

**CAS 2009/A/1823 Panamerican Judo Union v. International Judo Federation**

**ARBITRAL AWARD**

**rendered by**

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Jan Paulsson, attorney-at-law in Paris, France  
Arbitrators: Mr Quentin Byrne-Sutton, attorney-at-law in Geneva, Switzerland  
Mr Bernard Hanotiau, attorney-at-law in Brussels, Belgium

in the arbitration between

**PANAMERICAN JUDO UNION**

represented by Mr Jorge Ibarrola, attorney-at-law in Lausanne, Switzerland

-Appellant-

and

**INTERNATIONAL JUDO FEDERATION**

represented by Mr Georges Benelli, attorney-at-law in Paris, France

-Respondent-

**TABLE OF CONTENTS**

<b>1.</b>	<b>THE PARTIES.....</b>	<b>1</b>
<b>2.</b>	<b>THE CONFLICT IN A NUTSHELL.....</b>	<b>1</b>
<b>3.</b>	<b>FACTUAL BACKGROUND.....</b>	<b>1</b>
<b>4.</b>	<b>THE PROCEEDINGS.....</b>	<b>16</b>
<b>5.</b>	<b>JURISDICTION OF THE CAS .....</b>	<b>18</b>
<b>6.</b>	<b>APPLICABLE LAW .....</b>	<b>19</b>
<b>7.</b>	<b>ADMISSIBILITY .....</b>	<b>19</b>
<b>8.</b>	<b>THE SUBSTANTIVE ARGUMENTS.....</b>	<b>20</b>
	<b>PJU’s Submissions .....</b>	<b>20</b>
	<b>IJF’s Submissions .....</b>	<b>23</b>
<b>9.</b>	<b>THE PANEL’S FINDINGS ON THE MERITS .....</b>	<b>26</b>
	<b>Lack of legal basis of the Decision.....</b>	<b>26</b>
	<b>Confirmatory factual findings .....</b>	<b>30</b>
<b>10.</b>	<b>THE ADVISORY OPINION .....</b>	<b>36</b>
<b>11.</b>	<b>COSTS .....</b>	<b>ERREUR ! SIGNET NON DEFINI.</b>

## **1. THE PARTIES**

1.1 The Panamerican Judo Union (“PJU” or “Appellant”) is an association based in Santo Domingo, Dominican Republic. It has for the last 41 years been the sole Continental Union representing the national judo federations of the American continent within the IJF (see below).

1.2 The International Judo Federation (“IJF” or “Respondent”) is a company created in 1951, limited by guarantee and incorporated in Ireland. In August 2009, the IJF voted in favour of moving the IJF’s legal seat to Lausanne. The IJF is the international federation governing judo and is recognised by the International Olympic Committee; it is composed of national federations and continental unions.

## **2. THE CONFLICT IN A NUTSHELL**

2.1 The PJU contends that the leadership of the IJF has colluded with dissident members of the PJU, and fomented further dissent, in order to promote the creation of a competing Continental Union. Such an entity was indeed created under the name of the Panamerican Judo Confederation (“PJC”). The IJF, according to the PJU, violated basic principles of governance to evict the PJU and to install the PJC in its place.

2.2 The IJF counters that the PJU is no longer representative, has not respected basic principles of governance in its own affairs, and was validly disaffiliated as a Continental Union of the IJF.

## **3. FACTUAL BACKGROUND**

3.1 The elements set out below are a summary of relevant facts emerging from the parties’ written pleadings and proof, as well as from testimony in the course of the hearing held on 31 August 2009 at the CAS in Lausanne. The summary does not comprise every contention put forward by the parties. The Panel has considered all submissions, but

does not make specific reference to them except to the extent that it deems them to be of material significance to its analysis. Relevant correspondence is quoted at length to give full objective context; significant passages are selected and analysed in the Panel's discussion of the merits (see Section 9).

3.2 In early February 2008, the IJF invited certain national federations to a meeting in Rio de Janeiro later that month (the "Rio Meeting"). The invitation was on IJF letterhead and signed by Mr Ignacio Aloise, IJF Sports Director. It read as follows:

*Dear President:*

*As you know, from past years, but especially since the year 2006 has been a major concern of all those good Judocas who assume leadership positions in America, find suitable alternatives for honest and effective development of our sport, who increasingly losing ground to other continents in different competitive scenarios.*

*Judoca, your opinion and experience is needed to build the present and future of our sport at the continental level, so that each and every country that make up our Pan American Judo Union have finally support, organization and programming necessary for the proper development, so we invite you to participate in the meeting that for this purpose are being carried out:*

*Date: February 27 (arrival) to 29 (departure), 2008*

*Place: Rio de Janeiro – Brazil*

*This important meeting will be present president of the International Judo Federation, Mr. Marius Vizer and other significant figures of the World and Olympic Judo who, in turn, will make significant contribution to this important matter.*

3.3 The PJU was not invited to attend the Rio Meeting. On 20 February 2008, Mr Jaime Casanova Martinez, President of the PJU,

wrote to the IJF's President, Mr Marius Vizer, objecting to the Rio Meeting on the grounds that it would be used as a means of disempowering the PJU:

*In name of the Panamerican Judo Union, we expressed our indignation by the course of the events that you are generating in the scope of the Panamerican Judo Union.*

*Several countries have denounced that in your name, the gentlemen Paulo Wanderley T. and Ignacio Aloise, Presidents of the National Federations of Brazil and Uruguay are causing a "meeting" in Rio de Janeiro, on the upcoming days of February 28<sup>th</sup> and 29<sup>th</sup> 2008, with the purpose and object that is to turn the same one an illegal "Assembly of the UPJ", with the consequent destitution of all the democratically elected members and in functions of this continental organization.*

*We remind you that the democracy in America is the greater treasure of the town and many dictators lost the life due to not to (sic) valuing it, to respect it and to understand it.*

*In the sport of Judo, the Panamerican Judo Union democratically has fortified its bases, coexisting daily with opposite opinions to the direction, which have their space in each one of the Ordinary Congresses of our institution.*

*A "coup d'état", would make much damage to the Judo of the World, the International Olympic Committee would be first in finding out and verifying that Judo has lost the ethics and the respect, as a result of it until the durability of our sport in the Olympic Program would be in doubt and the new stage under its direction would be marked by the authoritarianism and the destruction, situation that we deeply want to avoid and to take advantage of to add forces for the democratic development of our loved sport.*

*We requested that it avoid the objective of the mentioned meeting and reflects in those who before lack*

*of legal instruments take refuges in moved away from their customs of the democratic life.*

3.4 On the same day (20 February 2008), Mr Casanova also wrote to the organisers of the Rio Meeting – Messrs Wanderley and Aloise – and advised them that PJU members who attended would be sanctioned:

*We are aware of the invitation that you are formulating in name of the International Judo Federation (IJF) to the panamerican countries, for a meeting in Rio de Janeiro, Brazil, on the day's (sic) of February 28<sup>th</sup> and 29<sup>th</sup> 2008.*

*On that matter, we warned them that if within the points that they are promoting is the one to turn that meeting into an assembly thus to dismiss of illegal way and violator of the Statutes to the Members of the Executive Committee of the Panamerican Judo Union, their actions will be penalized according to the Effective Statutes of our continental organization, specifically the established one in Section D. Loss of affiliation, point 3.*

3.5 On 21 February 2008, Mr Casanova wrote to the representatives of all national judo federations affiliated to PJU advising them of the “plot” being organised by Messrs Wanderley and Aloise to remove PJU directors and replace them with IJF “puppets”:

*In this opportunity we come to you with the objective to denounce to the entire world that our Pan-American Judo Union is being object of a great plot to dismiss those who democratically exert the direction of this continental organization.*

*Mr.'s Paulo Wanderley and Ignacio Aloise, Presidents of the National Federations of Brazil and Uruguay, respectively, in name of Mr. Marius Vizer, President of the International Judo Federation, are offending our dignity and intelligence with only inviting some people “to a meeting” on the days of the 28<sup>th</sup> and 29<sup>th</sup> of February 2008 in Rio de Janeiro, Brazil, for which they*

*never offered before to aerial passages, accommodation, Judogis, mats, and many other prebandage.*

*That offends shamelessly the one of these gentlemen who after discriminating against our brothers of the Caribbean “not to have judo”, now invites them to contribute innocents of their plans and eagerness of the coup participants.*

*His plan has been discovered, wanting to turn “the meeting”, in a legal Assembly of the Pan-American Judo Union to change the elect directors and to replace them by puppets of indicated by the International Judo Federation.*

*Do not allow that they use and turn that meeting into one of the greatest shames of the history of the Pan-American Judo Union.*

*At this time when the dictators sadly have been forgotten by history, it remember the Pan-American Judo Union, following faithful of the democratic rules has given and it will always give capacity to the opposite political ideas, but within the framework of the legality of a Congress as they establish its effective statutes.*

3.6 On 25 February 2008 the IJF President, Mr Vizer, replied to Mr Casanova explaining that the latter was mistaken as to his intentions; he would be in Copacabana for a week’s vacation and during that time was simply taking the opportunity to meet with some federations. The purpose of these informal meetings was to discuss problems related to individual federations, but problems within the PJU would not be discussed. His own words were as follows:

*In response to your letter, allow me to express, first of all, my highest appreciation for your democratic enthusiasm, but unfortunately, I must inform you that you are in a great confusion.*

*Therefore, please be informed that I am taking a one week vacation to Copacabana and on this occasion, I informed the President of the Brazilian Judo Federation, Mr. Wanderly, who is also my friend, about my private visit to Brazil.*

*Mr. Wanderly expressed his wish to meet me, an initiative which I confirmed. Afterwards, other Presidents of National Federations from the region expressed the same wishes – to discuss problems related to their federations. Of course, like always, I was open to their suggestion.*

*I would like to mention that it is not a premiere for me. On the occasion of many trips – private or official ones, in the interest of Judo, within Europe, Africa and Asia, I have met the leaders of judo organizations from the countries of the region which I visited. All these meetings were and are helpful for the development and promotion of International Judo.*

*Never in the course of such visits, have I discussed or would I discuss problems with reference to the structure or politics of a Judo Continental Union, but I have and always will be open to discussions about the support and promotion of Judo in certain countries. As the President of the International Judo Federation, I consider these meetings to be welcome and truly beneficial for our sport.*

*For the moment, Mr. President, my priority and the priority of the International Judo Federation, is the successful preparation of the Olympic Games in Beijing, as well as the development programs for the 2009 – 2013 period.*

*I assure you, Mr. President, of the most open collaboration and partnership with the Pan American Judo Union and I suggest that you, as well as your Executive Committee, follow precisely the strategic path of the International Judo Federation.*



3.7 The Rio Meeting took place as planned, without the PJU but with representatives of some of its member national federations.

3.8 On 17 August 2008, the PJU Executive Committee convened its members to an Ordinary Congress to be held on 17 October 2008 (the "PJU Congress"). On the agenda was the election of the PJU President, Sport Director and Referee Director. Certain federations nominated candidates for the available positions. Following a request for an extension of the time limit to submit applications for the election, on 30 September 2008 the PJU informed its members that the deadline to propose candidates had been extended.

3.9 On 1 October 2008, Mr Vizer wrote a circular letter to a number of national federations, noting alleged irregularities in relation to the organisation of the PJU Congress and announcing his intention to seek the convening of a meeting in Mexico for the purpose of allowing "all affiliates" to present candidatures as well as "concerns and proposals":

*We have received some documents at the International Judo Federation informing that on August 7<sup>th</sup> (sic), 2008, the Panamerican Judo Union convened a Congress to be held on October 17, 2008.*

*At the same time, we have received some documents from the Presidents of most of the National Federation comprising the Panamerican Judo Union denouncing the irregularities of this Congress notification.*

*In my capacity as President of the International Judo Federation and as my will in life is to defend the main democratic principles and the equality of all human beings, I have considered, after studying all documents and the Statutes of the Panamerican Judo Union, that the same violate several articles that EVERYONE is obliged to respect and comply with, irrespectively of their positions.*

*1. On August 17, 2008, the Panamerican Judo Union convened a Congress to be held on October 17<sup>th</sup>, 2008.*

2. *According to the Statutes of the Panamerican Judo Union, in article 7, “section D Procedures at the congresses” it is established that:*

*“The candidatures for the positions within the Executive Council, must be notified to the Secretary General with copy to the President of PJU, signed by the President of the National Organization duly affiliated, at least ninety (90) days before the date established for the Congress celebration and to every organization affiliated. No candidatures will be accepted during the Congress”.*

3. *At the last Congress it was not schedules (sic) a date or a place for the next Congress, therefore the National Federations affiliated to PJU did not have the opportunity to submit candidatures, as they were not aware of the date or place of election. We are being informed that the congress will take place in 60 days time, while the Statutes establish that the candidatures must be submitted 90 days before.*

4. *This situation turns inapplicable other rules referring to terms of 60 days as they obviously cannot take place when the term of 90 days, the first and longest, has not yet started. The electoral mechanism did not proceed in first place as the initial term does not exist.*

5. *The International Judo Federation will celebrate an Extraordinary Congress on October 21<sup>st</sup>, and one of the points of the agenda is to consider some rules regulating the electoral acts of the Federations or Continental Unions.*

6. *Following Article 2-2 of the Statutes of the International Judo Federation, the Continental Unions and its members Federations, must conform their Statutes and Rules to those of the International Federation.*

*To summarize:*

- *A Congress is convened 60 days in advance without notification to the members of PJU and that*

*makes impossible to present candidates, as the term required is of 90 days.*

*- A congress is convened 4 days before the congress convened by the International Judo Federation where the rules regulating the different electoral processes will be studied.*

*These points render impossible that supreme organizations and its affiliates are democratically elected, as established by the Statutes of the International Judo Federation and ACODEPA.*

*Due to the mentioned, I am informing you dear President, that the International Judo Federation WILL NOT RECOGNIZE this Congress or the agreements therein.*

*Due to these irregularities and for the good sake of Judo, I have requested the PASO President Mr. Mario Vázquez Raña to convene in Mexico on December, in due time and manner, an Extraordinary Congress under the supervision of PASO members, where all affiliates have the same opportunities to present their candidatures to the different positions as well as their concerns and proposals for discussion.*

*Being convented (sic) that these measures will benefit the Panamerican and World Judo and that they are the most appropriate, convenient and fair to all judo athletes you duly represent, I am at your full disposal to defend the sport we all love and to which we have devoted our time and energy.*

3.10 The same day (1 October 2008), Mr Casanova wrote to Mr Vizer, protesting that the IJF had no role to play in the election of the PJU's Executive Committee:

*My dear President, with all due respect, if we are talking about violating articles that we must respect and abide ; let's (sic) begin by analyzing if the Statutes of the International Judo Federation confers its President*

*the right to interfere in the elections of Continental Union. Evidently, “NO”, numeral 2-2 of the 2<sup>nd</sup> article of the International Judo Federation’s Statutes states:*

*“Bye-laws to Article 2.2- Notwithstanding the above, each Continental Union may elect its own EC **in its own way.**” (duly underlined)*

*So, in fact, I have yet to find the norm that entitles you the right, on behalf of the International Judo federation, to RECOGNIZE OR NOT Congresses or agreements that are made inside a Continental Union.*

*In the same order, and not being the International Judo federation the superior governing body that shall take care of verifying the way that authorities are elected in a Continental Union, I would like you to, instead of attributing functions that do not correspond to you, really dedicate yourself to comply with what is stated in article 4 of the aforementioned statutes, which states: “The IJF has the following aims: a) **To promote cordial and friendly relations between its members** and to supervise judo activity throughout the world. b) To protect the interest of judo throughout the world. c) **To organize, in collaboration with the five Continental Unions, the IJF Events (at regular intervals) as well as the judo competitions for the Olympic Games.** The right to organize the World Championships and international events will only be given to countries that are able to guarantee entry into their territory of all participants of Members Federations wishing to participate. d) To organize judo throughout the world and to develop and spread the practice of judo particularly amongst the youth. e) To establish the international regulations of judo. f) To support and maintain the ideals and objectives of the Olympic Movement.”*

*This, in reference to the letter where you inform me that, even as I am the President of the Panamerican Judo Union, I should not assist to the WORLD CHAMPIONSHIP FOR TEAMS (sustaining that idea with unjustified reasons). For which today I ask myself... How many conflicts are you talking about?*

*How am I going to collaborate with the IJF in the organization of events? How are you promoting cordial and friendly relations between its members?*

*In this matter, Mister President, I ask you... Do you consider that with these actions you respect the IJF Statutes and I, as a person, do not respect the PJU Statutes?*

*As well, I will like to take the opportunity to take note of your arguments to consider that the letter of convocation should be re-considered because it presents irregularities. In this respect I will like to inform you that as the President of the Panamerican Judo Union, I have taken care of creating an undeniable harmony between the members of the entity that I preside. Unfortunately, very well know, it is impossible to satisfy all the members of an organization: since possibly what is correct for me is not correct for others and vice-versa.*

*Being it as it may, you can be convinced that the right to nominate of every member country of this union has not been violated; however, if any member believes that its rights have been violated, I simply insist that it should direct its claim to our organizations. This, in fact, is the competent body to listen such allegations. Even so, to this day Mister President, I do not know that the entity that I preside has rejected a nomination and/or has denied the fact of an Electoral Guarantee.*

*Between many things in which I will like to refer, I will choose one more in order to finish; that democracy that you act as Guarantor. For which I ask you what is your definition of Democracy? Because, sincerely, I have no doubt that we concur with its definition. For me, **Democracy**, is a form of organization of group of people, in which the predominant characteristic is that in which the title of power relies upon the total number of its members, in order that, that the decisions made responds to the collective will of the group members. The same is found immersed in the Principle of Political Equality, as expressed by the Universal Suffrage (same*

*vote, direct, secret and without exclusions) manifested by the citizens or through their representatives.*

*The aforementioned question is made because, among many things, I have read the Proposal for Changes to the Statutes of the International Judo Federation. It amazes me, not less than others, what the proposal establishes in the Ordinal 4.1 of Article 5, in which NOMINATION is referred; “to be a member of the IJF a National federation has to recognized (sic) by the Olympic Committee and this by the IOC, must have a minimum of 100 judokas and stage an annual national event.*

*Then, if you are the Guarantor of the Democracy inside the International Judo family, I really don’t understand where I can assume that conditioning the membership with the IJF by numbers of judokas is DEMOCRATIC. In this case I have dedicated myself to seek information in respect and the universal Declaration of Human rights, as well as the Civil and Political Rights Treaty, among others have demonstrated that his proposal is not linked (in any way) to any democratic feeling and, by the contrary, we find ourselves in the most realistic violation of human rights (minority discrimination).*

*Mister President, to make a good job, you shall let other do theirs; each shall bear that what corresponds to his or her self. Therefore, none shall incur in ABUSE OF POWER.*

*And, expecting the respect that the Union that I preside deserves now and in the sure celebration of our Ordinary Congress on the October 17<sup>th</sup>, 2008 in Santo Domingo, Dominican Republic; I bid you farewell, mentioning the last doctrine tendencies that has been put into practice, in relation to this matter in the international environment **“that what is just will not be sacrificed due to lack of non essential formalities”**.*

3.11 On 5 October 2008, the President of the Haiti Judo Federation, Mr Ernst Laraque, wrote to the IJF President urging him to reconsider his decision not to recognise the upcoming PJU Congress. Mr Laraque

suggested that any irregularity in the timing of calling the PJU Congress was cured by the subsequent extension of the deadline to submit candidatures for the available positions. Mr Laraque also wrote to all PJU members in his capacity as President of the Caribbean Judo Confederation inviting them to attend the PJU Congress.

3.12 The PJU Congress was held as scheduled on 17 October 2008 with 21 federation members being recorded as present or represented (three were not allowed to vote because of unpaid dues). Mr Casanova was re-elected as PJU President, Mr Manuel Violenus was elected as PJU Sports Director and Mr Carlos Diaz was re-elected as PJU Referee Director. Notarised minutes of the meeting were sent to the IJF the next day.

3.13 Following up the intention expressed in the penultimate paragraph of Mr Vizer's letter of 1<sup>st</sup> October (see Paragraph 3.9 above), Mr Aloise sent an email to all PJU members on 23 December 2008 informing them that "The Provisory Commission for the conformation of the new organism of the Judo of the American Continent, it has the affability to mention to you the constituent congress that will be developed in the City of Mexico since 17<sup>th</sup> to 20<sup>th</sup> of January of year 2009" (the "Mexico Meeting").

3.14 On 2 January 2009, Mr Casanova wrote to Mr Aloise, objecting to this initiative in the following terms:

*Hereby we refer to a note written by you that has been circulating on behalf of a "Provisory Commission" for a "Constitutive Congress" of a new judo organization for the American continent to be held in Mexico between the 17<sup>th</sup> and 20<sup>th</sup> of January of 2009 and for which the agenda and other documentation of this main event will be sent later on.*

*We would like for you to be clear on the fact that this calling is in total violation of the statutes that rule the Panamerican Judo Union and for this reason your action is completely illegal and non respectful of democratic values.*

*Your position as a member of the Executive Committee of the International Judo Federation does not give you the will to do callings of any kind that interfere with the Panamerican Judo Union since this institutions is the most proper one to act the best and most transparent way in each situation judo faces.*

*Therefore, we suggest that you give up this mad position that together with your support to several intents of Coup D'Etat against the Panamerican Judo Union opens the possibility to initiate a disciplinary process against you.*

3.15 On 19 January 2009, a letter was sent to the PJU, purportedly in the name of 21 member federations (the number 21 appears to be purely coincidental, as the addressees only partly overlapped with those having been recorded as present or represented at the 17 October 2008 PJU Congress), stating that those federations no longer wished to be affiliated with the PJU.

3.16 On 28 January 2009, PJU wrote to the IJF stating that they were aware that a “breakaway union” had formed a new Continental Union. The PJU sought an undertaking from the IJF that the IJF would remove from the agenda of the emergency meeting in Paris any proposal to recognise the breakaway union or to pay it the Olympic dividends allegedly due to the PJU:

*We at the Pan-American Judo Union (“PJU”) are aware that a meeting took place on 19 January 2009 in Mexico City and that at this meeting there was an attempt to form an illegal breakaway Continental Union (the “Breakaway Union”). We understand that such a breakaway union would infringe upon or replace the rights and responsibilities exercised by the PJU. This action is in direct breach of the Statutes of the International Judo Federation (“IJF”).*

*We also understand that an emergency meeting of the Executive Committee of the IJF is to be held on or about 6 February 2009 in Paris (the “emergency meeting”). We further understand that, at this emergency meeting it*



*will be proposed that the Breakaway Union would be recognised by the IJF and that the Olympic dividend lawfully due to the PJU under the Statutes and Finance Rules of the IJF is to be paid to this Breakaway Union.*

*We believe that any attempt to recognise this Breakaway Union and any attempt to make payment of the Olympic dividend, rightly due to the PJU, to this Breakaway Union would be in contravention of the Statutes of the IJF. We also believe that the IJF has breached its own statutes by proposing to discuss this issue at the emergency meeting.*

*In light of the urgency of this matter we call upon you to confirm in writing before 5pm GMT on Thursday 29 January 2009 that you will comply with the following request (“PJU Preliminary Request”):*

*1. Remove from the agenda for the emergency meeting, and undertake not to consider or accept before the conclusion of these proceedings:*

*a. any proposal that the Breakaway Union would be recognised by the IJF, and*

*b. any consideration or proposal that the Olympic dividend due to the PJU would be paid to the breakaway union.*

*2. Ensure that the Olympic dividend is paid to the PJU without delay.*

3.17 On 12-13 March 2009, the purported constitution of the PJC was apparently consummated (or at least acknowledged), according to the following account of that meeting:

*At [the Mexico Meeting], due to fully justified reasons, the new Pan American Confederation of the sport was constituted, whose members decided to terminate their affiliation to the Pan American Judo Union presided by Mr. Jaime Casanova. The new Confederation counts with the official recognition by the International Judo*

*Federation and is in the process to obtain recognition by PASO.*

3.18 On 27 March 2009, the IJF announced by a letter signed by its Secretary General that the Executive Committee had decided by majority to recognise a new body, the PJC, as the sole union for the American continent, thereby purportedly disaffiliating the PJU (the “Decision”).

#### **4. THE PROCEEDINGS**

4.1 On 3 April 2009, the PJU filed an appeal at the Court of Arbitration for Sport (“CAS”), challenging the Decision.

4.2 On 6 May 2009, the PJU filed its appeal brief seeking annulment of the Decision and recognition of the PJU as the sole continental judo union for the American continent, as well as an award of costs.

4.3 By its terms, the Decision was to be submitted for approval by the Ordinary Congress of the IJF to be held on 23 August 2009 in Rotterdam. On 25 May 2009, the PJU filed a request for provisional measures seeking a stay of the Decision (and ancillary relief). On 8 June 2009 the IJF filed its response to the PJU’s request for provisional measures.

4.4 On 17 June 2009, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Mr Jan Paulsson, President of the Panel, Mr Quentin Byrne-Sutton and Mr Bernard Hanotiau, arbitrators. The parties raised no objection to the constitution and composition of the Panel.

4.5 On 25 June 2009 the IJF filed its answer to the appeal, calling upon the CAS to reject the PJU’s appeal and to consider the Decision valid. The IJF also seeks an award of costs.

4.6 By Order dated 24 July 2009, the Panel granted the PJU’s request for provisional measures in certain respects, holding that the Decision

should be given no effect unless and until it is upheld by the award of the CAS Panel and that therefore the Ordinary Congress of the IJF should not approve or ratify the Decision until the Panel has issued an award on the merits. The IJF did not approve or ratify the Decision at its Congress.

4.7 A hearing was held on 31 August 2009 at the CAS headquarters in Lausanne. The Panel was assisted by Ms Louise Reilly, Counsel to the CAS. Mr Jaime Casanova represented the PJU, assisted by Mr Jorge Ibarrola and Ms Valérie Diserens, counsel; and Ms Jaiana Casanova and Ms Natacha Casann, interpreters. The IJF was represented by Mr Hedi Dhoub, General Secretary of the IJF, and assisted by Mr Georges Benelli and Ms Annie Dutasta-Amieil and Ms Stéphenie Wolley, counsel; and Mr Jean Louis Duchamp, interpreter.

4.8 After opening statements, the following witnesses were heard: Mr Casanova; Mr Ernst Laraque, President of the Haiti Judo Federation and President of the Caribbean Judo Confederation; and Mr Miguel Vanegas, President of the Panamanian Judo Federation, all called by the Appellant; and Mr Paulo Wanderley, President of the PJC and Mr Ignacio Aloise, Executive Director of the PJC, both called by the Respondent. Each witness was reminded that false testimony could have serious legal consequences; each was examined and cross-examined by the parties and questioned by the Panel.

4.9 During the examination in chief of Mr Wanderley, Counsel for the IJF objected to the introduction of witness statements of Messrs Wanderley and Aloise dated 27 August 2009 inasmuch as they were untimely and sought to introduce new factual allegations. The President of the Panel observed that to the extent that factual propositions had not been asserted in a timely fashion, the other side might be at a disadvantage in terms of rebutting them, and the Panel would therefore take account of that circumstance. In the event, the Panel has not considered the contents of the statements in question to be material to its decision.

4.10 At the outset of the hearing, neither party raised any objection as to the constitution of the Panel. At the end of the hearing, after closing oral submissions by counsel, the parties were asked whether they had any comments to make on the way the proceedings had been conducted. Counsel for both parties confirmed that they were satisfied. The President

of the Panel then closed the proceedings except for one outstanding question as to the legal status of the PJU (see the following Paragraph).

4.11 As instructed by the Panel, PJU provided information about its status as a legal entity through a letter from its counsel dated 7 September 2009. PJU represented that it was originally founded in La Havana in 1952; has been affiliated with the IJF since 1968; and has established its seat, in accordance with its Statutes, at the domicile of its President. Attached to that letter was a notarial declaration to the effect that PJU is a non-profit organisation under Law 122-05 of 8 April 2005 of the Dominican Republic.

## **5. JURISDICTION OF THE CAS**

5.1 Article R47 of the Code of Sports-related Arbitration (the “Code”) provides that:

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

5.2 Article 29 of the IJF Statutes provides for an “IJF Arbitral Tribunal”. By letter dated 30 January 2009, Counsel for the IJF wrote to the PJU and stated:

*You are proposing to us to submit to the CAS jurisdiction the dispute which may oppose you to the IJF, in case of a decision which would be unfavourable for you and taken by the IJF, and that this CAS decision will be binding for all parties.*

*I confirm you the agreement of the IJF on this point which expressly accepts to let the case within the CAS’*

*jurisdiction to settle, in a final way, the question of the representativeness of one of both rival continental unions and the distribution of Olympic dividends.*

5.3 The Panel notes that the IJF does not dispute the veracity of the above statement nor does it contest the CAS' jurisdiction. Therefore, the Panel may be satisfied that the above statement by Counsel for the IJF amounts to an offer to submit to CAS arbitration which the PJU accepted by filing its appeal. The parties have thereby concluded a specific agreement to arbitrate within the meaning of Article R47 of the Code. Furthermore, the parties confirmed the jurisdiction of the CAS by signing and returning the Procedural Order.

## **6. APPLICABLE LAW**

6.1 Article R58 of the Code provides that:

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

6.2 In their submissions, the parties have almost exclusively relied on the IJF Statutes, as approved by the Extraordinary Congress in Bangkok on 21 October 2008.

## **7. ADMISSIBILITY**

7.1 Article R49 of the Code provides that:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*

7.2 The Decision was notified to the PJU on 27 March 2009. The PJU filed its appeal at the CAS on 3 April 2009. It follows that the appeal was filed in due time and is admissible.

## **8. THE SUBSTANTIVE ARGUMENTS**

### **PJU's Submissions**

8.1 The PJU submits that it is the only legitimate judo confederation representing the American continent and that "its existence and legitimacy do not depend on IJF or on any other international organization, but only on its own members, the national judo federations." The IJF's Executive Committee was thus not entitled to expel the PJU and recognise the PJC.

8.2 The PJU insists in particular that Art. 1.4 of the IJF Statutes cannot be interpreted in such a way as to allow the IJF Executive Committee to replace the PJU with the PJC. Article 1.4 provides as follows:

#### *1.4 Continental Union*

*The term "Continental Union" shall refer to a Member of the IJF.*

*Each Continental Union shall be a member of the IJF.*

*Each Continental Union is made up of National Federations in the relevant continent, except in the case of exceptional derogations authorized by the EC.*

*Continental Unions are in charge of implementing the policies of the IJF and the IOC.*

*The liability of Continental Unions as members is limited.*

*All Continental Unions undertake to contribute to the assets of the IJF.*

*In the event the company is wound up, all Continental Unions which are members at that time and for one (1) year afterwards, agree to pay the debts and liabilities of the company contracted before they cease to be members, as well as the costs, charges and expenses of winding up. For the adjustment of the rights of the contributors among themselves, such amount as may be required must not exceed ten Euros (10 €).*

8.3 The PJU reasons that the IJF's statutory power to expel a *National Federation* does not extend to create similar authority with respect to *Continental Unions*. Articles 28.3 and 28.4 of the IJF Statutes, dealing with expulsion and suspension, refer only to "[Member] National Federations", not to "Continental Unions". Even if Article 28 were held applicable to continental unions, the PJU submits that it has never violated the IJF Statutes and has done nothing to deserve expulsion.

8.4 In relation to the IJF's argument that Article 11.1 of its Statutes entitles the IJF's Executive Committee ("EC") to pronounce the PJU's disaffiliation, the PJU submits that Article 11.1 presupposes that the IJF itself had been given the plenary power to that effect in the first place. Article 11.1 reads as follows:

*Article 11 – Executive Committee*

*11.1 Powers*

*The EC shall determine the orientation for IJF activities and shall ensure implementation thereof within the limits of the aims of the IJF and subject to the powers expressly attributed to the Congress under these Statutes.*

...

*- The EC has the power to decide on all issues that have not been placed under the authority of another IJF governing body pursuant to these Statutes.*

8.5 In conclusion, the PJU asks for the Panel to set aside the Decision as an excess of power.

8.6 Factually, the PJU identifies three key moments in the sequence of events:

8.6.1 The Rio Meeting called by Messrs Wanderley and Aloise, to which only certain member federations were invited, and which the PJU describes as a “conspiracy”.

8.6.2 In connection with the PJU’s own Congress, the IJF and certain members of the PJC tried to take advantage of an immaterial issue of pure formality. The PJU argues that even if the PJU Congress was called without adequate notice, there were no material consequences.

8.6.3 Following the Mexico Meeting, 21 federations were ready to join the PJC. However, certain of the individuals who signed the letter dated 19 January 2009 had no authority to do so.

8.7 More particularly in relation to the letter the PJU received on 19 January 2009 on behalf of the 21 member federations, the PJU submits that it was invalid, since the members did not follow the provisions in their respective statutes for withdrawal from the PJU. Furthermore, the PJU submits that there are no performance criteria for the recognition of a Continental Union. The assertion that the 21 federations identified in the 19 January 2009 letter are those that have the most substantial judo activity on the American continent is irrelevant.



## **IJF's Submissions**

8.8 The IJF contends that an association has an inherent authority to affiliate and disaffiliate members. Its argument commences by invoking Article 1.4 of the IJF Statutes (see Paragraph 8.2 above), which provides that each Continental Union is a member of the IJF. The IJF submits that being members of the IJF, Continental Unions are necessarily subject to the IJF's control. Pursuant to Article 1.4 and the reference therein to "exceptional derogations", the EC is authorised to intervene in the affairs of Continental Unions.

8.9 The IJF next refers to Articles 4.1 and 4.2 of the IJF Statutes, which set out the conditions national federations must meet in order to become members of the IJF:

### *4.1 Application for membership*

*Only one Federation per Country may become a member of the IJF.*

*To apply for membership in the IJF, a National Federation must:*

- be recognized by its National Olympic Committee (NOC), which itself is recognized by the International Olympic Committee (IOC),*
- have a minimum of twenty (20) licensed members,*
- organize an annual national judo championship at least for the Senior or Junior categories.*

### *4.2 Procedure*

*Any National Federation which would like to join the IJF must apply for membership in writing with the IJF General Secretary.*

*The statutes of the National Federation must mandatorily be attached to the membership application and must absolutely provide that this National*

*Federation agrees to comply with the Statutes and all regulations and decisions of the IJF.*

8.10 Although the IJF Statutes do not contain similar provisions in relation to Continental Unions, the IJF submits that “There is no reason why this procedure should be any different for Continental Unions, which are also members of the IJF. Although the IJF Statutes do not specifically mention recognition of Continental unions by the IJF, they form a contract among its members.” The IJF relies on general principles of contract law that a contract must be “construed on the basis of the parties’ mutual intention rather than literally word for word, and that contractual clauses that are not specifically expressed but can be logically inferred from other written clauses should be supplemented as part of the contract”.

8.11 The IJF also quotes Article 18 of the Swiss Code of Obligations, which provides:

*In order to determine the form and clauses of a contract, the real and common intention of the parties must be sought, over and above the imprecise expressions or terms that may have been used, either erroneously or to disguise the true nature of the agreement.*

8.12 The IJF accordingly submits that

*Pursuant to the legal principle according to which in contractual matters, clauses that are not directly expressed but that may be inferred through related clauses should be supplemented as part of the contract, in our case it should be understood that as regards the Continental Unions which are also members of the IJF, it is up to the IJF to determine the conditions they must meet to be recognized as Continental Unions and that it is the IJF which has the power to recognize Continental Unions.*

8.13 In the IJF's view, Article 11.1 of the IJF Statutes grants the EC the power to decide on matters that have not been placed under the authority of another IJF governing body. The IJF concludes from this that as no other IJF body has the authority to decide on the recognition of a Continental Union "the IJF Executive Committee is irrefutably authorized to decide on such matters".

8.14 The IJF denies that it supported the creation of the PJC and submits that its "attitude was impartial at all times". The IJF points out that the national federations which created the PJC represent 90% of the judokas in the American continent. Furthermore, the IJF submits that no judoka belonging to the federations which remain affiliated to the PJU has ever won a medal in a world championship or competition in the last ten years, whereas the judokas in the PJC participate in world judo matches regularly and win medals. The IJF submits that the decision of the EC to recognise the PJC came about after the IJF examined the information submitted to it by the PJU and the PJC, concerning their association's respective claim to be recognised as the sole Continental Union, and was passed almost unanimously – with only one negative vote against and one abstention.

8.15 In response to the PJU's contention that federations that purported to resign from the PJU must do so in compliance with their own statutes, the IJF submits that of the 21 national federations that created the PJC, only three – Mexico, Barbados and Brazil – expressly mention their PJU membership in their Statutes. In relation to Canada, the IJF submits that its Statutes only refer to recognition by the PJU and not membership of the PJU. Furthermore, the IJF points to 'Article V – Affiliation or Membership' of the PJU Statutes, which provides at section D – Loss of Affiliation: "A National Organization loses its affiliation to this Union: 1. By resigning ...". The IJF concludes that "The right the PJU Statutes gives to all National Federations to resign from the PJU supersedes any statement given for informational purposes in the Statutes of the Federations of Mexico, Barbados and Brazil regarding their membership in the PJU".

8.16 In relation to the alleged lack of authority of individuals who signed on behalf of the 21 federations which constituted the PJC, the IJF submits that for Panama, Porto Rico and Peru the individuals had authority, either as a representative of the federation or by proxy (in the case of Peru).

8.17 The IJF invokes the hypothesis of 41 federations resigning from the PJU, and submits that were the PJU only to have one remaining federation affiliated to it, “the PJU obviously could not claim to be the Continental Union for the American continent”. The IJF contends that “The very fact that it is possible for the National Federations for the American continent to resign from the PJU logically leads one to conclude that the PJU has no right to remain, in perpetuity, the Continental Union for the American Continent”.

## **9. THE PANEL’S FINDINGS ON THE MERITS**

### **Lack of legal basis of the Decision**

9.1 The CAS has neither the authority nor the ambition to make policy for sports federations. In particular, it is not for the CAS to say whether one entity or another is a more suitable member of a federation. In other words, the CAS does not express any view as to which of the PJU or the PJC is a more appropriate Continental Union to represent the Americas.

9.2 The CAS’s authority is rather to verify the legal bases of federal actions, irrespective of their wisdom or otherwise, in the interest of parties who have a stake in the proper functioning of the federations, including persons or entities who at a particular moment may find themselves in the minority.

9.3 Such a review of legality could be required even in the case of a choice with a clean slate between two new entities proposed to fill a vacant seat as one of the five Continental Unions of the IJF. For example, there might be an allegation of a failure to respect important procedural requirements, such as the duty for a selection committee to hear both and not just one of two candidates.

9.4 The present case requires even greater punctiliousness. It does not involve two candidates for a vacant seat, but the attempt to dislodge an incumbent of no less than 41 years’ standing in favour of a competing entity created by dissident members of that incumbent. The situation is therefore far more complex, because it raises the issue of the propriety of

a radical constitutional rearrangement. Whether one is talking of a nation-State or an international sports federation, the exclusion of a constituent entity cannot be the result of an arbitrary executive action or by the extra-constitutional vote of a majority of the community – no matter how large the majority, no matter how unpopular the excluded member. This is a fundamental question of governance, and the Panel has examined it with the exceptional seriousness which it deserves.

9.5 The essential question before the Panel is whether there was a legal basis for the decision announced by the Secretary General's letter of 27 March 2009. It is a fundamental principle that sanctions are not to be taken in the absence of a legal foundation. There is hardly any need to cite authority, but the Panel notes the reliance placed on the "transnational principle" of *nulla poena sine lege* in Paragraph 89 of CAS 2007/A/1392 – a case which should be well-known in the sport of judo, since the IJF was a party to it.

9.6 PJU's eviction as Continental Union was no small matter; it entailed the extinction of its *raison d'être*. It naturally cannot be legitimised in the absence of a clear legal foundation. For reasons to be explained immediately below, the Panel has no doubt in concluding that the decision lacked legal basis.

9.7 There is no provision in the IJF Statute for the disaffiliation of any of its five constituent Unions. The Panel is well cognisant of the IJF's argument to the effect that Article 28 of the IJF Statute makes it possible for the IJF to decide that a national federation ("NF") is to be "suspended or expelled", and that since both NFs and Continental Unions are defined as "members" of the IJF one should reason by analogy that Continental Unions may also be expelled. The Panel does not, however, believe that Continental Unions can be equiparated with NFs for the purposes of the IJF statute. As federated constitutive bodies of the IJF, Continental Unions have a distinct status, organically different from the NFs who achieve membership through them. Moreover, the seriousness of suspension or expulsion is of such magnitude that the Panel is unwilling to create a legal basis for sanction by analogy.

9.8 Equally unavailing is the IJF's argument based on Article 11.4 of its Statutes ("the Executive Council has the power to decide all issues that have not been placed under the authority of another IJF governing body

pursuant to these Statutes”). Such residual-powers clauses are common in statutes and by-laws. Officials of the relevant entities are on occasion tempted to make sweeping claims of authority by reference to them. But such claims are absolutely constrained by the overall powers of the body as a whole. They do not give the vast power of arbitrary exclusion; if such a thing were possible, there would be no reason at all to define lesser powers and to allocate them carefully among internal organs along with a requirement of compliance with procedural safeguards. Otherwise residual-power clauses could degenerate into the proposition that “for matters not expressly defined herein, the President may do whatever he wants whenever he wants”. The proper purpose of a residual-powers clause is to make clear that *when a general authority has been explicitly granted, incidental and subsidiary decisions may be made by the authorised organ, even if they are not specifically defined*. Hence if an arbitral tribunal has “the general power to conduct the proceeding as it deems appropriate”, it follows that it has the power to decide whether a procedural schedule should be established by correspondence or by a preliminary meeting. Any inclination the Panel might have had to give the IJF Statutes an indulgent reading is discouraged by the observation that its current text, promulgated in the wake of Mr Vizer’s election, purports to give him the right to select up to 14 of the 22 members of the EC.

9.9 Even if one were somehow to accept either (i) the argument by analogy or (ii) the argument under Article 11.1, the IJF’s position would be untenable due to the absence of a proper procedure prior to the pronouncement of the sanction. Expulsion from the IJF is permitted only on the grounds of “serious breach or gross negligence, pursuant to a final decision of one of the IJF Discipline Commissions” (Article 28.1). A finding to that effect requires the opportunity to be heard. This is a matter of international public policy which should be apparent to an international body like the IJF. (The IJF’s argument that its invitation to both the PJU and the PJC to present arguments as to why each of them deserved to be chosen as the Panamerican Union is unconvincing: this invitation did not come in the context of a disciplinary procedure; it was not issued by the proper body; it asked the wrong question; and it gave no notice of its purported legitimisation by analogy or otherwise.)

9.10 The Panel reiterates that it takes no view as to the PJU’s attitude and performance as one of the five Continental Unions. Serious criticisms have been made as to the lack of accountability and poor

governance of the PJU. It is a matter of record that the CAS Panel in *CAS/A/1392* considered that the PJU's actions in suspending the President of one of its NFs to be contrary to two "transnational principles of international public order" and therefore null and void. But if such criticisms of the PJU were well founded, and reflected a democratic rejection of its leadership, the remedy was clear: to remove the leadership by constitutionally permissible means.

9.11 This is a fundamental point, because it answers the IJF's argument that it should not have to live "forever" with an entity that happens to have acquired the status of a Continental Union. The answer is that the IJF has the right and duty to require Continental Unions to have "Statutes and Regulations" that are "in compliance with the IJF Statutes and the By-laws decided by EC" (Statutes, Article 3.2). If the IJF has properly done its job – which should be presumed, with the attendant presumption that the PJU Statutes are in compliance – it follows that the Continental Unions could *de facto* be perpetual constitutive units of the IJF, because it would then be possible for the relevant NFs to oust a poorly functioning or non-representative Continental Union leadership.

9.12 The Panel fails to see why the dissident NFs could not have used internal statutory avenues to oust the PJU leadership, rather than creating a competing entity. How the PJU's members may have addressed perceived shortcomings in the governance of the PJU and the conduct of its affairs appears to be a matter of Dominican law. How the IJF's various organs may act, and whether its statutory arrangements are indeed lawful, appears to be a matter of Irish law. The Panel has been shown no foundation under applicable law for either the accusations against the PJU or for the IJF's assertion of its entitlement to take the extraordinary step of excluding the PJU.

9.13 IJF is incorporated under Irish law. Nevertheless the IJF has invoked Swiss law in its arguments, and neither side has presented any arguments based on Irish law. Article R58 of the CAS Rules gives the Panel the authority to apply "the rules of law" which it "deems appropriate". In the present circumstances, the Panel believes that the text of the IJF Statute provides a sufficient foundation for its decision, but finds it appropriate to confirm its conclusions by pointing out why the IJF's arguments are invalid under the only law to which the IJF has referred (that of Switzerland).

9.14 Under Article 65 of the Swiss Civil Code, the authority to admit or exclude the members of an association are residually vested in its general assembly. It follows that a delegation of power, especially with respect to a matter of such importance, must be articulated with unmistakable clarity. The Panel cannot read Article 11.1 of the IJF Statute as having that effect. Moreover, Swiss law recognises limits on the autonomy of associations, in particular with respect to matters which might encroach upon the fundamental principle of equality of treatment. As Margareta Baddeley puts it in her book, *L'association sportive face au droit: les limites de son autonomie* (Bâle, 1994), at page 109, the fundamental characteristics of an association are to a significant degree to be understood by reference to the “democratic inspiration” which underlies the very impetus to form an association.

9.15 Even if the IJF Statute had validly delegated explicit authority to the EC to admit or exclude members, or it were accepted that the EC could so act subject to ratification (a controversial proposition in and of itself, since an improper “provisional” decision could have immediate effects and cause irreversible prejudice), Article 72.3 of the Swiss Code requires that the exclusion of members be for just cause. Thus a Statute which does not define grounds for exclusion (or perhaps grounds which are so vague as to be uncontrollable) would be subject to external control, judicial or arbitral, in order to ascertain the presence of *justes motifs*. In the present case, the Panel considers that the IJF has not come close to demonstrating that its exclusion of the PJU was carried out in a manner that allows for a determination of just cause.

### **Confirmatory factual findings**

9.16 The Panel was made aware, through the parties’ submissions and witness testimony, of the context in which this dispute arose. The debate between the parties in this case was dominated not by competing analyses of the IJF’s statutory powers, but rather by factual accusations of misconduct. The present Panel has no mandate to make general pronouncements about the parties’ relations and behaviour. Its only duty is to rule on the legality of the Decision. The only factual determinations it needs to make therefore concern the IJF’s arguments to the effect that its Decision was somehow justified due to the PJU’s misdeeds. The IJF appears to make its case on the basis that it has an inherent authority to monitor, evaluate, and sanction the PJU’s activity. This position is untenable. The IJF’s authority is defined by the Statutes and by public



policy, no more and no less. The Panel must naturally consider the IJF's arguments to the effect that the factual circumstances provided a type of justification for the Decision that would excuse disregard of constitutional limitations. It will quickly be apparent that those arguments fail.

9.17 The recurrent themes of the IJF's submissions are to the effect that (i) "leading" NFs had lost faith in the PJU, and (ii) the PJU was unrepresentative. Others may or may not share this point of view, but these are quintessentially political issues internal to the PJU and of concern to its membership. The IJF does not have general authority to assist those political currents within Continental Unions of which it may take a favourable view. In particular, Mr Vizer's controversial letter of 1 October 2008 (see Paragraph 3.9 above), warning NFs that the 2008 PJU general assembly would be unlawful, was an excess of power and an unacceptable interference in the affairs of the PJU. This letter was salient in a series of events which the IJF have invoked as explanations of its conduct, and with respect to which the Panel makes the following findings.

9.18 Mr Casanova stated that some federations did not attend the PJU Congress because of the confusion caused by the IJF's declaring it to be illegal, and cited Guyana and Haiti as two members who initially said they would participate but subsequently did not. Of the 21 NFs who attended the PJU Congress, only 18 had the right to vote. (As noted above, three federations were not up to date with their dues.) Although 18 countries did not constitute a quorum, the PJU decided to go ahead with the PJU Congress as it believed that it was entitled to do so based on Article VII D 6 of the PJU Statutes, which provides that: "*Congresses, ordinary as well as extraordinary, shall be considered validly constituted at the time stated in the convocation, by the attendance of a number of delegates that represents more than half of the Affiliated (sic) National Organizations with the right to vote. After one (1) hour, the Congress shall begin with the delegates then present, and the decisions taken shall be legally binding*". The Panel asked Mr Casanova to imagine the scenario where people were unhappy with the federation; what could they do? Mr Casanova replied that their option lay within the organisation, to organise themselves and win the elections legally.

9.19 Mr Vanegas testified that he, as president of the Panamanian NF, participated in the PJU Congress and that the convening letter and agenda

were ratified at the outset of the PJU Congress; there were no objections to the holding of the PJU Congress.

9.20 It was put to Mr Wanderley in cross-examination that any deviation from the PJU Statutes in convening the PJU Congress was cured by the extension of time to submit candidatures. Mr Wanderley disagreed and said that potential candidates did not have enough time to prepare their applications. But when asked to name someone who had wanted to submit an application, Mr Wanderley replied that he could not remember any names.

9.21 If Mr Wanderley was truly motivated by a belief that the PJU had become unrepresentative when he took the initiatives that led to the creation of PJC, why had he just months before sought election to the Presidency of the self-same PJU? Why did the dissidents not attend the ordinary PJU Congress in 2008? If they really believed that there was some formal defect in the convening of this assembly which rendered it invalid, why did they not convoke an extraordinary meeting? On the occasion of the meetings in Rio and Mexico when the competing PJC was conceived and established, why were PJU loyalist National Federations not invited? The obvious concern to any objective observer must be that the answers to all of these questions may simply have been that the dissidents were not prepared to face the democratic process.

9.22 Messrs Casanova, Laraque and Vanegas confirmed in the course of the hearing that they were not invited to the subsequent Rio Meeting. Mr Laraque heard about the Rio Meeting from other members who had been invited; his understanding was that the objective of the Rio Meeting was to establish another organisation with the same role as the PJU; Mr Laraque believed it had the support of the IJF. Mr Vanegas stated that Mr Cesar Chu apparently represented Panama at the Rio Meeting, contrary to an earlier Panel's ruling in *CAS 2007/A/1392* to the effect that the NF chaired by Mr Vanegas is currently the only member of the IJF representing the judo of Panama.

9.23 When giving evidence at the hearing, Mr Wanderley stated that he invited the federations to the Rio Meeting by telephone and email; the federations he invited included the United States, Ecuador, Chile, Paraguay, El Salvador, Mexico and Canada. Mr Wanderley stated that to his knowledge, no one else sent invitations to the Rio Meeting. In

relation to the invitation notice to the Rio Meeting (on IJF letterhead and signed by Mr Ignacio Aloise, IJF Sports Director) Mr Wanderley stated that the notice was written without his authorisation.

9.24 Mr Vizer's role in Rio remains unclear. Mr Aloise's message to a selected number of Panamerican NFs, written in his capacity as the IJF's Sports Director, stated that "Mr Vizer has requested me today to transmit to you his convocation" to attend the Rio meeting. In his testimony before the Panel, Mr Aloise declared that this simple affirmation was in fact untrue. (He explained, astonishingly, that this untruth was intended to instil "confidence" in the invitees.) He said that he had subsequently been admonished by Mr Vizer. Yet no reprimand was made public, and there was no retraction of the "convocation". When confronted by a letter from Mr Casanova complaining about his interference, Mr Vizer answered that Mr Casanova had been "confused" because the true fact was that Mr Vizer was on a one-week vacation in Copacabana, and had contacted his friend Mr Wanderley, who then proposed a meeting with selected NFs. For his part, Mr Wanderley testified that it was all his initiative, and that he had no knowledge of Mr Aloise' message. When confronted with the fact that this email message listed him as an addressee, he simply denied that he had received it – although the address was the same as the one which evidently worked on other contemporaneous occasions.

9.25 Mr Aloise wrote another email on 11 February 2008 in which he urged one of the invitees, "given the importance of this meeting for Judo on our continent", to attend the Rio Meeting, saying that he would contact Mr Wanderley to send him "the passage" and that the accommodation during the stay in Rio would be covered by the IJF. (At the hearing the IJF denied that such payments were made.)

9.26 It is remarkable that Mr Aloise, who according to his testimony used his title as an officer of the IJF to inform numerous IFs of an untruth as to the position of the President of the IJF, was neither removed from office nor apparently disciplined in any way. The same President availed himself of the pretext of an alleged formal failure of timely notice of internal PJU elections – a matter which is the affair of PJU members, none of whom complained – to write to PJU members and tell them that their general assembly was unlawful. The contrast is so stark that the Panel can only wonder if Mr Aloise is truthful today about his alleged untruthfulness in early 2008.

9.27 The Panel is ultimately unable to discern which witness was truthful. But it is clear that Messrs Wanderley, Aloise, and Vizer acted in consort, and that at least one of them is dissembling. (The IJF did not present Mr Vizer as a witness.)

9.28 Nor do the circumstances of the meeting in Mexico City provide any legitimation of the Decision. Mr Vizer's letter of 1<sup>st</sup> October 2008, purportedly written in his capacity as President of the IJF, asserted that he had studied "all documents and the Statutes" of PJU and concluded that "the same" violate "several articles" in a manner that entitled the IJF not to "recognize" the PJU Congress, and that "due to these irregularities and for the good sake of Judo" he had requested PASO to convene an "Extraordinary Congress" in Mexico "under the supervision of PASO members". Mr Vizer thus took it upon himself to intervene in the governance of PJU, to declare that procedural violations had occurred without considering: (i) what the PJU had to say; (ii) the fact that Mr Vizer's own interpretation of the PJU texts were, to say the least, controversial; (iii) that no one appears to have complained about these supposed violations; and (iv) above all, that the IJF is not a member of the PJU and has no status entitling it to intervene in the internal affairs of the Continental Union. Nothing in the IJF statutes gives the President the power to make such determinations, or to declare that the IJF will refuse to "recognize" the actions of the PJU. This is a matter for its members. Even more *ultra vires* was Mr Vizer's presumption that he had the authority (for what he called "the good sake of Judo") to ask PASO in effect to facilitate dissent within the PJU.

9.29 If members of the PJU considered its leadership to have been deficient, it was for them to take institutionally legitimate steps to replace it. It was not for the IJF to intervene to expel one of its member Continental Unions without due process. Apparently the IJF and the dissident members of the PJU wanted to go fast and to create a *fait accompli*, rather than to follow legal procedures. Perhaps the PJU's leadership indeed represented NFs holding a numerical advantage which was disproportionate to their achievements in the sport. These are political issues similar to those faced by many international organisations, where it is occasionally asked why small countries should have the same vote as major powers in the general assembly. But it was not for the leadership of the IJF to make these decisions for the members of the PJU.

9.30 The Panel's findings are severe because the consequences of the undermining of the PJU have likely sapped its ability to defend itself. Various NFs – possibly unaware of the strategy employed, possibly sympathetic to the PJU at the outset – may gradually have come to the realisation that as a matter of *Realpolitik* it was simply too costly for them, in the interest of their own athletes, coaches, and referees, not to fall in line with the outcome that the IJF and the dissident NFs were adamant to achieve by force.

9.31 The Panel is aware that its decision is likely to leave the IJF in an uncomfortable position with respect to its Panamerican constituency. But the PJU itself is subject to legal processes. If members of the Continental Union have had serious grounds to believe that their rights have been violated, or that funds have been misappropriated, their own responsibility is in question if they have not demanded accountability in accordance with the legal regime applicable to the Union. Rumours and accusations of irregularities are insufficient. A number of evident legal measures may be sought by members of an association who believe the entity is being governed unlawfully. No evidence has been placed before the Panel suggesting that any attempt has been made to explore, let alone employ, such legal means. Ignorance of how to use such measures would put into question the fitness of the complainants to represent their own adherents. The Panel has no view of how the PJU would fare if its practices were subject to close scrutiny; the PJU is not the respondent here.

9.32 As a result of this improper attempt at eviction of the PJU, the judo world (or at least its Panamerican component) will, it seems, have to endure a further period of unrest. It is not within the ambit of the Panel's jurisdiction to say whether or not in the future the PJU could or should be replaced by the PJC. What is paramount to avoid future disputes, however, is that any such decision must follow proper procedures that respect legality. With due attention to fundamental constitutional procedures, there is no reason why the discord will not in due course be resolved (whether in a friendly manner or by legal process) in a manner consistent with the rule of law and with the interests of the athletes, coaches, referees and all others devoted to the Olympic ideals.

## 10. THE ADVISORY OPINION

10.1 While this case was pending, an Advisory Opinion (the “Opinion”) was rendered on 15 July 2009 by a CAS Panel seised unilaterally by the PanAmerican Sports Organization (“PASO”). The Opinion concerned the following three questions:

*(1) Does the creation of the Pan American Judo Confederation comply with the Statute of PASO?*

*(2) Is the substitution of the Pan American Judo Union by the Pan American Judo Confederation in compliance with the PASO Statute?*

*(3) What is the scope, within the sports community, of the decisions made by PASO in application of its Statute?*

10.2 The IJF suggested to the Panel that it was desirable that CAS decisions be consistent, and that the Opinion favoured IJF’s position in the present case.

10.3 There are important reasons in principle why an Advisory Opinion at the unilateral request of one party cannot have *res judicata* effect on two other parties who have not been heard by the authors of the Opinion. This operates as a limitation on the undoubted preference for consistency in all types of decisions rendered by CAS. Above all, the Opinion does not deal with the Statutes and processes of the IJF and the PJU which are at issue in this case. Moreover, the present Panel is of the clear view that PASO misstated the circumstances in a significant way when it explained in its request, as presented to the Panel asked to render the Opinion, that there had been a “long conflict between the IJF and the PJU”. Whether the conflict has been “long” is a subjective matter, but what is clear is that the conflict is an internal conflict within the PJU, and that there is no reason to suppose that the IJF has any conflict with what it believes to be positive forces within the PJU.

10.4 None of this is of any moment, however, since in fact there is no incompatibility between the present decision and the Opinion, as will be explained now.

10.5 As to Question (1), the Opinion concluded that the PASO Statute 2004 contained no impediment to the creation of a new Confederation, and that therefore the creation of the PJC “does comply with” the PASO Statute 2004. This conclusion is irrelevant to the issues raised in this case.

10.6 As to Question (2), the Opinion reasons that “it seems logical that the substitution of a confederation is also not contrary to the PASO Statute 2004”. This observation was however made “considering that the process of [PJC’s] recognition by the IJF is under way”. Hence the Opinion’s conclusion is contingent on the result of that process of recognition. As the present decision invalidates IJF’s purported recognition, the Opinion is in this respect explicitly based on a condition (“as soon as the IJF has recognized” the PJC) which has not been legally fulfilled.

10.7 As to Question (3), the situation is even simpler as the Opinion does no more than indicate that the members of PASO have “the obligation to comply with its directives and decisions”. It goes without saying that PASO’s directives are limited by PASO’s sphere of authority. It follows from Question 2 that the recognition of the relevant Continental Union is reserved to the IJF. (To imagine that PASO would have some transcendent right to overrule decisions pertaining to the IJF’s own Statutes, and thus effectively to act as the superior organ of the IJF, would be extraordinary. Whether the IJF’s autonomous actions, however valid under its Statutes, are consistent with its external relations with PASO is another matter.) The answer to Question 3, which is expressed in the most general terms, cannot be interpreted as holding PASO to be authorised to take decisions on behalf of the IJF without impermissibly putting the Opinion in contradiction with itself.

(...)

**ON THESE GROUNDS**

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

1. The appeal of the Panamerican Judo Union is upheld, and the Decision of 27 March 2009 is declared invalid for all purposes.
2. The decision of the Executive Committee of the International Judo Federation to recognise the Panamerican Judo Confederation as the sole union to represent the American continent is set aside.
3. (...)
4. All other claims for relief are dismissed.

Lausanne, 11 December 2009

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Mr Jan Paulsson  
President of the Panel

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Mr Quentin Byrne-Sutton  
Arbitrator

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Mr Bernard Hanotiau  
Arbitrator