

INTERPRETING THE FIFA STATUTES IN LIGHT OF INTERNATIONAL LAW

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*For over 15 years, the Palestinian Football Association (PFA) has sought sanctions against the Israel Football Association (IFA) for alleged violations of the FIFA Statutes. Its complaints relate to two issues – football clubs based in illegal settlements in the Occupied Palestinian Territory (OPT) which are playing in the domestic Israeli league; and issues of discrimination and freedom of movement which have severely impacted Palestinian football. The PFA complaints were investigated by FIFA in 2015-17, with no action resulting. In October 2024, the complaints were referred again to a FIFA Disciplinary Committee. This article explores the PFA complaints in light of this renewed referral, and the evolved international legal landscape in which it occurs. Section 1 sets out the wide autonomy FIFA enjoys in relation to alleged breaches of its Statutes, contrasting FIFA action on Ukraine with its inaction on Palestine. Section 2 considers the PFA complaint as it relates to the illegal settlement teams. Section 3 considers the PFA complaint as it relates to discrimination, in particular practices of racial segregation and apartheid. It is argued that FIFA's interpretation and application of its Statutes in relation to both complaints must be informed by developments in international law, including the July 2024 Advisory Opinion of the International Court of Justice and UN action on racial segregation and apartheid in the OPT. With growing UN scrutiny and criticism of FIFA, the Palestinian case illustrates how the *lex sportiva*, while a defined legal space, cannot operate outside the framework of international law.*

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I. INTRODUCTION

Football in Palestine has been the subject of debate and investigation before the Fédération Internationale de Football Association (FIFA) for over a decade.¹ At the 74th FIFA Congress held in Bangkok in May 2024, the Palestinian Football Association (PFA) demanded ‘appropriate sanctions’ be issued against the Israel Football Association (IFA) for breaches of the FIFA Statutes.² The PFA claims pertain to two issues – teams from illegal Israeli settlements in the Occupied Palestinian Territory (OPT) that play in the IFA leagues; and wider policies and practices of discrimination in the OPT that impact all aspects of Palestinian football.³ It called on FIFA to refer the matter to its Disciplinary Committee for adjudication, with a view to suspend or expel the IFA if it does not respect the territorial integrity of the PFA.⁴ In October 2024, the FIFA Council mandated the FIFA Disciplinary Committee to initiate an investigation into the two questions, what it termed ‘participation in Israeli competitions of Israeli football teams allegedly based in the territory of Palestine’; and

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1. Samindra Kunti, *Palestinians submit arguments to FIFA’s legal eagles making case for banning of Israel*, INSIDE WORLD FOOTBALL (July 2, 2024), <https://www.insideworldfootball.com/2024/07/02/palestinians-submit-arguments-fifas-legal-eagles-making-case-banning-israel/>.

2. *Id.*

3. See generally Philippe Broda, *FIFA as Referee of the Match Israel-Palestine from 1920 to 2020: An Institutional Approach*, 42 SPORT IN HIST. 76, 89 (2022) (noting that the PFA claims before FIFA began in 2013 and can be reduced to three issues: (1) the restrictions on the movement of Palestinian players; (2) the alleged racism against them—these two being linked; and (3) the participation of five Israeli teams from the occupied territories in competitions organised by the IFA). This article will consider the issues of restrictions on movement and discrimination together, as per the recent Disciplinary Committee referral.

4. *Id.*

the ‘alleged offence of discrimination raised by the Palestine Football Association.’⁵ The historian of Palestinian football, Issam Khalidi, has commented that it is evident that FIFA ‘does not believe there is an occupation in Palestine or racial discrimination against Palestinians and their sports. Therefore, FIFA describes the Palestinian Federation’s lawsuit as an ‘alleged’ offense of discrimination.’⁶

We have been here before. As the PFA noted in Bangkok, it has ‘consistently raised the same concerns with FIFA, only to see them repeatedly deferred from one Congress to another’.⁷ In particular, following the FIFA Congress in Zurich in May 2015, a Monitoring Committee was established to investigate and advise on two issues raised by the PFA, which broadly map to those being investigated by the 2024 Disciplinary Committee – the question of six teams based in illegal settlements in the OPT who play in Israeli domestic leagues; and restrictions applied to the movement of Palestinian footballers and equipment by Israeli security forces in the OPT.⁸ The Monitoring Committee was chaired by FIFA Congress member and African National Congress veteran Tokyo Sexwale, and published its report in October 2017.⁹ The Sexwale report provided a number of options to

5. Fédération Internationale de Football Ass’n, *FIFA Council takes key decisions on FIFA Member Associations and upcoming FIFA competitions*, INSIDE FIFA (Oct. 3, 2024), <https://inside.fifa.com/about-fifa/organisation/fifa-council/media-releases/fifa-council-takes-key-decisions-member-associations-upcoming-competitions>. On the FIFA governance structures and the critical need for reform, see Ilias Bantekas, *FIFA’s One Association-One Vote Rule: Does Democratic Governance Ensure Its “Corporate” Integrity?*, 14 AM. UNIV. BUS. L. REV. 53, 57, 78 (2024) (noting that the deceptively democratic nature of FIFA “is very much the reason for its criticism and the basis for many proven or alleged corruption scandals,” with an overhaul to FIFA’s governance model “long overdue”). Such reforms must include engagement with civil society, currently elided from decision-making, since “[w]ithout such broad involvement, the only source of information for FIFA is the association itself.” *Id.* at 73.

6. Issam Khalidi, *FIFA’s Inaction: Why Israel Should Be Expelled for Violating Palestinian Sports Rights*, PALESTINE CHRON. (Jan. 2, 2025), <https://www.palestinechronicle.com/fifas-inaction-why-israel-should-be-expelled-for-violating-palestinian-sports-rights/>.

7. Kunti, *supra* note 1 (quoting PFA President Jibril Rajoub).

8. Daniel Sher, *Tokyo Sexwale’s report frustrates Palestinian hopes*, GROUND UP (Nov. 10, 2017), <https://groundup.org.za/article/tokyo-sexwales-report-frustrates-palestinian-hopes/>.

9. FIFA Monitoring Comm., *Israel-Palestine: Report by Committee Chairman Mr Tokyo Sexwale*, No. X-Ib/2017/961 (Oct. 27, 2017). Although not published on the FIFA website, the report is available at: <https://daoudkuttat.medium.com/full-text-of-tokyo-sexwale-chairmans-report-to-fifa-on-palestine-israel-53c27c909a5b>. There was no agreement on a final document that could be called a “Consensus Report,” so

the FIFA Council, which ranged from taking no action at all to suspending Israel.¹⁰ The FIFA Council elected to take no action at all.¹¹ In doing so, it offered no views on the merits of the Sexwale report's claim that the IFA breached FIFA Statutes. FIFA President, Gianni Infantino, then stated that "[t]he matter is declared closed and will not be the subject of any further discussion until the legal and/or de facto framework has changed."¹²

The PFA appealed this outcome to the Court of Arbitration for Sport (CAS). In *PFA v FIFA* (2018), the CAS upheld the FIFA Council decision but ruled that it applied only to the actions of the Council, and did not bind other FIFA bodies.¹³ The CAS ruling allowed the PFA to re-introduce its claims into the agenda of the FIFA Congresses, leading to the recent October 2024 referral to the Disciplinary Committee.¹⁴ However, the FIFA Council retains all powers in relation to suspension or expulsion of a Member State, the principal outcome sought by the PFA.¹⁵ Under Article 10 of the FIFA Statutes, the Congress shall

instead it comprises a final document considered a "Chairman Report" with comments from the PFA and the IFA. It is perhaps interesting to note in passing that Sexwale spent thirteen years in Robben Island prison alongside Nelson Mandela.

10. *Id.* ¶¶ 5.1–5.3.

11. Andrew Warshaw, *Exclusive: FIFA ignored 100% of Sexwale report in killing off Israel-Palestine talks*, INSIDE WORLD FOOTBALL (Oct. 31, 2017), <https://www.insideworldfootball.com/2017/10/31/exclusive-fifa-ignored-100-sexwale-report-killing-off-israel-palestine-talks/>.

12. *FIFA will not intervene in Israel-Palestine standoff*, REUTERS (Oct. 27, 2017), <https://www.reuters.com/article/sports/fifa-will-not-intervene-in-israel-palestine-standoff-idUSKBN1CW1VT/>.

13. *Palestine Football Ass'n v. Fédération Internationale de Football Ass'n* (FIFA), CAS 2017/A/5166 & 5405, ¶¶ 111–12 (Ct. Arb. for Sport, July 9, 2018).

14. Fédération Internationale de Football Ass'n, *supra* note 5 ("The FIFA Disciplinary Committee will be mandated to initiate an investigation into the alleged offence of discrimination raised by the Palestine Football Association."). There are three principal governing bodies of FIFA: (1) the Congress, its "supreme and legislative body"; (2) the Council, its "strategic and oversight body"; and (3) the General Secretariat, its executive, administrative, and operational body. In addition, there are three judicial bodies pursuant to Article 50 of the FIFA Statutes: the Disciplinary, Ethics, Appeal Committees. See Fédération Internationale de Football Ass'n, FIFA Statutes art. 24 (May 2022 ed.), https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf [hereinafter FIFA Statutes 2022].

15. In March 2017, the PFA submitted a motion requesting "the FIFA Council to propose and/or adopt disciplinary measures—as described in Articles 16 and/or 17 of FIFA Statutes—against the IFA for their responsibility with regards to the activities of at least 6 of its clubs in the internationally recognized territory of PFA." Antoine

decide whether to admit, suspend or expel a member association ‘solely upon the recommendation of the Council.’¹⁶ This is further underlined in Article 16, whereby the Congress may suspend a member association ‘solely at the request of the Council’,¹⁷ with a similar formulation for expulsion under Article 17.¹⁸ Thus, after ten years, FIFA appears to have returned to the same point it was at in 2015. The same two issues are under investigation, and while the Disciplinary Council can make recommendations, the decision to progress to a vote in the Congress on suspension or expulsion of a member association rests solely with the FIFA Council.

Nevertheless, this article considers whether a different result should be expected. It points to the evolved international legal framework in which the FIFA Disciplinary Committee is adjudicating, in particular the July 2024 Advisory Opinion of the International Court of Justice (ICJ)/the Court in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.¹⁹ The Advisory Opinion is relevant to the determination of both issues before the Disciplinary Committee, engaging the status of the settlements as well as policies and practices of discrimination in the OPT. Furthermore, FIFA’s authority to determine the question without reference to international law is being increasingly challenged at the UN level in light of the ICJ Advisory Opinion.²⁰ Section 1 begins with a recognition of the wide autonomy FIFA enjoys in relation to alleged breaches of its Statutes, seen in its action in suspending the Russian Federation by contrast with its inaction to date on Israel. Section 2 sets out the PFA complaint in relation to the first issue of the illegal settlement teams, drawing on the earlier 2015-17 Sexwale report

Duval & Pedro José Mercado Jaén, *CAS 2017/A/5166 and 5405 Palestine Football Association v. Fédération Internationale de Football Association (FIFA)*, Award of 9 July 2018, in Y.B. OF INT’L SPORTS ARB. 2018–2020 129, 132 (Antoine Duval & Antonio Rigozzi eds., 2024).

16. FIFA Statutes 2022, *supra* note 14, art. 10.

17. *Id.* art. 16.

18. *Id.* art. 17. Note that a three-quarter majority vote of the member associations in the Congress is required for suspension or expulsion following any such recommendation from the FIFA Council.

19. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 2024 I.C.J. 753, ¶¶ 224–29, <https://www.icj-cij.org/case/186> [hereinafter ICJ Advisory Opinion].

20. See, e.g., U.N. Off. of the High Comm’r for Hum. Rts., *FIFA must respect international law regarding Israeli football clubs: UN experts* (Oct. 3, 2024), <https://www.ohchr.org/en/press-releases/2024/10/fifa-must-respect-international-law-regarding-israeli-football-clubs-un>.

as well as the CAS proceedings that followed. Section 3 examines the PFA complaint in relation to the second issue of discrimination, which engages policies and practices of racial segregation and apartheid as they impact football in the OPT. It is argued in relation to both complaints that FIFA's determination of whether its Statutes have been breached must be informed by developments in international law, including the ICJ Advisory Opinion and growing UN action on racial segregation and apartheid in the OPT. As the UN General Assembly moves to implement the ICJ Advisory Opinion,²¹ FIFA's autonomy to interpret its Statutes in implicit recognition of a situation illegal under international law will likely prove unsustainable.

II. THE LEX SPORTIVA: FIFA AND DOUBLE STANDARDS IN INTERNATIONAL SPORTS ADJUDICATION

It is important first to set out why Sports Governing Bodies (SGBs) such as FIFA, while proclaiming their adherence to human rights and other standards, can ultimately cherry-pick those actions that serve their own corporate purposes. SGBs in their vast majority are incorporated as non-profit entities²² in jurisdictions that allow them to enjoy the privileges and immunities of inter-governmental organizations,²³ while at the same time accruing profits and investing

21. On implementation of the ICJ Advisory Opinion, see G.A. Draft Res., U.N. Doc. A/ES-10/L.31/Rev.1 (Sept. 13, 2024); see also the subsequent report of the UN Secretary-General, U.N. Doc. A/79/588, ¶ 19 (Dec. 19, 2024) (emphasizing “the sustained engagement of the General Assembly on the matter, which is centrally shaping progress towards tangible, irreversible steps to end the occupation as rapidly as possible and achieve a viable two-State solution”).

22. See, e.g., INT'L OLYMPIC COMM., OLYMPIC CHARTER, rule 15(1) (Feb. 3, 2026), <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> (“The IOC is an international non-governmental not-for-profit organisation . . .”).

23. See Camille Gonseth & Philippe Küttel, *The Treatment of International Sport Organisations in the Swiss National Accounts*, 36TH IARIW GENERAL CONFERENCE, Norway, 23–27 August 2021, at 2, https://iariw.org/wp-content/uploads/2021/08/Gonseth_Kuttel_paper.pdf (noting that there are 67 international sports organizations represented in Switzerland). See also Accord entre le Conseil fédéral suisse et le Comité International Olympique relatif au statut du Comité International Olympique en Suisse [Agreement Between the Swiss Federal Council and the International Olympic Committee Regarding the statute of the International Olympic Committee in Switzerland], Switz.-IOC, Nov. 1, 2000, RO 2001 845. In 1981, the Swiss Federal Council, which is the highest executive body of Switzerland, published a decree which affirmed the IOC's universal activities and its legal character as an international institution. See Jean-Loup Chappolet, *Switzerland's Century-Long Rise as the Hub of Global Sport Administration*, 38 INT'L J. HIST. SPORTS 569, 580 (2021).

these in a manner exemplifying foreign investment.²⁴ The International Olympic Committee (IOC), and by extension the charters of most other SGBs including FIFA, demand that national sporting federations be wholly independent from State interference,²⁵ which means SGBs have effectively been provided with an autonomous regulatory space.²⁶ Within this regulatory space, SGBs have traditionally managed their internal relationships (e.g. between national clubs, athletes and other stakeholders) through institutional rules drafted by them and imposed as contractual terms and conditions. This contractual bond between an athlete and its national federation may be express or implied.²⁷ The contractual nature of these institutional rules, although of an adhesive character, has rendered them binding against all stakeholders on the basis of contractual autonomy.²⁸ In turn, this contractual authority, being of a constitutional nature, can only be limited if it violates a handful of mandatory rules, such as public policy. Domestic courts

24. See Ilias Bantekas & Hakan Sahin, *Non-Profit Entities as Foreign Investors? The Case of Sport Governing Bodies*, 60 STANFORD J. INT'L L. 70, 97–98 (2024) (noting that SGBs invest their assets in much the same way as traditional investors despite being non-profit institutions). Unlike traditional investors who rely on bilateral investment treaties, SGBs typically conclude host state agreements which contain a much higher number of investment guarantees and privileges.

25. FIFA Statutes 2022, *supra* note 14, art. 15(c) (“Member associations’ statutes must comply with the principles of good governance, and shall in particular contain, at a minimum, provisions relating to the following matters: ... to be independent and avoid any form of political interference.”). See also Council of Europe Convention on the Manipulation of Sports Competitions art. 1(1), Sept. 18, 2014, C.E.T.S. No. 215 (Macolin Convention) (protecting the principle of the autonomy of sport).

26. See Margareta Baddeley, *The Extraordinary Autonomy of Sports Bodies under Swiss Law: Lessons to be Drawn*, 20 INT'L SPORTS L.J. 3 (2020) (noting the “considerable autonomy afforded the governing bodies of international sports by the *Swiss law* of associations” reinforced by Swiss courts’ reluctance to “intervene in ‘internal’ affairs of the sports world” (emphasis in original)). See also Council of Europe Convention on the Manipulation of Sports Competitions, *supra* note 25, art. 1(1). On the many challenges tackling corruption in sport, see Ilias Bantekas, *Is Organized Gambling a Threat to the Integrity of Transnational Individual Sport Competitions?*, 25 S.D. INT'L L.J. 23, 29–36 (2024) (discussing how SGBs like the International Tennis Federation struggle to strike the right balance between making their events “bettable” while avoiding match-fixing).

27. See, e.g., *Finnigan v. NZRFU Inc.* (No. 1) [1985] 2 NZLR 159 at [179] per Cooke J (N.Z.) (holding that despite the absence of discrete contracts with the national sports federation, “[T]he claimants as local club members [were] linked to [said Federation] by a chain of contracts.”).

28. See, e.g., *Baker v. Jones* [1954] 2 All ER 553. The case centred around the contractual nature of an SGB’s bylaws. The British Amateur Weightlifters’ Association had violated its by-laws (internal regulations) and claimed that its members had no reason to complain because this was an internal matter. The court held that said bylaws constituted a contract between the SGB and its members.

have generally been reluctant to accept challenges against the institutional rules of SGBs to avoid the appearance of State interference.²⁹ Despite the fact that the contractual dimension of these institutional rules is adhesive in nature - such as the relationship between an SGB such as World Athletics and track and field athletes - it is not in any way mitigated by the sort of guarantees associated with other adhesive agreements, such as consumer agreements.³⁰ This uncontrolled regulatory space, which effectively allows SGBs to regulate by force of law (i.e. the sanctity of contracts) is known as the *lex sportiva*.³¹

This *lex sportiva*, with all the sensitivities concerning State interference and the interest of States not to upset SGBs at all costs, has allowed sports bodies to bypass human rights commitments typically imposed on other legal persons. It has also permitted them to violate competition law, among other aspects, with action initiated by private parties rather than States.³² This is not to say that other bodies

29. See, e.g., *Bradley v. Jockey Club* [2004] EWHC 2164 (QB), [62], [75] (holding that sports federations are generally excluded, both as a matter of law and precedent, from judicial review).

30. The principle of *contra preferentum* is a foundational principle in consumer contracts, whereby the parties and the courts are bound to construe ambiguous terms in favor of the consumer. Terms that are unfair—nowadays typically found in so-called blacklists—are not enforceable by the courts. See, e.g., Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, 1993 O.J. (L 95) 29, 33; Charter of Fundamental Rights of the European Union art. 38, 2000 O.J. (C 364) 1, 17.

31. See Leonardo Casini, *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, 12 GERMAN L.J. 1317, 1319 (2011) (defining *lex sportiva* as “judge-made sport law” while noting the uncertainty over its legal status); Ilias Bantekas, *Human Rights Forum Shopping in Transnational Sport Disputes*, 50 BROOK. J. INT’L L. 1, 1–3 (2024) (describing *lex sportiva* as a system of private, contract-based regulation administered by sporting bodies and enforced through arbitral tribunals).

32. The CJEU has made it clear that SGBs do not possess unfettered authority—effectively by reason of contract—to possess any sanctions on athletes in violation of their internal rules. See C-124/21 P, *Int’l Skating Union v. Comm’n*, ECLI:EU:C:2023:1012, ¶¶ 136–38 (Dec. 21, 2023) (describing the ISU’s rules preventing the imposition of sanctions in an arbitrary, discriminatory, or disproportionate manner). See also Ilias Bantekas, *The Enduring Battle Between the Lex Sportiva and EU Competition Law*, 30 COLUM. J. EUR. L. 203 (2025) (noting that the CJEU has held that sport governing bodies are subject to the same EU competition rules as commercial or other entities, thereby dealing a heavy blow to the unfettered nature of the *lex sportiva*); Ilias Bantekas & Pedro José Mercado Jaen, *Addressing the Unfettered Authority of Sport Governing Bodies Through EU Competition Law: The Effect of International Skating Union and European Super League*, 26 CAMBRIDGE Y.B. EUR. L. STUD. 48 (2024) (noting that, after the CJEU’s rulings in *International Skating Union* and *European Super League Company*, SGBs

such as multinational corporations (MNCs) are the subject of meticulous human rights regulation in their extra-territorial activities,³³ but there is a growing trend to impose human rights obligations in free trade agreements, bilateral investment treaties (BITs) and litigation (tort-based) before national courts. The same is not at all evident in respect of SGBs, and while they can rely on BITs to enhance their rights against host States staging mega-sporting events under their aegis, they generally refuse to do so.³⁴ The reason is that they can negotiate far more preferential rights under private agreements with host States.³⁵ The confidentiality of these individually negotiated terms, their private (as opposed to public) character, and the potential benefits (financial and political) to host States, ensures that only lip service is paid to human rights.

While SGBs such as the IOC and FIFA have adopted extensive policy instruments declaring their adherence to human rights treaties,³⁶ practice on the ground suggests otherwise. By way of illustration, Rule 50.2 of the Olympic Charter emphasizes that 'No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas'.³⁷ Yet, this is contrary to fundamental rights, chiefly the right to peaceful assembly and freedom

cannot inflict sanctions on their member associations for organizing or operating competitive leagues or events).

33. See Ilias Bantekas, *Multinational Business Entities and their Role in the Global Environmental, Social and Governance Architecture*, 33 MINN. J. INT'L L. 49, 79–88 (2024) (noting that there is now a significant body of practice limiting—to some degree—the ability of MNCs to bypass foundational human rights principles where they operate as foreign investors).

34. Bantekas & Sahin, *supra* note 24, at 72, 74 (noting that some, but not all, SGBs are organized as non-profit entities and are therefore not allowed to operate as foreign investors).

35. See, e.g., INT'L OLYMPIC COMM., HOST CITY CONTRACT FOR THE GAMES OF THE XXXII OLYMPIAD IN THE YEAR 2020 – TOKYO (Sept. 7, 2013), <https://www.2020games.metro.tokyo.lg.jp/hostcitycontract-EN.pdf>.

36. See generally FÉDÉRATION INTERNATIONALE DE FOOTBALL ASS'N, FIFA'S HUMAN RIGHTS POLICY (May 2017), <https://digitalhub.fifa.com/m/1a876c66a3f0498d/original/kr05dqyhwr1uhqy2lh6r-pdf.pdf> (including a FIFA Human Rights Advisory Board among other initiatives). See also FIFA *World Cup Qatar 2022: Sustainable Sourcing Code*, FIFA (Dec. 2020), <https://digitalhub.fifa.com/m/03dc1047f4cf6995/original/hp3yd5g3hlqzdlko6bev-pdf> (outlining how FIFA expects organizations in its supply chain to support its sustainability goals); see generally *Human Rights Documents*, INSIDE FIFA, <https://www.fifa.com/social-impact/human-rights/documents?filterId=CT2728f535-ea60-4c7a-9ff7-893dcc5a8e27> (including human rights impact assessments for tournaments in potential host cities).

37. INT'L OLYMPIC COMM., *supra* note 22.

of expression, which by extension gives rise to a peaceful right of protest.³⁸ This unchallenged defiance of human rights and rule-making by the IOC finds no justification under standards such as the European Convention of Human Rights (ECHR), yet it has not reached national courts or the European Court of Human Rights (ECtHR).³⁹ In equal measure, the contractual character of the institutional rules of SGBs effectively prevents any disputes from reaching national courts that would otherwise be susceptible to human rights and constitutional articles. Instead, SGB institutional rules stipulate that all disputes shall either be submitted to their internal arbitral mechanism (e.g. the International Tennis Federation's Independent Tribunal),⁴⁰ and/or the CAS in Lausanne.

The ECtHR has been clear that the agreement to submit disputes to CAS on the basis of institutional rules amounts to forced arbitration, albeit its defects can be remedied through procedural safeguards.⁴¹ Even so, like all arbitral tribunals, the CAS is disinclined to depart from the law set out in the parties' agreement - in this case, the SGB institutional rules. Given that these rules usually do not contain human rights standards, CAS tribunals generally refuse to entertain broader human rights claims. CAS arbitral awards are hence a strict reflection

38. See Hum. Rts. Comm., *General Comment No. 37 on the Right of Peaceful Assembly (Article 21)*, ¶ 3, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020) (recognizing that Article 21 of the ICCPR provides that "the right of peaceful assembly shall be recognized," and that this has been elaborated upon by monitoring bodies to, for example, include protest). See also Eleni Polymenopoulou, *Expressing Dissent: Gag Laws, Human Rights Activism and the Right to Protest*, 32 FLA. J. INT'L L. 337, 343 (2021) (observing that the U.N. Human Rights Committee, in its General Comment No. 37, elaborates on the relation between the right to peaceful assembly and protest, by emphasizing that protests, demonstrations, rallies and flash mobs all constitute different forms of assembly; that "peaceful assemblies can sometimes be used to pursue contentious ideas or goals"; and that regardless of form, scale or nature, and whether they actually "cause disruption," all should enjoy protection under human rights law).

39. See Ilias Bantekas, *Political Neutrality of International Sports Federations: Compatible with Fundamental Rights of Athletes?*, 34 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 193 (2024) (discussing how SGBs have promulgated internal rules that are inconsistent with human rights yet they impose these on host states and athletes as a matter of contract).

40. See Ilias Bantekas, *The Resolution of Professional Tennis Disputes*, 14 J. INT'L DISP. SETTLEMENT 488 (2023) (summarizing the range of arbitral and quasi-arbitral mechanisms in the armoury of the International Tennis Federation and the relationship of these mechanisms with CAS).

41. *Mutu & Pechstein v. Switz.*, App. Nos. 40575/10 & 67474/10 (Eur. Ct. H.R. Oct. 2, 2018), <https://hudoc.echr.coe.int/?i=001-186434>. The ECtHR held that CAS proceedings amounted to compulsory arbitration, which in turn was obliged to provide all the procedural safeguards enunciated in Art. 6 ECHR, including the right to a public hearing.

of institutional rules. Furthermore, human rights deficiencies will generally not be remedied by the Swiss Federal Tribunal, the competent court for annulment claims against arbitral awards rendered in Switzerland. The Swiss Federal Tribunal is hardly an exception. National courts tend to view arbitral proceedings – other than consumer arbitration – as encompassing parties acting at arm's length, which by extension does not give rise to human rights concerns. Even so, Article 396(2) of the Swiss Code of Civil Procedure does stipulate that the parties may request the competent court to review an arbitral award on the ground that it has violated the ECHR.⁴² The application of the ECHR, while generally less important in commercial arbitration, is crucial in arbitral proceedings between athletes and powerful SGBs. This was no more evident than the *Semenya* case, which involved an intersex track athlete who was banned from women's racing events on the basis of internal regulations adopted by World Athletics and which automatically became part of Semenya's contract with World Athletics without any further negotiation or consent. These internal regulations did not provide any human rights or constitutional remedies and were predicated exclusively on medical grounds unilaterally adopted by World Athletics. The internal regulations in question contained a CAS arbitration clause, which absent any human rights guarantees, meant the CAS tribunal decided the claims on strict contractual grounds. When Semenya attempted to set the CAS award aside before the Swiss Federal Tribunal, arguing that the failure by CAS to consider fundamental human rights concerns in this case constituted at the very least a violation of Swiss public policy, the Swiss Court disagreed and dismissed her request.⁴³ A subsequent judgment of the ECtHR would vindicate Semenya's plea that she had been discriminated by the relevant SGB, World Athletics, and that she had not been offered an opportunity to defend her human rights claims.⁴⁴ In general, although

42. See SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 19, 2008, SR 272, art. 396, para. 2, <https://www.fedlex.admin.ch/eli/cc/2010/262/en> (Switz.).

43. Tribunal Fédéral [TF] [Federal Supreme Court] Aug. 25, 2020, 4A_248/2019 & 4A_398/2019, https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?highlight_docid=aza%3A%2F%2Faza:/25-08-2020-4A_248-2019&lang=de&zoom=&type=show_document (Switz.).

44. *Semenya v. Switz.*, App. No. 10934/21 (Eur. Ct. H.R. July 11, 2023). The Grand Chamber of the ECtHR heard the case again but reached the same outcomes. See Ilias Bantekas, *Sport Arbitration and Human Rights: An Overview of the Semenya Judgment before the European Court of Human Rights*, 38 HARVARD HUM. RTS. J. (2025),

international human rights law issues are increasingly being raised in CAS proceedings, its jurisprudence in this area is marked by inconsistencies and contradictions.⁴⁵

In sum, FIFA enjoys wide autonomy to act or not act to enforce its Statutes, with a relatively narrow avenue of appeal to CAS in relation to both its actions and inactions. This is particularly pronounced in relation to Palestine. FIFA has in fact issued sanctions in a dispute involving Israel and Palestine, *against* the President of the PFA, Mr Jibril Rajoub. Following the scheduling of a match between Israel and Argentina to take place on 9 June 2018 in Jerusalem, which closely followed U.S. President Donald Trump's "recognition" of the city as Israel's capital, Rajoub called on 'everybody' to 'burn their Messi tshirts'.⁴⁶ The match was eventually cancelled. The FIFA Disciplinary Committee determined that Rajoub had breached Article 53 of the FIFA Disciplinary Code for inciting hatred and violence, and he was suspended for 12 months and fined CHF 20,000. The decision was upheld on appeal before the CAS.⁴⁷ The CAS Panel considered the balance between the statements and Mr. Rajoub's freedom of expression. It noted that 'an association – based on the special contractual legal relationship – may impose stricter duties on its members than the duties imposed on citizens by criminal law', and that Mr Rajoub had 'exceeded the legitimate boundaries of the freedom of speech'.⁴⁸ The Panel concluded that due to Mr. Rajoub's position, the situation was a 'serious case' of inciting hatred and targeting a well-known individual through mass media.⁴⁹

As set out in the CAS ruling, the decision distinguished between an "ordinary" act of burning a T-shirt, which may be protected by freedom of expression, and incitement to such actions on the part of 'everyone' through the mass media by a leader of a national association.

<https://journals.law.harvard.edu/hrj/2025/01/sport-arbitration-and-human-rights-an-overview-of-the-semenya-judgment-before-the-european-court-of-human-rights/>.

45. See Faraz Shahlaci, *The Collision between Human Rights and Arbitration: The Game of Inconsistencies at the Court of Arbitration for Sport*, 40 ARB. INT'L 169 (2024) (suggesting multiple reasons as to why CAS awards fail to incorporate human rights considerations, chiefly lack of expertise and possible bias or at best favouritism towards SGBs).

46. Reuters, *Argentina 'call off' controversial World Cup warm-up against Israel*, THE GUARDIAN (June 6, 2018), <https://www.theguardian.com/football/2018/jun/05/argentina-friendly-israel-jerusalem-cancelled-lionel-messi>.

47. Rajoub v. Fédération Internationale de Football Ass'n, CAS 2018/A/6007, ¶ 103 (Ct. Arb. for Sport, July 18, 2019).

48. *Id.* ¶¶ 94–95.

49. *Id.* ¶ 98.

But *Rajoub v FIFA* also captures the injustice of the situation from a Palestinian perspective. It provides a stark manifestation of swift action when it comes to breaches of its Statutes by one party, the PFA, and inaction when it comes to breaches of its Statutes by another, the IFA.⁵⁰ In addition, there is a gulf between the gravity of the two situations. *Rajoub v FIFA* involves a single act by an individual in relation to a single game, with the “victim” the world’s most famous footballer; whereas the situation that has been put before FIFA by the PFA, with no action to date, involves the systematic destruction of football in Palestine incurred through annexation and settlement of Palestinian territory, and the use of football to legitimise these actions through settlement clubs and other activities.

FIFA’s inconsistencies are also illustrated in relation to Russia, where it acted decisively and effectively to suspend the national and club teams following the invasion of Ukraine. It first decided on 27 February 2022 that ‘No FIFA competition shall be played on the territory of Russia’.⁵¹ Following the decisions by several FIFA member associations not to compete with the Russian national team in ongoing football competitions, notably the Polish, Swedish and Czech Football Associations, FIFA announced that all Russian teams were ‘suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently’ to allow them to be readmitted.⁵² In terms of the legal basis for the decision, FIFA noted that it had ‘a reasonable margin of discretion in decisions concerning the operation of its competitions and the participation of its member associations. This also allows FIFA to take into account cases of force majeure, such as acts of war’.⁵³ The Football Union of Russia (FUR) appealed to the CAS. In *FUR v FIFA*, it argued that the decisions of the Polish, Czech and Swedish FAs breached Article 14(1)(b) of the FIFA Statutes, which oblige member associations to take part in FIFA competitions.⁵⁴ It pointed out that there were many other examples of States involved in military action which have not resulted in the suspension of a sports

50. See also Broda, *supra* note 3, at 90 (comparing FIFA’s action against Rajoub with its inaction in relation to the PFA claims and noting “the favouritism, or a double standard”).

51. Football Union of Russia (FUR) v. Fédération Internationale de Football Ass’n (FIFA) et al., CAS 2022/A/8708, ¶ 27 (Ct. Arb. for Sport, Nov. 25, 2022).

52. *Id.* ¶ 33.

53. *Id.*

54. *Id.* ¶ 78(e). FIFA Statutes 2022, *supra* note 14, art. 14.1(b) (“Member associations have the following obligations: ... (b) to take part in competitions organised by FIFA.”).

federation or representative teams, such as the Vietnam War, the Iran/Iraq War, and military operations in Afghanistan.⁵⁵

The CAS decision noted that there was no evidence or suggestion that the FUR had breached any FIFA regulation or a provision of the FIFA Statutes, and consequently that it was not a disciplinary measure imposed on the basis of misconduct.⁵⁶ Instead, it was an administrative decision taken by the FIFA Bureau to impose a measure to deal with the consequences of a military conflict. On that basis, the Panel found that the FUR's claims that it was denied fundamental procedural rights had no application. In any case, this claim was subsequently cured by the CAS proceedings which had decided the case *de novo*.⁵⁷ The Panel then emphasised, in line with FIFA's submission, that 'a sports association has a high degree of autonomy to regulate its own affairs and make decisions that are in line with its statutory objectives and in accordance with its statutes'.⁵⁸ It also noted that, even taking account of the *de novo* review, 'a sports association is best placed to make decisions that further its statutory objectives, and that respect for the principle of freedom of association requires a certain level of deference to be afforded to a sports association'.⁵⁹ However, it stated that the administrative decisions of a sports association are not immune to review and a decision can be challenged if there is a violation of the Association's statutes or mandatory legal rules.⁶⁰ It thus set out the coexistence of deference to the decisions of sports associations with the Panel's power of *de novo* review:

CAS jurisprudence establishes that the principle of deference and respect for the autonomy of a sports association is not absolute, and that these principles "may yield when there are exceptional circumstances" such as arbitrariness, a misuse of an association's discretionary power, discrimination or breaches of any relevant mandatory legal principle . . . The threshold for determining those exceptional circumstances is set high, and "[the] arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice."⁶¹

55. FUR v. FIFA, *supra* note 51, at ¶ 78(f).

56. *Id.* ¶ 100.

57. *Id.* ¶ 104. This principle is well-established in CAS jurisprudence.

58. *Id.* ¶ 108.

59. *Id.* ¶ 109.

60. *Id.* ¶ 108.

61. *Id.* ¶ 110.

Ultimately, the Panel found that FIFA's decision was taken to further FIFA's statutory objective of organizing its competition and to ensure minimum disruption to and the smooth running of FIFA's competitions, which, the majority found, was within FIFA's margin of discretion in the circumstances with which the FIFA Bureau was faced.⁶² The Panel also could not help but recognise that 'it is at least arguable that the Swedish FA, Polish FA and Czech Republic FA were in breach of their obligations towards FIFA' under Article 14(1)(b), but that this was a matter for separate disciplinary proceedings.⁶³ The Panel concluded that the decision to suspend Russia under the circumstances 'was a reasonable decision to take.'⁶⁴

The *FUR v FIFA* case illustrates a high degree of autonomy for FIFA decision-making, which is often afforded express deference by CAS. Nevertheless, this autonomy is not total - a failure by FIFA to act in relation to clear violations of its Statutes may satisfy the CAS threshold of blatant and manifest arbitrariness, discrimination or breach that offends a basic sense of justice. UN human rights experts have also highlighted the limits of 'autonomy and self-regulation in sport', specifically in relation to FIFA.⁶⁵ With that in mind, we turn to the PFA claims currently before the FIFA Disciplinary Committee.

III. PFA CLAIM 1: THE ILLEGAL SETTLEMENT CLUBS UNDER ARTICLE 72.2 OF THE FIFA STATUTES

Football spread in Palestine with the establishment of British rule after World War I.⁶⁶ In 1925, the Jewish sports organisation Maccabi

62. *Id.* ¶ 146. See also Ilias Bantekas, *Sports Sanctions Against Russia Through the Lens of the Court of Arbitration for Sport*, 42 CARDOZO ARTS & ENT. L.J. 1, 24 (2024) (noting the decision was "predictable" and that "[o]verall, the CAS seems to have been satisfied that the risks to the competitions organized by FIFA and UEFA (physical harm and financial) far outweighed any impact on the clubs and national teams of the sanctioned national federations.").

63. FIFA Statutes 2022, *supra* note 14, art. 69. The Panel read this provision in conjunction with Article 69, which states that the FIFA Council "shall compile an international match calendar that shall be binding upon the confederations, member associations and leagues." See also *FUR v. FIFA*, *supra* note 51, at ¶ 148. As the Panel noted, this creates "a strong inference that it is mandatory for member associations to play in FIFA competitions."

64. *FUR v. FIFA*, *supra* note 51, at ¶ 150.

65. U.N. Off. of the High Comm'r for Hum. Rts., *supra* note 20 (quoting the experts' statement that "[t]he autonomy and self-regulation in sport must not be detrimental to fundamental human rights").

66. Issam Khalidi, *Sports and Aspirations: Football in Palestine, 1900-1948*, 58 Jerusalem Q. 74, 75 (2014).

applied to join FIFA, but was rejected on the grounds that it was not a State representative club.⁶⁷ This led it to establish the Palestinian Football Association (PFA) in 1928, which Arabs were invited to join with the aim of making it seem more inclusive.⁶⁸ In 1929, FIFA admitted Maccabi as the PFA. Subsequently, an unequal local league was launched, with nine Jewish clubs and one British club (the British police) in the champions league, while Arab clubs played only in the secondary league.⁶⁹ Representation within the PFA governing body was also unequal, with 14 of its 15 members Jewish and only one Arab, who attended only the first meeting in 1928.⁷⁰ By 1934, Arab clubs had no say in the Association despite Arabs comprising over three-quarters of Palestine's population.⁷¹ A PFA team that played Egypt in the 1934 World Cup qualifiers did not include a single Arab Palestinian player.⁷² The PFA further sought to obstruct Arab Palestinian teams which it had alienated or excluded from competing with teams from other Arab countries.⁷³ The PFA had become an exclusively Jewish organisation and would eventually change its name to the Israel Football Association (IFA) in 1948, after the founding of the State of Israel.⁷⁴

In 1962, Palestinians re-established the PFA and renewed their application to FIFA. However, it was rejected 'on the basis that Palestine did not exist'.⁷⁵ Further applications in 1978, 1979 and 1993 also failed.⁷⁶ Reasons given were that the Gaza Strip was under Egyptian administration, and that the West Bank was part of Jordan.⁷⁷ Palestine would eventually gain FIFA membership in 1998, with the first international match played in the OPT in 2008. Palestinians have noted that throughout this period, Israel has deliberately targeted

67. Nadia Naser-Najjab & Shireen Abu Akleh, *Palestinian Football and the Struggle for Identity*, 56 INT'L J. MIDDLE EAST STUD. 244, 248 (2024).

68. *Id.*

69. Yoni Mendel, *The Palestinian soccer league: A microcosm of a national struggle*, +972 MAGAZINE (May 1, 2015), <https://www.972mag.com/palestinian-soccer-league-gears-up-for-nailbiter-final/>.

70. *Id.*

71. Khalidi, *supra* note 66, at 79.

72. Naser-Najjab & Akleh, *supra* note 67, at 249.

73. Khalidi, *supra* note 66, at 79.

74. Bassil Mikdadi, *'Many players have died': Israel's war on Gaza hits Palestinian football*, AL JAZEERA (Oct. 30, 2023), <https://www.aljazeera.com/sports/2023/10/30/israelis-war-on-gaza-hits-palestinian-football>.

75. Naser-Najjab & Akleh, *supra* note 67, at 249 (quoting an interview with Issam Khalidi).

76. *Id.*

77. *Id.*

Palestinian football through various means, including the denial of travel permits, arrests, untargeted and targeted killing, and creating a perpetual sense of doubt and uncertainty.⁷⁸ As Khalidi wrote in *One Hundred Years of Football in Palestine*, football was:

a mirror that reflect[ed] political and social processes. It was not, and still is not, separated from the political conditions that Palestine went through and still is going through tens of decades later. Football was not isolated from the British-imposed mandate on Palestine, Zionist settlements, immigration and dreams [of] building the national home, [the] *Nakba* (the catastrophe of 1948), and Diaspora that [are present] to this day. In addition, it has been subjected to Israeli restrictions throughout the longest occupation in modern history.⁷⁹

Issues related to the Israeli occupation and its effects on football in Palestine have been formally raised before FIFA by the PFA since at least 2010.⁸⁰ As noted, FIFA appointed a Monitoring Committee in 2015 under Tokyo Sexwale to investigate and advise on two matters in particular - the restrictions applied to movement of Palestinian footballers and equipment by Israeli security forces; and football clubs in the occupied West Bank playing in Israeli domestic leagues.⁸¹ The report was published in October 2017 after numerous delays and postponement.⁸² The first issue it examined is what the PFA broadly referred to as the 'free movement of footballers'.⁸³ This aspect was where the committee considered it covered the most ground and produced a positive reaction, notwithstanding some serious obstacles and challenges.⁸⁴ An organisational device was worked out whereby the possible movements of the players were to be announced 35 days ahead of time to the Palestinian authority, which then transmitted the information to the Israelis.⁸⁵ A FIFA circular provided for this

78. *Id.* at 250.

79. *Id.* at 247 (quoting ISSAM KHALIDI, ONE HUNDRED YEARS OF FOOTBALL IN PALESTINE 5 (2013)).

80. Sher, *supra* note 8.

81. *Id.*

82. Warshaw, *supra* note 11.

83. FIFA Monitoring Comm., *supra* note 9, at ¶¶ 2.1, 2.4.

84. *Id.* ¶ 6.1.

85. Broda, *supra* note 3, at 89.

arrangement for a test period of four months.⁸⁶ However, the actual achievements then and since are difficult to verify given the absence of further detail, and there continues to be many cases of Palestinian players being detained by Israeli security forces for long periods of time or barred from travel altogether.⁸⁷

The second issue examined five Israeli clubs from settlements in occupied territories playing under the IFA, which are: Hapoel Bik'at Hayarden - 3rd division (Bik'at Hayarden settlement); Beitar Ironi Ma'aleh Adumim - 4th division (Ma'aleh Adumim settlement); Beitar Givat Ze'ev - 4th division (Givat Ze'ev settlement); FC Ironi Ariel - 5th division (Ariel settlement); and Elitzur Ironi Yehuda - 5th division (Kiryat Arba settlement).⁸⁸ The PFA submitted that the international community considers that these territories belong to Palestine, referring to 'several UN resolutions and the International Court of Justice (2004)', with the IFA countering that the clubs concerned are located in "Area C", which according to the Oslo Accords is a territory that remains under full political and military control of Israel until the final and permanent agreement between both parties is negotiated.⁸⁹ This aspect of the report engaged a number of relevant provisions of the FIFA Statutes, notably Article 72.2: 'Member associations and their clubs may not play on the territory of another member association without the latter's approval'.⁹⁰ The report presented three options to the FIFA Council –

86. Letter from Jérôme Valcke, Sec'y Gen., Fédération Internationale de Football Ass'n, to FIFA members FIFA (Oct. 14, 2013), http://goldengate-law.com/pdf/fifa_circular/fifa_circular_1385.pdf. See also FIFA Monitoring Comm., *supra* note 9, at ¶¶ 3.1, 3.3. According to the Sexwale report, a technical entity—the Local Support Unit (LSU)—was to be established. Both the IFA and PFA were to provide concrete proposals related to the work of the LSU in terms of timeline, speeding up of the permit applications procedure, and realistic short-, mid-, and long-term gains.

87. Sher, *supra* note 8.

88. FIFA Monitoring Comm., *supra* note 9, at ¶ 2.5.

89. *Id.* ¶¶ 2.6–2.7. The PFA's reference is to Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 120, <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

90. FIFA Statutes 2022, *supra* note 14, art. 71.2. Note that FIFA periodically updates its Statutes which can change the numbering of these provisions, even though the wording remains the same. Thus, what was Article 72.2 under the 2018 version of the FIFA Statutes is now Article 71.2 under the most recent 2022 version. For the purposes of this article which quotes proceedings taking place under the 2018 version of the Statutes, Article 72.2 will be used. Other relevant provisions of the Statutes

1. The status quo remains in that the IFA continues to administer football on the territories under discussion (the settlements). Under this option it implies that there should be no action by FIFA until the Oslo discussions - or similar negotiations - involving facilitated or direct talks between the parties have resolved the Israel-Palestine conflict.
2. In line with Article 72.2 of the FIFA Statutes, which proclaim that member associations and their clubs may not play on the territory of another member association without the latter's approval, the IFA is given a warning by FIFA (yellow card) to rectify this issue by desisting to administer football on the territories concerned within a minimum period of six months. Failure to find a resolution within this period shall mean that the matter will revert to the FIFA Council for final decision-making.
3. Continued discussions between the IFA and the PFA should be encouraged based purely on football issues aimed at finding accommodation on how to agree amongst themselves.⁹¹

Closing remarks concluded that the Monitoring Committee could only recommend, and that it was for the FIFA Council to decide which option to act on.⁹² FIFA was cautioned that it must be aware of, and sensitive to, its obligations under international law.⁹³ The Committee additionally stated: 'What the FIFA leadership cannot any longer avoid is taking a decision on this matter.'⁹⁴ It has been noted that this final comment 'presumably, did not mean FIFA decided to do nothing',⁹⁵ but that is precisely what occurred. The FIFA Council

discussed in the Sexwale report include: (1) Article 11.1 [same in 2022 updated version]: "Only one association shall be recognised as a member association in each country"; and (2) Article 73 [Article 72 in the updated 2022 version]: "[A]uthorisation must be given by both member associations" to take part in competitions on a member association's territory. For the 2018 version of the Statutes, see Fédération Internationale de Football Ass'n, FIFA Statutes (August 2018 ed.), <https://digitalhub.fifa.com/m/2a486a4bd551917b/original/whhncbdzio03cuhmwfx-a-pdf.pdf> [hereinafter FIFA Statutes 2018].

91. FIFA Monitoring Comm., *supra* note 9, at ¶¶ 5.1–5.3.

92. *Id.* ¶ 6.4. The remarks note also that this could include a mixture of the three options or new options from within the Council.

93. *Id.*; see also *id.* ¶ 1.9 (noting that FIFA "is not an island by itself; and should not be unmindful of its global obligations in terms of international law").

94. *Id.* ¶ 6.4.

95. Warshaw, *supra* note 11.

decided to refrain from imposing any sanctions or other measures on the IFA, and declared the matter closed.⁹⁶ Sexwale defended the report, insisting his Monitoring Committee carried out its mandate by studying the situation and presenting options to the FIFA Council, which it did not act upon.⁹⁷ But while the FIFA Council failed to act on the report, this was two of the three options that it was expressly presented with as recommendations. As Daniel Sher comments, ‘In effect, FIFA took the first option’.⁹⁸ He further observes: ‘Remarkably, only the second option of the three actually proposes applying FIFA’s own rules – and even then, does so only in the sense of giving a warning. No actual sanction, such as suspension of those football clubs or of the Israeli Football Association itself, is mentioned.’⁹⁹

It seems the report was watered down from a previous, more strongly worded draft, that recommended suspending Israel from FIFA until the situation was rectified.¹⁰⁰ Sher notes also that the report raised the Oslo Accords and the three zones of the West Bank ‘without analysis or discussion’, failing to consider that “Area C”, where the settlements and clubs in question are located is still occupied Palestinian territory even if under Israeli control.¹⁰¹ An expert legal opinion by Prof Andreas Zimmermann from April 2017, six months before publication of the report, had also stressed that for purposes of international law the territory in question (including Area C of the West Bank and East Jerusalem) continues to form part of the territory of Palestine, the conclusion of the Oslo Agreements notwithstanding.¹⁰² Ultimately, the Sexwale report accepted the IFA side in submitting inaction as an option, as did the FIFA Council in choosing this option. Neither the Sexwale report nor the FIFA Council acknowledged that maintaining the status quo was an illegal option because doing so

96. Reuters, *supra* note 12.

97. Andrew Warshaw, *Sexwale says Israel/Palestine task force did its job, but did FIFA do theirs?*, INSIDE WORLD FOOTBALL (Nov. 1, 2017), <https://www.insideworldfootball.com/2017/11/01/sexwale-says-israelpalestine-task-force-job-fifa/>.

98. Sher, *supra* note 8.

99. *Id.*

100. Warshaw, *supra* note 11.

101. Sher, *supra* note 8.

102. Andreas Zimmermann, *Legal Status of Israeli Football Clubs Located in the Occupied Palestinian Territory and Ensuing Legal Consequences for FIFA* 11 (Apr. 29, 2017), <https://apidiakoniasse.cdn.triggerfish.cloud/uploads/sites/2/2021/07/legal-status-of-israeli-football-clubs-located-in-the-occupied-palestinian-territory-and-ensuing-legal-consequences-for-fifa.pdf>.

would be a breach of FIFA Statutes, in support of wider breaches of international law. As the Zimmermann opinion concluded:

this implicit recognition of Israeli settlement clubs so far, by FIFA, amounts to an implicit recognition that those Israeli settlements are legal under international law since FIFA, contrary to the position of the international community, thereby implicitly takes the position that the territory in question constitutes Israeli territory in disregard to the right of the Palestinian people to self-determination. FIFA thereby aids and abets the overall settlement enterprise.¹⁰³

The outcome of the Sexwale report was appealed by the PFA to the CAS on two grounds.¹⁰⁴ The first related to the FIFA Congress decision in May 2017 not to vote on the PFA proposal, and to instead give the FIFA Council until its meeting in October 2017 to decide the matter. The second related to the subsequent October 2017 decision to refrain from imposing any sanctions or other measures on the IFA, and declare the matter closed and not subject to any further discussion until the legal and/or de facto framework had changed. In the May 2017 decision, the CAS proceedings quoted from the PFA President, Mr. Jibril Rajoub, in an address to the FIFA Congress:

We are not looking for the suspension or expulsion, but rather the full recognition of our rights including that no Israeli clubs play in our territory as established in Article 72.2 and Article 3 of the FIFA Statutes. This affects clubs playing on Palestinian land, forcefully stolen from its Palestinian owners. The racism and restrictions [are] still affecting us and very little improvement has been achieved. None of you will accept that clubs from another association play in your territory and this is exactly what we are looking for: to stop all football and football-related activities run by IFA in Palestinian internationally recognized territories which was approved recently last December in the Security Council 233.¹⁰⁵

The FIFA President then passed the floor to the IFA President, Mr. Ofer Eini. His intervention is not recorded verbatim, but it is recounted as:

103. *Id.* at 23.

104. Palestine Football Ass'n v. FIFA, *supra* note 13, at ¶¶ 111–12.

105. *Id.* ¶ 16.

[T]he IFA President essentially criticized the PFA's President intervention for being political and for dealing not with football but with the question of Israel's boundaries and declared that the Monitoring Committee had made some achievements, but that the Congress of FIFA did not have the power to establish political borders. He concluded his intervention by saying that the PFA was trying to prevent five or six youth teams from playing football and that the FIFA Congress should aim at having everybody playing football everywhere and use football as a means to bring people together in peace.¹⁰⁶

FIFA subsequently proposed to defer to the next Congress in October 2017, because a consolidated report of the FIFA Monitoring Committee was not yet ready and more time was needed to evaluate and make a decision. The deferral was significant since ahead of the next Congress, FIFA commissioned the Swiss law firm *Scherrer Jenny & Partner* to write a legal opinion to advise the FIFA Council on certain issues related to the IFA-PFA situation, with the specific question – 'What would be the most favourable approach for the FIFA Council to take on this matter in the light of the FIFA Statutes and other relevant FIFA rules and regulations as well as Swiss association and relevant international law?'¹⁰⁷ The "Scherrer Opinion" then advised that FIFA should: (i) refrain from taking any decision that would imply or state explicitly that the FIFA Council sides with one or the other position of the parties involved; (ii) refrain from taking any decision or other action that would interfere with the status quo of football in the region concerned; and (iii) take a fundamental decision according to which it will not deal with matters related to this particular topic anymore until the legal and/or de facto framework conditions on intergovernmental level have changed significantly.¹⁰⁸

This is, of course, precisely what FIFA would decide at its October 2017 Congress, with the Scherrer Opinion, as described by the CAS, even 'suggesting the possible wording of a decision for the FIFA Council to adopt'.¹⁰⁹ As a result, the FIFA Council decision not to sanction the IFA in October 2017 was crafted by the two Swiss lawyers who wrote the Scherrer Opinion as the 'most favourable

106. *Id.* ¶ 17.

107. *Id.* ¶¶ 25–26. The Scherrer Opinion was written by Dr. Urs Scherrer and Dr. Remus Muresan.

108. *Id.* ¶ 27.

109. *Id.* ¶ 28.

approach for FIFA to take', and was decidedly not an independent legal opinion weighing the relevant merits of the claim.¹¹⁰ It may also be noted that despite the brief, the Scherrer Opinion was not arrived at 'in light of the FIFA Statutes', failing to acknowledge that following its advice would sustain a breach of Article 72.2 of the FIFA Statutes, as well as 'relevant international law'.¹¹¹ In addition, the first element of its advice is contradictory – refraining from taking any decision is to side with the position of one of the parties involved, the IFA. This had been set out also by Prof Zimmermann:

There is obviously an important inherent value in keeping politics out of sports. Yet, any decision by FIFA not to follow the international community's recognition of the West Bank and East Jerusalem as occupied Palestinian territory, and to disregard the illegality of the Israeli settlements under international law, would itself be quintessentially political and would contribute to the continued violation of international law. By not taking action, it would be FIFA that would take a political decision.¹¹²

On the first appeal, the CAS panel determined that the FIFA Congress was within its rights in acting to postpone the PFA's proposal in May 2017, since it was ultimately a procedural motion rather than a substantive one that had respected all relevant procedural rules and members' rights.¹¹³ The Panel emphasised that it had 'not been asked to address the underlying merits' of the PFA proposal, but only whether Congress' decision to not vote on the PFA proposal was valid or not, holding that it was.¹¹⁴ The second appeal dealt with FIFA's October 2017 decision. CAS categorised the two issues before FIFA as the "Territory Obstruction Issue", i.e. the movement of Palestinian

110. *Id.* ¶ 26 ("The [CAS] Panel notes that the Scherrer Opinion is not an independent 'legal expert opinion' (and was never characterized by FIFA as such) but purports only to offer legal advice for FIFA's internal use, with recommendations as to how to proceed with the IFA-PFA situation.").

111. FIFA Monitoring Comm., *supra* note 9, at ¶ 4.3 ("[M]ember associations and their clubs may not play on the territory of another member association without the latter's approval") (quoting Article 72.2 of the 2018 FIFA Statutes, now Article 71.2 of the 2022 Statutes).

112. Zimmermann, *supra* note 102, at 24.

113. Palestine Football Ass'n v. FIFA, *supra* note 13, at ¶¶ 73, 90. The CAS Panel was composed of Prof. Massimo Coccia (Italy), President; Mr. José Juan Pintó (Spain); and Prof. Philippe Sands QC (United Kingdom).

114. *Id.* ¶ 98.

football players, officials and equipment within, into and out of territories defined by several UN resolutions as “Occupied Territories”; and the “Israeli Clubs Issue”, i.e. the jurisdiction over five (which at that point had become six) Israeli amateur clubs located in Israeli settlements within the Occupied Territories and playing in IFA-sanctioned championships.¹¹⁵ It summarised: ‘The Panel finds that, in essence then, FIFA recognized that it had before it an issue highly entangled with a complex public international law matter and that, as a private association governing the sport of football, it did not believe itself to be capable of dealing with the issue, opting instead to refrain from doing so until the external Israel-Palestine conflict on the West Bank issue advanced.’¹¹⁶ Again, ‘to refrain from doing so’ is to entangle itself in public international law matters by supporting an illegal situation. Any supposed complexity is self-inflicted, given international law is clear on the illegality of the settlements and by extension the settlement teams.

An important limitation to the October 2017 FIFA Council decision emerged in the CAS proceedings. The PFA argued that it was not within the FIFA Council’s scope of authority to instruct the FIFA Congress that a subject matter is closed and no longer subject to discussion, nor to restrict any other FIFA body from imposing sanctions or measures in relation to that matter.¹¹⁷ In the course of the hearing, FIFA stated that its decision ‘was confined to the FIFA Council only’.¹¹⁸ That statement appeared to surprise the PFA as an important concession, and one the Panel noted ‘commits the Respondent [FIFA] and may be relied upon by the Appellant [PFA] in the future.’¹¹⁹ It meant that the PFA had ‘misread’ the FIFA Council decision which ‘did not in any manner instruct the FIFA Congress or any other FIFA bodies in relation to the subject matter’. The FIFA Council would only refrain from “requesting” any other FIFA body to impose sanctions on the IFA or take other measures; it does not indicate that it prohibited or limited said FIFA bodies from doing so if they have the authority to do it under FIFA rules.¹²⁰ Furthermore, the FIFA Council could revisit the matter in the future and decide to reverse itself and take another approach.¹²¹

115. *Id.* ¶ 6.

116. *Id.* ¶ 106.

117. *Id.* ¶ 107.

118. *Id.*

119. *Id.*

120. *Id.* ¶ 108.

121. *Id.* ¶ 109.

The CAS panel concluded that, by deciding not to act, the FIFA Council had exercised its discretion in a valid manner under the FIFA Statutes.¹²² But since the decision does not affect the prerogatives of the FIFA Congress but only concerns the stance of the FIFA Council, it does not violate the PFA's statutory right under Article 13(b) and 28.1 of the FIFA Statutes to 'draw up proposals for inclusion in the agenda of the Congress'. Indeed, as FIFA confirmed at the hearing, the PFA remained at liberty to do so, provided that they fall within the scope of authority of the FIFA Congress.¹²³ It noted also of the decision that although it was an actual decision subject to appeal, it 'appears more in the nature of a policy statement than a decision that is intended to legally bind the Council for the future.'¹²⁴ What emerges from the CAS proceedings is that the 2017 decision related only to the FIFA Council, not the FIFA Congress, and in addition did not bind the Council (but served to guide it). It did not limit other FIFA bodies, including disciplinary bodies - 'The decision does not instruct other FIFA bodies to refrain from taking any disciplinary actions or other measures; it only indicates that the FIFA Council itself would refrain from requesting any other FIFA body to do so.'¹²⁵ As a result, the PFA was able to re-introduce its claims, including at the 74th FIFA Congress in Bangkok in May 2024 which led to the current proceedings before the Disciplinary Committee. However, while the Disciplinary Committee can impose various sanctions on member associations,¹²⁶ the ultimate decision to suspend or expel a member association rests with the FIFA Congress upon recommendation of the Council.¹²⁷

The issues raised by the PFA are now being reviewed by the FIFA Disciplinary Committee which, as affirmed by CAS, is not governed by the 2017 decision of the FIFA Council. This has been announced as two 'new' investigations - the 'specific claim by the PFA that clubs based in illegal settlements on occupied territory have been allowed to

122. *Id.* ¶ 111.

123. *Id.* ¶ 112.

124. *Id.* ¶ 109.

125. *Id.* ¶ 52(b)(ii); *see also id.* ¶ 108 ("The FIFA Council took the Second Appealed Decision for itself only and, as such, its decision only concerns the Council and does not limit the other FIFA bodies, such as the FIFA Congress *or disciplinary bodies*." (emphasis added)).

126. *See* FIFA Statutes 2018, *supra* note 90, art. 53.2 ("The Disciplinary Committee may pronounce the sanctions described in the FIFA Disciplinary Code on member associations, clubs, officials, players, football agents and match agents.").

127. *Id.* art. 53.3 ("These provisions are subject to the disciplinary powers of the Congress and Council with regard to the suspension and expulsion of member associations.").

take part in competitions licensed by the Israeli FA'; and the 'alleged offence of discrimination raised by the Palestine Football Association'.¹²⁸ Of course, these questions are not new. Here, FIFA is back where it started in 2015 and appears to be going through the same motions - the assessment would 'have to allow for inputs and claims of both member associations' with no fixed date for the investigations to be concluded. The FIFA Council will then take advice before acting on the outcomes.¹²⁹ But we should nevertheless expect a different outcome. In 2017, the FIFA Council declared the matter closed 'until the legal and/or de facto framework has changed'. The legal framework has not so much changed - the settlement teams breached FIFA Statutes then as now - but it has evolved since the Sexwale report and outcome. In the first investigation in 2015-17, the PFA raised UN Security Council 2334 which reads in its opening paragraph: 'Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law'.¹³⁰ In its October 2017 decision, the FIFA Council addressed this point by 'taking note' of UNSC resolution 2334 but stated that 'it should not take any position on [its] contents'.¹³¹ It is difficult to understand exactly what position there was for FIFA to take, given the relevant aspect of the resolution's contents - that the settlements and by extension settlement teams have no legal validity and constitute a violation of international law - is not open to interpretation. This has since been reaffirmed in the 2024 Advisory Opinion of the ICJ, where the Court emphasised that 'the Israeli settlements in the West Bank and East Jerusalem, and the regime associated with them, have been established and are being maintained in violation of international

128. Paul MacInnes, *Fifa investigates Israeli 'discrimination' after Palestinian FA calls for sanctions*, THE GUARDIAN (Oct. 3, 2024), <https://www.theguardian.com/football/2024/oct/03/fifa-investigation-israel-palestine-discrimination>.

129. *Id.* (describing the procedural steps leading to a FIFA Council decision).

130. S.C. Res. 2334, ¶ 1 (Dec. 23, 2016) (also noting that the settlements are "a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace").

131. Palestine Football Ass'n v. FIFA, *supra* note 13, at ¶ 28 ("The FIFA Council takes note of the documents adopted by international governmental bodies concerning the relationship between Israel and Palestine - such as United Nations Security Council Resolution 2334, which comprises recommendations without sanctions - but has decided that it should not take any position on their contents.").

law'.¹³² As Zimmermann emphasised in relation to the 2015-17 process, so it is again in 2024-25:

Although FIFA enjoys a degree of discretion with regard to disciplinary sanctions, it is important to note that the question of Israeli settlement clubs does not concern complex factual issues, the question whether IFA violates Art. 72, para. 2...being a purely legal one. Accordingly, FIFA's discretion on the matter is considerably reduced, to say the least.¹³³

Hence, the issue is not political or unrelated to football – it is legal, and pertaining specifically to the meaning of 'territory' for the purposes of understanding 'the territory of another member association' under Article 72.2 of the FIFA Statutes. As the ICJ Advisory Opinion held, 'the maintenance and expansion of settlements...amount to annexation of large parts of the Occupied Palestinian Territory'.¹³⁴ The Advisory Opinion thus re-affirms the meaning of Palestinian 'territory' with regard to applying Article 72.2 as inclusive of the territory on which the illegal settlements have been built and maintained, with the consequent obligation to seek the PFA's approval for football teams to play there. That approval has not been sought or gained, and the IFA is in breach. FIFA is obliged under Article 2.d of the FIFA Statutes 'to prevent infringements of the Statutes'.¹³⁵ It is for the FIFA Disciplinary Committee to reach the correct – and inexorable – outcome on this question, and provide the FIFA Council with only one option, which is to request that the Congress vote to suspend the IFA until the IFA-affiliated teams in the illegal settlements are disbanded.

This is confirmed in a recent statement of 3 October 2024 by a number of UN Special Rapporteurs, which directly addressed FIFA regarding illegal settlement teams in the OPT in light of the ICJ Advisory Opinion.¹³⁶ The statement noted that 'at least eight football clubs have developed or have been identified as playing in Israeli colonial settlements of the occupied West Bank', as well as a ninth club that 'plays some home games in a settlement'.¹³⁷ It is noteworthy that

132. ICJ Advisory Opinion, *supra* note 19, at ¶ 155.

133. Zimmermann, *supra* note 102, at 24.

134. ICJ Advisory Opinion, *supra* note 19, at ¶ 173.

135. FIFA Statutes 2022, *supra* note 14, art. 2(d) ('The objectives of FIFA are: . . . (d) to control every type of association football by taking appropriate steps to prevent infringements of the Statutes . . .').

136. U.N. Off. of the High Comm'r for Hum. Rts., *supra* note 20.

137. *Id.*

as with the settlements themselves, the number of settlement football teams is continually expanding. The UN experts found that '[s]uch integration and conduct within the IFA amounts to recognising as legal the situation arising from the unlawful presence of Israel in the occupied Palestinian territory.'¹³⁸ It noted that this was 'in stark violation of international law, as reiterated by the International Court of Justice in its Advisory Opinion of 19 July 2024'.¹³⁹ In the statement, the UN Special Rapporteurs 'call on the FIFA Council, who will examine this matter during its meeting in October 2024, to ensure that its decisions are in conformity with non-derogable norms of international law'.¹⁴⁰ The Disciplinary Committee can only recommend suspension of the IFA for violation of the FIFA Statutes in relation to the settlement clubs. The FIFA Council must then recommend suspension to the FIFA Congress, until the violation is remedied. To do otherwise, including failing to take any action, is to uphold a breach of its own Statutes and engage in an implicit act of recognition of the illegal situation.

IV. PFA CLAIM 2: DISCRIMINATION UNDER ARTICLE 4.1 OF THE FIFA STATUTES

Article 4.1 of the FIFA Statutes reads: 'Discrimination of any kind against a country, private person or group of people on account of race ... is strictly prohibited and punishable by suspension or expulsion.'¹⁴¹ Article 4.1 has a long history – FIFA's 1960 Rome Congress passed a resolution that national associations could not practice racial discrimination in the context of apartheid South Africa.¹⁴² FIFA would suspend South Africa in 1961, and eventually expel it in 1976.¹⁴³ The suspension was driven by newly independent African countries such as Ghana and Nigeria, who were joining FIFA in this period and making

138. *Id.*

139. *Id.*

140. *Id.*

141. FIFA Statutes 2022, *supra* note 14, art. 4.2.

142. See Chris Bolsmann, *White Football in South Africa: Empire, Apartheid and Change, 1892-1977*, 11 SOCCER & SOC'Y 29, 39 (2010) (describing the anti-apartheid campaign leading to FIFA's resolution and noting that the Football Association of Southern Africa (FASA) was given twelve months to comply).

143. Gustav Venter, *Promise Unfulfilled or Too Much Expected: South Africa's Historical Relationship with the FIFA World Cup, 1992-2018*, 23 SOCCER & SOC'Y 747, 748 (2022).

their views heard.¹⁴⁴ There was a period of ‘brief reprieve’ in 1963, where South Africa’s FIFA suspension was lifted thereby allowing the country into the qualification draw for the 1966 World Cup in England. When South Africa was drawn with Australia, North Korea and South Korea, South African officials intended to field a “non-white” team against the two Asian nations, and a “white” team against Australia. South Africa’s suspension was then re-imposed at FIFA’s 1964 Congress, ‘thereby ending the country’s hopes of bringing this bizarre plan to fruition.’¹⁴⁵ South Africa’s expulsion was until such time as ‘racial discrimination (apartheid) had ceased to exist’,¹⁴⁶ which would last until 1992. It has been noted that the 1961 decision was somewhat pioneering, as ‘the first major indictment of the apartheid regime, and it was done in the world’s most popular sport.’¹⁴⁷ As Nelson Mandela would later comment to FIFA - ‘I want to thank you for your courage and support against racism at a time when many were still hesitant.’¹⁴⁸

Discrimination did not form an express part of the 2015-17 FIFA Monitoring Committee report, which as noted engaged instead with the issue of freedom of movement. The report provided a separate section on relevant articles of the FIFA Statutes, but Article 4.1 was not one of them.¹⁴⁹ However, discrimination was raised by the PFA in the subsequent CAS proceedings – it noted that the ‘PFA Proposal[s] emerge as an act to stop the discrimination that PFA its footballers and

144. Shyamantha Asokan, *Defining Moment: South Africa is suspended from world football, September 1961*, FIN. TIMES (Aug. 22, 2009), <https://www.ft.com/content/bfdc8150-8c57-11de-b14f-00144feabdc0>. See also J. Simon Rofe & Alan Tomlinson, *The Untold Story of FIFA’s Diplomacy and the 1966 World Cup: North Korea, Africa and Sir Stanley Rous*, 42 THE INT’L HIST. REV. 505, 514 (2019) (noting that the most notable outcome of the 1961 All African Peoples Conference meeting in Cairo was a “Resolution on South Africa,” which called for the “boycotting of South African goods and severing of diplomatic relations, and, in its final clause, football”). The resolution also stated that the conference “welcomes the move for barring South Africa from the Federation of International Football Associations.” The decision to suspend South Africa from international football was then taken on 28-29 September 1961 by 67 FIFA Member States, who had gathered in London to consider the growing problem of their stance on South Africa’s apartheid regime.

145. Venter, *supra* note 143, at 748.

146. Paul Darby, *Stanley Rous’s ‘Own Goal’: Football Politics, South Africa and the Contest for the FIFA Presidency in 1974*, 9 SOCCER & SOC’Y 259, 269 (2008) (quoting FIFA, *Minutes of the XLth Ordinary Congress*, Montreal 16 July 1976).

147. Asokan, *supra* note 144 (quoting Peter Alegi).

148. In *Quotes: Mandela and Football*, INSIDE FIFA (July 18, 2016), <https://inside.fifa.com/news/quotes-mandela-and-football-2239872>.

149. FIFA Monitoring Comm., *supra* note 9, at § 4 (“Relevant articles of the FIFA Statutes”).

officials are facing everyday as a result of an illegal occupation of the Palestinian territory by the Israeli Defense Forces'.¹⁵⁰ The CAS Panel responded that it 'has difficulty seeing how the procedural act of postponing and delegating to the Council the decision on the PFA proposal can – in and of itself – be said to determine a violation of human rights or discrimination.'¹⁵¹ Thus, the issue of discrimination was not considered by the CAS Panel, whose remit extended only to determining the legal validity of the FIFA Council decisions which had not addressed the issue of discrimination.

The FIFA Disciplinary Committee, by contrast, has this remit, having been mandated in October 2024 to initiate an investigation into the alleged offence of discrimination raised by the PFA.¹⁵² It is apparent from the PFA quote above that there is an element of crossover with the 2015-17 report, to the extent that this engaged with the "Territory Obstruction Issue" i.e. the movement of Palestinian football players, officials and equipment. Thus, while the question of the settlement teams is a specific issue, the discrimination claim pertains to the overall situation in the OPT and relates to the viability, and indeed survival, of Palestinian football. Nevertheless, it is also limited to discrimination and does not refer to wider breaches of international law. In that regard, Article 4.1 of the FIFA Statutes may be contrasted with Article 3 on Human Rights, in which 'FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.' Unlike Article 4.1, Article 3 provides no reference to suspension or expulsion for human rights violations.¹⁵³ In fact, Article 3 is addressed to FIFA only and relates to the conduct of the Association, not its Member States. Article 4.1 on the other hand is addressed to Member States, and provides specifically for suspension or expulsion in relation to practices of discrimination. But it is silent on the circumstances in which such action is to be triggered.

150. Palestine Football Ass'n v. FIFA, *supra* note 13, at ¶ 98.

151. *Id.*

152. *FIFA Council takes key decisions on FIFA Member Associations and upcoming FIFA competitions*, INSIDE FIFA (Oct. 3, 2024), <https://inside.fifa.com/about-fifa/organisation/fifa-council/media-releases/fifa-council-takes-key-decisions-member-associations-upcoming-competitions>.

153. See Sanya Mansoor, *These Are the Countries FIFA Has Ever Banned From the World Cup*, TIME (Nov. 17, 2022), <https://time.com/6234776/countries-banned-world-cup-russia/> (noting that banning teams for human rights abuses may set a "thorny precedent" that could be applied unevenly, since many countries engage in human rights abuses).

Despite its origins in relation to South Africa, Article 4.1 does not refer expressly to apartheid, providing instead for practices of ‘discrimination’. It indicates that discrimination on the basis of race is *punishable* by suspension or expulsion, but it does not mandate this. Hence, there must be a threshold implicit in Article 4.1 in which discrimination would be of such a severity or degree as to require suspension or expulsion from FIFA. A further aspect of note is that Article 4.1 contains both an internal and inter-State dimension – discrimination on account of race may be against an individual or group of persons, but it may also be against ‘a country’. The apartheid regime in South Africa engaged in both, via discrimination towards its own people, as well as in its actions in Namibia where it applied policies of apartheid under the mandate it inherited from the League of Nations – the 1971 Advisory Opinion of the ICJ on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* would find the continued presence of South Africa in Namibia to be illegal.¹⁵⁴ In sum, not all discriminatory practices may lead to suspension or expulsion under Article 4.1. But action to suspend or expel must apply to policies and practices of discrimination that reach a certain threshold.

The UN General Assembly’s December 2022 request to the ICJ for an Advisory Opinion expressly asked the Court to investigate Israel’s ‘discriminatory legislation and measures’.¹⁵⁵ Importantly, in their written statements to the ICJ in July 2023, both South Africa and Namibia, States with direct experience of apartheid rule, concluded that the situation in the OPT amounts to apartheid.¹⁵⁶ As South Africa stated to the Court: ‘Israel...continues to impose an institutionalised regime of systematic racial oppression and discrimination against the people of Palestine which satisfies the prevailing evidentiary standard of the international crime of apartheid’.¹⁵⁷ South Africa would reiterate this position in December 2024 in *South Africa v Israel*, which alleges breaches of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) in Gaza: ‘The

154. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, <https://www.icj-cij.org/case/53>.

155. U.N. GAOR, 77th Sess., U.N. Doc. A/77/247, ¶ 18(a) (Dec. 30, 2022).

156. Written Statement of South Africa to the ICJ, ¶ 101 (July 25, 2023), <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-14-00-en.pdf>; Written Statement of Namibia to the ICJ, ¶ 120 (July 21, 2023), <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230721-wri-01-00-en.pdf>.

157. Written Statement of South Africa, *supra* note 156, ¶ 101.

institutionalised regime of discriminatory laws, policies and practices applied by Israel subjects Palestinians to what constitutes an apartheid regime'.¹⁵⁸ In its subsequent July 2024 Advisory Opinion, the ICJ held:

The Court observes that Israel's legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities. For this reason, the Court considers that Israel's legislation and measures constitute a breach of Article 3 of CERD.¹⁵⁹

Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) condemns racial segregation and apartheid.¹⁶⁰ The Court left it open to interpretation as to whether this constituted a finding of racial segregation, apartheid, or both.¹⁶¹ A number of ICJ judges duly interpreted it as a finding of apartheid, or analogous to apartheid. As President Salam held: 'Israel's commission of inhumane acts against the Palestinians as part of an institutionalized régime of systematic oppression and domination, and its intention to maintain that régime, are undeniably the expression of a policy that is tantamount to apartheid.'¹⁶² Similarly, Judge Tladi stated: 'The Court was correct to find that the policies and practices of

158. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings & Request for Provisional Measures, ¶ 35 (Dec. 29, 2023), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>; see also *id.* ¶ 4 (describing "a background of apartheid, expulsion, ethnic cleansing, annexation, occupation, discrimination, and the ongoing denial of the right of the Palestinian people to self-determination").

159. ICJ Advisory Opinion, *supra* note 19, at ¶ 229.

160. International Convention on the Elimination of All Forms of Racial Discrimination art. 3, 660 U.N.T.S. 195 (Dec. 21, 1965) ("States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."). On the history of Article 3 and its applicability in the context of the OPT, see David Keane, *Palestine v Israel and the Collective Obligation to Condemn Apartheid under Article 3 of ICERD*, 23 MELB. J. INT'L L. 251 (2022).

161. See David Keane, *Racial Segregation and Apartheid in the ICJ Palestine Advisory Opinion*, EJIL: TALK! (July 31, 2024), <https://www.ejiltalk.org/racial-segregation-and-apartheid-in-the-icj-palestine-advisory-opinion/> (noting ambiguity in whether the Court found racial segregation, apartheid, or both).

162. ICJ Advisory Opinion, *supra* note 19, Separate Opinion of President Salam, ¶ 29, <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-01-en.pdf>.

Israel in the OPT amount to apartheid'.¹⁶³ Victor Kattan notes of the Advisory Opinion that it provides 'an authoritative and comprehensive factual description of an institutionalised regime of systematic oppression and domination', fulfilling the constituent elements of the crime against humanity of apartheid.¹⁶⁴ This includes enforced demographic change with the concomitant denial of Palestinian self-determination, a foundational feature and hallmark of apartheid policies.¹⁶⁵

A number of other sources have assessed the systematic nature of the discriminatory regime in the OPT as apartheid, including *Yesh Din*,¹⁶⁶ *B'Tselem*,¹⁶⁷ *Human Rights Watch*¹⁶⁸ and *Amnesty International*.¹⁶⁹ Even senior Israeli diplomatic and security figures, including former Israeli ambassadors to South Africa and the former head of Mossad, have characterised the situation in the OPT as apartheid.¹⁷⁰ A 2022 report of the UN Special Rapporteur on human rights in the OPT, Michael Lynk, asked: 'Is this situation now apartheid?' and answered:

164. *Id.*, Separate Opinion of Judge Tladi, ¶¶ 5, 41, <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-14-en.pdf>.

163. Victor Kattan, *Apartheid or Systemic Discrimination? A Connotative Reading of the ICJ's Advisory Opinion*, VERFASSUNGSBLOG (Oct. 17, 2024), <https://verfassungsblog.de/apartheid-or-systemic-discrimination/>.

165. *Id.* ("Demographic engineering was a hallmark of the National Party's apartheid policies in South Africa...To secure Jewish domination over the Occupied Palestinian Territory (OPT) and the concomitant denial of Palestinian self-determination, well-documented policies altering its demographic composition have been instituted by successive Israeli governments of various ideological persuasions since 1948.").

166. Yesh Din, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 9, 2020), <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>.

167. B'Tselem, *This is Apartheid* (Jan. 12, 2021), <https://www.btselem.org/apartheid>.

168. Omar Shakir et al., *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, HUM. RTS. WATCH (Apr. 27, 2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

169. Amnesty International, *Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (Feb. 1, 2022), <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>.

170. Ilan Baruch & Alon Liel, *It's Apartheid, say Israeli Ambassadors to South Africa*, GROUND UP (June 8, 2021), <https://groundup.org.za/article/israeli-ambassadors-compared-israel-south-africa/>; Chris McGreal, *Israel imposing Apartheid on Palestinians, says former Mossad chief*, THE GUARDIAN (Sept. 7, 2023), <https://www.theguardian.com/world/2023/sep/06/israel-imposing-apartheid-on-palestinians-says-former-mossad-chief>.

‘the Special Rapporteur has concluded that the political system of entrenched rule in the occupied Palestinian territory...satisfies the prevailing evidentiary standard for the existence of apartheid.’¹⁷¹ In September 2024, a number of UN Special Procedures issued a statement warning that the international order was ‘on a knife’s edge’ and describing the situation in the OPT as an ‘apartheid regime’.¹⁷² As a result, a critical mass of UN Special Procedures have now expressly concluded that the situation in the OPT amounts to apartheid – some 24 mandates in total. Most recently, a January 2026 report by the UN High Commissioner for Human Rights chronicles ‘the intensification of decades of severe racial discrimination by Israel in occupied West Bank’, and warns that Israel is violating international law requiring States to prohibit and eradicate racial segregation and apartheid.¹⁷³ The High Commissioner, Volker Türk, made a direct comparison to apartheid South Africa: ‘This is a particularly severe form of racial discrimination and segregation, that resembles the kind of apartheid system we have seen before.’¹⁷⁴

How these discriminatory policies and practices impact on football in Palestine forms the substance of this aspect of the PFA claim. Although the PFA legal assessment to the FIFA Disciplinary Committee has not been published, there is some reporting on what is in it. It involves ‘all the same violations we raised over a decade ago’ according to the PFA, although it notes that the situation is now far

171. Human Rights Council Res. 49/87, U.N. Doc. A/HRC/49/87, ¶ 52 (Aug. 12, 2022).

172. U.N. Off. of the High Comm’r for Hum. Rts., *UN experts warn international order on a knife’s edge, urge States to comply with ICJ Advisory Opinion*, ¶¶ 6–8 (Sept. 18, 2024), <https://www.ohchr.org/en/statements/2024/09/un-experts-warn-international-order-knives-edge-urge-states-comply-icj-advisory> (noting the experts’ call on every political leader to bring “an end to Israel’s illegal occupation, apartheid, oppression of, and onslaught against the Palestinian people”).

173. U.N. Off. of the High Comm’r for Hum. Rts., *UN report chronicles intensification of decades of severe racial discrimination by Israel in occupied West Bank* (Jan. 7, 2026), <https://www.ohchr.org/en/press-releases/2026/01/un-report-chronicles-intensification-decades-severe-racial-discrimination> (referring to U.N. Off. of the High Comm’r for Hum. Rts., *Thematic Report - Israel’s discriminatory administration of the occupied West Bank, including East Jerusalem* (Jan. 7, 2026), <https://www.ohchr.org/en/documents/thematic-reports/thematic-report-israels-discriminatory-administration-occupied-west-bank>).

174. *Id.* The report has been widely reported in the media. See, e.g., Shaimaa Khalil & David Gritten, *UN rights chief says Israeli policy in West Bank ‘resembles apartheid system’*, BBC (Jan. 7, 2026), <https://www.bbc.com/news/articles/cly9erv6p15o>.

worse.¹⁷⁵ As highlighted by the Vice-President of the PFA, Susan Shalabi: ‘Our footballers and our football infrastructure are undergoing the same genocide that all Palestinians are suffering. We lost so many footballers, almost every football structure in Gaza is destroyed and we have evidence that the Israeli Football Association is complicit’.¹⁷⁶ The *South Africa v. Israel* case captured how football stadiums in Gaza are no longer used for sport and have instead become a site where extreme human rights violations occur: ‘Videos published by Israeli media on Christmas Day appeared to show hundreds of Palestinians, rounded up inside Al Yarmouk football stadium in Gaza City, including children, older people and persons with disabilities, being forced to strip to their underwear in degrading conditions.’¹⁷⁷ It was shortly after that footage emerged that the PFA called again on FIFA to sanction the IFA.¹⁷⁸ According to Nader al-Jayooshi of the Palestinian Olympic Committee, in a context of ‘the entire collapse of sport’, it is ‘the clubs and facilities for football, once Gaza’s overarching passion, that have borne the brunt of the destruction.’¹⁷⁹ Meanwhile, the PFA was able to document IFA members posting their support for the destruction of Gaza on social media.¹⁸⁰

The PFA legal assessment further cites impediments to football across Palestine, as raised in 2015-17, such as the destruction of pitches and routine denial of planning permission for new ones, movement and travel restrictions via checkpoints and the Wall, and attacks on the PFA headquarters and the PFA President who has been detained twice and threatened with interrogation.¹⁸¹ Palestinian clubs such as the Jenin Club and Nurshams club in the West Bank have been damaged

175. Ben Gelblum, *FIFA Urged to Ban Israel this Week for Killing Hundreds of Footballers and Destroying Almost Every Sporting Space in Gaza*, BYLINE TIMES (Aug. 30, 2024), <https://bylinetimes.com/2024/08/30/fifa-israel-ban-palestinian-football/>; RTE, *Palestine FA seek Israel exclusion from FIFA* (Apr. 18, 2024), <https://www.rte.ie/sport/soccer/2024/0418/1444198-palestine-fa-call-on-fifa-to-israel-fifa-exclusion/>.

176. Gelblum, *supra* note 175.

177. *S. Afr. v. Isr.*, *supra* note 158, at ¶ 54.

178. Abubaker Abed, *I’ve been robbed of my dreams’: the sporting tragedy of the war in Gaza*, THE GUARDIAN (May 7, 2024), <https://www.theguardian.com/football/article/2024/may/07/sporting-tragedy-war-in-gaza-israel-palestine>.

179. *Id.* (also noting “we may not run any sports in Gaza for a decade”).

180. *Id.* See also RTE, *supra* note 175 (“The submission also highlights social media posts by some administrators and clubs in Israeli football, including a post on LinkedIn by the CEO of the Israeli Professional Football Leagues, and a Facebook post by FC Maccabi Netanya. (The posts) indicate strong support for genocide in Gaza.”).

181. Gelblum, *supra* note 175.

or destroyed by the Israeli army during multiple incursions, with licenses for Palestinians to build sporting infrastructure in the West Bank routinely rejected by Israel.¹⁸² Checkpoints, roadblocks and settler attacks have multiplied, with the league suspended, football infrastructure destroyed, and the national team forced to play World Cup qualifiers abroad.¹⁸³ Given the multiple international legal sources attesting to a situation of racial segregation and apartheid in the OPT, including the ICJ Advisory Opinion, and its documented impact on all aspects of Palestinian football, it seems difficult if not impossible to conclude that the threshold for applying Article 4.1 of the FIFA Statutes has not been reached.

The ICJ tasked the UN General Assembly with the precise modalities of the implementation of its Advisory Opinion.¹⁸⁴ On 13 September 2024, the UNGA passed a resolution to give effect to this direction, which calls *inter alia* for the establishment of ‘a mechanism to follow up on the violations by Israel of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination’.¹⁸⁵ It has not yet been decided what form this mechanism will take. The most recent report of the UN Secretary-General, issued on 19 December 2024, provides the General Assembly with two proposals – ‘a stand-alone mechanism, based on the model of the United Nations Special Committee against Apartheid’; or ‘a mandate to the Independent International Commission of Inquiry on the Occupied Palestinian Territory’ which has been established by the Human Rights Council.¹⁸⁶ The two most recent reports of the UN Special Rapporteur on the OPT have urged the reactivation of the UN Special Committee on Apartheid in line with the first proposal: ‘Formally recognize Israel as an apartheid State and persistent violator of international law, reactivating the Special Committee Against

182. RTE, *supra* note 175.

183. Al Jazeera, *Palestine sets sights on FIFA World Cup 2026 despite Israel's war on Gaza* (Nov. 4, 2024), <https://www.aljazeera.com/sports/2024/11/4/palestine-sets-sights-on-fifa-world-cup-2026-despite-israels-war-on-gaza>.

184. ICJ Advisory Opinion, *supra* note 19, at ¶ 285(9) (“*Is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.*” (emphasis in original)).

185. G.A. Draft Res., U.N. Doc. A/ES-10/L.31/Rev.1, ¶ 14 (Sept. 13, 2024).

186. U.N. Doc. A/79/588, ¶ 18(a)–(b) (Dec. 19, 2024). Note also the difference between the two proposals in that the first “would be composed of Member States, with its membership based on the principle of equitable geographical distribution,” whereas the second “is composed of independent experts.”

Apartheid to comprehensively address the situation in Palestine'.¹⁸⁷ The UN Special Committee Against Apartheid was established by the General Assembly in 1962, and dissolved in June 1994.¹⁸⁸

The growing characterisation by UN bodies of Israel as an apartheid State directly implicates its sporting bodies. The UN Special Committee Against Apartheid published from 1981 onwards a register of organizations who had sports contacts with South Africa, commending all those sports bodies who had taken action while expressing grave concern 'over the collusion of others'.¹⁸⁹ Two international standards on apartheid in sports were also adopted in this period. First, the International Declaration against Apartheid in Sports was adopted by the General Assembly on 14 December 1977,¹⁹⁰ with 125 votes in favour, none against, and 14 abstentions.¹⁹¹ Its Article 3 reads: 'States shall take all appropriate action towards the exclusion or expulsion of any country practising apartheid from international and regional sports bodies.' Second, the International Convention against Apartheid in Sports (ICAS) was adopted by the General Assembly on 10 December 1985, entering into force in 1988. The ICAS has 62 States Parties to date. Its Article 8 reads: 'States Parties shall take all appropriate action to secure the expulsion of a country practising apartheid from international and regional sports bodies.' The ICAS established a treaty-monitoring body, the Commission against Apartheid in Sports. In 1992, with apartheid on the wane in South Africa, its outgoing Chairman Mr. James Victor Gbeho wrote:

I would like to note in this context that while the International Convention is aimed in particular at dealing

187. U.N. Doc. A/79/384, ¶ 91(b) (Oct. 1, 2024) (Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, Genocide as Cultural Erasure); U.N. Doc. A/HRC/55/73, ¶ 97(e) (July 1, 2024) (Anatomy of a Genocide).

188. E.S. Reddy, *United Nations Special Committee Against Apartheid Reports* (Aug. 2007), <https://www.jstor.org/site/struggles-for-freedom/southern-africa/united-nations-special-committee-against-apartheid-reports>.

189. U.N. GAOR, 36th Sess., U.N. Doc. A/36/22, ¶¶ 137–38 (Nov. 4, 1981).

190. U.N. Doc. A/32/105M at 38–40 (Dec. 14, 1977) (International Declaration Against Apartheid in Sports).

191. U.N. GAOR, 32nd Sess., U.N. Doc. A/32/PV.102 at 1678, ¶ 212 (Dec. 14, 1977). The abstentions were all from Western States: Austria, Belgium, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Portugal, UK, and US. The Nigerian Chair of the SCoA would comment of the vote: "[T]he Western Powers have still a long way to go before they can align themselves fully with the vast majority of Member States and join in the concerted action against apartheid."

with the situation in South Africa resulting from the abhorred policies of apartheid both in sports and in society, the provisions of the Convention, as I have previously observed, could be applicable to any system of institutional racism and discrimination.¹⁹²

Commentators have noted the potential renewed relevance of the ICAS in light of the situation in the OPT.¹⁹³ Indeed, the State of Palestine acceded to ICAS in 2018. The Convention is still in force in relation to all of its State Parties – as Mr. Gbeho observed in 1992, ‘no State party can decide that it is no longer committed to or by the Convention except by following the procedure set in the Convention for State parties to withdraw from the Convention.’¹⁹⁴ For the 62 States Parties to the ICAS, action to secure the expulsion of a country practising apartheid from international sports bodies remains a legal obligation. With growing UN alignment that the situation in the OPT amounts to apartheid, the role of FIFA will come under increased scrutiny.

The claim of discrimination before the Disciplinary Committee relates to the existential threat faced by Palestinian football. It is informed by a situation of racial segregation and apartheid in the OPT, as determined by the ICJ in its Advisory Opinion. The system of checkpoints and severe restrictions on freedom of movement are connected to the illegal settlement and annexation of Palestinian territory. In other words, the two strands of the PFA complaint are linked, which was not recognised by FIFA in the 2015-17 report which dealt with them as separate issues. As a 2016 report by *Human Rights Watch* concluded on the settlements and the settlement clubs, their existence and expansion is contingent on Israel’s unlawful seizing of Palestinian land and resources and a discriminatory two-tiered system

192. Report of the Commission Against Apartheid in Sports, U.N. Doc. A/47/45, annex IV, at 15 (Mar. 26, 1993) (statement of Mr. James Victor Gbeho (Ghana)).

193. See Carmen Pérez, *On the Reawakening of the 1985 International Convention against Apartheid in Sports in the Context of the Israel-Palestine Conflict*, AGENDA PUBLICA (Jan. 11, 2024), <https://agendapublica.es/noticia/19008/reawakening-of-1985-international-convention-against-apartheid-sports-context-of-israel-palestine-conflict> (noting “the need for the international community to consider the opportunity to reactivate . . . the International Convention against Apartheid in Sports” in the context of “characterizing Israeli actions as apartheid and genocide”).

194. Report of the Commission Against Apartheid in Sports, *supra* note 192, at 14 (criticising States Parties that were not making contributions or submitting reports for “indirectly instituting veto powers that do not exist in the article of the Convention”).

of laws, rules, and services that Israel has imposed in the area of the West Bank under its exclusive control - 'because of the discrimination inherent to Israeli settlements, the clubs have no choice but to provide these services in a discriminatory manner.'¹⁹⁵ The maintenance and expansion of the illegal settlements, which includes the illegal settlement clubs, has led to the severe restrictions on the freedom of movement of Palestinian footballers. It has led to the concerted attacks on the infrastructure and organisation of football in Palestine, including the total destruction of football in Gaza. While the illegal settlements and the settlement clubs are granted recognition by FIFA, Palestinian football will continue to be destroyed.

V. CONCLUSION

The ICJ Advisory Opinion called on Israel to cease all settlement activity and 'to evacuate all settlers from the Occupied Palestinian Territory'.¹⁹⁶ On 13 September 2024, the General Assembly passed a resolution to give effect to the ICJ Advisory Opinion.¹⁹⁷ This demanded that Israel 'brings to an end without delay its unlawful presence in the Occupied Palestinian Territory, which constitutes a wrongful act of a continuing character entailing its international responsibility, and do so no later than 12 months from the adoption of the present resolution'.¹⁹⁸ Thus, Israel had until September 2025 to dismantle the illegal settlements and evacuate the illegal settlers, a deadline that has now passed. This includes the illegal settlements' football clubs. Until this is achieved, the IFA is clearly in breach of Article 72.2 of the FIFA Statutes. As the UN human rights experts noted, the integration of settlement teams into the IFA leagues 'amounts to recognising as legal the situation arising from the unlawful presence of Israel in the occupied Palestinian territory. This is in stark violation of international law, as reiterated by the International Court of Justice in its Advisory Opinion of 19 July 2024'.¹⁹⁹ The experts pointed to the limits of autonomy and self-regulation in sport in that regard, which must not be detrimental to fundamental human rights.²⁰⁰ They reminded FIFA that 'the right to self-determination, as well as

195. Hum. Rts. Watch, *Israel/Palestine: FIFA Sponsoring Games on Seized Land* (Sept. 25, 2016), <https://www.hrw.org/news/2016/09/25/israel/palestine-fifa-sponsoring-games-seized-land>.

196. ICJ Advisory Opinion, *supra* note 19, at ¶ 285(5).

197. G.A. Draft Res., *supra* note 185, at ¶ 14.

198. *Id.* at 5, ¶ 2.

199. U.N. Off. of the High Comm'r for Hum. Rts., *supra* note 20.

200. *Id.*

the prohibition of racial discrimination and apartheid, applies to private international organisations, especially those that have global jurisdiction and mandates such as itself.²⁰¹ The FIFA Disciplinary Committee ought to affirm the essential role of international law in interpreting the FIFA Statutes. In that light, it should recommend to the FIFA Council suspending the IFA until such time as the illegal settlement teams are disbanded. It cannot offer, as the Sexwale Committee did, an option of taking no action at all, since such an option would be to uphold a breach of the FIFA Statutes in contradiction to the findings of international courts and UN bodies. The FIFA Council must then put this recommendation to a vote of the FIFA Congress. A failure to do so would surely breach the CAS threshold of a blatant and manifest misuse of an association's discretionary power that offends a basic sense of justice, such that deference to such a decision could not be upheld.

In the more recent context of genocide, FIFA has further scope to act. FIFA will no doubt take the position that it does not interfere in the domestic affairs of states and that in its capacity as a private association it cannot possibly make determinations of genocide. However, given the soft political power of sports, particularly football, such a position by an entity like FIFA is no longer tenable where multiple UN sources attest that there are reasonable grounds to believe genocide is occurring. FIFA holds significant political and financial leverage, often times far more than states or intergovernmental organizations. It is time to use this leverage to make an effective global impact. The suspension or expulsion of a member should not be seen as exceptional in international sport governance. Following Russia's invasion of Ukraine in February 2022, UEFA and FIFA, as well as many other SGBs, moved swiftly to expel Russian teams and the country's national team from all official competitions. Although FIFA banned Russian teams on the basis of physical risks arising from the ongoing war, this is clearly a political decision and hence there is sufficient precedent for the expulsion of teams where their home state is found to have committed serious international crimes, such as genocide. FIFA's own statutes mandate action in relation to the international crime of apartheid. The convergence of positive and meaningful action between international organizations and powerful SGBs should be a work in progress because it is now obvious that SGBs can enforce – in their narrow sphere of influence – policy

201. *Id.*

demands adopted by international organizations, in a way the latter are unable to do.