

Article

FIFA and UEFA's Reaction to Russia's Invasion of Ukraine

How the neutrality of sport survived the war

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1. Introduction

On 24 February 2022, Europe suffered an earthquake of massive magnitude and has been constantly shaking since then. As Russia's military entered the Ukrainian territory and initiated its campaign to conquer Ukraine, history restarted violently and Europeans awoke in the middle of the biggest land war since WW2. The ensuing refusal of the Ukrainians to be defeated and their successful resistance and later pushback against Russia's army turned this supposedly three-day dash to Kiev into an extremely bloody and long trench war, which is still ongoing at the time of writing. The war also triggered widespread condemnation at the UN,¹ as well as the adoption of sanctions against Russia and Russians by a wide range of states and organizations.² The war also generated numerous reactions in the sporting world. Most prominently, on the day the invasion started, the International Olympic Committee (IOC) condemned the breach of the Olympic Truce by the Russian government.³ Thereafter, on 25 February 2022, the IOC Execu-

tive Board urged all International Sports Federations to relocate or cancel their sports events planned in Russia or Belarus. It also urged that no Russian or Belarussian national flag be displayed and no Russian or Belarussian anthem be played at international sports events.⁴ Finally, and most prominently, on 28 February 2022, the IOC Executive Board recommended 'that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarussian athletes and officials in international competitions'.⁵ The IOC's recommendations were later supported by a public statement signed by 37 sports ministers.⁶ In

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1 See United Nations General Assembly Resolution ES-11/1.

2 See for example, the Russia Sanctions Database of the Atlantic Council available at www.atlanticcouncil.org/blogs/econographics/russia-sanctions-database/.

3 IOC, IOC strongly condemns the breach of the Olympic Truce, 24 February 2022, available at olympics.com/ioc/news/ioc-strongly-condemns-the-breach-of-the-olympic-truce.

4 IOC, IOC EB urges all International Federations to relocate or cancel their sports events currently planned in Russia or Belarus, 25 February 2022, available at olympics.com/ioc/news/ioc-eb-urges-all-ifs-to-relocate-or-cancel-their-sports-events-currently-planned-in-russia-or-belarus.

5 IOC, IOC EB recommends no participation of Russian and Belarussian athletes and officials, 28 February 2022, available at olympics.com/ioc/news/ioc-eb-recommends-no-participation-of-russian-and-belarusian-athletes-and-officials.

6 See Statement on Russia's war on Ukraine & international sport, available at www.gov.uk/government/news/statement-on-russias-war-on-ukraine-international-sport?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=4e1891df-d723-4197-851d-841088930f4e&utm_content=immediately. The statement state in particular: 'We, as a collective of like-minded nations, affirm our support for international sport organisations' position that:

- Russia and Belarus should not be permitted to host, bid for or be awarded any international sporting events.
- Individual athletes selected by Russia and Belarus, administrators and teams representing the Russian or Belarussian state should be banned from competing in other countries, including those representing bodies, cities or brands that are effectively representing Russia or Belarus, such as major football clubs
- Wherever possible, appropriate actions should be taken to limit sponsorship and other financial support from entities with links to the Russian or Belarussian states.

short, the invasion of Ukraine had an immediate impact on international sports and was quickly followed with numerous measures directed against Russian and Belarusian teams and athletes.⁷

For the purpose of this article, the analysis will focus more specifically on the repercussions of the war in the context of football. In tune with the IOC, both FIFA and UEFA condemned the use of force by Russia in Ukraine on the day of the start of the invasion.⁸ On 27 February 2022, FIFA and UEFA announced a first set of measures that were ‘in line with recommendations from the IOC’, and which included the following:

- No international competition shall be played on the territory of Russia, with ‘home’ matches being played on neutral territory and without spectators.
- The member association representing Russia shall participate in any competition under the name ‘Football Union of Russia (RFU)’ and not ‘Russia’.
- No flag or anthem of Russia will be used in matches where teams from the Football Union of Russia participate.⁹

Lastly, on 28 February, both FIFA and UEFA announced their joint decision to suspend Russian clubs and national teams from all their competitions until further notice.¹⁰ In a few days, what started as a fateful political decision by Vladimir Putin with no immediate bearing on sports had reverberated in the sporting world and triggered more systematic and comprehensive sporting sanctions (a total exclusion from the European and international football community) than for example the economic sanctions imposed by the European Union (Russian citizens are still allowed conditional entry into the territory of the EU, the same is true for economic relations in many sectors). Logically, they were also immediately challenged by Russia’s Football Union (FUR) at the Court of Arbitration for Sport (CAS), which first rejected the FUR’s request for a stay of the decision and

provisional measures,¹¹ and then sided with FIFA and UEFA on the merits.¹²

While in 2014 FIFA and UEFA had resisted the public urge to sanction Russia over its occupation of Crimea and its role in the uprising in the Donbas,¹³ this time was different. Their swift and strong reaction was hailed by many commentators, who talked of ‘unprecedented football sanctions’¹⁴ announcing ‘the end of sport’s neutrality’¹⁵ and considered them of a clear ‘punitive character’.¹⁶ Some speculated that FIFA and UEFA could have relied on their human rights commitments to support their decisions and were slowly morphing into enforcers of international (human rights) law.¹⁷ Yet, most of these early commentaries were based on the misleading language of the press releases, as FIFA and UEFA had not immediately disclosed the legal bases and full content of their decisions. The present piece builds on the information available in the recently released CAS awards in order to offer a more accurate analysis of the legal grounds actually invoked by FIFA and UEFA. As shown in section 2, the legal justifications advanced by both federations for their respective decision did not formally depart from their political neutrality and did not link the suspensions to the illegality of Russia’s war or the human rights violations committed by Russia’s armed forces. Furthermore, this pragmatic approach was, as outlined in section 3, fully endorsed by the majority of the CAS Panel in its awards on the merits. The final section of this article will offer some critical reflections on the implications of these decisions for the relationship between sports and politics.

We call on all international sport federations to endorse these principles, and applaud all those that have done so already.’

- 7 For an attempt at mapping these reactions, see D. Heerdt & G. Battaglia, Reactions of International Sport Organisations to the Russian Invasion of Ukraine: An Overview, Asser International Sports Law Blog, 1 April 2022, www.asser.nl/SportsLaw/Blog/post/reactions-of-international-sport-organisations-to-the-russian-invasion-of-ukraine-an-overview-by-daniela-heerdt-and-guido-battaglia.
- 8 FIFA, FIFA expresses hope for rapid cessation of hostilities and peace in Ukraine, 24 February 2022, www.fifa.com/about-fifa/organisation/fifa-council/media-releases/fifa-expresses-hope-for-rapid-cessation-of-hostilities-and-peace-in-ukraine.
- 9 FIFA, Bureau of the FIFA Council takes initial measures with regard to war in Ukraine, 27 February 2022, www.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/bureau-of-the-fifa-council-takes-initial-measures-with-regard-to-war-in.
- 10 FIFA, FIFA/UEFA suspend Russian clubs and national teams from all competitions, 28 February 2022, www.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/fifa-uefa-suspend-russian-clubs-and-national-teams-from-all-competitions.

- 11 See CAS Order on Request for Provisional Measures, 8 April 2022, 2022/A/8708 (Football Union of Russia (FUR) v. Fédération Internationale de Football Association (FIFA) et al) and CAS Order on Request for Provisional Measures, 8 April 2022, 2022/A/8709 (Football Union of Russia v. Union of European Football Associations (UEFA) et al).
- 12 See CAS 25 November 2022, 2022/A/8708 (Football Union of Russia v. Fédération Internationale de Football Association et al) and CAS 25 November 2022, 2022/A/8709 (Football Union of Russia v. Union of European Football Associations (UEFA) et al).
- 13 R. Pielke Jr., Sport does not exist in a vacuum. Fifa has a responsibility to act on Russia, *sportingintelligence*, 29 July 2014, www.sportingintelligence.com/2014/07/29/sport-does-not-exist-in-a-vacuum-fifa-has-a-responsibility-to-act-on-russia-290701/.
- 14 F. Siccardi, Unprecedented Football Sanctions Strip Russia of a Key Form of Soft Power, *Carnegie Europe*, 16 March 2022, carnegieeurope.eu/2022/03/16/unprecedented-football-sanctions-strip-russia-of-key-form-of-soft-power-pub-86651.
- 15 I. Katsarova, Russia’s war on Ukraine: Impact on athletes and sports competitions, *European Parliamentary Research Service*, April 2022, [www.europarl.europa.eu/RegData/etudes/ATAG/2022/729373/EPRS_ATA\(2022\)729373_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729373/EPRS_ATA(2022)729373_EN.pdf).
- 16 J. Lindholm, How Russia’s invasion of Ukraine shook sports’ foundation, *The International Sports Law Journal* (2022) 22, 1-4, at 3.
- 17 See S. Jain, Legal Justification for FIFA and UEFA’s Ban on Russian National Football and Club Teams, *EJIL: Talk!*, 14 April 2022, www.ejiltalk.org/legal-justification-for-fifa-and-uefas-ban-on-russian-national-football-and-club-teams/ and C. Perez, Ahead of the game? Sporting sanctions against Russia following the invasion of Ukraine, *EJIL: Talk!*, 9 March 2022, www.ejiltalk.org/ahead-of-the-game-sporting-sanctions-against-russia-following-the-invasion-of-ukraine/. The latter concludes her blog by claiming that it seems obvious that ‘SGB’s have decided to put the unrivalled allure of sport at the service of the defence of international legality’.

2. FIFA and UEFA's Decisions: The Russian invasion as unforeseeable disruption to international football competitions

The first contribution made by this article consist in offering a presentation and analysis of the actual legal justifications supporting FIFA and UEFA's decisions to suspend Russian clubs and national teams from their competitions (individual Russian players can still engage in UEFA or FIFA competitions with non-Russian clubs or other national teams (if they have dual nationality)). While neither FIFA nor UEFA published the underlying decisions, they were reproduced in the CAS awards and complemented with further arguments submitted by the two federations. Interestingly, the legal bases used by both federations are different, as well as to some extent the empirical arguments used to justify their decisions.

2.1 UEFA's decision and its justifications

UEFA's decision is introduced by contextual elements stressing that 'the situation in Ukraine has continued to drastically escalate' and that 'the international community, including sport organisations, have taken a strong stance against these military interventions'.¹⁸ The decision also puts weight on the threats of boycotts issued by national associations. Thus, it notes that 'an increasing number of UEFA national associations publicly voiced their intention to not participate in matches against teams from the Russian Football Union (RFU)'. The decision clearly aims at linking primarily the exclusion of Russian teams from UEFA competitions to the unpopularity of the war with its member associations and to the threats of boycotts issued by some of them. Another consideration relates to the perceived security threats surrounding games involving Russia. As put by UEFA: 'the general public's reaction has the consequence that, even if matches against Russian teams would be staged on a neutral territory, there are serious concerns about the ability to ensure the safety and security for all those involved'. In this regard, it is the risk of matches involving Russia or Russian teams leading to violence or terrorist acts which is summoned to support UEFA's decision. Finally, the last argument underpinning UEFA's decision, and maybe the least convincing in hindsight, concerns the material constraints to its capacity to organize matches involving Russian teams. Accordingly, UEFA stressed 'that several governments and the EU institutions have imposed flight bans from or to the Russian territory', arguing that it 'would have an ad-

ditional considerable impact on the smooth staging and running of UEFA competition matches'.

These are the main arguments supporting UEFA's conclusion that it

'becomes regrettably evident that UEFA is no longer in a position to fully achieve its objectives as stipulated in the UEFA Statutes under Article 2 par. 1(b) ["promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason"] and Article 2 par. 1(d) ["organise and conduct international football competitions and tournaments at European level for every type of football whilst respecting the players' health"]'

and that it must, therefore, suspend all Russian representative teams and clubs from taking part in UEFA competitions 'in order to be able to achieve its statutory objectives'. The link between the context of the Ukraine war and UEFA's ability to fulfil its statutory objectives is not further explicated. However, what becomes clear is that UEFA is not formally concerned with the legality of Russia's invasion or the human rights violations that are stemming or were likely to stem from it. While it was publicly condemning the violence unleashed by Russia's war on Ukraine, it is not UEFA's opposition to the war which serves as a justification for its decision. In fact, UEFA argued in its pleadings before the CAS that the Russian teams 'have been suspended because of an objective situation created by the military conflict and not because UEFA politically agrees with Ukraine'.¹⁹ In short, it did not seek 'to punish the Appellant's behaviour but rather addresses an objective situation that has arisen because of the military conflict'.²⁰ Ultimately, it is the practical nuisances caused by the war, due mainly to the strong ethical and political concerns of others, which constitute the legal backbone of UEFA's decision. As we will see, FIFA followed a similar though slightly different logic and legal basis.

2.2 FIFA's decision and its justifications

Despite the joint announcement of FIFA and UEFA's decisions and their identical effects, the justifications for the decisions differ quite significantly. In its decision,²¹ FIFA is almost exclusively emphasizing 'the clear decisions by several FIFA member associations not to compete with the Russian national team in ongoing football competitions' and argues that in this context FIFA 'needs to guarantee the smooth running of its flagship competition', the FIFA World Cup Qatar 2022. Indeed, FIFA considers it an 'objective necessity' to ensure 'that the calendar of the ongoing preliminary competition [for the FIFA World Cup Qatar 2022] is fully respected'. Only months before the start of the competition 'it is imperative that this calendar is not disrupted, thus jeopardising the efficient organization and smooth run-

18 CAS 25 November 2022, 2022/A/8709, para 16. (If not provided otherwise, all quotes in this section are taken from the same paragraph of the award.)

19 Ibid., para. 78.

20 Ibid.

21 CAS 25 November 2022, 2022/A/8708, para. 33.

ning of the matches due to take place over the next months'. Thus, FIFA's decision is framed as a necessary intervention to protect the good order and smooth functioning of the FIFA World Cup 2022. However, FIFA goes one step further than UEFA by recognizing that the blame (and, therefore, any sanctions) cannot be pinned on its member associations which are refusing to compete against the FUR team. Instead, this stance 'must be respected by FIFA' as it is 'fully understandable and cannot be criticized from either a legal or moral point of view'. Unfortunately, FIFA did not elaborate further on the reasons that made this particular threat of boycott 'understandable' and immune to criticism. Moreover, FIFA notes that it is 'foreseeable that other member associations would take the same position' triggering 'irreparable and chaotic' consequences for the FIFA World Cup Qatar 2022. Unlike UEFA, FIFA did not invoke any security or logistical risks to support its decision, but grounded it exclusively in the existential risk to the 2022 World Cup posed by the credible threats of boycotts issued by a number of its member associations if Russia were allowed to participate. Notably it refused to consider these threats as illegitimate, and therefore potentially subjected to disciplinary sanctions, while not expressly endorsing their critique of the Russian invasion. However, in its pleadings before the CAS, FIFA did argue that allowing the Russian national teams into its competitions creates

6 'an enormous security risk for all participating teams and delegations (including the FUR's), as well as for officials, referees and other persons involved in the organization of such matches, regardless of where the relevant matches are held'.²²

In fact, aimed to relativize the role of the threats of boycotts by other member associations in its decision, by arguing that in any event 'it would be impossible to hold any matches with the Appellant's national team whilst ensuring the safety and security of all participating teams, delegations, and officials'.²³

The legal basis for FIFA's decision was found jointly in articles 2.b and 34.12 FIFA Statutes, and article 31 Regulations of the FIFA World Cup Qatar 2022TM, Preliminary Competition. Article 2.b FIFA Statutes foresees that one of FIFA's objectives is 'to organise its own international competitions', while article 34.12 stipulates that the FIFA Council 'shall deal with all matters relating to FIFA that do not fall within the sphere of responsibility of another body, in accordance with these Statutes'. In combining these articles, FIFA's approach is relatively similar to UEFA's teleological reasoning. It invokes the necessity for the organization to fulfil its primary *raison d'être*, the organization of international football competitions and of the FIFA World Cup in particular, in order to justify its decision to suspend the FUR's teams. However, going beyond UEFA's approach to

the legal basis, it also grounds its competence to intervene and take this decision (with regard to the FIFA World Cup Qatar 2022) in article 31 Regulations FIFA World Cup Qatar 2022TM, Preliminary Competition, which states that '[m]atters not provided for in these Regulations or any cases of force majeure shall be decided by FIFA'. In this regard, Russia's war is being framed as a force majeure situation allowing FIFA to take an exceptional decision to modify its contractual relationship with the FUR. Hence, the war is not pictured as politically or ethically despicable, but instead as an unforeseeable and unfortunate nuisance which requires a fundamental change in the contractual relationship between FUR and FIFA.

In both cases, the invasion of Ukraine is being presented as an existential threat to the main purpose underlying FIFA and UEFA's existence, the organization of international/European football competitions. It is so mainly because of the hostile reactions it triggered inside and outside of the football family. The widespread condemnation and opposition to the war, especially in Europe, is put forward by FIFA and UEFA as a justification for the exceptional decision to suspend the FUR's teams. However, both organizations (though FIFA to a lesser extent) are wary to denounce or criticize the invasion in their decisions and submissions (though less so in their press releases) and are refusing to ground them on the illegality under public international law of the war or to link them with human rights violations committed by the Russian armed forces. Unlike what many assumed in the initial commentaries following these decisions, FIFA and UEFA have not departed formally from their political neutrality. Instead, they argue that this particular war causes extraordinary inconveniences and risks to their competitions which they feel can be addressed only by suspending Russian teams. This assessment was swiftly challenged by the FUR before the CAS, yet the majority of the CAS Panel endorsed UEFA and FIFA's justifications for their decisions.

3. The CAS Awards: Endorsing FIFA and UEFA's legal storyline

Early 2023, the CAS finally released the full text of the awards of the panels (composed of the same three arbitrators) in the FIFA and UEFA cases. The awards are structured around three main legal questions: the nature of the UEFA and FIFA decision, the competences on which it is based and the question whether it constitutes an abuse of power.

3.1 This is not a sanction

Summoning Magritte's famous pipe, without the cheekiness, the CAS Panel affirmed in both its UEFA and FIFA award that the challenged decisions were not to be considered disciplinary sanctions. Thus, the CAS Panel

22 Ibid, para. 79.

23 Ibid.

highlighted that ‘the Appealed Decision did not seek to punish the Appellant for its past behaviour, but was taken to address an objective situation being the consequences that had arisen from a military conflict’.²⁴ Consequently it concluded that ‘the Appealed Decision is clearly not a disciplinary decision, a disguised sanction or a decision that has an inherent disciplinary aspect’.²⁵ Unlike some had thought, the Panel stressed that UEFA and FIFA’s ‘intention was not penal’.²⁶ Instead, the arbitrators insisted that the decision of FIFA and UEFA should be interpreted as an administrative decision. This conclusion was also relevant to determine the intensity of the review that would be exercised as the Panel concluded that in such administrative cases ‘it is concerned not with the merits or substantive value of the decision made but with whether the decision and the measure it imposed violates the association’s statutes or mandatory legal rules or amounts to an improper use of the association’s discretionary power’.²⁷ The first main decision rendered in both awards was thus that in both cases, FIFA and UEFA did not issue disciplinary sanctions against the FUR but took instead administrative decisions lacking the intent to punish the Russian federation. This supports the idea that we are not dealing (at least officially) with sporting sanctions against Russia.

3.2 UEFA and FIFA have the competence to protect their *raison d’être* from unforeseen events

The second issue raised before the CAS concerned the competence of FIFA and UEFA to issue such an administrative decision suspending the FUR. Regarding UEFA, the CAS Panel considered that

‘the UEFA Statutes did not provide expressly for the situation in which the First Respondent [UEFA] considered that it needed to respond urgently namely the military conflict in Ukraine and its consequences for UEFA competitions and football in Europe’.²⁸

However, the majority of the panel accepted UEFA’s submission ‘that the UEFA Executive Committee was competent on the basis of Article 65 to take the Appealed Decision *as a matter not covered by* the UEFA Statutes’.²⁹ Accordingly, it concluded that UEFA ‘did not require an order from the IOC or another international organisation such as the United Nations to provide it with the competence to act because the competence already existed within its own Statutes and regulations’.³⁰ In FIFA’s case, the Panel had to follow a slightly different route to determine the validity of the legal basis of the decision. Indeed, as discussed previously, FIFA relied in

part on Article 31 of the World Cup Regulations to ground its decision. The majority concluded ‘that the FIFA Bureau was competent to make the Appealed Decision as something that was not expressly provided for within the World Cup Regulations or its Statutes and was a *force majeure* event’.³¹ The majority considered that ‘the *force majeure* event was in the present case not so much the military conflict *per se*, as the extraordinary and unprecedented consequences that followed, namely: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community to the conflict; the imposition of sanctions and travel bans on Russian people and businesses; the uncertainty of the duration and scope of the conflict; and, the exceptional and widespread international public reaction against it’.³² Again, the backlash against the Russian invasion of Ukraine is portrayed as an unforeseeable and insurmountable threat to FIFA’s organizational capacity. In this narrative, it is not a legitimate response that ought to be endorsed and supported, but a formidable and exceptional one that cannot be resisted.

3.3 UEFA and FIFA have not abused their powers in suspending the FUR

The final fundamental question raised by FUR’s appeal hinged on whether FIFA and UEFA had abused their powers in suspending the Russian federation. In this regard, the FUR raised a number of, more or less well grounded, arguments.

In particular, the FUR argued that UEFA and FIFA violated their duty of neutrality enshrined in their statutes. The majority of the Panel rejected this view. Indeed, it found ‘no evidence that the UEFA Executive Committee [and the FIFA Bureau] arrived at the Appealed Decision other than by its own independent decision-making’.³³ Instead, the majority considered ‘that the UEFA Executive Committee acted [and the FIFA Bureau] as it did in response to a set of extraordinary and unforeseen circumstances and not because it favoured a particular political position’.³⁴ The decision is said to have been taken

‘to further UEFA’s statutory objectives, specifically those of Articles 2(b), (d), (j) and (k), which, the majority finds was within the UEFA Executive Committee’s margin of discretion in the situation with which the Executive Committee was faced’.³⁵

The award even reiterates that ‘there is no evidence that the decision was taken because of the political opinion of the Appellant or that it was taken because of UEFA’s

24 CAS 25 November 2022, 2022/A/8709, para. 94 and CAS 25 November 2022, 2022/A/8708, para. 99.

25 Ibid., para. 95 and *ibid.*, para. 100.

26 Ibid., para. 96 and *ibid.*, para. 101.

27 Ibid., para. 105 and *ibid.*, para. 111.

28 Ibid., para. 112.

29 Ibid., para. 112.

30 Ibid., para. 114.

31 CAS 25 November 2022, 2022/A/8708, para. 125.

32 Ibid., para. 124.

33 CAS 25 November 2022, 2022/A/8709, para. 125 and CAS 25 November 2022, 2022/A/8708, para. 144.

34 Ibid., para. 127 and *ibid.*, para. 145.

35 Ibid., para. 128 and *ibid.*, para. 146. (‘In the majority’s opinion the Appealed 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 finds was within FIFA’s margin of discretion in the circumstances with which the FIFA Bureau was faced.’)

view of the military conflict or any other entity's view of the conflict'.³⁶

Another point raised by the FUR to substantiate the existence of an abuse of power was that UEFA and FIFA should have sanctioned the member associations which refused to play against Russian teams. The Panel rejected that claim by pointing out

'that whether a refusal by a UEFA member association was in fact a breach of a provision in a UEFA competition regulation is an issue more properly addressed through disciplinary proceedings, if any – none having to date been taken – than in these proceedings, and in any event such breach would not render the Appealed Decision invalid'.³⁷

While also stressing that 'ordinarily, a refusal to play by one member against another in a UEFA competition should expose the former to the risk of sanction and should not result in any form of detriment to the latter, in particular not its exclusion from the competition, and the Panel's Award should not be construed to contrary effect'.³⁸

The Panel also evaluated whether the decision taken by FIFA and UEFA was proportionate.³⁹ The majority of the arbitrators reached the conclusion 'that at the time the Appealed Decision was taken, the Appealed Decision was a proportionate response to the situation'. In reaching this conclusion, it endorsed FIFA and UEFA's argument that the

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'earlier position [e.g. the decision from 27 February] became untenable because of the security concerns, travel restrictions, the reaction of member associations, and widespread public reaction against the military conflict'.⁴⁰

In particular, the Panel deferred to UEFA and FIFA's 'considerable expertise to manage its competitions' match schedules as it sees fit',⁴¹ as well as their 'expertise when it comes to assessing the security risk and safety concerns of its competitions'.⁴² Thus, rejecting the FUR's contention that the games could still be moved or played on neutral ground. Hence, the conclusion of the majority of the arbitrators that UEFA's (and FIFA's) 'interest of organizing its competitions prevailed when considering, in particular, the security and logistical concerns for the organisation of a competition in which the Appellant's national team or clubs may participate'.⁴³

36 Ibid., para. 129 and *ibid.*, para. 146 ('there is no evidence that it was taken only because of those views or that it was taken in support of those positions or that it would not have been the same decision irrespective of those views').

37 Ibid., para. 136 and *ibid.*, para. 148.

38 Ibid., para. 137 and *ibid.*, para. 149.

39 Ibid., paras 139-147 and *ibid.*, paras 151-158.

40 Ibid., para. 143 and *ibid.*, para. 154.

41 Ibid., para. 145 and *ibid.*, para. 156.

42 Ibid., para. 146 and *ibid.*, para. 157.

43 Ibid., para. 147 and *ibid.*, para. 158.

Finally, the majority of the Panel rejected the FUR's claim that FIFA and UEFA's decision was incompatible with the principle of equal treatment. Indeed, the FUR pointed out in its pleas that in other comparable situations (such as the Syrian civil war or Russia's annexation of Crimea) FIFA and UEFA had not issued similar decisions. Yet, on this point the majority of the arbitrators considered that in reality 'this military conflict has elicited an unprecedented global reaction, including amongst the general public, and it was the consequences of that reaction to which UEFA considered it was required to act in order to fulfil its statutory objectives'.⁴⁴ Hence, the majority decided to distinguish sharply this war from all other previous examples of conflicts, without providing much empirical basis to support this important claim.

Ultimately, the two CAS awards are fully supporting the legal narrative advanced by FIFA and UEFA in their decisions. In other words, the majority of the Panel accepts that the decisions are not political and are rendered necessary by the 'extraordinary and unprecedented circumstances' in order 'to provide safe, secure and orderly international football events for European football's stakeholders'.⁴⁵ The awards even stated that 'it was unfortunate' that FIFA and UEFA were 'required' to take this decision and pointed out 'that over time the circumstances that persuaded the majority will change'.⁴⁶ In essence, the Panel seems to be laying the ground for a subsequent lifting of the suspension, even though the conflict is still ongoing. Both the FIFA and UEFA decision and the ensuing CAS awards are a living proof that the neutrality of sport is not dead as a foundational commitment of the Olympic Movement and the football family. The question remains: should it be killed?

4. Conclusion: Time to move beyond 'amoral universalism'?

As alluded to in the introduction to this article, many commentators have perceived the reactions of FIFA and UEFA (and more broadly the Olympic Movement) as a fundamental departure from the principle of neutrality of sport. In Lindholm's stark formulation, he believed Russia's invasion of Ukraine 'shook sports' foundation' and that 'the genie cannot be put back into the bottle'.⁴⁷ As I hope is clear from this short article, the actual content of FIFA and UEFA's decisions and their assessment by the CAS shows, borrowing from Mark Twain, that the reports of neutrality's death were greatly exaggerated. In fact, both organizations went to great lengths to ar-

44 Ibid., para. 151 and *ibid.*, para. 160.

45 Ibid., para. 164 and *ibid.*, para. 174.

46 Ibid., para. 165 and *ibid.*, para. 175.

47 J. Lindholm, How Russia's invasion of Ukraine shook sports' foundation, *The International Sports Law Journal* (2022) 22, p. 1-4.

gue that their decisions were not based on political considerations or even on considerations linked to the international legality or human rights compatibility of the Russian invasion. Instead, they are framed as resulting primarily from the threats of disruption to UEFA and FIFA competitions stemming from the ethical/political stance of member associations against the invasion and to a lesser extent on security risks and logistical troubles caused by it. The ethical/political positioning of some member associations is thus turned into a practical impediment, a thorn in the side of FIFA and UEFA. Undoubtedly, allowing for this transformation is in itself an implicit political endorsement of the positions of these member associations, as surfacing in the text of FIFA's decision. After all, FIFA and UEFA could have responded to the member associations (or clubs) which were threatening to boycott the Russian teams with a counterthreat of disciplinary sanctions.⁴⁸ This sequence highlights the fundamental paradox underlying the relationship between sports and national or international politics. It is probably obvious to many that sport is to some extent political, that the decision to allocate the Olympics or the World Cup to Russia has political implications and value, that winning or losing the FIFA World Cup is politically significant, that politicians are so numerous in football stadiums because the game as an important part of social life has political value. In short, it ought to be relatively uncontroversial that it is impossible to entirely disentangle football from politics and that there can be no insurmountable firewall between national or international politics and sports. In Pielke's words, 'of course FIFA cannot ignore global geopolitics'.⁴⁹ Yet, it remains (even in the face of the Russian invasion) unacceptable to the Olympic Movement to recognize openly that it is situated in a social space that is inherently political, that it is influenced by national and international politics, and that it cannot avoid taking sides. Not taking a side is also taking a side, the one normalizing unsavoury political regimes and their deeds. This type of 'hysterical denial of reality'⁵⁰ diagnosed by Haberman lives on even in the present context of Russia's war.

Hence, the 'neutrality myth'⁵¹ survived even Russia's invasion, even though it seemed obvious to many observers that the decisions taken had to be of a political nature and that it was this particular invasion which was being sanctioned because it was seen as especially egregious. Yet, instead of ethical or political reasons, pragmatic ones were put forward to hide under a veneer of

neutrality a decision which is fundamentally political in essence. Indeed, if security risks or widespread public condemnations would really matter for UEFA and FIFA, then the Israeli FA would have most likely been suspended from their competitions long ago. In fact, in many sports when national teams or athletes refuse to compete against Israeli teams or athletes, it is the refuseniks that regularly face a suspension not the other way around.⁵² Why is it different this time? The FUR is no more directly responsible for the illegal Russian invasion of Ukraine than the IFA for the illegal occupation by the Israeli army of the Occupied Palestinian Territories. Why are other wars not deemed so disruptive that they must lead to the suspension of national teams? In short, UEFA and FIFA's decision is difficult to trace back to material constraints only and, in any event, these could most likely have been overcome. Instead, it must be in essence a political one. The FIFA Bureau and the UEFA Executive Committee decided to react in such a way because of the (legitimate) outrage triggered, at least in Europe, by the Russian invasion and its almost universal condemnation by states.⁵³ This political choice was dressed up for strategic reasons as a decision caused by the practical ripple effects of the Russian invasion, potentially in order to protect its legality before the CAS and to keep the neutrality myth alive.⁵⁴ The question remains whether this type of unacknowledged discretionary and *ad hoc* politicization, as well as the double standards that risk coming with it,⁵⁵ is an acceptable way to govern global/European football.⁵⁶ In my view, it would be preferable for FIFA and UEFA to openly acknowledge the need to take decisions on the basis of political or ethical considerations in certain situations and

48 As incidentally pointed out in the CAS awards without really considering the logical consequences of such a conclusion.

49 R. Pielke Jr., 'Sport does not exist in a vacuum. Fifa has a responsibility to act on Russia', *sportingintelligence*, 29 July 2014, www.sportingintelligence.com/2014/07/29/sport-does-not-exist-in-a-vacuum-fifa-has-a-responsibility-to-act-on-russia-290701/.

50 J. Hoberman, *The Myth of Sport as a Peace-Promoting Political Force*, *The SAIS Review of International Affairs*, Winter-Spring 2011, Vol. 31, No. 1, 17-29, at 20.

51 H.E. Næss, *The neutrality myth: why international sporting associations and politics cannot be separated*, *Journal of the Philosophy of Sport*, 45(2), p. 144-160.

52 See, for example, L. Morgan, *Iran warned boycott of matches against Israelis will lead to International Chess Federation ban*, *Inside the Games*, 9 November 2020, www.insidethegames.biz/articles/1100569/chess and L. Morgan, *AIBA investigating claims Syrian boxer pulled out of Olympic qualifier for refusing to fight Israeli*, *Inside the Games*, 11 July 2016, www.insidethegames.biz/articles/1039486/aiba-investigating-claims-syrian-boxer-pulled-out-of-olympic-qualifier-for-refusing-to-fight-israeli.

53 Such a reaction was predicted eight years ago by Pielke, see *Sport does not exist in a vacuum. Fifa has a responsibility to act on Russia*, *sportingintelligence*, 29 July 2014, www.sportingintelligence.com/2014/07/29/sport-does-not-exist-in-a-vacuum-fifa-has-a-responsibility-to-act-on-russia-290701/. ('Ultimately, if the Ukrainian conflict escalates to the point where the United Nations begins to discuss sanctions, the Yugoslavian precedent means that it would likely be difficult to exclude sport as part of that discussion. Not only would such steps call into question the 2018 World Cup, but also the participation of Russian clubs in international competitions as well as effects on other international sports.')

54 In fact, the only International Federation which acknowledged that its decision to suspend Russian athletes was political, the International Luge Federation, was successfully challenged by its Russian member association. See Geoff Berkeley, *Russia rejoices after overturning FIL ruling which banned athletes in first court win*, *Inside the Games*, 9 April 2022, www.insidethegames.biz/articles/1121647/russia-successful-appeal-against-fil.

55 Putting the finger on the hypocrisy of FIFA and the IOC in their reactions to the Russian invasion and their double standards, see K. Pender, *History will judge IOC and Fifa as opportunistic hypocrites over Russia*, *The Guardian*, 3 March 2022, www.theguardian.com/sport/2022/mar/03/history-will-judge-ioc-and-fifa-as-opportunistic-hypocrites-over-russia.

56 For a similar argument, see J. Lindholm, *How Russia's invasion of Ukraine shook sports' foundation*, *The International Sports Law Journal* (2022) 22, 1-4.

to introduce proper procedures and rules in their statutes and rulebooks to deal with such cases. One could imagine, for example, that FIFA would foresee the suspension of a member association if the state it represents has been overwhelmingly condemned by the international community (for example through a Resolution of the U.N. General Assembly, the U.N. Security Council, the U.N. Human Rights Council or the International Court of Justice) for breaching fundamental principles of international law (such as the prohibition of a war of aggression) or for committing international crimes. Such a suspension could, in the case of an illegal invasion, be lifted when a peace agreement is reached. In other words, it might still be time to recognize that the Berlin 1936 Olympic Games were a terrible idea and should not have taken place and that sports and football should not be guided by what Hoberman called ‘amoral universalism’, the idea ‘that all human tribes must take part in the Games, no matter how repressive or inhumane their governments may be’.⁵⁷ This would require FIFA and UEFA to take their societal and political impact seriously by embracing their responsibility to govern international and European football with some regard for the political and human rights concerns linked to their competitions and members.⁵⁸ Eventually, such a recognition could even lead football to finally become this ‘vector of peace and hope’⁵⁹ that it dreams to be.⁶⁰

57 J. Hoberman, *The Myth of Sport as a Peace-Promoting Political Force*, *The SAIS Review of International Affairs*, Winter-Spring 2011, Vol. 31, No. 1, 17-29, at 21.

58 Discussing how controversies surrounding the Qatar World Cup forced FIFA to acknowledge some responsibility for the human rights impacts linked to its activities, see A. Duval, *How Qatar’s migrant workers became FIFA’s Problem: a transnational struggle for responsibility*, *Transnational Legal Theory*, 12:4, 2021, 473-500.

59 FIFA, *Bureau of the FIFA Council takes initial measures with regard to war in Ukraine*, 27 February 2022, www.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/bureau-of-the-fifa-council-takes-initial-measures-with-regard-to-war-in.

60 A paradox identified by Lindholm in *How Russia’s invasion of Ukraine shook sports’ foundation*, *The International Sports Law Journal* (2022) 22, 1-4, at para. 3. (‘By abandoning the principle of political neutrality, SGBs can perhaps, somewhat paradoxically, achieve what the principle claimed to achieve but for which there is scant evidence of success: promote peace.’)