



**Arbitrations CAS 2017/A/5166 & 5405 Palestine Football Association v. Fédération Internationale de Football Association (FIFA), award of 9 July 2018**

Panel: Prof. Massimo Coccia (Italy), President; Prof. Philippe Sands QC (United Kingdom); Mr José Juan Pintó (Spain)

*Football*

*(5166) Rights associated with the membership of a federation*

*(5405) Decision not to impose sanctions on a member and right to add an item to the agenda*

*Right of the supreme body of an federation to delegate a matter to another body*

*Standing to appeal*

*Nature of a motion*

*Content of the right to propose an item to be inserted in the agenda*

*Powers of the general assembly with regard to a procedural motion*

*Nature of a declaration of an executive body that a matter is closed*

- 1. The supreme body of an federation (designated as such by the statutes of the federation) which manifests by democratic vote the collective will of all of the federation's members is within its rights when deciding in satisfaction of the majority rule required under the statutes not to vote on a matter and instead delegate it to another body of the federation.**
- 2. Only an aggrieved party, having something at stake and, thus, a concrete legal interest ("*intérêt à agir*") in challenging a decision adopted by a sports body, may appeal to the CAS against a decision. In other words, if the appellant's interest does not merely pertain to abstract, theoretical legal issues but to concrete rights and duties which it has and which are established under the statutes of the federation, it has standing to sue. A claim shall be deemed inadmissible if it clearly does not serve the purpose of the appellant.**
- 3. In any formal gathering such as an assembly or meeting of a corporation or association, a "procedural motion" relates to procedural issues, such as the manner by which the assembly or meeting is conducted and agenda items are administered. A substantive motion or action, on the other hand, relates to the substance or subject-matter of the agenda item under consideration.**
- 4. Under Swiss association law the right to propose an item to be inserted in the agenda or even the right to add one does not entitle a member to a specific right as to how such item will be acted upon by the general assembly of an association. An association member does not have a guaranteed right that the item added to the agenda will be discussed substantively by the general assembly and/or necessarily lead to a substantive decision.**

5. **Any general meeting of the members of an association has an inherent power to vote on a procedural motion and decide, for example, to postpone the voting on a given issue or to delegate the decision on a given issue to the executive body of the organization (unless this delegation is explicitly forbidden by the association's statutes).**
6. **The declaration of an executive body that a matter is closed does qualify as an appealable decision, since declaring a matter closed (as far as the executive body is concerned) constitutes an actual ruling which – being effective until reversed or modified by the executive body itself – affects the legal situation of the addressee of the declaration, i.e. it contains an *animus decidendi* or intent of the executive body to decide on the matter.**

## **I. INTRODUCTION**

1. The Palestine Football Association (hereinafter also referred to as the “PFA” or the “Appellant”) brings two separate appeals against decisions of the Fédération Internationale de Football Association (hereinafter “FIFA” or the “Respondent”). The first appeal, docketed as CAS 2017/A/5166, is against the FIFA Congress’ decision of 11 May 2017 to (i) not vote on the proposal submitted by the PFA that the FIFA Congress officially recognize all of its membership rights listed in the FIFA Statutes (hereinafter the “PFA’s proposal”), and (ii) give the FIFA Council until its meeting in October 2017 to decide that matter (hereinafter the “First Appealed Decision”). The second appeal, docketed as CAS 2017/A/5405, is against the subsequent FIFA Council’s decision of 27 October 2017 in Calcutta, India to (i) refrain from imposing (or requesting any other FIFA body from imposing) any sanctions or other measures on either the Israel Football Association (hereinafter the “IFA”) or the PFA, and (ii) declare the matter closed and not subject to any further discussion until the legal and/or *de facto* framework has changed in the Israel-Palestine public international law matter (hereinafter the “Second Appealed Decision”).
2. As the PFA and FIFA (hereinafter indicated jointly as the “Parties”) agreed, the Panel shall deal with the separate appeals in a single award for the sake of procedural economy.

## **II. PARTIES**

3. The Appellant, the Palestine Football Association, headquartered in Ramallah, is the football governing body of Palestine and a member of FIFA since 1998.
4. The Respondent, FIFA, headquartered in Zurich, is the international governing body of football at worldwide level.

### III. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, oral pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, oral pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. At the 65<sup>th</sup> FIFA Congress of 28-29 May 2015 in Zurich, the members of FIFA voted to create the FIFA Monitoring Committee Israel-Palestine (hereinafter the "Monitoring Committee") to monitor the situation and seek a resolution of certain issues between the IFA and PFA, among them: (i) the "Territory Obstruction Issue", i.e. the movement of Palestinian football players, officials and equipment within, into and out of territories defined by several United Nations resolutions as "Occupied Territories", and (ii) the "Israeli Clubs Issue", i.e. the jurisdiction over five (later become six) Israeli amateur clubs located in Israeli settlements within the Occupied Territories and playing in IFA-sanctioned championships. Accordingly, FIFA went on to establish the Monitoring Committee (a tripartite working group composed by a FIFA representative as chair, Mr. Tokyo Sexwale, and by delegates of the IFA and the PFA) and then extended its mandate at the 66<sup>th</sup> FIFA Congress of 12-13 May 2016 in Mexico City.
7. On 5 January 2017, the PFA wrote to the FIFA Council to place "*an item on the table of the [upcoming FIFA] Council's meeting ... to take a decision on the different matters approved in the 65<sup>th</sup> Congress including the situation of the six Israeli clubs playing in the territory of the Palestinian Occupied State*".
8. On 10 January 2017, a FIFA Council meeting took place in Zurich at FIFA headquarters. At this meeting, Mr. Sexwale provided an update on the IFA-PFA situation. He reported that the Monitoring Committee had made no progress on the Israeli Clubs Issue and told the FIFA members that he would present his final report to the Monitoring Committee at a meeting in February, at which point there would be one last attempt to have the IFA and PFA resolve the matter, failing which he would present the report, together with its recommendation, to the FIFA leadership for a decision.
9. On 10 March 2017, in view of the upcoming 67<sup>th</sup> FIFA Congress scheduled for 10 and 11 May 2017 in Manama (Bahrain), the PFA submitted, pursuant to Article 28.1 of the FIFA Statutes, a "*proposal to be voted by the Congress in order to recognise the PFA's entitlement to all its right as described in Article 13 of FIFA Statutes*". In the explanation of the proposal, the PFA stated *inter alia* that the Israeli Clubs Issue remained unresolved and, due to the lack of improvement, it was appropriate to request the upcoming FIFA Congress to: "*Officially recognise PFA's rights as FIFA Member to run its football activities in accordance with the rules established in article 72.2 of FIFA Statutes as well as under the principle assumed by FIFA in the articles 3 and 4 of its Statutes to request the FIFA Council to propose and/or adopt disciplinary measures – as described in articles 16 and/or 17 of*

*FIFA Statutes – against the Israeli Football Association for their responsibility with regards to the activities of at least 6 of its clubs in the internationally recognized territory of PFA”.*

10. FIFA went on to include this proposal into the agenda of the 67<sup>th</sup> FIFA Congress as item 14.3 *“Request for official recognition of the Palestinian Football Association’s entitlements to all of its rights as described in the FIFA Statutes (proposed by the Palestinian Football Association)”.*
11. The IFA subsequently objected to the inclusion of item 14.3 and requested that the FIFA Secretary General either remove it from the agenda or make the PFA withdraw it. The FIFA Secretary General rejected the IFA’s request, indicating that the PFA had the right – pursuant to Article 13.1 of the FIFA Statutes – to draw up proposals for inclusion in the agenda of the FIFA Congress and that FIFA had the obligation to include such proposals if submitted in accordance with the FIFA Statutes.
12. The Monitoring Committee met twice prior to the 67<sup>th</sup> FIFA Congress. In the first meeting, on 22 March 2017, Mr. Sexwale tabled a draft report to the members of the Committee. He then granted the PFA and IFA until the 24 April 2017 to send their comments on the draft report. In the second meeting, held in the morning of 9 May 2017, (i) the IFA declared that no discussion on the draft report had taken place and that more time was needed to finalize the report, (ii) the PFA stated that it had provided its comments on the draft to Mr. Sexwale and that he should report to the FIFA Council that there was a draft report with comments, and (iii) Mr. Sexwale reminded that the report was merely his draft as the Chairman of the Monitoring Committee and that it could still be amended.
13. On the afternoon of 9 May 2017, the FIFA Council met. At this meeting, Mr. Sexwale reported that negotiations between the IFA and PFA had stalled since the last meeting, noting that (i) the IFA and PFA had not yet reached a consensus on the draft report, (ii) the draft report was significant because it made concrete recommendations, (iii) he was surprised to find out that the PFA submitted its proposal of 10 March 2017 without informing the Monitoring Committee or the IFA but that it was the PFA’s prerogative to do so, and (iv) he would continue to talk with both sides before the upcoming FIFA Congress to help them reach a consensus on the draft report.
14. Following Mr. Sexwale’s update, the FIFA Council discussed the matter and decided that it was *“premature”* for the FIFA Congress to take any decision on the PFA’s proposal of 10 March 2017 and that, therefore, it would put the following motion up for vote at the following 67<sup>th</sup> FIFA Congress: *“Considering that the matter is not a Congress competence but a Council competence, that a consolidated report of the monitoring committee is not yet ready, and that more time is needed to evaluate the situation and to take a decision, the Council proposes to the Congress to give time to the Council to take a decision before end of March 2018”.*
15. On 10 and 11 May 2017, FIFA held the 67<sup>th</sup> FIFA Congress in Manama, Bahrain. On the evening of 10 May 2017, Mr. Sexwale sent a *“Consolidated Monitoring Committee Report”* by email to the FIFA Secretary General. In that email, Mr. Sexwale indicated that the IFA had *“demand[ed] an entirely new report”* while the PFA *“requested that their comments, which are not substantial, should also be attac[h]ed to the report as footnotes”.* Later that same night, the IFA

expressed its surprise and discontent with the fact that Mr. Sexwale had seemingly issued that document as a final report. The IFA pointed out that such document had never been discussed or dealt with by the Monitoring Committee prior to its issuance and, as a result, it should be presented for what it truly is – the Chairman’s Report and not the Monitoring Committee Report.

16. On the second day of the FIFA Congress, the PFA’s proposal was addressed. The FIFA President began by inviting the PFA President, Mr. Jibril Rajoub, to address the FIFA Congress on the PFA’s proposal. The PFA President, in an intervention of about thirteen minutes, declared *inter alia* the following:

*“... This is the fifth time that I address this Congress as President of the Palestinian Football Association, although the Council considers it premature to take a decision regarding our situation. As you will agree, Palestine should – by default – benefit from the same rights as any other FIFA member, those rights recognized in the FIFA Statutes and respected by all other member associations. Since 2013, the Palestine Football Association has been actively struggling for the recognition which includes the rights enshrined in Article 72.2 of the FIFA Statutes: ‘Member associations and their clubs may not play on the territory of another member association’. Until now, all FIFA Initiatives to solve the problem have failed due to the lack of collaboration from the Israeli Football Association (IFA) and the pressure exercised by the Israeli Government and its proxies ...*

*We are not looking for the suspension or expulsion, but rather the full recognition of our rights including that no Israeli clubs play in our territory as established in Article 72.2 and Article 3 of the FIFA Statutes. This affects clubs playing on Palestinian land, forcefully stolen from its Palestinian owners. The racism and restrictions still affecting us and very little improvement has been achieved. None of you will accept that clubs from another association play in our territory and this is exactly what we are looking for: to stop all football and football-related activities run by IFA in Palestinian internationally recognized territories which was approved recently last December in the Security Council 2334 ...*

*What we are proposing is a football related solution, exactly as one of those proposed in the report delivered by Mr. Tokyo Sexwale to the FIFA President. Yes dear sisters and brothers, Mr. Sexwale has presented a full report to the President and we don’t know why this report has not been presented to this Congress ...*

*We have endorsed the report presented by Mr. Sexwale last 22<sup>nd</sup> – or the draft of the report – the 22<sup>nd</sup> of last March, with just small comments and corrections but we accept his report as well members of the committee did ... all except Israel who opposed even those options that kept the actual status quo, because they know the status quo is illegal. In any case, our solution – as the option presented by Mr. Sexwale – consists in giving IFA until the end of this season or a maximum of 6 months to disengage of all its football and football-related activities in Palestinian land or face the consequences of such an illegality. This is not a political solution but a football one because politics should remain out of FIFA ...*

*Now going to my plea, what I am asking you all now is to vote on our proposal which is simple: To recognize that PFA is entitled to the same rights as any other FIFA Member, and to give IFA until the end of this football season or a maximum of 6 months, as mentioned in the recommendation of Mr. Sexwale, to disengage of all its activities in Palestinian land or face the consequences of such an illegality.*

*We are a small federation from a small country, but our belief in the message of football and our respect to FIFA Statutes is larger than life. Football cannot be played without respecting human rights. All of us have an obligation to demonstrate that human rights is not an empty concept included in our Statutes for cosmetic reasons, but rather a solid value for all of us and the people we represent. So now, it is up to you my dear sisters and brothers to make that possible. It's up to you to guarantee a future for Palestinian football and it's up to you to make a reality FIFA's commitment to human rights, and discrimination, and even violence ...*

*Please dear brothers and sisters: I ask you to vote for my right to develop the game within my recognized borders and for the Israelis to develop the game in their internationally recognized borders according to the statutes of FIFA. I think this is a very simple and justice request. Thank you all and I hope this will be the last time to address you about this so crucial, humanitarian and justice issue. Thank you”.*

17. The FIFA President then passed the floor to the IFA President, Mr. Ofer Eini. In an intervention of about four minutes, the IFA President essentially criticized the PFA's President intervention for being political and for dealing not with football but with the question of Israel's boundaries and declared that the Monitoring Committee had made some achievements, but that the Congress of FIFA did not have the power to establish political borders. He concluded his intervention by saying that the PFA was trying to prevent five or six youth teams from playing football and that the FIFA Congress should aim at having everybody playing football everywhere and use football as a means to bring people together in peace.
18. Following the IFA President's speech, the PFA President took the floor again for a couple of minutes and emphatically reiterated his position denouncing the current situation as a violation of the FIFA Statutes, human rights, and UN resolutions.
19. The FIFA President then went on to inform the FIFA Congress that the FIFA Council had discussed the matter at its meeting of 9 May 2017 and wished to put forward a “*proposal and a motion*” to not vote on the PFA's proposal and delegate the matter to the FIFA Council to resolve before the end of March 2018:

*“So, we have discussed the matter at the Council. We received a report – an oral report – by Mr. Tokyo Sexwale who told us that the final report was not yet ready. However, yesterday night he tabled his – the Chairman's report, which is not the Monitoring Committee report, it's something different. Nevertheless, this report of the Chairman is of course to be consolidated as well with the different parties to try to reach a consensus, if at all possible. I agree, Rajoub ... and Ofer. These topics, and this topic should not be on the agenda of the Congress. Should not be on the ... for the 5<sup>th</sup> time in a row a matter which is addressed by the FIFA Congress. And at the Council, we actually felt the same, and it was already too long; and it's true we said a few months and a few months and we never received the final report. Now it seems we are really getting there and, therefore, the Council has decided to put forward a proposal and a motion to this Congress on that topic and the motion states that:*

*Considering that:*

- *this not a Congress competence, but a Council competence, we are, as Council, assuming responsibility for that,*

- *that a consolidated report of the Monitoring Committee is not yet ready,*
- *that more time is therefore needed to evaluate the situation and take a decision.*

*The Council proposes to the Congress not to vote on the proposal of the Palestinian Football Association, to give time to the Council to take a decision before the end of March 2018.*

*But I agree with you, the end of March is too late, and I am asking my colleagues if we cannot put this on the agenda in October and come to a final conclusion: a decision by the Council in October. This would be the decision that we are asking the Congress to take. As Council, we assume responsibility, we'll come to a decision. And we'll take this decision, we'll put it on the agenda of our Council meeting in October. We would like to ask the Congress to vote on this proposal on behalf of the Council".*

20. The PFA's lawyer, Mr. Gonzalo Boye, took the floor and insisted the FIFA Congress vote on the PFA's proposal. He asserted that if the FIFA Council had wished to amend said proposal, it should have presented a formal amendment and not a motion.
21. In response, the FIFA President explained that the FIFA Council acted in accordance with the FIFA Statutes and regulations and had unanimously decided to put forward the relevant motion.
22. The FIFA Secretary General then proceeded with the vote "*on the proposal by the FIFA Council to give time to itself to take a decision before the end of March 28*". It passed with 138 votes in favour and 50 against, i.e. with a majority of 73 percent (the "First Appealed Decision").
23. Later that day, FIFA recapped the above Congress' decision in a press release:

*"The 67th FIFA Congress followed the proposal of the FIFA Council with regard to the motion submitted by the Palestinian Football Association – 'a request for official recognition of the Palestinian Football Association's entitlements to all of its rights as described in the FIFA Statutes'. The FIFA Congress approved, with 73% of valid votes, the following proposal: 'Considering that the matter is not a Congress competence but a Council competence, that a consolidated report of the monitoring committee is not yet ready, and that more time is needed to evaluate the situation and to take a decision, the Council proposes to the Congress not to vote on the proposal of the Palestinian Football Association and to give time to the Council to take a decision before the end of March 2018.' Nevertheless, the Council has committed to deciding on the matter already at its next meeting, on 27 October 2017".*
24. The PFA appealed the above FIFA Congress' decision to the CAS on 30 May 2017.
25. On 6 October 2017, in view of the FIFA Council's next meeting, FIFA requested the Swiss law firm Scherrer Jenny & Partner to write a legal opinion to advise the FIFA Council on certain issues related to the IFA-PFA situation. In particular, FIFA asked the firm the following question: "*What would be the most favourable approach for the FIFA Council to take on this matter in the light of the FIFA Statutes and other relevant FIFA rules and regulations as well as Swiss association and relevant international law?*".
26. Dr. Urs Scherrer and Dr. Remus Muresan signed on behalf of Scherrer Jenny & Partner the requested legal opinion on 17 October 2017 (hereinafter the "Scherrer Opinion") and

delivered it to the FIFA Council. The Panel notes that the Scherrer Opinion is not an independent “*legal expert opinion*” (and was never characterized by FIFA as such) but purports only to offer legal advice for FIFA’s internal use, with recommendations as to how to proceed with the IFA-PFA situation.

27. The Scherrer Opinion first assessed the “*matter*” the FIFA Council had to deal with. It concluded that it was appropriate to shape the matter to cover the issue of the relationship between the PFA and the IFA in a broader context, focusing on the aspects of the Israeli Clubs Issue, the Territory Obstruction Issue, and whether sanctions should be imposed on the IFA for alleged violations of the FIFA Statutes and regulations. The Scherrer Opinion concluded that the FIFA Council was competent to deal with this matter and recommended that, in order to fulfil its obligation to remain politically neutral, it: (i) refrain from taking any decision that would imply or, *a fortiori*, state explicitly that the FIFA Council sides with one or the other position of the parties involved in the differences on intergovernmental level presently relevant; (ii) refrain from taking any decision or other action that would interfere with the status quo of football in the region concerned, (iii) take a fundamental decision according to which it will not deal with matters related to this particular topic anymore until the legal and/or *de facto* framework conditions on intergovernmental level have changed significantly, and (iv) allow for the work of the FIFA Monitoring Committee to continue, as far as such work proves (potentially) fruitful. It concluded by suggesting the possible wording of a decision for the FIFA Council to adopt.
28. On 27 October 2017, the FIFA Council met in Calcutta (hereinafter the “Calcutta Meeting”) and took a decision on the matter, set forth in the following press release:

*“Following the report submitted by the FIFA Monitoring Committee Israel-Palestine chaired by Tokyo Sexwale and after a thorough legal consultation process, the FIFA Council has agreed on a position with regard to the administration of football in the West Bank territories.*

*The FIFA Council takes note of the documents adopted by international governmental bodies concerning the relationship between Israel and Palestine – such as United Nations Security Council Resolution 2334, which comprises recommendations without sanctions – but has decided that it should not take any position on their contents.*

*The FIFA Council acknowledges that the current situation is, for reasons that have nothing to do with football, characterised by an exceptional complexity and sensitivity and by certain de facto circumstances that can neither be ignored nor changed unilaterally by non-governmental organizations such as FIFA. Given that the final status of the West Bank territories is the concern of the competent international public law authorities, the FIFA Council agrees that FIFA, in line with the general principle established in its Statutes, must remain neutral with regard to political matters.*

*Furthermore, it was agreed that any interference by FIFA in the status quo of football in the relevant territories without the consent of the parties concerned might aggravate the situation of football not only in the territories in question, but also in the greater region affected – which would not be in the best interests of the game.*

*Therefore, the FIFA Council has decided to refrain from imposing any sanctions or other measures on either the Israel FA or the Palestinian FA, as well as from requesting any other FIFA body to do so. The matter is declared closed and will not be subject of any further discussion until the legal and/or de facto framework has changed.*

*With that said, the FIFA administration will continue to facilitate the movement of players, officials and football equipment in, out of, and within Palestine – the aspect on which the FIFA Monitoring Committee Israel-Palestine has covered the most ground and achieved a positive response” (the “Second Appealed Decision”). The PFA appealed this FIFA Council’s decision to the CAS on 16 November 2017.*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

29. On 30 May 2017, in accordance with Articles R47, R48 and R51 of the Code of Sport-related Arbitration (hereinafter the “CAS Code”), the Appellant filed its statement of appeal and appeal brief to challenge the FIFA Congress’ decision of 11 May 2017 (i.e. the First Appealed Decision), thereby initiating the proceeding docketed as CAS 2017/A/5166 (hereinafter “CAS 5166”).
30. On 4 August 2017, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter in CAS 5166 would be constituted by Prof. Massimo Coccia as chairman, Prof. Philippe Sands QC designated by the Appellant, and Mr. Jose Juan Pintó designated by the Respondent.
31. On 7 August 2017, the CAS Court Office notified the Parties of the appointment of Mr. Francisco A. Larios as *ad hoc* clerk in CAS 5166.
32. On 15 August 2017, in accordance with Article R55 of the CAS Code, the Respondent filed its answer in CAS 5166.
33. On 24 August 2017, the CAS Court Office sent the Parties the Order of Procedure in CAS 5166, which the Appellant and Respondent signed and returned on that same day and 1 September 2017, respectively.
34. On 16 November 2017, in accordance with Article R47 of the CAS Code, the Appellant filed a statement of appeal challenging the FIFA Council’s decision of 27 October 2017 (i.e. the Second Appealed Decision), thereby initiating the proceeding docketed as CAS 2017/A/5405 (hereinafter “CAS 5405”).
35. On 21 November 2017, with reference to the proceeding CAS 5166, the CAS postponed the hearing scheduled for 27 November 2017 until 31 January 2018.
36. On 27 November 2017, in accordance with Article R51 of the CAS Code, the Appellant filed his appeal brief in CAS 5405. In that submission, the Appellant (i) sought the production of the Calcutta Meeting’s minutes, as well as any documents submitted 60 days before, during or

after, related to the Second Appealed Decision, and (ii) requested that, after the production of said documents, it be granted adequate time to adjust/amend its prayers for relief and arguments.

37. In December 2017, with regard to the Appellant's request for production of documents, FIFA explained that the requested Calcutta Meeting's minutes were not yet approved and remained in draft form. Instead of producing said minutes, FIFA offered to produce (i) the Scherrer Opinion, which it explained was the basis of the Second Appealed Decision, (ii) a letter related to that opinion, and (iii) a power point presentation allegedly displayed at the Calcutta Meeting. On 21 December 2017, the Respondent sent said documents to the CAS Court Office.
38. On 29 December 2017, upon the agreement of the Parties, the CAS appointed in proceeding CAS 5405 the same Panel and *ad hoc* clerk already appointed in proceeding CAS 5166.
39. On 18 January 2018, the CAS, at the Parties' request, cancelled the hearing for CAS 5166 scheduled for 31 January 2018 in order to deal with CAS 5166 and CAS 5405 in a single hearing.
40. On 5 February 2018, the Parties agreed to a joint procedural calendar in CAS 5405, permitting the Appellant to file an amended appeal brief to address the produced documents.
41. In accordance with that joint procedural calendar, the Appellant submitted its amended appeal brief on 12 February 2018. In that submission, the Appellant, acknowledged the documents produced by FIFA and withdrew its request for production of documents made in the original appeal brief.
42. On 2 March 2018, in accordance with Article R55 of the CAS Code and the joint procedural calendar agreed by the Parties, the Respondent filed its answer in CAS 5405.
43. On 5 March 2018, the CAS Court Office sent the Order of Procedure in CAS 5405 to the Parties, which signed and returned it.
44. On 6 March 2018, the hearing took place at the CAS headquarters in Lausanne, Switzerland to deal with both proceedings.
45. The following persons were in attendance at the hearing:
  - the Panel, assisted by the *ad hoc* clerk and Mr. Antonio de Quesada (CAS Counsel);
  - for the Appellant: Messrs. Gonzalo Boye, Hansjörg Stutzer, Simon M. Hohler as legal counsel, and Mr. Jibril Rajoub (PFA President) and Ms. Susan Shalabi (PFA Vice President) as party representatives;
  - for the Respondent: Prof. Antonio Rigozzi and Mr. William McAuliffe as legal counsel;

- Professor Stephanie Hrubesch, as expert witness appointed by the Appellant, and Professor Thomas Probst, as expert witness appointed by the Respondent, who gave their expert evidence by debating in a conference format and answering to the Parties’ and the Panel’s questions;
  - Mr. David Borja as an observer from the Asian Football Confederation, who attended upon a proposal by the Appellant not objected to by the Respondent and accepted by the Panel.
46. At the outset of the hearing, both Parties stated they had no objections to the constitution and composition of the Panel. At the end of the hearing, both Parties acknowledged the Panel had fully respected their rights to be heard and to be treated equally and made no procedural objections.

## V. SUBMISSIONS OF THE PARTIES

### A. The Appellant: The Palestine Football Association

47. In CAS 5166, the Appellant originally set out the following motion for relief, requesting “*CAS to accept this appeal and once processed according to the applicable norms and practiced the evidences that this Court may considered as pertinent we formally request CAS to estimate our appeal declaring the decision for not to vote our proposal as null and void and revoke the appealed decision – adopted in FIFA 67<sup>th</sup>. Congress – and, based on that, to order FIFA to immediately vote the proposal presented by the Palestine Football Association*”.
48. At the hearing, the Appellant clarified the above motion for relief and indicated that it should read: “*CAS to accept this appeal and once processed according to the applicable norms and practiced the evidences that this Court may considered as pertinent we formally request CAS to estimate our appeal declaring the decision for not to vote our proposal as null and void, and/or annul and/ or to declare invalid the appealed decision – adopted in FIFA 67<sup>th</sup>. Congress*”. The Respondent had no objection to the clarification and the Panel accepted the modified wording of the Appellant’s motion for relief as falling within the scope of the original motion.
49. In CAS 5405, the Appellant set forth in its amended appeal brief the following amended prayers for relief:

*“1. To declare that the decision of the FIFA Council of 27 October 2017, taken in Calcutta, according to which:*

*‘The FIFA Council has decided to refrain from imposing any sanctions or other measures on either the Israel FA or the Palestinian FA, as well as from requesting any other FIFA body to do so. The matter is declared closed and will not be the subject of any further discussion until the legal and/ or de facto framework has changed’*

*is null and void, and, in event, to annul such decision ex tunc;*

2. *all costs of this proceedings to be borne by FIFA and FIFA shall also be ordered to adequately compensate PFA and its counsels*".

50. The Appellant's submissions, in essence, may be summarized as follows.

(a) On the First Appealed Decision

The First Appealed Decision must be declared null and void, and/or annulled and/or invalid:

- (i) The Appellant has a legitimate legal interest to act against the First Appealed Decision. The challenge of an association's decision for violation of statutory rights does not presuppose that the challenging party is actually directly affected by such challenged decision. Article 75 CC, which guarantees in general terms "*the legality of corporate life*" grants every member of an association the right to challenge an association's decision that is contrary to Swiss law or the association's statutes. In any case, the Appellant was directly affected.
- (ii) The proposal not to vote on the PFA's proposal at the 67<sup>th</sup> FIFA Congress, whether it constituted a motion to alter the agenda or an amendment to the PFA's proposal, was not procedural in nature but substantive. The First Appealed Decision violated the FIFA Statutes, in particular Article 28 ("*Ordinary Congress agenda*"), because it: (a) prevented the FIFA Congress from voting on the PFA's proposal even though it duly and timely presented it for inclusion in the agenda of the FIFA Congress pursuant to Article 28.1 of the FIFA Statutes, and (b) altered the agenda without the required vote of 3/4 of the FIFA Congress under Article 28.3. Furthermore, the President's proposal, if considered an amendment to the PFA's proposal, should have been submitted at least two months before the FIFA Congress as per Article 28.1. The First Appealed Decision also violated:
- Articles 5 ("*Debates*"), 7 ("*Proposals*") and 9 ("*Votes*") of the Standing Orders of the Congress;
  - Articles 2 ("*Objectives*"), 3 ("*Human rights*"), 4 ("*Non-discrimination, gender equality and stance against racism*"), 5 ("*Promoting friendly relations*"), 8 ("*Conduct of bodies, officials and others*"), 10 ("*Admission, suspension and expulsion*"), 16 ("*Suspension*"), 13 ("*Member associations' rights*"), 14 ("*Member associations' obligations*"), 24 ("*Bodies*"), 25 ("*Congress*"), 26 ("*Vote, delegates, observers*"), 28 ("*Ordinary Congress agenda*"), 34 ("*Powers of the Council*"), and 35 ("*President*") of the FIFA Statutes; and
  - Articles 3 ("*General conduct of members of FIFA bodies and FIFA employees – FIFA compliance policy*"), 8 ("*Duties, powers and responsibilities [of the FIFA Council]*"), 10 ("*Council members' duties*"), and 14 ("*Role, duties, powers and responsibilities [of the FIFA President]*") of the FIFA Governance Regulations.

(b) On the Second Appealed Decision

The Second Appealed Decision must be declared null and void or, alternatively, annulled *ex tunc* because:

- (i) The FIFA Council does not have the “*competence*” or authority, under the FIFA Statutes and regulations or Swiss law, to instruct the FIFA Congress that a subject matter in dispute is closed and no longer subject to discussion, nor does it have the power to restrict any other FIFA body to refrain from imposing any sanctions or measures in relation to that matter. The FIFA Council overstepped its authority by instructing the other FIFA bodies – which are supposed to be independent pursuant to Article 50 (“*Institutional independence*”) of the FIFA Statutes and 36 (“*Institutional independence*”) of the FIFA Governance Regulations – on how to deal with the IFA-PFA matter.
- (ii) In deeming the matter closed before properly discussing it and voting on it, the Appealed Decision infringes on the PFA’s statutory right under Article 13(b) (“*Members associations’ rights*”) and Article 28.1 (“*Ordinary Congress agenda*”) to draw up proposals for inclusion in the agenda of the FIFA Congress, a right which is mandatory and protected under Swiss Association law (Article 66 and 67 of the Swiss Civil Code) and the principle of freedom of speech embedded in the Swiss Constitution and Article 10 of the European Human Rights Convention (ECHR) applicable through Article 3 (“*Human rights*”) of the FIFA Statutes. Members in a Swiss association are entitled to participation rights (Article 64 of the Swiss Civil Code *et seq.*), the most important of which is the right to vote. In order to meaningfully exercise that right to vote, so-called “*ancillary rights*” or “*supplementary rights*” (such as the right to include an item on the agenda) must exist. While the Swiss Federal Supreme Court has not dealt with the issue of whether a member has the right to include an item in the agenda of the General Assembly, the prevailing doctrine supports that it does. Moreover, the FIFA Statutes specify that members have such right, in particular in Articles 13.1(b) and 28.1, and this is confirmed or, at minimum, indicated by FIFA’s past practice.

**B. The Respondent: FIFA**

51. In both CAS 5166 and CAS 5405, the Respondent requests the CAS to issue an award:

- *Dismissing the Palestine Football Association’s appeal.*
- *Confirming the Appealed Decision.*
- *Ordering the Palestine Football Association to pay the costs of the arbitration.*
- *Ordering the Palestine Football Association to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings”.*

52. The Respondent’s submissions, in essence, may be summarized as follows.

(a) On the First Appealed Decision

The First Appealed Decision must be confirmed:

- (i) The Appellant's request lacks a legitimate legal interest, since the FIFA Council already decided on the PFA's proposal at the Calcutta Meeting on 27 October 2017.
- (ii) The First Appealed Decision was taken in full accordance with the FIFA Statutes and regulations, as well as Swiss law. It did not violate Articles 28 ("*Ordinary Congress agenda*") of the FIFA Statutes because the motion presented by the FIFA President on behalf of the FIFA Council at the 67<sup>th</sup> FIFA Congress was neither an "*alteration*" to the agenda under Article 28.3 nor an amendment to the PFA's proposal. It was a procedural motion governed by and duly presented in accordance with Article 8 ("*Procedural motions and closing of debates*") of the Standing Orders for the Congress. FIFA duly included the PFA's proposal in the Congress agenda. The fact that the FIFA Congress ultimately elected not to vote on the PFA's proposal does not mean that it deprived the PFA of the right to "*draw up proposals for inclusion in the agenda of the Congress*" or that it somehow prevented a vote on the PFA's proposal.

(b) On the Second Appealed Decision

The Second Appealed Decision must be confirmed:

- (i) The Second Appealed Decision is based on the general principle that FIFA must remain neutral on political matters, which is confirmed in the FIFA Statutes, the FIFA Code of Ethics, and, in a separate context, by the FIFA Governance Committee.
- (ii) The Second Appealed Decision complies with:
  - Articles 13(b) and 28.1 of the FIFA Statutes. The Appellant's claim that the Second Appealed Decision violates the PFA's statutory right to draw up proposals for inclusion in the FIFA Congress goes to a "*future decision*" and does not affect the validity of the Second Appealed Decision. In any event, the Second Appealed Decision does not violate such right because it does not affect the prerogatives of the FIFA Congress under the FIFA Statutes. The PFA remains free to propose the item for inclusions into the agenda of a future FIFA Congress in accordance with Article 28 of the FIFA Statutes. However, any proposal made by the PFA would have to be within the scope of the FIFA Congress' scope of authority and be lawful in order to be included. Further, a breach of Article 13(b) could only come into play if that provision provided FIFA members with the unilateral right to "*add*" items to the agenda to the FIFA Congress. There is, however, no basis in either that provision, the law of associations, or SFT jurisprudence to support that a member of an association has such unilateral right; rather, under the FIFA Statutes there is only the right to "*propose*" items. The legal doctrine on the alleged right to add

items diverges and, in any case, is irrelevant to the extent that the issue is dealt with by the FIFA Statutes (in keeping with the association's autonomy) which only grants the right to propose an item to the agenda of the FIFA Congress.

- Article 3 of the FIFA Statutes, as it does not violate the principle of freedom of speech; and
- Articles 50 of the FIFA Statutes and 36 of the FIFA Governance Regulations. Appellant misreads the Second Appealed Decision. The decision does not instruct other FIFA bodies to refrain from taking any disciplinary actions or other measures; it only indicates that the FIFA Council itself would refrain from requesting any other FIFA body to do so. Therefore, it does not interfere with the institutional independence of other FIFA bodies.

## VI. JURISDICTION

53. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

54. Articles 57.1 and 58.1 of the FIFA Statutes provide, respectively:

*“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”;* and

*“Appeals against final decisions passed by FIFA’s legal bodies ... shall be lodged with CAS”.*

55. Both of the Appellant's appeals come from decisions of FIFA bodies – the FIFA Congress in CAS 5166 and the FIFA Council in CAS 5405 – which are not appealable internally within FIFA. Therefore, the CAS has jurisdiction to decide the disputes in both proceedings.

56. The Parties did not dispute the jurisdiction of the CAS in either proceeding and confirmed it by signing the Orders of Procedure.

## VII. ADMISSIBILITY

57. The admissibility of the appeals is not challenged.

58. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

59. According to Article 58.1 of the FIFA Statutes, appeals *“shall be lodged with CAS within 21 days of notification of the decision in question”*.
60. The 67th FIFA Congress took the First Appealed Decision on 11 May 2017 and the Appellant then lodged an appeal on 30 May 2017. The FIFA Council took the Second Appealed Decision on 27 October 2017 and the Appellant then filed a statement of appeal against that decision on 16 November 2017. The Appellant thus complied with the 21 days allotted under Article 58.1 of the FIFA Statutes in both proceedings.
61. It follows that both Appellant’s appeals are admissible.

#### **VIII. APPLICABLE LAW**

62. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

63. Pursuant to Article 57.2 of the FIFA Statutes, *“[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
64. During the proceedings, both Parties invoked and analysed in writing and orally the FIFA Statutes and regulations in force at the time of the two appealed decisions as well as Swiss law (particularly Swiss association law).
65. It follows that the Panel must decide the present dispute in accordance with the FIFA Statutes (the version in force as of 27 April 2016) and other FIFA regulations (in particular the Standing Orders of the Congress in force as of 26 February 2016) and, additionally, Swiss law.

#### **IX. MERITS**

##### **A. Merits of CAS 2017/A/5166**

66. The Appellant challenges the First Appealed Decision (see this decision *supra* at paras. 19 and 23) as null and void, annulable, and/or invalid on the ground that it allegedly violated several articles of the FIFA Statutes, the Standing Orders of the Congress, and the FIFA Governance

Regulations (see *supra* at para. 50). In short, the Appellant argues that (a) the FIFA President and FIFA Council breached FIFA's procedural rules by submitting a "proposal and a motion" at the 67<sup>th</sup> FIFA Congress to not vote on the PFA's proposal (hereinafter the "Motion"), and (b) the First Appealed Decision violated various of the Appellant's rights as a FIFA member. The Respondent, on the other hand, contests that any such infringements occurred and seeks that the First Appealed Decision be confirmed in its entirety.

67. In light of the Parties' dispute, the Panel must assess whether it should set aside the First Appealed Decision. In order to determine that issue, however, the Panel must first address the following issues: (i) the exact content of the PFA's proposal to the Congress; (ii) what the First Appealed Decision actually pronounced, i.e. the *decisum* of the First Appealed Decision; (iii) whether the Appellant has legal interest to challenge said decision; (iv) whether the Motion put before the FIFA Congress by the FIFA President on behalf of the FIFA Council was a procedural motion or a substantive proposal; (v) whether any FIFA's procedural rules were infringed; and (vi) whether the Appellant's membership rights were violated.

**(i) *The content of the PFA's proposal***

68. The Panel reminds that the PFA's proposal before the Congress was "to recognise the PFA's entitlement to all its right as described in Article 13 of FIFA Statutes" (see *supra* at para. 9). In this connection, Article 13 of the FIFA Statutes (entitled "Member associations' rights") is a general catalogue of FIFA members' rights, reading as follows: "1. Member associations have the following rights: a) to take part in the Congress; b) to draw up proposals for inclusion in the agenda of the Congress; c) to nominate candidates for the FIFA presidency and the Council; d) to participate in and cast their votes at all FIFA elections in accordance with the FIFA Governance Regulations; e) to take part in competitions organised by FIFA; f) to take part in FIFA's assistance and development programmes; and g) to exercise all other rights arising from these Statutes and other regulations. 2. The exercise of these rights is subject to other provisions in these Statutes and the applicable regulations".
69. The Panel notes, in light of Article 13 of the FIFA Statutes, that the related item inserted in the agenda of the 67<sup>th</sup> Congress, although slightly reworded by FIFA and not mentioning Article 13 ("Request for official recognition of the Palestinian Football Association's entitlements to all of its rights as described in the FIFA Statutes (proposed by the Palestinian Football Association)", *supra* at para. 10), correctly mirrored the request put forward by the Appellant, who in fact did not complain about such rewording.
70. It does not escape the Panel's attention that the PFA's proposal indirectly addressed, at least from a policy viewpoint, the Israeli Clubs Issue and, more generally, the issue of the administration of football in the West Bank territories in relation to Article 72.2 of the FIFA Statutes, prohibiting member associations and their clubs from playing on the territory of another member association without the latter's approval. This is reflected in the PFA's letter to FIFA dated 10 March 2017 (see *supra* at para. 9) and in the oral intervention of the PFA President at the 67<sup>th</sup> FIFA Congress (see *supra* at para. 16). However, the Appellant made it absolutely clear, in its written and oral submissions, that with its request it sought Congress' vote only on the proposal as above written, and did not in these proceedings seek any sanction

against the IFA. Accordingly, the Panel must treat the PFA's proposal on the basis of the characterisation given to it by the Appellant.

**(ii) *The decimum of the First Appealed Decision***

71. The Panel observes that, with the First Appealed Decision, the FIFA Congress decided, first, to delegate the decision on the PFA's proposal to the Council as it considered that body to be the competent FIFA body to decide the matter and, second, to postpone the decision on the PFA's proposal until the end of March 2018, and if possible by October 2017, in order to give time to the FIFA Council to better evaluate the situation (see *supra* at paras. 19, 22 and 23).
72. As to the first point, irrespective of whether or not the Council was initially the competent FIFA body to deal with the PFA's proposal (which the Panel need not decide), the Congress, in satisfaction of the simple majority required under Article 30, para. 9 of the FIFA Statutes (see *infra* at para. 88), decided not to vote on that matter and instead delegated it to the FIFA Council. In so acting, the FIFA Congress made the FIFA Council the body responsible to deal with the PFA's proposal. As the supreme body of FIFA (see Article 24 of the FIFA Statutes) which manifests by democratic vote the collective will of all of the FIFA members, the Panel considers that the Congress was well within its rights to take such action.
73. The FIFA Congress was also within its rights in acting to postpone the PFA's proposal. As will be discussed *infra* at para. 78 *et seq.*, the FIFA Congress respected all procedural and members' rights embodied in the various FIFA regulations when it decided not to vote on the PFA's proposal, and to postpone the decision on such proposal until a later date.

**(iii) *The Appellant's legal interest***

74. The Respondent contends that the Appellant has no legal interest to challenge the First Appealed Decision. Essentially, the Respondent, although admitting that under Article 75 of the Swiss Civil Code an action to set aside is admissible irrespective of any "*special*" legal interest, maintains that the Appellant does not have sufficient legal interest because the FIFA Council already took a decision on the PFA's proposal (the Second Appealed Decision).
75. The Panel rejects the Respondent's position. According to CAS jurisprudence, only an aggrieved party, having something at stake and, thus, a concrete legal interest ("*intérêt à agir*") in challenging a decision adopted by a sports body, may appeal to the CAS against a decision (CAS 2009/A/1880-1881, at para. 29). The CAS has further held – in the context of an association law-related dispute – that a claim shall be deemed inadmissible if it "*clearly does not serve the purpose of the Appellant*" (CAS 2016/A/4602, at para. 49).
76. The Panel considers that the issue raised by the Respondent goes to the merits of the case. The Panel finds that the Appellant undoubtedly has a legal interest in establishing whether the Motion has been carried out as an improper alteration of the agenda pursuant to Article 28.3, and whether the First Appealed Decision was invalid. Indeed, if that decision were held to be invalid, this would mean that the 67<sup>th</sup> FIFA Congress unlawfully decided that the matter

pertained to the competence of the FIFA Council; this, in turn, could have an impact on the issue of whether the FIFA Council was entitled to take the Second Appealed Decision, consequently putting the validity of that second decision into question. In this way, the Appellant's interest does not merely pertain to abstract, theoretical legal issues but to concrete rights and duties which it has and which are established under the FIFA Statutes.

77. The Panel thus concludes that the Appellant has a legal interest to act against the First Appealed Decision.

**(iv) Procedural or substantive motion**

78. At the heart of the dispute about whether FIFA breached its procedural rules is the question of whether the Motion was procedural or substantive in nature. The Appellant submits that, with the benefit of hindsight, it is evident that the Motion was not procedural in nature and constituted a substantive "*alteration*" of the agenda. In support of that submission, the Appellant contends that the Motion and the ensuing First Appealed Decision "*disposed of*" the PFA's proposal and made it "*disappear*". The Panel has carefully considered the Appellant's position but has not been persuaded by it, for the following reasons.

79. The Panel points out that, in any formal gathering such as an assembly or meeting of a corporation or association, a "procedural motion" relates to procedural issues, such as the manner by which the assembly or meeting is conducted and agenda items are administered. A substantive motion or action, on the other hand, relates to the substance or subject-matter of the agenda item under consideration.

80. In the present case, the Panel identifies the Motion (regardless of the unclear label "*proposal and a motion*") as a procedural motion because, by approving it, the FIFA Congress did not address in any way the PFA's request to have recognized its rights under the FIFA Statutes. Instead, the FIFA Congress decided:

- *not to vote on the proposal of the [PFA]*", i.e. not to take any action on the substance of the PFA's proposal for official recognition of its rights (including with relation to the Israeli Clubs Issue);
- that the matter was within the "*competence*" of the FIFA Council (or, more correctly articulated, that it was within the scope of authority of that body); and
- that the FIFA Council should decide the matter when it would be more adequately prepared to handle it, no later than March 2018, and if possible by October 2017.

81. The Panel observes that the Motion thus only related to the *manner* in which the substantive PFA proposal would be dealt with. The Motion was not substantive because it did not request the FIFA Congress to actually enter into the substance or subject-matter of the PFA's proposal listed as item 14.3 of the agenda by rejecting or dismissing it, and expressed no view on the substance. Nor did the PFA's proposal "*disappear*". The FIFA Congress merely moved it to be decided at another time by another FIFA body. Therefore, in the view of the Panel,

the Motion is properly to be treated as being a procedural motion. Whatever the FIFA Council later decided at the Calcutta Meeting on 27 October 2017 with the Second Appealed Decision cannot affect the inherent procedural character of the Motion and the validity of the First Appealed Decision.

82. In reaching the above conclusion, the Panel is comforted by the fact that both Parties' Swiss law experts agreed during the hearing that the Motion was procedural in character.

**(v) *No breach of FIFA's procedural rules***

83. The Panel observes that, according to both experts that testified before the Panel, under Swiss association law the right to propose an item to be inserted in the agenda or even the right to add one – assuming it exists as the Appellant's expert suggests – does not entitle a member to a specific right as to how such item will be acted upon by the general assembly of an association. Both experts confirmed that an association member does not have a guaranteed right that the item added to the agenda will be discussed substantively by the general assembly and/or necessarily lead to a substantive decision. In other words, the Parties' experts are in agreement that whatever the FIFA Congress decides to do with an item on the agenda (e.g. accept, dismiss, delegate, postpone it, etc.) and to whatever extent it elects to discuss it, the Congress is free to make that determination for itself.
84. Based on this premise, the Panel finds that the Motion, being a procedural motion, was presented and acted upon without violating any FIFA rules, for the reasons set out below.
85. The main violation argued by the Appellant concerns Article 28 of the FIFA Statutes, which so reads: "*1. The Secretary General shall draw up the agenda based on proposals from the Council and the member associations. Any proposal that a member association wishes to submit to the Congress shall be sent to the general secretariat in writing, with a brief explanation, at least two months before the date of the Congress. 2. The Congress agenda shall include the following mandatory items: ... (n) votes on proposals for adopting and amending the Statutes, the Regulations Governing the Application of the Statutes and the Standing Orders of the Congress (if applicable); (o) discussion of proposals duly submitted by the member associations and the Council within the period stipulated under par. 1 (if applicable) ... 3. The agenda of an Ordinary Congress may be altered, provided three-quarters (3/4) of the member associations present at the Congress and eligible to vote agree to such a motion*".
86. Contrary to the Appellant's position, the Panel is of the view that the Motion, since it was procedural in nature, did not constitute a "*proposal*" or "*alteration*" of the agenda under Article 28 of the FIFA Statutes. Therefore, it did not have to be included in the agenda of the FIFA Congress, or require that it be approved by a 3/4 vote as alterations to the agenda must.
87. The Panel's view is consistent with Article 8 ("*Procedural motions and closing of debates*") of the Standing Orders of the Congress, which reads as follows: "*1. If a procedural motion is made, discussion on the main question shall be suspended until a vote has been taken on the motion*". This is the only applicable FIFA provision governing procedural motions and implicitly, but nevertheless rather clearly, shows that there is no requirement to table a proposal in advance, or to formally alter the agenda in order to move, and then vote on a procedural motion. The Panel is of the

view, comforted by the evidence submitted on Swiss law, that any general meeting of the members of an association has an inherent power to vote on a procedural motion and decide, for example, to postpone the voting on a given issue or, like in the case at hand, to delegate the decision on a given issue to the executive body of the organization (unless this delegation were explicitly forbidden by the association's statutes, which is not the case here).

88. In the present case, when the FIFA President set out the Motion on behalf of the FIFA Council, the FIFA Congress suspended the discussion on the PFA's proposal until it voted on said Motion. As no FIFA rule fixes a specific majority for procedural motions, only a simple majority (i.e. more than 50% of the valid votes cast) was necessary for the Motion to pass pursuant to Article 30, para. 9 of the FIFA Statutes. The Panel notes that the FIFA Congress passed such a vote with 73 percent in favour.
89. The Panel is of the opinion, contrary to the Appellant's position, that Articles 7.2 and 9.7 of the Standing Orders of the Congress are inapplicable to procedural motions. This is because they make reference to amendments (and alterations of amendments) to proposals that have been tabled in accordance with Article 28 of the FIFA Statutes (see *supra* at para. 85). In fact, Article 7 is entitled "*Proposals*" and its paragraph 2 stipulates that "[a]ny amendment shall be drawn up in writing and passed to the chair before being put to the debate", while Article 9 is entitled "*Votes*" and its paragraph 7 provides that "*Alterations to amendments shall be put to the vote before the amendments proper, and amendments before the main proposal*". Neither provision deals with procedural motions; rather, both provisions deal with how the Congress should deal with the discussion of and voting on substantive proposals that were regularly tabled prior to the Congress and that, during the Congress, undergo impromptu requests for amendment (and alterations thereof).
90. In light of the foregoing, the Panel concludes that the First Appealed Decision was based on a procedural motion, and that it did not violate any of FIFA's procedural rules.

**(vi) *No breach of the Appellant's rights as a FIFA member***

91. The next question for the Panel is whether the First Appealed Decision complied with the Appellant's rights as a FIFA member under the FIFA Statutes and regulations. The Panel finds that the First Appealed Decision was compliant with the various FIFA provisions invoked by the Appellant.
92. With regard to Article 28 ("*Ordinary Congress Agenda*") of the FIFA Statutes (quoted *supra* at para. 85), the Panel observes that said provision requires the FIFA Secretary General to draw up the agenda based on proposals from the member associations and FIFA Council and that the agenda include a discussion on said proposals. The 67<sup>th</sup> FIFA Congress' decision not to vote on the PFA's proposal and delegate to the FIFA Council the authority to deal with the matter before the end of March 2018, did not deprive the Appellant of its rights under Article 28 of the FIFA Statutes. As the Parties' experts both confirmed during the hearing, a member of an association has no guaranteed right that an item placed on the agenda will be discussed to its satisfaction or voted on. The FIFA Congress is entitled to take procedural actions, such

as postponing the resolution of a matter, until a more suitable and appropriate time and/or to delegate the matter to the Council.

93. With regard to Article 13 (“*Member associations’ rights*”) of the FIFA Statutes and Article 5 (“*Debates*”) of the Standing Orders of the Congress, the Panel observes the following:
- Article 13 provides as follows: “1. *Member associations have the following rights: ... (b) to draw up proposals for inclusion in the agenda for the Congress; ... (g) to exercise all other rights arising from these Statutes and other regulations*”. The Appellant contends that the First Appealed Decision violated said articles because it “*prevented*” the FIFA Congress from respecting its rights as a FIFA member to have a vote on its proposal, draw up proposals for inclusion in the agenda, and exercise all other rights under the FIFA Statutes and regulations. The Panel rejects this argument. It is undeniable that the Appellant did in fact “*draw up a proposal for inclusion in the agenda*” and that FIFA, whether obligated or not (a question that the Panel need not resolve, see *infra* at para. 112), placed it on the agenda. It is true that, ultimately, the FIFA Congress elected not to vote on the matter and delegated it to the FIFA Council to resolve later. However, as the Panel held above, the fact that an item is on the agenda does not guarantee the right that the FIFA Congress will vote on it. Therefore, there is no violation of Article 13 of the FIFA Statutes.
  - There is also no violation of Article 5 of the Standing Orders of the Congress. That provision requires: “1. *Debates on each item on the agenda shall be preceded by a short report: ... c) by a delegate from the member association that requested the item be included in the agenda*”. As the recording of the 67<sup>th</sup> FIFA Congress confirms, the transcript of which is reproduced above at paras. 16-22, the PFA President had the opportunity to present more than a “*short report*”. The PFA President presented the PFA proposal at great length and rebutted comments made by the IFA President before the FIFA President put the Motion on the floor.
94. The Appellant also argues that the Respondent violated Articles 24 (“*Bodies*”), 25 (“*Congress*”), 26 (“*Vote, delegates, observers*”), 28 (“*Ordinary Congress agenda*”), 34 (“*Powers of the Council*”), 35 (“*President*”) of the FIFA Statutes and Articles 3 (“*General conduct of members of FIFA bodies and FIFA employees – FIFA compliance policy*”), 8 (“*Duties, powers and responsibilities [of the FIFA Council]*”), 10 (“*Council members’ duties*”), and 14 (“*Role, duties, powers and responsibilities [of the FIFA President]*”) of the FIFA Governance Regulations. The Panel observes that, generally speaking, the above provisions regulate (i) the scope of authority, specific powers/duties, and functioning of each FIFA body, (ii) the Ordinary Congress agenda, and (iii) who is entitled to vote at a FIFA Congress. With regard to the latter point, the FIFA rules stipulate that only the FIFA members present at a Congress are entitled to vote (Article 26.1 of the FIFA Statutes), while the FIFA Council members cannot be delegates for their respective associations (Article 26.4) and the President has no right to vote (Article 35.4).
95. The Appellant argues the FIFA Council and the FIFA President have exceeded their powers and thereby violated the above-cited articles. In the Appellant’s view, neither the FIFA Council nor the FIFA President have (i) the capacity to undermine the rights of any member association, (ii) the right to “*prevent*” the FIFA Congress from voting on a proposal duly

presented by a member association and properly included in the agenda, or (iii) the right to vote in the FIFA Congress and induce the vote of delegates by misinforming them on the PFA's proposal and the status of the Monitoring Committee Report.

96. The Panel is not able to accept the notion that the FIFA President, Council or FIFA Congress exceeded their powers with the Motion and the First Appealed Decision. First, there is no indication that the FIFA President or a FIFA Council member voted on the Motion. Second, there is no indication that they misinformed the FIFA Congress. As evident from the recording and transcript of the 67<sup>th</sup> FIFA Congress, the FIFA President accurately communicated to the Congress that the FIFA Council considered that not voting on the PFA's proposal and delegating the matter to the FIFA Council for later resolution was warranted given the circumstances. Third, the FIFA Congress did not "*prevent*" a vote on the PFA's proposal. The FIFA Congress simply approved a procedural motion (i.e. a motion, not a binding act, by the FIFA Council on how to procedurally deal with an item). As noted above, the Appellant had no guaranteed right to what extent its proposal would be discussed or that it would be voted on. Fourth, there is no FIFA rule forbidding the President and/or Council to voice their opinions and submit procedural motions; actually, it would be absolutely counterintuitive and defy common sense if the bodies elected by the Congress to lead the organization were prohibited from expressing their opinions (and, in turn, naturally influencing the opinion of the voting members) and from submitting procedural motions during the Congress.
97. The Appellant then argues that the Respondent violated Articles 2 ("*Objectives*"), 3 ("*Human rights*") and 4 ("*Non-discrimination, gender equality and stance against racism*") of the FIFA Statutes. The Panel observes that:
- Article 2 sets as a FIFA objective to improve the game of football and promote it globally "*in light of its ... humanitarian values*";
  - Article 3 declares that FIFA is "*committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights*"; and
  - Article 4 prohibits any sort of discrimination.
98. The Appellant argues that the First Appealed Decision infringes said provisions by violating the humanitarian values objective of FIFA, not respecting/promoting internationally recognized human rights, and discriminating against the PFA's footballers and officials. In support of its claim, the Appellant argues that the PFA's proposal is aimed at fighting human rights and discrimination violations. The Appellant asserts that the "*PFA Proposal emerge as an act to stop the discrimination that PFA its footballers and officials are facing everyday as a result of an illegal occupation of the Palestinian territory by the Israeli Defense Forces. This occupation is illegal in accordance with Swiss Law, the International Law and the International Humanitarian Law as established on several UN Security Council Resolutions which FIFA is ignoring*". The Panel is of the opinion that – without expressing any view as to the merits – the argument goes to the *substance* of the PFA's proposal, which is not, on the approach taken by the Appellant, a matter that is before the Panel in the present arbitration. The Appellant has asked the Panel to determine whether the FIFA

Congress' decision to not vote on the PFA proposal is valid or not. The Panel has not been asked to address the underlying merits. Accordingly, the Panel has difficulty seeing how the procedural act of postponing and delegating to the Council the decision on the PFA proposal can – in and of itself – be said to determine a violation of human rights or discrimination.

99. The Appellant then invokes Article 5 (*"Promoting friendly relations"*) of the FIFA Statutes. This article requires that FIFA *"promote friendly relations"* and *"provide the necessary institutional means to resolve any dispute that may arise between or among member associations, confederations, club, officials and players"*. The Appellant argues that in *"preventing"* a vote on the PFA's proposal, FIFA has taken the side of the IFA in the conflict between the PFA and IFA and failed to promote friendly relations and provide the necessary institutional means to resolve the dispute between the PFA and IFA. However, as the Panel already held above, the FIFA Congress was not *"prevented"* from voting on the PFA's proposal. The FIFA Congress simply agreed not to vote on the PFA's proposal, and to delegate the matter to the FIFA Council on the basis that more time was necessary. Whilst noting the disappointment of the Appellant as to the course taken, the Panel does not consider that FIFA has sided with the IFA or failed to promote friendly relations with the postponement/delegation of the PFA's proposal. Further, the Panel notes that FIFA does have the institutional means in place to resolve the dispute between the PFA and IFA, such as the FIFA Congress and FIFA Council and even the Monitoring Committee, which FIFA established specifically to oversee and work on resolving the issues between said federations.
100. The Appellant also asserts that Article 10 (*"Admission, suspension and expulsion"*) and 16 (*"Suspension"*) of the FIFA Statutes by *"transferring"* from the FIFA Congress to the FIFA Council the power to suspend and expel a member. However, the Panel is bound to reject this argument because the Appellant made it clear at the hearing and in its briefs that its proposal to the 67<sup>th</sup> Congress did not seek the suspension or expulsion of the IFA. In any event, Article 10 of the FIFA Statutes provides that the FIFA Congress has the power to suspend a member association *"solely upon the recommendation of the Council"*. Therefore, the FIFA Council's involvement in such a matter cannot be deemed to be a violation of the FIFA Statutes.
101. Further, the Appellant argues that a violation of Article 14.1(i) (*"Member associations' obligations"*) of the FIFA Statutes occurred because the Prime Minister of Israel, Mr. Benjamin Netanyahu, allegedly called the FIFA President to influence him to remove the PFA motion from the agenda of the 67<sup>th</sup> FIFA Congress. However, the Panel notes that (i) FIFA routinely has relationships with governments and heads thereof and that this, in and of itself, does not mean that it does not manage its affairs independently and without influence by any third parties, and (ii) there is no evidence before the Panel that the alleged actions of the Israeli Prime Minister caused the FIFA Congress to act in one way or the other. In any event, the Panel finds that since the FIFA body that took the First Appealed Decision – the FIFA Congress – is not a *"member association"*, Article 14.1(i) of the FIFA Statutes is inapplicable and, consequently, cannot have been violated.
102. Finally, with regard to Article 8 (*"Conduct of bodies, officials and others"*) of the FIFA Statutes, the Panel observes that this provision stipulates that *"All bodies and officials must observe the Statutes,*

*regulations, decisions and Code of Ethics of FIFA in their activities*". As the Panel decided above, the FIFA President and Council in proposing the procedural motion, and the FIFA Congress in voting to accept it, did not violate any of the articles of the FIFA Statutes and regulations cited by the Appellant. Therefore, the Respondent has not violated Article 8 of the FIFA Statutes with the First Appealed Decision.

103. In light of the foregoing, the Panel concludes that no violations of the Appellant's rights as a member of FIFA have occurred. With no violations of such rights or other procedural rights, the Panel deems that the First Appealed Decision is valid and is to be confirmed.

**B. Merits of CAS 2017/A/5405**

104. The Appellant requests the Panel to declare the Second Appealed Decision null and void or, alternatively, to annul it *ex tunc* because (i) the FIFA Council did not have the authority to instruct the FIFA Congress and other FIFA bodies not to deal with the IFA-PFA matter, and (ii) in "*closing*" the matter, the FIFA Council has violated the PFA's right under the FIFA Statutes and Swiss law to "*add*" an item to the agenda under Article 13(b) and 28.1 of the FIFA Statutes. The Respondent, on the other hand, seeks full confirmation of the Second Appealed Decision, alleging that (i) said decision did not affect the prerogatives of any FIFA bodies except the FIFA Council itself, and (ii) members do not have a unilateral right to add items to the agenda, only to "*propose*" an item, a right that the FIFA Council did not violate. In light of the Parties' disagreement, the Panel must assess (i) what the Second Appealed Decision actually pronounced, i.e. its *decisum*, and (ii) whether that decision violated the Appellant's rights related to the inclusion of items to the agenda.

**(i) *The decisum of the Second Appealed Decision***

105. The Panel observes that, on the Second Appealed Decision's face, the FIFA Council (i) reviewed the report submitted by the Chairman of the Monitoring Committee on the eve of the 67<sup>th</sup> FIFA Congress, (ii) asserted the exceptional complexity and sensitivity of the situation on the status of the West Bank territories, and (iii) declared that background circumstances existed which could not be ignored or changed unilaterally by FIFA and were actually in discussion at public international law level. The FIFA Council then decided that the issue was a political one and that the FIFA Council should remain neutral in this respect, and refrain from imposing any sanctions or taking any other measures on the IFA or PFA (as well as requesting any other body to do so). Therefore, the FIFA Council declared the matter to be closed and not subject to further discussion until the legal and/or *de facto* framework changes (see *supra* at para. 28 for the relevant press release's exact language).
106. The Panel finds that, in essence then, FIFA recognized that it had before it an issue highly entangled with a complex public international law matter and that, as a private association governing the sport of football, it did not believe itself to be capable of dealing with the issue, opting instead to refrain from doing so until the external Israel-Palestine conflict on the West Bank issue advanced.

107. The Parties disagree as to whether the Second Appealed Decision pronouncement not to act on the PFA's proposal extended to the FIFA Congress and other bodies of FIFA. Initially, according to the Appellant, it did extend to said FIFA bodies. The Appellant argued that it was not within the FIFA Council's scope of authority to instruct the FIFA Congress that a subject matter is closed and no longer subject to discussion, nor to restrict any other FIFA body from imposing sanctions or measures in relation to that matter. In the course of the hearing the Respondent stated that the Second Appealed Decision was confined to the FIFA Council only. That statement, which appeared to surprise the Appellant, was made in the course of formal legal proceedings. In the view of the Panel it commits the Respondent and may be relied upon by the Appellant in the future.
108. That said, the Panel finds that the Appellant appears to have misread the Second Appealed Decision. With that decision, the FIFA Council did not in any manner instruct the FIFA Congress or any other FIFA bodies in relation to the subject matter. The FIFA Council took the Second Appealed Decision for itself only and, as such, its decision only concerns the Council and does not limit the other FIFA bodies, such as the FIFA Congress or disciplinary bodies. In fact, a careful reading of the press release dated 27 October 2017 demonstrates that the FIFA Council would only refrain from "requesting" any other FIFA body to impose sanctions or take other measures on the IFA and PFA; it does not indicate that it prohibited or limited said FIFA bodies from doing so if they have the authority to do it under FIFA rules (see *supra* at para. 28). The Panel finds that the PFA, thus, remains free to draw up proposals for inclusion in a future FIFA Congress pursuant to Article 13(b) of the FIFA Statutes, as FIFA confirmed in the present proceeding in its written and oral submissions: "*The FIFA Council's decision does not affect the prerogatives of the FIFA Congress under the FIFA Statutes and the PFA remains free to make proposals for inclusions of an item it wishes to submit to the Congress according to Article 13(b) of the FIFA Statutes*".
109. The Panel is bound to add that, as FIFA clearly acknowledged during the hearing, even though the Second Appealed Decision only concerns the extent of the FIFA Council's actions, that body may, in the future, revisit the matter and decide to reverse itself and take another approach. In the view of the Panel that decision appears more in the nature of a policy statement than a decision that is intended to legally bind the Council for the future.
110. The Panel notes that this is not to say that the Second Appealed Decision is not an actual decision subject to appeal under Article R47 of the CAS Code. The Second Appealed Decision does qualify as an appealable decision, since declaring a matter closed (as far as the FIFA Council is concerned) constitutes an actual ruling which – being effective until reversed or modified by the Council itself – affects the legal situation of the PFA, i.e. it contains an *animus decidendi* or intent of the FIFA Council to decide on the matter (see e.g. CAS 2014/A/3744 at para. 47).

**(ii) Validity of the Second Appealed Decision**

111. The Panel finds that, by deciding not to act, the FIFA Council exercised its discretion in a valid manner under the FIFA Statutes and Swiss law.

112. The Panel finds that since the Second Appealed Decision does not affect the prerogatives of the FIFA Congress but only concerns the stance of the FIFA Council (see *supra* at para. 108), the Second Appealed Decision does not violate the PFA's statutory right under Article 13(b) and 28.1 of the FIFA Statutes to "*draw up proposals for inclusion in the agenda of the Congress*" (see para. 91, 92 and 93) for the full text of the provisions). Indeed, as FIFA confirmed at the hearing, the Appellant remains at liberty to do so, provided that they fall within the scope of authority of the FIFA Congress and are consistent with legal requirements. Therefore, the extensive and highly controversial debate over whether a FIFA member has the right to "*include*" an item on the FIFA Congress or just to "*propose*" such an item (see *supra* at paras. 500(ii) and 52(b)(ii) for the Parties' position on that subject) becomes purely academic in nature and one that the present Panel need not resolve. For the same reason that the Second Appealed Decision does not affect the prerogatives of the FIFA Congress, the Panel does not find a violation of Swiss association law under Article 66 and 67 SCC, or freedom of speech.
113. The Panel also considers that since the Second Appealed Decision does not instruct the FIFA Congress or any other body to act in a certain manner, it has in turn not interfered with the independence of said FIFA bodies. As a result, the Panel does not find that there is a violation of Article 50 of the FIFA Statutes ("*Institutional independence: The independent committees as well as their individual members shall conduct their activities and perform their duties entirely independently but always in the interests of FIFA and in accordance with the Statutes and regulations of FIFA*") or 36 of the FIFA Governance Regulations ("*Institutional independence: In accordance with art. 50 of the FIFA Statutes, the independent committees as well as their individual members shall conduct their activities and perform their duties entirely independently but always in the interests of FIFA and in accordance with the Statutes and regulations of FIFA*"), which both require that the independent committees of FIFA act entirely independent.
114. To conclude, the Panel holds that the Second Appealed Decision is valid and must be confirmed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeals filed by the Palestine Football Association on 30 May 2017 (proceeding CAS 2017/A/5166) and 16 November 2017 (proceeding CAS 2017/A/5405) are dismissed.
2. The decisions of the 67<sup>th</sup> FIFA Congress in Manama, Bahrain on 11 May 2017 and of the FIFA Council in Calcutta on 27 October 2017 are confirmed.
3. (...).
4. (...).
5. All further or different motions or prayers for relief are dismissed.