Arbitration CAS 2018/O/5830 International Surfing Association (ISA) v. International Canoe Federation (ICF), award of 5 August 2020

Panel: Mr Patrick Lafranchi (Switzerland), President; Mr Jeffrey Benz (USA); Mr Nicholas Stewart QC (United Kingdom)

Surfing / canoeing (Stand-Up Paddleboard (SUP))
Governance of a sport by an International Federation (IF)
Validity of the arbitration agreement
Scope of the arbitration agreement
Applicable law
Legal basis to adjudicate a claim regarding the governance of a sport at world level
CAS power to partially accept the parties' claim
Consequences of the inter partes effect of the award
Recognition of the IF governing a sport at Olympic level according to the applicable criteria

1. **Art. 178 of the Swiss Private International Law Act (PILA) establishes a number of prerequisites that any arbitration agreement shall meet in order to be valid. As to the form, under Art. 178.1, the arbitration agreement shall be made *"in writing … by any means of communication that establishes the terms of the agreement by a text"*. Thus, the parties' will to arbitrate can be clearly evidenced in writing by a Memorandum of Understanding (MoU), confirmed by an extensive exchange of letters, e-mails, communications and drafts of documents. The absence of the parties' signature on the document is not relevant since this is not strictly necessary for an arbitration agreement to be valid under Swiss law. As to the substance, under Art. 178.2, to be valid the arbitration agreement shall comply *"with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law"*. Pursuant to the applicable Swiss law, a valid arbitration agreement exists if the parties have agreed on its essential elements *(essentialia negotii).* In this respect, a valid arbitration agreement exists within the meaning of Art. R27 of the CAS Code if the parties have carried out conclusive acts which undoubtedly confirm their acceptance of and commitment to a three-step dispute resolution process in which their failure to reach an agreement in any of the prior states would ultimately result in arbitration before CAS, with binding effect upon them, to the exclusion of the ordinary courts.**

2. **Once the existence of an arbitration agreement has been admitted, the objective scope of the arbitration agreement is to be interpreted broadly. It should be assumed, absent any limiting language between them or other contrary indication, that the parties wish to confer jurisdiction that is as broad as possible upon the arbitrators. Bearing in mind this principle of utility, the general rules for the interpretation of contracts (i.e. Art. 1 and 18 of the Swiss Code of Obligations - SCO -, and Art. 2 of the Swiss Civil Code -**

SCC), ascertaining the true and common intention of the parties without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement, shall be applied. The original scope of the arbitration agreement cannot subsequently be altered, limited or have its framework reduced as it is against the principle of good faith established by Art. 2 of the SCC.

3. According to Art. R45 of the CAS Code, absent any agreement of the parties to authorize a CAS panel to decide the dispute *ex aequo et bono*, it is not possible to decide the dispute on this basis. Moreover, the references made by the parties in the correspondence exchanged and negociations held before entering into arbitration to the regulations of the IOC are not sufficient to ground a valid implicit choice of law made by the parties in favour of the latter to the exclusion of any other applicable law.

4. Swiss law does not provide for the adjudication of the governance and administration of a sport at world level to one IF. Indeed, Articles 60 *et seq.* of the SCC which regulate the rights of associations are intended to safeguard their independence and autonomy in connection with the administration of their sport but are irrelevant in the specific context of adjudicating the governance and administration of a sport at the world level. The principle of good faith enshrined in Article 2.1 of the SCC encompasses the interpretation of contracts, acts, and even the limitation of rights, and hence may refer to an existing legal relationship or situation, but it cannot create it. Hence, this fundamental legal principle does not encompass the adjudication of the governance of a sport at world level either. Finally, the same conclusion applies to Articles 2 and 5 of the Swiss Act on Unfair Competition (UWG) whose application is subjected to the proof that the Swiss market has been impacted by the conduct of an IF concerning the governance of a sport.

5. An arbitral tribunal can award less than is requested in an arbitration procedure without ruling *ultra* or *extra petita*, or impose conditions on its findings, without committing any procedural error. If both parties to the arbitration procedure are bound to the framework of the Olympic Movement (OM), a legal and contractual basis therefore exists for the adjudication of the parties' dispute concerning the recognition of a sport at Olympic level. Thus, the CAS panel has the power to partially accept the parties' claims (*qui potest plus, potest minus*) and may narrow the extent of the parties' prayers for relief – i.e. limiting its adjudication to the governance and administration of SUP at Olympic level – without engaging in any procedural flaw.

6. Within the legal and contractual framework of the OM, a decision on the governance of a sport will bind the parties to the arbitration procedure with no binding effect on any third party including the IOC (*inter partes* effect). In particular, such decision will not imply any pronouncement with regard to the recognition of that sport at the Olympic level, its inclusion in the Olympic programme or any kind of official recognition within the OM, that are competences exclusively belonging to the IOC. For the sake of clarity, only the party that has been adjudicated with the governance of the sport at the Olympic level will be entitled to exercise any right or perform any

action inherent to such entitlement. Notwithstanding this, in order to avoid any misinterpretation, the party that has not been adjudicated with the governance and administration of the sport at the Olympic level will be free to develop the sport and organise its own sport events outside the IOC sphere. This falls in line with Swiss law.

7. In addition to the general formal criteria i.e. the statute of "Recognized International Federation", Art. 2.2 of the Recognition Rules contains a list of evaluation criteria to be considered for the recognition of an IF in connection with each sport in accordance with the evidence available. The background of the parties in the sport should also be weighed, in particular, the work that each party has done, respectively, on the promotion, development, popularity, recognition and standardisation of that sport as an international sport. An IF being the first federation in organizing and governing *de facto* a sport at the international level, but also the only IF that has shown a real and genuine interest in the sport, having made great efforts and spending considerable time and money in its promotion, development and governance, not only at the professional level but also in developing it at the grassroots level, giving financial aid to athletes and high level competition opportunities, *de facto* fulfils the criteria required by Art. 2.1 of the Recognition Rules of being (i) *"the only Federation governing the sport worldwide"* and (ii) *"Have existed in such capacity for at least five years"*.

I. PARTIES

1. The International Surfing Association ("ISA" or the "Claimant"), is the international sports federation governing surfing, recognized as such by the International Olympic Committee (the "IOC"). It is an American non-profit public benefit corporation with its headquarters in La Jolla (California, USA).

2. The International Canoe Federation ("ICF" or the "Respondent"), is the international sports federation governing canoeing, recognized as such by the IOC. It is an association incorporated under Swiss law with its headquarters in Lausanne (Switzerland) (individually, ISA and ICF shall be referred to as "Party" and collectively as "Parties").

3. Both the ISA and the ICF are members of the following Swiss non-profit associations: (i) Global Association of International Sports Federations (the "GAISF"), which is composed of autonomous and independent international sports federations, and (ii) the Association of Summer Olympic International Federations (the "ASOIF"), whose members are international federations governing sports included in the Olympic Games programme.

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed below based on the Parties' written submissions, the evidence filed with these submissions, and the statements made by the Parties and the evidence taken at the hearing held in the present case. Additional facts and allegations found in the Parties' written submissions and the evidence adduced may be set out, where relevant, in connection with the legal discussion that follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments and evidence submitted by the Parties and deemed admissible in the present proceedings.

(A) Introduction

5. The present dispute relates to the governance of Stand-Up Paddleboard ("SUP"), a sport discipline that both the ISA and the ICF consider to fall within their respective fields of competence. In line with this, in its Constitution, the ISA includes within its objectives *"To govern and regulate Surfing and SUP in the Olympic Games and other international, continental and regional multi-sports events"*, and recognizes it as a surfing modality since 2008 (2008 ISA Guide). Likewise, in accordance with its Statutes, the ICF is a multi-sport organisation focused on all canoeing and paddling activities that *"embraces every activity in which a paddler is facing the direction of travel with a single or double bladed paddle"*.

6. Currently, SUP is one of the fastest growing sports in the world. It has several sub-modalities and it can be practised in different bodies of water (ocean, open water, rivers, lakes, flatwater, etc.). However, in general terms, it can be defined as a water sport in which an athlete stands on a board and uses a paddle to direct and propel him or herself through the water.

(B) SUP events and competitions within the years 2008-2019

7. In 2008, the ISA included SUP in its official ISA Guide as one of the surfing disciplines managed by the ISA. In this Guide, the ISA defined SUP in the following terms: *"Riders stand on the board to paddle out through the break using a single blade paddle, then catch and surf their wave to shore, again using the paddle as a point of additional leverage when turning and as a point of stability when nose riding"*.

8. In January 2009, the ISA issued its first technical rules for SUP activities, which were included in the "Rule Book" for the ISA 2009 World Junior Surfing Championship, held from 28 March to 5 April 2009 in Ecuador.

9. From 20 to 25 February 2012, the ISA organized the 2012 ISA World Stand Up Paddle and Paddleboard Championship in Peru, which was the first SUP competition at a worldwide level. Since then, the ISA has organized one annual "World Championship" taking place in Peru (2013), Nicaragua (2014), Mexico (2015), Fiji (2016), Denmark (2017), China (2018) and El Salvador (2019).

10. SUP surf and SUP racing were included in the Bolivarian Beach Games of 2012 (Lima) and 2014 (Huanchaco), with the national Olympic teams selected by the ISA National Federations.

11. In 2013, SUP was included in the Bolivarian Games (Trujillo), with the participating athletes selected by the ISA National Federations (a regional multi-sport event held in honor of Simon Bolivar, and organized by the Bolivarian Sports Organization, open to athletes from Bolivia, Colombia, Ecuador, Panama, Peru, and Venezuela (Chile was included from 2010).

12. In August 2015, the ISA presented both surfing and SUP to the Tokyo 2020 Organizing Committee for inclusion in the Olympic Sports Programme. Finally surfing, but not SUP, was included in the Tokyo 2020 Olympic Sports Programme.

13. On 28 May 2016, the well-known SUP race named "The Lost Mills", which was held in Bavaria (Germany), became the first SUP race to be recognized by the ICF.

14. On 1 January 2017, the ICF's Canoe Sprint Competition Rules entered into force, which for the first time included SUP categories (SUP Men and SUP Women).

15. In 2017, SUP was included in the programme for the 2017 Central American Games held in Nicaragua, alongside surfing.

16. Also in 2017, the ISA entered into a partnership with the Association of Paddlesurf Professionals ("APP"), which is the official professional world tour for the sport of SUP.

17. On 16 March 2017, the ICF's SUP Canoe Racing Competition Rules entered into force, with the aim *"to provide the rules that govern the way of running ICF SUP Canoe Racing competitions"*.

18. On 30 July 2018, the Portuguese Sports Arbitration Tribunal (the so-called Tribunal Arbitral do Desporto –"TAD"-), rendered a decision by means of which it ruled, *inter alia*, that the ICF could not involve the Portuguese Canoe Federation *(Fedaraçao Portuguesa de Canoagem)* in the organization of the ICF Stand Up Paddling World Championship, which the ICF planned to organize from 30 August to 2 September 2018, because under Portuguese law, SUP was governed exclusively by the Portuguese Surf Federation (Federaçao Portuguesa de Surf) and the organization of SUP events in Portugal was the responsibility of the Portuguese Surf Federation.

19. On 14 March 2019, the ICF announced that from 24 to 27 of October 2019, it would organize the first ICF Stand Up Paddling World Championships in Qingdao (China). The World Championships have taken place as announced.

20. In the summer of 2019, the Pan American Sports Organization ("PASO") organized the XVIII Pan American Games, which included SUP as one of the sport disciplines of surfing.

(C) The Parties' previous attempt to settle their dispute through conciliation and mediation procedures

21. On 21 April 2016, representatives of the ISA and of the ICF met during the SportAccord Convention in Lausanne, Switzerland and discussed the governance of SUP.

22. On 9 November 2016, the Presidents of the ISA and the ICF held a meeting during the International Federation Forum that was held in Lausanne (Switzerland), regarding the governance of SUP.

23. On 15 November 2016, the ISA sent the following letter to the ICF:

Dear President, Dear José,

I am writing to follow up on our discussion on November 9th, at the Lausanne IF Forum.

I was concerned by the actions the ICF is planning on taking at your upcoming Congress in relation to StandUp Paddle (SUP). Those actions basically amount to an attempted hostile takeover of a discipline that has always been fully governed by the ISA.

This issue has been discussed for several years now and, as you know very well, it has always been agreed that the ISA is the world governing authority for SUP, all confirmed by the lack of any SUP activities by the ICF until today.

The ISA never agreed to any authority over SUP by the ICF.

We believe these actions, including ICF recognizing SUP as an ICF discipline and potentially including it in your world championship program, are unwarranted and in violation of ISA's rights as the legitimate recognized IF for SUP.

Such actions would cause grave harm to the ISA who has always been the sole and exclusive International Federation managing this sport since its creation.

The ICF plans, as presented during our meeting include:

- *Request by a number of ICF NFs for inclusion in the Agenda of next ICF Congress this month, of a motion to approve SUP as an official discipline of the ICF.*
- *Once the motion is approved, your NFs will petition their respective NOCs for recognition of SUP under their governance in each respective country.*
- *Subsecuent [recte Subsequent] to that, inclusion of SUP in ICF future world championships.*
- *Potential for inclusion in Olympic Games Programme of SUP through ICF.*
- *The ICF's stated objective in doing this, and preventing the ISA from governing SUP, would be to avoid the ICF losing current Olympic Games medals.*

The ICF itself has had no relation whatsoever to any activity related to the management, development and governance of SUP until today.

On the other hand, the ISA has performed the full role of the sole and legitimate IF for SUP, as evidenced in the points listed below.

The ICF has never listed, and still does not list SUP as a discipline under its governance. The ISA lists SUP as one of its disciplines in its Constitution and website.

More specifically and to set the record straight, the ISA wishes to highlight some key facts:

1. *StandUp Paddle (SUP) is one of the ISA's core disciplines and is an activity born from the sport of Surfing in Hawaii and created by surfers. The ISA Constitution defines Surfing as follows:*
   - *Any sport in which the primary force that moves the participant's surfing equipment, is a wave either of natural or artificial source.*
   - *An activity on the waves on any type of equipment used for surfing.*
   - *An activity in calm waters on any type of equipment used for surfing.*
   - *All StandUp Paddle (SUP) activities in all bodies of water in any format.*
2. *SUP consists of competitions judged on the waves (SUP Surfing) and racing competitions on any body of water (SUP Racing), both ocean and freshwater regardless of the distance and format.*
3. *The ISA's drive to develop both SUP disciplines is also fully aligned with the goals of Agenda 2020 since SUP Surfing and SUP Racing are appealing to youth, easy to practice and accessible to all.*
4. *In 2015 the ISA presented both Surfing and SUP to the Tokyo 2020 Organizing Committee for inclusion in the Olympic sports Programme.*
5. *Since early 2015, the ISA has been working with Buenos Aires 2018 LOC leadership for the inclusion of a SUP racing event, as either a demonstration sport or a medal sport.*
6. *The 2019 ANOC World Beach Games Programme will include Sup [Sic]racing and shortboard surfing, both presented and introduced by the ISA. The ISA has been full supporter of this event from its very early days.*
7. *The ISA has always been and is still today the sole and exclusive organizer of the SUP World Championships in both disciplines. Since 2012, the ISA has successfully organized the only World Championships for SUP Surfing and SUP Racing, featuring all the best StandUp paddlers in the world, including the top professionals. These World Championships have included SUP Racing on flat fresh water as recently as 2014 in Nicaragua.*
8. *The 2016 edition of the ISA World StandUp Paddle & Paddleboard Championship is taking place in Fiji on November 12-20 with participation by over 245 athletes from 26 countries, from all five continents;*
9. *The 2017 ISA World StandUp Paddle & Paddleboard Championship will take place in Denmark where competitions will be held on flatwater (in Copenhagen) and in the ocean (in the North) and new records of participation are expected.*
10. *SUP surf and SUP racing were included as medal sports in the 2012 and 2014 Bolivarian Beach Games in Lima and Huanchaco, Peru. The National Olympic Teams included SUP surfers and SUP racers selected by ISA National Federations.*
11. *The 2013 Bolivarian Games in Trujillo, Peru included SUP surf and SUP racing as medal sports in the official Programme, again with the athletes selected by ISA National Federation.*
12. *The 2017 South American Beach Games to be held in Pimentel, Peru in February includes SUP surf and SUP racing.*
13. *Two-time SUP Racing World Champion and current active professional athlete, Casper Steinfath from Denmark, is a member of the ISA Executive Committee and the Chair of the ISA Athletes' Commission. There is no SUP representation on the ICF board.*

14. *For years, the ISA has run a worldwide coaching Program for certifying SUP coaches and SUP instructors and Judging [Sic] and officials for both ocean and flat-water racing. No such a program exists at the ICF.*

15. *Several NOC's around the world have already recognized the ISA's NFs as the official national governing body for both SUP and Surf.*

All of the above points clearly demonstrate our status as the legitimate and legal IF for SUP. As a consequence of the ISA activities, SUP has experienced dramatic growth in participation and popularity in recent years both in coastal and inland areas of the World. They also prove the ongoing long-term, commitment and strategy of the ISA and a major organizational and financial investment on the part of the ISA and its National Federations, in the development, growth and promotion of SUP.

The ISA and ICF have been discussing the issue of SUP governance for several years now and, as you know very well, the ICF has always agreed to the ISA being the world governing authority for SUP, all confirmed by the lack of any SUP activities by the ICF.

I would again like to confirm that in countries with no ISA NF, the ISA would be happy to welcome athletes from and ICF NF from that country at our ISA SUP World Championships, on a case-by-case basis. Your ICF Member should contact the ISA directly about participating.

Also, we would welcome an application from an ICF NF, for membership of the ISA in countries where no ISA NF is in existence. This type of dual membership exists in many sports, and would allow participation by such country in the ISA SUP World Championships, as well as access to all other ISA programs.

We understand that there may be canoeing clubs or event ICF NIFs who run some SUP activities on a local or even national level and are not currently related to the ISA, whether or not an ISA NF exists for that territory.

But this fact does not give the ICF legal grounds to declare SUP an ICF discipline.

I do hope that this transparent, fact-based letter would convince you of the undesirability of the stated plans of the ICF related to SUP, and that ICF immediately ceases and desists with its plan of action.

Sincerely yours,

Fernando Aguerre

Cc: Dr. Thomas Bach, IOC President
Mr. Patrick Baumann, SportAccord President
Mr. Francesco Ricci Bitti, ASOIF President
H.E. Sheik Ahmad Al-Sabah, ANOC President
Mr. Gerardo Werthein, IOC Member, Chairman YOG Buenos Aires 2018
Mr.Christophe Dubi, Olympic Games Executive Director
Mr. Kit McConnell, IOS Sports Director

24. On this same day, 15 November 2016, the President of the ICF sent an email to the Danish National Canoe Federation stating the following:

Dear Ole and Christian, I need your help, the ISA President says that next year the World Stand-Up will be in Copenhagen, I need to know who is the organizer and if the competition is recognized by the Danish Olympic Committee.

You have to tell the organizer that the ICF will protest to the IOC if there is a competition in calm waters.

I attached the letter.

25. On 17 November 2016, the ICF answered that ISA letter in the following terms:

Dear Mr President, dear Fernando,

Thank you for your letter 15th November 2016 regarding the Governance of Stand Up Paddling (SUP).

On behalf of the ICF, I can tell you that we disagree with your stance regarding ISA and the perception you have over this paddling discipline and we continue the same line of opinion that we have had for several years now.

The discussions we had at Sportaccord in Lausanne earlier this year where Tony Estanguet, Simon Toulson and I made our position very clear to you, yet you continue to ignore what was said at that meeting.

The ICF Statutes (Article 1) are clear and have been the same for over 30 years:

"The ICF is a multi-sport organization, which consists of all canoeing and paddling activities. ***The ICF embraces every activity in which a paddler is facing the direction of travel with a single or double bladed paddle****".*

During our discussions, we have always acknowledged SUP belongs to ISA in the surf and open water. Where there is surf and moving waves it is your domain. However, flatwater venues that require the athlete/participant to use propulsion by a paddle is clearly paddling sport and this is why we defend the right to organize, control and run SUP activities under these conditions. Clearly under the above description SUP is not a surfing activity by your own definition.

You identify that the ICF has no activity in SUP but this is not the case. There have been many competitions both national and international events (junior and senior) held with our National Federations including Germany, Italy, USA and Portugal in 2016. You are well aware of this and we have discussed this at length with you. We are still waiting for the MoU that was proposed during the meeting in Lausanne which never materialized from ISA.

As in all our disciplines (of which not all are mentioned in our Statutes) the main denominator is the use of the paddle as a means of propulsion of a craft, which is reflected in our rules. We have made this clear to you over the years and tried to compromise over the definition of SUP with you. The failure of ISA of recognize paddling activities under the responsibility of the ICF is a clear attempt to encroach in our sporting arena.

Regarding the Olympic Movement as historically only one International Federation can be seen to "own" a sport the ICF objects to ISA using SUP in any form at any events organised by the IOC.

To conclude, as outlined to you at Sportaccord and the IF Forum, it is our view that SUP is a paddling activity specifically in flatwater environments and we will defend our interests as far as we need to should you not respect this definition.

Yours sincerely,

Jose Perurena Lopez

ICF President and Member IOC

26. On 22 November 2016, Mr. Fernando Aguerre, President of the ISA, sent a letter to Mr. José Perurena, President of the ICF, stating:

Dear President, Dear José,

I am writing to follow up on our discussions and exchange of correspondence concerning one of the ISA's core disciplines, i.e. StandUp Paddle (SUP).

As you know, the International Surfing Association is and has been until now the only international federation organizing StandUp Paddle competitions. This is not surprising, since SUP is a surfing discipline that has been invented by surfers, using surfing equipment on any body of water. In fact, all international rules regarding the discipline at a competitive level have been created, managed and issued by the ISA.

The ICF has never organized a SUP competition, nor has it ever issued official rules for this discipline.

We have understood from you that a number of ICF Members have planned or are planning to petition the ICF General Assembly to vote to recognize SUP as a discipline of ICF. We strongly urge ICF not to take this vote, since we would consider such an act to be a deliberate violation of the Olympic Charter, a violation of the Statutes and rules of SportAccord, and a clear violation of both Swiss and US law.

The Fundamental Principles of Olympism require each member of the Olympic Family, and in particular also each International Federation, to act in accordance with the "educational value of good example, social responsibility and respect for universal fundamental ethical principles". To seek to "occupy" or lay claim to a discipline successfully regulated, organized, and since many years developed by another International Federation is an act of bad faith and is an act directed against the principle of a concerted action in favour of sport, i.e. the principle that bind all members of the Olympic Family.

Additionally, both the Swiss Federal Law as well as US Federal and State law Against Unfair Trade and Competition prohibit unfair trade practices. No person, business, association or other entity may appropriate an individual's goods or likeness without permission.

Should ICF pursue this attempt to assume authority over SUP in any form and thus infringe on the ISA's fundamental rights as the sole and exclusive governing body over this discipline, we would be obliged to initiate legal action, before competent state and arbitral tribunals as well as sporting bodies. Such legal action, while not preferred by any means, would be aimed at protecting the legitimate interests of a harmonized international sport of StandUp Paddle, in accordance with existing rules and internationally accepted events, as defined by the ISA and evidenced by the highly successful ISA World SUP & Paddleboard Championship, just recently concluded in Fiji and featuring all the world's best SUP athletes.

The ISA does not seek legal confrontation with another member of the Olympic Family. We believe indeed that the values of Olympism command International federations to seek solutions based on dialogue, always in the interest of the sport. We therefore herewith respectfully but firmly ask ICF:

(i) to not take any decision that can be perceived as an infringement of the ISA's rights and interests; and

(ii) to agree to a meeting as soon as possible, in presence of leaders of the IOC, ANOC and/or SportAccord, in order to avoid that the matter be resolved by courts.

We sincerely hope that ICF will not take any action that violates the rules to which all of us have declared to be bound, nor violates rules and principles of Fair Trade under national laws.

I can assure you, dear José, of the ISA's full commitment to find a way to avoid a dispute that would be damaging and costly for the sport. I trust you will understand that ISA has to protect, with all appropriate

means, the existence, running and proper administration of one of our core disciplines. This is our international federation responsibility to our athletes and Members who have been participating and investing in the development of this discipline all these years.

We look forward to your prompt response.

Sincerely,

Fernando Aguerre

CC: Dr. Thomas Bach, IOC President
Mr. Patrick Baumann, SportAccord President
Mr. Francesco Ricci Bitti, ASOIF President
H.E. Sheik Ahmad Al-Sabah, ANOC President
Mr. Gerardo Werthein, IOC Member, Chairman YOG Buenos Aires 2018
Mr. Christophe Dubi, Olympic Games Executive Director
Mr. Kit McConnell, IOC Sports Director"

27. On 13 January 2017, Mr. Pierre Fratter-Barduy, Head of Summer Sports and IF Relations of the IOC, sent the following letter to the President of the ISA:

Dear Fernando,

Happy New Year, I hope you are well.

The meeting on SUP is confirmed at the IOC headquarters for Monday at 11:30 am. The President will join for the first hour and Kit and I will stay for the second hour if needed.

The ICF have confirmed that José, Tony and Thomas Konietzko (ICF Vice President) will attend, plus potentially Simon (to be confirmed).

From the IOC side, the attendees will be the President (for the first hour), Kit, Andre Sabbah from our legal team (to clarify any questions regarding forms of agreement or CAS processes as necessary) and myself.

In terms of structure of the meeting, we propose the following:

- *Short welcome from the President*
- *Presentation / overview from the ICF (10-15 minutes)*
- *Presentation / overview from the ISA (10-15 minutes)*
- *Open discussion*
- *Conclusion by the President*
- *Continued discussion following the departure of the President*
- *Conclusions*

As previously discussed, the President would like both parties to agree to the following three-step process prior to the meeting:

i. Facilitated discussion with the IOC (16 January)

ii. CAS mediation (if step 1 is not successful)

iii. Binding CAS arbitration (if steps 1 and 2 are not successful)

We have prepared the attached document and we would like this signed prior to the meeting so all parties are clear and committed to the process before the discussion.

We look forward to seeing you on Monday.

Kind regards,

Pierre

28. In addition, in his email, Mr. Fratter-Bardy attached the following Memorandum of Understanding ("MoU"), which was not signed by the Parties:

"MEMORANDUM OF UNDERSTANDING
Entered into this […] 2017 by and between the
INTERNATIONAL CANOE FEDERATION
[…]
And the
INTERNATIONAL SURFING ASSOCIATION
[…]

WHEREAS the International Canoe Federation (the "ICF") and the International Surfing Association (the "ISA") are recognized by the International Olympic Committee (the "IOC") as International Federations.

WHEREAS this memorandum of understanding (the "MoU") shall set out a framework for the ICF and ISA (hereinafter collectively referred to as the "Parties") to find a solution regarding the governance of Stand Up Paddle, a discipline that both Parties claim to govern;

NOW THEREFORE, in order to reflect the key principles agreed upon during their recent discussions and meetings and recognize the existing relationship between the ICF and ISA, the Parties hereby agree to be legally bound as follows.

1. *The Parties shall, work closely together, in the spirit of mutual friendship and cooperation, and find a mutually agreeable solution, by 31 March 2017, as to how the discipline of Stand Up Paddle shall be governed.*
2. *If the Parties are unable to mutually agree on a solution, the dispute shall be submitted to mediation in accordance with the CAS Mediation Rules. The language to be used in the mediation shall be English.*
3. *If, and to the extent that, any such dispute has not been settled within 90 days of the commencement of the mediation or if, before the expiration of the said period, either Party fails to participate or continue to participate in the mediation, the dispute shall be submitted to and finally settled, to the exclusion of the ordinary courts, by CAS arbitration pursuant to the Code of Sports-related Arbitration.*
4. *The present MoU enters into force upon signing by both Parties and shall expire automatically when the Parties have mutually agreed as to how Stand Up Paddle shall be governed, or upon final decision of CAS arbitration, whichever occurs first.*
5. *Any dispute arising from or in connection with the execution or interpretation of this MoU or breach thereof which cannot be settled amicably, shall be finally settled, to the exclusion of the ordinary courts,*

in accordance with the Code of Sports-related Arbitration. The parties undertake to comply with the said Code, and to enforce in good faith the award to be rendered. The seat of arbitration shall be at Lausanne, Switzerland. […]".

29. On 16 January 2017, the ISA and the ICF held a meeting with the President of the IOC, Mr. Thomas Bach, in order to try to reach a solution regarding the governance of SUP.

30. On 13 March 2017, Mr. Fernando Aguerre, the President of the ISA, sent a letter to Mr. Thomas Bach, President of the IOC, in the following terms:

Dear Mr. President, Dear Thomas

Thank you for the time and interest you have dedicated personally to this matter.

Following our meeting in Lausanne, we have been in contact with Kit McConnell and provided your office with copies of our various correspondence and ongoing concerns.

In January we travelled to Lausanne, at no small effort or expense, with the best of intentions and in the genuine interest of seeking a collaborative solution. While different scenarios were discussed, no viable solution was possible at the time.

Unfortunately, since the meeting, the ICF leadership has communicated misinformation to its NFs, as well as to Olympic leaders and organizers, about a supposed agreement in the meeting, in which the ISA agree to "split governance" over SUP. As you know, there is no such agreement, as such a "split governance" would hardly be beneficial for the development of SUP in the world. Such misleading communications from the ICF have continued to cause substantial confusion and consternation amongst ISA NFs and in the global SUP Community.

Since January, we have had multiple reports from our ISA Members about National Canoe Federations taking action to claim authority over SUP on a national level, apparently with the encouragement of ICF, and attempting to gain NOC recognition of ICF's NFs over SUP.

Despite the ICF's actions, and our subsequent loss of confidence in ICF's good faith, we have decided to initiate the process for CAS Mediation this week as you suggested.

Our National Federations have urged us to defend and protect their rights and the ISA rights and governance over SUP, which, as you know well from our various discussions, has been the exclusive and undisturbed domain of the ISA to date.

As I mentioned in our meeting, we find it disheartening and frustrating that after nearly a decade of the ISA leading SUP without any objection or opposition from any party, ICF should choose now to lay claim over this discipline, and is doing so by waging a campaign fought at the national level, against ISA's NFs the legitimate national governing bodies of SUP.

We believe time is now of the essence and CAS Mediation must be iniated [sic] very swiftly, with the support of the IOC.

Ultimately, given the ICF's actions, we believe this process will only lead to CAS Arbitration. This could be avoided, of course, should the IOC take itself the decision to recognize ISA as the sole International Federation for SUP. This is what the ISA has been doing all along, together with our NFs and with the full support of all SUP surfers and racers of the world.

Should ICF be reluctant to purse this course of action, or if we are further delayed in this process, the ISA will be obliged to consider alternative other ways to protect its interests as well as the interests of its member federations.

Thanking you again in advance for your leadership and support on this critical issue for the ISA.

Kind regards,

Fernando Aguerre

Cc: Mr. José Perurena, ICF President
Mr. Patrick Baumann, SportAccord President
Mr. Francesco Ricci Bitti, ASOIF President
H.E. Sheik Ahmad Al-Sabah, ANOC President
Mr. Gerardo Werthein, IOC Member, Chairman YOG Buenos Aires 2018
Mr. Christophe Dubi, Olympic Games Executive Director
Kit McConnell, IOC Sports Director

31. On 1 June 2017, the Secretary General of the ICF informed the ISA about the ICF's intention to start CAS Mediation in the following terms:

Dear Bob,

I hope this email finds you well and you had a successful World Championship.

The ICF would like to start CAS Mediation proceedings with ISA. To do this we need to have an agreement between both parties that we will honour CAS proceedings and abide by the rules of CAS. There also needs to be an agreement to share 50/50 the 1000 Euro mediation costs. Both parties will need to be bound by article 10 Confidentiality Clauses.

Please let me know if this is acceptable to you and we can advance proceedings.

Best regards,

Simon Toulson

32. On 2 June 2017, while replying to previous correspondence from the ISA, Mr. Simon Toulson sent an email to the ISA with the following content:

Dear Robert,

Thanks for your reply. I am certainly glad that you have agreed to go to CAS Mediation. I want to clarify something here, the ICF has always insisted on CAS Mediation and CAS Arbitration to settle this matter. We were ready to sign the IOC MoU without any changes and we encouraged ISA to CAS Mediation during Sportaccord. We have not deviated from this point nor have we changed opinion.

We will start the proceedings with CAS.

Best regards,

Simon Toulson

33. That same day, the ISA's Executive Director, Mr. Robert J. Fasulo, answered the ICF's correspondence, and informed them that they were *"pleased, as you, that the CAS Mediation and Arbitration procedure can now start"*.

34. On 9 June 2017, the ICF filed a Request for Mediation with CAS, which read as follows:

Request for CAS Mediation for a sport dispute between the International Canoe Federation and the International Surf Association

Dear Sir/Madam,

As per Article 4 of the CAS Mediation Rules, the International Canoe Federation (ICF) along with the International Surf Association (ISA) would like to initiate CAS Mediation proceedings regarding a dispute over the jurisdiction and ownership for Stand Up Paddling (SUP).

Both parties have agreed between themselves that CAS Mediation should be sought to resolve the dispute and that both parties agree to the CAS Mediation Guidelines for the duration of the process.

[…]

In brief, the dispute over the ruling body of Stand Up Paddling (SUP) has been going on for several years. The dispute concerns what jurisdiction each Federation has with regards to Stand Up Paddling competitions and who ultimately controls SUP for the Olympic Games, Youth Olympic Games and other multi-sport Games.

The issue has been discussed at many levels and between both parties however no agreement has been reached and therefore we look to CAS Mediation to help solve this issue.

As per the CAS Mediation guidelines the ICF will pay the 1000 Euro fee to CAS. Both parties agree to share any additional costs relating to the CAS Mediation.

35. The same day, the ISA filed a Request for Mediation with CAS, which read as follows:

Request to Initiate CAS Mediation

In re

International Surfing Association ("ISA")

[…]

The ISA

versus

International Canoe Federation ("ICF")

[…]

The ICF

Dear Sir or Madam,

1. *On behalf of the ISA, the undersigned attorney hereby respectfully requests to initiate CAS mediation in the matter of the organization of international StandUp Paddle ("SUP") competitions and of jurisdiction and federative "ownership" of SUP at international level.*
2. *The parties of this CAS Mediation proceeding shall be the ISA and the ICF.*

3. As requested by Art. 4 and Art. 7 of the CAS Mediation rules, Counsel of ISA hereby respectfully submits to the CAS Court Office the following information:

(i) contact details of the Parties (please see above);

(ii) brief description of the dispute;

(iii) Applicants, upon suggestion of Dr. Thomas Bach, the president of the IOC, agreed verbally and with exchange of emails to submit their dispute to CAS, first to mediation, second, in the event no solution is reached, to Arbitration. Applicants have not reached an agreement to file a joint communication, however, they agreed to file each individually a request for mediation. As to the knowledge of ISA, ICF has already filed its application with the CAS; and

(iv) power of attorney of the undersigned representing ISA, please also find enclosed;

(v) Mediation fee; ISA has been informed that ICF has paid the fee of CHF 1'000 already. Other costs of the mediation will be shared by the parties.

Brief Description of the Dispute

4. The objective of this CAS Mediation is to find a solution regarding the question which of the two Applicants shall govern and organize international SUP competitions, including for instance at the Olympic Games.

5. The initiation of CAS Mediation is part of a procedure mutually agreed between the Parties to solve this dispute.

We thank you for your due consideration and remain at your disposal for any queries you may have.

36. On 14 June 2017, the CAS Court Office acknowledged receipt of the Parties' Request for Mediation and informed them that it had initiated a CAS mediation procedure with reference *CAS 2017/MED/63 International Canoe Federation (ICF) & International Surfing Association (ISA)*.

37. On 30 August 2017, the ICF and the ISA held a mediation meeting at the CAS Court Office with the Mediator appointed in this case. The Parties did not reach any agreement on the merits of their dispute.

38. On 5 September 2017, the CAS Court Office sent a draft of a Mediation Resolution to the Parties (the "Mediation Resolution"), which included an arbitration agreement, and invited them to file their comments on the proposed draft.

39. On 11 September 2017, the ISA sent to the CAS Court Office a new version of the Mediation Resolution with the amendments that it suggested.

40. On 18 September 2017, the ICF sent to the CAS Court Office its version of the Mediation Resolution, with the amendments that it suggested.

41. On 20 September 2017, the CAS Court Office informed the Parties that, after having reviewed the amendments to the Mediation Resolution proposed by the Parties, *"The Mediator does not see any amendment as having any material impact on the agreement of the Parties to proceed with arbitration and settle the dispute under that procedure"*. In this same letter, the CAS Court Office invited the

ISA to provide its comments on the latest draft of the Mediation Resolution that the ICF had circulated.

42. On 26 September 2017, the ISA informed the CAS Court Office that the Parties had started bilateral communications and requested the CAS Court Office to suspend the mediation procedure in the interim.

43. On 9 November 2017, Mr. Simon Toulson, Secretary General of the ICF, sent an email to Ms. Gunilla Lindberg, Secretary General of the Association of National Olympic Committees ("ANOC"), requesting the following:

Dear Gunilla,

Hope you are well. I have one specific issue that my President has asked to raise with yourself.

The ICF has heard that ANOC is willing to include Stand Up Paddling in the ANOC Beach Games. As you will be aware ISA and ICF are currently in protracted Court of Arbitration over the recognition of this discipline. At this stage both Federations are arguing over the rights for this sport and as we have a number of NOCs that recognise the ICF National Members for SUP, we are disputing the fact that ISA control the sport.

Can you please give me information regarding SUP and how it is to be presented in ANOC Beach Games.

Sorry to bring to you such a negative question but it could have a bearing on our legal proceedings with the case in the near future.

Best regards,

Simon Toulson

44. On 18 November 2017, the Secretary General of the ANOC sent an email to the President of the ISA, informing him about the following:

Dear Fernando

Many thanks for your kind email regarding SUP on the ANOC World Beach Games event. Yes you are right ANOC has always been keen to have this event on our program for San Diego but after the discussion now with IOC they strongly recommend us not to put SUP event on the program as it is still a "discussion" between canoeing and surfing on where the SUP in all forms belong and that's why its not on the program for Youth Olympic Games in Buenos Aires, nor in Tokyo.

So ANOC will not put it on the ANOC World Beach Games program and of course we still have the short board. Is there any other discipline that would fit in the program and is practised world wide [sic] of both man and women that we could replace SUP with? As San Diego is the big surfing city and the excellent place to promote the sport we hope you can find something else.

Sorry for the confusion which is out of our hands and we have to follow the recommendations from IOC on this and the question is not solved between canoeing and surfing. For the MOU we will send you a new one with the SUP deleted but please inform if you want to discuss something else and we will bring that up also with SD organizing committee.

All the best,

Gunilla Lindberg

45. On 15 December 2017, Mr. Simon Toulson, Secretary General of the ICF, emailed Mr. Robert Fasulo, Executive Director of the ISA, in order to inform him about the following:

Dear Bob,

Thank you for your email. We agree to cease CAS Mediation and continue to CAS Arbitration as no compromise position has been accepted by either party. Regarding World Beach Games I was advised not to answer that part of your email as it was irrelevant to the mediation proposals.

Best regards,

Simon

46. On 23 February 2018, the ISA's lawyers sent the ICF's lawyers a draft of the Mediation Resolution. In his correspondence, the counsel for the ISA stated that *"ICF and ISA were not able to reach a settlement and that the matter shall therefore go to CAS arbitration"*.

47. On 23 March 2018, the ICF's counsel informed the ISA's counsel that it accepted the changes proposed to the Mediation Resolution with one sole amendment, namely that *"in order to ensure that the arbitration agreement is clear, an additional paragraph 9(c) has been added, which states that the parties do not authorise the Panel to determine the matter "ex aequo et bono""*.

48. On 31 March 2018, the ISA's counsel sent a new draft of the Mediation Resolution to the ICF's counsel, reframing the arbitration agreement.

49. On 11 April 2018, counsel to the ICF emailed ISA's counsel to inform him about his client's disagreement with the new version of the arbitration agreement that the latter had proposed. In this correspondence, ICF's counsel stated that *"The issues between the parties should be decided as a matter of law. If and when any SUP disciplines fall to be considered for Olympic participation (which we understand is highly unlikely in the near future), the issue of which international federation(s) should act as the governing body for those disciplines should be decided at that stage. The appropriate issue for arbitration at this stage relates only to the legal question of whether any federation holds exclusive rights in relation to any disciplines involving SUP. This is the basis on which our client is prepared to enter into arbitration"*.

50. On 15 April 2018, the ISA's counsel emailed the ICF's counsel, rebutting the latter's allegations. In his email, the ISA's counsel stated that *"The fact is, both ICF and ISA committed before the IOC President, in January 2017, to submit to CAS mediation and, if necessary, to CAS arbitration based on the fundamental question which led us to meet with the IOC and that is, which of the two Federations shall play a leading role in SUP and govern SUP at the international level. This has been the issue at the core of the dispute from the beginning of this process. In fact, ICF has not refrained to act against the ISA and work against the presence of SUP events at international competitions, including the Youth Olympic Games and the ANOC World Beach Games"*.

51. On 25 April 2018, the ICF's counsel answered the correspondence received from ISA's counsel in the following terms:

[…] The ICF remains willing in principle to refer the dispute to the CAS, as it has been throughout the matter. Any suggestion that this is not the case or that the ICF has been obstructive or disruptive is false. However, the ICF's position remains that CAS should be asked to reach a determination on the relevant issues as a matter of law, as is appropriate. It is not the CAS's role to determine, on the basis of subjective impressions of fairness, which international federation should play a leading role in disciplines involving SUP.

The ISA's contention (as originally set out in Mr Aguerre's letter of 22 November 2016) has been that the ICF's involvement in disciplines involving SUP amounts to a violation of law. The consequence of that argument is that the ISA maintains that it has exclusive legal rights in relation to disciplines involving SUP. It is this argument that the ICF is willing, quite properly, to submit to the CAS for determination and which, it is clear, requires an assessment based on legal principles. I note that you again suggest that the question, which your client now proposes should be submitted to the CAS, is consistent with "the requirements of the IOC and the Olympic family". However, as explained in my email below, our understanding is that it is highly unlikely that SUP disciplines will fall to be considered for Olympic participation in the near future. If and when that does happen, then it is a matter for the IOC to decide which international federation(s) should act as the governing body(ies). Until that point, questions of the "principles of Olympism", and the like, do not arise. […].

52. On 27 April 2018, the ICF informed the CAS Court Office that the Parties had not reached an agreement as to arbitration and that the ICF had proposed to the ISA that the Parties agree to a mediation resolution, thus terminating the mediation, without an arbitration clause.

53. On 2 May 2018, the ISA's counsel emailed the ICF's counsel, rejecting the notion that the ISA was unwilling to submit the real subject of the dispute to CAS arbitration. In his correspondence, ISA's counsel affirmed that *"The fact is from the very beginning of this matter it has always been clear what was the issue at stake, i.e. the governance of SUP, in particular at an international, incl. Olympic level"*. In this same letter the ISA's counsel asked the ICF's counsel to confirm whether his client agreed to submit the key question to CAS Arbitration or not.

54. On 4 May 2018, the ISA informed the CAS Court Office that the Parties were not able to reach a settlement agreement and requested the termination of the mediation procedure.

55. On 9 May 2018, the CAS Head of Mediation informed the Parties that the mediation procedure was terminated. The CAS mediation procedure ended without the Parties' signature of the proposed Mediation Resolution.

56. On 3 July 2018, the President of the IOC sent a letter to the ISA, stating the following:

Dear President, dear Fernando,

Thank you very much for your letter of 30 May 2018 regarding the governance of Stand-Up Paddle. The delay in our response was due to the need for us to discuss this matter again with the ICF President to understand the latest situation.

The IOC agrees with you that as the parties do not seem to have reached a mutually agreeable position, moving to CAS arbitration is an important step to bring clarity to the situation. We have also emphasised to the ICF the importance of reaching this clarification, for the benefit of the athletes and the ongoing development of the sport.

Thank you for your continued support to the Olympic Movement, I remain,

57. On 20 November 2018, the Secretary General of the Panam Sports informed the ISA by email about the following:

Hi Fernando and Bob,

Will either of you be in Tokyo for the ANOC. General Assembly? I need to talk about the request we have received from the ICF to exclude or put on hold the race event of SUP for the Lima 2019 Pan AM Games, based on the case that is being discussed in CAS.

58. On 12 March 2019, Mr. Francesco Ricci Bitti, President of the ASOIF, sent a letter to the ICF stating:

Dear President, dear Jose,

ASOIF is indeed aware of the dispute between the International Canoe Federation (ICF) and the International Surfing Association (ISA) over the governance of Stand Up Paddle (SUP) and that the case is currently before the Court of Arbitration for Sport (CAS).

ASOIF's role as an Association of International Federations is to serve their common interest of all its members. Therefore, the formal position of ASOIF is that it cannot get involved in any such dispute between two of its members. However, I am pleased to confirm that ASOIF will fully respect, of course, any final decision made by the CAS in this regard.

59. On 21 March 2019, Mr. Philippe Gueisbuhler, Director of the GAISF, sent a letter to the Secretary General of the ICF stating:

Dear Mr. Toulson,

We are contacting you with reference to your enquiry regarding the GAISF website description of the International Surfing Association displayed in the GAISF Members section at the following link: http://gaisf.sport/members/International-Surfing-Association/

We hereby would like to clarify that the content of the Members section is provided by each Member and/or is taken from public available sources that can be found on internet search engines (e.g.: Wikipedia) and that GAISF's policy is that of maintaining a neutral position in respect thereof, refraining from any interference.

Accordingly, we expect the parties to instruct GAISF properly, upon delivery of the CAS decision of the ongoing proceedings regarding the governance of Stand-Up Paddle.

We hope to have clarified the matter, should you have any questions or need further information please do not hesitate to contact Mr. Davide Delfini […].

III. ARBITRATION PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

60. On 17 July 2018, the Claimant lodged a request for arbitration with the Court of Arbitration for Sport ("CAS") against the ICF, in accordance with Art. R27 and R38 of the Code of Sports-related Arbitration (the "CAS Code"). In its request for arbitration, the Claimant

appointed Mr. Jeffrey G. Benz, Attorney-at-Law in Los Angeles (USA) and in London (UK) as arbitrator and submitted the following prayers for relief, asking CAS to:

"(i) Determine which of the two federations, ISA or ICF, taking into due consideration their history and their activities, involvement, track record, background, investments in connection with SUP, shall govern Stand Up Paddle ("SUP"), a sporting discipline that both parties claim to govern, at international level. In other words, which of the two federations shall in good faith be considered the international non-governmental organization in the meaning of the IOC Charter and therefore be the International Federation governing, among other disciplines, SUP at world and Olympic level or shall administer, at least, a vast majority of SUP disciplines at international level, including the Olympic Games. When taking its decision the Panel shall consider the principles of Olympism, trust and fairness, as enshrined in the Olympic Charter, and the mission and the role played by both ISA and ICF, in the past, in connection with the sport of SUP. The Panel shall be free to render its decision ex aequo et bono, in accordance with art. R45 of the CAS Code.

(ii) Order that Respondent shall bear the arbitration costs in their entirety and reimburse Claimant for any such costs, including the filing fee.

(iii) Order Respondent to reimburse Claimant's legal and other expenses related to the present arbitration".

The Claimant based the jurisdiction of CAS on the fact that the Parties had *"agreed to submit the Dispute to CAS Mediation, followed by CAS Arbitration in case of failure of the CAS Mediation procedure".*

61. On 23 July 2018, the CAS Court Office acknowledged receipt of the Claimant's request for arbitration and invited the Respondent to file the relevant answer.

62. On 25 July 2018, the Respondent requested the CAS Court Office to extend the procedural deadlines initially granted to appoint an arbitrator and to answer the Claimant's request for arbitration.

63. On 27 July 2018, the Claimant informed the CAS Court Office that it objected to the Respondent's request for an extension of the procedural deadlines granted.

64. On 30 July 2018, on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that the Respondent's request for extension of the procedural deadlines was partly accepted.

65. On 31 July 2018, the Respondent requested CAS to reconsider the decision of the President of the CAS Ordinary Arbitration Division not to grant the extension of the procedural deadlines initially granted. The Respondent based its requests on the fact that (i) in its request for arbitration the Claimant had not properly identified the arbitration agreement upon which it intended to ground the jurisdiction of CAS and that (ii) even though it was willing to arbitrate the present dispute, it had neither agreed to do so on the specific terms or basis proposed by the ISA, nor on the basis of the legal standard *(ex aequo et bono)* proposed by the aforementioned.

66. On 2 August 2018, the CAS Court Office acknowledged the Respondent's request to reconsider the decision on the extension of the procedural deadlines of the arbitration and invited the Claimant to comment on such request. In addition, in its correspondence the CAS Court Office informed the Parties that, despite the fact that the scope of the Parties' arbitration agreement was yet to be defined due to their lack of agreement in this regard, it considered that an agreement had been reached in principle, to submit the present dispute to CAS and, hence, at this stage, the CAS Court Office would operate on the basis that *prima facie* jurisdiction existed. Finally, in this correspondence the CAS Court Office also informed the Respondent that any objection to the jurisdiction of CAS had to be filed with its answer to the request for arbitration and invited the Respondent to give some clarification regarding the statements filed with its correspondence of 31 July 2018.

67. On 3 August 2018, the Claimant filed its comments on the Respondent's request regarding the reconsideration of the petition to extend the procedural deadlines.

68. On 6 August 2018, the Respondent provided the clarifications requested by the CAS Court Office on 2 August 2018. In its correspondence, the Respondent sustained that the Claimant had not properly identified the arbitration agreement on which it relied in its request for arbitration, and that no arbitration agreement existed on the terms proposed by the ISA, which therefore meant that it had not agreed to arbitrate the present dispute under the terms established by the Claimant.

69. On 8 August 2018, the CAS Court Office informed the Parties that the Respondent's request for reconsideration of the decision on the extension of the procedural deadlines was rejected. Furthermore, given the Respondent's position regarding the jurisdiction of CAS, the CAS Court Office invited the Respondent to file its submissions on the scope of the CAS jurisdiction with its answer to the request for arbitration. The CAS Court Office further informed the Parties that the Claimant would thereafter be invited to respond to the Respondent's submissions on the scope of the jurisdiction of CAS.

70. On the same day, the Respondent requested the CAS Court Office to extend the deadline for the nomination of an arbitrator until 10 August 2018.

71. On 9 August 2018, the CAS Court Office informed the Parties that the Respondent's request to extend the deadline for the nomination an arbitrator was granted, as a result of the Claimant's agreement in this respect.

72. On 10 August 2018, the Respondent informed the CAS Court Office that it nominated Mr. Nicholas Stewart Q.C., Barrister in London, United Kingdom as arbitrator. In this same letter, the Respondent reserved its right to dispute CAS jurisdiction.

73. On 23 August 2018, the Respondent filed its answer to the request for arbitration in which it filed an objection regarding CAS jurisdiction.

74. On 24 August 2018, the CAS Court Office acknowledged receipt of the Respondent's answer to the request for arbitration and invited the Claimant to respond to the Respondent's objection on CAS jurisdiction.

75. On 31 August 2018, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

President: Mr. Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-Law in Los Angeles (USA) and London (UK), as arbitrator appointed by the Claimant

Mr. Nicholas Stewart Q.C., Barrister in London (UK), as arbitrator appointed by the Respondent

76. On 17 September 2018, the Claimant filed its response to the Respondent's position on CAS's jurisdiction.

77. On 24 September 2018, the Respondent requested the CAS Court Office to allow it to file further brief submissions regarding certain allegations made by the Claimant in its submissions of 17 September 2018 with regard to the jurisdiction of CAS.

78. On 27 September 2018, the CAS Court Office informed the Parties that the Panel had determined that CAS has jurisdiction to decide the present dispute and that it rejected the Respondent's request to file further submissions on this issue. Furthermore, the CAS Court Office informed the Parties that the Panel acknowledged that the scope of the present arbitration was in dispute between the Parties and invited them to file a joint statement within 10 days framing a mutually-agreed upon scope of this arbitration or, in case the Parties could not agree on the scope of the arbitration, to file individual statements setting forth their position in this regard.

79. On 8 October 2018, after having been informed by the Parties that they had not been able to mutually agree upon the scope of this arbitration, the CAS Court Office invited them to file individual statements setting forth their position on this subject.

80. On 15 October 2018, both Parties filed their individual statements on the scope of the present arbitration. The positions of the Parties were the following:

- For the Claimant, it is undisputed that the core of the dispute between the Parties arises from the fact that both federations wish to govern the sport of SUP on a worldwide level and within the frame of the Olympic Movement. In this regard, the Claimant maintains that the scope of dispute is the one described in the MoU that the IOC proposed. This definition is precisely the one presented by the ICF in its request for mediation.
- The Respondent agrees with the Claimant that a dispute has arisen as to the governance of the sport of SUP. In line with this, the ICF was and has remained willing to sign the

MoU that the IOC had proposed. For the Respondent, the only arbitration agreement which the present arbitration can be based on is the one originally proposed by the IOC in the MoU, namely covering disputes *"as to how the discipline of Stand Up Paddle shall be governed"*. With regard to the scope of the dispute, the Respondent considers that the ISA seeks to limit it in order to prevent the ICF from raising the issues and arguments that it wishes to raise. Therefore, the Respondent considers that both Parties should have the opportunity to argue relevant issues in the arbitration and seek determinations and relief that it is permitted to do by the putative arbitration agreement relied upon by the Claimant.

81. On 2 November 2018, the CAS Court Office informed the Parties that after having considered the Parties' submissions, the Panel had determined that the question to be decided in the present arbitration was *"How shall the discipline of Stand Up Paddle be governed from this point forward?"* and that answering this question required the Panel *"to decide the respective rights and responsibilities of the ISA and the ICF in relation to such governance in accordance with the applicable law"*. Furthermore, in this correspondence the CAS Court Office invited the Parties to submit their position on the law applicable to the present dispute, including the possibility of allowing the Panel to decide the present dispute *ex aequo et bono*.

82. On 19 November 2018, the Parties filed their submissions with regard to the law applicable to the present arbitration. The position of the Parties was the following:

- The Claimant is of the view that the Parties not only agreed to a three-steps procedure, but also tacitly agreed that the dispute shall be decided *ex aequo et bono*. On a subsidiary basis, the Claimant maintains that there is at least a valid choice of law and rules between the Parties, according to which the Olympic principles and the regulatory framework of the IOC shall apply in the matter at hand. Finally, the Claimant maintains that ultimately, in the absence of a valid choice of law, Swiss law would be applicable in the present matter and, among others, Art. 60 et seqq. of the Swiss Civil Code and, as a consequence, the regulatory framework of the IOC and the GAISF.
- The Respondent considers that, in accordance with Art. 187(1) PILA and Art. R45 of the CAS Code, since the Parties have not made any agreement as to the choice of law, the dispute is to be determined according to Swiss law.

83. On 21 November 2018, the CAS Court Office informed the Parties that pursuant to Art. R45 of the Code, the Panel will decide the present dispute in accordance with Swiss law principles and that the grounds of this decision will be set forth in the final award. In addition, in this letter the CAS Court Office invited the Claimant to file its statement of claim.

84. On 12 February 2019, the Claimant filed its statement of claim with the following prayers for relief:

(i) Determine that the discipline of Stand Up Paddle ("SUP") shall be governed from this point forward by ISA, with ISA being the international non-governmental organization in the meaning of, among

other sets of rules, the Olympic Charter; therefore ISA shall be the International Federation governing, among other disciplines, SUP at world and Olympic level.

(ii) Determine that of the two Federations, ISA or ICF, it is ISA that, taking into due consideration the history and the activities, involvement, track record, background, investments, etc. of the two Federations in connection with SUP, shall govern Stand Up Paddle ("SUP"), a sporting discipline that both Parties claim to govern, at international level. In other words, it is ISA that shall in good faith be considered the international non-governmental organization in the meaning of the Olympic Charter and therefore be the International Federation governing, among other disciplines, SUP at world and Olympic level or shall administer, at least, a vast majority of SUP disciplines at international level, including the Olympic Games. When taking its decision the Panel shall consider the association principles and rules applicable under Swiss law, and in particular the principles of Olympism, trust and fairness, as enshrined in the Olympic Charter, and the mission and the role played by both ISA and ICF, in the past, in connection with the sport of SUP.

(iii) Order that the Respondent shall bear the arbitration costs in their entirety and reimburse Claimant for any such costs, including the filing fee.

(iv) Order Respondent to reimburse Claimant's legal fees and other expenses related to the present arbitration.

85. On 13 February 2019, the CAS Court Office invited the Respondent to file its response to the Claimant's statement of claim by 17 April 2019.

86. On 3 April 2019, the Respondent sent a letter to the CAS Court Office alleging that the Claimant's description of the expected testimony of its witnesses did not fulfil the requirements of Art. R44.1 of the CAS Code, and requesting that the Panel order the Claimant to file individual witness statements for each of the witnesses proposed. Furthermore, the Respondent requested that the deadline granted to file its response and witness statements be reasonably postponed.

87. On 8 April 2019, the CAS Court Office advised the Parties that Art. R44.1 of the CAS Code only requires that the parties provide a brief summary of the expected testimony of their witnesses, and therefore a generic description of the expected testimony complies with the requirements of the CAS Code. Notwithstanding the foregoing, the CAS Court Office invited the Claimant to file its comments in this regard and informed the Parties that the Respondent's request would subsequently be submitted to the Panel for a decision.

88. On 9 April 2019, the Claimant filed its comments with regard to the Respondent's request to order the Claimant to file witness statements.

89. On 12 April 2019, the CAS Court Office informed the Parties that the Panel considered the witness summaries that the Claimant provided to be sufficient to fulfil the requirements of Art. R44.1 of the CAS Code; thus, the Respondent's request for witness statements was denied.

90. On 17 April 2019, the Respondent filed its answer to the statement of claim, with the following prayer for relief:

126.1 that the ISA's prayers for relief be dismissed;

126.2 that the ISA be required to pay the arbitration costs in their entirety; and

126.3 that the ISA be required to pay the Respondent's legal fees and all other expenses incurred in connection with these arbitration proceedings".

91. On 8 May 2019, on behalf of the Panel, the CAS Court Office informed the Parties that in order to answer the question of the present arbitration (i.e. *"How shall the discipline of Stand Up Paddle be governed from this point forward?"*) the Panel would apply Art. 1 of the Swiss Civil Code, and invited them to comment on the following:

a. Is there a provision of Swiss law which can serve as a basis to answer the relevant question? And if yes, how it shall be applied?

b. If no such provision exists, is there customary law that can serve as a basis to answer the relevant question? And if there is, how shall such customary law be applied?

c. If no such provision and no such customary law exists, what rule should the Panel create as a "legislator" (this rule has hence to be general and abstract) in order to answer the relevant question? And how shall such rule be applied in the present case?

In this same correspondence, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter and invited the Parties to inform CAS of their availability for such a hearing.

92. On 28 May 2019, both Parties submitted their comments on the application of Art. 1 of the Swiss Civil Code, as requested by the Panel. In their submissions, the Parties stated the following:

- The Claimant considered that there were several provisions of Swiss law that could serve as a basis to decide the present dispute. In particular, the following:
  - Art. 5 of the Swiss Law against Unfair Competition, which prohibits a party from adopting or exploiting the work result of a third party.
  - Art. 2 of the Swiss Law against Unfair Competition, which prohibits any party from acting in a deceiving manner or in any other manner which is contrary to good faith.
  - Art. 2 of the Swiss Civil Code, pursuant to which each party has the obligation to act in good faith.
  - Art. 60 *et seq.* of the Swiss Civil Code, including the rules of the relevant sports associations and, in the present case, the Statutes and the rules of the IOC, the GAISF and the ASOIF, which form part of Swiss law.

  In addition, the Claimant considered that the provisions of the relevant associations (i.e. IOC, GAISF, ASOIF), as well as the principle *"One Sport, One Federation"* (i.e. one sport shall be governed and managed by only one international federation on a worldwide level), constituted customary law within the meaning of Art. 1.2 of the Swiss Civil Code. The same would apply to the criteria to be considered when deciding if an International Federation should be recognized within the Olympic family, that had been formalized

in 2013 by the IOC in the document *"International Sports Federations requesting IOC recognition – Recognition Procedure"* and by the GAISF in Art. 7.A.4 of its Statutes.

Finally, the Claimant submitted that if it was concluded by the Panel that no provision of Swiss law and no customary law existed, then the Panel could act as a legislator and establish the corresponding rule.

- The Respondent maintained that the fact that Art. 60 *et seq*. of the Swiss Civil Code did not contain any rule supporting the Claimant's claims and that the requirements of Art. 2 of the Swiss Civil Code and Arts. 2 and 5 of the Swiss Law against Unfair Competition were not met, did not mean that there was a lacuna in Swiss law. In the Respondent's opinion, in this case there was no true lacuna (*"lacune proprement dite"*) as the Swiss legislator wanted to leave these issues to each sport association in application of the constitutional principle of freedom of association. Furthermore, the Respondent asserted that there was no customary law in Switzerland preventing a sport federation from governing a discipline alongside another federation which wanted to govern the same discipline.

  Finally, the Respondent submitted that, in the present case, given that there was no lacuna to be filled, the Panel could act as a legislator (*modo legislatoris)*. In addition, in its opinion it would be difficult to see how an arbitral ruling could constitute a genuine source of law under Swiss law.

93. On 26 September 2019, in order to ensure that the hearing of this case would be conducted in a smooth manner, the CAS Court Office requested both Parties to each provide an outline setting out the key points, order and structure of their proposed oral submissions, together with a numbered and indexed bundle containing all the relevant documents and items already referred to in their written submissions on which they intended to rely in their oral pleadings. In addition, for this same purpose the CAS Court Office requested the Parties to confirm which of the proposed witnesses would attend the hearing in person and which would appear via video or teleconference. Separately, the Parties were also requested to provide English translations of certain documents that they had previously produced and certain submissions that they had made in a different language. Finally, in this same correspondence, the CAS Court Office informed the Parties that the Panel would not provide further instructions concerning the applicability of Art. 1 of the Swiss Civil Code to the present case.

94. That same day, the Respondent wrote unsolicited to CAS submitting a copy of an article and a blog entry related to the design of SUP boards, stating that it intended to use the documents at the hearing for cross-examination purposes.

95. On 2 October 2019, the CAS Court Office invited the Claimant to file its comments on that latest material received from the Respondent.

96. On 3 October 2019, the Respondent filed with CAS its bundle of documents for the hearing as well as the translations requested by the Panel and provided all the information requested with regard to the hearing schedule.

97. On 4 October 2019, the Claimant submitted to CAS its skeleton argument, its bundle of documents, the translations requested by the Panel and a signed copy of the Order of Procedure. In addition, in this correspondence the Claimant also provided CAS with all the information requested in connection with the hearing schedule. Furthermore, with regard to the new documents that the Respondent had filed on 1 October 2019, the Claimant informed CAS that it did not oppose their admission as it considered such new documents irrelevant for the resolution of the present dispute.

98. On 4 October 2019, the Respondent submitted to CAS its skeleton argument as well as a signed copy of the Order of the Procedure, on which it made some handwritten amendments with regard to CAS jurisdiction and to the applicable law. In particular, such amendments read as follows:

- Jurisdiction: *"The Respondent has reserved its rights regarding the Panel's jurisdiction ruling to the extent that the Panel asserts jurisdiction to adjudicate the Claimant's prayers for relief"*.
- Law applicable on the merits: *"On 21 November 2018, the Panel decided that the law applicable to the merits is Swiss law, thereby confirming that the Panel is not authorised to decide on an ex aequo et bono basis. The Claimant did not take issue with this"*.

99. On 7 October 2019, the Respondent filed a new document with CAS, consisting of a press release and an article regarding the ISA 2019 World Championships that was going to take place in El Salvador, which the Respondent intended to use during the hearing for cross-examination purposes.

100. On 8 October 2019, the CAS Court Office sent the Parties the hearing schedule approved by the Panel.

101. On that same day, both the Claimant and the Respondent submitted to CAS some comments with regard to the proposed hearing schedule. In particular, the Claimant considered that as Mr. Fernando Aguerre was a party representative, he would have to be heard at the close of the evidentiary proceedings. The Respondent claimed that in order to respect the rights of defence all the Claimant's witnesses and party representatives had to be heard before the examination of the Respondent's witnesses and its party representative.

102. On 8 and 9 October 2019, the hearing of the present case was held in Lausanne. The following persons attended the hearing:

a) For the Claimant: Mr. Fernando Aguerre (President of the ISA), Mr. Robert Fasulo (Executive Director of the ISA), Dr. Jan Kleiner (Counsel) and Mr. Luca Tarzia (Counsel).

b) For the Respondent: Mr. José Perurena (President of the ICF), Mr. Simon Poulson (Secretary General of the ICF), Mr. Thomas Rudkin (Counsel), Mr. Adam Lewis Q.C. (Counsel), Mr. Tom Mountford (Counsel) and Mr. Antonio Rigozzi (Counsel).

103. In addition, Mr. Brent J. Nowicki, Managing Counsel to the CAS, and Mr. Yago Vázquez Moraga, Attorney-at-Law in Barcelona, Spain, *ad hoc* clerk, assisted the Panel at the hearing.

104. At the outset of the hearing, the Respondent informed the Panel that it maintained the reservations that it had already made in the proceedings. Furthermore, with regard to the Respondent's claim on the schedule of the hearing, the Panel confirmed the Parties that Mr. Aguerre will be examined at the end of the Claimant's evidentiary case, just before the start of the Respondent's case.

105. At the hearing the following persons were heard by the Panel:

Claimant

i. Mr. Casper Steinfath, SUP athlete and multiple world champion (in-person).

ii. Mr. Jakob Faerch, President of the Danish Surfing Association (in-person).

iii. Mr. Tristan Boxford, CEO of the App Tour (in-person).

iv. Mr. Fernando Aguerre, President of the ISA (in-person).

v. Mr. Robert Fasulo, Executive Director of the ISA (in-person).

vi. Mrs. Candice Appleby, SUP athlete (by video-conference, in accordance with Art. R44.2 of the CAS Code)

Respondent

vii. Mr. Simon Toulson, Secretary General of the ICF (in-person).

viii. Mr. Martin Marinov, ICF Canoe Spring and Calm Water Technical Manager (in-person).

ix. Mr. Rami Zur, former Canoe Spring and SUP athlete and the Chair of the ICF SUP Commission (in-person).

x. Mr. Ernstfried Prade, former international windsurfer, member of the ICF's SUP Commission, and designer of water sports equipment including SUP boards (in-person).

xi. Ms. Krisztina Fakezas, a canoe sprint gold medalist and SUP athlete, and member of the ICF Athletes Committee (by video-conference, pursuant to Art. R44.2 of the CAS Code).

xii. Mr. Andrey Kraitor, a professional canoe sprint and SUP athlete (in-person).

xiii. Mr. Andre Santos, CEO of the company Nelo, a leading manufacturer of canoeing, surf, SUP and rowing equipment (in-person).

106. After examination of all the witnesses, the President of the ISA, Mr. Fernando Aguerre, made a final statement in his position as an officer of the Claimant. Afterwards, both Parties presented their closing submissions.

107. During the hearing, the Parties had the opportunity to present their case, to submit their arguments, examine the witnesses, answer the questions posed by the Panel and submit their final pleadings. At the end of the hearing the Claimant expressly declared that it did not have

any objections with respect to the procedure and that its right to be heard had been fully respected. For its part, the Respondent maintained its reservations and objections with regard to the hearing schedule and otherwise as raised during the proceedings.

IV. THE PARTIES' SUBMISSIONS

108. The following summary of the parties' positions does not include every contention put forward by the Parties. The Panel, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, whether or not there is a specific reference to those submissions in the following summary.

A. Claimant's submissions

109. ISA's essential submissions were as follows:

i. Jurisdiction of CAS

110. The ISA considers that the ICF is not disputing the jurisdiction of CAS. On the contrary, in the ISA's opinion, the ICF has repeatedly stated that it wishes to arbitrate the present matter. The ICF only objects on two issues: (i) the standard of *ex aequo et bono* and (ii) the way the ISA has framed the dispute.

111. With regard to the first objection, this is not an issue of jurisdiction, but of the law applicable to the dispute. It will be for the Panel to decide whether or not the dispute should be decided *ex aequo et bono*, in accordance with articles R45 of the CAS Code and 187 para. 2 of the Swiss Private International Law Act.

112. With regard to the second objection, the dispute between the Parties has always consisted of determining which of the two federations should be recognized and should act as the international, non-governmental organization in the sense of the IOC Charter. Precisely for this reason, the Parties agreed with the IOC to resolve the dispute following a three-step process which consisted of (i) a conciliation meeting with the IOC, (ii) CAS mediation and, if unsuccessful, (iii) CAS arbitration. Under Swiss law, this already constitutes a fully valid arbitration agreement.

113. At the first two steps (conciliation before the IOC and CAS mediation) the dispute was always defined as the determination of which of the two Federations should have the jurisdiction to act as the governing International Federation for the sport of SUP, not the "exclusivity rights" that the ICF is now claiming. This is clearly confirmed by the Request for Mediation filed by the ICF, which framed the dispute in the same way as the ISA (*"what jurisdiction each Federation has with regards to Stand Up Paddling competitions and who ultimately controls SUP for the Olympic Games, Youth Olympic Games and other multi-sport Games"*). Moreover, the dispute was framed in the same way in the draft of the Mediation Resolution. It was only afterwards and in a surprising turn of events that the ICF's counsel tried to change the object of the dispute, and bring the matter to a question of "exclusivity". Indeed, even the CAS Mediator confirmed that the amendments

suggested by both Parties to the Mediation Resolution draft did not have any material impact on their agreement to proceed with arbitration.

114. Under Swiss law, a valid agreement to arbitrate does not need to be signed by the parties and can also be concluded by email. What is more, in accordance with the jurisprudence of the Swiss Federal Tribunal, the jurisdiction of an arbitral tribunal can also be based on the exchange of a draft contract which was never signed by the parties. In the present case, the ICF agreed that in absence of conciliation before the IOC and in case of failure to successfully mediate the matter, the dispute would move to CAS arbitration. This was confirmed by the correspondence exchanged with Mr. Simon Toulson, General Secretary of the ICF. As a result, the Request for Arbitration met all the requirements set forth in Art. R38 of the CAS Code.

ii. Scope of the present arbitration procedure

115. It is undisputed that the core of the dispute is the one described in the MoU prepared by the IOC. It concerns the question which of the two Federations, the ISA or the ICF, should be the International Non-Governmental Organization for SUP within the meaning of the IOC Charter and, therefore, be the International Federation governing SUP at the worldwide and Olympic level, among other disciplines.

iii. Law applicable to the present dispute

116. In the ISA's view, the Parties did not only agree to a three-step procedure to resolve their dispute, but also tacitly agreed that it should be decided *ex aequo et bono*. It was the ISA's understanding that the Parties wanted the deciding body to consider what seems to be fair and equitable in the interest of sport.

117. If not, the Olympic principles and the IOC regulatory framework shall apply, including the principles of Olympism, trust and fairness, as enshrined in the Olympic Charter. In this regard, a valid choice of law is not required to be express and in writing; it can also be tacit. In addition, the term "law" does not necessarily refer to a national law, but can also refer to non-state rules, such as the various sports regulations. In the present case, the choice of rules in favour of the IOC regulatory framework arises from the correspondence exchanged between the Parties and from their conduct (i.e. both Parties referred to the Olympic Games in their Request for CAS Mediation).

118. Finally, if the Panel reaches the conclusion that there is no valid choice of law, then the regulatory frameworks of the IOC and the GAISF shall equally govern the dispute. This reasoning is based on Art. R45 of the CAS Code, which, in the absence of a choice of law by the parties, foresees the application of Swiss law. Therefore, Art. 60 et seq. of the Swiss Civil Code apply to the present dispute particularly. As the IOC is an association ruled by Swiss law, in accordance with the Swiss law principle of autonomy of association, it is entitled to enact its own rules to regulate its ordinary matters and resolve disputes within the association. Despite the fact that they are not IOC members, both Parties are bound by the IOC regulatory

framework (Art. 1 para. 4 of the Olympic Charter) as well. Therefore, even in this case, the IOC regulatory framework shall apply. Furthermore, the Panel will reach the same conclusion by applying the GAISF rules (also an association under Swiss law), which are also binding for the Parties (Art. 10 of its Statutes).

119. The Statutes and rules of the IOC, the GAISF and the ASOIF are part of Swiss law. In accordance with the Statutes of these three associations, only one International Federation shall govern a sporting discipline on a worldwide level. Therefore, based on this key principle, the ISA should continue to govern the surfing discipline of SUP, since it is the only International Federation that has ever been internationally recognized as the worldwide governing body of SUP.

120. In addition, Art. 5 of the Swiss Act on Unfair Competition (UWG[1]) prohibits parties from adopting or exploiting the results of work carried out by a third party without employing its own effort. Under Swiss law, the organization of events is a "work product" that falls within this protection. By trying to take possession of SUP, the ICF is trying to obtain an unjustified advantage and to benefit from the hard work of the ISA. In addition, Art. 2 UWG prohibits any party from acting in a deceitful manner or in any other manner which is contrary to good faith. In line with this, and pursuant to Art. 2 of the Swiss Civil Code, each party is obliged to act in good faith. Therefore, the Court cannot accept a breach of Swiss law and, based on good faith, the ISA shall govern SUP on a worldwide level.

121. With regard to the applicability of Art. 1 para. 2 of the Swiss Civil Code:

- The legal prerequisites under which a rule can be considered as customary law are the following: (i) the law contains a gap, (ii) there must be a constant and consistent practice of this rule, and (iii) the concerned persons have to be convinced that such a practice is legally binding. Therefore, in the present case, the Statutes and rules of the IOC, the GAISF and the ASOIF and, in particular, the principles contained in these regulations, constitute customary law that can be applied to the present case. In particular, the following principles/rules will apply:
  a. The *"One Sport, One Federation"* principle: it is a constant and consistent practice that only one international federation can govern a particular discipline at an international level within the IOC, the GAISF and the ASOIF.
  b. The criteria to recognize an International Federation: there is a constant and consistent international practice concerning the criteria to be considered when deciding if an International Federation shall be recognized within the Olympic family. The IOC formalized and summarized in 2013 these criteria in the document entitled *"International Sports Federations requesting IOC recognition – Recognition Procedure"*. The same criteria are applied by the GAISF (Art. 7.A.4 of its Statutes).

[1] Bundesgesetz gegen den unlauteren Wettbewerb (UWG) / Loi fédérale contre la concurrence déloyale (LCD).

The Panel shall apply these criteria to determine if either the ISA or the ICF is in a better position to govern SUP on a worldwide level and within the framework of the Olympic Movement.

- If no rules are considered to be directly applicable and if no customary principle can be identified, taking into account the aforementioned principles and practices, the following general and abstract rule could be enacted by the Panel:

  It shall be generally accepted that only one International Federation shall be responsible to govern a certain sport discipline on a worldwide level.

  In case several international federations wish to govern a specific sports discipline within the framework of the Olympic Movement, it shall be decided which of these federations is in the better position to govern the discipline, taking into due consideration the values and the principles of the Olympic movement.

  In addition, the following criteria may be considered to answer the question which of these International Federations is in the better position to govern the discipline on a worldwide level and within the framework of the Olympic Movement: History, engagement, track record, background, technical aspects of the discipline, investments, organization of events, promotion of the discipline, position of the athletes, etc.

  For the avoidance of doubt, the above does not hinder national or regional sports associations from organizing competitions in the same discipline at national or regional level.

iv. Merits

122. Despite each Party's wish to govern SUP, only the ISA has a verifiable history of governance, organization, investment, development and promotion of the discipline. In particular, the ISA has been active in promoting SUP at the worldwide level for over a decade. In particular, SUP was identified as one of the ISA disciplines in 2008 and its regulations already appeared in the ISA Rule Book of 2009. In line with this, ISA organized the first SUP World Championship in Peru in 2012, and it has been held on an annual basis since then (2013 Perú, 2014 Nicaragua, 2015 Mexico, 2016 Fiji, 2017 Denmark and 2018 China), achieving record participation in 2017 with 286 athletes from 42 countries. Under the ISA's governance, SUP has been included in several international competitions (the Bolivarian Beach Games of 2012 and 2014, the Bolivarian Games of 2013, the Central American Games of 2017 and the Pan American Games of 2019).

123. Furthermore, the ISA's national member associations are also active in organizing SUP events all over the world (around 100 events were scheduled in 2017 at the domestic level under the umbrella of the ISA and its member associations). Not surprisingly, the Portuguese and French governments have given the exclusive mandate to govern SUP to their respective national surfing associations (the French Surfing Federation received a delegation from the Ministry of Sports in 2010 to exclusively lead, regulate, develop and promote SUP in France, and the Portuguese Institute of Sport and Youth ruled in 2015 that SUP is a discipline that should be considered as integrated in the modality of surfing and thus protected by the Portuguese Surfing Association).

124. By contrast, the ICF has never been directly involved in the development of SUP internationally, and it only recognised it as one of its disciplines in 2016 (i.e. *"SUP Canoe Racing"*, as a sub-category of canoe). In line with this, the ICF has never organized any important international SUP competition. Prior to 2016, the ICF never raised any objections to the ISA's international governance of SUP. However, after the inclusion of surfing in the 2020 Olympic Games in August 2016, the ICF began to challenge the ISA's governance of the sport and tried to expropriate a discipline in which it had no involvement whatsoever. Since then, the ICF has obstructed or attempted to obstruct the inclusion of SUP in multi-sport games under the Olympic movement (including blocking the inclusion of SUP competitions proposed by the ISA in the Buenos Aires 2018 Youth Olympic Games and the ANOC World Beach Games, and unsuccessfully trying to block the inclusion of SUP events proposed by the ISA in the Pan American Games 2019 in Lima).

125. CAS shall decide which of the two International Federations should be the international governing body for SUP in the context of the Olympic family. To this end, the one-federation principle (i.e. *"One Sport, One Federation"*), pursuant to which only one federation within a sport and within a specific geographical area is accepted as a member of a supranational federation, shall be considered. This principle is even more relevant within the Olympic Movement, as the IOC only recognizes one International Federation per sport (see Arts. 25 and 46 of the Olympic Charter, and Art. 2.1 of the IOC Guideline *"International Sports Federation Requesting IOC recognition -Recognition Procedure"*). The same principle applies in other relevant international sports associations, such as the GAISF (Art. 7.A of the GAISF Statutes) or the ASOIF. This principle is even recognized by the European Parliament through its resolution from 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity (2016/2143(INI)). CAS has also recognized the applicability of this principle by means of an advisory opinion issued upon request of the ICF with regard to the governance of the sport discipline known as dragon boat (CAS Advisory Opinion *CAS 2008/C/1649*).

126. In accordance with the applicable statutory rules, no International Federation is allowed to "steal" the sport or discipline of another International Federation. The ICF's obstruction of the ISA's activities within the Olympic Movement clearly violates the fundamental principles of Olympism and goes against the necessary *"spirit of friendship, solidarity and fair play"* (the Fourth Principle of the Olympic Charter) and against the general principle of good faith (Art. 2.1 of the Swiss Civil Code). In addition, this conduct also violates Arts. 5 and 2 of the Swiss Law against Unfair Competition (UWG) and constitutes an act of unfair competition.

127. Both Parties are bound by the regulatory frameworks of the IOC, the ASOIF and the GAISF. Pursuant to the aforementioned IOC Guideline *"International Sports Federations requesting IOC recognition – Recognition Procedure"* (which are similar to those established in Art. 7.A.4 of the GAISF Statutes), the following criteria should be applied in order to recognise a new International Federation:

i. General (value of the sport/discipline)

ii. Governance (e.g. good governance basic principles)

iii. History and Tradition (e.g. organization of World Championships)

iv. Universality (e.g. number of affiliated National Federations)

v. Popularity (e.g. steps taken by the International Federation to present the discipline in the most interesting and attractive manner, broadcasting of the events, sponsors)

vi. Athletes (e.g. athlete's programme)

vii. Development of the International Federation (e.g. the International Federation's distribution, technical evolution of the discipline, gender equity)

viii. Finance (e.g. accounting standards)

128. In the ISA's view, these criteria clearly prove that it is the International Federation that shall govern SUP at worldwide level and within the Olympic Movement. In particular:

- SUP was born from surfing; it is a surfing discipline created and developed by surfers that has no origins or connections to canoeing. In addition, international SUP events have traditionally been organised, managed and supported by the ISA only, not by the ICF. The ISA has invested significant energy, time, dedication and funds (over USD 5 million) in the development of the surfing discipline of SUP with great success (broadcasting SUP events, conducting anti-doping controls in SUP competitions, implementing a global SUP education programme certifying coaches and instructions as well as judges and event officials, etc.). As a result, since 2017 the Association of Paddlesurf Professionals ("APP"), which is the exclusive global professional tour of SUP events and features all of the world's top SUP athletes, recognizes the ISA as the sole governing body for surfing, including SUP.
- From a technical point of view, SUP and canoeing have little in common, even though they both use some sort of a paddle. However, the use of the paddle while surfing does not make SUP a canoe sport: it is and remains a surfing sport. Surfing is usually practised in the ocean, but there is also surfing on rivers, lakes and even in pools. SUP athletes need the same skills as in the other surfing disciplines (balance, flexibility, the ability to read the water, and endurance), which are different to those needed for canoeing (such as responsiveness and endurance). The equipment and the position of the athletes in SUP and canoeing is different. Canoe racers use a boat and do not stand up on a board. SUP athletes paddle in a standing position on a surfboard. In line with this, while the weight of kayaks and canoe has an important impact on the exercise of these sports, this factor is not relevant in SUP. Furthermore, SUP paddles are not the same as the canoeing/kayaking paddles, and the techniques for using the paddles are completely different.
- The ICF has no background, experience or history in SUP, and it has never been active in the discipline of SUP. Indeed, prior to 2016 there was neither a mention of SUP in the ICF Rules nor in any of the ICF's published materials. The ICF has not organized a single significant SUP event in the past. In accordance with the ICF's event calendar, only one SUP event has taken place in the past couple of years, "The Lost Mills" race in Germany (2017), which was in fact run by an independent promoter and had no direct involvement from the ICF, other than including ICF branding on and around the event.

- The world's best SUP athletes participate in the ISA competitions and want to belong to the ISA.

129. Therefore, due to the history, the activities, the involvement, the track record, the background and the funds invested, only the ISA has the legitimacy to act as the International Federation for SUP within the Olympic Movement.

B. Respondent's submissions

130. In essence, ICF's submissions may be summarised as follows:

i. Jurisdiction of CAS

131. In accordance with Art. R38 of the CAS Code, the ISA had to accompany its request for arbitration with a copy of the arbitration agreement on the basis of which CAS has jurisdiction to hear the present dispute. However, the ISA did not properly identify such an agreement, making its request for arbitration deficient. As a result, there is no agreement to refer the dispute as it was framed by the ISA to CAS Arbitration.

132. While in principle the ICF wishes to arbitrate, it did not agree to do so on the specific terms or basis suggested by the ISA. Following the failure of CAS Mediation, the Parties failed to agree on the terms of a dispute for the purposes of CAS Arbitration. The sole basis upon which ICF expressed its willingness to arbitrate was set out in the amended version of the Mediation Resolution draft dated 23 March 2018, which framed the dispute as follows:

> *b) The questions which the CAS is asked to determine are as follows:*
>
> - *Does any federation or none have an exclusive right to act as the sole international sports governing body regulating and sanctioning or organizing competition in all or any disciplines involving stand up paddling?*
> - *Is the ISA or ICF or both of them able to recognize all or any disciplines involving stand up paddling as disciplines in its sport and able to regulate and sanction or organize competition in them?*
>
> *c) For the avoidance of doubt the parties do not authorize the CAS to determine the matter ex aequo et bono.*

133. In summary: if the Claimant is willing to arbitrate the dispute as it was framed in the Mediation Resolution draft from 23 March 2018, then there is a valid arbitration agreement between the Parties. If not, then CAS has no jurisdiction to determine the dispute identified in the ISA's Request for Arbitration and it would have to be dismissed for lack of jurisdiction.

ii. As to the scope of the present arbitration procedure

134. If there is a valid arbitration agreement founding jurisdiction in the present case, its scope is the one originally proposed by the IOC in the Memorandum of Understanding, which would

be the last wording of the arbitration clause on which the Parties can be deemed to have agreed: covering disputes *"as to how the discipline of Stand Up Paddle shall be governed"*.

135. In any arbitration proceedings, the scope of the dispute arises out of the pleadings and prayers for relief of each party, which outline the scope of the dispute. However, the way in which the ISA has framed its prayer for relief is intended to confine the scope of the dispute and narrow the way in which the Panel should address the dispute. This kind of binary and exclusive choice between the ISA and the ICF that the ISA is requesting that the Panel to make goes beyond the scope of the arbitration agreement.

136. In the opinion of the Respondent, the Claimant seeks to limit the scope of the dispute from the outset and invites the Panel (i) to make a ruling that precludes the ICF from raising the issues and arguments that it wishes to raise and that are within the scope of the putative arbitration agreement on which the ISA can rely and (ii) to adopt a definition of the scope of the dispute that pre-supposes answers to questions that are contested.

137. Therefore, the scope of the arbitration can only be established pursuant to the arbitration clause contained in the IOC's Memorandum of Understanding (i.e. *"a dispute as to how the discipline of Stand Up Paddle shall be governed"*). It is for each of the Parties to plead its case and identify its prayers for relief, and the sum of the Parties' pleadings and prayers for relief will identify the scope of the dispute to be decided in this arbitration. Both Parties can respond to the other Party's prayers for relief, either by challenging them on the merits or on the grounds that it falls out of the scope of the arbitration agreement.

138. Indeed, what these arbitration proceedings are actually about is whether the ISA has any legal basis under Swiss law, or any factual basis, to sustain its claim to be entitled to a determination from CAS that the ISA alone should govern SUP on the international level, rather than the ICF. In this context, at least the following questions will emerge, all of which fall within the scope of the putative arbitration agreement that the ISA relies upon:

- Question 1: does either the ISA or the ICF have an exclusive right to govern SUP?
- Question 2: if so, which one and on what basis?
- Question 3: if there is no exclusive right to govern SUP, should there, at this time and for any purposes (including, amongst others, Olympic competition), be a binding allocation of responsibility for SUP in favour of either the ISA or the ICF, or a binding division of responsibility for SUP between the ISA and the ICF?
- Question 4: if so, for which purposes, to what extent, and on what basis?
- Question 5: if not, should there be any other measures in place to avoid conflict between the ICF and the ISA with respect to SUP, and if so, which measures and on what basis?

139. CAS cannot decide, without any legal basis in the applicable law justifying the conclusion but in effect *ex aequo et bono*, that the ISA's assertions about what it has done in relation to SUP in the past mean that it should be declared the sole body to govern all forms of the activity in the future, rather than the ICF.

iii. Law applicable to the present dispute

140. Taking into account that the Parties have not agreed to authorize the Panel to decide the dispute on an *ex aequo et bono* basis, this legal standard is not applicable to the present case. As a result, the ICF considers that, in accordance with Arts. 187 of the Swiss Private International Law Act and R45 of the CAS Code, the present dispute shall be decided pursuant to Swiss law.

141. In the present case, the regulations of the IOC, GAISF and ASOIF are not applicable. The fact that international pan-sports organisations (such as, and in particular, the IOC) choose only to accept one member to govern a precisely defined and separate sport for the purposes of their membership and their pan-sports competition, does not impose a legal entitlement under Swiss law in favour of one organisation over the other to be that member. That is a choice for the relevant international pan-sports organisation, to be exercised based on reasonable and rational grounds for the purposes of their pan-sports competitions. In the absence of the exercise of that choice by the relevant international pan-sports organisations (in this case, the IOC), there is no legal basis in the applicable Swiss law or otherwise on which a putative governing body or organiser can bring proceedings against another to secure any declaration of legal entitlement to govern or organise alone. In line with this, a number of sports such as skiing, snowboarding, boxing and chess have had more than one international governing body organising participation and competition in the sport. Only if, at some point in the future, the IOC considers the possibility of adding SUP to the Olympic programme, then the IOC's model and statutes presently require one international governing body to be recognised per sport, for the purposes of participation in the Olympics.

142. Furthermore, the provisions of Swiss law on which the ISA intends to rely do not provide any applicable legal norms or guidance for the resolution of the present dispute. The alleged principle "One Sport, One Federation" is not part of the applicable Swiss association law here. The fact that both the ISA and the ICF have agreed to be bound by the IOC, GAISF and ASOIF's statutes is not relevant, as the statutes of those associations govern the relationship between the associations and their members or candidates for membership, but do not contain any provision that purports to govern the situation where two members of such a federation each govern a discipline that each considers to be part of the sport on the basis of which each association has been admitted or recognised. Indeed, only the IOC, GASIF or ASOIF can potentially be in breach of these provisions if they were to admit or recognise two federations for the same sport. Therefore, none of the IOC, GASIF or ASOIF provisions invoked by the ISA are applicable to the present dispute, which is a dispute between federations that are already admitted or recognised within these international associations.

143. Regarding Art. 2 of the Swiss Civil Code, far from acting in bad faith and/or in abuse of right, the ICF has acted in good faith based on its correct appreciation of how best to progress the developing position in relation to SUP. On the other hand, Swiss Law against Unfair Competition (UWG) is not applicable to the present dispute. The ICF has not adopted any conduct that has an impact on the Swiss market, which is a prerequisite for the application of the UWG. Furthermore, even assuming that the UWG was applicable, no actionable misappropriation could have taken place, because SUP events cannot be qualified as *"work*

results" within the meaning of Art. 5 UWG. Concerning Art. 2 UWG, good faith is presumed under Swiss law (Art. 3 of the Swiss Civil Code) and it is for the party invoking its breach (in this case, the ISA) to establish and prove that such a breach has taken place. In the present case, the ISA has not proven such bad faith. Ultimately, even if the ICF would have breached the UWG, such a breach would not constitute a legal basis for the remedy that the ISA is seeking for, as none of its prayers for relief can be squared with the actions provided for by Art. 9 UWG.

144. With regard to the applicability of Art. 1 of the Swiss Civil Code, the ICF considers that:

- The fact that the provisions of Swiss law upon which the ISA tries to ground its claim (i.e. Arts. 60 et seq. Swiss Civil Code, Art. 2 of the Swiss Civil Code, Arts. 2 and 5 of the UWG) do not contain any rule supporting it, does not mean that there is a lacuna in Swiss law. The only lacuna that could trigger the application of Art. 1(2) of the Swiss Civil Code is the so-called *"lacunes proprement dites",* which exists only when it is clear that the legislator wanted to govern an issue but the law, as enacted, involuntarily omits to do so.
- This does not occur in the present case. To the contrary, the Swiss legislature intended to leave these issues to each sports association in application of the constitutional principle of freedom of association. According to this principle, the ICF is free to govern whatever discipline falls within the scope of its statutes and regulations, and its freedom in doing so is only limited by mandatory law.
- On the other hand, there is no customary law in Switzerland preventing a sports federation from governing a discipline over another federation who wants to govern the same discipline. In this regard, the provisions of the IOC, GAISF and AOISF cannot be considered customary law, and they are only relevant when two governing bodies claim to represent a sport within these sports associations. No customary law exists prohibiting two sports federations to govern the same discipline in general or allowing a sports governing body to exercise exclusive jurisdiction over a sport or discipline, in particular at the Olympics. In this regard, it will be the IOC who will have to decide the issue if and when SUP becomes an Olympic discipline.
- Besides this, regarding the possibility for the Panel to act *"modo legislatoris",* even though this is possible for a judge (because Swiss case law constitutes a genuine source of law under Swiss law), it is difficult to sustain this possibility in the present case, because the Panel's authority is based exclusively on the Parties' agreement and their mission is limited to the adjudication of the dispute that the Parties have brought before it. Any CAS decision limiting the ICF's freedom to organise the sport as it wishes would constitute an infringement of the constitutional guarantee of freedom of association to which the ICF is entitled pursuant to Art. 23(1) of the Swiss Constitution, and the award would be inconsistent with Swiss public policy.

iv. Merits

145. The ISA's characterisation of the dispute does not match reality. Stand Up Paddling is one of the eleven paddling disciplines governed by the ICF. The ICF has been aware of the development of SUP and started to take steps to develop the sport years before the ISA obtained the inclusion of surfing for the summer Olympic Games in 2016. However, it is the ICF's practice to allow nascent paddling disciplines to emerge and develop at local and national level for a significant period of time and to only organise international competitions when the discipline has solidified as a distinct discipline. When the ICF learned in 2015 that the ISA had listed SUP as one of the potential disciplines to include in the Tokyo 2020 games, the ICF considered that it needed to be involved in the discussions between the ISA and the IOC, given the SUP activities being undertaken and developed by its National Federations and its role with respect to paddling sports. At the SportAccord Convention in April 2016 the representative of ISA approached the ICF and told them that the ISA considered the ICF had no role in the development of SUP.

146. The ISA attempts to obtain an exclusive position in the governance and development of the entire spectrum of SUP (i.e. in all its forms), trying to force a decision conferring such exclusivity upon it without any legal basis. The ISA's position relies on certain fundamental fallacies, because:

1) There is no legal basis in Swiss law pursuant to which one body is entitled to be the sole governor or organizer of a competitive activity. This applies in particular, when SUP takes varying forms that are still developing and when no decision has been made by any relevant international pan-sports organisation. The fact that international pan-sports organisations (such as the IOC) choose only to accept one member as governing a specific sport for the purpose of their membership and their pan-sports competitions, does not impose a legal entitlement under Swiss law for one organisation over another to be that member. SUP shall be allowed to develop in its various forms and take its natural course, and the relevant international pan-sports organisations shall be allowed to exercise their choice on reasonable and rational grounds in the future.

   The criteria identified by the ISA would only come into play if and when the IOC decides to include SUP (or any sub-discipline of SUP) in the Olympic programme and possibly have to decide which federation is the International Federation governing SUP (or any sub-disciplines of SUP) as far as the Olympics are concerned. However, this is not the scope of the present arbitration. Indeed, the ISA is requesting CAS to issue a ruling in lieu of the IOC without even bringing the IOC into the proceedings.

2) Even if there was such a legal basis, it is not the case that simply because one organisation has been the first mover in organising some form of a competitive activity, and has invested in it in the past, it therefore has the right to be the organiser of that form of the competitive activity in the future.

3) SUP is not a single, homogeneous competitive activity that has already coalesced into a single defined sport. On the contrary, it is an activity that takes many forms and that

is still developing and is developing in the direction of canoeing and not in the direction of surfing. At one end of the spectrum is the additional incidental use of a paddle on a surfboard in ocean surf, with surf remaining the main means of propulsion and the stance being a surfing stance or posture. At the other end of the spectrum is flat water point-to-point racing propelled only by a paddle on a vessel, which is rapidly evolving into something akin to a competitive kneeling canoe but using a longer version of the paddle than what is used in kneeling canoe. With regard to the rest of the spectrum, where a vessel is stand up paddled in a point-to-point race on other types of water, it is closer to canoeing than to surfing. Currently around 80% of SUP races around the world take place on flat water.

Like canoeing, SUP involves paddle propulsion (not ocean surf, like surfing), point-to-point racing and objective quantitative judging (not subjective qualitative judging and scoring like surfing), thus a technique that is already closely aligned to canoeing and that is developing in a way which will bring them even closer. Additionally, the equipment used is now closer to those of kneeling canoes than to those of surfboards and will continue to move closer and closer to racing canoe equipment. The same happens with SUP paddles, which are made of the same materials as canoe spring paddles. In this regard, it is important to appreciate how different SUP racing is from SUP surfing.

SUP racing is a paddling discipline, involving the use of a single-bladed paddle to propel the vessel, where SUP surfing is an artistic discipline. Whereas in SUP activities on the surf, athletes stand perpendicular to the direction of the board and utilise the paddle as an assistance tool when catching the waves, in contrast, in point to point SUP racing, the athlete's position is diagonal to the axis of the craft, much like that of kneeling canoeist. In summary, the techniques involved in SUP racing and canoeing are therefore already very similar, and are converging and will continue to do so. They are quite different from the techniques used in surfing, with or without a paddle as an adjunct.

147. It is the ISA which is illegitimately and reprehensibly seeking to extend its curtilage well beyond surfing to paddling, trying to control activities that fall naturally within the ICF's ambit. If CAS considers that there is a legal basis to mandate that one organisation is entitled to govern and organise competitive SUP, then this organisation must be the ICF. Alternatively, if CAS is not prepared to accept that the ICF should be the one organisation that should be entitled to govern and organise competitive SUP, then:

i. the ISA should be able to govern and organise SUP only where the relevant activity involves the additional incidental use of a paddle on a surfboard in ocean surf, with that surf remaining the only (or on any basis the main) means of propulsion and the stance being a surfing stance or posture;

ii. the ICF should be the only organisation that should be entitled to govern and organise all other forms of competitive SUP.

148. The ICF has already offered the ISA a compromise that the ISA should be able to govern and organise SUP where the relevant activity involves the additional incidental use of a paddle on

a surfboard in ocean surf, with that surf remaining the only or main means of propulsion and the stance being a surfing stance posture. However, the ISA refused to accept this proposal, seeking to govern all SUP activities, regardless of whether they take place in surf or on flat or inland waters and whether or not the paddle is the main or an incidental instrument of propulsion.

149. The allegation of the ICF's lack of involvement and investment to date in SUP is unfounded and ill-conceived. In the past two years, the ISA has spent a lot of time and thought, led by its SUP Commission, considering the best way to develop and organise SUP, including the standardisation of its rules and the support for organic, bottom-up development of the sport. After the setback of the legal action taken by surfing interest to prevent the ICF SUP World Championships in Portugal in 2018, the ICF is looking forward with great anticipation to the ICF World Championship to be held in China in 2019. While the ICF does not deny that the ISA has been involved in the development of SUP, the ISA significantly overstates the breadth and depth of its involvement. Only very recently has the ISA had any significant involvement at all in SUP outside the context of SUP surfing. Furthermore, the ISA's work in seeking to develop SUP is too heavily focused on organising an annual World Championship event rather than seeking to build the sport more broadly from the ground up. At the same time, the ISA's connection with the Association of Paddlesurf Professionals (APP) is just a commercial partnership where athletes are paid for participation in events.

150. Ultimately, the ICF is the federation with the established track record and long history of developing paddling disciplines. It is broadly based from a geographic perspective and will be able to develop and host SUP racing at its venues for canoeing and kayaking activities, hence it will allow the development of the sport much more broadly than by reference to the more limited set of oceanic surfing sites that are the focus of the ISA.

V. JURISDICTION

151. In accordance with Art. R27 of the CAS Code, CAS shall have jurisdiction in the following cases:

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.

152. In its request for arbitration the Claimant submitted that CAS has jurisdiction in the present matter because *"The Parties have agreed to submit the Dispute to CAS Mediation, followed by CAS Arbitration in case of failure of the CAS Mediation procedure. This commitment has been taken also vis-à-vis the International Olympic Committee, showing the readiness to try to avoid a complex litigation before any*

state courts". The Claimant supported this statement with a copy of the Parties' respective requests for mediation to CAS, as well as the correspondence of CAS Head of Mediation sent to the Parties on 9 May 2018, by means of which CAS notified the Parties of the termination of the mediation proceedings.

153. The Respondent disputes the existence of a valid arbitration agreement between the Parties on which CAS could ground its jurisdiction as it pertains to the specific claim that has been brought by the Claimant. The Respondent maintains that with its request for arbitration, the Claimant did not provide *"a copy of the contract containing the arbitration agreement or of any document providing for arbitration"* as requested by Art. R38 of the CAS Code. In this regard, the Respondent contends that the way in which the Claimant has framed the dispute, requesting that the Panel establish whether the ISA or the ICF shall be the exclusive international governing body for the organisation and administration of SUP, has nothing to do with the dispute that the ICF was and is willing to arbitrate (i.e. if there is any legal basis for affording either the ISA or the ICF exclusive rights to the organisation of SUP). Ultimately, the Respondent considers that this kind of binary and exclusive choice that the ISA is requesting the Panel make would go beyond the scope of the purported arbitration agreement, if there is one to begin with. Therefore, the Respondent submits that the only arbitration agreement on which CAS could base its jurisdiction is the one originally submitted to the Parties by the IOC in the MoU, which would cover disputes as to *"how the discipline of Stand Up Paddle shall be governed"*.

154. The Claimant rejects the Respondent's objection and affirms that the present dispute has never been about "exclusivity rights" over SUP, and that the nature and formulation of the dispute has been always the same: to determine which of the two *"Federations, ISA or ICF, shall be the International Non-Governmental Organization in the meaning of the IOC Charter and therefore be the International Federation governing, among other disciplines, Stand Up Paddle at world and Olympic level"*. In the Claimant's view, this would be confirmed by the content of the MoU prepared by the IOC, where the matter was circumscribed to *"find[ing] a solution regarding the governance of Stand Up Paddle, a discipline that both Parties claim to govern"*.

155. With regard to the arbitration agreement at stake, the Claimant submits that the Parties agreed with the IOC to resolve their dispute through a three-step process, consisting of (1) a conciliation meeting with the IOC, and discussions; (2) if unsuccessful, CAS mediation; and, (3) if also unsuccessful, CAS arbitration. In the Claimant's opinion, under Swiss law this already constitutes a valid arbitration agreement. Finally, the Claimant affirms that in these previous instances (conciliation before the IOC and CAS mediation), the subject-matter of the dispute has been always the same.

(i) Existence of a valid arbitration agreement

156. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed the Claimant did not have its domicile in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Art. 186(1) of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. The same is explicitly stated in Art. R39 (4) of

the CAS Code, according to which the Panel has the power to decide upon its own jurisdiction. This general principle of *Kompetenz-Kompetenz* is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748).

157. In this context, Art. 178 of the PILA[2] applies to establish whether a valid arbitration agreement binding for the Parties exists in the present case. This provision establishes a number of prerequisites as to the form and substance that any arbitration agreement shall meet in order to be valid. In particular, pursuant to Art. 178 of the PILA:

1 As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text.

2 As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law.

158. In addition, with regard to the fulfilment of these formal requirements, the Panel observes that, when the subject-matter of the arbitration is a sports-related dispute, as it is the case in the matter at hand, the jurisprudence of the Swiss Federal Tribunal ("SFT") indicates that a flexible approach shall be taken. Thus, in these cases, *"Concerning the formal requirement (Art. 178(1) PILA) the Federal Tribunal examines the Parties' agreement in sport matters to submit disputes to an arbitral tribunal with some "good will"; this is done for the purpose of encouraging the quick settlement of the dispute by specialized courts like the CAS, which offer enough guarantees of independence and impartiality (BGE 138 III 29 at 2.2.2; 133 III 235 at 4.3.2.3, p. 244 f.). The liberal interpretation which marks the jurisprudence in this field is particularly evident"* (ATF 4A_102/2016, para. 3.2.3). In this regard, in the Panel's view, such a non-formalistic approach is necessary in sports matters in order to aid CAS in fulfilling its role of true "Supreme Court for Sport", as it has been recognized by the SFT itself (cfr. *"Véritable 'Cour suprême du sport mondial', selon l'expression utilisée par Juan Antonio Samaranch, ex Président du CIO (cité par KÉBA MBAYE, in Recueil II, p. x), le TAS est en plein essor et son développement n'est pas encore terminée"*, ATF 4P.267/2002). And, for this reason, in these cases *"the Federal Tribunal examines the consensual nature of sports arbitration with a certain generosity, with the aim of promoting the swift resolution of disputes by specialized tribunals that have sufficient guaranties of independence and impartiality, such as the CAS (ATF 133 III 235 at 4.3.2.3)"* (4A_314 / 2017).

159. In any case, consistent with Swiss law's broad view on what may constitute a valid contract, Swiss law is quite liberal in determining the content that such written form shall have in order to meet the standard of validity required by Art. 178.1 PILA, which is indeed a very broad legal criterion. In particular, *"In order for the formal requirement to be complied with, a visually perceptible, physically reproducible and not necessarily signed text of the agreement is sufficient"* (MULLER/RISKE, in

[2] Free translation into English of the original French version, that reads as follows:
"[1] Quant à la forme, la convention d'arbitrage est valable si elle est passée par écrit, télégramme, télex, télécopieur ou tout autre moyen de communication qui permet d'en établir la preuve par un texte.
[2] Quant au fond, elle est valable si elle répond aux conditions que pose soit le droit choisi par les parties, soit le droit régissant l'objet du litige et notamment le droit applicable au contrat principal, soit encore le droit suisse".

ARROYO M. (ed.), Arbitration in Switzerland - The Practitioner's Guide, Second Edition, Wolters Kluwer, The Netherlands, 2018, Volume I, p. 77). Therefore, as it has been acknowledged by CAS jurisprudence, *"the parties' written statements can be expressed in one or several documents (Andreas BUCHER, Le nouvel arbitrage international en Suisse, Bâle/Francfort-sur-le-Main 1988, n° 122, p. 49; Gabrielle KAUFMANN-KOHLER/Antonio RIGOZZI, Arbitrage international – Droit et pratique à la lumière de la LDIP, Zurich/Bâle/Genève 2006, p. 75)"*. The Swiss Federal Tribunal has (in context with Art. 5 of the PILA which was emulated from Art. 178 of the PILA) stated that the formal requirement is complied with by exchange of letters and, contrary to Art. 13 of the SCC, by exchange of communication using modern means of communication insofar as the consensus about an agreement of jurisdiction clearly emerges from it. It is necessary that each party submits its declaration of intent in writing or in one of the other forms of communication mentioned (SFT 119 II 391 p. 394, 3. a)[3]. Furthermore, a party who proceeds on the merits without raising the lack of written form is deemed to have waived the right to challenge the arbitral tribunal's jurisdiction on this basis (SFT 111 Ib 253, 255). Or more generally: A party can agree to an arbitration clause through a procedural step or in certain circumstances, a particular conduct may be a substitute for compliance with the formal requirement based on the principle of good faith (Handelsgericht of St. Gallen, decision of 16 January 2007, 25 ASA Bulletin (2007) 393, 401)[4].

160. In the case at stake, the Panel considers that the formal requirement of the written form is clearly met, and that the Parties' will to arbitrate arises out of the MoU and is confirmed by the extensive exchange of letters, e-mails, communications and drafts of documents (including the Mediation Resolution) that the Parties exchanged after 13 January 2017. On that date, the IOC Head of Summer Sports and IF Relations submitted the MoU to the Parties, proposing that they should agree on a three-step process to settle their dispute before holding the conciliation meeting with the IOC President.

161. Regarding this three-step dispute resolution process, the Panel notes that the Parties never signed the MoU. However, under Swiss law the signature of the parties is not strictly necessary for an arbitration agreement to be valid; hence whether the MoU was signed or not by the Parties is not decisive for determining if CAS has jurisdiction or not in this case, given the circumstances surrounding the case. Since the receipt of the MoU and the Parties' meeting with the President of the IOC, the Parties exchanged a number of correspondence and communications, and undertook several actions and processes which, in the Panel's view, obviously demonstrate their agreement with the above described three-step process and with the terms of the MoU. Therefore, the Panel considers that, in the present case, the Parties'

[3] Free translation into English from the German original version which reads as follows: "*Dem Formerfordernis entspricht auch ein Briefwechsel, im Unterschied zu Art. 13 OR ebenso ein Schriftwechsel unter Verwendung moderner Kommunikationstechniken, soweit die Einigung der Parteien über eine Gerichtsstandsvereinbarung dadurch deutlich zum Ausdruck kommt. Notwendig ist, dass jede Partei ihre Willenserklärung schriftlich oder in einer der erwähnten andern Kommunikationsformen abgibt (HANS REISER, Gerichtsstandsvereinbarungen nach dem IPR-Gesetz, Diss. Zürich 1989, S. 124 f.; PAUL VOLKEN, Conflits de juridictions, entraide judiciaire, reconnaissance et exécution des jugements étrangers, in: Le nouveau droit international privé suisse, Lausanne 1988, S. 242; GABRIELLE KAUFMANN-KOHLER, La clause d'élection de for dans les contrats internationaux, Diss. Basel 1980, S. 99)".*

[4] Free translation into English from the German original version which reads as follows: *"[...] So könne eine Partei durch einen blossen Verfahrensschritt einer Schiedsklausel zustimmen oder bei Vorliegen entsprechender Umstände könne eine bestimmte Verhaltensweise nach Treu und Glauben die einhaltung einer Formvorschrift ersetzen".*

will to arbitrate their dispute is clearly evidenced in writing and, in particular, by the MoU itself and the rest of the documentary evidence produced by the Parties in the present procedure, so the formal prerequisite established in Art. 178.1 PILA is met. In addition, the Parties, by proceeding from an unsuccessful mediation further to making submissions before CAS, have engaged in conduct that suggests that there was an agreement to arbitrate. None of the Parties has claimed a lack of written form regarding the arbitration agreement but both have even more so proceeded on the merits.

162. On the other hand, in regards to the substantive validity of the arbitration agreement, Swiss jurisprudence indicates that, *"Pursuant to Art. 178(2) PILA, the arbitration agreement is materially valid if it meets the requirements set by the law chosen by the parties or by the law governing the dispute and in particular the law applicable to the main contract or, moreover, by Swiss law. The provision quoted contains three alternate links in favorem validitatis, with no hierarchy between them, namely the law chosen by the parties, the law governing the dispute (lex causae), and Swiss law as the law of the seat of the arbitration (ATF 129 III 727 at 5.3.2, p. 736)"* (4A_124/2014). As a result, the Panel considers that the substantive validity of the alleged arbitration agreement shall be assessed in the present case in accordance with Swiss law, as this is the law governing the dispute (see below), as well as the law of the seat of the arbitration.

163. In this sense, the Panel observes that under Swiss law, *"An arbitration clause must be understood as an agreement in which two or more determined or determinable parties agree and bind themselves to submit one or several existing or future disputes to an arbitral tribunal to the exclusion of the original jurisdiction of the state, pursuant to a directly or indirectly determined legal order (BGE 130 III 66 at 3.1, p. 70). It is decisive that the will of the parties should be expressed to remit the decision of some specific disputes to an arbitral tribunal and not to a state court (BGE 138 III 29 at 2.2.3, p. 35)"* (4A_102/2016). Therefore, beyond other substantive requirements that are not at issue here (i.e. arbitrability of the dispute, capacity of the parties, venue of arbitration, etc.), pursuant to Swiss law a valid arbitration agreement exists if the Parties have agreed on its essential elements *(essentialia negotii)* and, in particular, if it has the following minimum content:

- A consensus between the parties that all or certain disputes between them shall be settled by arbitration and to the exclusion of state courts. Concerning this requirement, it shall be emphasized that, *"With regard to whether there is a will of the parties to arbitrate, the Swiss Federal Supreme Court has repeatedly stated that, as a principle, it applies a "benevolent" standard in sports arbitration, in order to encourage the speedy resolution of disputes by specialized arbitral tribunals presenting sufficient guarantees of independence and impartiality, such as the CAS"* (NOTH/HAAS, in ARROYO M. (ed.), Arbitration in Switzerland - The Practitioner's Guide, Second Edition, Wolters Kluwer, The Netherlands, 2018, Volume I, p. 1439).

- A determination of the subject-matter of the dispute or the legal relationship that the parties intend to submit to arbitration. In order to fulfil this prerequisite, *"it must be determinable and foreseeable whether or not a certain dispute is covered by an arbitration clause"* (Ibid., p. 1440).

164. In addition, Swiss jurisprudence has clarified that, *"If, concerning the arbitration agreement, there is no certain, indeed concurrent will of the parties, then this must be interpreted according to the principle of good*

faith, meaning that the presumable will must be determined in the way it would and had to have been understood, in good faith, by the respective recipient of the declaration. If the result of the interpretation is that the parties wanted to exclude the dispute from state jurisdiction and wanted to submit it instead to the decision of an arbitral tribunal, but there are differences regarding the implementation of the arbitration procedure, it is basically the utility concept that applies: as far possible, the implementation of a contractual understanding should be sought that leaves the arbitration agreement in place (BGE 138 III 29 at 2.2.3, p. 35 f.)" (4A_102/2016).

165. Taking the aforementioned into account, the Panel has reviewed all the extensive correspondence exchanged between the Parties and assessed the behaviour shown by them before and after their meeting with the President of the IOC. After doing so, it has become clear to the Panel that the Parties agreed to submit their already-existing dispute to a multi-tiered dispute resolution process in which the Parties' failure to reach an agreement in any of the prior states would ultimately result in arbitration before CAS, with binding effect upon them. In particular, the Panel is of the opinion that the Parties agreed that their dispute would have to be settled by means of (i) conciliation within the IOC, followed by (ii) Mediation before CAS, and finally, if none of these amicable resolution methods was successful, through (iii) CAS arbitration. In this respect, the Panel notes that this type of multi-tiered system of dispute resolution is perfectly valid under Swiss law as the jurisprudence of the SFT demonstrates (i.e. 4A_124/2014).

166. In this way, the Parties committed themselves to first undertake an attempt to settle their dispute amicably, through a conciliation meeting with the IOC followed by CAS Mediation. Finally, and only if none of these preliminary steps yielded a positive result, the Parties agreed to move on to CAS Arbitration, as the last and definitive resort for the resolution of their dispute. The Panel observes that this is consistent with the fact that, in its Request for CAS Mediation, the Claimant referred to the multi-tiered resolution process agreed by the Parties in the following terms:

Applicants, upon suggestion of Dr. Thomas Bach, the president of the IOC, agreed verbally and with exchange of emails to submit their dispute to CAS, first to mediation, second, in the event no solution is reached, to Arbitration. Applicants have not reached an agreement to file a joint communication, however, they agreed to file each individually a request for mediation. As to the knowledge of ISA, ICF has already filed its application with the CAS.

There was no contemporaneous objection by the Respondent to this characterization by Claimant.

167. Therefore, the Panel finds that from the very beginning the Parties decided that, in case these two previous steps were not successful, their dispute would have to be arbitrated by CAS. In this regard, the Panel finds that the chronological steps that both Parties took after their meeting with the President of the IOC until the Claimant filed its request for arbitration (holding this conciliation meeting as well as conducting mediation proceedings before CAS, - i.e. CAS 2017/MED/63) are conclusive acts which undoubtedly confirm the Parties' acceptance of and commitment to this three-step resolution process proposed by the IOC, to the exclusion of the ordinary courts.

168. In particular, with regard to their agreement to arbitrate their dispute, the Panel observes that both Parties have regularly, consistently, and constantly expressed their will to submit the matter to CAS Arbitration. By way of example, in his email of 2 June 2017 to the ISA, the Secretary General of the ICF, Mr. Simon Toulson, expressed that *"the ICF has always insisted on CAS Mediation and CAS Arbitration to settle this matter. We were ready to sign the IOC MoU without any changes and we encouraged ISA to CAS Mediation during Sportaccord. We have not deviated from this point nor have we changed opinion"*. The Parties' agreement in this regard was later confirmed by the Executive Director of the ISA, through an email sent this same day to Mr. Toulson and Mr. Aguerre, in which he expressed that they were *"pleased, as you that the CAS Mediation and Arbitration procedure can now start"*.

169. Thus, in the Panel's opinion, the Parties unambiguously expressed their mutual consent to submit their dispute to CAS Mediation and CAS Arbitration, if necessary. For this reason, in his email to Mr. Aguerre and Mr. Fasulo of 15 December 2017, Mr. Toulson stated that, *"We agree to cease CAS Mediation and continue to CAS Arbitration as no compromise position has been accepted by either party"*. The ICF's counsel echoed a similar sentiment in his email dated 25 April 2018, while discussing the dispute that they intended to submit to CAS with the ISA's counsel, stating that, *"The ICF remains willing in principle to refer the dispute to the CAS, as it has been throughout the matter"*. Furthermore, the Parties shared their decision and intention to arbitrate this dispute with third parties, copying some of their correspondence to the IOC, the ASOIF, the ANOC and SportAccord, among others. In line with the foregoing, on 3 July 2018, the President of the IOC acknowledged the Parties' decision to submit the present matter to CAS, stating that *"moving to CAS arbitration is an important step to bring clarity to the situation"*. For this reason, the Panel recognizes in the Parties' behaviour their intention to settle their dispute by means of a binding decision from CAS.

170. Last but not least, the Panel is satisfied that, despite having formally challenged the jurisdiction of CAS to rule on the dispute as it has been framed by the Claimant, in the present procedure the Respondent itself has acknowledged the existence of an arbitration agreement between the Parties several times, as well as its will to arbitrate. By way of example:

- In its correspondence of 31 July 2018, the Respondent stated that, *"Whilst in principle the ICF wishes to arbitrate, it has not yet agreed to do so on the specific terms or basis apparently suggested by the ISA"*.

- In its correspondence of 6 August 2018, the Respondent submitted that, *"The ICF's position is that it wishes in principle to arbitrate, but that it has not agreed to do so on the terms that the ISA appears to advance"*.

- In its correspondence of 24 September 2018, the Respondent clarified that, *"The ICF remains willing to arbitrate a dispute that is framed in an open manner. […] The ICF has always been willing, and remains willing, to arbitrate on precisely the basis set out in the draft Memorandum of Understanding advanced for signature by the parties by the IOC (ISA Exhibit C-9). That basis is that the dispute between the parties is "as to how the discipline of Stand Up Paddle shall be governed""*.

- In its submissions on the scope of jurisdiction of 15 October 2018, the ICF sustained that *"the only arbitration agreement on which the present arbitration can be based is the one originally proposed by the IOC in the MoU, namely covering disputes "as to how the discipline of Stand Up Paddle shall be governed""*.

171. As a result, the Panel finds that a valid arbitration agreement exists in the present case within the meaning of Art. R27 of the CAS Code, by means of which the Parties agreed to refer their existing dispute to CAS arbitration and, thus, that CAS has jurisdiction. This determination is made without prejudice to the admissibility of the reliefs sought by the Parties in the present arbitration, or its inadmissibility in case they fall outside the scope of the Parties' arbitration agreement, as the Respondent maintains.

(ii) Scope of the arbitration agreement

172. The Respondent questions the scope of the arbitration agreement. In this respect, the Panel notes that, for the determination of the scope of the arbitration agreement, general principles of interpretation of contracts under Swiss law apply. In this regard, *"The interpretation of an arbitration agreement in Swiss law takes place according to the general rules on the interpretation of contracts. The Court must first learn the real and common intent of the parties, empirically as the case may be, on the basis of clues without stopping at the inaccurate names or words they may have used. Failing this, it will apply the principle of reliance and determine the meaning that, according to the rules of good faith, the parties could and should give to their mutual statements of will in each circumstance. Even if it is apparently clear, the meaning of a text signed by the parties is not necessarily decisive, as purely literal interpretation is prohibited (Art. 18(1) CO). When the wording of a contract clause appears crystal clear at first sight there may still be some other conditions of the contract, the goal sought by the parties, or some other circumstance causing the text of the clause to fail to express the exact meaning of the agreement concluded. However, there is no reason to depart from the literal meaning of the text adopted by the parties to the contract if there is no serious reason to doubt that it does not correspond to their intent (ATF 140 III 134 at 3.2; 135 III 295 at 5.2, p. 302 and the cases quoted)"* (4A_124/2014).

173. Therefore, "*If the result of the interpretation is that the parties wanted to exclude the dispute from state jurisdiction and wanted to submit it instead to the decision of an arbitral tribunal, but there are differences regarding the implementation of the arbitration procedure, it is basically the utility concept that applies: as far possible, the implementation of a contractual understanding should be sought that leaves the arbitration agreement in place (BGE 138 III 29 at 2.2.3, p. 35 f.)"* (4A_102/2016). Furthermore, in accordance with the Swiss literature, *"once the existence of an arbitration agreement has been admitted, the objective scope of the arbitration agreement is to be interpreted broadly"* (MULLER/RISKE, *op. cit.*, p. 77), pursuant to the principle of effectiveness or utility (*Utilitätsgedank)* of the arbitration agreement (4P_162/2003).

174. Likewise, in accordance with the Swiss jurisprudence, *"once the principle of arbitration is established, case law is flexible as to the modalities of arbitration proceedings and as to the scope of the dispute covered by the arbitration clause. This broad interpretation is consistent with procedural efficiency and ensures an economy of procedure but it could not imply a presumption in favour of arbitral jurisdiction (judgment 4A_562/2009 of January 27, 20120 at 2.1 and references)"* (4A_103/2001). Therefore, *"once the existence of an arbitration agreement is established, there is no reason to interpret it restrictively. On the contrary, it has to be*

assumed that the parties want, by concluding an arbitration agreement, an all encompassing jurisdiction of the arbitral tribunal (ZH 22.05.1990 [p. 15])" (MULLER C., International Arbitration. A guide to the Complete Swiss Case Law (Unreported and Reported), Schulthess, 2004, p. 118). So, under Swiss law, once the existence of a valid arbitration agreement has been established, it should be assumed, absent any limiting language between them or other contrary indication, that the parties wish to confer jurisdiction that is as broad as possible upon the arbitrators (i.e. see ATF 116 la 56, p. 58 pursuant to which[5] *"in the event of a dispute, it cannot be easily accepted that such an agreement has been reached. If, however, an arbitration agreement has been established, there is no longer any reason for a particularly restrictive interpretation; on the contrary, it can be assumed that the parties would like the arbitral tribunal to have full jurisdiction if they have already reached an arbitration agreement (LALIVE / POUDRET / REYMOND, Le droit de l'arbitrage internal et international en Suisse, p. 46; JOLIDON, op. cit , P. 133; RÜEDE / HADENFELDT, loc. Cit., P. 63)").*

175. Bearing in mind this principle of utility, in order to determine the scope of the arbitration agreement in the present case, the Panel shall apply the general rules for the interpretation of contracts (i.e. Art. 1 and 18 of the Swiss Code of Obligations - "SCO" -, and Art. 2 of the Swiss Civil Code - "SCC"), ascertaining the true and common intention of the Parties without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement (i.e. in accordance with Art. 18.1 SCO, *"Pour apprécier la forme et les clauses d'un contrat, il y a lieu de rechercher la réelle et commune intention des parties, sans s'arrêter aux expressions ou dénominations inexactes don't ells ont pu se server, soit par erreur, soit pour déguiser la nature véritable de la convention"*).

176. The Respondent maintains that it did not agree to arbitrate the questions identified by the Claimant, which, in its view, had been framed in a way intended to limit the scope of the dispute. Conversely, the Claimant contends that the dispute that the Parties agreed to arbitrate *"was never about "exclusivity rights" (as claimed today by the ICF), but about which of the two Federations shall be the International Governing Body for SUP in the context of the IOC and the Olympic Family"* (see Claimant's submissions on jurisdiction). Notwithstanding this, in these proceedings the Respondent has recognized that a dispute arose between the Parties as to the governance of the sport of SUP (cf. the Respondent's submissions on the scope of the arbitration), and that it is willing to arbitrate the Parties' dispute provided that it is framed in an open manner, with a permissive formulation of the subject of arbitration, on the basis set out in the MoU. On this point, the Panel notes that both Parties agree with regard to the validity of the MoU for the definition of the scope of their dispute, with the Claimant also submitting that the core of the dispute is the one described in the MoU.

177. In this regard, the Panel observes that the MoU was intended to *"find a solution regarding the governance of Stand Up Paddle, a discipline that both Parties claim to govern"*, and that the subject-matter of the dispute was defined as *"how Stand Up Paddle shall be governed"*. Furthermore, the

[5] Free translation of the original German version which reads as follows: *"dass eine solche Vereinbarung getroffen worden ist, darf daher im Streitfall nicht leichthin angenommen werden. Steht hingegen das Vorliegen einer Schiedsabrede fest, so besteht kein Anlass zu einer besonders restriktiven Auslegung mehr; diesfalls ist im Gegenteil davon auszugehen, dass die Parteien eine umfassende Zuständigkeit des Schiedsgerichts wünschen, wenn sie schon eine Schiedsabrede etroffen haben (LALIVE/POUDRET/REYMOND, Le droit de l'arbitrage interne et international en Suisse, S. 46; JOLIDON, a.a.O., S. 133; RÜEDE/HADENFELDT, a.a.O., S. 63)".*

Panel sees that the Parties described the scope of the mediation in their respective requests for CAS Mediation as follows:

a) The Claimant:

"The objective of this CAS Mediation is to find a solution regarding the question which of the two Applicants shall govern and organize international SUP competitions, including for instance at the Olympic Games" (emphasis added).

b) The Respondent:

"As per Article 4 of the CAS Mediation Rules, the International Canoe Federation (ICF) along with the International Surf Association (ISA) would like to initiate CAS Mediation proceedings regarding a dispute over the jurisdiction and ownership for Stand Up Paddling (SUP).

[…]

In brief, the dispute over the ruling body of Stand Up Paddling (SUP) has been going on for several years. The dispute concerns what jurisdiction each Federation has with regards to Stand Up Paddling competitions and who ultimately controls SUP for the Olympic Games, Youth Olympic Games and other multi-sport Games" (emphasis added).

178. Taking this into account, the Panel is of the opinion that the Parties had a common intention from the very beginning that the subject-matter submitted to the 3-step resolution process was, in general and in the widest sense, the governance of SUP, both at the International and Olympic levels. In the Panel's opinion, this was precisely the real intent of the Parties when they agreed on the multi-tiered resolution process that the IOC proposed to them. In this regard, *a fortiori*, for the correct determination of the scope of the arbitration agreement, the Panel deems it useful to take into account the context in which the dispute of the Parties arose and the circumstances that led them to enter into the arbitration agreement which, in the Panel's view, corroborate its understanding on this subject.

179. In particular, the Panel is of the opinion that the chronology of the events confirms this understanding. In this regard, from the evidence produced in these proceedings it appears that the dispute started between 2015 and 2016, due to the Claimant's attempt, in the summer of 2015, to include SUP in the Olympic Sports Programme for Tokyo 2020. Until that moment and at least since 2009, the Claimant had been organizing international SUP competitions, either directly or within the context of multi-sports games, without coming into conflict with the Respondent. However, as Mr. Toulson explained during his witness examination, when the ICF learned that the ISA had listed SUP as one of its potential disciplines, it decided to get involved in the discussions between the ISA and the IOC regarding SUP. As a consequence, the conflict with the ICF arose and the discussions between the Parties started (in the meeting they held during the SportAccord Convention of April 2016). In addition, the ICF got involved for the first time in an international SUP competition at that time, supporting the "The Lost Mills" race held on 28 May 2016, despite the fact that it did not take part of the competition's organization.

180. Furthermore, from the documentary evidence produced to the file it follows that from that moment on, the Respondent began opposing all the Claimant's attempts to include and organize SUP competitions in different multi-games competitions, some of them backed by or linked to the IOC (i.e. the Youth Olympic Games - "YOG"). This is clearly evidenced by the email that the President of the ICF sent on 15 November 2016 to the Danish Canoe Federation, asking if the World Stand Up Paddle and Paddleboard Championship that was going to be held in Denmark for 2017 was *"recognized by the Danish Olympic Committee",* and noting that the *"ICF will protest to the IOC if there is a competition in calm waters"*. In the same vein, in its letter to the ISA of 17 November 2016, the President of the ICF, Mr. Perurena, made clear to the ISA that *"Regarding the Olympic Movement as historically only one International Federation can be seen to "own" a sport the ICF objects to ISA using SUP in any form at any events organized by the IOC"*.

181. Similarly, after the Parties' agreement to the 3-step resolution process, they effectively started CAS Mediation, which was not successful. As it has been noted, the Respondent submitted that the subject-matter in these mediation proceedings was the determination of *"what jurisdiction each Federation has with regards to Stand Up Paddling competitions and who ultimately controls SUP for the Olympic Games, Youth Olympic Games and other multi-sport Games"*. The Claimant did the same, stating in its request for mediation that *"The object of this CAS Mediation is to find a solution regarding the question which of the two Applicants shall govern and organize international SUP competitions, including for instance at the Olympic Games"*.

182. Likewise, while the mediation proceedings were being conducted, the Respondent opposed the Claimant's attempt to include SUP in several international competitions and, among others, in the Buenos Aires 2018 and in the Tokyo 2020 Youth Olympic Games (YOG) as well as in the ANOC World Beach Games of 2019, as evidenced by the e-mail correspondence the Secretary General of the ANOC sent to the President of the ISA on 18 November 2017. The same occurred with the Claimant's attempt to include SUP in the program of the Pan American Games of 2019, which ended in SUP being excluded from the program upon the Respondent's request, as evidenced by the e-mail that the Secretary General of the Panam Sports sent to the Claimant on 20 November 2018.

183. Considering all the aforementioned, the Panel is convinced that when the Parties accepted to go through the 3-step resolution process proposed by the IOC, their aim and understanding was to include all the claims and arguments that they already had with regard to SUP in this agreement, as well as any matter related to the governance of SUP both in the International and Olympic level. Ultimately, as stated in the MoU, the Parties' intention was *"to find a solution regarding the governance of Stand Up Paddle, a discipline that both Parties claim to govern"*, hence putting a definitive end to their conflict in the interests of the SUP athletes and the sport, as well as finally establishing which of the two International Federations shall govern SUP at International and Olympic level.

184. Regarding the scope of the arbitration agreement, it is the Panel's responsibility *"to consider a reasonable interpretation because it should not be assumed that the parties wanted an inadequate solution (DFT 15.08.1995 [ASA pp. 677-678])"* (MULLER C., International Arbitration. A Guide to the Complete Swiss Case Law (Unreported and Reported), Schulthess, 2004, p. 117). In the case

at stake, it can be observed that the Parties gave their arbitration agreement a very broad scope, covering a large number of pleadings and reliefs, provided that their resolution is useful to settle the matter of *"how the discipline of Stand Up Paddle shall be governed",* as determined in the MoU.

185. Indeed, if it was understood, *quod non*, that the Parties did not reach a real consensus on the subject-matter of the arbitration agreement, pursuant to an objective interpretation of their declarations and the so-called principle of mutual trust (*principe de la confiance*), the Panel considers that the same conclusion would be reached. In particular, the Panel considers that, within this context and in accordance with the rules of good faith, the meaning that both Parties ultimately gave to the mutual statements and correspondence that they exchanged, is that CAS Arbitration would put an end to their dispute by determining which of the two federations shall govern the sport of SUP at International and Olympic level.

186. For this reason, in its letter of 2 November 2018, the Panel defined the scope of the present arbitration as follows: *"As the matter stands, the dispute and question for the Panel's resolution is: How shall the discipline of Stand Up Paddle be governed from this point forward? Answering this question requires the Panel to decide the respective rights and responsibilities of the ISA and the ICF in relation to such governance in accordance with the applicable law"*. In a nutshell, this is the scope of the arbitration and hence the procedural framework of this arbitration procedure.

187. Finally, the Panel wants to make clear that it is aware of the fact that, in the conversations held with regard to the termination of the mediation proceedings, the Parties did not agree on the specific terms and the extent of the dispute that they were ready to arbitrate with CAS. However, in the Panel's view, such disagreement is not relevant, because at that time, the Parties had already agreed on the scope and framework of the arbitration agreement, as a result of their acceptance of the MoU. In addition, the Panel considers that their later disagreement exclusively dealt with the delimitation of the specific dispute they were intending to submit to CAS by mutual agreement, but it does not alter the scope of the arbitration agreement that at that time was already in force. In this regard, Swiss scholars emphasize that *"If an arbitration clause (and its scope) needs to be interpreted, the principle of good faith is crucial. The time of the conclusion of the contract [or the arbitration agreement – my remark] is decisive, which is why later conduct of the Parties is not of importance for the interpretation; it can at the most give some indication as to how the Parties really understood their manifestation"* (GÖKSU T., Schiedsgerichtsbarkeit, Zurich 2013, Rz 534, with reference to ATF 138 III 681 = 4A_119/2012 E. 4.1 and ATF 129 III 675 E. 2.3).

188. In the Panel's view, in the context of the Parties' conversations to agree on the terms of the termination of the mediation process, the Respondent somehow tried to change the subject matter of the Parties' dispute (e.g. see email sent by the ICF's counsel to the ISA's counsel on 11 April 2018), and tried to reduce it to a legal question (i.e. does either of the Parties have an exclusive right to govern SUP?) instead of the resolution of the specific dispute that the Parties had concerning the governance of SUP. Thus, the Panel considers that such attempt to

unilaterally alter or limit the scope of the arbitration agreement is not admissible, as it is against the principle of good faith that is established by Art. 2 of the SCC[6], pursuant to which:

1 Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.

2 The manifest abuse of a right is not protected by law.

189. Allowing the Parties to unilaterally modify the scope of the arbitration at a later stage would be an act contrary to the principle of good faith, which also applies to procedural matters (4A_628/2015). The Panel notes that *"According to jurisprudence, the law does not protect a contradictory attitude ("venire contra factum proprium") when the previous behaviour of one party generated in the other party a legitimate expectation which prompted it to execute certain acts which are revealed harmful once the situation has changed (ATF 116 II 700 at 3b p. 702, ATF 115 II 331 at 5a p. 338, ATF 110 II 494 at 4 p. 498, ATF 106 II 320 at 3a)"* (ATF 121 III 350) . As a result, the Panel considers that the original scope of the arbitration agreement cannot subsequently be altered, limited or have its framework reduced.

190. On the contrary, as explained before, the Panel finds that the scope of the arbitration is very broad, and that it entails the Parties to submit any relief and raise any issue or argument in this arbitration that they choose in order to decide, under the applicable law, *"How shall the discipline of Stand Up Paddle be governed from this point forward"*, as expressed by the Panel in its correspondence of 2 November 2018.

(iii) Scope of the dispute

191. The scope of the present dispute arises out of the prayers for relief made both Parties, as their submissions frame and define the subject-matter of the dispute. In connection with this matter, in accordance with Swiss jurisprudence, *"an arbitral tribunal has jurisdiction only when, among other conditions, the dispute falls within the anticipations of the arbitration clause and when it does not exceed the limits given by the request for arbitration and, as the case may be, by the terms of reference (judgement 4A_210/2008 of October 29, 2008 at 3.1 and the precedent quoted)"* (4A_103/2011). Otherwise, the arbitral tribunal will exceed its jurisdiction, ruling *extra potestatem*.

192. The Claimant is asking the Panel to find that, of the two International Federations, the Claimant should be the one to govern and administer SUP at world and Olympic level.

193. Conversely, the Respondent is requesting the Panel to determine that there is no legal basis in Swiss law to establish that any of the Parties is entitled to be the sole governor or organiser of SUP, hence requesting *"that the ISA's prayers for relief be dismissed"*. In addition, even though the Respondent did not formally include these requests in its prayers for relief, in its Response the Respondent also submits that, in case the Panel finds that there is a legal basis for determining that one of the Parties is entitled to govern and organise SUP, then:

[6] Which, in its original French version, reads as follows:
[1] *Chacun est tenu d'exercer ses droits et d'exécuter ses obligations selon les règles de la bonne foi.*
[2] *L'abus manifeste d'un droit n'est pas protégé par la loi.*

i. the ICF is the International Federation that shall do it or, subsidiarily,

ii. the ISA should be able to govern and organize SUP *"only where the relevant activity involves the additional incidental use of a paddle on a surfboard in ocean surf, with that surf remaining the only (or on any basis the main) means of propulsion and the stance being a surfing stance or posture"*, and the ICF should govern and organize all other forms of competitive SUP.

194. As mentioned above, for CAS to have jurisdiction in this case, the scope of the dispute, as defined by the Parties' submissions, must fall within the scope of the arbitration agreement. With regard to this matter, the Panel finds that the scope of the dispute that has been pleaded and submitted to the Panel is perfectly covered by the arbitration agreement, and falls within the scope of the question as to, *"How shall the discipline of Stand Up Paddle be governed from this point forward?"*. Therefore, the CAS has jurisdiction over the dispute that has been submitted by the Parties.

195. On the other hand, with regard to the concerns that the Respondent raised in its submissions on the scope of CAS jurisdiction, i.e., the Claimant's alleged attempt to limit the scope of the dispute and exclude the Respondent from raising the issues and arguments that it wished to raise, the Panel finds that these concerns are unfounded. In the Panel's view, it is not true that the Claimant's prayer for relief *"goes beyond the scope of the arbitration agreement"*. At the same time, the Panel stresses that in the present arbitration the Respondent had the opportunity to file all the submissions, pleadings and requests for relief it has deemed convenient. Indeed, in the Panel's view the Respondent's concerns in this matter were baseless because in accordance with Art. R39 of the CAS Code, the Respondent could have raised any counterclaim that it wanted with its answer to the claim (provided that it was covered by the arbitration agreement). Thus it was materially impossible for the Claimant to restrict or limit the scope of the arbitration from the outset of the procedure, as the Respondent sustained.

196. Indeed, the Panel considers that even though the Respondent did not include it in its prayers for relief, it submitted *de facto* some sort of "counterclaim" (which the Claimant has also answered), by means of which it requested that, in case the Panel considered that it was legally possible to award the governance of SUP to one of the Parties, such party should be the Respondent in the terms referred to above. As a consequence, in these proceedings, the Respondent has not been precluded from raising any issue that it was entitled to raise, or to challenge or contest any of the Claimant's arguments and submissions, being free to plead its case and identify its prayers for relief in the sense and to the extent it wanted. For this reason, all the reservations made by the Respondent in this regard are rejected.

VI. ADMISSIBILITY

197. The Request for Arbitration filed by the Claimant on 17 July 2018 fulfilled all the prerequisites established by Art. 38 of the CAS Code. In particular, contrary to the Respondent's position in this matter, and on the grounds given above, the Claimant submitted a copy of the relevant document providing for arbitration with its Request for Arbitration, hence fulfilling the prerequisite established by Art. R38 of the CAS Code. Therefore, the Panel finds the claim admissible.

VII. APPLICABLE LAW

198. Article R45 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the rules of law chosen by the Parties or, in the absence of such a choice, according to Swiss law. The Parties may authorize the Panel to decide ex aequo et bono.

199. In the present case, the Parties did not make any express choice of law within the meaning of Art. R45 of the CAS Code and Art. 187(1) PILA *("The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected")*. Consequently, the present dispute shall be determined according to Swiss law, as decided by the Panel in its letter of 21 November 2018.

200. In relation to this matter, the Panel would like to clarify two points. First of all, with regard to the Claimant's request to decide the dispute *ex aequo et bono*, that is not possible, because the Respondent did not agree to authorize the Panel to decide the dispute on this basis, as is required by Art. R 45 of the CAS Code. Furthermore, the Panel considers that, contrary to what the Claimant asserts, on the evidence produced it cannot be established that the Parties tacitly agreed in the MoU (or later) that the dispute was to be decided *ex aequo et bono*.

201. Second, the Panel also dismisses the Claimant's submission that the Parties would, in any case, have agreed to apply the IOC regulatory framework, including the principles of Olympism, trust and fairness, as enshrined in the Olympic Charter. The Panel is aware that the Parties have freedom to opt for private regulations instead of state rules under Swiss law. In addition, the Panel has also noted that in the correspondence exchanged and negotiations held before entering into arbitration, the Parties constantly referred to the Olympic and Youth Olympic Games, as well as to the IOC itself (including the IOC's interventions through its President). Indeed, the present dispute undoubtedly refers in part to the governance of SUP at Olympic level. However, and without detriment to the considerations made in the following and subsequent paragraphs of this award on the IOC's regulations, the Panel is of the opinion that such reference is not sufficient to ground a valid implicit choice of law made by the Parties in favour of the regulations of the IOC to the exclusion of any other applicable law.

202. As a result, the present dispute shall be decided in accordance with Swiss law. This without prejudice to the consideration that shall be given to the regulations of the IOC, as explained below.

VIII. MERITS

A. The relief sought by the Parties

203. In the present arbitration the Claimant is requesting CAS to:

(i) Determine that the discipline of Stand Up Paddle ("SUP") shall be governed from this point forward by ISA, with ISA being the international non-governmental organization in the meaning of, among other sets of rules, the Olympic Charter; therefore ISA shall be the International Federation governing, among other disciplines, SUP at world and Olympic level.

(ii) Determine that of the two Federations, ISA or ICF, it is ISA that, taking into due consideration the history and the activities, involvement, track record, background, investments, etc. of the two Federations in connection with SUP, shall govern Stand Up Paddle ("SUP"), a sporting discipline that both Parties claim to govern, at international level. In other words, it is ISA that shall in good faith be considered the international non-governmental organization in the meaning of the Olympic Charter and therefore be the International Federation governing, among other disciplines, SUP at world and Olympic level or shall administer, at least, a vast majority of SUP disciplines at international level, including the Olympic Games. When taking its decision the Panel shall consider the association principles and rules applicable under Swiss law, and in particular the principles of Olympism, trust and fairness, as enshrined in the Olympic Charter, and the mission and the role played by both ISA and ICF, in the past, in connection with the sport of SUP.[…]

204. In other words and in summary, the Claimant is ultimately requesting the Panel to:

1. declare that, of the two Parties, the ISA shall be the International Federation to govern and administer SUP at world level;

2. declare that, of the two Parties, the ISA shall be the International Federation to govern and administer SUP at Olympic level.

205. On the other hand, the Respondent is requesting the Panel to:

(i) dismiss the claim entirely, holding that *"there is no legal basis in Swiss law at this point in time upon which one body is "entitled" to be the sole governor or organiser of SUP".*

(ii) or, subsidiarily:

- *"hold that it is the ICF that is the one organisation that should be entitled to govern and organise competitive SUP",*

or

- hold that:

i. "The ISA should be able to govern and organise SUP only where the relevant activity involves the additional incidental use of a paddle on a surfboard in ocean surf, with that surf remaining the only (or on any basis the main) means of propulsion and the stance being a surfing stance or posture".

ii. "The ICF should be the one organisation that should be entitled to govern and organise all other forms of competitive SUP".

206. The Panel will decide first whether the Claimant's request to govern and administer SUP at the world level should be accepted and, if not, then determine whether the Claimant is entitled to such governance and administration at the Olympic level. In this regard, taking into account the Respondent's submissions, should the Panel consider that exclusive SUP governance can be awarded at the world and/or Olympic level to one International Federation, the Panel will assess which of the Parties, if either, is entitled to such exclusive governance, either the Claimant or the Respondent.

207. Furthermore, the Panel deems it necessary to make clear that its mission is not to define the concept, modalities, rules or technical characteristics of SUP, which is a matter that belongs to the natural development of the sport itself, to the autonomy of the different stakeholders that are involved in its practice and development, and to any relevant governing body. No matter its enthusiasm for waterborne activities, this Panel is not competent (or capable) to issue any such definitions. Therefore, for the avoidance of doubt, it should be noted that all the references made in the present award to SUP exclusively refer to the sporting disciplines that the Claimant and the Respondent currently recognize as such in their statutes and regulations.

B. The governance of SUP at the world level

208. The Claimant maintains that, in accordance with the so-called principle of *"One Sport, One Federation"*, pursuant to which only one International Federation shall govern a certain sport at the worldwide level, only one of the Parties can play this role. In the Claimant's view, the International Federation governing SUP at the world level must be the Claimant, due to the history, activities, involvement, track record, expertise, background and funds it has invested in this sport. In addition, the Claimant affirms that this would be the appropriate resolution in light of Arts. 60 *et seq.* of the SCC and the regulations of the IOC, GAISF and ASOIF. Furthermore, in its view, such a finding would also result from the application of Art. 2 of the SCC and Arts. 2 and 5 of the UWG. Finally, and despite laying claim to the governance of the sport, the Claimant considers that such potential finding does not entail any sort of exclusivity over SUP, hence allowing the Respondent the freedom to organize SUP events and competitions in any case. In this regard, the Panel notes that at the hearing the Claimant's counsel affirmed that the ISA is not seeking for any kind of exclusivity at the world level, but only within the framework of the Olympic Movement.

209. The Respondent disagrees with the Claimant and considers that there is no legal basis in the applicable Swiss law or otherwise upon which one putative governor or organiser can bring proceedings against another to secure any declaration of legal entitlement to govern or organise alone. In its view, the fact that there are international multisport organisations that only accept one organising body for each separately and precisely defined sport for purposes of their membership and their multisport competitions, does not legally entitle one organisation over another one to lay claim over that membership position. This choice belongs to the relevant international multisport organisation. Hence, in the absence of that choice being made by the relevant international multisport organisation, the Respondent considers that there is no legal basis upon which one International Federation can bring proceedings against another International Federation in order to be declared legally entitled to govern or organise the sport alone.

210. The Panel agrees with the Respondent in this matter, and finds that the arguments and legal provisions upon which the Claimant intends to rely for the adjudication in its favour of the governance and administration of SUP at world level do not provide for such determination. First of all, in the absence of an agreement from the Parties authorizing the Panel to adjudicate the present dispute *ex aequo et bono*, the Panel has no power to decide the case according to

what it considers fair or good. For this reason, in this case the Panel cannot take a decision solely based on *"the history and the activities, involvement, track record, background, investments, etc. of the two Federations in connection with SUP"*, as requested by the Claimant. Instead, any determination in this issue must be based on Swiss law.

211. In this regard, the Panel agrees with the Claimant and considers that the *"principle of a single federation per sport is of particular relevance and its rooted in the social importance of sport as the best means of safeguarding the interest of sport and the benefits that it delivers to society",* as recognized by the Resolution of the European Parliament of 2 February 2017 (P8_TA(2017)0012). However, the Panel considers that this general principle is not useful to decide the present matter.

212. Likewise, the Panel finds that the legal provisions invoked by the Claimant do not serve its purpose. On the contrary, Arts. 60 *et seq.* of the SCC, which regulate the rights of associations, confer upon associations a large degree of freedom and autonomy, in accordance with the freedom of association principles enshrined in Art. 23 of the Federal Constitution of the Swiss Confederation providing as follows:

> *1 Freedom of association is guaranteed.*
>
> *2 Every person has the right to form, join or belong to an association and to participate in the activities of an association.*
>
> *3 No person may be compelled to join or to belong to an association.*

213. In particular, CAS jurisprudence (CAS 2011/A/2675) acknowledges that:

> *The principle of autonomy of associations is anchored in the Swiss Law of Private Associations (Cf. CAS 2011/O/2422, para. 8.31). It provides an association with a very wide degree of self-sufficiency and independence (Cf. HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. (Zurich, 2005), para 58). The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of the private autonomy of associations is the competence to issue rules to their own governance, their membership and their own competitions. Swiss associations are deemed sovereign to issue their statutes and regulations (Cf. HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. (Zurich, 2005), para 69). However, they are bound by their contractual engagements towards third parties.*

214. In line with this, the Panel is of the opinion that, contrary to the Claimant's position, these legal provisions are intended to *"safeguard the independence and autonomy of international federations in connection with the administration of their sport (see in particular CAS OG 02/001)"* (TAS 2007/A/1424) and that, in the specific context of adjudicating the governance and administration of a sport at the world level, they are irrelevant.

215. Furthermore, with regard to Art. 2.1 of the SCC that establishes the principle of good faith *("Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations")*, the Panel finds that this mandatory rule cannot ground the type of determination the Claimant is seeking. The Panel notes that the rule of good faith under Swiss law encompasses the interpretation of contracts, acts, and even the limitation of rights, and hence

it may refer to an existing legal relationship or situation, but it cannot create it. In particular, *"this legal provision is a fundamental norm - without having the rank of a fundamental right except in its specifically constitutional aspects ATF 122 I 328 JT 1997 I 452 - drawn from ethical considerations which are added to the rules governing the various legal relationships, to complete them and contribute to their interpretation*[7]*"* (SCYBOZ/SCYBOZ/GILLIÉRON/BRACONI, Code Civil Suisse et Code des Obligations Annotés, Basel 2008, p. 7). Therefore, the Panel considers that this fundamental legal principle does not encompass the adjudication of the governance of a sport at world level. Indeed, the Claimant failed to duly explain in its submissions how this legal mandate can substantiate its position to be granted the governance and administration of SUP at world level, which in the Panel's view additionally reveals that this legal provision is not helpful in deciding the present dispute.

216. Finally, with regard to the Arts. 2 and 5 of the UWG, the Panel reaches the same conclusion. First of all, the Claimant has not proven that the Respondent's conduct concerning the governance of SUP has had an impact on the Swiss market, which is a prerequisite for the applicability of this law. In addition, even assuming that the Respondent's behaviour constitutes an act of unfair competition within the meaning of Art. 5 of the UWG, in that the Respondent's conduct entails the exploitation of the Claimant's work result, or a breach of Art. 2 of the UWG *("Any behaviour or business practice that is deceptive or that in any other way infringes the principle of good faith and which affects the relationship between competitors or between suppliers and customers shall be deemed unfair and unlawful")*, such a finding would entitle the Claimant to seek the legal remedies available under Art. 9 UWG, but not to claim the governance and administration of SUP at world level.

217. In particular, Art. 9 of the UWG establishes the following legal remedies:

1 Whoever, through an act of unfair competition, suffers or is likely to suffer an impairment to his clientele, his credit or his professional reputation, his business or otherwise in his economic interests, may request the judge:

a. to prohibit an imminent infringement;

b. to remove an ongoing infringement;

c. to establish the unlawful nature of an infringement if its consequences still subsist.

2 He may, in particular, require that a rectification or the judgment shall be communicated to third parties or be published.

3 He may, further, in accordance with the Swiss Code of Obligations, bring an action for damages and redress and may also require the recovery of profits pursuant to the provisions governing conducting business without mandate".

218. Therefore, interpreting this legal framework in accordance with the principle of favouring freedom, the Panel finds that Swiss law does not provide for the adjudication of the governance and administration of SUP at world level to one International Federation. Indeed, considering that the findings of this Award are only binding on the Parties and do not have

[7] Free translation into English of the original French version which reads as follows: *"cette disposition est une norme fondamentale - sans avoir le rang de droit fondamental, sauf sous ses aspects spécifiquement constitutionnels ATF 122 I 328 JT 1997 I 452 - tirée de considérations éthiques qui s'ajoutent aux règles qui régissent les divers rapports juridiques, pour les compléter et contribuer à leur interprétation".*

wider effect, and given the limitless scope that the reference "at world level" has, without any specific framework in which a resolution like that could be executed, a declaration such as this one would be for naught; a purely academic exercise with no real effect. In sum, what is missing from the allegations of the Claimant with respect to the UWG is any causal connection between the claimed breach of the UWG (which would not be arbitrable absent a specific agreement to arbitrate those claims) and the claimed relief sought here. Therefore, in the absence of any legal provision entitling the Claimant (or the Respondent) to this relief, the Panel dismisses the Claimant's request regarding the governance of SUP at the world level (something the Panel has already noted has been acknowledged as not being in issue by the Claimant).

C. The governance of SUP at the Olympic level

219. This being said the Panel will now decide if a different determination can be established with respect to the claimed governance and administration at the Olympic level.

220. In this regard, contrary to what the Claimant asserts, the Respondent is of the opinion that despite the fact that both Parties are bound by the IOC regulations, this is legally irrelevant because these regulations govern the relationship between the IOC and their members or candidates for membership, but they do not contain any provision that purports to govern the situation where two of its members are disputing the governance of a sport, or in summary relations as between the IOC-recognized member federations. As a result, the Respondent considers that the IOC regulations are in practice inapplicable to the present dispute.

221. The Panel disagrees with the Respondent and considers that, in this case, within the framework of the Olympic Movement, a legal and contractual basis indeed exists for the adjudication of the Parties' dispute concerning the Olympic level. In this regard, as the Respondent's counsel acknowledged at the hearing of this case, the Panel considers that it has the power to partially accept the Parties' claims (*qui potest plus, potest minus*). As such, the Panel may narrow the extent of the Parties' prayers for relief – for example, limiting its adjudication to the governance and administration of SUP at Olympic level - without engaging in any procedural flaw.

222. In this regard, Swiss jurisprudence has established that an arbitral tribunal can award less than is requested in an arbitration procedure without ruling *ultra* or *extra petita*, or impose conditions on its findings, without committing any procedural error. In particular, pursuant to the SFT, *"With regard to the principle expressed by the adage a maiore minus, it is obvious that a court - state or arbitral – does not rule ultra nor extra petita by awarding less to a party than it requested (judgment 4A_314 / 2017 of May 28, 2018 at 3.2.2 in fine; see also: FABIENNE HOHL, Civil Procedure, Tome I, 2nd ed. 2016, n ° 1198; SUTTER-SOMM / SEILER, in Kommentar zur Schweizerischen Zivilprozessordnung [ZPO], Sutter- Somm / Hasenböhler / Leuenberger [ed.], 3rd ed. 2016, n ° 12 ad art 58 CPC; CHRISTOPH HURNI, in Bernese commentary, Schweizerische Zivilprozessordnung, vol. I, 2012, n ° 19 ad art 58 CPC). […] In the same vein, the conditional admission of a claim constitutes a minus compared to an unconditional admission (judgment 4A_439 / 2014 of February 16, 2015 at 5.4.3.2 and the previous cited; SUTTER-SOMM / SEILER , ibid .; HURNI, op. cit., n ° 23 ad art 58 CPC; DANIEL GLASL, in Schweizerische Zivilprozessordnung, Brunner / Gasser / Schwander [ed.], 2nd ed.*

2016, n ° 21 ad art 58 CPC). As for the finding that there are no claims likely to be the subject of legal action, it does not constitute an aliud, but a minus, in comparison with the conclusion aimed at establishing the inexistence of whatever claim (judgment 4A_459 / 2009 of March 25, 2010 at 6.1; HURNI, op. cit., n ° 24 ad art. 58 CPC)[8]".

223. Coming back to the issue at hand, in accordance with art. 3.3 of the Olympic Charter ("OC"), *"The IOC may recognise IFs and associations of IFs"*. In particular, the IOC may recognise an International Federation as the non-governmental organisation governing one or several sports (Art. 25 of the OC). The Panel observes that both Parties have the status of "Recognised International Federations" before the IOC and are "constituent members" of the Olympic Movement, hence being subject to the OC. In accordance with the OC, *"Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC"* (Fundamental Principles of Olympism, para. 7). Furthermore, the Panel notes that, within this contractual framework, *"the Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely the International Olympic Committee, the International Federations and the National Olympic Committees, as well as the Organising Committees for the Olympic Games, all of which are required to comply with the Olympic Charter"* (Introduction to the Olympic Charter, para. c). The same mandate can be found in Art. 1.1 of the OC, pursuant to which, as constituent members of the Olympic Movement, both Parties *"agree to be guided by the Olympic Charter"* (art. 1.1 of the OC). Furthermore, in accordance with art. 1.4 of the OC, *"Any person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC"*.

224. The Panel also notes that, pursuant to Art. 19.3.10 of the OC, the regulations of the IOC that are issued by the IOC Executive Board *"are legally binding"* on its members. In particular, pursuant to this provision, the IOC Executive Board can issue regulations *"in the form it deems most appropriate, such as, for instance, codes, rulings, norms, guidelines, guides, manuals, instructions, requirements and other decisions, including, in particular, but not limited to, all regulations necessary to ensure the proper implementation of the Olympic Charter and the organisation of the Olympic Games"*. Among this set of rules, the IOC has issued regulations establishing *"the conditions and the decision-making process to obtain the status of Recognised International Federation"* (Preamble of the IOC regulation named *"International Sports Federations Requesting IOC Recognition. Recognition Procedure"*) in order to administer one or several sports within the Olympic Movement (the "Recognition Rules").

[8] In its original French version, it reads as follows: *"Eu égard au principe rendu par l'adage a maiore minus, il est évident qu'un tribunal - étatique ou arbitral - ne statue ni ultra ni extra petita en accordant moins à une partie que ce qu'elle demandait (arrêt 4A_314/2017 du 28 mai 2018 consid. 3.2.2 in fine; voir aussi: FABIENNE HOHL, Procédure civile, Tome I, 2e éd. 2016, n° 1198; SUTTER-SOMM/SEILER, in Kommentar zur Schweizerischen Zivilprozessordnung [ZPO], Sutter-Somm/Hasenböhler/Leuenberger [éd.], 3e éd. 2016, n° 12 ad art. 58 CPC; CHRISTOPH HURNI, in Commentaire bernois, Schweizerische Zivilprozessordnung, vol. I, 2012, n° 19 ad art. 58 CPC). […] Dans le même ordre d'idées, l'admission conditionnelle d'une demande constitue un minus par rapport à une admission sans condition (arrêt 4A_439/2014 du 16 février 2015 consid. 5.4.3.2 et le précédent cité; SUTTER-SOMM/SEILER, ibid.; HURNI, op. cit., n° 23 ad art. 58 CPC; DANIEL GLASL, in Schweizerische Zivilprozessordnung, Brunner/Gasser/Schwander [éd.], 2e éd. 2016, n° 21 ad art. 58 CPC). Quant à la constatation selon laquelle il n'existe pas de créances susceptibles de faire l'objet d'une action en justice, elle ne constitue pas un aliud, mais un minus, en comparaison avec la conclusion visant à faire constater l'inexistence de quelque créance que ce soit (arrêt 4A_459/2009 du 25 mars 2010 consid. 6.1; HURNI, op. cit., n° 24 ad art. 58 CPC)".*

225. In particular, in this set of rules, the IOC establishes some qualitative and quantitative criteria in order to recognise an International Federation as the non-governmental organisation governing one or several sports in the meaning of Art. 25 of the OC. However, the Panel observes that, pursuant to Art. 1.2 of the Recognition Rules, *"being a Recognised International Federation is not a guarantee that the sport it governs will be included in the Olympic programme"*. Indeed, if a Recognised International Federation wishes to have its sport included in the Olympic programme, it *"must then follow the procedure set out in the framework of the regular review of such programme, carried out after each edition of the Olympic Games by the Olympic Programme Commission"* (Art. 1.2 of the Recognition Rules).

226. The Panel considers that, within this legal and contractual framework to which both Parties are bound, a decision can be made on which of the Parties *"shall be the International Federation to govern and administer SUP at Olympic level"*; i.e. regarding sport competitions that are organized under the umbrella or with the patronage of the IOC. In the Panel's view, making this decision will not imply any pronouncement with regard to the recognition of SUP at the Olympic level, its inclusion in the Olympic programme or any kind of official recognition within the Olympic Movement of the corresponding federation as the International Federation administrating such sport within the IOC. It is obvious that the Panel has no jurisdiction or power to exercise competences that exclusively belong to the IOC and, in particular, to the IOC Session (see Art. 18 of the OC and Art. 2.3 of the Recognition Rules), which has full autonomy and independence to decide these matters (see 4A_314 / 2017). The foregoing is even more true when considering that the IOC is not a Party in these proceedings and therefore cannot be bound by this award nor can its effects extend to it. Hence, the Panel makes clear that any adjudication made in the present Award will only affect the Parties to these proceedings.

227. Therefore, the Panel considers that, so as to bind the Parties to this arbitration and with no binding effect on the IOC or any other third party, it can decide on the governance and administration of SUP at the Olympic level on the grounds of the IOC regulations (to which both Parties are subject). With regard to the consideration of the IOC regulations in the present case, the Panel observes that, in accordance with the Swiss jurisprudence, *"Rules drawn up by private associations are in principle subordinate to state laws and can only be considered as far as state law allows for autonomous regulation (JÉRÔME JAQUIER, La qualification juridique des règles autonomes des organizations sportives, Diss. Neuchâtel 2004, Rz. 212). They do not constitute a "law" within the meaning of Article 116 (1) IPRG and can not be recognized as a "lex sportive transnationalis", as advocated by one doctrine (JÉRÔME JAQUIER, ibid., Paragraphs 293 et seq.). The rules of the (international) sports federations can only be applied in the context of a reference relating to substantive law and are therefore only recognized as party agreements, over which mandatory national legal provisions take precedence (KELLER/KREN KOSTKIEWICZ, Zürcher Kommentar, N. 84 to Art. 116 IPRG)"* (BGE 132 III 285)[9]. Therefore, in the Panel's view, even though the IOC regulations do not

[9] Free translation of the original German version which reads as follows: *"Von privaten Verbänden aufgestellte Bestimmungen stehen vielmehr grundsätzlich zu den staatlichen Gesetzen in einem Subordinationsverhältnis und können nur Beachtung finden, so weit das staatliche Recht für eine autonome Regelung Raum lässt (JÉRÔME JAQUIER, La qualification juridique des règles autonomes des organisations sportives, Diss. Neuenburg 2004, Rz. 212). Sie bilden kein "Recht" im Sinne von Art. 116 Abs. 1 IPRG und können auch nicht als "lex sportiva transnationalis" anerkannt werden, wie dies von einer Lehrmeinung befürwortet wird (JÉRÔME JAQUIER, a.a.O., Rz. 293 ff.). Die Regeln der (internationalen) Sportverbände können nur im Rahmen* einer materiellrechtlichen Verweisung

have the rank of state law, given that pursuant to the constitutional principle of freedom of association Swiss law gives private associations full autonomy to rule and regulate its owns business and activities and their internal legal relationships (i.e. between the association and its members and between their members with each other), taking into account that in the present case a specific substantive legal relationship exists (as both Parties are members of the IOC and are subjected to its regulations), the Panel considers that for the limited purpose of deciding on an *inter parties* basis who of the two Parties shall govern and administer SUP within the Olympic Movement, the IOC regulations must be applied.

228. With regard to this adjudication, the Parties will be bound by the Panel's decision and will have to do anything necessary in good faith (Art. 2 SCC) in order to comply and act in accordance with such decision. Once again, it is worth noting that the Parties freely decided to bring their dispute on the governance of SUP to CAS, and to grant jurisdiction to the CAS to *"find a solution regarding the governance of Stand Up Paddle, a discipline that both Parties claim to govern"* at the Olympic level. For this reason, and contrary to what the Respondent is requesting in these proceedings (i.e. for the Panel to make no firm ruling on governance of SUP by either of the parties), in its Request for Mediation it submitted that it wanted a decision on *"who ultimately controls SUP for the Olympic Games, Youth Olympic Games and other multi-sport Games"*. Consequently, and for the abovementioned reasons, the Panel finds that it can certainly rely on the regulations and criteria established by the IOC, which indeed *"are legally binding"* for both Parties (Art. 19.3.10 of the OC).

229. Therefore, the Panel finds that, with this limited *inter partes* effects and on the grounds of Swiss law and the IOC regulations, which are legally binding for the Parties, it can and shall decide which of the Parties shall govern and administer SUP at the Olympic level in the sense of Arts. 25, 26 and 46.1 of the OC (i.e. *"25 Recognition of IFs", "26 Mission and role of the IFs within the Olympic Movement"* and *"46 Role of the IFs in relation to the Olympic Games"*). Consequently, as the Panel's decision will be binding on the Parties, *"from this point forward"* (cf. scope of the arbitration defined by the Panel in its correspondence of 2 November 2018) they would be obliged to behave and act before the IOC and the Olympic Movement in accordance with the adjudication made in the present Award. For the sake of clarity, the Panel deems it convenient to clarify that this finding will imply that only the Party that has been adjudicated with the governance and administration of SUP at the Olympic level will be entitled to exercise any right or perform any action inherent to such entitlement, such as, *inter alia*: claim the governance of the sport to the IOC, request the inclusion of its SUP competitions or to organize SUP competitions in official events or competitions organized by the IOC or held under the IOC patronage. To the contrary, the other Party shall refrain from doing so. Notwithstanding this, in order to avoid any misinterpretation, the Panel shall make clear that, at the same time, the Party that has not been adjudicated with the governance and administration of SUP at the Olympic level will be free to develop SUP and organise its own SUP competitions and events outside the IOC sphere. In the Panel's view, this falls in line with Swiss law.

Anwendung finden und daher nur als Parteiabreden anerkannt werden, denen zwingende nationalrechtliche Bestimmungen vorgehen (KELLER/KREN KOSTKIEWICZ, Zürcher Kommentar, N. 84 zu Art. 116 IPRG)".

230. In deciding this matter, the Panel considers the qualitative and quantitative criteria established by the Recognition Rules of the IOC. In this regard, the Panel first observes that, to become recognised, the applicant International Federation must satisfy some general formal criteria (i.e., be a signatory of the WADA Code, recognize CAS jurisdiction, be the only Federation governing the sport worldwide, have existed in such capacity for at least five years, be a member of SportAccord, have a minimum of 50 affiliated countries from at least three continents, and respect some general principles). With regard to these requirements, bearing in mind that both Parties already do have the status of "Recognised International Federations" before the IOC and are "constituent members" of the Olympic Movement, the Panel is satisfied that both Parties comply with these general formal criteria (at least with regard to the sports which governance has been already recognised by the IOC in their favour), which are thus not particularly relevant for deciding the present matter. Indeed, the Panel observes that the only controversy that may exist with regard to the fulfilment by the Parties of these formal criteria would relate to the governance and administration of SUP (but not with their recognised sporting disciplines), where the following two criteria would be in dispute: (i) *"Be the only Federation governing the sport worldwide"* and (ii) *"Have existed in such capacity for at least five years"*. The potential fulfilment of these two criteria by the Parties is precisely one of the questions that the Panel shall answer in the present Award, and that will be addressed in the following paragraphs.

231. The Panel further notes that, in addition to these general criteria, Art. 2.2 of the Recognition Rules contains a list of evaluation criteria to be considered for the recognition of an International Federation in connection with each discipline or sport. The Panel considers that in this case, as it has been requested by the Claimant, it must evaluate and apply these criteria in order to decide which of the Parties shall govern and administer SUP at the Olympic level.

232. In particular, regarding the relevant criteria to be considered in accordance with the evidence available, the Panel observes the following:

(A) GOVERNANCE:

On this point, the Recognition Rules value the existence of a multi-year strategic planning process. In this matter the Panel notes the following:

- *The Claimant*

From the evidence produced in these proceedings, it appears that since 2008 the ISA has been playing a role in the promotion, development and governance of SUP at International level. In particular, in 2008 the ISA included SUP as one of its surfing disciplines. In 2009 the ISA established the first technical rules for SUP (the so-called "Rule Book"), addressed to regulate the SUP competitions at the 2009 ISA World Junior Surfing Championship. In addition, since 2012 the ISA has organized a World Championship on an annual basis (i.e. 8 in total, in the years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019), that has taken place in different countries and continents (Peru, Nicaragua, Mexico, Fiji, Denmark, China and El Salvador).

In line with this, in 2015 the ISA submitted SUP to the Olympic Programme Commission in order to include such discipline in the Olympic Sports Programme for

the Olympic Games of Tokyo 2020. In addition, in these years the ISA has managed to include and organize SUP competitions in several international multisport competitions, like the Bolivarian Beach Games of 2012, 2013 and 2014, as well as in some other international competitions organized under the patronage of the IOC, such as the 2017 Central American Games or the 2019 Pan American Games.

In addition, since 2011 the ISA has several SUP development programs in place, and has been certifying SUP coaches and instructors, as well as for judges and event officials. Furthermore, since 2012 the ISA has been working together with the Association of Paddlesurf Professionals ("APP"), which organizes the world professional tour for the sport of SUP ("APP World Tour). Moreover, in 2017 the ISA and the APP entered into a partnership pursuant to which, *inter alia*, the ISA officially sanctions the APP World Tour, and the APP acknowledges the ISA as being the sole world governing body for SUP.

- *The Respondent*

In accordance with the minutes produced of the ICF's Ordinary Congresses of 2008, 2010, 2012 and 2014, during this period the ICF Congress did not deal with any issue related with SUP. In this regard, the first mention to SUP in an Ordinary ICF Congress is found in the minutes of the XXXVII ICF Ordinary Congress of 2018, where SUP was included in section 17 *("Reports by ICF Commissions")*.

Furthermore, in *"The strategic business plan for the International Canoe Federation"* for the period January 2016 to December 2020, aimed among other things to *"to achieve a credible growth in the paddling disciplines under the responsibility of the ICF"*, SUP was not included, nor even mentioned. In line with this, at least until 15 February 2017 (date of the screenshot of the ICF's webpage submitted to the file), SUP was not referred in the ICF's webpage as one of its sport disciplines.

The first international SUP competition in which the ICF was involved was the "The Lost Mills" race that was held in Bavaria on 28 May 2016 and which was recognized by the ICF (even though it was not organized by it). In addition, after its unsuccessful attempt to organize it in Portugal in 2018, the first World Championship organized by the ICF (i.e. the "ICF Stand Up Paddling World Championship") took place in 2019. By comparison, in accordance with the ICF Events Calendar for the period 2015-2019 produced to the file, during this period the ICF did not organize or get involved in any SUP event different to those that have been already referred to. Furthermore, in the Statistics that the ICF has published with regard to the years 2017 and 2018, SUP competitions or events are not mentioned.

The first official SUP competition technical rules of the ICF came into force on 1 January 2017. In line with this, on 16 March 2017 the ICF's SUP Canoe Racing Competition Rules entered into force, with the aim *"to provide the rules that govern the way of running ICF SUP Canoe Racing competitions"*.

In addition, although some of its members (i.e. the American Canoe Association and the British Canoeing) give some SUP courses, the ICF does not certify SUP coaches, instructors, judges or officials.

In addition, under questioning from the Panel, it became clear that the ICF had not yet allocated a complete budget to the development of the sport and its athletes as of the time of the hearing, instead allocating resources to its first World Championships only.

As a result of the above, the Panel considers that, at least until 2016/2017, the Respondent did not have a multi-year Strategic planning process for the development of SUP.

(B) HISTORY AND TRADITION

In accordance with the Recognition Rules, this criterion shall be evaluated taking into account (i) the date of establishment of the International Federation, (ii) the history of the World Championship organized by the International Federation at stake (year in which it was first held, number of World Championships, frequency of World Championships, etc.), (iii) number of times that the sport discipline has been included in one of the multi-sports Games selected by the rules (i.e. World Games, Universiade, Commonwealth Games, Continental Games, All Africa Games, Asian Games, Pan-American Games and Mediterranean Games, SportAccord Multi-Sport Games).

Regarding these criteria, the Panel observes:

- Of the two Parties, the ICF is the oldest International Federation, being founded in 1946, while the ISA was founded in 1964.
- The ISA organizes one World Championship per year. Given that the ICF has only organized one World Championship, the frequency of this event is unknown.
- To date, the ISA has organized 8 SUP World Championships (2012-2019), while the ICF has organized one (2019).
- In accordance with the evidence made available to the Panel, SUP has been included once in one of the multi-sports Games selected by the Recognition Rules (i.e. the Pan-American Games of 2017). In this event the ISA acted as the organizer of the SUP competition.

(C) UNIVERSALITY

From the different criteria established in this section of the Recognition Rules, the Panel notes the following:

- While the ISA has 104 National Federations, the ICF has 167 National Federations.
- In the ISA SUP World Championship of 2017, 286 athletes participated from 42 countries. In the ISA SUP World Championship of 2018, 200 athletes participated from 26 countries.
- With regard to the ICF, information regarding the ICF Stand Up Paddling World Championship of 2019 is not available to the Panel. Notwithstanding, given that this competition was held after the Parties' round of submissions and the hearing of this arbitration (i.e. it being materially impossible for the ICF to submit any information in this regard), in order to assure the Parties' equal treatment the

Panel will assume that the number of participants in the ICF Stand Up Paddling World Championship of 2019 is the same as the average of participants of the ISA SUP World Championship.

(D) POPULARITY

This section includes a set of criteria (Youth appeal, Spectators-World Championships, Broadcasting-World Championships, Broadcasting Rights-World Championships, Digital Media, Sponsors) addressed to assess the steps taken by the International Federation in order to increase the popularity of the sport at stake.

In the present case, the Panel observes that, in accordance with the *"Post-Event Media and Marketing ROI Report"* of the ISA World SUP Championship of 2017, the ISA has taken many steps to increase the popularity of the sport, broadcasting SUP competitions, streaming live its World Championship in several platforms (webpage, Facebook, etc.), being active in social media platforms, distributing to broadcasters worldwide a highlight program, being present in national and local media (TV, Radio, Web, Print), working with media partners (i.e. SUP Racer, Surfline, The Inertia, Magicseaweed, etc.), issuing press releases, running event branding, *etc.*

Conversely, the ICF's Statistics (2018 SDP Statistics, Online Entries and Accreditations, 2018 Live Streaming Statistics, 2018 Statistics During competitions, 2017 Statistics During Competitions) do refer to SUP competitions at all (as they do to other sport disciplines governed by the ICF). Therefore, it can be concluded that, if the ICF has conducted any action of this type, aimed to promote and increase the popularity of SUP, it did not have the same extent or the same effectiveness as those conducted by the ISA.

(E) ATHLETES

Both Parties give their athletes the possibility of participating in their commissions, technical committees, executive board or equivalent. In this regard, the Panel observes that, contrary to the ISA's case, where the world SUP champion, Mr. Casper Steinfath, holds a position in its Executive Committee, being one of its Vice-Presidents, the ICF does not have any SUP athletes in its Executive Committee, nor in its Board of Directors.

In addition, as it was evidenced during the hearing of the case, while the ISA has active SUP athletes in its technical committees, none of the members of the ICF SUP Commission that gave testimony (i.e. Mr. Ramy Zur, Ms. Ernstfried Prade and Mr. Andrej Kraitor) were SUP athletes. And very telling was the fact that the ICF Secretary General was unable to name any of the top SUP athletes in the world for men and women beyond those who testified at the hearing.

(F) DEVELOPMENT OF THE SPORT

Regarding the existence of SUP development programmes or events for young people, ISA has a development programme in place called ISA Scholarship Program, through which it awards financial aid to SUP athletes. Regarding the ICF, during his examination

as a witness Mr. Andrej Kraitor, member of the ICF SUP Commission, explained that he has been on this commission for three years discussing how to develop SUP. However, when he was asked by one of the members of the Panel if the ICF has a budget allocated to the development of SUP, he just answered that he did not know.

233. The Panel thus notes that, in accordance with the foregoing, the party that meets the greatest number of the criteria established by the Recognition Rules to be entitled to govern and administer SUP at Olympic level, is the Claimant. Furthermore, after having weighed the background of the Parties in SUP and, in particular, the work that each party has done, respectively, on the promotion, development, popularity, recognition and standardisation of SUP as an international sport, the Panel has reached the conclusion that of the two Parties, only the ISA has been truly active in the development, promotion and governance of this sport. In accordance with the evidence produced by the Parties, the ISA was the first (in 2008) International Federation recognizing SUP as one of the sports disciplines governed by it (as one surfing modality), also the first setting official technical rules for the sport (the Rule Book in 2009), the first in organizing international events at federative level and, in particular, the first World Championship (8 annual editions up to date). It also managed the inclusion of this sport in different international multisport competitions, being the first International Federation in claiming the official governance of this sport modality within the Olympic Movement and, finally, the ISA is the International Federation that officially sanctions the most popular professional SUP regular competition worldwide (i.e. the APP world tour), whose organizer, the APP, considers the ISA as being the sole governing body for SUP at international level.

234. In turn, in the Panel's view, of the two Parties only the ISA would satisfy, if not formally at least in fact, the two criteria envisaged by Art. 2.1 of the Recognition Rules, of being (i) *"the only Federation governing the sport worldwide"* and (ii) *"Have existed in such capacity for at least five years"*, because during this long period and until this dispute arose, the ICF never acted as the governing body of SUP, or purported to be so, and in no way for at least five years.

235. In the Panel's view, it is not only that the ISA has been the first in organizing and governing *de facto* SUP at the international level (which is an important fact but not sufficient *per se* to entitle an International Federation to govern a sport within the Olympic Movement) but also that, in the Panel's opinion, the ISA is the only International Federation that has shown a real and genuine interest in SUP, having made great efforts and spending considerable time and money in its promotion, development and governance, not only at the professional level but also in developing it at the grassroots level, giving financial aid to SUP athletes and high level competition opportunities. As a consequence, the Panel is of the opinion that, by doing so, the Claimant *de facto* fulfilled the criteria required by Art. 2.1 of the Recognition Rules and the mission and role that the OC confers to International Federations within the Olympic Movement. In particular:

- *"to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application"* (Rule 26.1.1 OC);
- *"to ensure the development of their sports throughout the world"* (Rule 26.1.2 OC).

236. In comparison, in the Panel's view it is only very recently that the ICF has shown an interest in SUP, which is most likely due to the high popularity and appeal that SUP has gained worldwide in recent years, and to the risk that this sport modality could be recognized by the IOC as a surfing discipline governed by the ISA, as the latter has already claimed. In this regard, the Panel is of the opinion that until 2015/16 the ICF did not pay attention to SUP (either in open or in flat waters) and it did not consider it as a canoeing discipline, not having taken part of the governance, development and promotion of SUP until very recently.

237. Taking into account the foregoing, the Panel finds that, of the two Parties, the Claimant should be the International Federation to govern and administer SUP at the Olympic level, with the extension and in the terms stated above (i.e. with binding effects on the Parties, both of which are obliged to behave and act in accordance with the adjudication made in the present Award, but with no binding effect on any third party, including the IOC). The Respondent remains entitled to conduct all type of SUP activities (i.e., organise SUP competitions and events worldwide and at all levels, promote and develop SUP, conduct and develop all forms of SUP activities, etc.) outside of the Olympic Movement. This is without prejudice to the eventual decision that the IOC may take in the future, if any, regarding the recognition and governance of SUP within the Olympic Movement.

238. The analysis and conclusions in paragraphs 219 to 237, and the relief granted to the Claimant on that basis, are by a majority only.

239. Finally, and for the sake of completeness, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Claim filed by the International Surfing Association on 17 July 2018 against the International Canoe Federation is partially accepted.

2. The request of the International Surfing Association to be recognized as the sole governing body of SUP at the world level is dismissed.

3. The International Surfing Association shall be the International Federation governing and administrating SUP at the Olympic level, in the terms established in the present Award.

4. Each Party is hereby ordered to perform the obligations and duties as in this decision.

(…)

7. Other motions or prayers for relief are rejected.