



International Oil Pollution  
Compensation Funds

<b>Agenda Item 1</b>	IOPC/NOV20/1/2/2	
<b>Date</b>	4 December 2020	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A25	●
<b>1992 Fund Executive Committee</b>	92EC74	●
<b>Supplementary Fund Assembly</b>	SA17	●

## EXAMINATION OF CREDENTIALS

### Report of the Credentials Committee

**Summary:** The Credentials Committee has examined the credentials of delegations of 1992 Fund Member States, including States members of the 1992 Fund Executive Committee and of the Supplementary Fund, and submits the following report.

**Action to be taken:** 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly

Information to be noted.

### 1 Introduction

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

Germany (Mr Volker Schöefisch)  
Japan (Mr Iwao Shimizu)  
Malaysia (Mr Kanagalingam Selvarasah)  
Mexico (Ms Aideé Saucedo)  
Russian Federation (Mr Yuri Melenas)

- 1.2 The Committee met remotely on 2 December 2020 under the chairmanship of Mr Kanagalingam Selvarasah.

### 2 Examination of credentials

- 2.1 The credentials of delegations of 69 Member States of the 1992 Fund, including States members of the 1992 Fund Executive Committee and of the Supplementary Fund, were examined.
- 2.2 The Committee based its deliberations on Rules 9 and 11 of the Rules of Procedure of the 1992 Fund Assembly and on the guidelines given in circular IOPC/2015/Circ.4.
- 2.3 Credentials received in respect of the following Member States were found to be in order:

**1992 Fund Executive Committee**

Canada	Jamaica	South Africa
China <sup>&lt;1&gt;</sup>	Japan	Thailand
France	Mexico	Turkey
Georgia	Republic of Korea	United Arab Emirates
Ghana	Singapore	United Kingdom

**Other 1992 Fund Member States**

Algeria	Germany	Niue
Antigua and Barbuda	Greece	Norway
Argentina	India	Palau
Australia	Ireland	Panama
Bahamas	Italy	Philippines
Belgium	Kenya	Poland
Bulgaria	Latvia	Portugal
Cambodia	Liberia	Qatar
Colombia	Luxembourg	Russian Federation
Cook Islands	Madagascar	Spain
Croatia	Malaysia	Sri Lanka
Cyprus	Malta	Sweden
Denmark	Marshall Islands	Switzerland
Dominica	Montenegro	Uruguay
Dominican Republic	Morocco	Vanuatu
Ecuador	Netherlands	Venezuela (Bolivarian
Estonia	New Zealand	Republic of)
Fiji	Nicaragua	
Finland	Nigeria	

- 2.4 The following 1992 Fund Member States did not present credentials and did not participate in the 25th session of the 1992 Fund Assembly, the 74th session of the 1992 Fund Executive Committee or the 17th session of the Supplementary Fund Assembly:

Albania	Guyana	Saint Vincent and the
Angola	Hungary	Grenadines
Bahrain	Iceland	Samoa
Barbados	Iran (Islamic Republic of)	Senegal
Belize	Israel	Serbia
Benin	Kiribati	Seychelles
Brunei Darussalam	Lithuania	Sierra Leone
Cabo Verde	Maldives	Slovakia
Cameroon	Mauritania	Slovenia
Comoros	Mauritius	Syrian Arab Republic
Congo	Monaco	Tonga
Côte d'Ivoire	Mozambique	Trinidad and Tobago
Djibouti	Namibia	Tunisia
Gambia	Oman	Tuvalu
Gabon	Papua New Guinea	United Republic of
Grenada	Saint Kitts and Nevis	Tanzania
Guinea	Saint Lucia	

- 2.5 Côte d'Ivoire submitted credentials after the opening day of the December 2020 sessions. Since the Credentials Committee had already examined all the credentials submitted by Member States; the credentials submitted by Côte d'Ivoire could not be examined at that time.

### **3 Credentials of the Bolivarian Republic of Venezuela**

#### *Background information: considerations at the October 2019 sessions of the governing bodies*

- 3.1 In October 2019, the Director received two letters of credentials for two separate delegations claiming to represent the Bolivarian Republic of Venezuela (Venezuela) – one signed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to the International Maritime Organization (IMO) and other international organisations headquartered in London, appointed by President Nicolas Maduro); and the other one signed by President Juan Guaidó (President of the National Assembly, and President (E) of Venezuela).
- 3.2 Given the complexity of the issue, the Director had invited Dr Rosalie Balkin AO, former Assistant Secretary General and Director of Legal Affairs and External Relations Division of the IMO, to provide assistance to the Credentials Committee during its deliberations. He had also requested the advice of Professor Dan Sarooshi Q.C., the 1992 Fund's legal counsel in public international law.
- 3.3 The Credentials Committee concluded that the role of the 1992 Fund Assembly was not to decide which was the legitimate Government of Venezuela but which of the two representatives should be accredited as the delegation of Venezuela at those particular sessions of the Funds' governing bodies in October 2019.
- 3.4 In light of the legal advice provided, coupled with the position of the Maduro Government within the United Nations and the fact that Ambassador Maneiro continued to be the Ambassador accredited to the United Kingdom, where the Headquarters of the IOPC Funds are located, the Credentials Committee recommended that the *status quo* should continue and that the letter of credentials issued by Ambassador Maneiro should be accepted as the official representatives for the October 2019 sessions of the governing bodies. The Credentials Committee noted, however, that this position was applicable to that meeting only and that it could be susceptible to change in the coming months depending on future developments.
- 3.5 This recommendation was accepted by the 1992 Fund Assembly and the Assembly's decision was noted by the 1992 Fund Executive Committee and Supplementary Fund Assembly.

#### *December 2020 sessions of the governing bodies*

- 3.6 Prior to the December 2020 sessions of the governing bodies, the Director received two letters of credentials for two separate delegations for Venezuela. The Credentials Committee has reviewed the recent developments and is providing a recommendation to the governing bodies as to which of the two authorities is entitled to represent Venezuela at the December 2020 sessions of the governing bodies.
- 3.7 The Director has invited Dr Rosalie Balkin AO to provide her assistance to the Credentials Committee. The Director has also requested the advice of Professor Antonios Tzanakopoulos, Associate Professor of Public International Law of the Faculty of Law in the University of Oxford, who provided a legal opinion on this matter.

- 3.8 The Credentials Committee was unanimous in its view that it is not the function of the IOPC Funds to decide which is the legitimate government of Venezuela since it considered that to be a political question to be decided in another forum, namely the political organs of the United Nations (the UN General Assembly and the Security Council). The Committee concluded that the role of the Credentials Committee and the 1992 Fund Assembly is simply to decide which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the Funds' governing bodies and make its recommendation to the 1992 Fund Assembly.
- 3.9 In considering this matter and the legal advice received, the Credentials Committee noted that, where there is more than one authority issuing credentials of delegations of the same State, there are no settled legal criteria that have been consistently applied by the United Nations (UN) to determine who is the only lawful representative of a Member State. The Committee noted, however, that at the 74th session of the UN General Assembly in December 2019, the Guaidó authority did not appear to have submitted any credentials and that the Credentials Committee simply accepted those submitted by the Maduro Government as representing Venezuela. The General Assembly subsequently adopted a resolution (without a vote) approving the report of the Credentials Committee. In so doing, the Committee noted further that the decisions of the UN General Assembly on credentials are considered by the UN Office of Legal Affairs (OLA) as providing 'authoritative guidance' to other UN organs, even though they are not binding.
- 3.10 The Credentials Committee also noted that, as indicated in the report of the Credentials Committee of the UN General Assembly issued on 23 November 2020, the credentials submitted by the Maduro Government during the 75th session of the General Assembly in 2020 were also accepted and the draft resolution proposed by the Chair had been adopted without a vote on that occasion.
- 3.11 It can be inferred from this practice that (a) the Maduro Government continues to represent and appoint representatives of Venezuela in the UN, its specialised agencies and conferences; (b) the Maduro Government is likely to continue to do so considering the 'authoritative guidance' already given by the General Assembly in 2018, 2019 and 2020, that (c) it appears that the Guaidó authority has not sought to challenge this position by submitting credentials; and that it is extremely unlikely that the General Assembly will *proprio motu* refuse to accept the credentials issued by the Maduro Government.
- 3.12 The Credentials Committee also noted that there are two regional organisations, the Inter-American Development Bank (IDB) and the Organisation of American States (OAS) that accepted the appointment of representatives put forward by the Guaidó authority in 2019. However, it must be noted that neither of these two organisations had set up a Credentials Committee and accordingly, in the case of the IDB, its Board of Governors simply took note of the designation of the Guaidó authority and the revocation of any previous designations by the Maduro Government.
- 3.13 Similarly, in the case of the OAS, in the absence of a Credentials Committee, it is the Secretary-General of the OAS who receives credentials and reports to the General Assembly of the organisation. The OAS General Assembly approved the appointment of the representatives put forward by the Guaidó authority in June 2019 but there were serious disagreements with several States voting against the decision, which was finally passed by 19 affirmative votes, there also being six abstentions.
- 3.14 When considering the position of these two regional organisations, the Credentials Committee also noted that the IOPC Funds are in a different position to that of the IDB and the OAS. The IOPC Funds are global treaty bodies, established by international conventions adopted under the auspices of the IMO, a UN specialised agency. The Funds' clear – if not direct – relationship with the UN system would favour following the practice of the UN, its specialised agencies and its conferences rather than those of regional organisations with reference to the Americas.

- 3.15 The Credentials Committee also noted that Ambassador Maneiro, appointed by President Maduro, has regularly attended sessions of the IOPC Funds' governing bodies. Furthermore, the Committee noted the established practice of the UN and other international organisations that allows the authority that has previously been accepted as representing the State to continue to represent the State pending future developments. In addition, the Credentials Committee noted that Ambassador Maneiro continues to be the Ambassador accredited to the United Kingdom, where the Headquarters of the IOPC Funds are located.
- 3.16 The Credentials Committee therefore recommended that the *status quo* should continue and that the letter of credentials of the current delegation of Venezuela issued by Ambassador Maneiro, appointed by President Maduro, should be accepted and that the named individuals therein be deemed the official representatives for the December 2020 sessions of the governing bodies. The Committee also noted, however, that this position was applicable to this meeting only and it could be susceptible to change in the coming months depending on future developments.
- 3.17 The Chair of the Credentials Committee presented the interim report of the Committee at 11.50 am on Thursday, 3 December. The 1992 Fund Assembly took note of the report and decided to accredit the delegation headed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to IMO and other international organisations headquartered in London, appointed by President Nicolas Maduro) as the representative of Venezuela at these sessions of the governing bodies of the IOPC Funds.
- 3.18 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly as set out in paragraph 3.17 above.

#### **4 Action to be taken**

##### 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly

The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly are invited to take note of the information.

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