



Arbitration CAS 2014/A/3776 Gibraltar Football Association (GFA) v. Fédération Internationale de Football Association (FIFA), award of 27 April 2016

Panel: Prof. Massimo Coccia (Italy), President; Prof. Jan Paulsson (France); Mr Bernhard Welten (Switzerland)

Football

Membership of an international federation

FIFA's supreme regulatory authority and obligation to respect general principles of law

CAS jurisdiction to hear a dispute over a FIFA ExCo decision regarding an applicant for FIFA membership

Application of the principle of non-retroactivity in non-disciplinary cases

Principle of procedural fairness and admission of clubs or athletes to competitions

Criteria for applying mandatory rules according to Article 19 Swiss PILA

Prohibition of the retroactive application of membership criteria by a sports governing body

Concept of "nation" or "country" in the sports environment and difference from its political meaning

Limits in the autonomy of a sports association

Membership to UEFA and non-admission to FIFA

Difference between an exclusion from a single FIFA competition and a permanent exclusion from all FIFA competitions

- 1. The special power that FIFA holds as the supreme regulatory authority within its sport is accompanied by special responsibility. Albeit being a private body, FIFA must thus respect general principles of law and, in particular, those that generally bind legislators and public administrations. Among such principles of law, the non-retroactivity of laws and rules, procedural fairness, and good faith figure prominently.**
- 2. Satisfying solely Article 67, para. 1 of the 2014 FIFA Statutes is insufficient in and of itself for establishing CAS jurisdiction to hear a dispute over a final decision of the FIFA Executive Committee. Article 67, para. 1 of the 2014 FIFA Statutes cannot be read in isolation, but rather in conjunction with Article 66 of the 2014 FIFA Statutes, which limits the class of individuals and entities entitled to submit disputes to CAS to *"FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, licensed match agents and players' agents"*. Given this limitation, an applicant for FIFA membership is not entitled to rely on Article 66 and 67 of the 2014 FIFA Statutes in order to base CAS jurisdiction.**
- 3. FIFA has an established practice of avoiding the retrospective application of its substantive regulations in non-disciplinary settings, such as in matters related to the status and transfer of players. Also, the principle of non-retroactivity has been applied consistently in decisions of the FIFA Dispute Resolution Chamber and the FIFA Players' Status Committee to disallow the retrospective application of substantive rules.**
- 4. The principle of procedural fairness has consistently been applied in CAS arbitration, and particularly so in relation to disputes concerning the admission of clubs or athletes**

to competitions: *“under CAS jurisprudence the principle of procedural fairness is surely among the unwritten principles of sports law to be complied with by international federations. Procedural fairness in the relationships between sports institutions and those subject to their authority – particularly in the realm of eligibility for and access to competitions – is one of the most important principles of lex sportiva, if not the most important one”*.

5. Article 19 PILA provides that a mandatory rule of a law different from the *lex causae* may be taken into account if the dispute presents a close connection with that law. In order to apply EU rules of law, a CAS panel adjudicating an international dispute must verify that the three conditions set forth by Article 19 LDIP are met: (i) the EU rules in question belong to that special category of norms which call for application irrespective of the law applicable to the merits of the case; (ii) there is a close connection between the subject matter of the dispute and the EU territory; and (iii) from the point of view of Swiss legal theory and practice, the invoked EU rules aim to protect legitimate interests and crucial values and their application allows a just decision.
6. The retroactive application of membership criteria by a sports governing organization with supreme regulatory authority would cause said criteria to be meaningless, as the organization could simply alter the rules to exclude a particular applicant and would also violate the principle of procedural fairness. In this regard, it must be especially considered that, in essence, admission as a member of an international federation is the only gateway for a national federation (and its athletes and teams) to gain access to competitions at world level.
7. According to CAS jurisprudence, the concept of *“nation”* or *“country”* in the sports environment may have a different meaning than in the usual language and may not necessarily be understood within its common political meaning.
8. The autonomy of an association under Swiss law is not unlimited. The autonomy may further be restricted where the relevant association holds a dominant position and exercises monopolistic powers. Under such a case, an admission can be refused to an applicant only if there is a justifiable ground for doing so. The restrictions placed on an association’s autonomy of association are based on the legal protection of personality rights, of good faith and against anti-competitive agreements and abuse of a dominant position.
9. The fact that national federation has access, as a member of UEFA, to football activities and competitions throughout Europe, does not mean that the federation’s personality rights are not infringed by non-admission to FIFA, not least due to the differences in the sporting and economic activities at the different levels.
10. A total and permanent exclusion of a federation from all FIFA competitions is different from an exclusion from a single isolated FIFA competition, much like a player under a life ban would be perpetually unable to compete in any kind of world-level competition.

I. INTRODUCTION

1. The Gibraltar Football Association brings this appeals arbitration proceeding against FIFA, challenging a decision of the FIFA Executive Committee dated 26 September 2014 rejecting the Gibraltar Football Association's application for FIFA membership and refusing to forward it to the FIFA Congress. The Gibraltar Football Association is currently a UEFA member, having been granted full UEFA membership in 2013 following several years of legal conflict with UEFA and three awards of the Court of Arbitration for Sport ("CAS") in favour of the Gibraltar Football Association.
2. The territory of Gibraltar is located in the southern part of the Iberian Peninsula at the entrance of the Mediterranean Sea. Under the laws of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK"), Gibraltar constitutes a British Overseas Territory, that is, a territory under the jurisdiction and sovereignty of the United Kingdom, but not part of it. Gibraltar's inhabitants have UK citizenship.

II. THE PARTIES

3. The Gibraltar Football Association (hereinafter the "Appellant" or "GFA"), established in 1895, is the football governing body in Gibraltar. The GFA is formally and substantially independent of any other association, whether within Gibraltar or elsewhere.
4. The Fédération Internationale de Football Association (hereinafter the "Respondent" or "FIFA") is the international governing body of football, headquartered in Zurich, Switzerland.

III. FACTUAL BACKGROUND

5. This section of the award sets out a brief summary of the main relevant facts, as established by the Parties' written submissions, the CAS file, and the evidence given in the course of the hearing that took place on 21 May 2015. Additional facts are set out, where material, in other parts of this award.

A. The GFA's first application for FIFA membership in 1991

6. On 21 March 1991, GFA submitted an application to FIFA seeking FIFA membership. After receiving the application, by letter of 28 March 1991 FIFA asked the Football Association of England (hereinafter the "FA") and the Football Association of Spain (the Real Federación Española de Fútbol, hereinafter the "RFEF") for their views on GFA's application "*in view of the particular status of the territory of Gibraltar*" and of the fact that both associations are "*entities directly involved in this matter*".
7. On 3 April 1991, the Minister for Sport of Gibraltar, having received from GFA a copy of the letter of 28 March 2011, wrote to FIFA that "*there is no question as to the particular status of the territory of Gibraltar. It is a dependent territory of the United Kingdom and the Constitution of Gibraltar clearly states that it will continue to be so unless the people of Gibraltar freely and democratically choose*

otherwise.... We can understand your approach to the Football Association in London, but the fact remains that Spain is our neighbour, as is Portugal”.

8. In response, the then FIFA Secretary General, Mr Joseph Blatter, explained that *“when asking to have the viewpoints of two of its affiliated National Associations, FIFA clearly chose to deal with the matter on a sporting and not political basis”.*
9. On 16 December 1991, the FIFA Executive Committee declined to forward GFA’s application to the FIFA Congress and rejected its application for membership (hereinafter also the “1991 FIFA Decision”), because *inter alia* Gibraltar *“is dependent upon the United Kingdom”* and *“has virtually no autonomy”* and *“with regard to the extremely special nature of [Gibraltar’s] territory’s geographical and political position, accepting its independence on sporting grounds would set important precedents for our organisation that would be contrary to the consistent policy of FIFA in such matters”.*
10. It is disputed whether GFA accepted the 1991 FIFA Decision. GFA denies that it did, arguing that ever since that decision, it *“has consistently pointed out the unequal treatment that it has received from FIFA in comparison to other football associations and has consistently sought to take the relevant steps to become a FIFA member...”.* In particular, it refers to its letter of 8 January 1997 (see *infra* at para. 11). For its part, FIFA argues that even if GFA may not have “accepted” the 1991 FIFA Decision, it manifestly did not challenge it before a Swiss court (At the time, FIFA had not yet accepted the jurisdiction of CAS).

B. GFA’s second application for FIFA membership in 1997 and its transfer to UEFA

11. On 8 January 1997, GFA submitted a second application to FIFA seeking FIFA membership under the 1996 FIFA Statutes. GFA commented, *inter alia*, that:

“1. In 1991 [the GFA] applied for the very first time to become members of F.I.F.A. This was declined basically because Spain had raised an objection on political grounds, contrary to the statutes of F.I.F.A in Article 2 which states: There shall be no discrimination against a country or an individual for reasons of Race, Religion, or Politics.

2. At the time we were informed that with regards to the extremely special nature of our territory’s geogra[ph]ical and political position, accepting its independence on sporting grounds would set important precedents...

3. Since our initial application almost 6 years have elapsed... newly declared states within the previously known territories of the Soviet Union, have all been accepted into FIFA without objections even though politically unstable.

4. Recently we have seen Guam, British Virgin Islands and Palestine joining FIFA...

5. In Para. 2 above, we were informed that accepting Gibraltar independence in sporting grounds would set important precedents. This is difficult to understand when we are purely relating to sporting matters and an example of this is the acceptance of [many Gibraltarian associations] as members of the world governing bod[ies]...

In conclusion we strongly believe that in our initial application we were discriminated upon solely on the grounds that Spain had raised an objection based on her political claim of Gibraltar which has been in existence for the last three hundred years...”.

12. The admission process for FIFA membership under the 1996 FIFA Statutes was as follows:
 - First, the applicant football association was required to file a written request to become a FIFA member. Along with this request, the applicant had to submit certain relevant documents, including: (i) a declaration that the applicant would conform at all times to the FIFA Statutes and regulations, as well as with the decisions of FIFA and of the continental confederations (the “Confederations”); (ii) a declaration that it would observe the Laws of the Game; (iii) a copy of its own Statutes and regulations; and (iv) a file containing details of its internal organization and the sports infrastructure in its country (see Article 4, paras. 2, 3, 4 and 5 of the 1996 FIFA Statutes, *infra* at para. 104).
 - Next, if FIFA considered the applicant’s file to be complete, it would, in light of the requirements that an applicant must be “*a provisional member of a confederation for at least two years*”, forward the applicant’s file to the Confederation territorially responsible for the applicant (in the case of GFA that would be UEFA) (See Article 4, paras. 1 and 6 of the 1996 FIFA Statutes, *infra* at para. 104).
 - Thereafter, the Confederation would decide whether to grant the applicant provisional membership or full membership and, if so, would monitor the applicant’s conduct for a period of two years before compiling a detailed report and sending it to FIFA (See Article 1, paras. 1 and 2 of the 1996 Regulations Governing the Application of the Statutes, *infra* at para. 106).
 - At that point, on the basis of the Confederation’s report, the FIFA Executive Committee would decide “*whether or not*” to submit the application for FIFA membership to the FIFA Congress (See Article 2 of the 1996 Regulations Governing the Application of the Statutes, *infra* at para. 107).
 - Finally, the FIFA Congress would definitively decide whether to grant full FIFA membership to the applicant (See Article 3 of the 1996 Regulations Governing the Application of the Statutes, *infra* at para. 108).
13. On 31 May 1997, the FIFA Executive Committee met and discussed, among other matters, GFA’s case. In the relevant minutes it is recorded that “[*n*]hereas *The Football Association has no objection to the Gibraltar FA becoming a FIFA member, the Spanish FA is strongly opposed to it. Several other sports associations in Gibraltar have become independent members of their international federations (e.g. athletics, boxing, hockey, swimming, volleyball and basketball). FIFA will complete the file for submission to the next Executive Committee meeting*”.
14. On 16 June 1997, FIFA’s then Deputy Secretary General, Mr Michel Zen-Ruffinen, communicated to GFA that: (i) the FIFA Executive Committee had mandated the FIFA General Secretariat to further examine the GFA’s application for affiliation; and (ii) even though the GFA’s Statutes essentially conformed to FIFA’s provisions, FIFA would in any case transmit to GFA a copy of model statutes in order to enable GFA to adapt its own Statutes in such a way as to achieve complete compliance with FIFA’s requirements.
15. On 13 October 1997, GFA filed a report in support of its FIFA membership application.
16. On 11 November 1997, FIFA, through the then Secretary General, Mr Blatter, acknowledged receipt of the new draft of the GFA’s Statutes and indicated that they conformed on the whole

with FIFA provisions. He stated, however, that FIFA would have liked to meet some of the representatives of GFA in order to discuss the overall structure of GFA's Statutes and some important points related to them. Mr Blatter further expressed FIFA's wish to organize a meeting with GFA in Zurich in December 1997 and instructed GFA to contact Mr Vincent Monnier to make the necessary arrangements.

17. On 27 November 1997, the FA confirmed to FIFA that it "thoroughly support[ed]" GFA's FIFA membership application.
18. On 10 December 1997, Mr Joseph Nuñez and Mr Albert Buhagiar, the Chairman and Secretary General of GFA, respectively, met with Mr Vincent Monnier of FIFA at FIFA's headquarters in Zurich. According to Mr Nuñez's notes of this meeting (drafted on 12 December 1997): (i) the attendees discussed GFA's statutes and the procedure/logistics necessary to arrange a FIFA visit to Gibraltar; (ii) Mr Monnier on more than one occasion declared that FIFA would not permit politics to enter the matter of GFA's FIFA membership application; and (iii) Mr Zen-Ruffin (introduced to GFA representatives at the end of the meeting) expressed the expectation that the next time he would see the GFA representatives would be at the FIFA Congress after the GFA's application had been approved.
19. On 27 May 1998, the FIFA Executive Committee (i) deferred the FIFA membership application of GFA, as well as those of Bhutan and Greenland, and (ii) submitted the applications of the football associations of Palestine, Eritrea, Turks and Caicos, US Virgin Islands and American Samoa to the 1998 FIFA Congress, noting that a "*long and heated debate ensued with regard to accepting certain of the above-mentioned associations as members since the statistics showed that they had very few players and clubs and/or did not have complete sovereignty over their territories. However, since membership had been granted in the past in similar cases, it was decided that all these applications be submitted to the Congress now but that a special committee be set up specifically to scrutinise all future applications for affiliation on the basis of strict criteria*".
20. On 27 October 1998, Mr Nuñez, Mr Buhagiar and Mr Dennis Nuza, representatives of GFA, again met with Mr Monnier. According to a note Mr Nuñez drafted on 28 October 1998, Mr Monnier explained that "*there was no reason whatsoever for FIFA not to continue to abide by its own statutes and continue to process the GFA application since there was nothing untoward in said application*" and that even if Mr Villar, a member of the FIFA Executive Committee and President of the RFEF, "*managed to persuade the FIFA Executive Committee to submit a negative report on [GFA's] application to the FIFA Congress, the fact of the matter was that the important vote was that of the Congress who would approve the application even in those circumstances*".
21. On 23 February 1999, at a meeting of the FIFA Associations Committee (then known as the National Associations Committee), Mr Monnier explained in relation to GFA's case that "*diplomatically this is a difficult situation but that discussions continue and a meeting is planned under UEFA*".
22. On 3 March 1999, FIFA wrote to GFA to confirm that the "*preliminary procedure*" was completed and that consequently it would, in accordance with Article 4, para. 6 of the 1996 Statutes, initiate "*the second phase of the procedure (evaluation of the organisation for a period of at least two year)*". In this connection, FIFA also reminded GFA that, according to Article 4, para. 7 of the 1996 Statutes, the concerned Confederation (UEFA) would decide whether to grant GFA provisional or associate membership.

C. The transfer of the GFA's application to UEFA

23. On 23 March 1999, UEFA informed GFA that FIFA had forwarded to UEFA its file for affiliation to FIFA and that, in order to continue with the affiliation procedure, GFA was invited to a meeting at UEFA headquarters in Nyon on 16 April 1999.
24. Following said meeting, on 19 April 1999, GFA submitted a file in support of its application for UEFA membership. The next day, by letter dated 20 April 1999, the then Deputy Secretary General of UEFA, Mr Markus Studer, thanked GFA for the "*much appreciated presentation*" and expressed that they were "*highly impressed by the professional manner in which [GFA] presented [its] situation*". He went on to explain in the letter that the process now called for UEFA to examine GFA's file thoroughly with FIFA and that, following a visit to Gibraltar in the fall, "*we will make a recommendation for the UEFA Executive Committee to discuss at one of its meetings in winter 1999/2000*". Mr Studer also confirmed that the Executive Committee of UEFA would not make a final decision with regards to GFA's UEFA membership until the year 2000.
25. At that time and until 11 October 2001 (see *infra* at para. 53), the English version of Article 5, para. 1 of the UEFA Statutes stipulated that "*Membership of UEFA is open to national football associations situated in the continent Europe which are responsible for the organisation and implementation of football related matters in their particular territory*".
26. On 7 January 2000, UEFA informed GFA that the FIFA Associations Committee was in the process of reviewing the affiliation procedure rules and that it would thus not be able to give GFA any further information on its UEFA membership application until the FIFA Committee's next meeting set to take place in March 2000.
27. On 19 January 2000, Mr Nuñez wrote to UEFA and declared that: (i) the on-going review of the FIFA affiliation procedure should not affect GFA's application as it was made before the commencement of said review. Mr Nuñez explained: "*To retrospectively apply procedural rules to a pending application would not appear to us to be appropriate especially if the review results in either greater hurdles having to be surmounted by the applicant or the application not being entertained*"; and (ii) the fact that the UEFA inspection of GFA's facilities had not yet taken place, even though it supposedly ought to have occurred by December 1999 at the latest, was a matter of concern to GFA. Mr Nuñez, therefore, sought assurances that UEFA was processing GFA's application in accordance with the then applicable procedures.
28. On 27 January 2000, UEFA acknowledged receipt of the 19 January 2000 letter from GFA and indicated that it would "*discuss with FIFA once more the procedure of affiliation which was agreed with [GFA] during [its] visit in Nyon*".
29. On 22 March 2000, the FIFA Associations Committee, according to the minutes of the meeting, "*accepted that [GFA's] file was still dealt with in compliance with the current statutes*" and confirmed that a "*FIFA/UEFA inspection visit*" had been planned for May 2000.

D. The joint FIFA/UEFA delegation's visit to Gibraltar

30. On 25 March 2000, UEFA communicated the following to GFA: "*FIFA and UEFA administrations have discussed the application procedure for [GFA]. After having received also the green light*

by the FIFA Committee for national associations we inform you that a joint FIFA/UEFA delegation will visit [GFA]”.

31. On 25 April 2000, UEFA provided GFA with the details of the joint FIFA/UEFA delegation and confirmed that Mr Monnier from the FIFA National Associations Department would be attending and accompanying three UEFA representatives.
32. On 8-10 May 2000 the joint FIFA/UEFA delegation conducted an inspection visit of GFA.
33. After the visit, Mr Monnier wrote to GFA to thank it for the *“heartfelt welcome extended to the FIFA/UEFA delegation during its stay in Gibraltar and for the excellent organisation of the various meetings held with the officials of the GFA and the representatives of the sports authorities. Our discussions were both interesting and fruitful and will allow our two organisations to have a better understanding of the situation of football ‘on the Rock’”.*
34. On 11 July 2000, the UEFA delegation issued an “Inspection Report” on GFA (based on its file and the visit of 8-10 May 2000). In it, UEFA noted that the FIFA Executive Committee had rejected GFA’s 1991 application *“for political reasons, as a result of objections raised by Spain on the basis of various stipulations in the FIFA Statutes”.* The delegation recommended that GFA be admitted to UEFA on a provisional basis under three cumulative conditions, reasoning *inter alia* that GFA *“fulfils all the requisite statutory conditions for admission to UEFA”* and that *“for purely political reasons, and apparently through the pressure of its politicians, the [RFEF] has so far refused to give its consent”.* The three cumulative conditions were: (i) that GFA would be able to take part in the UEFA’s youth, women’s and amateur competitions from the 2001/2002 season at the earliest; (ii) that the football infrastructure in Gibraltar’s territory correspond to the requirements for said competitions by the time of entry for said competitions; and (iii) that the GFA’s Statutes be adapted to UEFA’s requirements by the start of the 2001-2002 season.
35. On 24 July 2000, UEFA informed GFA that the Inspection Report would be submitted to the UEFA Executive Committee at its next meeting on 25-26 August 2000 and that the UEFA Administration would be recommending its Executive Committee to accept GFA as a provisional member of UEFA.

E. Amendment of UEFA Statutes and postponement of GFA’s application

36. On 3 August 2000, the FIFA Executive Committee, at its meeting in Zurich, discussed Gibraltar’s case. In the minutes of that meeting, the FIFA Executive Committee noted: *“The conclusions of the FIFA/UEFA Inspection in May had been positive. UEFA would probably take a decision shortly as to the possible admission of this organisation”.* Furthermore, the FIFA Executive Committee *“agreed to the FIFA President’s suggestion that the rules for affiliating new member national associations should be revised for inclusion in the new version of the Statutes for 2004 and that no more members should be admitted in the meantime”.*
37. On 9 October 2000, GFA updated FIFA on the steps it had taken towards achieving UEFA membership by forwarding its correspondence with UEFA.
38. On 29 August 2000, UEFA informed GFA that the UEFA Executive Committee had decided in its meeting of 26 August 2000 to: (i) postpone the decision concerning the provisional UEFA membership of GFA until its next meeting of 4-5 October 2000; and (ii) hold a meeting

between the FA, the RFEF and UEFA to discuss GFA's case. This meeting did not take place until 30 November 2000. Despite GFA's request, UEFA did not permit GFA to attend this meeting, as it considered it an "internal meeting" and considered GFA's presence unnecessary "since... the UEFA Administration is in favour of your application".

39. On 5 September 2000, the Secretary General of the RFEF demanded FIFA to explain "when how and why [FIFA] apparently submitted to UEFA the affiliation application for the supposed Football Federation of the British Colony of Gibraltar".
40. On 15 December 2000, UEFA informed GFA that the UEFA Executive Committee had decided in its meeting of 14-15 December 2000 that independent legal advice was necessary to evaluate GFA's UEFA membership application and that, therefore, a panel of three independent legal experts (hereinafter the "UEFA Expert Panel") would be constituted to prepare a substantiated legal report for the UEFA Executive Committee.
41. On 15 and 16 March 2001, the FIFA Executive Meeting discussed GFA's case. The relevant minutes state: "Gibraltar: a meeting had taken place last November between the English and Spanish FAs and a committee of experts had been assigned to report on the validity of Gibraltar's application for membership and its conformity with the FIFA Statutes. The FIFA President said that Ángel María Villar's opposition on the part of the Spanish FA to Gibraltar becoming a FIFA member would be given due consideration".
42. On 11 and 12 July 2001, the UEFA Executive Committee met and proposed an amendment to the UEFA membership criteria to the effect that an association could become a member of UEFA only if its headquarters were located in a country which was an independent state recognized by the United Nations.
43. On 30 July 2001 and 20 August 2001, GFA expressed its concern that no legal report had yet been issued by the UEFA Expert Panel and asked for an update on its application.
44. On 27 August 2001, the UEFA Expert Panel rendered its legal report to the UEFA Executive Committee. In said report, the Expert Panel unanimously agreed that according to Article 5, para. 1 of the UEFA Statutes (see *supra* at para. 25) and Articles 1 and 2 of the Regulations Governing the Implementation of the UEFA Statutes, "the GFA was entitled to provisional admission as a member of UEFA". However, it advised the UEFA Executive Committee that "to avoid similar problems in the future" it should amend the UEFA Statutes "to the effect that only UN-recognised states may apply for admission to and membership of UEFA".
45. On 30 August 2001, UEFA informed GFA that the UEFA Expert Panel had rendered its report and indicated that the UEFA Executive Committee would discuss it at its meeting of 6-8 September 2001, where it would also take a decision regarding the application of GFA. It did not, however, make the legal report available to GFA. UEFA also pointed out that the provisions on UEFA membership were expected to be amended at the next Extraordinary UEFA Congress in October 2001.
46. Following the issuance of the UEFA Expert Panel's report, the RFEF, on 3 September 2001, contacted FIFA seeking confirmation that "the UEFA's current Statutes (edition 2000) have been approved by FIFA's Executive Committee, as set forth in Article 9.5 of the UEFA Statutes".
47. The same day, the RFEF sent to the then President of FIFA, Mr Joseph Blatter, a letter in which it criticized the UEFA Expert Report for being concluded in a forced manner and from

a viewpoint of pure legal theory, and, further, for being unconvincing on many points. The RFEF went on to comment as follows:

“What is UEFA’s goal in pursuing this rash membership approval through the back door, claiming that it is FIFA’s responsibility, as they were the ones who submitted the file to UEFA for review? We do not understand such haste since, in a relatively short period of time, the Congress will approve an amendment to the statutes that will settle this issue. The matter involved a dispute between two European Union countries, and requires the utmost impartiality (Art. 1, UEFA Statutes).

It is also astonishing that the report in question claims that UEFA freely determines the admission of members because there is “no contractual relationship” with FIFA. On this point, and in order to stop laying the blame at FIFA’s door for initiating the problem, i.e. sending the file in due time with Gibraltar’s application for membership, we advise FIFA to urge UEFA to freeze the file.

... We stress, moreover, that even the UEFA itself has come to recognize and agree with this statement by understanding that, in order to avoid this type of problem in the future, the UEFA Statutes should be amended to specify that only countries recognized by the UN may request membership in UEFA. This amendment will take place in Prague in 36 days.

So it is reasonable to halt the process, reject it, or, barring this, wait until the Congress approves the next text which would resolve the matter definitively”.

48. The next day, on 5 September 2001, the then Secretary General of FIFA, Mr Zen-Ruffinen, wrote to UEFA that it would be premature to proceed with the affiliation of GFA in the forthcoming months because FIFA was planning to change its criteria for membership. More specifically, Mr Zen-Ruffinen stated: *“Nous avons été contactés par la Fédération Espagnole de Football au sujet du dossier relatif à l’affiliation de Gibraltar à votre Confédération. En matière, nous aimerions vous faire part, qu’à notre sens il serait prématuré de procéder à l’affiliation de cette association dans les prochains mois. En effet, comme vous le savez, la FIFA procédera d’ici à l’année de son centenaire à la révision totale de ses statuts. Dans ce cadre, les dispositions concernant l’affiliation des associations nationales et en particulier les articles relatifs aux conditions devant être remplies pour une demande d’affiliation seront précisés et seront l’objet de règles extrêmement précises”.*

49. On 7 September 2001, UEFA wrote to GFA announcing that the decision on the latter’s application for membership would be postponed until further notice, given that the UEFA Executive Committee had decided to change the criteria for becoming a UEFA member. The relevant portion of this letter reads:

“1. The [UEFA] Executive Committee did not enter into the request of the [GFA] to be provisionally affiliated to UEFA.

The UEFA Executive Committee has already discussed and decided at its July 2001 meeting to change the membership conditions in the UEFA Statutes. These proposals will be dealt with by the UEFA member associations at the next extraordinary Congress in Prague in October 2001. In the meantime, UEFA has been informed by FIFA that the FIFA membership conditions are also currently under discussion and that FIFA wishes that both FIFA and UEFA membership conditions have the same requirements. Consequently, UEFA is presently not in a position to accept any new affiliations until this discrepancy is solved.

2. *The decision concerning the affiliation request of the [GFA] is therefore postponed until further notice. [...]*”

50. As of September 2001, GFA repeatedly requested UEFA to make a decision on its application for provisional membership to UEFA without delay and on the basis of the UEFA membership criteria in force at the time when it submitted its application.
51. On 21 September 2001, UEFA confirmed to GFA that it had decided on 7 September 2001 to postpone any decision on GFA’s case until further notice and that it would therefore not discuss the issue until its next October 2001 meeting.
52. On 5 October 2001, senior officials of UEFA and of GFA held a meeting but did not reach a solution on the matter.
53. On 11 October 2001, the UEFA Congress approved the amendment to the UEFA membership criteria so that UEFA membership would only be granted to associations from countries recognized by the United Nations as independent States. The new provision read: *“1. Membership of UEFA is open to national football associations situated in the continent of Europe, based in a country which is recognised by the United Nations as an independent state, and which are responsible for the organisation and implementation of football-related matters in the territory of their country”*.
54. On 13 November 2001, UEFA communicated to GFA that: (i) *“the Executive Committee has so far not taken a negative decision on [its] application request but has only postponed its decision upon FIFA’s request”* (emphasis in original); and (ii) it would not place GFA’s application on the agenda of the UEFA’s Executive Committee meeting *“until FIFA established the necessary guidelines regarding membership. Therefore, the UEFA Executive Committee will not deal with the matter at its December meeting”* (emphasis in original).
55. On 1 November 2001, the FIFA Associations Committee met and discussed, among other matters, that of GFA’s application. The relevant minutes of the meeting state: *“UEFA judged that the application for affiliation should be put on ice until the FIFA Statutes have been adopted. Mr Ruhee said that this situation was unfortunate because Gibraltar’s file was excellent. This highly political file has been shelved for the moment until 2004”*.
56. On 20 November 2001, GFA replied to UEFA that it considered that UEFA had acted illegally in this matter.
57. At its meeting of 8-9 March 2002, the FIFA Executive Committee, in discussing the case of New Caledonia FA, noted that *“[a]fter drawing comparisons with the applications of Gibraltar and Zanzibar, which had been put on hold until 2004, the consensus opinion was that this item be taken off the Congress agenda”*.

F. The first GFA v. UEFA arbitration before the CAS

58. On 26 April 2002, GFA informed UEFA that it understood UEFA’s position to be that it was not eligible for UEFA membership under the new membership criteria and that, therefore, its application would fail. GFA also declared that it considered as illegal: (i) UEFA’s treatment of GFA’s 1999 UEFA membership application under the revised membership criteria; and (ii) its decision to change the rules with retrospective effect in such a way as to prevent GFA from

becoming a member. Finally, it requested UEFA to accept CAS jurisdiction (which UEFA did on 12 July 2002).

59. On 16 August 2002, GFA filed a request for arbitration with the CAS (hereinafter the “First GFA-UEFA CAS case”).
60. On 22 October 2003 the CAS issued the award 2002/O/410 in which it ordered UEFA to decide, by no later than 31 March 2004, on GFA’s application for UEFA membership on the basis of the rules in force at the time when GFA filed the application (hereinafter the “First GFA-UEFA CAS Award”).

G. The 2004 amendment to the FIFA membership criteria

61. On 19 October 2003, the Extraordinary FIFA Congress decided to amend the criteria to become a FIFA member. According to the minutes of that Congress *“the definition of the word ‘country’ should be amended to fall into line with the wording of the Olympic Charter, with the addendum reading: ‘In this context, the expression ‘country’ shall refer to an independent state recognised by the international community”*. The FIFA Congress also agreed that *“an additional paragraph should be added stating that this article shall not affect the status of existing members”*. On 1 January 2004, the revised Statutes entered into force (see Article 10 of the 2004 FIFA Statutes *infra* at para. 109).
62. It should be noted that between 1988 and said amendment entered into force in 2004, FIFA had admitted the following territories as members:
 - In 1988: Aruba (a part of Netherlands Antilles at the time of FIFA membership and now a Part of the Netherlands); and the Faroe Islands (a Danish possession now and at the time of FIFA membership).
 - In 1992: The Cayman Islands (a British Dependent Territory at the time of FIFA membership and now a British Overseas Territory).
 - In 1994: The Cook Islands (an Associated State, i.e. a self-government in free association with New Zealand, now and at the time of FIFA membership).
 - In 1996: Anguilla, Montserrat and the British Virgin Islands (all British Dependent Territories at the time of FIFA membership and now British Overseas Territories); and Guam (a U.S. possession then and now).
 - In 1998: American Samoa and the U.S. Virgin Islands (both U.S. possessions now and at the time of FIFA membership); Palestine (an occupied territory having the status in the United Nations of a “non-member observer state” now as well as at the time of achieving FIFA membership); and the Turks and Caicos Islands (a British Dependent Territory at the time of accession to FIFA membership and now a British Overseas Territory).
 - In 2004: New Caledonia (a French overseas territory now and at the time of FIFA membership).
63. On 31 October 2003, GFA took note of FIFA’s amendment and expressed its *“firm opinion that the membership criteria applicable to [its] application for membership (which was filed in January 1997),*

is that contained in the statutes of FIFA which were in force in 1997 and not those that will come into force on the 1st of January 2004 or at any time thereafter". FIFA acknowledged receipt of said letter on 19 November 2003 and noted that it would take *"due note of its content"*.

64. On 29 February 2004, the FIFA Media Office reported that the FIFA Executive Committee had stated that *"if Gibraltar officially applied for membership, it could not be admitted as a member according to the [new] FIFA Statutes"*. This is confirmed in the minutes of the FIFA Executive Committee meeting of 29 February 2004, which read as follows: *"The Court of Arbitration for Sport had recently set UEFA the deadline of 31 March 2004 by which to reach a decision on the Gibraltar Football Association's application for affiliation. In response to a subsequent request from UEFA for input from FIFA, the Executive Committee noted that Gibraltar did not fulfill the conditions of admission laid down in article 10 paragraph 1 of the new FIFA Statutes, since it was a UK overseas territory and not 'an independent state recognised by the International community'. While the Associations Committee would discuss this issue at its next meeting, it was agreed that FIFA would advise UEFA that it would most likely not be possible for the Gibraltar Football Association to be affiliated to the world governing body"*.
65. After GFA expressed surprise and objected to FIFA about its announcement of 29 February 2004, FIFA replied in two separate letters (both sent on 10 March 2004) explaining that *"the discussions were held without prejudice on the matter whatsoever"* and that *"although the matter was discussed, no decision whatsoever was taken on the subject"*.

H. The second GFA v. UEFA arbitration before the CAS

66. On 25 March 2004, the UEFA Executive Committee rejected GFA's request for provisional membership to UEFA on the basis that: (i) UEFA's decision as to whether to admit GFA on a provisional basis is made within a procedure which is prescribed by the FIFA Statutes and with a view to obtain FIFA membership; and in connection with the latter (ii) GFA did not fulfil the criteria for FIFA membership.
67. On 12 May 2005, GFA filed a second request for arbitration with the CAS (hereinafter the "Second GFA-UEFA CAS case").
68. On 29 June 2005, the FIFA Executive Committee at its meeting in Frankfurt noted with regard to GFA's case that *"FIFA had lent its support to UEFA in denying the association associate member status and in rebuffing the appeal which had since been submitted to the Court of Arbitration for Sport"*.
69. On 6 July 2006, the CAS issued the award 2005/O/880 in which it ordered that the UEFA Executive Committee admit GFA to provisional membership and that the UEFA Congress decide on GFA's full membership in the spirit of that award and, in particular, on the basis of the rules applicable at the time when GFA filed its application for UEFA membership (hereinafter the "Second GFA-UEFA CAS Award").
70. In a meeting of 5-6 December 2006, the FIFA Executive Committee rejected the RFEF President's request that FIFA recommend the UEFA Congress to refuse to grant UEFA membership to GFA based on the latter's failure to meet the FIFA membership criteria. The FIFA Executive Committee felt it was not in a position to make such a recommendation. Instead, according to the relevant minutes, it agreed to simply *"write to UEFA to indicate that the GFA did not meet the requirements for affiliation to FIFA but not to make any recommendation to the UEFA Congress"*.

71. On 7 December 2006, FIFA issued a communiqué in which it announced that “... *the Executive Committee ruled that Gibraltar does not meet the statutory requirements to become a FIFA member*”.

I. The third GFA v. UEFA arbitration before the CAS

72. On 8 December 2006, the UEFA Executive Committee admitted GFA to provisional UEFA membership and decided to submit to the UEFA Congress in Düsseldorf on 25-26 January 2007 the consideration of GFA’s application for full UEFA membership. Furthermore, it took note of the FIFA Executive Committee’s decision that GFA “*does not meet the statutory requirements to become a FIFA member*”.
73. On 25-26 January 2007, according to the official transcripts, the UEFA Congress rejected GFA’s application for full UEFA membership on the basis that: (i) Gibraltar did not qualify as a “country” and thus failed to meet the current criteria for FIFA membership; (ii) GFA’s stadium was located on disputed territory; and (iii) the question of GFA’s membership to UEFA had a political connotation (hereinafter the “UEFA 2007 Congress Decision”).
74. On 6 March 2007, GFA filed with CAS a request (entitled “Request for Arbitration/Statement of Appeal”) for a third arbitration (CAS 2007/O/1237, hereinafter the “Third GFA-UEFA CAS case”).
75. UEFA raised a number of jurisdictional objections to GFA’s Request for Arbitration/Statement of Appeal. The relevant CAS panel, on 3 July 2008, issued an award on jurisdiction rejecting UEFA’s objections. The majority of the panel ruled that the CAS did have jurisdiction to hear the dispute as an ordinary arbitration on the basis of Article 61 of the then applicable UEFA Statutes (hereinafter also the “GFA-UEFA CAS Jurisdiction Award”). One member of the Panel, on the other hand, also considered the CAS to have jurisdiction to hear the dispute but as an appeals arbitration on the basis of Article 62 of the same UEFA Statutes. Thereafter, on 27 August 2008, UEFA filed an action before the Swiss Federal Tribunal (“SFT”) to set aside the GFA-UEFA CAS Jurisdiction Award. On 22 December 2008, the SFT rejected said UEFA’s action and upheld the GFA-UEFA CAS Jurisdiction Award.
76. On 18 August 2011, the CAS panel issued the final award in the Third GFA-UEFA CAS case, in which it ruled that GFA was entitled to full UEFA membership and ordered UEFA to take all necessary measures to admit GFA to full UEFA membership without delay (hereinafter the “Third GFA-UEFA CAS Award”).
77. On 24 May 2013, the XXXVII Ordinary UEFA Congress held in London granted GFA full UEFA membership. This decision, in accordance with Article 20 of the UEFA Statutes, came into force on 24 August 2013, three months after the date of the UEFA Congress.
78. It should be noted that FIFA kept itself apprised of GFA’s case at UEFA (including all three CAS arbitrations), periodically discussing any on-going developments at its meetings of the FIFA Associations Committee and FIFA Executive Committee.

J. GFA’s “revival” and “resumption” of its 1997 application for FIFA membership

79. On 19 September 2013, having become an effective member of UEFA in the previous month, GFA wrote to FIFA to “*revive and to confirm the resumption of GFA’s outstanding application for membership*” submitted to FIFA on 8 January 1997 (see *supra* at para. 11).
80. According to the witness Mr Michael Van Praag (President of the football association of the Netherlands, member of the UEFA Executive Committee and member of the FIFA Associations Committee), in September 2013 he had a meeting with the then President of FIFA, Mr Blatter, for reasons unrelated to GFA’s membership application and, during that meeting, Mr Van Praag brought up the issue of GFA’s FIFA membership application. According to Mr Van Praag’s testimony, in the course of the conversation Mr Blatter acknowledged that there were other territories in the world that were in a similar political situation as Gibraltar and whose football associations were full FIFA members, citing five or six specific examples. Furthermore, according to Mr Van Praag, Mr Blatter exhibited a positive attitude towards GFA’s membership application, all the while noting that the decision of whether or not GFA would be granted membership was in the end up to the FIFA Executive Committee and not just him. Mr Van Praag also testified that he reported the content of that meeting to the former President of GFA, Mr Desmond Reoch.
81. On 11 October 2013, FIFA acknowledged receipt of GFA’s letter of 19 September 2013 and responded that it was in the process of analyzing the content of the received documentation and that it would revert to GFA in due course after proper assessment.
82. On 11 November 2013, FIFA informed GFA that its application was incomplete. FIFA explained that (i) its application did “*not contain the mandatory information as defined in the applicable Regulations [Governing the Admission of Associations to FIFA]*”; and (ii) that “*it is not possible to assess the present application based on the documents submitted together with the GFA’s application made more than 16 years ago, in 1996. Instead, all documents shall be submitted in accordance with art. 3 of the Regulations*”. FIFA set a deadline of 23 September 2014 for GFA to supplement its application.
83. In reply, on 15 November 2013, GFA sent a letter to FIFA in which it declared that, in order to continue complying “*with the FIFA requirements, from time to time in force, as to the information that is to be provided in support of a pending and unresolved application for membership of FIFA*”, it would fulfil FIFA’s request to update the information included in its 8 January 1997 application. This notwithstanding, GFA asserted that “*the updating of this information neither will nor can alter the fact that the GFA application was made in 1997, and that accordingly it falls to be assessed by reference to the admission criteria then applicable, as unequivocally decided in CAS 2002/O/410 the Gibraltar Football Association v UEFA, award of 7 October 2003*”.
84. On 14 February 2014, GFA and FIFA held a meeting at which, according to the minutes of the FIFA Associations Committee’s meeting on 17 March 2014, “*FIFA communicated to GFA that the application initiated in 1997 had lapsed with the decision of the UEFA Congress 2007 (which was to terminate the status of the GFA as a provisional member of UEFA without having recognised the GFA as an ordinary member) without the proceedings at FIFA ever having begun*”. According to Mr Van Praag’s testimony, this meeting was attended by Mr Jérôme Valcke (then Secretary General of FIFA), Mr Marco Villiger (Director of Legal Affairs of FIFA), Mr Markus Kattner, Mr Thierry Regenass (Director of the Member Associations and Development Division of FIFA), Mr

Desmond Reoch, Mr Michael Llamas (then GFA Vice-President) and Mr Dennis Beiso (GFA Chief Executive). Mr Van Praag testified that, at this meeting, Mr Valcke approached the GFA's application for membership as a "new" application and declared that the GFA did not fulfil the requirements of Article 10 of the 2014 FIFA Statutes. The GFA representatives, supported by Mr Van Praag, were unable to persuade the FIFA representatives otherwise. However, according to Mr Van Praag, the FIFA representatives at the meeting accepted that, if GFA's application had been treated as an "old" or "existing application", then the FIFA Statutes existing at the time of application would have been applicable.

85. On 19 February 2014, GFA requested, as had apparently been agreed at the meeting of 14 February 2014, that FIFA explain the reasoning behind its belief that GFA's application of 1997 could not be pursued.
86. On 21 February 2014, GFA submitted five dossiers of information to FIFA in accordance with FIFA's request to update its application as per the Regulations Governing the Admission of Associations to FIFA (hereinafter the "2013 Admission Regulations"). Included in the dossiers was GFA's acceptance of Article 3(1)(s) of the Admission Regulations, which requires as part of the contents for a FIFA membership application a "*Confirmation [by the applicant] that all disputes regarding the application procedure shall be decided by the Court of Arbitration for Sport (CAS) headquartered in Lausanne (Switzerland)*".
87. On 19 March 2014, Mr Villiger, Director of Legal Affairs of FIFA, explained to GFA that its file had been transferred to the FIFA Associations Committee for consideration and that further information on its case would follow in due course. Mr Villiger further set out his personal opinion as to why GFA's case may be considered a "new application" and not the continuation of its 1997 application, but reserved for the appropriate FIFA institutions the final decision, which he confirmed had not yet been taken. Mr Villiger explained in part:

"At least from a substantive law perspective, I deem that admission proceedings could and can only begin once the relevant applicant has fulfilled the conditions required for an application; in casu, if it had completed at least a two-year membership in UEFA. In fact no further exchange of correspondence concerning the application for FIFA membership seems to have taken place, neither from FIFA nor from the GFA, after 3 March 1999 and FIFA did not undertake any action to progress with whatsoever that could lead anyone to conclude that acceptance proceedings had begun or were pending.

Furthermore, it also appears evident that at least admission proceedings with respect to the GFA had lapsed – if one were to assume that they had ever commenced or were pending at FIFA – as a result of resolution of the UEFA Congress in 2007. From my point of view, this resolution terminated the status of the GFA as a provisional member of UEFA without having recognised the GFA as an ordinary member.

No objection was raised to this resolution and as a result it then became final and binding regarding the proceedings initiated in 1997. Legally speaking, the ordinary proceedings before CAS subsequent to the aforementioned Congress and the UEFA resolution did not deal with the GFA's objection to the resolution but instead sought to determine whether the GFA could become an ordinary member of UEFA. This is, from a legal perspective, to be regarded as a new application seeking to qualify as (provisional) member of UEFA and/or seeking to determine that the GFA has a right to be accepted and is, in principle, entitled to become a member of UEFA.

Thus, the application initiated in 1997 lapsed with the decision of the UEFA Congress 2007 without admission proceedings at FIFA ever having begun.

This allows for the conclusion that the letter of 19 September 2013 constitutes in fact a new application by the GFA.

Furthermore... the issue of lawfulness of decisions is to be assessed in accordance with the legal situation at the time the judgment is issued”.

88. On 24 March 2014, FIFA informed GFA that it had become evident that *“one of the crucial aspects of the GFA application will be the question of whether or not the GFA represents a ‘country’ in accordance with article 10 of the FIFA Statutes”*. FIFA, characterizing the issue as one of substantive law, reserved the matter for the competent body at the relevant stage of the admission proceedings. FIFA further notified GFA that it had forwarded GFA’s application to UEFA as per the 2013 Admission Regulations, despite the substantive law issue that it might face later in the admission proceedings.
89. Upon receiving the file, UEFA responded to FIFA on 26 May 2014 simply confirming that GFA had UEFA membership. UEFA explained that *“Given that [GFA] is already a full member of UEFA, it is not immediately clear why the file has been forwarded to [UEFA]. It is [UEFA’s] understanding that, while the application of the above-mentioned FIFA regulations makes sense in the case of associations which are not yet members of a confederation, the situation is different for an association such as the GFA, which is already member of a confederation, namely UEFA”*.
90. On 20 June 2014, FIFA requested GFA to confirm whether UEFA’s letter should be treated as a *“report with detailed information”* pursuant to Article 8 of the 2013 Admission Regulations. GFA replied on 30 June 2014 that it considered the five dossiers sent on 21 February 2014 to be the relevant report. FIFA replied on 8 August 2014 that if GFA provided no further materials to UEFA by 18 August 2014, FIFA would assume that GFA *“has refrained from requesting UEFA to submit a report according to art. 8 of the [2013 Admission Regulations]”*.
91. On 14 August 2014, GFA confirmed that it had consulted with UEFA on the issue of the Confederation having to submit a *“report with detailed information on the workings of the applicant”* within the meaning of Article 8 of the 2013 Admission Regulations, but that UEFA, having never before filed such a report, was unaware of what sort of information it must contain. As a result, it requested that FIFA clarify the issue and that the deadline of 18 August 2014 be extended to allow for the preparation of that report.
92. On 18 August 2014, FIFA explained to GFA that, by means of its letter of 8 August 2014, it did not request that UEFA provide a report prior to 18 August 2014, but rather awaited GFA’s indication whether or not it would insist on such a report in accordance with Article 8 of the 2013 Admission Regulations. Due to the confusion, FIFA gave GFA until 24 August 2014 to submit that indication, failing which FIFA would assume that GFA was not requesting UEFA to submit the report envisaged by Article 8 of the 2013 Admission Regulations. It concluded by declaring that *“with regard to the contents of the relevant report, we would like to inform you that this is a matter which would have to be dealt with primarily by UEFA. However, and should UEFA have any queries in this regard, it goes without saying that FIFA would be pleased to assist in clarifying any such queries”*.

93. On 22 August 2014, GFA confirmed to FIFA that it had requested UEFA to submit a report as per the requirements stipulated in Article 8 of the Admission Regulations and indicated that UEFA would be contacting FIFA to request further clarification on the issue of what UEFA's report should include, which it did do later that same day.
94. On 2 September 2014, FIFA clarified for UEFA that while the report should be specific, UEFA has full discretion to decide what its contents should be. FIFA added, however, that placing into a binder the contents of GFA's website as the report would not suffice. FIFA pointed to the information referred to in Article 3 of the 2013 Admission Regulations, in particular paras. d), e), f), h) and j), as the kind of information that would have to be included, appropriately presented and confirmed, in the report.
95. On 8 September 2014, UEFA filed a 24-page report in accordance with Article 8 of the 2013 Admission Regulations and confirmed that GFA had become a full member of UEFA through the UEFA Congress decision of 24 May 2013 and that said decision came into force three months later on 24 August 2013 in accordance with Article 20 of the applicable UEFA Statutes.
96. On 19 September 2014, FIFA acknowledged receipt of UEFA's report and confirmation and further indicated that GFA's application would be submitted to the FIFA Associations Committee at its meeting of 22 September 2014 and subsequently, in accordance with Article 2, para. 1 of the Admission Regulations, to the FIFA Executive Committee at its meeting of 25 and 26 September 2014.
97. According to the minutes of the meeting of 22 September 2014 and the Chairman's report, the FIFA Associations Committee debated GFA's case and came to the conclusion that GFA did not satisfy Article 10, para. 1 of the 2014 FIFA Statutes as it did not organize and supervise football in a "country" as defined by said statutes (i.e. "an independent state recognised by the international community") and given that only one association could be recognized in each country. It therefore proposed for the FIFA Executive Committee to reject GFA's application for FIFA membership. This account was confirmed by Mr Van Praag's testimony at the hearing.
98. On 26 September 2014, FIFA sent GFA a letter in which it rejected GFA's application for admission to FIFA membership (the "Appealed Decision").

IV. THE APPEALED DECISION

99. The body of the Appealed Decision issued by the FIFA Executive Committee on 26 September 2014 reads as follows:

"The FIFA Executive Committee would like to inform you on recent developments regarding the application of the Gibraltar Football Association (GFA) for admission to FIFA.

As you are certainly aware, the Gibraltar Football Association (GFA) applied, on 21 March 1991, to become a member of FIFA for the first time. With regard to this application, the FIFA Executive Committee decided, on 7 December 1991, that an application for affiliation from the GFA was not possible and that it could not submit the application for the FIFA Congress.

With a letter dated 8 January 1997, the GFA again applied to become a member of FIFA. In accordance with the FIFA Statutes applicable at the time, FIFA conducted an examination of the completeness of the documents submitted and advised the GFA of some incongruous provisions of the Statutes which were subsequently amended by the GFA. Further in accordance with the FIFA Statutes applicable at the time, FIFA transferred the GFA application to UEFA. After almost 15 years of inspections, negotiations and legal proceedings, the GFA became a member of UEFA in 2013.

On 19 September 2013, the GFA sent a letter to FIFA, received by FIFA on 24 September 2013, bearing the reference “Gibraltar Football Association (“GFA”) FIFA membership”. In this letter, the GFA referred to its application for FIFA membership of 1997, and stated, inter alia, that “the purpose of this letter is to revive and confirm the resumption” of the relevant application.

On 11 November 2013, FIFA informed the GFA that its application was considered incomplete and gave the GFA a deadline until 23 September 2013 to submit a revised, full application. The GFA submitted its revised application on 21 February 2014. With letter of 24 March 2014, the FIFA Secretary General informed the GFA that the FIFA Associations Committee has agreed to forward the GFA application to UEFA. In the same letter, the FIFA Secretary General pointed out that one of the crucial aspects in the context of the application will be whether the GFA represents a “country” in accordance with art. 10 of the FIFA Statutes.

On 8 September 2013, UEFA provided FIFA with a report on the workings of the GFA. Previously, UEFA had confirmed that the GFA is a member of UEFA.

On 22 September 2014, the FIFA Associations Committee has discussed the matter of the reference. In accordance with art. 9 of the Regulations Governing the Admission of Associations to FIFA, it submitted its findings and recommendations to the FIFA Executive Committee at its meeting of 25 and 26 September 2014. In this context, the FIFA Associations Committee indicated in particular that the requirements for admission to FIFA appear not to be met by the GFA.

Pursuant to art. 2 par. 1 of the Regulations Governing the Application of the Statutes of FIFA, the Executive Committee shall decide whether an association requesting admission to FIFA fulfils the requirements for such admission. Only if the relevant requirements are met, the application for admission shall be submitted to the FIFA Congress (art. 10 of the Regulations Governing the Admission of Associations to FIFA in conjunction with art. 2 par. 2 of the Regulations Governing the Application of the Statutes).

The requirements for admission of associations to FIFA are specified in art. 10 of the FIFA Statutes. Pursuant to art. 10 par. 1 of the FIFA Statutes, any association which is responsible for organising and supervising football in all of its forms in its country may become a Member of FIFA. Pursuant to the same provision, only one association shall be recognised in each country. The term “country”, in turn, is specified in no. 6 of the definitions section of the FIFA Statutes as “an independent state recognised by the international community”. However, pursuant to art. 10 par. 6 of the FIFA Statutes, an association in a region which has not yet gained independence may, with the authorisation of the FIFA members association in the country on which it is dependent, also apply for admission to FIFA. Moreover, art. 10 par. 5 of the FIFA Statutes provides for an exception regarding the four British football associations which are all recognised as separate members of FIFA.

With regard to the GFA, according to its statutes, the GFA is responsible for organising and supervising football in the territory of Gibraltar. Gibraltar is an Overseas Territory of the United Kingdom of Great Britain and Northern Ireland (UK). It is beyond any dispute that the territory of Gibraltar has not been recognized as a sovereign state by any state in the world. Moreover, due to its status as an Overseas Territory of the UK, Gibraltar is not independent.

As a consequence, the “country” relevant in the context of the application of art. 10 par. 1 of the FIFA Statutes with regard to the GFA is the United Kingdom of Great Britain and Northern Ireland. In this respect, the FIFA Executive Committee notes that the UK is already represented in FIFA. Thus, the country relevant in the present context (the UK) is already represented in FIFA. Consequently, in the light of the provision of art. 10 par. 1 of the FIFA Statutes – pursuant to which it is only possible to admit an association if the relevant country is not already represented in FIFA – the requirements for admission to FIFA are not met with regard to the GFA.

In the light of the above, the FIFA Executive Committee notes that the requirements for admission to FIFA are not met with regard to the Gibraltar Football Association (GFA). Consequently, the FIFA Executive Committee will not submit the relevant application to the FIFA Congress”.

V. RELEVANT FIFA RULES

100. The following provisions of the 1996 FIFA Statutes, the 1996 FIFA Regulations Governing the Application of the Statutes, the 2004 FIFA Statutes, 2014 FIFA Statutes, the 2014 Regulations Governing the Application of the Statutes, and the 2013 Admission Regulations are pertinent to the present dispute:

A. 1996 FIFA Statutes

101. Article 1 (“*Title and Constitution*”), paras. 2 through 5 provide:

“2. FIFA shall consist of the national associations which are affiliated to it and recognised by it as controlling association football in their respective countries.

3. Only one association shall be recognised in each country.

4. Each of the four British associations shall be recognised as a member of FIFA.

5. A football association in a region which has not yet gained independence may, with the authorisation of the national association of the country on which it is dependent, also ask to become affiliated to FIFA”.

102. Article 2 (“*Objects*”), para. 3.1 provides:

“There shall be no discrimination against a country or an individual for reasons of race, religion or politics”.

103. Articles 3 (“*Membership*”) provides:

“Associations shall be admitted as members by the Congress only”.

104. Article 4 (“*Application for membership*”), paras. 1 through 8 provide:

- “1. Any association applying for membership of FIFA must first have been a provisional member of a confederation for at least two years.
2. Any association applying for membership shall address a written request to this effect to FIFA.
3. The application for membership shall contain a declaration in which the applicant association undertakes:
 - (a) to conform at all times to the Statutes, regulations and decisions of FIFA and the confederations;
 - (b) to observe the Laws of the Game in force with FIFA.
4. The applicant association shall enclose a copy of its own statutes and regulations with its request. These statutes must, without exception, contain a mandatory clause stipulating the restraints and obligations contained in Art. 59 of the FIFA Statutes.
5. The applicant association shall submit to FIFA a file containing details of its internal organization and the sports infrastructure (facilities for playing football) in its country.
6. If FIFA considers the file to be complete, it shall forward it to the confederation which it considers is territorially competent to deal with it.
7. The confederation shall decide whether to grant provisional membership or associate membership to the applicant association. The confederation shall notify FIFA as soon as it considers a provisional member national association to be qualified to become a member of FIFA (cf. Art. 1 of the Regulations governing the Application of the Statutes).
8. The Regulations governing the application of the Statutes shall determine the terms and conditions”.

105. Article 14 (“Agenda of the Ordinary Congress”), para. 1(i) provides:

“The agenda of the Ordinary Congress shall include at least the following items: (i) admission... of national associations”.

B. 1996 FIFA Regulations Governing the Application of the Statutes

106. Article 1 (“Application for affiliation – provisional affiliation”), paras. 1 and 2 provide:

“1. A confederation granting provisional membership to an association which has applied for affiliation to FIFA shall observe the way the association is organised for at least two years, in compliance with Art. 4 of the FIFA Statutes.

2. The confederation concerned shall then supply FIFA with a detailed report on the organization of the association”.

107. Article 2 (“Confederations – associate members”), provides:

“Based on this report and on the documents mentioned in Art. 4 of the FIFA Statutes, the FIFA Executive Committee shall decide whether or not to submit the association’s application for affiliation to the FIFA Congress”.

108. Article 3 provides:

“The FIFA Congress shall decide whether to grant definitive affiliation or not, should such be the case (cf. Art 14,(i) of the FIFA Statutes)”.

C. 2004 FIFA Statutes

109. Article 10 (*“Admission”*), paras. 1, 5 and 6 provide:

“1. Any Association which is responsible for organising and supervising football in its country may become a Member of FIFA. In this context, the expression “country” shall refer to an independent state recognised by the international community. Subject to par. 5 and par. 6 below, only one Association shall be recognised in each country.

[...]

5. Each of the four British Associations is recognised as a separate Member of FIFA.

6. An Association in a region which has not yet gained independence may, with the authorisation of the Association in the country on which it is dependent, also apply for admission to FIFA”.

D. 2014 FIFA Statutes

110. The *“Definitions”* section provides that the *“terms given below denote the following:”*

“2 Association: a football association recognised by FIFA. It is a member of FIFA, unless a different meaning is evident from the context. [...]

4 British Associations: the four Associations in the United Kingdom – The Football Association, The Scottish Football Association, The Football Association of Wales and The Irish Football Association (Northern Ireland).

6 Country: an independent state recognised by the international community.

7 Confederation: a group of Associations recognised by FIFA that belong to the same continent (or assimilable geographic region).

8 Congress: the supreme and legislative body of FIFA.

9 Executive Committee: the executive body of FIFA.

10 Member: an Association that has been admitted into membership of FIFA by the Congress.

15 Official Competition: a competition for representative teams organised by FIFA or any Confederation”.

111. Article 3 (*“Non-discrimination and stance against racism”*) provides:

“Discrimination of any kind against a Country, private person or group of people on account or race, skin colour, ethnic, national or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion”.

112. Article 10 (*“Admission”*), paras. 1 through 7 provide:

- “1. Any Association which is responsible for organising and supervising football in all of its forms in its Country may become a Member of FIFA. Consequently, it is recommended that all Members of FIFA involve all relevant stakeholders in football in their own structure. Subject to par. 5 and par. 6 below, only one Association shall be recognised in each Country.*
- 2. Membership is only permitted if an Association is currently a member of a Confederation. The Executive Committee may issue regulations with regard to the admission process.*
- 3. Any Association wishing to become a Member of FIFA shall apply in writing to the FIFA general secretariat.*
- 4. The Association’s legally valid statutes shall be enclosed with the application for membership and shall contain the following mandatory provisions:*
 - a) always to comply with the Statutes, regulations and decisions of FIFA and of its Confederation;*
 - b) to comply with the Laws of the Game in force;*
 - c) to recognise the Court of Arbitration for Sport, as specified in these Statutes.*
- 5. Each of the four British Associations is recognised as a separate Member of FIFA.*
- 6. An Association in a region which has not yet gained independence may, with the authorisation of the Association in the Country on which it is dependent, also apply for admission to FIFA.*
- 7. This article shall not affect the status of existing Members”.*

113. Article 11 (“Request and procedure for application”), paras. 1 and 2 provide:

- “1. The Executive Committee shall request the Congress either to admit or not to admit an Association. The Association may state the reasons for its application to the Congress.*
- 2. The new Member shall acquire membership rights and duties as soon as it has been admitted. Its delegates are eligible to vote and be elected with immediate effect”.*

114. Article 25 (“Ordinary Congress Agenda”), para. 2(m) provides:

- “2. The Congress agenda shall include the following mandatory items: ... m) admission for membership (if applicable)”.*

115. Article 66 (“Court of Arbitration for Sport (CAS)”) provides:

- “1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, and licensed match agents and players’ agents.*
- 2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

116. Article 67 (“Jurisdiction of CAS”) provides:

- “1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
- 2. Recourse may only be made to CAS after all other internal channels have been exhausted. [...]”.*

E. 2014 FIFA Regulations Governing the Application of the Statutes

117. Article 2 (“Confederations”), paras. 1 and 2 provide:

“1. The Executive Committee shall decide whether the Association fulfills the requirements for admission to FIFA based on the Confederation’s final report.

2. If the requirements have been fulfilled, the next Congress shall decide whether to admit the Association or not”.

118. Article 5 (“Principle”) provides:

“1. Any person holding a permanent nationality that is not dependent on residence in a certain Country is eligible to play for the representative teams of the Association of that Country.

2. With the exception of the conditions specified in article 8 below, any Player who has already participated in a match (either in full or in part) in an Official Competition of any category or any type of football for one Association may not play an international match for a representative team of another Association”.

119. Article 6 (“Nationality entitling Players to represent more than one Association”) provides:

“1. A Player who, under the terms of art. 5, is eligible to represent more than one Association on account of his nationality, may play in an international match for one of these Associations only if, in addition to having the relevant nationality, he fulfils at least one of the following conditions:

- a) He was born on the territory of the relevant Association;*
- b) His biological mother or biological father was born on the territory of the relevant Association;*
- c) His grandmother or grandfather was born on the territory of the relevant Association;*
- d) He has lived continuously on the territory of the relevant Association for at least two years.*

2. Regardless of par. 1 above, Associations sharing a common nationality may make an agreement under which item (d) of par. 1 of this article is deleted completely or amended to specify a longer time limit. Such agreements shall be lodged with and approved by the Executive Committee”.

120. Article 7 (“Acquisition of a new nationality”) provides:

“Any Player who refers to art. 5 par. 1 to assume a new nationality and who has not played international football in accordance with art. 5 par. 2 shall be eligible to play for the new representative team only if he fulfils one of the following conditions:

- a) He was born on the territory of the relevant Association;*
- b) His biological mother or biological father was born on the territory of the relevant Association;*
- c) His grandmother or grandfather was born on the territory of the relevant Association;*
- d) He has lived continuously for at least five years after reaching the age of 18 on the territory of the relevant Association”.*

121. Article 8 (“Change of Association”), para. 1 provides:

“1. If a Player has more than one nationality, or if a Player acquires a new nationality, or if a Player is eligible to play for several representative teams due to nationality, he may, only once, request to change the Association for which he is eligible to play international matches to the Association of another Country of which he holds nationality, subject to the following conditions:

- a) *He has not played a match (either in full or in part) in an Official Competition at “A” international level for his current Association, and at the time of his first full or partial appearance in an international match in an Official Competition for his current Association, he already had the nationality of the representative team for which he wishes to play.*
- b) *He is not permitted to play for his new Association in any competition in which he has already played for his previous Association”.*

F. 2013 Admission Regulations

122. Article 1 (“Principle”) provides:

“Any association that is seeking admission to FIFA must put forward an application that contains detailed information on its organisation, its sporting infrastructure and its territory”.

123. Article 2 (“Application for admission”), paras. 1 through 4 provide:

“1. Applications may be submitted to the FIFA general secretariat by any means of communication deemed appropriate, including in electronic form. In any case, the application must also be made in writing, accompanied by documents and reports in original.

2. The FIFA general secretariat shall verify the completeness of the application. If the application is not complete, it shall be returned to the applicant with a deadline for submitting a revised application. The applicant must submit a full application within twelve months of the initial submission to FIFA. If the applicant fails to do so, the application will be rejected and the applicant may submit no further applications in the twelve months following the rejection of the application.

3. Any applications not submitted to the FIFA general secretariat shall be deemed invalid.

4. Upon receipt of an application, the FIFA general secretariat shall inform the confederation that is geographically responsible and the FIFA Associations Committee in writing”.

124. Article 3 (“Content of Application”), para. 1(s) provides:

“1. The application for admission shall be made in quintuplicate (five copies) and must contain reports and documentation on the points listed below. Any applications that do not meet the provisions of this article shall be regarded as incomplete. All documents and reports must be originals. [...]

s) Confirmation that all disputes regarding the application procedure shall be decided by the Court of Arbitration for Sport (CAS) headquartered in Lausanne (Switzerland)”.

125. Article 4 (“General”) provides:

“The FIFA Associations Committee and the confederation that is geographically responsible shall process all applications for admission. The FIFA Associations Committee shall also work in close cooperation with the confederation that is geographically responsible while the application is being processed. These two bodies shall also discuss the steps, visits and checks that are to be conducted on the applicant while the application is being processed”.

126. Article 5 (“FIFA Associations Committee”) provides:

“The FIFA Associations Committee shall work in close cooperation with the FIFA general secretariat to verify the completeness of the application. Complete applications shall be forwarded to the confederation that is geographically responsible for the applicant”.

127. Article 7 (“Inspections”) provides:

“The FIFA Associations Committee and the confederation may visit the applicant at any time to conduct inspections. In such circumstances, the applicant shall provide the necessary support”.

128. Article 8 (“Confederations”) provides:

“The confederation shall submit a report to FIFA with detailed information on the workings of the applicant, including confirmation that the applicant is currently a member of the confederation in accordance with the confederation’s applicable statutes and regulations”.

129. Article 9 (“Final report”) provides:

“The confederation’s final report shall be submitted to the FIFA Associations Committee for discussion and recommendation. The FIFA Associations Committee shall then submit its findings to the FIFA Executive Committee”.

130. Article 10 (“FIFA Executive Committee”) provides:

“The FIFA Executive Committee shall submit the corresponding application for admission, together with a recommendation that it be accepted or rejected, to the next FIFA Congress”.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

131. On 17 October 2014, pursuant to Article R47 and R48 of the Code of Sports-related Arbitration (hereinafter the “CAS Code”), the Appellant filed a Statement of Appeal with the CAS to challenge the Appealed Decision taken on 26 September 2014.

132. On 14 November 2014, the Appellant filed its Appeal Brief, within which it made a request for production of documents.

133. On 13 January 2015, the Respondent, in accordance with an extension previously agreed upon between the Parties, filed its Answer.

134. On 16 January 2015, the Parties informed the CAS Court Office that they had agreed to a second round of written submissions with the following procedural timeline: the Appellant was to file its Reply by 10 March 2015 and the Respondent its Rejoinder by 6 May 2015. These deadlines were later on extended by agreements between the Parties to 12 March 2015 for the Appellant and to 8 May 2015 for the Respondent.

135. On 21 January 2015, in view of the Appellant’s request for production of documents pursuant to Articles R44.3 and R57 of the CAS Code, the Panel submitted to the Parties a so-called Redfern Schedule, requesting the Appellant to complete its portion within two weeks and the Respondent to do the same within two further weeks. Additionally, the Panel requested the Parties to submit, together with their respective second submissions, witness statements and expert reports from any witnesses or experts on whom they intended to rely.

136. On 4 February 2015, the Appellant submitted its part of the Redfern Schedule.

137. On 19 February 2015, the Respondent submitted its part of the Redfern Schedule.
138. On 24 February 2015, the Panel invited the Appellant to comment on the Respondent's positions taken in the Redfern Schedule by no later than 27 February 2015, and the Respondent then to reply to the Appellant's comments by no later than 4 March 2015. The Parties did so.
139. On 12 March 2015, the Appellant filed its Reply.
140. On 13 March 2015, the Panel partially granted the Appellant's request for disclosure, ordering the Respondent to produce additional documents by 25 March 2015. The Panel granted the Appellant until 16 April 2015 to comment on the documents produced and the Respondent the opportunity to respond to the Appellant's comments in its second submission due on 8 May 2015.
141. On 26 March 2015, the Respondent produced the requested documents.
142. On 16 April 2015, the Appellant submitted its comments on the documents produced.
143. On 11 May 2015, following the Panel's decision to grant the Respondent an extension, the Respondent filed its Rejoinder. In the Rejoinder the Respondent answered to the Appellant's comments concerning the Respondent's disclosure of documents.
144. On 13 May 2015, the Panel, in view of the Appellant's further request for disclosure made in its comments of 16 April 2015, ordered the Respondent to produce additional documents by 18 May 2015. Furthermore, the Panel indicated that the Parties would be afforded the opportunity to comment on the produced documents at the hearing.
145. On 18 May 2015, the Respondent produced the requested documents.
146. On 21 May 2015 a hearing was held at CAS headquarters. In attendance at the hearing were:
 - For the Appellant: Messrs Adam Lewis QC, Ravi Mehta, Afshin Salamian and Michael Llamas (all as legal counsel for GFA), Mr Ivan Robba (Head of Legal for GFA), and Mr Dennis Beiso (CEO of GFA).
 - For the Respondent: Messrs Antonio Rigozzi, Fabrice Robert-Tissot and Rolf Tanner (all as legal counsel for FIFA).
147. As for expert witnesses, Professor Gian Paolo Romano (for the Appellant), and Mr Benoît Keane and Professor Thomas Probst (for the Respondent) testified in person at the hearing. Professor Christine Chappuis (for the Appellant) testified by teleconference.
148. Finally, Mr Michael van Praag (factual witness called by the Appellant) also testified at the hearing by teleconference.
149. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution and composition of the Panel.
150. At the end of the hearing, the Parties agreed to the filing of post-hearings briefs and acknowledged that the Panel had respected their rights to be heard.
151. On 28 May 2015, the Panel, as agreed by the Parties at the hearing, invited them to file post-hearing briefs by no later than 30 June 2015.

152. On 23 July 2015, following the Parties' agreements for extensions, the Parties submitted their post-hearing briefs.
153. On 26 August 2015, the Panel invited the Parties to file a simple statement of fees and expenses, which were duly submitted by both Parties.

VII. OVERVIEW OF THE PARTIES' POSITIONS

154. The following is a summary of the Parties' submissions and does not purport to give full account of every contention put forth by the Parties. Nevertheless, the Panel's deliberations have encompassed all evidence and arguments submitted by the Parties.

VII.1 THE APPELLANT: GIBRALTAR FOOTBALL ASSOCIATION

155. The Appellant challenges the Appealed Decision on the ground that the FIFA Executive Committee failed to assess GFA's application for FIFA membership under the criteria applicable at the time of the filing of its application on 8 January 1997 – i.e. those set forth in the 1996 FIFA Statutes. The Appellant contends that it satisfied the membership criteria of said Statutes and that, therefore, the FIFA Executive Committee had the obligation to forward GFA's application to the FIFA Congress for the latter to grant GFA full membership. The Appellant considers that FIFA improperly rejected GFA's application because it changed the rules in the middle of the process, it was discriminated between associations in the same position, and it allowed political pressure – from the RFEF – to determine who could become a FIFA member.
156. With respect to the principal issues, the Appellant's contentions are as follows:

A. The CAS has jurisdiction to hear the present dispute

157. CAS has jurisdiction over the present dispute on three grounds.
158. First, the present dispute is, pursuant to Article 67, para. 1 of the 2014 FIFA Statutes (see *supra* at para. 116), an appeal against a final decision of a FIFA legal body, the FIFA Executive Committee. GFA has standing to appeal under said article because:

“[its wording] provides no limitation as to the status of the party that challenges a decision passed by FIFA's legal bodies. The focus on the provision is on the decision-making body rather than on the appellant. Thus, the FIFA Statutes must be read in favour of jurisdiction of CAS (favor arbitrii). Indeed, Article 10(3) of the 2014 FIFA Statutes specifically refers to an “Association wishing to become a Member of FIFA” and requires – as part of the application process – the relevant NFA “recognise the Court of Arbitration for Sport” in its statutes (Article 10(4)(c)). Similarly, Article 4(1)(a) provides that “[e]very person and organisation involved in the game of football is obliged to observe the Statutes [...]”. Read together, therefore, the 2014 Statutes contemplate that applicants for FIFA membership are able to bring appeals against final decisions regarding their applications for membership to CAS”.

159. Second, an arbitration agreement was concluded pursuant to Article 3(1)(s) of the 2013 Admission Regulations between the Parties on 21 February 2014. This contention was not a part of the Appellant's initial pleadings but emerged in reaction to the Respondent's jurisdictional objection set forth in its Answer, and is subject to the proviso that the agreement to arbitrate did not entail acceptance of the applicability of the substantive membership criteria in the 2014 FIFA Statutes. Thus, although the Appellant acknowledges that it accepted FIFA's offer to arbitrate made in Article 3(1)(s) of the 2013 Admission Statutes when, on 21 February 2014, it updated its 1997 application at FIFA's request (see *supra* at para. 86), it clearly indicated on 15 November 2013 that the updating of its membership application would be without prejudice to the applicability of the rules in force at the time of GFA's application, and in particular the substantive criteria of the 1996 FIFA Statutes (see *supra* at para. 83). The Appellant adds to this that FIFA continued processing the application without making any counter-comments on GFA's reservation, meaning that, even if the reservation were considered a "counter-offer", FIFA accepted it and therefore cannot now impose the substantive membership criteria of the 2014 FIFA Statutes. As to the scope of Article 3(1)(s) of the 2013 Admission Regulations, the Appellant argues that (i) the provision's wording – "*all disputes regarding the application procedure*" – read as a whole and interpreted as a matter of construction in no way limits the scope of arbitration, in particular with respect to the subject-matter of the dispute or to the "new" or "old" characterization of its membership application; and (ii) even if the wording were not clear, "*FIFA's offer of arbitration should be given the meaning that would be attributed to it by the GFA on the assumption that FIFA would act in good faith by application of the principle of trust. It is obvious that FIFA cannot submit, in good faith that the GFA should have understood that its offer to arbitrate was contingent on the rejection of GFA's own application*".
160. Third, CAS would be the natural forum for the dispute. The Appellant contends that, even if there were no formal arbitration agreement between the Parties, CAS should nonetheless have jurisdiction to hear the present appeal because: (i) "*there is a corroborating policy within both parties to submit disputes arising out of their decision-making to CAS*"; and (ii) the significant history between the Parties created a legitimate expectation for GFA that FIFA would recognize CAS as competent to deal with a dispute arising from its membership application.

B. Swiss law, EU law and general principles of law are applicable

161. The Appellant contends that, in addition to FIFA rules, Swiss law, EU law and general principles of law are applicable to the dispute. This contention has three foundations: (i) the Parties not having chosen rules of law and Switzerland being the seat of FIFA, Swiss law must apply to the dispute pursuant to Article R58 of the CAS Code; (ii) by virtue of Article 19 of the Swiss Private International Law Act of 18 December 1987 ("PILA"), the mandatory rules of EU law, including competition rules (Articles 101 and 102 TFEU) and free movement rules (Articles 45, 49 and 56 TFEU), are applicable; and (iii) given that FIFA is an international federation, it must abide by general principles of law in accordance with CAS jurisprudence.

C. The GFA and Gibraltarian footballers cannot access international football through the British Associations

162. Neither the Appellant nor Gibraltarian footballers as individuals can participate in international football through one of the British Associations, such as the FA (to which the Respondent claims the GFA used to be formally affiliated). In particular:

- GFA is not, and has never been, formally affiliated to the FA. Historically, it had an informal relationship of cooperation, but the FA does not and has never treated such relationship as a basis for regulating players and clubs of Gibraltar, or for considering their players as part of its national team selection pool;
- as a football association of a British Overseas Territory, GFA cannot be compared to the associations of the Channel Islands and the Isle of Man, which are Crown Dependencies. Indeed, due to their proximity to the UK mainland, the football associations of the Crown Dependencies are treated as analogous to “county football associations”, i.e. internal subdivisions of the FA, and as different from the football associations of the British Overseas Territories, which are treated as foreign federations. Furthermore, *“the misplaced comparison that FIFA attempts to make between Gibraltar (a UEFA member) and the Crown Dependencies (none of whom are UEFA members) would lead to absurd results – for instance, that a player could represent Gibraltar against England in a UEFA-organised competition but then be selected for the same English team in a FIFA-organised competitions. That cannot have been contemplated by the FIFA Statutes and would undermine the relationship between FIFA and its confederations”*;
- the avenue for Gibraltarian footballers to compete internationally for one of the four British Associations is restricted by FIFA regulations. Indeed, based on Articles 5 to 8 of the 2014 FIFA Regulations Governing the Application of the Statutes (see *supra* at paras. 118 to 120), Gibraltarian footballers can only play for one of the four British Associations if they satisfy an ancestry requirement or a residence/education requirement. The examples mentioned by FIFA of the well-known England internationals Matt Le Tissier (Guernsey born) and Graeme Le Saux (Jersey born) are wrong examples, as they (i) were born in Crown Dependencies, not an Overseas British Territory, and (ii) fulfilled the residency requirements of Article 6 of the FIFA Regulations Governing the Application of the Statutes;

D. FIFA amended its Statutes in 2004 to prevent the GFA from obtaining FIFA membership

163. The amendment to the FIFA Statutes in 2004 concerning membership criteria (see *supra* at para. 61 *et seq.*) did not arise from FIFA’s interest in keeping said criteria in line with those of the IOC (which as of 1996 defined the term “country” as *“an independent State recognised by the international community”*), but rather from its interest (emanating from political pressure from the RFEF and the Kingdom of Spain) in preventing GFA from becoming a FIFA member. In support, the Appellant invokes the facts that (i) FIFA waited almost eight years since the IOC amendment of the Olympic Charter in 1996 to alter its own Statutes; (ii) the FIFA Statutes were amended between the issuance of the First GFA-UEFA CAS Award and the

deadline (for UEFA to rule on the GFA's application for UEFA membership) fixed by the CAS in that award; and (iii) the RFEF actively lobbied FIFA against GFA's FIFA membership application (see e.g. the RFEF's letters to FIFA dated 5 September 2000 and 3 September 2001, and FIFA's letter to UEFA on 5 September 2001 *supra* at para. 39, 46-47 and 48, respectively).

E. The applicable membership criteria are those set forth in the 1996 FIFA Statutes

164. Initially, the Appellant's Appeal Brief contended that the amendment to the FIFA Statutes in 2004 cannot apply retroactively to GFA's application submitted in 1997, because (i) the retroactive application of new membership criteria would infringe the general principles of Swiss law, namely the principles of the non-retroactivity of laws, of acquired rights, and of security and predictability of law, which must all apply by analogy to the present dispute since *"FIFA's monopolistic position is comparable to the monopolistic position of the administrative state authorities"*; and (ii) when there is a rule change of a substantive nature, such as the amendment to the notion of "Country" in 2004, the applicable law remains in principle that which was in force at the time of the pending application's filing.
165. In response to FIFA's argument to the effect that the 2014 FIFA Statutes should apply as a matter of contract law, the Appellant made the following submissions, with the support of a legal opinion written by Professors Christine Chappuis and Gian Paolo Romano:
- Membership in associations is acquired by contractual agreement, i.e. the exchange of an offer and acceptance with congruent terms. Further, an association is required to abide by its own statutes. However, the statutes by which an association must abide are not those in force at the time when it accepts or rejects the application for membership, since that would mean that *"the association, which determines unilaterally its statutory conditions of membership, is not bound by an "offer" of any applicant that fulfill those applicable admission conditions and remains finally free to change unilaterally the conditions of admissibility of such an "offer" as far as it has not unilaterally expressed its acceptance"*.
 - Normally, applications for membership in a Swiss association constitute offers. However, an application for membership in an association with the status of FIFA is not comparable to a sale of car or adherence to a church choir association, given that FIFA is the leading world football association and has dominant position in that market. In that context, an agreement arises between the applicant and the association as a consequence of and at the moment that an applicant submits an application for membership that complies with the relevant terms and conditions set out in the statutes. This agreement *"is based on an interplay between statutory provisions (which contain the membership conditions and the admission process) and mandatory legal provisions or principles (such as those developed under Swiss law in relation to the Sports associations enjoying a dominant position)"*. From a contractual perspective, the mandatory rules and principles (applicable to FIFA as a monopoly holder) has the effect of turning the association's invitation to offer into a firm offer, which is accepted at the moment when an applicant submits an application for membership that satisfies the conditions laid down in the association's statutes. At this point in time, the parties enter into a legal pre-admission relationship (of a contractual nature), which, like any other contracts, cannot be unilaterally changed by

either party. The applicant obtains a “*right to obtain admission*” and the association a “*obligation to grant admission*”. Such a “*right to obtain admission*” should not be confused with rights and obligations acquired by an applicant when the admission contract is entered into. To sum up, “[a]s a matter of consequence, under Swiss law, the GFA has, at the time of filing its request for membership in 1997, already acquired a “*right to admission*” (with the FIFA’s corollary “*obligation to grant admission*”) as a consequence of its fulfilling the formal and substantive conditions laid down in the 1996 FIFA statutes and, therefore, FIFA’s change of statutes in 2004 cannot, as a matter of contract law, affect the GFA’s right to be admitted as a FIFA member (nor FIFA’s obligation to grant admission the GFA)”. It follows that GFA, although it did not formally acquire UEFA membership until 2013, i.e. after the rule change of 2004, it had satisfied the conditions for UEFA membership at least as early as August 2001 (the date on which the UEFA Expert Report was issued) or 2002 (at the beginning of the first GFA-UEFA CAS case that held GFA to be qualified for UEFA membership), and that the only reason it did not obtain UEFA membership at that time was that UEFA failed to comply with its obligation to admit GFA, forcing GFA to seek membership through a second and then third CAS case against UEFA. Furthermore, GFA’s right to membership is not time-barred under Swiss law because: (i) although said “*right to obtain admission*” existed in 2002, it could not be exercised against FIFA until it obtained the condition of being a UEFA member; (ii) the time necessary to obtain UEFA membership cannot be detrimental to GFA’s “*right to obtain admission*”; and (iii) GFA’s claim to FIFA membership cannot be time-barred as long as FIFA’s undue rejection results in a continuous violation of GFA’s personality rights (on which GFA’s right to membership is based).

- FIFA’s application of the 2014 FIFA Statutes is a violation of good faith given that FIFA voluntarily delayed the treatment of GFA’s case and instigated or assisted UEFA’s delay so that it could implement the amendment to the term “Country” in 2004 before considering GFA’s application for FIFA membership. Therefore, FIFA must examine GFA’s application on the basis of the membership criteria of the 1996 FIFA Statutes.

166. In any event, the application of the intertemporal conflict of laws criteria lead to the same conclusion: the 1996 FIFA Regulations are applicable to the GFA’s membership application. In this connection, the Appellant states as follows:

“Significant guidance and inspiration may be drawn from [the principles of intertemporal conflict of laws (Article 1-4 of the Final Title CC)] by way of analogy. Based on the principle of non-retroactivity of substantive laws, a new law may not affect substantive rights that have arisen – and are therefore ‘droit acquis’ – under the old law, let alone suppress them altogether. Here the 2004 FIFA Statutes, which, in this context are analogous to the ‘new law’, purpose to impose a new substantive requirement of being an ‘independent state recognized by the international community’, which the GFA does not fulfill. However, such a statutory provision, being of substantive nature, cannot affect a right of GFA to be admitted, which had already arisen under the 1996 FIFA Statutes, which are analogous to the ‘old law’, read in conjunction with the mandatory rule of Swiss law...”

167. FIFA’s assertion that GFA’s 1997 application for FIFA membership lapsed with the effluxion of time and that, as a matter of Swiss law, it was terminated on 26 February 2007, with the

result that it was thereafter presenting a “new” application subject to the 2014 FIFA Statutes, is unsustainable for the following reasons:

- FIFA cannot rely on the unlawful conduct of the UEFA Congress in 2007 (see *supra* at para. 73), nor on the technicality that CAS accepted (by majority) jurisdiction in the third GFA-UEFA CAS case as an ordinary arbitration as opposed to an appeal arbitration (whereas GFA filed its appeal for arbitration on three grounds, one of which was an appeal arbitration). Doing so would be self-serving and fundamentally unfair in light of the history of the Parties’ relationship. Moreover, GFA did not have an obligation to challenge the UEFA 2007 Congress Decision before the ordinary Court of Nyon because, as a provisional member of UEFA already in 2006, GFA was subject to Articles 61 and 62 of the UEFA Statutes which granted CAS jurisdiction over such a dispute.
 - In any case, given that the third GFA-UEFA CAS Award held UEFA’s actions to be unlawful and granted GFA full UEFA membership on the basis that GFA satisfied the relevant criteria of the applicable UEFA Statutes, any such “termination” must be considered “expunged”. In this respect: (i) the third GFA-UEFA CAS Award, overturning the UEFA 2007 Congress Decision, has an *erga omnes* effect on all persons interested in that award, even if not parties to the relevant CAS proceedings; (ii) GFA challenged the UEFA 2007 Congress Decision in a timely fashion, because under Swiss law, the time to challenge a decision starts to run when the appellant has full knowledge of the decision (here that would be when GFA received the reasons for the UEFA 2007 Congress Decision during pendency of the third GFA-UEFA CAS case); (iii) an appeal to the ordinary courts of Switzerland against the UEFA 2007 Congress Decision would have been dismissed for lack of jurisdiction, since GFA’s status as a provisional member of UEFA required it to submit its disputes exclusively to CAS in accordance with the UEFA Statutes; and (iv) GFA did not accept, by proceeding to update its application in accordance with the 2013 Admission Regulations, that its membership application was a new one, as it had made a reservation to contrary effect on 15 November 2013.
168. Equally unsustainable is FIFA’s contention that if the Parties entered into an arbitration agreement on 21 February 2014 on the basis of Article (3)(1)(s) of the FIFA Statutes, it results in a “new” application and the GFA’s acceptance of the 2014 FIFA Statutes: (i) GFA’s letter of 19 September 2013 clearly expressed its intent to “*revise and to confirm the resumption*” of its membership application originally submitted in 1997, with the result that there was no “new” application in 2013 which could be subject to the post-2004 FIFA Statutes; and (ii) GFA made clear in its letter of 15 November 2013 that updating the file, as per FIFA’s request, in accordance with the 2013 Admission Regulations would not have altered the fact that GFA’s application was filed in 1997 and is, thus, to be governed by the 1996 FIFA Statutes.

F. The GFA satisfies the membership criteria set forth in the 1996 FIFA Statutes

169. The Appellant maintains that it satisfies the FIFA membership criteria of the 1996 FIFA Statutes. According to GFA, the provisions of the FIFA Statutes must be construed (i) with a purposive approach; (ii) in accordance with the meaning of its text, as it could or should be

- understood in a given situation; and (iii) against FIFA as the party imposing the text of the provision (*in dubio contra stipulatorem*).
170. Further, the term “country” in Article 1, para. 2 of the 1996 FIFA Statutes must be interpreted consistent with the manner in which FIFA applied the provision at the time of GFA’s application – i.e. to include territories that are analogous to Gibraltar in terms of status, such as Bermuda (1962), Cayman Islands (1992), Anguilla (1996), British Virgin Islands (1996), Montserrat (1996) and Turks and Caicos Islands (1998), all of which are British Overseas Territories – and need not be understood in its common political meaning, but rather in accord with the provision’s purpose.
 171. The Appellant rejects (i) FIFA’s assertion that said other territories were admitted on the basis of Article 1, para. 5 of the 1996 FIFA Statutes or Article 10, para. 6 of the 2014 FIFA Statutes, and (ii) that GFA is distinguishable from said territories based on its alleged status as a “unique case” and as a “disputed territory”, noting that FIFA has failed to satisfy its burden of proving either claim.
 172. Gibraltar’s alleged status as “disputed territory” has no bearing on whether GFA satisfies the membership criteria of the 1996 FIFA Statutes or the 2014 FIFA Statutes; it does not advance FIFA’s defence. This factor cannot legitimately be given weight since, inter alia, (i) it is not identified in any editions of the FIFA Statutes or the 2013 Admission Regulations, or in the Appealed Decision, or in any correspondence from FIFA to GFA between 1997 and 1999, or after FIFA transferred the file to UEFA, or during the FIFA/UEFA joint delegation’s inspection of May 2000, or in the 1991 FIFA Decision; (ii) it is a political consideration which in view of Article 3 of the 2014 FIFA Statutes can be given no weight; (iii) in any event, there is no legitimate dispute, as Spain ceded Gibraltar to the United Kingdom in 1713 pursuant to Article X of the Treaty of Utrecht; and (iv) it would be inconsistent with FIFA’s application of its membership criteria to other “disputed” or “sensitive” but nevertheless accepted territories such as Chinese Taipei, Palestine and Timor-Leste.
 173. The Appellant rejects any comparisons to Northern Mariana Islands FA and the Zanzibar FA, as those federations, due to the timing of their application, are subject to criteria first implemented in the 2004 FIFA Statutes, which require that an association be responsible for organizing football in “*an independent state recognised by the international community*”.
 174. The Appellant thus satisfies the membership criteria of the 1996 FIFA Statutes, which did not impose on any applicant the requirement that it be “*an independent state recognised by the international community*”.
 175. In addition, even though the FIFA Executive Committee Decision of 1991 referred to the “*extremely special nature of [Gibraltar’s] geographical and political position*”, FIFA did not raise such objection following the GFA’s 1997 application. Had there been any significant problem with eligibility in 1997 for this or any other reason, FIFA would have said so and would neither have allowed the application process to continue, nor spent two years completing the first step before transferring the file to UEFA. The extensive contacts between FIFA and GFA in those years cannot be explained by the need to confirm that the file was complete; there would have been no reason to transfer the file to UEFA if FIFA considered that GFA’s application for FIFA membership had no merit.

176. The Appellant rejects the Respondent's assertion that it did not change the concept of "country" in 2004, but rather simply codified its allegedly already-existing meaning of "*an independent state recognized by the international community*". The Appellant denies the relevance of the Swiss Federal Tribunal's judgment in GOC v. IOC (Decision 5A_21/2011 of 10 February 2012), on which the Respondent relies; that case is distinguishable on the following grounds: (i) the Olympic Charter gave "large discretion" to the IOC in defining the notion of "country", whereas in the present case FIFA has no such discretion; (ii) the changes to the Olympic Charter had been under discussion since the 1980s, i.e. before GOC's application, and the IOC informed GOC of those discussions at the outset of its application process, whereas in the present case it took three years after the GFA filed its application for FIFA to commence discussions on amending its membership criteria; and (iii) the IOC did not admit similar territories after 1987, i.e. several years prior to the GOC filing its application, whereas in the present case FIFA admitted all other analogous applications aside from that of GFA.
177. In any event, GFA has satisfied Article 1, para. 5 of the 1996 FIFA Statutes (and continues to satisfy Article 10, para. 6 of the 2014 FIFA Statutes), as it is an association "*in a region which has not yet gained independence*" that has "*the authorisation of the national association of the country on which it is dependent*", i.e. the FA. FIFA accepted New Caledonia with the support of the French Football Federation (as admitted by Respondent) and Palestine with the support on the country on which it is arguably "dependent", Israel (as disclosed in the Minutes of the 51st Ordinary FIFA Congress in Paris on 7/8 June 1998). With regard to the territories of Catalonia, North Ossetia and Kosovo, the Appellant notes that these territories lie within the geographical territory of the relevant country on which their respective associations depend on for purposes of Article 1(5); therefore, they are not in a comparable situation to GFA. Finally, the Appellant disagrees that Article 1, para. 5 of the 1996 FIFA Statutes and Article 10, para. 6 of the 2014 FIFA Statutes require a region to "*be on the way to independence*".

G. There are legal constraints on FIFA's freedom of action under Swiss law

178. Although an association incorporated under the laws of Switzerland may freely accept or refuse any applicant even if the applicant fulfils all statutory conditions, that discretion is subject to a number of legal constraints under Swiss law, derived from (i) personality rights (Article 28 of the Swiss Civil Code or "CC"), (ii) the obligation to act in good faith (Article 2 CC), and (iii) competition law under the Swiss Cartel Act, as FIFA holds a dominant position in the market. FIFA has crossed the line of those legal constraints and the Panel should consequently "step into the shoes" of FIFA and declare GFA a member of FIFA with immediate effect.
179. As to the first legal constraint, FIFA has violated GFA's personality rights pursuant to Art. 28 CC because:
- FIFA enjoys a monopolistic position in the worldwide organization of football and thus does not have an absolute freedom to exclude members; instead, as a monopoly holder, FIFA has the duty to admit an applicant to FIFA membership so long as (i) that applicant satisfies the applicable membership criteria and (ii) there are no justified grounds for the non-admission. Since FIFA refused to admit GFA, despite GFA having satisfied the FIFA membership criteria of the 1996 FIFA Statutes and FIFA having

admitted under the same regulations football associations of other territories comparable to Gibraltar, it has acted in a discriminatory manner and violated GFA's rights under Article 28 CC, particularly its right to engage in sporting and economic activities through its participation in FIFA.

- FIFA's infringement of said personality rights is not justified by any overriding interest:
 - (i) GFA does not need to fulfil the 2014 FIFA Statutes since FIFA has an obligation of a contractual nature, created at the moment that GFA filed its application in 1997, which prevents FIFA from applying any substantive criteria other than those included in the 1996 FIFA Statutes. Therefore, the allegation that GFA fails to satisfy the "country" requirement of the 2014 FIFA Statutes and that this is a legitimate reason for refusing its membership application is incorrect; the 1996 FIFA Statutes apply, and GFA has satisfied them.
 - (ii) FIFA is not authorized to reject GFA's application on the ground that Gibraltar is allegedly a "disputed" or "sensitive" territory. In this respect, FIFA has failed to prove that (a) Gibraltar is a "disputed" or "sensitive" territory in any real sense; (b) the characterization of a "disputed" or "sensitive" territory is sufficient to distinguish GFA's situation with respect to football matters from that of other non-independent territories or "disputed territories" which FIFA admitted under the 1996 FIFA Statutes; and (c) FIFA's interest in refusing membership to the GFA overrides GFA's interest in becoming a member. FIFA never invoked this ground before (see *supra* at 172); raising it now violates the principle of good faith.
- The balance of interest actually weighs in favour of GFA because: (i) there is no objective reason for discriminating against GFA; (ii) the "*consequences are significant for [GFA's] Players, Clubs, Referees and fans – they are denied any meaningful access to international competitions organised by FIFA, the substantial economic related services which accompany such competitions, the significant training and development investment which FIFA provides to its members, and the administrative resources (such as the TMS) which provide assistance and protection for the GFA's members*"; (iii) the denial of access is substantial, since, unlike in the *GOC v. IOC* case, here Gibraltarians cannot play for the UK; and (iv) there is no proven danger that accepting the GFA as a FIFA member will lead to any conflict.
- The Respondent's reliance on *GOC v. IOC* to support the proposition that FIFA has an overriding interest (see *infra* at para. 221) is unavailing because: (i) in that case the amendment to the Olympic Charter arose against the backdrop of a long debate as to the criteria for recognition of National Olympic Committees, which started in the 1980s, before GOC even filed its request for recognition, whereas in the present case the FIFA Statutes followed UEFA's amendments to its Statutes, which the CAS held to be motivated by a desire to prevent the GFA from obtaining membership to UEFA; (ii) of the reasons mentioned *supra* at para. 176; and (iii) the language indicating that IOC had an overriding interest in "*avoiding proliferation of NOCs which exercise jurisdiction in territories that do not correspond to a state recognized by the International Community and the admission of which would be a source of conflicts with sovereign states on which such territories depend*" refers to the UK and not the Kingdom of Spain, which is key considering that GOC

did not have the support of the UK, whereas in the present case the GFA does have the support of the FA.

- In light of the above, the Respondent violated GFA's personality rights and, in accordance with Article 28(a) CC, the Panel has the authority to compel FIFA to enter into a membership relationship with GFA in order to ensure that FIFA ceases to infringe those personality rights.

180. Second, FIFA has violated the principle of good faith contained in Art. 2 CC because:

- A legal relationship of a contractual nature between the Parties was created at the moment of the filing of an application in conformity with the relevant terms and conditions. The terms of that pre-admission contract must be interpreted in good faith. As a consequence, FIFA cannot apply the 1996 FIFA Statutes in a manner contrary to its treatment of other applicants, or contrary to GFA's legitimate expectation as FIFA spent two years assessing the application before transferring the file to UEFA for admission to the latter.
- As declared in the third GFA-UEFA CAS Award, FIFA's discretion when considering the admission of new members cannot be exercised arbitrarily. Good faith requires justified and objective reasons for refusing to admit an applicant who fulfils the criteria for membership. FIFA has failed to identify any such objective or justified reasons and has thus violated the principle of good faith: (i) at the time of GFA's application and during the whole "preliminary procedure" (before FIFA transferred the file to UEFA), FIFA did not raise any issue as to GFA's compliance with the criteria for membership; (ii) FIFA actively and without any objection participated in the second phase of the procedure (UEFA's evaluation of GFA for a period of two years), notably by partaking in the joint FIFA/UEFA visit to GFA; (iii) FIFA's reason that GFA is a "unique case" and "disputed territory" is misconceived for the reasons alluded to *supra* at para. 172 *et seq.*; (iv) FIFA cannot exclude an applicant who satisfies the rules that FIFA publishes; (v) it is arbitrary and discriminatory to introduce a rule principally in order to defeat an existing application (of course, FIFA is not barred from amending its Statutes; but applicants whose applications are pending and who proceed on the basis of guidance from the relevant association, would legitimately expect for its application to be assessed pursuant to the membership criteria applicable at the time said application is submitted and not future criteria unilaterally imposed by the association); (vi) applying such a rule change under pressure of the RFEF and/or the Kingdom of Spain for political reasons unrelated to football contravenes Article 3 of the 2014 FIFA Statutes; and (vii) it is arbitrary and discriminatory to delay (or instigate to delay) and freeze GFA's application for FIFA membership while continuing, during the same period, to process the applications of comparable applicants.

181. Third, FIFA has violated Article 7 the Swiss Cartel Act in the following ways:

- FIFA holds a dominant position in the worldwide organization of football; by refusing membership to GFA on discriminatory grounds and without justification, it has prevented GFA's participation in violation of Article 7 of the Swiss Cartel Act.

- FIFA's refusal to accept the GFA's application for FIFA membership has a relevant effect on competition, as (i) an association that has its seat in Switzerland and is governed by Swiss law, like FIFA, may have an "effect" in Switzerland within the meaning of Article 2, para. 2 of the Swiss Cartel Act, notably the deprivation of the possibility to take part in the corporate life of the Swiss association; (ii) if the Swiss Cartel Act does not apply, it would be difficult to identify a national legislation prohibiting cartels which could ever apply geographically; and (iii) FIFA competitions take place throughout the whole world, including in Switzerland, its organization is managed from Switzerland, and although the Swiss market may be only a small part of FIFA's global market, in any event *"the intensity of the effects occurring in Switzerland is not a condition for application of the Swiss Cartel Act"*.
- FIFA is an undertaking that holds a dominant position in the relevant market and thus is subject to the Swiss Cartel Act. It is safe to assume that FIFA is an "undertaking" if one considers that UEFA has been characterized as such by both Swiss courts and the CAS. Further, FIFA is the leading organization in the world of football and enjoys a monopolistic position in that market; its decisions have a pronounced economic and practical consequences.
- FIFA has abused its dominant position in the relevant market. FIFA's unjustified refusal to accept the GFA as a member, thereby preventing the GFA from accessing the global football market and to take part in world football competitions as well as in the relevant decision-making process within the world governing body, qualifies as "abusive" under the Swiss Cartel Act.
- As remedy, under Articles 12 and 13(b) of the Swiss Cartel Act a person impeded by unlawful restraint from entering or competing in a market is entitled to request (and the judge entitled to order) that the person responsible for that hindrance be obligated to contract. Accordingly, GFA is entitled to ask the Panel to remove the alleged hindrance by obligating FIFA to grant it FIFA membership.

182. Finally, *"in application of Articles 28a of the Swiss Civil Code and of 13(b) of the Cartel Act, a judge is not only entitled to make a declaratory order that a breach of law is illegal, or to prohibit certain acts, but he also has the power directly to correct or eliminate a pending breach. A judge may even issue, in the dispositive of the judgment, such declarations in the name of the liable party as are necessary to establish or redress the legal situation subject, however, to the respective submissions of the party requesting such an order (citation omitted). As noted by the [Third GFA-UEFA CAS Award], 'the Judge may stand in the shoes of an association and declare a person to be a member of an association and oblige the association to do all necessary to allow the applicant to exercise its membership rights (citation omitted)... GFA fulfils all the requisite conditions to be a member of FIFA and given the long-standing history of its file, does not wish to take any risk again that might see the delay made any longer. As a result, the GFA respectfully seeks an award from the CAS... a self executory declaration that the GFA is immediately member of FIFA and enjoys with all rights and obligations attached to the status of FIFA member with immediate effect"*.

H. FIFA has violated general principles of law

183. Furthermore, FIFA's actions have infringed its obligations under the general principles of law either inherent in the administration of sport or derived from Swiss law, EU law and the ECHR, specifically the principles of:
- good faith: For the same reasons alluded to in para. 180 and because it required FIFA to "*act consistently with the basis of its proposed processing of the 1997 application which was communicated to the GFA's official*".
 - fairness: because FIFA failed to act in a procedurally fair manner, meaning that it failed to (i) provide GFA an adequate opportunity to put its case and to be present when its application was being discussed by FIFA with third parties and (ii) deal with GFA's 1997 application in a timely fashion. If GFA's application had been dealt with in a normal way, it would have obtained FIFA membership prior to the amendment of the FIFA membership criteria in 2004. In this connection, FIFA can find no excuse in UEFA's unlawful conduct.
 - equal treatment: FIFA treated the GFA application differently than the applications of other comparable associations without providing any objectively justifiable distinction between them.
 - proportionality: FIFA acted disproportionately, i.e. its refusal to grant GFA membership in the face of established practice did not pursue a legitimate and identified aim.
 - certainty, acquired rights, and legitimate expectation: FIFA changed its rules for no other reason than to neutralize a right that GFA had already acquired by submitting its application in 1997 in compliance with and in satisfaction of the 1996 FIFA Statutes. GFA acquired a legitimate right and expectation that FIFA would deal with its application in accordance with the 1996 FIFA Statutes.
 - protection of fundamental rights: GFA's right to property was contravened by FIFA's amending its membership criteria in a way that would create additional new requirements. The Appellant insists that the protection of fundamental rights under the ECHR apply to FIFA even though it is not a state authority because it exercises quasi-public functions by acting as a private regulatory agency.
184. With regard to Respondent's contention that there is no material difference between Swiss law and the general principles of law, the Appellant asserts that "*the general principles derived from the practice and principles of good administration of Sports authorities, as well as a growing body of legal authorities, are sensitive to the sporting context. As such, the analysis of FIFA's conduct must be seen from the perspective of the exclusive position it occupies at the apex of world football, and as the sole gatekeeper of access to international; (i.e. non-regional) football competitions at national and club level*". FIFA cannot maintain that principles such as the duty of fairness, equal treatment and proportionality do not apply to non-members.

I. FIFA has violated EU competition law and EU freedom of movement law

185. FIFA has violated EU competition law as follows:

- (i) Article 101(1) TFEU: FIFA's refusal to deal with GFA constitutes a restrictive decision of an association of undertakings. In essence, FIFA's membership rules and their application, as exemplified by the manner in which FIFA sought to use them with respect to GFA's FIFA membership application, are neither objective, nor sufficiently determinate, nor capable of uniform, non-discriminatory application and, therefore, contravene EU case law.
- (ii) Article 102 TFEU: FIFA is an undertaking which abused its dominant position as the *de facto* monopoly regulator of worldwide football by (i) imposing upon GFA's membership application conditions dissimilar to those applied, during the same period, to applications of other associations from comparable territories, and (ii) engaging in conduct that restricted the growth and expansion of GFA's activities and generally of football in Gibraltar to the direct detriment of all the consumers of this sport in Gibraltar. As to the relevant market for purposes of Article 102 TFEU, FIFA does not operate in the same market as UEFA. For one, FIFA does not operate in a market which provides sporting events for clubs throughout the course of the year and on a regular basis, as does UEFA (e.g. the UEFA Champions League); instead FIFA's competitions, which are most notably the FIFA World Cup and FIFA Club World Cup *"take place according to a different cycle, and yet are incredibly lucrative and sought-after content, which broadcasters bid for separately, according to the terms of the organising committee"*. Therefore, FIFA must be considered a *"de facto monopoly regulator of cross-border football across the globe, and organiser of cross-border football events including the World Cup"*.

186. FIFA's exclusionary actions were disproportionate and discriminatory. Its treatment of Gibraltar as an alleged "unique case" or "disputed territory", provided no justification for its anti-competitive behaviour.

187. FIFA breached the EU rules on free movement (i.e. Articles 45 (freedom of workers), 49 (freedom of establishment) and 56 (freedom to provide services) of the TFEU).

188. In light of the above, GFA's Appeal Brief seeks the following relief:

"280.1. A Declaration that the GFA's application for membership must be considered and decided by FIFA on the basis of the criteria for admission applicable when the application was made on 8 January 1997, namely that the applicant association controls association football in its "country" as that word was then applied and interpreted by FIFA under Article 1 of the 1996 Statutes, as opposed to as it has subsequently been defined by amendment as "an independent state recognised by the international community" under Article 10 read together with definition six of the definitions section of the 2014 FIFA Statutes.

280.2. A Declaration that the GFA does satisfy those criteria for admission applicable when the application was made on 8 January 1997.

280.3. A Declaration that the FIFA Executive Committee is obliged to submit, and an Order that the FIFA Executive Committee do submit, the GFA's application to the next FIFA Congress.

280.4. *A Declaration that the FIFA Executive Committee is obliged so to submit, and an Order that the FIFA Executive Committee do so submit, the GFA's application together with a request and/or recommendation that it be accepted by the FIFA Congress.*

280.5. *An Order that FIFA and/or the FIFA Executive Committee and/or the FIFA Congress and/or any other competent or relevant FIFA organ and/or each individual Member of FIFA do admit the GFA to full membership of FIFA without delay and/or in any event by the latest the next meeting of the FIFA Congress and/or in any event by a date to be specified by CAS.*

280.6. *An Order that the GFA is immediately a full member of FIFA, and as such FIFA and/or the FIFA Executive Committee and/or the FIFA Congress and/or any other competent or relevant FIFA organ and/or each individual Member of FIFA do treat the GFA in accordance with the FIFA Statutes and Regulations and other rules and in the same way as any other Member and without any discrimination. In particular, but without prejudice to the generality of the above, the GFA shall be immediately eligible and entitled and allowed by FIFA to participate in all such events, championships and competitions as other full Members in the equivalent position to the GFA, and shall be eligible and entitled to, and shall be paid by FIFA, all financial payments that other full Members in the equivalent position to the GFA receive.*

280.7. *An Order that the question of any Damages in respect of the loss and damage sustained by the GFA by reason of FIFA's wrongful failure to admit it to membership be reserved.*

280.8. *An Order that FIFA pay all costs of the arbitration as well as legal costs incurred by the GFA".*

189. Reacting to the Respondent's objections as to the admissibility of the Appellant's requests for the relief, the Appellant's Reply makes clear that its primary request for relief is that set out in paras. 280.6, 280.7 and 280.8 of the Appeal Brief (respectively, a self-executory Declaration that the GFA is a member of FIFA with immediate effect, a reservation of the question of damages, and costs and legal expenses). Specifically concerning its request to reserve the question of damages, the Respondent points out that it is not inconsistent with Article R56 of the CAS Code as "[t]o date, the GFA has no choice but to reserve its rights at this stage because the question on damages is dependent on the main question of membership and difficult to address within the constraint of the deadlines of the present Appeal proceedings, especially where an applicant (by contrast to a member) has limited access to relevant financial information". The Appellant also clarifies that, secondarily, it requests the substantive relief set out in paras. 280.1 to 280.5 of the Appeal Brief. It explains that it takes this approach *ex abundanti cautela* in light of its previous experience with the UEFA CAS arbitrations, where UEFA sidestepped awarding membership to the GFA by engaging in a series of procedural devices premised on the form of the relief that could be sought at each stage. The Appellant concludes that, in order to avoid any doubt, the Panel should read its requests for relief as follows:

"As primary relief:

- (1) A self-executory Declaration that the GFA is awarded membership of FIFA with immediate effect (§280.6...);*
- (2) An order that the question of Damages in respect of the loss and damage sustained by the GFA by reason of FIFA's wrongful failure to admit it to membership be reserved;*

(3) *An Order that FIFA pay all costs of the arbitration as well as legal costs incurred by the GFA.*

As Subsidiary Relief:

(1) *FIFA is ordered to grant the GFA membership, i.e. FIFA shall take all necessary actions (§§280.1 to 280.5) to admit the GFA to membership of FIFA without delay;*

(2) *An Order that the question of any Damages in respect of the loss and damage sustained by the GFA by reason of FIFA's wrongful failure to admit it to membership be reserved;*

(3) *An Order that FIFA pay all costs of the arbitration as well as legal costs incurred by the GFA”.*

190. The Appellant's post-hearing brief refers to the requests for relief in the Appel Brief.

VII.2 THE RESPONDENT: FIFA

191. According to FIFA, the Appealed Decision was correct inasmuch as the FIFA Executive Committee (i) applied the 2014 version of the FIFA Statutes in force at the time when it issued the Appealed Decision, and (ii) decided not to forward the application to the FIFA Congress on the basis that GFA did not satisfy the requirement of Article 10, para. 1 of the 2014 FIFA Statutes, under which applicants for membership must be responsible for organizing and supervising football “*in an independent state recognised by the international community*”.

192. With regard to the principal issues, the Respondent's contentions are as follows:

A. CAS lacks jurisdiction to hear the present appeal

193. Under Article 67, para. 1 of the 2014 FIFA Statutes (i) GFA cannot assert any right provided by the 2014 FIFA Statutes until it becomes a member of FIFA, and (ii) said Article 67, para. 1 cannot be read alone, but must be read in connection with Article 66 of the 2014 FIFA Statutes, which does not include non-member applicants as parties entitled to appeal FIFA matters to CAS.

194. In its Answer, the Respondent specifies that CAS jurisdiction could in principle be based on the Appellant's acceptance of the offer to arbitrate set forth by Article 3(1)(s) of the 2013 Admission Regulations, but only to the extent that the present arbitration does not concern the application filed by the GFA in 1997. In fact, that application does not constitute an application within the meaning of the 2013 Admission Regulations, and thus falls outside the scope of the offer to arbitrate contained therein. The only reason the Appellant initially ignored this arbitration agreement and relied, instead, on Article 67, para. 1 of the 2014 FIFA Statutes was that the Appellant recognized that acceptance of the arbitration offer under the 2013 Admission Regulations would confirm that its submission of 19 September 2013 constituted a new application (and not a resumption of the 1997 application) and would, therefore, be subject to the membership criteria established in 2004 FIFA Statutes, which the Appellant knew it could not satisfy. In other words, the reason for the Appellant's jurisdictional strategy was its awareness that Article 3(1)(s) of the 2013 Admission Regulations only covers disputes regarding applications filed under those very Regulations.

195. As for the Appellant’s claim that GFA accepted the offer to arbitrate on 21 February 2014 only with the previous reservation that the substantive rules applicable to its application would remain those in the 1996 FIFA Statutes, this is an issue that is intertwined with the merits, since the Appellant’s reliance on the arbitration agreement made on the basis of Article 3(1)(s) confirms that the application of 19 September 2013 is a new one (not a resumption of the 1997 application) which is, therefore, subject to the version of the FIFA Statutes applicable in 2013. The Appellant did not accept the offer to arbitrate of Article 3(1)(s) of the Admission Regulations, but rather made a “counter-offer” by way of its letter of 15 November 2013 which Respondent did not accept. ATF 129 III 675 made clear that “*as a matter of principle, arbitration agreements are interpreted according to the general rules on the interpretation of contracts (Article 18(1) CO). However, a restrictive approach shall be observed when the formation, conclusion, or existence of an arbitration agreement is disputed, since the existence of such an agreement cannot be admitted lightly as it would entail inter alia a waiver of the constitutional right of access to courts and limited remedies against the award*”.
196. In the alternative, if the Panel were to conclude that the Parties entered into an arbitration agreement based on Article 3(1)(s), the scope of the arbitration clause does not in any event encompass the dispute arising from the 1997 application, as it should be interpreted (a) by reference to the wording of the second part of Article 3(1)(s) of the Admission Regulations which use the phrase “*regarding the application procedure*”, and (b) in light of the fact that “*application*” in the Admission Regulations consistently refers to Article 10, para. 1 and 10, para. 2 of the FIFA Statutes but not to the 1996 FIFA Statutes. Article 3(1)(a) indeed provides in the relevant part that “*the Application for admission...must contain... documents that show that the applicant represents a country in accordance with article 10 of the Statutes*” (emphasis added). In other words, the scope of arbitration is limited to new applications subject to the substantive rules of the 2014 FIFA Statutes.
197. In sum, CAS has jurisdiction only if the Panel agrees that the relevant application for the present appeal is the new one filed in 2013 in accordance with Article 3(1)(s) of the 2013 Admission Regulations, in which case the offer to arbitrate is deemed to be accepted.

B. Swiss law is applicable; EU law is not; general principles of law are only residually applicable

198. Swiss law is certainly applicable to the present dispute; however, EU law is not applicable on the basis of Article 19 PILA.
199. As for the general principles of law or *lex ludica/lex sportiva*, the Respondent “*does not contest the existence of general principles of law that can be applied in sports disputes without having to determine (or even irrespective of) the national law applicable to the merits*”. That said, even if such principles are accepted, CAS is not necessarily free to disregard Swiss (substantive) law. In fact, “*in proceedings like the present one that are expressly governed by Swiss [law] it is only when the Panel has objective reasons to conclude that the application of Swiss law is not appropriate that it can apply another rule of law, including general principles of law*”.

C. FIFA membership is not necessary for GFA and Gibraltarian footballers to participate in international football

200. GFA may obtain access to international football if it secures affiliation with one of the four British Associations, such as the FA. GFA has already been affiliated in the past with the FA, as demonstrated by: (i) GFA's 1991 application for FIFA membership in which GFA noted that it had been "*for many years ... affiliated to the [FA]*" and (ii) GFA's Statutes, as attached to its 1997 application, which state that "*The GFA shall take such action as the Council may from time to time deem necessary to become affiliated and remain affiliated to the Football Association of England and Wales and/or to become a member of FIFA and/or any other international governing body or association*". GFA's explanation that in that context "affiliated" only meant a "cooperation relationship" should be rejected. Three "County Football Associations" may be cited as examples of other football associations that currently participate in international football through the FA: the Jersey Football Association, the Guernsey Football Association, and the Isle of Man Football Association. GFA has failed to prove that it is not affiliated to the FA, or that it can no longer be so affiliated, or that it took all possible measures so to be affiliated; instead, it is evident that GFA simply prefers FIFA memberships over FA affiliation. GFA could rely on the contents of FIFA's post-hearing brief to regain FA membership or to become a member of another British Association; it can "*count on FIFA's support*" in confirming this "*in the event that the FA (or any other British Association) should oppose a request for affiliation*".
201. No rule in the FIFA regulations prevents Gibraltarian footballers from competing internationally at the FIFA level. Gibraltarian footballers, even those competing for the GFA in UEFA competitions, can play for the FA. Once again, FIFA offers its support in confirming this to the British Associations. The cases of Matt le Tissier (Guernsey) and Graeme le Saux (Jersey) as examples of players from County Football Associations who have played for the England national team.
202. The opportunity for GFA and for Gibraltarian footballers to participate in international football by affiliating with one of the four British Associations (irrespective of direct affiliation with FIFA) is fatal for the Appellant's appeal since all of the legal grounds on which it relies, i.e. personality rights, competition law (Swiss or EU), and the general principles of law, are based on the assumption that the GFA and Gibraltarians footballers cannot access international football without becoming members of FIFA.

D. The amendment to the FIFA Statutes in 2004 resulted from FIFA's wish to align its membership criteria with those of the Olympic Charter

203. FIFA changed the membership criteria in 2004 in order to align them with the Olympic Charter, as evidenced in the Minutes of the Extraordinary FIFA Congress in Doha in 2003, where that amendment was approved (see *supra* at para. 61 *et seq.*). The Appellant's suggestion that FIFA made said amendment in reaction to the first GFA-UEFA CAS Award is wrong; as the relevant Minutes indicate, the extraordinary FIFA Congress in Doha occurred on 19 October 2003, i.e. three days prior to the date of issuance of the first GFA-UEFA CAS Award (22 October 2003). Nor did political pressure applied by the RFEF and Spain drive the amendment. The letters of September 2000 and 2001 from the RFEF to FIFA merely disclose

the RFEF's displeasure with UEFA's consideration of GFA's application and do not contain any inference that the amendment at the Doha Congress (two years later) resulted from the RFEF's intervention and from the aim of preventing GFA accession to FIFA membership.

E. The Panel cannot draw any adverse inference from the alleged lack of evidence

204. The Respondent has put considerable effort into and has produced all the documents that the Panel has ordered it to, i.e., it has not displayed any lack of transparency. The Panel cannot draw any inferences (reserved as an *ultima ratio* measure) against the Respondent.

F. GFA's relevant application for FIFA membership is the one filed on 19 September 2013

205. The Appellant's attempt to qualify its 2013 application for membership as a "revival" and "resumption" of its 1997 application (in order to apply the membership criteria of the 1996 FIFA Statutes) is misconceived since GFA's 1997 application actually terminated on 26 February 1997 when it failed to challenge the UEFA 2007 Congress Decision in accordance with Article 75 CC. More particularly:

- The Appellant should have filed, in accordance with (the mandatory) Article 75 CC, an action before the local courts of Nyon within one month from the decision of the UEFA 2007 Congress Decision (i.e. by 26 February 2007) but failed to do so, which resulted in that Decision becoming final and, in turn, the lapsing of GFA's 1997 application.
- Instead of seizing the local Swiss courts in accordance with Article 75 CC, the Appellant filed an ordinary CAS arbitration on 6 March 2007, seeking full UEFA membership. Although this request for arbitration defined itself as an *appeal* arbitration under Article 62, para. 1 of the UEFA Statute, the 10-day limit of appeal to the CAS granted under Article 62 of the UEFA Statutes had already expired, thereby time-barring Appellant from taking such action.
- The third GFA-UEFA CAS Award, which granted the GFA FIFA membership, could in theory have cured the tardiness of GFA's appeal in relation to UEFA, given that UEFA participated in that case as a party, "*but this does not change the fact that for the purposes of the FIFA membership process and as a matter of Swiss law the 1997 Application was terminated in February 2007*".
- The time limit of Article 75 CC is not extended by the time it took for the Appellant to receive the reasons for the UEFA 2007 Congress Decision. The Appellant should have appealed within the time limit of Article 75 CC and then requested the UEFA Congress to produce the relevant minutes.
- It is doubtful that under Swiss law a request for membership could be considered as valid after more than 10 years, even where the delay was due to protracted litigation between the GFA and UEFA.

206. In sum, GFA's submission of 19 September 2013 must be deemed to have been a new application, and not a revival and resumption of the 1997 application; it thus follows that the

FIFA Statutes in force in 2013 (already including the definition of the term “country” as “*an independent state recognised by the international community*”) would be applicable in any event.

G. The 2014 FIFA Statutes are applicable to the GFA’s application as a matter of contract law

207. As indicated by the two expert reports submitted by Prof. Thomas Probst, even assuming that the relevant application for FIFA membership was the 1997 application (i.e., revived and resumed on 19 September 2013), the applicable criteria for membership should be those set out in the Statutes in force at the time when the decision on the application was made, i.e. the 2014 FIFA Statutes, because the present dispute concerns a matter of Swiss contract law, governed by Article 1 *et seq.* CO, and not the intertemporal rules on the modification of enacted laws (Articles 1-4 of the Final Title of the CC).
208. Under Swiss law, for a contract to be formed between FIFA and GFA there must be an exchange of an offer and acceptance with congruent terms. GFA’s application would thus constitute the offer, which FIFA could refuse or accept according to the version of the FIFA Statutes in force at the time of the acceptance/refusal. Since the FIFA Executive Committee held that GFA failed to fulfil the membership criteria and therefore did not refer the matter to the FIFA Congress, no *contrat d’adhésion* or other contractual relationship between the Parties came into being. Consequently, “*GFA’s submission that it would have been entitled to ‘freeze’ the text of the articles of association by submitting its application on 8 January 1997, which would have been somehow ‘revived’ on 19 September 2013, contradicts not only common sense but also and more importantly the relevant principles of Swiss law*”. FIFA must abide by its own Statutes and cannot grant membership to an applicant which does not fulfil the membership criteria provided for by the FIFA Statutes; it is bound to grant membership exclusively on the basis of the Statutes in force at the time it accepts the applicant’s offer for membership. Accordingly, irrespective of whether the relevant application of GFA is that of 1997 or 2013, the applicable Statutes are the 2014 FIFA Statutes, as they were the Statutes in force when FIFA rejected GFA’s application.
209. No *contrat d’adhésion* could have been concluded at the moment GFA filed its application for membership (this being the acceptance of an offer that FIFA allegedly made by publishing its Statutes), as this, as well as the theory of a pre-admission contractual relationships creating a right to obtain admission for the applicant, is unheard of in Swiss law. GFA’s position is incorrect as a matter of Swiss law *inter alia* because:
- No “*pre-admission [contractual] relationship*” or “*right to obtain admission*” has been established, given that the 1996 FIFA Statutes do not provide that an association fulfilling all conditions of Article 1 therein would be *entitled* to membership under Swiss law. In the absence of any rule or agreement (“*accord de négociation*” or “*pré-/avant-contrat*”) providing otherwise, it is presumed that the association retains complete freedom to refuse membership, even where the applicant satisfies all membership criteria.
 - The FIFA Congress (to which the FIFA Executive Committee would have forwarded the application had the GFA satisfied the membership criteria of the 2014 FIFA Statutes) retains the freedom to refuse membership even where an association satisfies

all membership criteria, as is evident from Article 2 of the 2014 Regulations Governing the Application of the Statutes, Article 1(o) of the 2013 Admission Regulations, Article 3 of the 1996 FIFA Statutes and Article 3 of the 1996 Regulations Governing the Application of the Statutes. Thus, GFA could not have had a “right of admission”.

- A “*pre-admission [contractual] relationship*” or “*right to obtain admission*” cannot exist before the conclusion of a *contrat d’adhésion* (before FIFA accepts the applicant’s offer for membership), without which there is no agreement of a bilateral nature or “*right for membership*” arising from the FIFA’s “*offer for a right to membership*”.
- As a matter of contract law, FIFA would be entitled unilaterally to change the criteria for membership as long as it has not yet accepted the applicant’s offer for membership.
- The fact that FIFA is the leading world football association, as compared to a gardening association, comes into play only when discussing “*a hypothetical exception to the principle of the exchange of an offer and acceptance, in particular with respect to a possible obligation to contract*”.

210. The Appellant’s belated introduction (in its Reply) of this “*pre-admission [contractual] relationship*” position puts into serious question the strength of that argument and is difficult to square with Article R56 of the CAS Code. The Respondent concludes that, in any case, if the Appellant’s position were accepted, then the “contractual” claim arising in 1997 would have become time-barred as a matter of Swiss law in 2007 based on Article 127 CO which provides a ten-year statute of limitation for contractual claims

H. The 2014 FIFA Statutes are applicable to the GFA’s application also by operation of the intertemporal provision applicable to Swiss legislation

211. The Appellant initially (in its Appeal Brief) only relied on the intertemporal rules and the principles of administrative law (in particular the principle of non-retroactivity), but then resorted to heavier reliance on contract law. Intertemporal rules cannot apply, even by analogy, to the extent the Appellant puts its case as a matter of contract law: “[i]n certain circumstances, the analogy between the sport governing bodies and the public administration might be relevant when discussing the rights and obligations of a member (based on association law) but certainly not when discussing the application of a non-member to become a member (based on contract law)”. Inasmuch as GFA’s application for membership is a matter of private contract law, it is governed by the offer and acceptance principles of Article 1 *et seq.* CO and, thus, intertemporal rules that govern statutory law, i.e. Articles 1-4 Final Title CC and Swiss administrative law, are irrelevant. An association such as FIFA “cannot be expected to grant membership to a new member on the basis of former articles of association, which are no longer legally binding and existent. Such decision would constitute a violation of the articles of association in force at the time when such decision is issued. When applied to the present matter, these principles mean that the GFA’s application for FIFA membership constitutes an offer, whose acceptance/rejection by FIFA is governed by the FIFA Statutes in force at the time when [the] FIFA Executive Committee took its decision, i.e. the 2014 FIFA Statutes”.

212. Even if the intertemporal rules applicable to Swiss legislation apply by analogy and even if the 1997 application is considered the relevant application, a proper interpretation of said rules would still lead to the application of the rules in force at the time that FIFA decided to reject the GFA’s application, i.e. the 2014 FIFA Statutes: “in accordance with the principle of non-

retroactivity, Article 1(1) and (2) Final Title CC would provide that the legal effects of facts having occurred under the previous legal provisions continue to be governed by these provisions after the new law has come into force. Conversely, facts occurring under the new provisions would be governed by the new law, unless that new law provides otherwise (Article 1(3) Final Title CC). As the 2014 Statutes do not provide that they will not [be] applied to application[s] for membership submitted prior to their entry into force, the GFA's offer of 8 January 1997 made under the FIFA Statutes 1996 would not cease to exist under the [2014] FIFA Statutes, but FIFA's refusal or acceptance of that offer would inevitably be governed by the [2014] FIFA Statutes... [This position] is further confirmed by Article 4 Final Title CC, which states that non-vested rights under the previous law are subject to the new law as soon as the new provisions have entered into force. The mere fact of making an application/ offer for FIFA membership under the previous 'law' (i.e. the 1996 FIFA [Statutes]) does not confer any vested right upon the offeror as to the possible conclusion of an admission contract since it requires the acceptance of that application/ offer by FIFA... Finally,... the GFA cannot rely on the delay in the processing of its 1997 [a]pplication... [as] there is no evidence that FIFA 'instigated or assisted in UEFA's delay' and used such delay 'to instigate the change of its own rule'... [T]he change of the FIFA rules was not meant to prevent GFA's application but rather to adopt the requirement for affiliation newly provided for by the Olympic Charter".

213. The fact that the FIFA Statutes do not contain explicit provisions on the intertemporal fact-situations is not an oversight. No such provision is needed since each fact is deemed to be governed by the Statutes in force at the time when it occurs, meaning that the application for membership (i.e. the offer) is governed by the Statutes in force at the time when the application is made, whereas the acceptance or rejection thereof is governed by the Statutes in force at the time of said acceptance or rejection.
214. Unlike in a disciplinary setting where the public administration analogy makes sense, i.e. an association must apply the substantive rules in force at the time when the facts (the disciplinary offense) occurred, the same is not true for the situation where an association applies for membership. This is why the Appellant has resorted to the theory that a pre-admission contractual relationship arose at the moment the GFA filed its application for membership, but this has no basis under Swiss law.
215. Swiss courts have rejected the application of intertemporal rules in disputes like the present one: *"According to the Swiss Courts in the GOC v. IOC case, it is doubtful that administrative law can apply, even by analogy, to such contractual settings where an applicant applies for membership to a Swiss association. Even though the principle of freedom of contract can be restricted in specific instances in case of a dominant position and may justify the application of general principles of law, this cannot lead to the application of the whole administrative law. The Swiss courts found that there is no reason to deviate from the principle that the statutes in force at the time of the decision to accept or to refuse the offer to contract (i.e. the application) should apply"*.

I. GFA fails to satisfy the membership criteria set in the 2014 FIFA Statutes

216. It is undisputed that GFA does not meet the membership criteria of the current FIFA Statutes (criteria that have been in force since 2004) since GFA governs football in a territory that does not satisfy the concept of "country" as *"an independent state recognized by the international community"*.

J. GFA fails to satisfy the membership criteria set in the 1996 FIFA Statutes

217. Even if the relevant version of the Statutes were the 1996 FIFA Statutes, GFA fails to satisfy the membership criteria therein:

- “[I]t is doubtful that the rules of interpretation that have been developed for the legal relationship between an association and its members or indirect members, also apply to a non-member”.
- It is not self-evident that FIFA must interpret the term “country” in the GFA’s case as it did in other allegedly identical cases, given that it is difficult to square with the principle of *pas d’égalité dans l’illégalité*.
- The FIFA Executive Committee as well as CAS have “a great deal of discretion in the application” of the term “country”, since it is left undefined in the 1996 Statutes, and should interpret it taking into account the definition introduced in the FIFA Statutes as from 2004. If FIFA had intended to change the substance of the FIFA requirement in 2004, it would not have defined the term “country” but rather replaced it with the expression “independent state recognized by the international community”. In other words, in 2004 FIFA simply codified the antecedent meaning of the term “country”. Such an interpretation is consistent with Article 1, para. 3 of the 1996 FIFA Statutes which provide that “only one association shall be recognized in each country”. The term should therefore be considered as remaining unchanged in 2004.
- The present situation is not comparable with the one of the *GFA v. UEFA* arbitration proceedings, in which UEFA changed the term “territory” to “country”.
- The *GOC v. IOC* case decided by the Swiss Federal Tribunal supports the proposition that even if the 1996 FIFA Statutes apply to GFA’s case, the deciding body (here the FIFA Executive Committee or the CAS) would be entitled to take into account the post-2004 version of the FIFA Statutes because the new regulation codified or materialized the discretionary power of the deciding body. That case is relevant and applicable, considering its similarities with the present dispute: (i) the Olympic Charter also used the concept of “country” which it later defined as an “independent state recognised by the international community”; (ii) the new definition was adopted *after* the GOC applied for membership but had entered into force as of that application’s rejection; (iii) the IOC had the *discretion* to accept or reject the application as does FIFA under Article 10 and Article 1 of the 2014 and 1996 FIFA Statutes, respectively. The alleged distinctions raised by the Appellant between the *GOC v. IOC* case and the present dispute are incorrect: (i) the British Olympic Association (BOA) did not oppose the GOC’s application to the IOC; (ii) the issue of how long the IOC discussed changes to the Olympic Charter and the GOC’s awareness of this was only considered in connection with whether the IOC had created legitimate expectations on which the GOC could rely, and not in connection with the interpretation of membership requirement; (iii) Gibraltarians have access to the Olympics through the BOA like they would have access to international football through whichever British Association with which the GFA might affiliate; (iv) other territories admitted into FIFA were admitted under Article 10, para. 6 of the FIFA Statutes.

- Consistently with this interpretation, GFA fails to satisfy Article 1, para. 2 of the 1996 FIFA Statutes since Gibraltar it is not a “country” in the sense of an independent state recognised by the international community. This is corroborated by the fact that FIFA had previously rejected the GFA’s 1991 membership application on the basis that Gibraltar “*has virtually no autonomy and has not been recognized as autonomous by any existing public legal body*” and that due to “*the extremely special nature [of its] territory’s geographical and political position, accepting its independence on sporting grounds would set important precedents for [FIFA’s] organisation that would be contrary to the consistent policy of FIFA in such matters*”, a finding that GFA did not challenge during the six years that passed before it sought membership anew.
- Admittedly, the Panel could theoretically be limited when interpreting the term “country” if the Appellant could establish that FIFA has consistently interpreted the term as referring also to non-independent states; however, FIFA has not done so *inter alia* because the associations the Appellant lists as comparable with the GFA are not so for the following reasons:
 - (i) the four British Associations’ memberships have a century-old historic sporting background;
 - (ii) the various associations of the British Overseas Territories (such as Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands) and the associations of other territories (e.g. American Samoa, Antigua and Barbuda, Aruba, Bahamas, Brunei Darussalam, Cook Islands, Curacao, Faroe Islands, Fiji, Guam, Hong Kong, Macau, New Caledonia, Puerto Rico, Suriname, and the U.S. Virgin Islands) were admitted on the basis of Article 1, para. 5 of the 1996 FIFA Statutes (the equivalent of Article 10, para. 6 of the 2014 FIFA Statutes) and are not “disputed territories”; and
 - (iii) the associations of other politically sensitive territories are not comparable since Chinese Taipei, East Timor and South Sudan were admitted as football associations pertaining to independent states (all were UN members at the time FIFA granted them membership), while Palestine was admitted on the basis of Article 1, para. 5 of the 1996 FIFA Statutes, it being understood that FIFA exercised its discretion taking into account the agreement of all members including the Israeli Federation, which supported the membership. As for Zanzibar and Northern Mariana Islands, while their associations were not members of their respective confederations, the main reason for FIFA’s rejection of their applications for membership was that they are not independent states recognized by the international community.
- Placing the burden on FIFA of proving that it accepted the aforementioned associations under the exceptional provision of the FIFA Statutes is inconsistent with Article 8 CC, especially given the context: (i) the Parties agree the territories in question were not independent; and (ii) there is no indication that they were admitted as FIFA members on the ground that they were considered “countries” under the 1996 Statutes.
- In any event, according to Article 4, para. 2 of the 1996 FIFA Statutes, in order to qualify for FIFA membership, an applicant must first be a UEFA provisional member

of at least two years' standing, and since UEFA did not grant it UEFA provisional membership until December 2006, GFA never fulfilled the requirements for membership while the 1996 FIFA Statutes were still in force.

- Finally, GFA cannot rely on the exception defined in Article 1, para. 5 of the 1996 FIFA Statutes (or its equivalent Article 10, para. 6 of the 2014 FIFA Statutes); nor, in any event, does it satisfy it. First of all, GFA's application, whether it be the 1997 or the 2013 version, did not request admission based on the exception provision; consequently, it cannot now rely on that discretionary provision in this arbitration to remedy the fact that it falls short of complying with Article 1, para. 2 of the 1996 FIFA Statutes or Article 10, para. 1 of the 2014 FIFA Statutes. Second, assuming equal treatment applies to non-members seeking discretionary admission, the reason FIFA admitted other territories as FIFA members based on said provisions, whereas it did not do the same with GFA, is that the other territories were not disputed and their applications were not opposed by other FIFA members.

K. GFA has failed to establish that FIFA is under an obligation to accept its membership under Swiss law

218. The Appellant's reliance on an obligation to contract in order to claim its entitlement to obtain FIFA membership (an argument developed in its Appeal Brief) conflicts with its argument that GFA already had a contractual right to admission at the moment of the filing of its application (an argument developed in its Reply).
219. Even if GFA met the membership criteria of the 1996 or 2014 FIFA Statutes, FIFA nonetheless retains full discretion in deciding to admit or reject an application for membership, even if all the requirements for membership (provided by the applicable statutes) are met. None of the legal provisions and general principles of Swiss law relied upon by the GFA, under the circumstances of the present case, limit said autonomy.
220. The freedom of contract and the liberty of association or Articles 19 CO and Article 63 CC, respectively, are "*fundamental legal principles under Swiss law*" and can only be restricted by "*specific legal provision ('base légale')*". While FIFA's freedom to accept or refuse an application for membership is not unlimited, none of the limitations the GFA identifies – the protection of personality rights (Article 28 CC), the obligation to act in good faith (Article 2 CC), and the protection against the abuse of dominant position under Swiss Cartel law – apply in the present case. Articles 28 CC and 7 of the Swiss Cartel Act provide for very strict conditions. Under Article 28 CC, an obligation to contract only arises under very specific circumstances, where personality rights are effectively infringed without any justified or legitimate grounds. For Article 7 of the Swiss Cartel Act, an obligation to contract only arises where an undertaking *abuses* its dominant position in the market, i.e., it impedes or restricts the access to competition without any justified or legitimate grounds.
221. With regard to personality rights (Article 28 CC):
 - The protection under Swiss law of personality rights might limit the autonomy of the concerned association in specific circumstances; accordingly, in the context of applications for membership, it might oblige FIFA to accept a member that fulfils all

the requirements for membership. However, FIFA's power to exclude a prospective member at its own discretion (Article 72 CC) may be limited by an applicant's personality rights to pursue economic activity only where the balance of interest of the prospective member prevails over the interest of FIFA to exclude such prospective member; this should only be held in exceptional circumstances. Moreover, considering that the prospective member in the present case is a national football organization, as opposed to an individual athlete, the requirements for an obligation to contract that may arise from the protection of personality rights are even more stringent.

- There is no violation of personality rights, let alone a violation serious enough to justify imposing on FIFA the obligation to enter into an admission contract with the GFA, as the GFA and Gibraltar footballers already have access to European competitions through UEFA and non-admission does not frustrate GFA's statutory purposes.
- The ground upon which the FIFA Executive Committee refused GFA's application for FIFA membership is not discriminatory if the Panel agrees that GFA did not fulfil the criteria for membership. If such is the case, there cannot be an infringement of the GFA's personality rights. But even in the contrary hypothesis, the FIFA Congress would be entitled to reject the GFA's application without discriminating against GFA because the GFA application involved a unique situation.
- Even if there were a violation of personality rights, FIFA has an overriding and legitimate interest under Article 28, para. 2 CC in rejecting GFA's membership application: its long-standing objective of maintaining political neutrality and avoiding disputes between its current members. FIFA seeks to avoid that an association governing football in a "country" that is not independent joins as a member when (i) the territory is disputed between two States and (ii) the members representing these States have not consented to the admission. The *GOC v. IOC* case (which is indistinguishable from the present case) ruled that the IOC "*had an overriding interest, which must be taken into account, in avoiding the proliferation of NOCs which exercise jurisdiction in territories that do not correspond to a State recognized by the international community and the admission of which would be a source of conflicts with sovereign states on which such territories depend*". Denying FIFA's legitimate interest would create or exacerbate a dispute between two current FIFA members (the FA and the RFEF) and the relevant sovereign states (the UK and Spain). Whether Spain's claims are warranted as a matter of public international law is irrelevant to FIFA's legitimate interest because the dispute exists as a matter of fact.
- The Appellant's reliance on the Third GFA-UEFA CAS Award to claim that the "*relevance of Spanish pretensions over Gibraltar has already been firmly discarded by CAS*" is misplaced. That award examined the reason to justify a change of attitude by UEFA (not present in the FIFA case) as opposed to whether there were legitimate grounds to refuse admission *per se* under Article 28 CC.
- Further, GFA cannot escape the consequences of FIFA's legitimate interest by claiming that FIFA has relied on Gibraltar's status as a "disputed territory" artificially and in bad faith. That the FIFA Statutes do not refer to the concept of "disputed territory" is immaterial. Its only relevance is in connection with FIFA's exercise of the discretion afforded to it under those Statutes and to explain why other dependent territories were

admitted under Article 1, para. 5 of the 1996 FIFA Statutes and Article 10, para. 6 of the 2014 FIFA Statutes. In fact, the FIFA Executive Committee does not mention this concept in the Appealed Decision, which was taken on the basis of Article 10, para. 1 of the FIFA Statutes, and not under the exception provision for dependent territories.

- Finally, FIFA's position is not at odds with the non-discrimination clause of Article 3 of the 2014 FIFA Statutes which has no pertinence to GFA's application given its distinguishing features.

222. As to the obligation to act in good faith under Article 2 CC:

- Since GFA is not a FIFA member, FIFA cannot have committed any arbitrary or discriminatory acts between the GFA and other FIFA members.
- FIFA never made any promise to GFA or created any expectation (as UEFA did) that it would grant it FIFA membership. In fact, since 1991 GFA has known of the political difficulties related to its application.
- The decision to not grant GFA membership is not arbitrary given that FIFA has legitimate and objective grounds, e.g. the GFA's unique status.
- The mere change of membership requirements does not constitute a violation of the duty to act in good faith as FIFA has the right to revise its statutes and, moreover, has a legitimate interest in not admitting disputed and sensitive territories. GFA has not shown any arbitrary or discriminatory actions against the GFA, i.e., there is no proof that the 2004 amendment to the FIFA Statutes did not emerge from the purpose of aligning them with the Olympic Charter. In any case, FIFA has not changed the requirements for membership at all since the 1996, 2004, and 2014 FIFA Statutes have all required, when interpreted properly, that a "country" be "*an independent state recognised by the international community*".
- The obligation to act in good faith and the prohibition of abuse of right vis-à-vis a candidate member cannot create an obligation to contract, rather only a *culpa in contrahendo*, which would only give rise to reliance damages ("*intérêt négatif*").

223. With respect to competition law under Article 7 of the Swiss Cartel Act:

- This Act does not apply here because FIFA's refusal to accept GFA as a FIFA member does not have a relevant effect on competition in Switzerland. GFA failed to explain why being deprived of taking part in "corporate life" of FIFA (which only relates to "internal functions" of FIFA not affecting competition) would affect the Swiss market of goods and services.
- FIFA is not a dominant undertaking. For an entity to be considered as a dominant undertaking under Swiss law, it must be able to behave to an appreciable extent independently of other market participants in a determined market (Article 4, para. 2 of the Swiss Cartel Act). The notion of "market" is determined geographically (territorial area of commercial activity) and substantively (in light of specific goods and services offered and in view of their substitutability). The Appellant has failed to demonstrate the latter. The fact that FIFA's refusal to grant GFA membership does not have any relevant effect on competition in Switzerland also means that FIFA cannot

have a “dominant position” under the Swiss Cartel Act. Therefore, FIFA is not a dominant undertaking.

- FIFA’s behaviour in the market is not *abusive*, as it (i) does not impede or restrict competition or take advantage of a dominant position to the detriment of other competitors, and (ii) is justified by objective reasons for the alleged restraint on the market.

224. Finally, given that GFA and Gibraltarian football players may participate in international football once affiliated to one of the British Associations, there cannot be a violation of either Swiss personality rights or competition law.

L. The Appellant cannot seek the enforcement of the right to membership of FIFA

225. The Appellant is “*not entitled to seek a self-executory declaration from CAS that the GFA is immediately a member of FIFA and enjoys all rights and obligations arising from the status of FIFA member with immediate effect*” because GFA is not entitled to membership (it fails to satisfy the membership criteria of the 1996 or 2014 FIFA Statutes) and, in any case, “*FIFA has the complete discretion to reject the application since the requirements of Article 28 CC and Article 7 [of the Swiss Cartel Act] are not fulfilled*”.

M. The Respondent has not violated general principles of law

226. FIFA did not infringe the general principles of (i) good faith (for the same reasons given in connection to Article 2 CC), (ii) fairness (as, *inter alia*, FIFA does not “*rely on UEFA’s unlawful conduct to justify its actions*” nor do said actions extend to FIFA), (iii) equal treatment (as, *inter alia*, GFA is objectively unique and the principle applies only between a state and an individual, not between private entities), (iv) proportionality (for the same reasons tipping the balance of interest under Article 28, para. 2 CC in favour of FIFA, and in any event since the principle is of no relevance in the absence of any infringement of GFA’s personality right or any abuse of right), (iv) certainty, acquisition of rights and legitimate expectations (for the same reasons given in connection to Article 2 CC), and (v) protection of fundamental rights (as FIFA is not a state authority).

N. The Respondent has not violated EU law

227. The Respondent has not violated EU law; in particular, it has not violated:

- the EU rules on freedom of movement because the “*GFA is not providing a pan-European service outside of Gibraltar and the provision of a team for international football matches falls outside the scope of a ‘service’ given the specific characteristics of such matches*”.
- EU competition law because: (i) the Appellant has failed to define the relevant market accurately and (ii), in any case, FIFA has not *abused* its alleged dominant position in the market (for the same reasons it gave in relation to Swiss competition law). The Respondent asserts that “*FIFA’s decision does not infringe Competition law because it is inherent and proportionate to the legitimate objective of maintaining the pyramid structure of sports and,*

specifically, protecting the governance of football. There is no support for the contention that the GFA has been treated in a discriminatory manner vis-à-vis any of the territories that it has listed. [Furthermore] even if the GFA is considered to meet the conditions of membership, FIFA still retains a wide margin of discretion as a matter of EU & Competition law to reject its application having regard to objective factors, such as the disputed and particular nature of Gibraltar, that could adversely affect the governance of football”.

O. The Appellant’s requests for relief are inadmissible

228. In its Answer, the Respondent contests the admissibility under Swiss law of the Appellant’s requests for relief in its Appeal Brief, including those specified in: (i) paras. 280.1 and 280.2 since they are declaratory and thus subsidiary in nature (the Respondent claims that the Appellant has no legal interest in such declarations in light of the relief sought in 280.3 and 280.4, provided those reliefs are not declaratory in nature); (ii) para. 280.3 since it is allegedly subsidiary to the “order” sought under the same paragraph and since said “order” allegedly goes beyond the Panel’s power under Article R57 of the CAS Code (the Appellant failed to seek the annulment of the Decision and a de novo award submitting the GFA’s application for membership to the FIFA Congress); (v) paras. 280.4, 5 and 6 as they allegedly go beyond the Appealed Decision; and (vi) para. 280.7 since it allegedly goes beyond the scope of the arbitration agreement concluded based on Article 3(1)(s) of the Admission Regulations.
229. In its Rejoinder, the Respondent contends that the Appellant’s amendment to the requests for relief in its Reply is inadmissible pursuant to Article R56 of the CAS Code. The Appellant’s relief sought is inadmissible as it goes beyond the Panel’s authority pursuant to Article R57 of the CAS Code and/or are merely declaratory in nature. The Panel does not have the authority to make any ruling with respect to a decision of the FIFA Congress, as this is an appeal from the decision of the FIFA Executive Committee not to forward the GFA’s case to the FIFA Congress; thus *“all the present Panel can do is to (either remit the matter back to the FIFA Executive Committee or to) rule on a de novo basis in place of the FIFA Executive Committee (Article R57 of the CAS Code) that the GFA application (i) fulfils the membership requirement set out by the FIFA Statutes and (ii) the GFA’s application should be transmitted to the next FIFA Congress with a recommendation to accept the application”*. Finally, the Respondent asserts that *“the declaratory reliefs sought by the GFA are inadmissible since, as a matter of Swiss law, such reliefs are subsidiary in nature. The GFA has indeed no legal interest in such declaration when it could (and should) have sought a decision replacing the Decision under appeal”*.
230. In light of the foregoing, the Respondent requests in its Answer a decision:
- “1. Declining jurisdiction to the extent that the GFA’s application for FIFA Membership that is relevant for the present arbitration is the application submitted on 8 January 1997.*
 - 2. Asserting jurisdiction only to the extent that the GFA’s application for FIFA-Membership that is relevant for the present arbitration is the application submitted on 19 September 2013.*
 - 3. Declaring all of the GFA’s requests for “substantive relief” inadmissible to the extent that the CAS has jurisdiction to hear the Appeal.*
 - 4. Dismissing all of the GFA’s requests for “substantive relief” to the extent that they are admissible and that the CAS has jurisdiction to hear the Appeal.*

5. Confirming the Decision under appeal.

6. Condemning the GFA to pay all the costs of the present arbitration.

7. Condemning the GFA to pay FIFA a substantial compensation for the costs incurred by FIFA before the Court of Arbitration for Sport, including the attorney and legal experts' fees, of an amount to be further specified but of at least CHF 100,000.00”.

231. In its Rejoinder, the Respondent requests in its requests for relief a decision:

“1. Declining jurisdiction to bear the present appeal.

2. Confirming the Decision under appeal.

3. Condemning the GFA to pay all the costs of the present arbitration.

4. Condemning the GFA to pay FIFA a substantial compensation for the costs incurred by FIFA before the Court of Arbitration for Sport, including the attorney and legal experts' fees, of an amount to be further specified but of at least CHF 100,000.00”.

232. In its post-hearing brief, the Respondent confirmed the motions for relief set forth in its Rejoinder.

VIII. LEGAL DISCUSSION

233. In light of the Parties' submissions, the Panel must preliminarily decide whether (i) CAS has jurisdiction to hear the present dispute and, if so, (ii) to what extent Swiss law, EU law, and general principles of law may be applicable.

234. If it rules that CAS does have jurisdiction, the Panel must then decide, based on the applicable rules of law, whether the Appealed Decision is to be confirmed or whether the appeal is to be upheld. In order to do so, the Panel would have to address the following primary questions:

(i) What membership criteria are applicable to GFA's application: those set forth in the 1996 FIFA Statutes or in the 2014 FIFA Statutes?

(ii) Does GFA satisfy the applicable membership criteria?

(iii) If yes, does FIFA retain discretionary power, based on the liberty of association and freedom of contract, to refuse membership to GFA or does FIFA, considering that it is a monopoly holder and a supreme regulatory authority, have the duty to accept new members meeting all requisite conditions?

235. If the Appealed Decision is to be overturned, the Panel will further have to consider what remedy is available to GFA and also whether the question of damages in respect of the loss and damage sustained by it, if any, may be reserved.

236. The Panel will address these issues in separate subsections below.

VIII.1 PRELIMINARY REMARKS

237. Preliminarily, the Panel notes that (a) FIFA’s special position in the worldwide domain of football as the supreme regulatory authority affects the standards of behaviour that are applicable to it as an association; and (b) the present *GFA v. FIFA* case is to be distinguished from the *GOC v. IOC* case (Swiss Federal Tribunal, Decision 5A_21/2011 of 10 February 2012) in several respects (which will be discussed *infra* at paras. 241-248, 305 and 334), and most of all for the following reason: whereas there is a British Olympic Association tasked with Olympic sports governance over the entire UK territory, no British football association exists as such and the territory over which GFA exerts its football governance (i.e., the territory of Gibraltar) is not part, geographically or legally, of the territories in which the four “British Associations” – as defined in the FIFA Statutes: the Football Association (FA), the Football Association of Wales (FAW), the Scottish Football Association (SFA), and the Irish Football Association (IFA) – govern the sport of football (the territories of England, Wales, Scotland and Northern Ireland).

A. FIFA’s special responsibility as the supreme regulatory authority of its sport

238. As from the end of the 19th century, an increase in the popularity of sports led to the establishment of non-governmental organizations for the administration, monitoring and development of sports. This included FIFA, founded in 1904 as the governing body for football internationally. It was tasked with exercising regulatory, supervisory, and disciplinary functions over national football associations, clubs, officials and players worldwide.

239. Since then, FIFA, like other international sports federations, has developed into the supreme regulatory authority within its sport, exerting legislative and administrative powers and enjoying substantial independence and autonomy from governments and national law. It has essentially developed into a self-regulated organisation, being only slightly curtailed in its autonomy at international level by a few court decisions such as, e.g., the well-known *Bosman* ruling by the EU Court of Justice (judgment of 15 December 1995, case C-415/93). In issuing regulations and monopolistically shaping the world of football, FIFA acts in a manner analogous to that of a state legislator (see CAS 2006/A/1181 at para. 10: “*insofar as FIFA, as a monopoly federation, is exercising autonomy in issuing regulations and is shaping the world of football, FIFA is acting in a manner that is comparable to a state legislator*”). FIFA itself treats its own regulations much like laws, promulgating them as binding on national football associations, clubs, players, and so on (see, e.g., Article 1, entitled “Scope”, of the FIFA Regulations on the Status and Transfer of Players, hereinafter “RSTP”).

240. In the Panel’s view, special responsibilities accompany the special power held by FIFA as the supreme regulatory authority within its sport, and as the organizer of the most important worldwide competition between national football associations (i.e. the FIFA World Cup). The Panel is persuaded that FIFA, albeit a private body, must respect general principles that also constrain legislators and governmental administrations, including the non-retroactivity of laws and rules, good faith, and procedural fairness. It is remarkable and meaningful that the EU Court of Justice has always treated FIFA and the other international federations as functionally equivalent to state legislators, in particular by applying to them the Treaty rules on freedom

of movement, even though those Treaty rules were conceived as applicable to the conduct of public authorities of the EU Member States (see, e.g., the well-known judgments of the EU Court of Justice in case 13-76, *Donà*, at paras. 17-18, and case C-415/93, *Bosman*, at paras. 82-83).

B. The present case must be distinguished from the GOC v. IOC case (SFT Decision 5A_21/2011 of 10 February 2012)

241. FIFA contends that (i) GFA could affiliate with one of the British Associations in order to participate in international football (claiming in particular that GFA was once formally affiliated with the FA), and that (ii) nothing in the FIFA regulations prevents Gibraltar footballers from playing for the English national team, or for that of any other British Association. The Panel disagrees with both of these contentions.
242. With regard to the GFA's potential affiliation with one of the British Associations, the Panel has regard to two propositions.
243. First of all, from the evidence submitted, it is clear that prior to the filing of the GFA's application in 1997 the GFA was independent of any of the four British Associations, including in particular of the FA. Article 3.1 of the GFA Statutes at that time explicitly provided that "*the GFA shall take such action as the Council may from time to time deem necessary to become affiliated and remain affiliated to the Football Association of England and Wales and/or to become a member of FIFA and/or any other international governing body or association*" (emphasis added). In other words, GFA had to take some action in order to become affiliated to the FA or the FAW. This was confirmed by the Third GFA-UEFA CAS Award, which recognized that GFA had "*always been independent from any other football association, within Gibraltar or elsewhere*". It is undisputed that, at the time of the 1997 application to FIFA and thereafter, the GFA has not been affiliated with the FA or with any other British Association. It follows that GFA and its footballers have not had, and do not have, access to international football.
244. Secondly, the Panel observes that in order for GFA to participate in international football at worldwide level it must either become affiliated with one of the British Associations or directly with FIFA. However, GFA's formal affiliation to one of the British Associations, and thus its access to international football, would be subject to and fully dependent on the discretion and will of those associations. FIFA could only support such an application but not guarantee that it would succeed. This is evident from FIFA's own acknowledgement in its post-hearing brief that the British Associations could refuse the GFA's bid to become formally affiliated to them, and FIFA's declaration that it would "*support*" the GFA by confirming to the British Associations that nothing in the FIFA regulations prevents such an affiliation (FIFA states in its post-hearing brief: "*... there is no FIFA Regulation preventing the GFA from seeking a similar status of affiliation within the FA as the Channel Island associations... FIFA is happy to confirm that the GFA is entitled to rely on the contents of this submission in order to (re)gain FA (or any other British Association) membership... More generally, the GFA can count on FIFA's support in confirming the above in the event that the FA (or any other British Association) should oppose a request for affiliation*").
245. The Panel finds that the discretionary nature of a possible affiliation with one of the British Associations is particularly concerning, given the likelihood that they may feel disinclined to

accept GFA as a formal affiliate due to the practical complications that could arise therefrom, such as, in particular, the difficulty to integrate GFA clubs into the lower-division leagues of one of the four British Associations. It would be unsurprising to find lower-division leagues or clubs of the British Associations opposed to integrating GFA clubs into their leagues for fear of heightened financial costs as a consequence of the geographical distance between the UK and Gibraltar. This is manifestly a particularly important issue in the context of lower-division leagues of the British Associations, where clubs operate with limited financial resources. As GFA's affiliation with any of the British Associations is subject to said associations' discretion, it cannot be said that GFA has guaranteed access to international football through them.

246. As to Gibraltarian footballers competing internationally, the Panel first notes that they cannot play for the UK because there is no UK national football team. Article 10, para. 5 of the 2014 FIFA Statutes (and the corresponding provisions of all the precedent versions of the FIFA Statutes) makes this an inevitability: *"Each of the four British Associations is recognised as a separate Member of FIFA"*. Gibraltarian footballers' only chance at competing internationally would be, therefore, through one of the four British Associations' national teams. Yet, their footballers' status as British nationals does not alone guarantee a right for them to do so. Gibraltarian footballers wishing to play for one of the British Associations' national teams must additionally meet at least one of the four requirements related to place of birth, ancestry, or residence set forth in Article 6 of the FIFA Regulations Governing the Application of the Statutes (see *supra* at para. 119), i.e. the provision made for players who are eligible to represent more than one association on account of nationality. In other words, a Gibraltarian footballer's prospect in this regard would depend entirely on that individual's particular circumstances. This does not provide sufficient guarantee of access to international football through the British Associations.
247. Furthermore, the Panel notes that, due to FIFA's own regulations, Gibraltarian footballers who have played for the "A" national team of their native Gibraltar in a UEFA competition – as the top Gibraltarian players did in the recent qualifiers for the 2016 UEFA European Championship – would be precluded from playing for the national team of one of the British Associations in FIFA competitions, even if they complied with the other FIFA requirements for national team eligibility. Indeed, according to Article 5, para. 2 of the 2014 FIFA Regulations Governing the Application of the Statutes (see *supra* at para. 118), *"any Player who has already participated in a match (either in full or in part) in an Official Competition of any category or any type of football for one Association may not play an international match for a representative team of another Association"*, and UEFA competitions for national teams are undoubtedly *"Official Competitions"* (see the definition in the FIFA Statutes, *supra* at para. 110). Therefore, contrary to what FIFA alleges (see *supra* at para. 201), if GFA were to be kept outside of FIFA, the Gibraltarian footballers (male and female) who have played for the GFA "A" national team in UEFA competitions would not be allowed to play for the national team of one of the British Associations in FIFA competitions (in fact, FIFA rules allowing players to change the national association for which they are eligible to play international matches do not apply to players who have played in the "A" national team of another association; see *supra* at para. 121).
248. In light of the above, the present case is clearly to be distinguished from the *GOC v. IOC* case (SFT Decision 5A_21/2011 of 10 February 2012), since in the latter case there existed a British

National Olympic Committee (the BOA), through which Gibraltar athletes (being UK citizens) could participate in the Olympic movement and be eligible to compete for British national teams in Olympic events.

VIII.2 JURISDICTION

249. Article R47 of the CAS Code stipulates that “*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body*”.
250. Thus, within the context of appeal arbitration procedures, CAS jurisdiction is limited to the adjudication of appeals against a decision of a sports body, where the following three requirements are satisfied cumulatively: (i) the statutes or regulations of the sports body contain an arbitration clause providing for appeal to CAS or where the parties have agreed on an arbitration agreement; (ii) the sports body has issued a decision; and (iii) said decision is final, meaning that the appealing party has exhausted all available internal recourse.
251. In the present appeal, the only dispute is whether the first requirement has been satisfied: (i) whether the 2014 FIFA Statutes, namely Articles 66 and 67, permit GFA, not being a FIFA member but only an applicant for FIFA membership, to file an appeal to the CAS, and (ii) whether the Parties entered into an arbitration agreement, on the basis of Article 3, para. 1(s) of the 2013 Admission Regulations, the scope of which would encompass disputes arising from applications filed prior to the implementation of the 2013 Admission Regulations.
252. To recap the Parties’ arguments, the Appellant submits that CAS has jurisdiction on the alternative basis of (i) Article 67, para. 1 of the 2014 FIFA Statutes; (ii) GFA’s acceptance of FIFA’s offer to arbitrate set forth in Article 3, para. 1(s) of the 2013 Admission Regulations; and/or (iii) CAS being the natural forum for the present dispute (see *supra* at para. 157 *et seq.*). On the other hand, the Respondent maintains that (i) CAS jurisdiction with respect to the present appeal cannot extend to GFA’s 1997 application, since that application is not covered by the 2013 Admission Regulations and thus falls outside the scope of the offer to arbitrate contained in Article 3, para. 1(s) of those Regulations (i.e., CAS would only have jurisdiction to hear the present appeal if the Panel agreed that it concerns a new application submitted by GFA in 2013 in accordance with the 2013 Admission Regulations, in which case the offer to arbitrate in Article 3, para. 1(s) would be deemed to be accepted); (ii) GFA’s reservation of 15 November 2013 would constitute a counter-offer, which FIFA did not accept, with the result that there is no arbitration agreement and thus no CAS jurisdiction over the present matter; and (iii) even if an arbitration agreement exists, the scope of Article 3, para. 1(s) of the 2013 Admission Regulations does not encompass disputes arising from applications submitted under previous regulations, meaning that the CAS cannot hear a dispute concerning the GFA’s 1997 application (see *supra* at para. 193 *et seq.*).
253. In light of the Parties’ disagreement, the Panel must determine whether it has jurisdiction to hear the present appeal.
254. As an initial matter, the Panel is unpersuaded by the Appellant’s contention that a “*corroborating policy within both parties to submit disputes arising out of their decision-making to CAS*” or a “*legitimate*

expectation” based on the significant history between the Parties, such to make CAS the “*natural forum*” for the present dispute, is sufficient to satisfy the requirement of the existence of an arbitration agreement (Article R47 of the CAS Code).

255. Second, the Panel does not find that CAS jurisdiction over the present appeal is established on the basis of Article 67, para. 1 of the 2014 FIFA Statutes. True, the Appealed Decision does constitute a “*final decision*” passed by one of “*FIFA’s legal bodies*” (i.e., the FIFA Executive Committee), and there have been several CAS panels retaining jurisdiction over appeals against decisions of the FIFA Executive Committee (see, e.g., CAS 2014/A/3744 & 3766, TAS 2011/A/2371, CAS 2009/A/2022). However, satisfying solely Article 67, para. 1 of the 2014 FIFA Statutes is insufficient in and of itself for establishing CAS jurisdiction to hear a dispute over a final decision of the FIFA Executive Committee. Article 67, para. 1 of the 2014 FIFA Statutes cannot be read in isolation, but rather in conjunction with Article 66 of the 2014 FIFA Statutes, which limits the class of individuals and entities entitled to submit disputes to CAS to “*FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, licensed match agents and players’ agents*”. Given this limitation and the fact that GFA is not a FIFA member (but rather only an applicant for FIFA membership), GFA is not entitled to invoke Article 66 and 67 of the 2014 FIFA Statutes. Furthermore, since Article 66 of the 2014 FIFA Statutes explicitly lists those who are entitled to submit a dispute to the CAS, there is no room for the Applicant’s (in any case doubtful) interpretation to the effect that Article 67, para. 1, Article 10, paras. 3 and 4(c), and Article 4, para. 1(a) of the 2014 FIFA Statutes read together permit applicants for FIFA membership to bring appeals against final decisions regarding their membership applications to the CAS. Finally, the Panel notes that no other provisions in the 2014 FIFA Statutes have been invoked as available to an applicant for FIFA membership and as setting forth an arbitration clause providing for an appeal to the CAS. In light of these considerations, the Panel holds that the 2014 FIFA Statutes do not yield an adequate basis to exercise jurisdiction over the present appeal.
256. On the other hand, for the reasons set out hereinafter, the Panel holds that CAS does have jurisdiction to hear the present appeal on the basis of an arbitration agreement between the parties based on FIFA’s 2013 Admission Regulations.
257. Article 3 of the 2013 Admission Regulations is entitled “*Contents of application*” and provides at para. 1(s) that any applicant for FIFA membership must give “[*c*]onfirmation that all disputes regarding the application procedure shall be decided by the Court of Arbitration for Sport (CAS) headquartered in Lausanne (Switzerland)”. The Panel recognizes as undisputed that on 21 February 2014 – in response to FIFA’s letter of 11 November 2013, which characterized GFA’s application as incomplete and requiring updating with the mandatory information as defined in the 2013 Admission Regulations (see *supra* at *para.* 82) – GFA submitted five dossiers of information, including GFA’s confirmation, as per Article 3, para. 1(s) of the 2013 Admission Regulations, “*that all disputes regarding the application procedure for the GFA’s membership of FIFA shall be decided by the [CAS]*”. The offer to arbitrate contained in the 2013 Admission Regulations was accepted by GFA without any reservation and in the same terms as it was formulated by FIFA. The Panel observes that FIFA did not object to (or indicate a particular understanding of, or qualify, or make any comment on) GFA’s acceptance of FIFA’s offer to arbitrate included in Article 3, para. 1(s) of the 2013 Admission Regulations. Indeed FIFA has never done so until the present proceedings, even though it was evident from GFA’s communications to FIFA,

namely those of 19 September 2013 and 15 November 2013, that GFA considered its submissions of 2013 not as a new application but as a revival and resumption of its 1997 application. In fact, GFA's letter of 15 November 2013 clearly communicated to FIFA that "*GFA has complied and will continue to comply at all times with FIFA's requirements, from time to time in force, as to the information that is to be provided in support of a pending and unresolved application for membership of FIFA. The GFA will therefore, within the 23 September 2014 deadline you have identified, update the information contained in its pending 1997 application. The updating of this information neither will nor can alter the fact that the GFA application was made in 1997, and that accordingly it falls to be assessed by reference to the admission criteria then applicable*" (see *supra* at para. 83). The Panel notes that Article 3, para 1(s) of the 2013 Admission Regulations does not qualify in any way FIFA's offer to arbitrate by limiting it to only new applications; rather, it clearly makes reference to "all" disputes between the applicant for admission and FIFA regarding the application procedure. The Panel also observes that, due to the well-known principle of the severability (or autonomy) of the arbitration clause, the existence, effectiveness and validity of an agreement to arbitrate can be found without having regard to the content, effectiveness or validity of the contractual document(s) in which the relevant arbitration clause is inserted.

258. The Panel accordingly considers that, in the context described above, GFA's acceptance of FIFA's offer to arbitrate, as contained in Article 3, para. 1(s) of the 2013 Admission Regulations, is sufficiently consolidated evidence of the Parties' intent to submit all their disputes concerning GFA's application to CAS arbitration. Parties are free to agree to arbitration at any time, and the Panel is of the view that, at the moment GFA accepted FIFA's offer to arbitrate, per Article 3, para. 1(s) of the 2013 Admission Regulations, an arbitration agreement was formed which became immediately binding on both Parties.
259. As a result, the Panel finds that an arbitration agreement does exist between the Parties.
260. According to a *jurisprudence constante* of the Swiss Federal Tribunal, once the existence of an arbitration agreement is established, as is the case here, its scope is not subject to restrictive interpretation, but rather should be interpreted broadly. The Panel finds that the arbitration agreement entered into by the Parties on 21 February 2014 encompasses disputes arising not only from new applications but also from applications submitted under previous regulations. Indeed, the text of Article 3, para. 1(s) of the 2013 Admission Regulations, unilaterally drafted by FIFA, makes a wide-ranging and unqualified reference to "*all disputes regarding the application procedure*" and is not limited in its scope by Article 3 or any other provision of the 2013 Admission Regulations. The Panel also observes that in the various communications sent by FIFA to GFA in 2013 and 2014, FIFA never sought to qualify or confine the arbitration clause, which generically refers to any "application procedure", only to disputes arising from application procedures newly initiated under the 2013 Admission Regulations. Accordingly, considering the already mentioned principle of the severability of arbitration clauses, the Panel holds that the CAS arbitration agreement concluded between the parties equally covers new and pending application procedures (i.e. regardless of whether the Panel considers GFA's submission on 19 September 2013 to be a new application or a revival and resumption of the 1997 application – an issue that will be discussed below).
261. In light of the foregoing, the Panel holds that it has jurisdiction to hear the present appeal on the basis of an arbitration agreement founded on Article 3, para. 1(s) of the 2013 FIFA

Admission Regulations, entered into between the Parties on 21 February 2014, when GFA confirmed its acceptance of the jurisdiction of CAS proposed by FIFA.

VIII.3 APPLICABLE LAW

262. According to Article R58 of the CAS Code, *“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
263. The Panel holds, first of all, that FIFA regulations are applicable to the present dispute. It is common ground between the Parties that Swiss law applies subsidiarily to the present dispute. Indeed, since the Parties have not chosen any specific rules of law – the choice of law contained in Article 66, para. 2 of the 2014 FIFA Statutes not being applicable because, in the Panel’s view, it only applies to the disputes between the parties listed in Article 66, para.1 – Article R58 of the CAS Code requires the Panel to apply on a subsidiary basis the law of the country in which FIFA is seated, Switzerland.
264. In addition to Swiss law, the Panel holds that general principles of law are also applicable as *“rules of law [whose application] the Panel deems appropriate”* (Article R58 of the CAS Code). As previously mentioned, the special power that FIFA holds as the supreme regulatory authority within its sport is accompanied by special responsibility. Albeit being a private body, FIFA must thus respect general principles of law and, in particular, those that generally bind legislators and public administrations. As the panel in CAS 98/200 held, at para. 156: *“The Panel is of the opinion that all sporting institutions, and in particular all international federations, must abide by general principles of law. Due to the transnational nature of sporting competitions, the effects of the conduct and deeds of international federations are felt in a sporting community throughout various countries. Therefore, the substantive and procedural rules to be respected by international federations cannot be reduced only to its own statutes and regulations and to the laws of the country where the federation is incorporated or of the country where its headquarters are. Sports law has developed and consolidated along the years, particularly through the arbitral settlement of disputes, a set of unwritten legal principles – a sort of lex mercatoria for sports or, so to speak, a lex ludica – to which national and international sports federations must conform, regardless of the presence of such principles within their own statutes and regulations or within any applicable national law, provided that they do not conflict with any national «public policy» («ordre public») provision applicable to a given case. Certainly, general principles of law drawn from a comparative or common denominator reading of various domestic legal systems [...] can be deemed to be part of such lex ludica”*. With respect to this citation, the Panel notes that what was then termed *“lex ludica”* has become by now widely known as *“lex sportiva”*.
265. Among such principles of law, the non-retroactivity of laws and rules, procedural fairness, and good faith figure prominently.
266. Specifically with regard to the principle of non-retroactivity, a CAS panel held that *“these principles [related to the prohibition of issuing rules having retrospective effect], which were developed first and foremost for the state legislator, are applicable mutatis mutandis to a sports federation such as FIFA, because, firstly, the prohibition of issuing rules having retrospective effect is an expression of a*

general legal principle which is not limited to the state legislator. Secondly, insofar as FIFA, as a monopoly federation, is exercising autonomy in issuing regulations and is shaping the world of football, FIFA is acting in a manner that is comparable to a state legislator. In any event, from the point of view of those who are subject to the regulations – whose protection is the very purpose of the prohibition of issuing rules having retrospective effect – it makes little difference whether a provision has been issued by a monopoly federation or by a state legislator. However, if the rules of a monopoly federation are measures having an equivalent effect, then there is no reason not to apply the prohibition of issuing rules having retrospective effect developed for the state legislator to a sports federation such as FIFA” (CAS 2006/A/1181 at para. 10).

267. The Respondent contends that the principle of non-retroactivity should only be applied in a disciplinary setting (see *supra* at para. 214). However, the Panel notes that (i) the above quoted CAS award was rendered in a non-disciplinary case, and (ii) FIFA itself has an established practice of avoiding the retrospective application of its substantive regulations in non-disciplinary settings, such as in matters related to the status and transfer of players. For instance, in Article 26 of the 2015 FIFA RSTP, it is stipulated that “[a]ny case that has been brought to FIFA before these regulations have come into force shall be assessed according to the previous regulations”. The principle of non-retroactivity has been applied consistently in decisions of the FIFA Dispute Resolution Chamber (“DRC”) and the FIFA Players’ Status Committee to disallow the retrospective application of substantive rules. See, e.g., the DRC Decision of 25 August 2006, *Club A v. Club B* (where it is stated at para. 15 that “club A could not have complied with the formal requirements foreseen in the Regulations 2005 before they even came into force. To claim that club A would have had to comply with the formal requirements would constitute a retroactive application of the said formal requirements. Therefore, the Chamber decided that these requirements cannot be applicable on the case at hand”), and the DRC Decision of 1 February 2012, *N. v. U.* (where it is stated at para. 20, that “since the aforementioned amendment of the pertinent article of Annexe 4 of the Regulations only came into force on 1 October 2009, the Chamber found that it cannot apply said amendment to the years of training and education of the player prior to the coming into force of the amended art. 5 par. 3 of Annexe 4, i.e. prior to 1 October 2009. In other words, the Chamber concurred that the said provision could not be applied retroactively”). The Panel observes that, in light of such FIFA constant practice, for FIFA to claim in this case that it might apply its substantive rules retrospectively would be a case of *venire contra factum proprium*.
268. As for the principle of procedural fairness, it has consistently been applied in CAS arbitration, and particularly so in relation to disputes concerning the admission of clubs or athletes to competitions: “under CAS jurisprudence the principle of procedural fairness is surely among the unwritten principles of sports law to be complied with by international federations (see CAS OG 96/001 [...], para. 15; CAS 96/153 [...], para. 10)” (CAS 98/200 at para. 190). Indeed, the Panel considers procedural fairness in the relationships between sports institutions and those subject to their authority – particularly in the realm of eligibility for and access to competitions – to be one of the most important principles of *lex sportiva*, if not *the* most important one.
269. While the Respondent does not contest that general principles of law may be applicable to sports disputes pursuant to Article R58 of the CAS Code, it questions the extent to which they are applicable and, specifically, whether they can supersede the applicable Swiss substantive laws. To recapitulate, the Respondent submits on this issue that “even accepting that general principles of law could be relevant, this does not mean that CAS panels can completely disregard Swiss (substantive) law... it is only when the Panel has objective reasons to conclude that the application of Swiss

law is not appropriate that it can apply another rule of law, including general principles of law". The Panel disagrees. As observed in the already quoted CAS case no. 98/200, due to the transnational character of international sporting competitions and the global effects of the actions and omissions of international federations, general principles of law (and in particular those general principles that have become part of the so-called *lex sportiva*) must be respected at all times by international federations even if they are not reflected in specific enactments of the applicable national law (see the quote reported *supra* at para. 264); the only exception would be in the unlikely situation that such general principles were in conflict with some national or transnational public policy provision applicable to a given case (*ibidem*), which the Panel finds not to be true here.

270. The Parties also disagree as to whether EU competition rules apply to the present dispute. The Swiss Federal Tribunal has stated as follows with respect to EU competition law: "*It is generally recognized that Swiss civil courts or arbitrators, when deciding the validity of a contractual agreement affecting the EU market, shall examine this issue in the light of Art. 81 EC Treaty [now Art. 101 TFEU]. They shall do so even if the parties have contractually agreed to apply Swiss law to their contractual relationship. This examination is compulsory where a party invokes the nullity of the contractual agreement before the court or the arbitrator*" (SFT Judgment 4P.119/1998 of 13 November 1998). In the Panel's opinion, in order to apply EU competition rules in a given case, a CAS panel should take guidance from Article 19 PILA (providing that a mandatory rule of a law different from the *lex causae* may be taken into account if the dispute presents a close connection with that law) even if, in principle, Article 19 PILA is a rule addressed to Swiss judges and not to arbitrators. Accordingly, as noted in CAS 98/200 at para. 10, in order to apply EU rules of law, a CAS panel adjudicating an international dispute must verify that the three conditions set forth by Article 19 LDIP are met: (i) the EU rules in question belong to that special category of norms which call for application irrespective of the law applicable to the merits of the case (so called mandatory rules or, in French, *lois d'application immédiate*); (ii) there is a close connection between the subject matter of the dispute and the EU territory; and (iii) from the point of view of Swiss legal theory and practice, the invoked EU rules aim to protect legitimate interests and crucial values and their application allows a just decision. The Panel is convinced that those three conditions are met in the present case because: (i) it is universally recognized in the legal literature and jurisprudence that EU rules protecting competition are fundamental rules pertaining to the said category of mandatory rules; (ii) GFA is under the sovereignty of the United Kingdom, which is a EU member State and, as acknowledged by the Respondent's own expert, EU provisions on competition unquestionably apply to Gibraltar, not to mention the fact that FIFA World Cup qualifiers (in which GFA would compete if admitted into FIFA) regularly take place throughout the EU territory; and (iii) interests and values protected by EU competition law are shared and supported by the Swiss legal system, as demonstrated by the fact that the Swiss Cartel Law has been inspired by and modelled on EU competition law.
271. Accordingly, the Panel will decide the present dispute pursuant to FIFA regulations and, subsidiarily, Swiss law. In addition, the Panel will also apply, to the extent that it is appropriate in accordance with the approach outlined above, general principles of law and EU competition law.

VIII.4 APPLICABLE MEMBERSHIP CRITERIA

272. While the Parties are in agreement that the various regulations of FIFA apply to the present dispute, they are divided as to which version of said regulations apply. The Appellant argues that the applicable membership criteria are those set forth in the 1996 FIFA Statutes, while the Respondent insists that they are those of the 2014 FIFA Statutes. For the following reasons, the Panel finds that the applicable membership criteria are those laid out in the 1996 FIFA Statutes.

A. No abandonment of GFA's 1997 application

273. The Panel rejects the Respondent's contention that GFA's resumption of its 1997 application for membership must be considered as a new application because GFA, as a matter of Swiss law, abandoned its 1997 application on 26 February 2007.

274. To recapitulate, the Respondent believes that because GFA allegedly failed to challenge the UEFA 2007 Congress Decision of 25-26 January 2007 within one month in accordance with Article 75 CC, a *new* application necessarily emerged (as opposed to a revival and resumption of GFA's 1997 application), which, in the event that the applicable membership criteria are those set forth in the FIFA Statutes in force at the time of the application, as is the case (see *infra* at para. 279 *et seq.*), would be subject to the FIFA Statutes then in force (i.e. a post-2004 amendment version of the FIFA Statutes).

275. The Panel disagrees and finds that the GFA did in fact challenge the UEFA 2007 Congress Decision by submitting a claim to CAS on 6 March 2007.

276. Contrary to the Respondent's contention, GFA did not have an obligation under Article 75 CC to file its challenge with the ordinary Court of Nyon. According to Article 2 of the Regulations Governing the Implementation of the UEFA Statutes (Edition 2006), "*a national football association admitted on a provisional basis shall have the same rights and obligations as a Member Association [with the exception of the right to vote]*". Given that GFA had become a provisional member of UEFA on 8 December 2006, it was subject to Article 61 and 62 of the UEFA Statutes (Edition 2006) at the time when it wished to challenge the UEFA 2007 Congress Decision. Accordingly, GFA was bound by the UEFA statutory choice of CAS as the exclusive dispute settlement forum and, conversely, did not have an obligation to submit its claim before the Swiss courts. This is explicitly confirmed by the acceptance of CAS jurisdiction in the Third GFA-UEFA CAS case. For the purposes of determining whether GFA abandoned its 1997 application, it is of no consequence that the (majority of the) panel in the Third GFA-UEFA CAS case accepted it had jurisdiction as an ordinary procedure as opposed to (as accepted by the minority of the panel) an appellate procedure, because:

- (i) GFA filed its claim against the UEFA 2007 Congress Decision as both an appellate and ordinary procedure and its intention was thus undoubtedly to challenge the UEFA 2007 Congress Decision through any avenue available to it (as the CAS panel clearly stated in its preliminary award on jurisdiction dated 3 July 2008: "*the present dispute arises out of a decision of UEFA's highest decision-making organ, the Congress*" and "*the dispute before us arose as a result of a decision taken by the highest UEFA organ*");

- (ii) in that CAS case, UEFA argued unsuccessfully that CAS did not have jurisdiction because the complaint filed by GFA on 6 March 2007 was out of time; this Panel will not reconsider the same issue of timeliness in this case, because that would entail a substantive review of whether the prior CAS panel had the power to entertain that dispute, a matter decided by that CAS panel under the *Kompetenz-kompetenz* principle (Article 186, para. 1 PILA) and by the Federal Tribunal in judgment no. 4A_392/2008/ech of 22 December 2008, which dismissed UEFA’s challenge against the award;
 - (iii) anyways, in the Panel’s view GFA filed its challenge with the CAS in a timely fashion because, according to CAS jurisprudence, the time for appeals begins to run upon the challenging party’s receipt of the grounds of the decision (see CAS 2010/A/2315 and CAS 2007/A/1322; see also HAAS U., *The “Time Limit for Appeal” in Arbitration Proceedings before the Court of Arbitration for Sport*, in *CAS Bulletin*, 2/2011, p. 10); in the Third GFA-UEFA CAS case, the reasons for not granting UEFA membership were included in the minutes of the relevant UEFA Congress, which GFA did not receive until during the CAS proceedings; and
 - (iv) the CAS panel ultimately overturned the UEFA 2007 Congress Decision and granted full UEFA membership to GFA. The fact that in that case the CAS arbitrators upheld jurisdiction as an ordinary procedure rather than as an appeal is immaterial given that, undeniably, they did overturn the UEFA 2007 Congress Decision which had rejected GFA as a permanent member. On this point, the Panel disagrees with FIFA that the effect of such overturning does not extend to FIFA; even though FIFA was not a party to the Third GFA-UEFA CAS case and is not a member of UEFA, it is FIFA itself which requires that, in order to obtain FIFA membership, an applicant be first accepted and spend two years as a provisional member of a continental association. Therefore, those UEFA decisions and the related CAS awards must be seen as incorporated into the FIFA membership process because FIFA rules so provide by effecting an “incorporation by reference” (i.e. an “*incorporation par renvoi*”) of the Confederation’s admission process; thus, the effect of the Third GFA-UEFA CAS Award under the circumstances necessarily extend to FIFA and its admission process.
277. In light of the foregoing, the Panel finds that the GFA’s 1997 application was not abandoned on 26 February 2007 (i.e., there was no “new” application in 2013). As GFA’s 1997 application thus revived on 19 September 2013, and taking into account the Panel’s ensuing holding (see *infra* paras. 279 *et seq.*) that the applicable membership criteria are those established at the time of the filing of the application, the 1996 FIFA Statutes apply in the present appeal.
278. The Panel also notes that FIFA itself, in the Appealed Decision, did not qualify GFA’s submission of new information and documents on 21 February 2014 (see *supra* at para. 86) as a new application but merely as a “revised” application: “On 11 November 2013, FIFA informed the GFA that its application was considered incomplete and gave the GFA a deadline until 23 September 2013 to submit a revised, full application. The GFA submitted its revised application on 21 February 2014” (see *supra* at para. 99). The Panel further finds that, prior to the Appealed Decision, at no point during the application procedure did FIFA rule with an *animus decidendi* that GFA’s 1997 application had lapsed; in fact, FIFA did not decide this issue on 11 November 2013, when it merely informed GFA that its application was “incomplete” as it lacked some information

and documentation (see *supra* at para. 82), nor on 19 March 2014, when its Director of Legal Affairs merely expressed his personal opinion as to why the GFA’s submission had to be considered a “new application” while making clear that the decision on this issue would have to be taken by the appropriate FIFA body (see *supra* at para. 82). The Panel lastly observes that, contrary to what FIFA alleges, it is legally irrelevant that so many years have passed after GFA’s 1997 request for membership, given that, in the Panel’s view, the GFA’s application for FIFA membership has been continuously pending since its submission. Indeed, GFA bears no responsibility for and cannot suffer any consequences from the fact that it took a long time (and four legal proceedings, including the present one) for FIFA and UEFA to duly process GFA’s application.

B. Effect of the general principles of non-retroactivity of rules, of good faith and of procedural fairness

279. At the time that GFA filed its 1997 application, the membership criteria established in Article 1, para. 2 of the 1996 FIFA Statutes required that the applicant national association be “controlling association football in [its] respective countr[y]” (see *supra* at para. 101), without providing any further implicit or explicit indication in said Statutes as to what the word “country” meant. In 2004, FIFA amended its membership criteria by defining “country” to mean “an independent state recognised by the international community” (see *supra* at para. 109). In 2014, the Executive Committee, applying the 2014 FIFA Statutes, which required that an applicant football association be “responsible for organizing and supervising football in all of its forms in its Country” as defined above, refused to forward the GFA’s application to the FIFA Congress on the basis that Gibraltar did not qualify as a “country”. FIFA now argues that the FIFA Executive Committee rightly applied the 2014 FIFA Statutes, instead of the 1996 FIFA Statutes.
280. As held *supra* at para. 273 *et seq.*, the relevant application for the present arbitration is the one filed in 1997. The question for the Panel is, therefore, whether FIFA may validly rely on the 2014 FIFA Statutes, by applying them retroactively to reject the GFA’s 1997 FIFA membership application.
281. The Panel finds that FIFA cannot rely on the 2014 FIFA Statutes; FIFA cannot apply membership criteria which entered into force in 2014 retroactively to an application filed back in 1997 (and never abandoned since then), as doing so would violate the general principles of non-retroactivity of rules, and, especially in light of the circumstances, the general principles of procedural fairness and of good faith. As a result, FIFA was required to assess GFA’s application on the basis of the membership criteria in place at the moment when GFA filed its application, i.e. those established in the 1996 FIFA Statutes.
282. As previously mentioned, the Panel is of the opinion that FIFA, as the supreme regulatory authority of international football, has a special responsibility to respect general principles that a legislator and a governmental agency must also observe, including the non-retroactivity of laws and rules. Therefore, although being a private body, FIFA is subject by a parity of principle to the intertemporal rules on the modification of enacted law and must thus enact rules for the future and to abstain from, save for limited exceptions, applying its rules retroactively.

283. While FIFA is correct in saying that it may alter its membership criteria when it so pleases, it is not correct in saying that it may apply those modified criteria as it pleases and to whom it pleases. In making those arguments, FIFA disregards the fact that it is the supreme regulatory authority in its sport and that its membership is the only existing gateway to compete at world level for football clubs and footballers that may not do it through other national football associations. Accordingly, the Panel is of the opinion that, in issuing regulations on the substantive criteria necessary for FIFA membership, FIFA is essentially acting as a legislator or a governmental agency. This renders it unsuitable to view FIFA's interaction with an applicant for membership as a simple offer to contract by the latter leading to acceptance or rejection (under Article 1 *et seq.* CO) by the former, thus allowing FIFA to apply the regulations in force at the time of its decision to the evaluation of a membership application.
284. To the contrary, given FIFA's special position, when a football association submits its membership application, it acquires a legitimate expectation, based on the principles of good faith and procedural fairness, that the international federation will apply, in the assessment of its candidature, the rules applicable at the moment of the application and not any unknown and future criteria implemented by the international federation at some point during the application process that would render the applicant ineligible for membership.
285. While FIFA is unquestionably free to change its membership criteria at any time, it cannot retroactively apply such changes to already pending membership applications, but only to future instances. It would be improper if FIFA, in its position as a worldwide monopolistic association having a global reach, could retain the unfettered right when reviewing a candidate football association's application to change, so long as the application has not been accepted, the general terms and conditions of membership to the detriment of the applicant. Accepting such an approach would essentially give absolute control to FIFA vis-à-vis any applicant for admission and could render any and all of admission regulations and procedures irrelevant and unreliable. For these reasons, FIFA may not apply its membership criteria retroactively. In this respect, the Respondent is incorrect when it contends that the application of the intertemporal rules to disputes like the one at hand was explicitly rejected by the Swiss courts in the *GOC v. IOC* case (Decision 5A_21/2011 of 10 February 2012). In that case, the Federal Tribunal did not hold that the rules in force at the time of the decision should apply, but left that issue undecided (see paras. 5.4.1 to 5.4.3 of the judgment and in particular the following statement therein: "*La question de savoir si ce sont les nouvelles règles de la Charte qui s'appliquent, comme retenu par l'autorité cantonale et préconisé par l'intimé, peut cependant demeurer indécise*").
286. The Panel makes this note *en passant*: notwithstanding that applications should be evaluated in accordance with rules extant at the time of the application's filing, the membership rights that a successful applicant acquires are those set forth in the rules in force at the time membership is *granted*; it is at that moment that membership rights are born, and the new member becomes entitled to the same rights as other existing members at the time when it is allowed to join.
287. For the sake of completeness and in light of the fact that one of the exceptions to the principle of retroactivity is, in the absence of an express provision to the contrary, that laws and rules that are procedural in nature apply immediately upon entering into force and regardless of when the facts at issue occurred (see, for instance, CAS 2000/A/274), the Panel observes that the new rule at stake here – the definition of the term "country" incorporated in the FIFA Statutes as from 2004 – is clearly of a substantive nature. It does not pertain to evidentiary or

procedural matters, but rather to the basic substantive criteria that an applicant needs to satisfy in order to qualify as eligible for membership. Furthermore, the five cumulative conditions under Swiss law for admitting an exception to the principle against non-retroactivity of rules have not been satisfied (see ATF 101 Ia 235; ATF 113 Ia 425): the retroactivity was not expressed in any of the post-2004 amendment versions of the FIFA Statutes, and, in any case, it would (on FIFA's case in these proceedings) not have been limited in time and would have resulted in significant inequalities.

288. The Panel takes comfort in the fact that its conclusion is aligned with CAS jurisprudence and Swiss law, according to which it is well-established as a general principle that regulations of a substantive nature may not be applied retrospectively but only if they are in force at the time the facts at issue occurred (see CAS 2000/A/274 citing KNAPP B., *Précis de droit administratif*, Basle 1991, p. 116; ATF 110 V 254; ATF 99 V 200), in both disciplinary and non-disciplinary cases. In particular, the Panel recalls the following passages from CAS awards:

- *“As to the different versions of the applicable rules, the Panel determines that it must necessarily apply to the Athletes the IOC and IAAF rules in effect during the 2000 Sydney Olympic Games, and not those entered into force at a later stage (such as, for example, the WADA Code). In the Panel’s view, intertemporal issues are governed by the general principle of law ‘tempus regit actum’, which holds that any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed must be done in accordance with the law in effect at the time of the allegedly sanctionable conduct and new rules and regulations do not apply retrospectively to facts occurred before their entry into force”* (CAS 2008/A/1545 at para. 10);
- *“The succession in time of anti-doping regulations poses the problem of the identification of the substantive rule which is relevant for the answer to such question. In this respect, the Panel confirms the principle that ‘tempus regit actum’: in order to determine whether an act constitutes an anti-doping rule infringement, it has to be evaluated on the basis of the law in force at the time it was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future”* (CAS 2005/C/841 at para. 51);
- *“The Panel identifies the applicable rules by reference to the principle ‘tempus regit actum’: in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future”* (CAS 2009/A/2019 at para. 19);
- *“The CAS has already considered in the past that in the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred. On the other hand, it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied. Such principles were set out in particular in the CAS award [...], CAS 2000/A/274, sections 72-73 ... In the present instance, while the third sentence of Article 2 of the Regulations governing the implementation of the UEFA Statutes sets out the formal conditions which an application for UEFA membership has to meet, it is quite another question whether Article 5 paragraph 1 of the UEFA Statutes is to be seen as merely procedural. This provision sets out the substantive conditions that any applicant will need to fulfill in order to become a member. For this first reason, in accordance with the general principle of non-retroactivity of laws and rules, the Panel may have to consider that the New*

Rule may not apply to the GFA's application" (First GFA-UEFA CAS Award, i.e. CAS 2002/O/410, at paras. 70 and 71).

- *"The Panel observes that, as a general rule, transitional or inter-temporal issues are governed by the principle 'tempus regit actum', holding that any deed should be regulated in accordance with the law in force at the time it occurred... the Panel deems that a plausible construal which would avoid any regulatory inconsistency could be the following: any substantive aspects of contracts entered into before 1 September 2001 are governed by the 1997 Regulations, whereas any procedural aspects (such as the settlement of disputes) are governed by the 2001 Regulations. This reading of the above FIFA provisions would be in full compliance with the tempus regit actum principle [cross-reference omitted], according to which – as a general rule – the substantive aspects of a contract keep being governed by the law in force at the time when the contract was signed, while any claim should be brought and any dispute should be settled in accordance with the rules in force at the time of the claim"* (CAS 2004/A/635, para. 47).
289. The Panel takes comfort in the fact that its conclusion does not conflict with CAS 2008/A/1583 & 1584 (at para. 43), as the change of rules in the present case does not seem to affect other candidates than GFA. In this respect, the Panel notes that FIFA has not provided any evidence to show that there were other football associations which had applied for membership around the same time as the GFA and which were also affected by the rule change in 2004.
290. In addition to violating the principle of non-retroactivity of rules, the Panel finds that an attempt to apply the 2014 membership criteria to GFA's application would, given the particular circumstance of the case, also contravene the principles of procedural fairness and of good faith, to which FIFA is also subject to as a sports governing organization and the benefits of which extend to GFA as candidate for admission.
291. The Panel considers it useful to elucidate the particular circumstances which have weighed on its findings:
- GFA filed its application in 1997 when the 1996 FIFA Statutes were in force and, since then, as previously determined, never abandoned its application throughout the protracted litigation with UEFA or thereafter.
 - Upon receipt of GFA's application in 1997, FIFA processed it under the 1996 FIFA Statutes without making any reservations. Indeed, at no point throughout the first phase of the FIFA procedure, which lasted two years, did FIFA inform GFA that it might, given the then applicable membership criteria, face any potential obstacles due to Gibraltar's status (in particular, it never mentioned that it considered the GFA would not satisfy the requirement that it governed football in a "country"). In fact, FIFA proceeded with the assessment of the application and even went on to examine the GFA Statutes, to declare on 16 June 1997 that they essentially conformed to the FIFA standards but that some adaptations should be made to place them in line with the requirements, then to indicate on 11 November 1997, after the GFA sent a new revised draft of its Statutes to FIFA, that they conformed on the whole with the FIFA provisions, and to express on 11 November 1997 a wish to meet with GFA to discuss

the overall structure of the GFA Statutes and some important points related to them (see *supra* at paras. 14 to 16).

- On 3 March 1999, FIFA informed GFA that the “*preliminary procedure*” was completed (an implicit reference to Article 4, para. 6 of the 1996 FIFA Statutes, *supra* at para. 104) and that it would send the application to UEFA for the second phase of the FIFA procedure, i.e. “*the evaluation of the organisation for a period of at least two years*” (a reference to Article 4, paras. 1 and 7 of the 1996 FIFA Statutes, *supra* at para. 104).
- After transferring the file to UEFA, FIFA took part in a joint FIFA/UEFA delegation on 8-10 May 2000 – the evidence on file clearly proves, contrary to the Respondent’s allegations, that this was indeed a joint FIFA/UEFA inspection – and, then, in a FIFA Executive Committee meeting of 3 August 2000 acknowledged that “*the conclusions of the FIFA/UEFA Inspection in May had been positive*” and that “*UEFA would probably take a decision shortly as to the possible admission of this organisation*” (see *supra* at para. 36).

292. The Panel is of the opinion that if FIFA had found that GFA did not satisfy the membership criteria of 1996 FIFA Statutes, it would have alerted GFA to that problem immediately rather than to forward the application to the pertinent continental Confederation. Contrary to FIFA’s allegation, this was not merely a first perfunctory step in the admission process. In the Panel’s view, FIFA would not have proceeded with the application, assessed and confirmed the compliance of the GFA Statutes with the FIFA requirements, completed the first phase, confirmed said completion by letter to GFA of 3 March 1999, and then transferred the application to UEFA for its evaluation of GFA for a two-year period (which is incorporated into the FIFA procedure), if the preliminary assessment of GFA’s application had not been positive. Given the background of FIFA’s denial in 1991 of GFA’s application for FIFA membership at that time on the grounds, *inter alia*, that “[Gibraltar] *has virtually no autonomy and has not been recognised as autonomous by any existing public legal body*”, it would have been pointless for FIFA to complete the first stage of the admission process and transfer the file to UEFA for GFA’s admission into that Confederation if it had found that GFA’s new application was doomed to fail as the previous one had. The fact that FIFA assessed and confirmed the compliance of GFA’s Statutes with its requirements, completed the first stage of the process and conducted a joint FIFA/UEFA inspection of the GFA and, even more so, gave it a positive assessment, created a legitimate expectation on the part of GFA (i) that FIFA considered that this was a separate application unconnected with the initial application of 1991 and the ensuing denial of FIFA membership (and rendering thus irrelevant the issue of whether that negative decision of 1991 had been accepted by GFA, *supra* at para. 10), and (ii) that GFA was going to be admitted into FIFA once it had become a member of UEFA.

293. Additionally, the Panel notes that:

- After the FIFA Executive Committee of 3 August 2000 acknowledged the positive outcome of the joint FIFA/UEFA inspection and the fact that UEFA would probably decide soon on the admission of GFA, FIFA clearly changed attitude towards GFA, likely due to the political objection then raised by the influential Spanish federation (see the RFEF’s letter of 5 September 2000 demanding FIFA to explain “*when how and why [FIFA] apparently submitted to UEFA the affiliation application for the supposed Football Federation of the British Colony of Gibraltar*”, *supra* at para. 39). FIFA thus brought undue

influence on UEFA to postpone and even stay the procedure. This is inferentially corroborated by the fact that three months later the UEFA Executive Committee put on hold the evaluation of GFA's application by reference to its seeking legal advice (see *supra* at para. 40).

- The fact that UEFA's delaying attitude was prompted by FIFA is confirmed by the fact that UEFA in the course of 2001 (i) postponed the examination of the GFA's application two days after receiving a letter from the FIFA Secretary General in which the latter indicated that it would be premature for UEFA to proceed with GFA's affiliation in the forthcoming months since FIFA was planning to change its membership criteria (see *supra* at paras. 48 and 49), and (ii) informed GFA that the decision on its application had been postponed upon FIFA's request (see *supra* at para. 54).
 - The fact that FIFA was influenced by the RFEF's political stance is evident from the FIFA Executive Committee's Meeting on 15 and 16 March 2001, the minutes of which so report: "*Gibraltar: a meeting had taken place last November between the English and Spanish FAs and a committee of experts had been assigned to report on the validity of Gibraltar's application for membership and its conformity with the FIFA Statutes. The FIFA President said that Ángel María Villar's opposition on the part of the Spanish FA to Gibraltar becoming a FIFA member would be given due consideration*" (emphasis added).
 - FIFA accepted the membership of other football associations of territories comparable to Gibraltar under pre-2004 versions of its Statutes (see discussion *infra* at para. 302).
 - FIFA adopted the contested new membership criteria during the course of GFA's application process for membership (viewing the admission process at UEFA, and thus the protracted litigation that arose therefrom by no GFA's fault, as part of the overall FIFA admission procedure).
 - FIFA adopted the new membership criteria in a factual context which supports the existence of a causal link between the political difficulties raised in relation to the GFA's application and the change of membership criteria (for example, not coincidentally, the FIFA Executive Committee discussed within the same meeting both the situation of the GFA's application and the FIFA President's proposal that the rules for affiliating new members be revised; see *supra* at para. 36).
 - Most importantly, after FIFA decided in 2003 to amend its membership criteria and GFA immediately expressed to FIFA its "*firm opinion*" that FIFA had the obligation to still apply the old membership criteria, FIFA did not object and did not express any reservation, but only stated that it would take "*due note*" of GFA's opinion (see *supra* at para. 63).
294. The Panel further observes that, among the 54 UEFA football association members, GFA is the *only* one that is not a member of FIFA. It seems surpassingly illogical for a football association that became a member of a continental Confederation in consequence of the process set out in the 1996 FIFA Statutes subsequently to be refused membership in FIFA. Indeed, considering the workings of that process – i.e., that a football association applying for

membership to FIFA would have its file, upon being deemed complete, forwarded to the territorially competent Confederation, which would in turn decide whether to grant the association provisional or full membership, observe the association for a period of two years and finally notify FIFA when that association became qualified to become a member of FIFA, supplying the latter with a detailed report of the organization of the association (see *supra* at para. 101 to 108) – GFA, as mentioned above, was clearly entitled to the legitimate expectation that once it became a UEFA member, it would subsequently be accepted as a member of FIFA as well. The Panel is of the opinion that it would have been pointless to send GFA’s file to UEFA and then have it (satisfactorily) be subject to two years of provisional membership, if FIFA membership could not follow the UEFA membership, especially bearing in mind that GFA had first sought FIFA membership rather than UEFA membership, which was in effect just a step in the process of acquiring FIFA membership.

295. The Panel finds that to apply the 2014 FIFA Statutes under the foregoing circumstances would be contrary to the elementary principles of procedural fairness and good faith. Moreover, by its very nature, the fact that the retroactive application of membership criteria by a sports governing organization with supreme regulatory authority would cause said criteria to be meaningless, as the organization could simply alter the rules to exclude a particular applicant (as explained *supra* at para. 285), would also violate the principle of procedural fairness. In this regard, it must be especially considered that, in essence, admission as a member of an international federation is the only gateway for a national federation (and its athletes and teams) to gain access to competitions at world level.

296. The Panel’s holding is consistent with CAS jurisprudence. See, for example:

- CAS 98/200 at paras. 61 and 158:

“a sports governing organization such as an international federation must comply with certain basic principles of procedural fairness vis-à-vis the clubs or athletes, even if clubs and athletes are not members of the international federation (see the Swiss Supreme Court decision in the Grossen case, in ATF 121 III 350; see also infra). The Panel does not find a hurried change in the participation requirement shortly before the beginning of the new season, after such requirements have been publicly announced and the clubs are entitled to compete have already been designated, admissible.

[...] Under CAS jurisprudence the principle of procedural fairness is surely among the unwritten principles of sports law to be complied with by international federations (see CAS OG 96/001 US Swimming v. FINA, award of 22 July 1996, in Digest of CAS Awards 1986-1998, op. cit., p. 381, para. 15; CAS 96/153 Watt v. ACF, award of 22 July 1996, ibidem, p. 341, para. 10). The Panel has already found that UEFA violated its duty of procedural fairness because it adopted the Contested Rule too late, when the Cup Regulations for the 1998/99 season containing no restriction for multiple ownership, had already been issued and communicated to the interested football clubs”.

- CAS 2008/O/1455 at paras. 16 and 22:

“In any event, even if the Respondent had properly and formally enacted a resolution adopting a new qualification system, the Panel is of the opinion that an attempt to alter the Olympic qualification process with retrospective effect at such a late stage – a few months before the Olympic Games – would violate the principle of procedural fairness and the prohibition of venire contra factum proprium (the

doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party).

[...] crucial considerations of procedural fairness towards its members require international federations to announce at a reasonably early stage the Olympic qualification process and not to alter it when the national federations and their athletes have already started the sporting season leading to the Olympic Games”.

- CAS 2002/O/410, i.e. the First GFA-UEFA CAS Award, at para. 72 *et seq.*:

The panel relied on the fact that applying a new rule, even if procedural in nature, would be a violation of widely-recognized general principles of law, particularly the principles of fairness and of good faith. In particular, the panel leaned on the principle of *venire contra factum proprium* (which, as explained by that panel “*provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party*”) for the conduct of UEFA raised legitimate expectations on the part of the GFA that its application “*would be processed under the Old Rule, with adequate speed or at least upon receipt of and in compliance with the advice of the Expert Panel that UEFA had appointed specifically for that purpose*”.

- CAS 2007/O/1237, i.e. the Third GFA-UEFA CAS Award, at para. 118:

“[w]hen reviewing the application of the GFA and recommending accepting the GFA as a member of UEFA, the Expert Panel created a legitimate expectation for the GFA to achieve its goal to become affiliated with UEFA”.

297. In sum, the Panel concludes that even if the reasons for FIFA’s amendment of its Statutes in 2004 were legitimate (to align FIFA’s membership criteria with those of the Olympic Charter, as per the explanation submitted by FIFA), the principles of the non-retroactivity of laws, of procedural fairness and of good faith require FIFA to examine GFA’s application on the basis of the membership criteria in force when the GFA filed its application in 1997.

VIII.5 THE GFA SATISFIES THE MEMBERSHIP CRITERIA OF THE 1996 FIFA STATUTES

298. Preliminarily, the Panel notes that the Appealed Decision rejected the GFA’s membership application on the ground that GFA did not satisfy the “country” requirement of Article 10, para. 1 of the 2014 FIFA Statutes. Thus, the Appealed Decision did not touch on whether the GFA satisfied the membership criteria – including the “country” requirement – of the 1996 FIFA Statutes, given that it (incorrectly) applied the 2014 Statutes. Pursuant to Article R57 of the CAS Code, the Panel has the power to review the Appealed Decision *de novo*, meaning that it is not bound by the grounds of the Appealed Decision and is thus free to consider whether GFA satisfies the membership criteria set forth in the 1996 FIFA Statutes and to issue a decision replacing the Appealed Decision.
299. Pursuant to Article 1, para. 2 of the 1996 FIFA Statutes, “*FIFA shall consist of the national associations which are affiliated to it and recognised by it as controlling association football in their respective countries*”. Therefore, in order for GFA to satisfy the 1996 FIFA Statutes it must be (i)

“controlling association football” (ii) in its “country”. There is no dispute between the Parties as to whether GFA is the governing body of football in Gibraltar, i.e., that it does control association football in such territory. What is disputed between the Parties is whether Gibraltar qualifies as a “country” under Article 1 para. 2 of the 1996 FIFA Statutes, a term left undefined until the 2004 FIFA Statutes. Central to the dispute is therefore the interpretation of the term, specifically whether it must be construed in a restrictive manner to mean “*an independent state recognized by the international community*”, as explicitly defined from 2004 onward, or whether it should be construed in a broader manner, encompassing also territories without independent statehood such as Gibraltar.

300. According to the Respondent, the restrictive interpretation of the term “country” must be employed. In brief, it contends that the amendment to the FIFA Statutes in 2004 merely codified the meaning of the term “country”, in support citing the *GOC v. IOC* case, 5A_21/2011, of 10 February 2012 (see *supra* at para. 217).
301. For the following reasons, the Panel disagrees with the Respondent and finds that the meaning of the term “country” in the 1996 FIFA Statutes must be interpreted in a manner to include also territories without independent statehood.
302. First of all, FIFA itself interpreted Article 1, para. 2 of the 1996 FIFA Statutes in a broad manner so as to include territories without independent statehood. This is evident from the fact that FIFA admitted to membership, around the time of the GFA’s 1997 application and under the pre-2004 versions of the FIFA Statutes, other football associations from territories without independent statehood and with similar or equivalent status as Gibraltar. This includes:
 - in 1996, Anguilla, Montserrat and the British Virgin Islands (all British Dependent Territories at the time of FIFA membership and now British Overseas Territories, exactly like Gibraltar), and Guam (a U.S. possession then and now);
 - in 1998, American Samoa and the U.S. Virgin Islands (both U.S. possessions now and at the time of FIFA membership), Palestine (a *sui generis* occupied territory having a UN status as a non-member observer state, now and at the time of FIFA membership), and the Turks and Caicos Islands (a British Dependent Territory at the time of FIFA membership and now a British Overseas Territory like Gibraltar).
 - Before the GFA’s 1997 application, FIFA had admitted: in 1988, Aruba (a Netherlands Antilles at the time of FIFA membership and now a Part of the Netherlands), and the Faroe Islands (a Danish possession now and at the time of FIFA membership); in 1992, the Cayman Islands (a British Dependent Territory at the time of FIFA membership and now British Overseas Territory); in 1994, the Cook Islands (an Associated State, i.e. a self-government in free association with New Zealand, now and at the time of FIFA membership).
303. All in all, FIFA’s practice in applying its pre-2004 versions of the FIFA Statutes (including in particular the 1996 FIFA Statutes) to admit as members territories comparable to Gibraltar demonstrates that the term was not, at least at any point before the 2004 amendment, interpreted to mean “*an independent state recognised by the international community*”. The Panel cannot avoid recalling that one of the former FIFA president Blatter’s favourite lines in countless

public declarations was that his organisation could boast more members than the United Nations (evidently due to the presence into FIFA of several members not corresponding to independent States).

304. With respect to FIFA's very liberal pre-2004 practice in admitting as members federations controlling football in territories which could by no means be considered as States under public international law, the Panel notes that:

- (i) The Respondent itself made a significant concession to the effect that *"The Panel could theoretically be limited in its discretion in interpreting the term 'country' as meaning 'independent state recognised by the international community' only if the GFA could establish that FIFA has consistently interpreted the word country as referring also to non-independent states"*.
- (ii) The FIFA Executive Committee itself acknowledged, during a meeting held on 27 May 1998, that *"membership had been granted in the past in similar cases"*, i.e., also in cases of associations that *"did not have complete sovereignty over their territories"* (see *supra* at para. 19).
- (iii) The Respondent is unconvincing in its attempt to explain that the cases of the aforementioned associations (*supra* at para. 302) are distinguishable from that of GFA. FIFA's assertion that there is no indication that they were admitted as FIFA members on the ground that the territories they represented were considered "countries" under Article 1, para. 2 of the 1996 Statutes (rather than "regions" which have not yet gained independence upon authorisation of the country on which they are dependent, under Article 1, para. 5 of the 1996 FIFA Statutes), is inconsistent with Article 8 CC (which reads *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*) because it erroneously attempts to place the burden of proof on GFA. In the Panel's opinion, FIFA must bear the burden of proof in this respect since it is both (i) the party asserting that the applications in question were accepted on the basis of the exceptional provision of Article 1, para. 5 of the 1996 FIFA Statutes or Article 10, para. 6 of the 2014 FIFA Statutes, and (ii) the party with sole access to documents that could sustain this assertion.
- (iv) Although it had the burden of proof pursuant to Article 8 CC, and knew that it did so because the Panel's first order for production of documents (13 March 2014) explicitly advised the Parties that *"it is FIFA which has the burden of proving that those cases are to be distinguished from the GFA case"*, FIFA failed to distinguish GFA from the other football associations that FIFA accepted as members, including: (i) most importantly, the associations of other British Overseas Territories, such as Anguilla, Montserrat, the British Virgin Islands, the Cayman Islands, Bermuda and the Turks & Caicos Islands; (ii) the associations of other non-independent territories, such as the US Virgin Islands, Guam, the Faroe Islands, and so on; and (iii) the associations of non-independent politically sensitive territories such as Palestine. In particular, FIFA submitted no evidence to the effect that any of those other applicants were granted membership by way of Article 1, para. 5 of the 1996 FIFA Statutes, as *"[a]n association in a region which has not yet gained independence"* and *"with authorisation of the national association of the country on which it is dependent"*, rather than pursuant to Article 1, para. 2 of the 1996 Statutes.

- (v) FIFA has also failed to establish that there is justification for a difference in treatment between GFA and those other applicants. The allegation that Gibraltar is a “disputed” and/or “sensitive” territory is not only an insufficient ground for a difference in the treatment of GFA, but also legally and factually misplaced. First of all, whether the territory over which a football association governs is “disputed” or “sensitive” cannot be taken into account in assessing whether that association satisfies the membership criteria, because it is not listed as a criterion in the 1996 FIFA Statutes (nor in the post-2004 version of the FIFA Statutes for that matter); and even if it were a criterion (*quod non*), Gibraltar would not fall into that category as there is no truly pending legal dispute over its territory as a matter of public international law. Gibraltar was ceded to the United Kingdom more than 300 years ago pursuant to Article X of the Peace and Friendship Treaty of Utrecht of 1713, which provides that the Spanish “*Catholic King does hereby, for himself, his heirs and successors, yield to the Crown of Great Britain the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever*”. Since then, Gibraltar has undeniably been under the stable sovereign control of the United Kingdom, the right of self-determination of the local population even being clearly expressed in favour of the United Kingdom in the Gibraltar sovereignty referendum of 1967. Certainly, Spain has an underlying territorial claim over Gibraltar that has never waived, and FIFA has attempted to present this issue as one of great concern and tension between the two States. However, the fact of the matter is that, unquestionably, Spain and the United Kingdom have regular, peaceful and friendly diplomatic relations, are fellow members of the European Union and, most of all, are military and political allies within the framework of NATO. In fact, FIFA has failed to prove that any international dispute settlement procedure concerning the sovereignty over Gibraltar is pending: no evidence has been brought before this Panel proving (i) that a dispute is pending before an international court or the U.N. Security Council, or (ii) that a dispute settlement mechanism through negotiation, enquiry, mediation, conciliation or arbitration – i.e., one of the dispute settlement methods listed by Article 33 of the UN Charter – is currently active. In short, under public international law the sovereignty over Gibraltar is clearly British and no actual legal dispute is presently pending. The Panel must also underscore that the lack of evidence to the contrary suggests that GFA’s admission into UEFA in 2013 has not caused any disruption within that Confederation, and Gibraltar’s national team took part in the qualifying round of the 2016 UEFA European Championship without any incident. Furthermore, the case of Hong Kong – whose football association has been a member of FIFA since 1954 and has been keeping such status, with no evidence before this Panel of any problem or tension, after the 1997 handover of sovereignty from the United Kingdom to the People’s Republic of China – seems to suggest that, even if in the future the sovereignty over Gibraltar were to be transferred from the United Kingdom to Spain, this would not imply particular problems or tensions in terms of football.
- (vi) The 1991 FIFA Decision which rejected the GFA’s application for membership based on, *inter alia*, the “*extremely special nature of [Gibraltar’s] geographical and political position*” is

irrelevant for corroborating GFA's alleged failure to satisfy Article 1, para. 2 of the 1996 FIFA Statutes, given that that decision is also inconsistent with FIFA's own application of its pre-2004 versions of the FIFA Statutes.

305. Second, the Panel disagrees that the definition of the term "country" introduced in 2004 can be used to interpret the term's meaning in the 1996 FIFA Statutes. The Respondent's attempt to present this case as analogous to the *GOC v. IOC* case (SFT Judgment 5A_21/2011 of 10 February 2012) is unpersuasive. That case is not comparable for the purposes of interpreting the term "country", *inter alia* because (i) FIFA, unlike the IOC (which, as the Federal Tribunal states at para. 5.4.3 of its judgment, after 1987 did not recognize any organization from a non-independent territory: "*depuis 1987 aucune organisation qui n'émanait pas d'un Etat indépendant n'a été reconnue*"), did not cease admitting non-independent territories before the GFA's application; in fact, as previously mentioned, FIFA, unlike the IOC, continued to accept other comparable territories prior to, during, and after the moment GFA submitted its FIFA membership application; and (ii) FIFA, unlike the IOC, began discussing changes to the membership criteria some time after the filing of the GFA's application.
306. Third, in accordance with CAS jurisprudence (see e.g. CAS 2014/A/3832 & 3833; CAS 2014/A/3765; CAS 2004/A/635), it is a well-established rule of interpretation that, in case of doubt, texts are interpreted *contra proferentem*.
307. The Panel observes here too that its holding is consonant with CAS jurisprudence, which has recognized that the concept of "nation" or "country" in the sports environment may have a different meaning than in the usual language and may not necessarily be understood within its common political meaning (see CAS 98/201 at para. 30: "*within the framework of the rules of football ... the concepts of 'nation' or 'country' have different meanings than in the usual language, it being understood that those concepts – within the context of football – do not correspond systematically and/or strictly to the existing political borders of the concerned territories*").
308. In light of the foregoing, the Panel finds that GFA satisfies Article 1, para. 2 of the 1996 FIFA Statutes. It also concludes that GFA as of 8 December 2008 also satisfies the requirement (set forth by Article 4, para. 1 of the 1996 FIFA Statutes) of having been a provisional member of a continental Confederation for at least two years. In the Panel's view, contrary to the Respondent's position, the fact that GFA, due to its protracted legal struggle with UEFA, only reached that point, and thus fulfilled all the requirements for membership at a moment when the 1996 FIFA Statutes were no longer in force, is irrelevant; the fact that GFA's application must be appraised under the requirements set forth in the 1996 FIFA Statutes (see *supra* at paras. 272 to 297) is not altered by the fact that those requirements must be met at the time of the admission.
309. Given that the Panel finds that GFA squarely satisfies the requirements for membership set forth by Article 1, para. 2 of the 1996 FIFA Statutes, which is the temporally relevant version of the FIFA Statutes, there is no need for the Panel to enter into the question of whether GFA also satisfies the exceptional admission requirements of Article 1, para. 5 of the 1996 FIFA Statutes.

VIII.6 SWISS LAW LIMITATIONS ON THE AUTONOMY OF FIFA AS A DOMINANT ASSOCIATION

310. According to Article 1, paras. 2 and 3 of the 1996 FIFA Regulations Governing the Application of the Statutes (see *supra* at paras. 101), the FIFA Executive Committee must decide, after the relevant Confederation has observed the applicant football association for a period of two years, and on the basis of a report from that Confederation on the organization of the association, whether to submit the application for membership to the FIFA Congress, which in turn must finally decide whether to grant affiliation to the applicant.
311. The Respondent argues that even if GFA satisfied the membership criteria of the 1996 FIFA Statutes, FIFA retains discretionary power to refuse it membership in accordance with the principle of the autonomy of an association under Swiss law.
312. The autonomy of an association under Swiss law is, however, not unlimited. Article 63, para. 2 CC e.g. states that *“Mandatory provisions of law cannot be altered by the articles of association”*. Further, the autonomy may be restricted where the relevant association holds a dominant position and exercises monopolistic powers, as is the case here. Under such a case, an admission can be refused to an applicant only if there is a justifiable ground for doing so. The restrictions placed on an association’s autonomy of association are based on the legal protection (i) of personality rights under Article 28 CC, (ii) of good faith under Article 2 CC, and (iii) against anti-competitive agreements and abuse of a dominant position under the Swiss Cartel Act, and may, under certain circumstances, impose upon an association in a dominant position and exercising monopolistic powers the obligation to accept an applicant for membership (see the Third GFA-UEFA CAS Award at para. 105: *“The principle of the autonomy of the association under Swiss law is, however, subject to a number of restrictions especially with respect to associations with monopolistic powers which may have, under certain circumstances, a duty to accept new members. These restrictions are mainly based on the legal protection of personality rights (Article 28 of the Swiss Civil Code), on the obligation to act in good faith (Article 2 of the Swiss Civil Code) and also on competition law”*). While FIFA acknowledges that a Swiss association’s autonomy and discretion is not unlimited, it insists that no such limitation has been identified here.
313. The Panel must therefore determine whether and to what extent FIFA has the discretion to invoke the principle of freedom of association against GFA as an applicant otherwise meeting the membership criteria of the 1996 FIFA Statutes.

A. Protection of personality rights under Article 28 CC

314. Swiss associations enjoy substantial autonomy in their constitution, organization and relationship with their members (Articles 60 to 79 CC). In the absence of relevant mandatory provisions of law, an association is free, in its articles of association, to freely determine the rules of admission and exclusion of members.
315. The association’s freedom to admit or exclude is limited, however, where the association holds a dominant position and exercises monopolistic power. The Swiss Federal Tribunal has held, for instance, that the level of freedom of such an association (Article 72 CC) to exclude a member is limited by the member’s “personality right” to pursue an economic activity (Article 28 CC) (ATF 123 III 193, 197-198); the association may exclude a member only on the basis of a justified ground (*“justes motifs”*) (*Idem*).

316. In such instances, where there is a conflicting interest between the association to exclude a member on the one hand (Article 72 CC), and the member's interest in retaining membership on the other (Article 28 CC), the interests must be balanced. Exclusion of a member is permissible only if the association's interest is preponderant because the existence of justifiable reasons (ATF 123 III 193, 197-198: "... dans de tels cas, il faut procéder à une pesée des intérêts entre celui de l'association à exclure le membre d'une part, et d'autre part, entre celui de ce dernier à faire partie de l'association; une exclusion ne peut intervenir que si les intérêts de l'association l'emportent, à savoir que s'il existe de justes motifs").
317. The Swiss Federal Tribunal has stated that the rejection of an application for membership can violate the applicant's personality rights exactly like the exclusion of a member: "Il doit en aller de même, dans certaines circonstances, lorsqu'une personne se voit refuser son admission dans une association. En effet, comme en matière d'exclusion de l'association, le refus du sociétariat peut occasionner une atteinte à la personnalité du candidat lorsqu'il s'agit de l'adhésion à une association professionnelle, corporative ou économique, ou encore à une association sportive" (Judgment 5A_21/2011 of 10 February 2012, para. 5.2.1.3).
318. Central to whether FIFA has the freedom to refuse membership to the GFA is, therefore, Article 28 CC.
319. The CAS recently, in the Third GFA-UEFA CAS Award, dealt with the issue of whether non-admission of the GFA to UEFA could constitute a violation of Article 28 CC. The panel's discussion on the legal framework of Article 28 CC is pertinent for the present case. In the relevant parts, the CAS panel stated:
- "106. Article 28 of the Swiss Civil Code ("CC") gives to any person whose personality rights are unlawfully infringed the right to apply to the court for protection against all those causing the infringement. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed, or by an overriding private or public interest, or by law. Indisputably, personality rights include also the rights of sporting economic activities of individuals as well as of legal entities, including associations and federations.*
- 107. The rejection of an application for membership for discriminatory reasons may constitute an unlawful breach of personality rights (RIEMER, Berner Kommentar, Article 70 paras. 68f). This is recognised not only for professional and trade associations but also for sports associations with monopolistic powers (RIEMER, Berner Kommentar, Article 70 para. 71; HEINI/SCHERRER, Basler Kommentar, Article 70 par. 38).*
- 108. Moreover, Article 8 of the Swiss Constitution prohibits any kind of discrimination before the law, in particular on grounds of origin and race...*
- 109. A violation of Art. 28 CC, especially if this consists of discriminatory behavior, may lead to an obligation of the discriminator to enter into a contract with the discriminated person (Art. 28a para. 1.1 CC; GAUCH/SCHLUEP, Schweizerisches Obligationenrecht Allgemeiner Teil, Zurich 2008, N 1111)".*
320. Accordingly, the Panel must determine (i) whether, in the circumstances, FIFA discriminated against GFA by refusing to accept its application, (ii) whether said refusal constitutes an infringement of personality rights to pursue an economic activity creating an obligation for

FIFA to contract with GFA, and, if so (iii) whether FIFA has an overriding legitimate reason tipping the balance of interest in its favour.

(i) *FIFA discriminated against the GFA by refusing to accept its application*

321. The Panel has held, *supra* at para. 298 *et seq.*, that GFA fulfilled the criteria for FIFA membership established in the applicable 1996 FIFA Statutes. FIFA nevertheless refused to admit GFA to FIFA membership in 2014 (when its Executive Committee declined to forward the application to the FIFA Congress), whereas it had previously admitted other football associations governing football over territories comparable to Gibraltar, at least with relation to their degree of autonomy and their lack of independent statehood under public international law. As seen, FIFA has not established a distinction between those other admitted associations (in particular the other British Overseas Territories that were admitted around the time of GFA’s 1997 application) and the GFA and thus failed – despite having the burden of proof under Article 8 CC – to prove (i) that said other territories were admitted under the exceptional provision of Article 1, para. 5 of the 1996 FIFA Statutes, (ii) that characterization as a “sensitive” or “disputed” territory is a criterion for refusing the admission of an applicant football association, and (iii) that Gibraltar can truly be qualified under public international law as a “disputed” territory. The Panel holds, as a result, that FIFA’s refusal to admit the GFA to FIFA membership was a discriminatory act.

(ii) *FIFA’s refusal constitutes an infringement of the GFA’s personality rights giving rise to an obligation to contract*

322. Having established that FIFA discriminated against GFA when it refused its admission as a FIFA member, the Panel must determine whether such discriminatorily-based refusal constitutes a violation of GFA’s personality right to engage in sporting and economic activities through its participation in FIFA and, if so, whether said breach is sufficiently serious to impose on FIFA the obligation to contract with GFA for the latter’s admission.

323. FIFA argues that its decision to reject GFA’s application for FIFA membership does not constitute an infringement of personality rights, let alone an infringement that would justify imposing on FIFA the obligation to enter into a contract of admission with GFA, because (i) GFA has access to football activities and competitions in Europe through UEFA and (ii) GFA’s statutory purposes have not been impeded by non-admission. The Panel disagrees.

324. First of all, the fact that GFA has access, as a member of UEFA, to football activities and competitions throughout Europe, does not mean that GFA’s personality rights were not infringed by non-admission to FIFA. The sporting and economic activities in which GFA engages in at the UEFA level and those in which it could engage in at the FIFA level are markedly different. UEFA’s activities and competitions encompass only Europe and involve 54 national football associations that are all from or close to that continent. FIFA’s activities and competitions, on the other hand, are worldwide and involve 209 national football associations. Non-admission to FIFA would deprive GFA of participation in the qualifying rounds and final stages of men’s national team tournaments, including the FIFA World Cup (at senior, U20, and U17 level), the FIFA Confederations Cup, the FIFA Futsal World Cup,

the FIFA Beach Soccer World Cup, as well as women's national team tournaments, including the FIFA Women's World Cup (at senior, U20 and U17 level). GFA would also be deprived of participating in FIFA club competitions, such as the FIFA Club World Cup and the FIFA Women's Club World Cup. GFA would also remain without access to fundamental FIFA administrative resources such as the FIFA Transfer Matching System (TMS) – an online platform reserved to FIFA members to record players' transfers between clubs, which must be mandatorily used to transfer players between clubs of different football associations – and to the related economic benefits for GFA clubs (such as training compensation and solidarity mechanism) and the legal protections afforded to clubs and players (such as the rules on the protection of minors) under the various FIFA regulations, particularly the FIFA RSTP. These advantages, both from a sporting and economic standpoint, are certainly not the same as those derived from UEFA membership: the UEFA competitions for clubs and national teams and the various UEFA programs. Thus, FIFA's refusal to admit GFA to FIFA membership on discriminatory grounds does hinder GFA, and its clubs and players, from fully pursuing their sporting and economic activities at world level and, as a consequence, does hinder GFA from exercising its personality rights.

325. The Panel further disagrees with the argument that the GFA's statutory purpose is not hindered by non-admission to FIFA. According to the current GFA Statutes (adopted on 18 January 2007 and entered into force on 24 May 2013), the objects of GFA are *inter alia* "2.1.3 to establish and administer within Gibraltar... international fixtures or anything else which will serve to promote the game of association football and/or the interest of all players of either sex participating and/or wishing to participate in the sport... 2.1.4. to manage international sporting relations connected with association football in all its forms and to maintain friendly relations with all associations of the member countries of UEFA and/or FIFA... 2.1.8. to host competitions at international levels". Furthermore, as stipulated in Article 3.1 of the GFA Statutes, GFA "shall take such action as the Council may from time to time deem necessary to... become affiliated to [FIFA]". Non-admission to FIFA would thus certainly impede GFA in advancing its international objectives, namely becoming a member of FIFA and hosting matches and competitions at world level, as well as having its clubs and footballers allowed to take part in the international transfer of players under the RSTP and the TMS
326. The Panel also rejects the Respondent's invocation of the so-called *Enic* case (CAS 98/200) as supporting the conclusion that such a discriminatory refusal is not a violation of personality rights. In the *Enic* case, the CAS panel distinguished the exclusion of a club from a single competition from a two-year exclusion of an athlete to compete in any kind of competition due to a doping offense (making reference to the *Gasser* case). It held that the club's exclusion, unlike a player's, does not equate to a violation of personality rights because *inter alia* "while an unfairly adopted long doping ban might harm the whole sporting career of an athlete, and thus his/her personality, a club's non-participation in a UEFA competition would involve some loss of income but, since the club would still take part in other important football competitions such as the national championship and the national cup (which are competitions appreciated by fans and economically rewarding...), its 'personality' would not be affected...". In the present case, by contrast, GFA was not excluded from a single isolated FIFA competition but, rather, is being excluded altogether and forever from *all FIFA competitions*, precluding it from participating in an entire sporting and economic sector, much like a player under a life ban would be perpetually unable to compete in any kind of world-level competition. Another important distinguishing factor from the *Enic* case is that, under

the UEFA rules relevant to that case, a club would be excluded from the relevant competition only insofar as it had the same owner as another club admitted to the same competition, but could be immediately readmitted to the competition if the controlling shares of the club were transferred to another owner (in other words, exclusion from or admission to the competition entirely depended on the will of the club's shareholders and not on a UEFA permanent ban).

327. In short, the Panel is persuaded that FIFA violated GFA's personality rights.
328. This conclusion accords with the Swiss Federal Tribunal's considerations in the *GOC v. IOC* case (Decision 5A_21/2011 of 10 February 2012), where, although it ultimately concluded that the GOC did not actually meet the requirements for recognition in the applicable rules, the Federal Tribunal noted that if GOC had complied with all the requirements, the IOC's denial of recognition would certainly be illegal (see para. 5.4: "*Même si le juge doit seulement déterminer si le refus de reconnaissance constitue un acte illicite, il s'impose de vérifier tout d'abord si la réglementation a été correctement appréciée; car, si tel ne devait pas être le cas, en particulier si le GOC remplissait les conditions d'une reconnaissance en qualité de CNO par le CIO, il y aurait certainement illécéité*"; emphasis added).
329. With regard to the issue of whether such infringement of personality rights created an obligation upon FIFA to contract with GFA for its admission, the Panel first notes that the Respondent has acknowledged that "*the protection of personality rights (Article 28 CC) might limit the autonomy of an association in specific circumstances. In the context of applications for membership, the protection of personality rights might oblige the concerned association to accept a member that fulfills all the requirements for membership, notwithstanding the fact that the concerned association is not willing to grant membership to that member*". Further, FIFA has conceded that the "*obligation to contract exists only if (i) the sports association's actions prevents the other party from exercising its personality rights (ii) without any justified or legitimate grounds (Article 28(2) CC)*".
330. The Panel finds that imposing such an obligation to contract is appropriate here. Given that FIFA has a monopolistic position in the relevant world market as the supreme regulatory authority of such market, and that GFA and Gibraltarian footballers cannot access said market without FIFA membership (and bearing in mind that UEFA is not an adequate substitute), the infringement of personality rights is certainly serious enough to impose on FIFA the obligation to contract with GFA. In this respect, the Panel acknowledges that, had GFA and Gibraltarian players had unconditional access to international football through the British Associations or a hypothetical UK football association, then their personality rights would not necessarily have been violated to a degree sufficiently serious to impose an obligation to contract. However, as established *supra* at para. 238 *et seq.*, GFA and Gibraltarian footballers do not have such access. Furthermore, as will be discussed in the following subsection, FIFA did not have an overriding just cause to refuse GFA's exercise of its personality rights. As a result, the refusal to accept GFA to FIFA membership is a violation of personality rights serious enough to warrant placing an obligation on FIFA to enter into an admission contract with GFA.

iii) Balance of interest weights in favour of the GFA

331. FIFA submits that even if the Panel accepts that there is an infringement of personality rights limiting FIFA's freedom of contract and association, it has an overriding interest under Article 28, para. 2 CC to reject the GFA's application for FIFA membership. FIFA contends that it has a legitimate and overriding interest to avoid the situation that an association governing football in a "country" that is not independent joins as a member, when (i) the territory is "disputed" between two sovereign States and (ii) the members representing these States do not consent to the admission. FIFA claims that the objection to GFA's admission was aimed at preserving FIFA's political neutrality and avoiding disputes among its current members. In support, FIFA cites the GOC v. IOC case, in which the Court held that avoiding the proliferation of NOCs which exercise jurisdiction over non-independent statehoods and whose admission would be a source of conflict between the territories on which such territories depend constituted an overriding interest for the IOC.
332. The Panel must thus balance the interests: that invoked by FIFA as justifying the refusal of admission to GFA and that of the latter in obtaining membership. The Panel holds, for the following reasons, that FIFA does not have any overriding legitimate reason to restrict GFA's personality rights by refusing its membership application in a discriminatory manner.
333. First of all, the fact that Gibraltar is not an independent State, but rather a dependent territory of the UK, cannot serve as an overriding just cause for refusing to admit GFA to FIFA membership. As the Panel held, *supra* at para. 272 to 292, while the 2014 FIFA Statutes require that a "country" be "*an independent state recognised by the international community*", that version of the Statutes is not applicable to GFA's membership application. Furthermore, as held *supra* at para. 298, while the 1996 FIFA Statutes stipulate in Article 1, para. 2 that an applicant football association must govern football over a "country", that term was consistently interpreted by FIFA – prior to its 2004 reform of the admission rules – as including football associations of territories not having independent statehood, such as GFA. Moreover, regardless of when and how the various football associations were admitted to FIFA, among the 209 FIFA members there are many associations governing football over non-independent territories. Therefore, the fact that Gibraltar is a dependent territory of the UK does not override the GFA's interest in being admitted to FIFA.
334. Nor does FIFA have an overriding just cause to exclude GFA from admission because the latter governs football in a dependent territory that is allegedly "disputed" between the UK and Spain and whose admission is contested by the RFEF:
- (i) Neither the applicable 1996 FIFA Statutes, nor for that matter any of the post-2004 versions of the FIFA Statutes, mention characterization as a "disputed" or "sensitive" territory as a criterion that the FIFA Executive Committee or the FIFA Congress should consider when deciding on a membership application. Consequently, the fact that Gibraltar is allegedly a "disputed" and "sensitive" territory cannot be invoked as an overriding legitimate interest to refuse GFA's membership application. FIFA argues that the fact that its Statutes do not refer to the concept of "disputed" or "sensitive" territory is irrelevant, and pertinent only in the exercise of the discretion it says is afforded to the FIFA Executive Committee and the FIFA Congress under the 1996 FIFA Statutes to admit or refuse a member, and to admit other dependent

territories under on Article 1, para. 5 of the 1996 FIFA Statutes or its equivalent Article 10, para. 6 of the 2014 FIFA Statutes. The Panel disagrees. As it has already held, FIFA has failed to prove that the other dependent territories were admitted under the exceptional provisions of the 1996 or 2014 FIFA Statutes. Then, even acknowledging that in some circumstances FIFA could take into account the “disputed” and/or “sensitive” nature of a territory in refusing membership to an applicant which meets all statutory membership requirements, the Panel notes that FIFA has granted membership to associations governing football over territories that are way more “disputed” or “sensitive” than Gibraltar, such as Palestine (admitted to FIFA in 1998) or Timor Leste (admitted in 2005, when the tensions with Indonesia were still significant). In contrast, as the Panel previously indicated, there is no currently pending legal dispute or state of truly dangerous tension over Gibraltar, which has been under the stable sovereign control of the UK for the past 300 years.

- (ii) GFA does not need the consent of the RFEF or of any other particular national association. Since GFA satisfies the requirements of Article 1, para. 2 of the 1996 FIFA Statutes, no consent from the federation of the “country on which it is dependent” is necessary. That is only a requirement under Article 1, para. 5 of the same Statutes. Even if it were necessary, no relevant federation could be extant: under the pertinent rule it could not be the FA (which in any case did give its consent) but a hypothetical “UK football association”, which does not exist, and certainly not the RFEF (as Gibraltar is not dependent on Spain). In short, FIFA does not have a basis for refusing FIFA membership until there is a “consensus on its application” as so claims. To hold otherwise would be equivalent to granting a veto power over FIFA admission decisions to a member association, without any legal basis for it in the FIFA Statutes.
- (iii) The overriding interest cited in the *GOC v. IOC* case – the avoidance of a proliferation of associations from territories that are not independent States and whose admission would be a source of conflicts with the associations of the sovereign States on which such territories depend – is not applicable here, namely because: (a) unlike any other scenario, due to historical reasons and FIFA’s own rules (see the FIFA statutory provisions on the special status of the British Associations, *supra* at paras. 101, 109 and 112), the UK is the only sovereign State in the world that does not have a football association of its own but four different football associations (the FA, FAW, SFA and IFA, see *supra* at para. 237); in other words, this is a wholly unique situation which cannot be replicated both because there is no other pending application to be evaluated under the flexible interpretation of “country” prevailing under the pre-2004 FIFA Statutes and because no other State has multiple football associations instead of a single national association (and, consequently, no “dangerous precedent”, as FIFA puts it, could be caused by this award); (b) as already seen (*supra* at paras. 241 to 248), GFA and Gibraltarian footballers do not have an unconditional access to world-level football, whereas in the circumstances of the *GOC v. IOC* case Gibraltarian athletes could participate in Olympic activities through the British Olympic Association.
- (iv) In any event, the Respondent has failed to prove that accepting GFA as member might lead to serious conflicts jeopardizing relations among FIFA members or among States.

Judging from the lack of such conflict within UEFA since GFA's admission there, the Panel has no reason to surmise that it will.

335. Third, FIFA does not have an overriding legitimate interest in terms of political neutrality vis-à-vis GFA; FIFA has argued that if Gibraltar is considering embarking on a campaign to become an independent country, then FIFA's recognition of the GFA could be used for that politically motivated reason, giving FIFA all the more reason to remain politically neutral. The Panel stresses, however, that there is no sufficient evidence of such campaign for independence, which has been denied by the Appellant. In addition, the Panel remarks that its decision today only reaches an affirmative conclusion on whether Gibraltar is a "country" not under public international law, but rather on the basis of it satisfying FIFA's own consistent practice in interpreting the term "country" under the 1996 FIFA Statutes, which was inclusive of territories analogous to Gibraltar. In other words, FIFA would not be recognizing Gibraltar as an independent State by being obligated to contract with GFA, but rather would be recognizing GFA as an association governing football in a "country" as it interpreted that term prior to its 2004 amendment, i.e. not necessarily as "*an independent state recognized by the international community*". Indeed, in the Panel's view, FIFA's legitimate wish to remain politically neutral requires FIFA to not discriminate GFA vis-à-vis other football associations of territories in analogous situations to Gibraltar.
336. The protection under Article 28 CC of the personality rights of GFA (including its clubs and players) to pursue economic and sporting activities by being admitted to FIFA thus outweighs FIFA's right to refuse the GFA membership to FIFA.
337. In light of the foregoing, the Panel holds that FIFA has violated GFA's personality rights in a manner that gives rise to an obligation on FIFA to enter into an admission contract with GFA.

B. Whether FIFA's refusal constitutes a violation of competition law

338. Given that the Panel has already decided the matter and upheld the appeal on the basis of FIFA's violation of personality rights under Swiss law, there is no need for the Panel to discuss and decide the competition law issue.

VIII.7 RELIEF GRANTED

339. It is clear to the Panel that GFA is requesting that it be granted FIFA membership. More specifically, it is evident that GFA principally requests a self-executing declaration that GFA is awarded FIFA membership with immediate effect and, only subsidiarily, that FIFA be ordered to grant GFA membership to FIFA, i.e. that CAS order FIFA to take all necessary actions to admit GFA to FIFA membership (prayers listed under §§280.1 to 280.5 *supra* at para. 188 *et seq.*), including by *inter alia* i) declaring that the FIFA Executive Committee is obliged to submit, and ordering the FIFA Executive Committee to submit, GFA's application to the next FIFA Congress, ii) declaring that the FIFA Executive Committee is obliged to submit, and ordering the FIFA Executive to submit, GFA's application together with a request and/or recommendation that it be accepted by the FIFA Congress, and (iii) ordering that the relevant FIFA body or bodies admit GFA to full FIFA membership without delay or at the latest at the next FIFA Congress or any other date specified by this Panel's award.

340. By submitting the dispute to the CAS, the Parties have empowered the Panel, under Article R57 of the CAS Code, to step into the shoes of the FIFA Executive Committee and rule on a *de novo* basis in its place. Furthermore, according to Article 28(a) CC, when there is a violation of personality rights, as is the case here (see *supra* at para. 310 *et seq.*), the applicant may request a judge (or in this case an arbitrator) “1. To prohibit a threatened infringement; 2. To order that an existing infringement cease; 3. To make a declaration that an infringement is unlawful if it continues to have an offensive effect” and “in particular...that the rectification or the judgement be notified to third parties or published”. In other words, the judge (or arbitrator here), as aptly indicated in the Third GFA-UEFA CAS Award, at para. 129, “is not only entitled to declare a breach of the law as illegal, or to prohibit certain acts, but he also has the power directly to correct or eliminate a pending breach. For this purpose, a judge may even issue, in the dispositive of the judgement, such declarations in the name of the liable party as are necessary to establish or redress the legal situation, subject however, to the respective submissions of the party requesting such an order [citation omitted]. As a consequence, the judge may stand in the shoes of an association and declare a person to be a member of an association and oblige the association to do all necessary to allow the applicant to exercise its membership rights [citation omitted]”.
341. Stepping into the shoes of the FIFA Executive Committee, and considering the Panel’s findings that GFA fulfilled the requirements for admission to FIFA under the applicable 1996 FIFA Statutes (see *supra* at paras. 298 to 309), and that FIFA has violated the personality rights of GFA and has an obligation to admit GFA to FIFA membership (see *supra* at paras. 310 to 337), the Panel elects to replace the Appealed Decision with its own holding, in accordance with Article R57 of the CAS Code. While taking note of the Appellant’s request for a self-executing declaration granting FIFA membership to GFA, the Panel is well aware that an admission to FIFA must come from the FIFA Congress and not from the FIFA Executive Committee. Thus, the request for a declaration as formulated in para. 280.6 of the Appeal Brief is inadmissible as going beyond the powers of the Panel under Article R57 of the CAS Code. Nonetheless, given FIFA’s obligation to admit GFA, the Panel, as it is entitled to do under Article R57 of the CAS Code and Article 28(a) CC, unanimously orders the FIFA Executive Committee to submit GFA’s application to the FIFA Congress which, in order to avoid the persisting infringement of GFA’s personality rights, is required to admit GFA as a FIFA member as soon as possible within the limits of the FIFA Statutes.
342. For the sake of completeness, the Panel notes its disagreement with the Respondent when the latter asserts that the relief sought by the Appellant in paras. 280.1 and 280.5 of its Appeal Brief is inadmissible under Swiss law as being declaratory and/or subsidiary in nature. GFA has a legal interest in said declarations, given that they are necessary to resolve a legal uncertainty that threatens it and to protect its personality rights in a matter that is directly at issue between the Parties. Furthermore, the subsidiary or secondary nature of the orders requested in paras. 280.1 to 280.5 does not make them inadmissible.

VIII.8 DAMAGES

343. With regard to damages, the Appellant requests the Panel to issue an order reserving judgment in respect of the loss and damage GFA has sustained by reason of FIFA’s wrongful failure to admit it to membership. The Panel observes, however, that this is a CAS appeal procedure seeking the reversal of a decision of FIFA, and that the Panel may rule only on the dispute as

defined by the Appealed Decision and as limited by its objective and subjective scope (see CAS 2005/A/835 & 942, CAS 2006/A/1206, CAS 2013/A/3314). If GFA wishes to seek damages against FIFA, it will have to start a new and different legal action. Accordingly, the Panel dismisses the Appellant's motion for relief under para. 280.7 of the Appeal Brief (see *supra* at para. 188).

344. All other or further requests or motions submitted by either Party are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has jurisdiction to entertain the appeal filed by the Gibraltar Football Association on 17 October 2014.
2. The appeal filed by the Gibraltar Football Association on 17 October 2014 against the decision issued by the FIFA Executive Committee on 26 September 2014 is partially upheld to the extent that the FIFA Executive Committee is ordered to transmit the Gibraltar Football Association's application for FIFA membership to the FIFA Congress, which shall take all necessary measures to admit the Gibraltar Football Association as a full member of FIFA without delay.
3. (...).
4. (...).
5. All other or further requests or motions for relief are dismissed.