uniquement à la Région administrative spéciale de Hong Kong.

- 2.4 La Commission de vérification des pouvoirs a noté que les pouvoirs soumis par la Jamaïque n'étaient pas en bonne et due forme. La Commission espère que la délégation jamaïcaine rectifiera cette situation avant la présentation de son rapport final le vendredi 28 octobre 2022.
- 2.5 Dans le cas de de l'Afrique du Sud, de la Belgique et d'Oman, qui ont participé à la session du mardi matin, la Commission de vérification des pouvoirs a noté qu'aucun pouvoir n'avait été présenté. Elle espère que les délégations concernées rectifieront cette situation avant la présentation de son rapport final le vendredi 28 octobre 2022.
- 2.6 La Commission de vérification des pouvoirs a en outre noté que le Monténégro avait soumis des pouvoirs mais n'avait pas assisté aux séances tenues le matin.
- 2.7 La Commission de vérification des pouvoirs souhaite encourager les États Membres à suivre le plus fidèlement possible les directives fournies dans la circulaire IOPC/2015/Circ.4 afin d'éviter toute irrégularité dans les pouvoirs soumis lors des réunions.
- 2.8 Après avoir examiné les lettres conférant des pouvoirs aux délégations de 60 États Membres, la Commission de vérification des pouvoirs a examiné les deux lettres conférant des pouvoirs de la République bolivarienne du Venezuela (Venezuela).
- 2.9 En ce qui concerne les pouvoirs du Venezuela, la Commission de vérification des pouvoirs a tenu un débat séparé comme indiqué dans la section 3 ci-dessous.

### **3 Pouvoirs de la République bolivarienne du Venezuela**

#### Considérations exprimées lors des sessions antérieures des organes directeurs

- 3.1 Aux réunions des organes directeurs tenues en octobre 2019, décembre 2020, mars 2021, novembre 2021 et mars 2022, la Commission de vérification des pouvoirs a examiné deux lettres conférant des pouvoirs à deux délégations distinctes qui soutenaient représenter le Venezuela – l'une signée par Mme Rocío Maneiro et l'autre signée par le Président Juan Guaidó<sup><3></sup>.
- 3.2 À ces cinq réunions, la Commission de vérification des pouvoirs a recommandé à l'Assemblée du Fonds de 1992 d'accepter les personnes désignées dans les lettres conférant des pouvoirs délivrées par l'Ambassadrice Maneiro comme étant les représentants officiels du Venezuela. L'Assemblée du Fonds de 1992 a accepté ces recommandations, et le Comité exécutif du Fonds de 1992 et l'Assemblée du Fonds complémentaire ont pris note des décisions de l'Assemblée (voir les documents IOPC/OCT19/1/2/1, IOPC/NOV20/1/2/1, IOPC/MAR21/1/2/1, IOPC/NOV21/1/2/4 et IOPC/MAR22/1/2/1).

#### *Sessions d'octobre 2022 des organes directeurs*

- 3.3 Lors des sessions d'octobre 2022 des organes directeurs, l'Administrateur a reçu des lettres conférant des pouvoirs aux deux mêmes délégations qui soutenaient représenter le Venezuela. L'Administrateur a demandé à M. Antonios Tzanakopoulos de fournir un avis juridique actualisé sur cette question (joint en annexe au présent document).
- 3.4 Comme lors des réunions précédentes, la Commission de vérification des pouvoirs a estimé à l'unanimité qu'il n'appartenait pas aux FIPOL de décider quel était le gouvernement légitime

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<3> Mme Rocío Maneiro est l'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 le Président Juan Guaidó est le Président de l'Assemblée nationale et le Président (E) du Venezuela.

du Venezuela, car il s'agissait d'une question politique qui devait être tranchée au sein d'une autre enceinte, à savoir les organes politiques de l'Organisation des Nations Unies (ONU) (que sont l'Assemblée générale et le Conseil de sécurité de l'ONU). La Commission de vérification des pouvoirs a conclu que son rôle, comme celui de l'Assemblée du Fonds de 1992, consistait simplement à décider laquelle des deux délégations devait être accréditée en tant que représentant officiel du Venezuela à chaque réunion des organes directeurs des Fonds.

- 3.5 En examinant cette question et l'avis juridique fourni par M. Tzanakopoulos le 24 octobre 2022, la Commission de vérification des pouvoirs recommande de nouveau que le *statu quo* soit maintenu et que, par conséquent, la lettre conférant des pouvoirs à la délégation actuelle du Venezuela délivrée par l'Ambassadrice Maneiro, nommée par le Président Maduro, soit acceptée et que les personnes désignées dans cette lettre soient considérées comme les représentants officiels à la réunion d'octobre 2022 des organes directeurs. Toutefois, la Commission note également que cette position ne s'applique qu'à cette réunion et qu'elle pourrait être susceptible d'être modifiée dans les mois à venir en fonction de l'évolution de la situation.

#### **4 Mesures à prendre**

##### **4.1 Conseil d'administration du Fonds de 1992**

Le Conseil d'administration du Fonds de 1992 est invité 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 du Conseil d'administration 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.

\* \* \*

ANNEX

**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 October 2022

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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 25 to 28 October 2022. 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 March 2022, when the IOPC Funds last solicited and obtained a legal opinion on these matters by me, having previously also obtained a number of opinions by me and, earlier, an opinion by Professor Dan Sarooshi, KC. As in my last four opinions on these matters, which are 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 to 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 opinions of 17 March 2022, 25 October 2021, 24 March 2021, and 25 November 2020, on the opinion of Professor Dan Sarooshi, KC 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.<sup>1</sup> 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, '[the conference] recall that the General Assembly has accepted the State's credentials for the 65<sup>th</sup> session and that it is the practice of UN conferences to follow the guidance of the General Assembly on decisions relating to credentials'.<sup>2</sup>

5. That the same applies to specialised agencies of the UN follows from paragraph 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, '*considering* 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', '*recommends* 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*'.<sup>3</sup>

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,<sup>4</sup> submits a report to the General Assembly, which then decides on credentials by means of a resolution,

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

<sup>2</sup> 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.

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

<sup>4</sup> Rule 28 General Assembly Rules of Procedure.



based on the Committee's report. In practice, the GA usually merely adopts a resolution approving the report of the Credentials Committee.<sup>5</sup> Until the Committee has submitted its report 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.<sup>6</sup>

7. There are two instances in which the practice of the UN regarding representation and approval of credentials<sup>7</sup> 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".'<sup>8</sup> 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",'<sup>9</sup> 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

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<sup>5</sup> See for example for the 74<sup>th</sup> session of the GA: UN Doc A/RES/74/179 of 18 December 2019; for the 75<sup>th</sup> session: UN Doc A/RES/75/19 of 7 December 2020; for the 76<sup>th</sup> session: UN Doc A/RES/76/15 of 6 December 2021.

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

<sup>7</sup> 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.

<sup>8</sup> Referring to United Nations Juridical Yearbook 1972, 155 para 8.

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

recognition it enjoyed.<sup>10</sup> 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 finally deleted, leaving only a reference to the purposes and principles of the UN and the circumstances of each case.<sup>11</sup> A leading commentator wrote, accordingly, that ‘in testing the representativeness of a government, the political organs of the United Nations, like individual governments in bilateral relations, render *an essentially political judgment*’.<sup>12</sup>

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.<sup>13</sup> 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.

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<sup>10</sup> See Sarooshi Opinion of 6 October 2019, para 10.

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

<sup>12</sup> See Ciobanu, n 7, 370–371 (emphasis added).

<sup>13</sup> 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’.<sup>14</sup> In my previous opinions of 17 March 2022, 25 October 2021, 24 March 2021, and 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 74<sup>th</sup> session of the GA on 10 December 2019.<sup>15</sup> 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.<sup>16</sup> 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’,<sup>17</sup> 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,<sup>18</sup> which the General Assembly duly adopted on 18 December 2019.<sup>19</sup> It appears from the Official Records of the 51<sup>st</sup> Plenary Meeting of the General Assembly that that resolution was also adopted without a vote,<sup>20</sup> 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.<sup>21</sup> This is done out of an abundance of caution, and was done in that context also by some States with regard to States other than Venezuela. Other delegations also took the floor to express their support for the Maduro Government.<sup>22</sup>

12. As such, it was the Maduro Government that represented the Bolivarian Republic of Venezuela during the 74<sup>th</sup> session of the United Nations General Assembly in 2019. This was

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<sup>14</sup> See Sarooshi Opinion of 6 October 2019, para 12.

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

<sup>16</sup> *Ibid.*, paras 7–8.

<sup>17</sup> *Ibid.*, para 9.

<sup>18</sup> *Ibid.*, para 12.

<sup>19</sup> UN Doc A/RES/74/179.

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

<sup>21</sup> *Ibid.*, 1–2.

<sup>22</sup> *Ibid.*, 2–4.

also the case during the next (75<sup>th</sup>) session of the General Assembly in 2020(-21). In fact, Maduro himself addressed the 75<sup>th</sup> 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.<sup>23</sup> 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.<sup>24</sup> The GA also adopted a decision that was similar to that of 2019 on 1 December 2020.<sup>25</sup> The resolution was adopted without a vote and 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.<sup>26</sup>

13. During the 76<sup>th</sup> session of the General Assembly in 2021, there were two instances in which competing credentials were submitted for representatives of States: neither, however, referred to Venezuela, but rather to Myanmar and Afghanistan. On those two sets of credentials the Credentials Committee opted to 'defer' its decision.<sup>27</sup> The credentials submitted by the Maduro Government, however, were once again the only credentials submitted for Venezuela to the Credentials Committee, which recommended their adoption to the General Assembly, with the usual dissociation by the US representative on the Committee.<sup>28</sup> The General Assembly, in turn, adopted the recommended resolution without a vote, as per its usual practice.<sup>29</sup> With regard to the current, 77<sup>th</sup> session of the General Assembly in 2022, the meeting of the Credentials Committee is still to take place on a date to be determined. As per usual practice, this should take place in late November or early December 2022.

14. It should be noted, finally, that even before the decisions of the GA based on the reports of the Credentials Committee in December 2019, November 2020, and December 2021, UN conferences had followed the guidance of the GA in accepting the credentials issued by the

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<sup>23</sup> See <<https://news.un.org/en/story/2020/09/1073382>> and <[https://estatemts.unmeetings.org/estatemts/10.0010/20200923/aCaK5IQSX0PR/KAwodvEAAVpK\\_en.pdf](https://estatemts.unmeetings.org/estatemts/10.0010/20200923/aCaK5IQSX0PR/KAwodvEAAVpK_en.pdf)> (both accessed 22 November 2020).

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

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

<sup>26</sup> See UN Doc A/75/PV.33 of 1 December 2020, 17–18.

<sup>27</sup> See UN Doc A/76/550 of 1 December 2021, paras 7–9.

<sup>28</sup> *Ibid.*, paras 5, 10–12.

<sup>29</sup> UN/DOC/A/RES/76/15 of 6 December 2021.

Maduro Government for the 73<sup>rd</sup> session in December 2018,<sup>30</sup> 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’).<sup>31</sup> Both Russia and China noted, in that connection, that the GA had accepted the credentials issued by the Maduro Government for the 73<sup>rd</sup> session of the GA,<sup>32</sup> implicitly pointing to the ‘authoritative guidance’ discussed above, in Part II of this Opinion. UN conferences have continued this practice, as did most recently the Credentials Committee for the Intergovernmental Conference on an internationally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction on 23 August 2022.<sup>33</sup>

15. 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, 2020, and 2021; (c) it appears that the Guaidó authority has not sought to challenge this position through the submission of competing credentials, at least to my knowledge and at this time.

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<sup>30</sup> 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.

<sup>31</sup> See UN Doc A/CONF.235/5 of 20 March 2019, paras 10–14.

<sup>32</sup> *Ibid*, paras 15–16.

<sup>33</sup> See UN Doc A/CONF.232/2002/08.

#### IV. PRACTICE IN OTHER INTERNATIONAL ORGANISATIONS

16. 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.

17. 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.'<sup>34</sup> 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.<sup>35</sup> 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 appear to be no further relevant resolutions in 2020, 2021, or 2022.<sup>36</sup>

18. 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 resolved '[t]o accept the Permanent Representative to the Organization of American States, designated by the National Assembly of Venezuela, until new presidential elections are

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<sup>34</sup> Doc AG-1/19 and CII/AG-1/19 of 15 March 2019, para 1.

<sup>35</sup> 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.

<sup>36</sup> See <<https://www.iadb.org/en/about-us/resolutions-adopted-board-governors>> (accessed 20 October 2022).

held and result in the appointment of a democratically-elected government’ on 28 June 2019,<sup>37</sup> following a Resolution of the Permanent Council with the same content on 9 April 2019.<sup>38</sup> The latter session did give rise to 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 18 affirmative votes, there being also 6 abstentions.<sup>39</sup> A similar situation appears to continue in 2020, 2021, and 2022.<sup>40</sup>

19. 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’.<sup>41</sup> 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.<sup>42</sup> 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

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<sup>37</sup> Doc AG/RES.2944 (XLIX-O/19) of 28 June 2019, para 1.

<sup>38</sup> Doc CP/RES.1124 (2217/19) of 10 April 2019, para 1.

<sup>39</sup> 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 35, 135.

<sup>40</sup> See Doc AG/RES.2963 (L-O/20) of 21 October 2020, para 11.

<sup>41</sup> Quintero Vollmer, n 35, 133.

<sup>42</sup> See <<https://thedocs.worldbank.org/en/doc/45fc8267f59fdf50a364f6538c2817e7-0330032021/original/Bank-Governors.pdf>> and <<https://www.imf.org/en/About/executive-board/members-quotas>> (both accessed 20 October 2022).

by demonstrating the close relationships of those provisions with the applicable provisions in the UN system.



## V. THE IOPC FUNDS

20. 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.<sup>43</sup> 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.<sup>44</sup>

21. 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.<sup>45</sup> 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.<sup>46</sup>

22. 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.

23. 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.<sup>47</sup> Juan Guaidó claims to be the interim Head of State. In the

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<sup>43</sup> Rule 10 1992 Fund Assembly Rules of Procedure.

<sup>44</sup> Rule 11 1992 Fund Assembly Rules of Procedure.

<sup>45</sup> Rules 9–10 1992 Fund Executive Committee Rules of Procedure; Rules 10–11 Supplementary Fund Rules of Procedure.

<sup>46</sup> See Doc 92FUND/A/ES.9/28 of March 2005, paras 24.5–24.7.

<sup>47</sup> See < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1109153/london-diplomatic-list-October2022.odt](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109153/london-diplomatic-list-October2022.odt) > (accessed 20 October 2022).

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 State of the Bolivarian Republic of Venezuela. If the IOPC Funds were to follow UN practice in this 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.

A handwritten signature in black ink, consisting of a series of fluid, connected strokes. The signature is positioned to the right of the main text block.

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## **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  
United Nations General Assembly Resolution 76/15 of 6 December 2021  
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 /75/606 of 23 November 2020  
Report of the Credentials Committee, UN Doc A/ 76/550 of 1 December 2021  
51<sup>st</sup> Plenary Meeting Procès-Verbaux, UN Doc A/74/PV.51 of 18 December 2019  
33<sup>rd</sup> Plenary Meeting Procès-Verbaux, UN Doc A/75/PV.33 of 1 December 2020  
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  
Report of the Credentials Committee [of the Fifth Session of the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction], UN Doc A/CONF.232/2002/08 of 23 August 2022  
[IDB] Resolution AG-1/19 and CII/AG-1/19 of 15 March 2019  
[OAS] Doc AG/RES.2944 (XLIX-O/19) of 28 June 2019, para 1.  
[OAS] Doc CP/RES.1124 (2217/19) of 10 April 2019, para  
[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 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 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 is the Secretary-General of the International Law Association. Antonios 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.