



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

Point 1 de l'ordre du jour	IOPC/APR24/1/2/1	
Date	29 avril 2024	
Original	Anglais	
Conseil d'administration du Fonds de 1992	92AC24/92AES28	●
Comité exécutif du Fonds de 1992	92EC82	●
Assemblée du Fonds complémentaire	SAES12	●

EXAMEN DES POUVOIRS

RAPPORT INTERMÉDIAIRE DE LA COMMISSION DE VÉRIFICATION DES POUVOIRS

(À la date du 29 avril 2024 à 14 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, 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.
Mesures à prendre :	<p><u>Conseil d'administration du Fonds de 1992</u>^{<1>}</p> <ul style="list-style-type: none"> 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 de la République bolivarienne du Venezuela à ces sessions particulières des organes directeurs des FIPOL. <p><u>Comité exécutif du Fonds de 1992 et Assemblée du Fonds complémentaire</u></p> <ul style="list-style-type: none"> 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.

1 Introduction

1.1 Conformément à l'article 10 du Règlement intérieur de l'Assemblée du Fonds de 1992 et de l'Assemblée du Fonds complémentaire et à 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. Salem Boubaker)
Équateur (M. Julio Mindiola)
Portugal (M. Carlos Sequeira)
Royaume-Uni (M. Shaun Rogers)
Uruguay (M. Frederick Fontanot)

^{<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 29 avril 2024 sous la présidence de M. Carlos Sequeira 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 50 États Membres du Fonds de 1992, y compris ceux des délégations des États qui sont membres du Comité exécutif du Fonds de 1992 et du Fonds complémentaire, ont été examinés.
- 2.2 La Commission de vérification des pouvoirs 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/2023/Circ.6](#).
- 2.3 Les pouvoirs reçus concernant les 48 États Membres suivants ont été jugés en bonne et due forme à 14 heures le 29 avril 2024 :

Membres du Comité exécutif du Fonds de 1992

Algérie	Espagne	République de Corée
Canada	Italie	Royaume-Uni
Chypre	Nouvelle-Zélande	Thaïlande
Danemark	Pologne	

Autres États Membres du Fonds de 1992

Allemagne	Ghana	Panama
Angola	Grèce	Philippines
Antigua-et-Barbuda	Îles Cook	Portugal
Argentine	Japon	République dominicaine
Belgique	Lettonie	Saint-Marin
Bulgarie	Luxembourg	Singapour
Chine ^{<2>}	Madagascar	Suède
Émirats arabes unis	Malte	Trinité-et-Tobago
Équateur	Mexique	Türkiye
Fédération de Russie	Pays-Bas	Uruguay
Finlande	Nigéria	Venezuela (République bolivarienne du)
France	Norvège	
Géorgie	Oman	

- 2.4 Au moment de l'établissement du présent rapport, la Commission de vérification des pouvoirs a noté que les pouvoirs présentés par un État Membre n'étaient pas en règle. La Commission espère que la délégation concernée remédiera à la situation avant la présentation de son rapport final le mercredi 1^{er} mai 2024.

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

- 2.5 Au moment de l'établissement du présent rapport, la Commission de vérification des pouvoirs a noté que les pouvoirs d'un État Membre demandaient à être précisés. La Commission espère que la délégation concernée fournisse les précisions nécessaires avant la présentation de son rapport final le mercredi 1^{er} mai 2024.
- 2.6 La Commission de vérification des pouvoirs a noté que 12 États Membres avaient présenté des pouvoirs après la date limite, qui n'avaient donc pas été acceptés aux fins d'être examinés.
- 2.7 En ce qui concerne les pouvoirs du Venezuela, la Commission de vérification des pouvoirs a tenu un débat séparé comme indiqué à la section 3 ci-dessous.

3 Pouvoirs de la République bolivarienne du Venezuela

3.1 Considérations exprimées lors de précédentes sessions des organes directeurs

- 3.1.1 Aux réunions des organes directeurs tenues en octobre 2019, novembre 2020, mars 2021, novembre 2021, mars 2022 et octobre 2022, la Commission de vérification des pouvoirs avait examiné deux lettres conférant des pouvoirs à deux délégations distinctes qui soutenaient représenter le Venezuela : l'une signée par M^{me} Rocío Maneiro et l'autre signée par le Président Juan Guaidó^{<3>}.
- 3.1.2 À chacune de ces six réunions, la Commission de vérification des pouvoirs avait recommandé à l'Assemblée du Fonds de 1992 d'accepter en tant que représentants officiels du Venezuela les personnes figurant dans les lettres conférant des pouvoirs délivrées par l'Ambassadrice Maneiro. L'Assemblée du Fonds de 1992 avait accepté ces recommandations, et le Comité exécutif du Fonds de 1992 et l'Assemblée du Fonds complémentaire avaient pris note des décisions de l'Assemblée (voir les documents [IOPC/OCT19/11/1](#), [IOPC/NOV20/11/2](#), [IOPC/MAR21/9/2](#), [IOPC/NOV21/11/2](#), [IOPC/MAR22/9/2](#) et [IOPC/OCT22/11/1](#)).

3.2 Sessions d'avril 2024 des organes directeurs

- 3.2.1 Avant les sessions d'avril 2024 des organes directeurs, l'Administrateur a reçu deux lettres conférant des pouvoirs pour deux délégations distinctes prétendant représenter la République bolivarienne du Venezuela : l'une signée du Ministre des affaires étrangères du Venezuela, par M. Yvan Gil, et l'autre de M^{me} Dinorah Figuera, en qualité de Présidente de l'Assemblée nationale de la République bolivarienne du Venezuela. L'Administrateur a demandé à M. Antonios Tzanakopoulos de fournir un avis juridique actualisé sur cette question (joint en annexe au présent document).
- 3.2.2 Comme lors des réunions précédentes, la Commission de vérification des pouvoirs a été unanime dans son opinion selon laquelle il n'appartenait pas aux FIPOL de décider quel était le Gouvernement légitime du Venezuela, car cette question était considérée comme une question politique devant être tranchée par une autre instance, à savoir les organes politiques de l'Organisation des Nations Unies (ONU) (c'est-à-dire l'Assemblée générale et le Conseil de sécurité de l'ONU). La Commission de vérification des pouvoirs a conclu que son rôle et celui de l'Assemblée du Fonds de 1992 sont simplement de décider laquelle des deux délégations devrait être accréditée en tant que représentant officiel du Venezuela à chaque réunion des organes directeurs des FIPOL.
- 3.2.3 Après avoir examiné cette question et l'avis juridique fourni par M. Tzanakopoulos le 25 avril 2024, la Commission de vérification des pouvoirs recommande de nouveau que le *statu quo* soit maintenu. Elle recommande donc que la lettre conférant des pouvoirs à l'actuelle délégation vénézuélienne délivrée par le Ministre des affaires étrangères de la République bolivarienne du Venezuela,

<3> M^{me} Rocío Maneiro avait signé en qualité d'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 avait signé en qualité de Président de l'Assemblée nationale et de Président (E) du Venezuela.

M. Yvan Gil, soit acceptée et que les personnes nommées dans cette lettre soient considérées comme les représentants officiels pour les sessions des organes directeurs d'avril 2024. Toutefois, la Commission de vérification des pouvoirs souligne également que cette position ne s'applique qu'à cette réunion et qu'elle pourrait être susceptible d'être modifiée à l'avenir 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.

* * *

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

25 April 2024

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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 April to 1 May 2024. 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 October 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 five 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 in general, 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 24 October 2022, 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.

4. It is worth noting at the outset that the situation with respect to the government of the Bolivarian Republic of Venezuela has changed significantly since my last opinion, almost a year and a half ago. The National Assembly of Venezuela elected in 2015, which was headed by Juan Guaidó, and on the authority of which the latter claimed the title of ‘Interim President’ of the Bolivarian Republic of Venezuela, has removed Juan Guaidó and has dissolved the ‘interim government’. The credentials now submitted allegedly on behalf of Venezuela are signed by Dinorah Figuera, whose purported title is only ‘President of the National Assembly’ and *not*, as with Juan Guaidó previously, also ‘President (I) of the Bolivarian Republic of Venezuela’. Further, the text of the letter submitted to me differs significantly from previous versions submitted by Juan Guaidó, in that the letter appears to ‘ratify’ a delegation made unanimously and in plenary session in March 2018 to the purported delegate, William Barrientos Vicuña. This delegation, however, appears from the letter to refer to a specific maritime casualty only, namely the incident involving the tanker *Plate Princess* of 27 May 1997.

5. In any event, and while I submit a full opinion regarding UN practice as instructed, I consider it important to state the following at the outset. Irrespective of the relevant practice of the UN, it appears that the letter submitted by Mr Barrientos and signed by Ms Figuera does not conform to the relevant Rules of Procedure of the 1992 Fund Assembly, the 1992 Fund Executive Committee, and the Fund Supplementary Assembly, and in particular to Rule 9, as restated most recently in Doc IOPC/APR24/1/1, Annex I, on credentials and notifications. In accordance with Rule 9, credentials must be issued by the Head of State, Head of Government, Minister of Foreign Affairs, or the Ambassador/High Commissioner [accredited to the United Kingdom].¹ When credentials are issued by some other entity, then a letter from the appropriate authority [ie: those mentioned just previously] appointing the person authorised to issue credentials should be provided to the Director of the IOPC Funds.²

¹ See further Part V, below, and cf Doc IOPC/APR24/1/1 of 21 February 2024, Annex I, para 1.4.

² *Ibid.*

6. The credentials submitted by Mr Barrientos and signed by Ms Figuera are not even purportedly issued by any of the entities stated in the applicable Rules of Procedure, which entities are entitled *ex officio* to represent a State internationally (cf Article 7(2) of the Vienna Convention on the Law of Treaties, reflecting customary international law). The credentials are also not accompanied by a letter from such an entity (the ‘appropriate authority’) appointing either person as authorised to issue credentials. It follows that they are not even *prima facie* admissible and that they need not be considered any further. In the interest of providing a full opinion, however, I will now proceed with the analysis of UN practice as stated earlier.

II. UN PRACTICE REGARDING CREDENTIALS

7. 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.³ 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 65th session and that it is the practice of UN conferences to follow the guidance of the General Assembly on decisions relating to credentials'.⁴

8. 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*'.⁵

9. 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,⁶

³ See United Nations Juridical Yearbook 1985, 129 and cf Sarooshi Opinion of 6 October 2019, para 7.

⁴ United Nations Juridical Yearbook 2011, 495 para 6. For a reiteration of the OLA view referred to in the text in n 3 above, see *ibid* para 5.

⁵ UN Doc A/RES/396(V) of 14 December 1950, para 3 (emphasis added).

⁶ Rule 28 General Assembly Rules of Procedure.

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.⁷ 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.⁸

10. There are two instances in which the practice of the UN regarding representation and approval of credentials⁹ 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.

11. 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".'¹⁰ 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

⁷ See for example for the 74th session of the GA: UN Doc A/RES/74/179 of 18 December 2019; for the 75th session: UN Doc A/RES/75/19 of 7 December 2020; for the 76th session: UN Doc A/RES/76/15 of 6 December 2021; for the 77th session: UN Doc A/RES/77/239 of 16 December 2022; for the 78th session: UN Doc A/RES/78/124 of 18 December 2023.

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

⁹ 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.

¹⁰ Referring to United Nations Juridical Yearbook 1972, 155 para 8.

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”,¹¹ 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.¹² 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.¹³ 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*’.¹⁴

12. 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.¹⁵ 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 Referring to Memorandum on the Legal Aspects of the Problem of Representation in the United Nations, UN Doc S/1466 of 9 March 1950.

¹² See Sarooshi Opinion of 6 October 2019, para 10.

¹³ UN Doc A/RES/396(V) of 14 December 1950, para 1.

¹⁴ See Ciobanu, n 9, 370–371 (emphasis added).

¹⁵ 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

13. In his opinion of 6 October 2019, Professor Sarooshi noted that ‘delegates from Maduro’s Government continue to represent Venezuela at the United Nations’.¹⁶ In my previous opinions of 24 October 2022, 17 March 2022, 25 October 2021, 24 March 2021, and 25 November 2020, I confirmed that this continued to be the case. I noted that there appeared to have been no submission of credentials of a delegation by the Guaidó authority or any other purported authority, or at least none was noted in the reports of the GA Credentials Committee from 2019 to 2021.

14. The Credentials Committee held its single meeting for the 74th session of the GA on 10 December 2019.¹⁷ 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.¹⁸ 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’,¹⁹ but it does not appear that the US raised a formal objection.

15. In any event, the Credentials Committee recommended to the General Assembly that it adopt a resolution merely approving the Credentials Committee’s report,²⁰ which the General Assembly duly adopted on 18 December 2019.²¹ It appears from the Official Records of the 51st Plenary Meeting of the General Assembly that that resolution was also adopted without a vote,²² 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

¹⁶ See Sarooshi Opinion of 6 October 2019, para 12.

¹⁷ See UN Doc A/74/572 of 4 December 2019 [sic], paras 5–6.

¹⁸ *Ibid*, paras 7–8.

¹⁹ *Ibid*, para 9.

²⁰ *Ibid*, para 12.

²¹ UN Doc A/RES/74/179.

²² UN Doc A/74/PV.51 of 18 December 2019, 1.

a tacit recognition by the relevant States of the Maduro Government.²³ This was 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, in turn, also took the floor to express their support for the Maduro Government.²⁴ As such, it was the Maduro Government that represented the Bolivarian Republic of Venezuela during the 74th session of the United Nations General Assembly in 2019.

16. This was also the case during the next sessions of the General Assembly and continues to be so today. 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 2020.²⁵ There was no submission of competing credentials on behalf of the Guaidó authority or any other 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.²⁶ The GA also adopted a decision that was similar to that of 2019 on 1 December 2020.²⁷ 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.²⁸

17. During the 76th 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.²⁹ The creden-

²³ Ibid, 1–2.

²⁴ Ibid, 2–4.

²⁵ 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).

²⁶ UN Doc A/RES/75/606 of 23 November 2020, paras 8, 13.

²⁷ UN Doc A/RES/75/19 of 7 December 2020.

²⁸ See UN Doc A/75/PV.33 of 1 December 2020, 17–18.

²⁹ See UN Doc A/76/550 of 1 December 2021, paras 7–9.

tials 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.³⁰ The General Assembly, in turn, adopted the recommended resolution without a vote, as per its usual practice.³¹

18. Moving now to those sessions of the General Assembly not covered by my previous opinions, during the 77th session of the General Assembly in 2022, the Credentials Committee again had to deal with competing credentials – which however did not refer to Venezuela, but rather to Myanmar, Afghanistan, and Libya.³² The credentials submitted by the Maduro Government 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.³³ The General Assembly, in turn, adopted the recommended resolution without a vote, as per its usual practice.³⁴ Notably, neither the US nor any other State took the floor to make any statements on the Maduro Government after the adoption of the Resolution.³⁵

19. During the 78th session of the General Assembly in 2023, not only was the Maduro Government the only one to submit credentials on behalf of Venezuela as usual, which the Credentials Committee recommended that the General Assembly accept, but this time there was no dissociation by the US.³⁶ The General Assembly, in turn, adopted the recommended resolution without a vote, as per its usual practice.³⁷

20. 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, December 2021, December 2022, and December 2023, UN conferences had followed the guidance

³⁰ Ibid, paras 5, 10–12.

³¹ UN Doc A/RES/76/15 of 6 December 2021.

³² UN Doc A/77/600 of 12 December 2022, paras 8–10.

³³ Ibid, paras 5, 11, 14.

³⁴ UN Doc A/RES/77/239 of 16 December 2022.

³⁵ See UN Doc A/77/PV.55 of 16 December 2022.

³⁶ See UN Doc A/78/605 of 6 December 2023, para 5.

³⁷ UN Doc A/RES/78/124 of 21 December 2023.

of the GA in accepting the credentials issued by the Maduro Government for the 73rd session in December 2018,³⁸ 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’).³⁹ 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,⁴⁰ 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 2022.⁴¹

21. 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, 2021, 2022, and 2023; (c) it appears that neither the Guaidó authority nor any other authority has not sought to challenge this position through the submission of competing credentials, at least to my knowledge and at this time.

³⁸ 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.

³⁹ See UN Doc A/CONF.235/5 of 20 March 2019, paras 10–14.

⁴⁰ *Ibid*, paras 15–16.

⁴¹ See UN Doc A/CONF.232/2002/08.

IV. PRACTICE IN OTHER INTERNATIONAL ORGANISATIONS

22. 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 or any other 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.

23. 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.'⁴² 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.⁴³ 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, 2022, 2023, or 2024.⁴⁴

⁴² Doc AG-1/19 and CII/AG-1/19 of 15 March 2019, para 1.

⁴³ 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.

⁴⁴ See < <https://www.iadb.org/en/who-we-are/how-we-are-organized/board-governors/resolutions-governors> > (accessed 24 April 2024).

24. 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 held and result in the appointment of a democratically-elected government’ on 28 June 2019,⁴⁵ following a Resolution of the Permanent Council with the same content on 9 April 2019.⁴⁶ 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.⁴⁷ A similar situation appeared to continue in 2020.⁴⁸

25. 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’.⁴⁹ 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.⁵⁰ This means that neither the Guaidó authority nor any other authority has either sought, or 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 Government’s appointees to the Guaidó authority’s, or any other authority’s,

⁴⁵ Doc AG/RES.2944 (XLIX-O/19) of 28 June 2019, para 1.

⁴⁶ Doc CP/RES.1124 (2217/19) of 10 April 2019, para 1.

⁴⁷ 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.

⁴⁸ See Doc AG/RES.2963 (L-O/20) of 21 October 2020, para 11.

⁴⁹ Quintero Vollmer, n 35, 133.

⁵⁰ See < <https://thedocs.worldbank.org/en/doc/45fc8267f59fdf50a364f6538c2817e7-0330032021/original/BankGovernors.pdf> > and < <https://www.imf.org/en/About/executive-board/members-quotas> > (both accessed 24 April 2024).

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.

V. THE IOPC FUNDS

26. 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.⁵¹ 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.⁵²

27. 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.⁵³ 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.⁵⁴

28. 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 Minister of Foreign Affairs of the Bolivarian Republic of Venezuela, Yvan Gil, as well as by Dinorah Figuera as President of the National Assembly of the Bolivarian Republic of Venezuela.

29. Yvan Gil is the Minister of Foreign Affairs of the Bolivarian Republic of Venezuela, as required by Rule 9 of the 1992 Fund Assembly Rules of Procedure. Dinorah Figuera is, or claims to be, the President of the National Assembly, ie not a person entitled to issue

⁵¹ Rule 10 1992 Fund Assembly Rules of Procedure.

⁵² Rule 11 1992 Fund Assembly Rules of Procedure.

⁵³ Rules 9–10 1992 Fund Executive Committee Rules of Procedure; Rules 10–11 Supplementary Fund Rules of Procedure.

⁵⁴ See Doc 92FUND/A/ES.9/28 of March 2005, paras 24.5–24.7.

credentials in accordance with Rule 9, and as already explained in Part I of this Opinion. In the instance, then, the credentials submitted by Yvan Gil clearly conform to Rule 9 of the 1992 Fund Assembly Rules of Procedure. On the other hand, the credentials submitted by Dinorah Figuera clearly do not conform to the same rule.

30. For the credentials submitted by Ms Figuera to conform to the Rule 9 of the Rules of Procedure, the IOPC Funds would have to decide that Ms Figuera is the Head of State, the Head of Government, the Minister of Foreign Affairs, or the Ambassador of the Bolivarian Republic of Venezuela – something which not even Ms Figuera claims in the relevant document. If the IOPC Funds were to conform to their own Rules of Procedure, and to follow UN practice in this respect, they would have to accept the credentials submitted by Yvan Gil and reject those submitted by Dinorah Figuera.

A handwritten signature in black ink, consisting of a stylized 'A' followed by 'ntz' and a long horizontal line extending to the right.

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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

United Nations General Assembly Resolution 77/239 of 16 December 2022

United Nations General Assembly Resolution 78/124 of 18 December 2023

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

Report of the Credentials Committee, UN Doc A/77/600 of 12 December 2022

Report of the Credentials Committee, UN Doc A/78/605 of 6 December 2023

51st Plenary Meeting Procès-Verbaux, UN Doc A/74/PV.51 of 18 December 2019

33rd Plenary Meeting Procès-Verbaux, UN Doc A/75/PV.33 of 1 December 2020

55th Plenary Meeting Procès-Verbaux, UN Doc A/77/PV.55 of 16 December 2022

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

[OAS] Doc CP/RES.1124 (2217/19) of 10 April 2019

[OAS] Doc AG/RES.2963 (L-O/20) of 21 October 2020

[IOPC Funds] Doc 92FUND/A/ES.9/28 of March 2005

[IOPC Funds] Doc IOPC/APR24/1/1 of 21 February 2024

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. A full biography is available at <https://www.law.ox.ac.uk/people/antonios-tzanakopoulos>.