TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/10093 Russian Olympic Committee (ROC) v. International Olympic Committee (IOC), award of 23 February 2024

Panel: Lord John Dyson (United Kingdom), President; Mr David Wu (China); Prof. Luigi Fumagalli (Italy)

Olympic Movement
Suspension of a NOC for violation of the Olympic Charter
Autonomy of the IOC to adopt rules defining the territorial jurisdiction of a NOC
Private law vs public international law applicable to solve disputes between NOCs
Definition of a "country" and of its "limits"
Concept of "international community"
Previous practice as source of law
Principle of equality
Duty of political neutrality

1. **The IOC is an autonomous private association which under Swiss law can regulate and determine its own affairs. Based on the autonomy of association under Swiss civil law, the IOC is free to adopt rules defining the territorial jurisdiction of a NOC that it recognises.**

2. **What is a *"country"* and what constitutes its *"limits"* are to be determined as a matter of private law in accordance with the Olympic Charter (OC). It cannot have been intended by those who drafted the OC that any dispute between NOCs which concerns their *"area of jurisdiction"* can only be resolved at the level of public international law and is not amenable to determination by the IOC under Rule 59 OC or, in the event of a dispute, by the CAS.**

3. **Rule 30.1 OC defines "country" wherever the expression appears in the OC as meaning *"an independent state recognised by the international community"*. When read in conjunction with Rule 30.1 OC, the meaning of Rule 28.5 OC is clear and there is no need to have recourse to the *contra proferentem* principle. It means that an NOC can only exercise territorial jurisdiction within the limits of the boundary of an independent State recognised by the international community. Over the years, the IOC has consistently relied on the position of the international community to determine the jurisdiction of a NOC.**

4. **The concept of the international community is not vague or uncertain. In most cases, it will be clear whether an independent State is recognised by the international community. Where a dispute arises as to this, it can be resolved in accordance with the dispute resolution procedure provided by Rule 61 OC.**

5. As a matter of Swiss law, for previous practice to constitute a source of law within an association, it must reach a level of *"Observanz".*

6. According to the principle of equality, similar cases must be treated similarly, but dissimilar cases could be treated differently.

7. The 5th Fundamental Principle of Olympism mandates political neutrality among sports organisations within the Olympic Movement. This means that the IOC is obliged to ensure that each NOC applies political neutrality and complies with the OC. This includes preventing any NOC from interfering with the territorial jurisdiction of another NOC. That is achieved by ensuring compliance with Rule 28.5 OC read together with Rule 30.1 OC, if necessary, by imposing sanctions in accordance with Rule 59 OC in the event of a violation.

I. THE PARTIES

1. The Appellant is the Russian Olympic Committee ("ROC"), the National Olympic Committee ("NOC") representing Russia within the Olympic Movement. It is recognised by the International Olympic Committee ("IOC").

2. The Respondent is the IOC, a non-profit organisation under Swiss law. It governs the global Olympic Movement and organises all aspects of the Olympic Games.

3. The ROC and the IOC will hereinafter be referred collectively as "the Parties".

II. FACTUAL BACKGROUND

4. Set out below is a summary of the relevant facts based on the Parties' written submissions, pleadings and evidence in these proceedings and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel's reasoning and its decision.

5. On 21 February 2022, the Russian State officially recognised the independence of the "Donetsk People Republic" and of the "Lugansk People Republic". On 30 September 2022, Russia proclaimed the incorporation of four regions from the southeast of Ukraine (Donetsk, Kherson, Lugansk and Zaporozhye). These four regions will be referred to as "the Regions".

6. With the exception of North Korea and Syria, the international community has not formally recognised Russia's annexation of the Regions. On the contrary, there has been international condemnation of Russia's annexation.

7. On 12 October 2022, the United Nations General Assembly issued Resolution ES-11/4 – *Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*. 143 Member

States approved the resolution, with only 5 (including Russia, Syria, North Korea, Belarus and Nicaragua) voting against and 35 abstaining. In particular, the UN General Assembly reaffirmed *"its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders"* (point 1); condemned *"the attempted illegal annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine"* (point 2); declared that *"the subsequent attempted illegal annexation of these regions have no validity under international law and do not form the basis for any alteration of the status of these regions of Ukraine"* (point 3); and called *"upon all States, international organizations and United Nations specialized agencies not to recognize any alteration by the Russian Federation of the status of any or all of the Donetsk, Kherson, Luhansk or Zaporizhzhia regions or Ukraine"* (point 4).

8. On 30 September 2022, a resolution of the United Nations Security Council, declaring that referenda held in September 2022 in parts of the Regions were neither valid nor formed the basis for any alteration of the status of the Regions, could not be adopted simply because it was vetoed by Russia itself.

9. On 21 October 2022, the European Council of the European Union adopted conclusions condemning and firmly rejecting the *"illegal annexation by Russian of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions"*, stating that *"the European Union will never recognise this illegal annexation"*.

10. On 30 September 2022, the members of the Council of Europe, of which Russia was still a member until March 2022, condemned the *"illegal annexation by Russia of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions"* stating that *"Crimea, Kherson, Zaporizhzhia, Donetsk and Luhansk are Ukraine"* and calling on *"all States and international organisations to unequivocally reject this illegal annexation"*.

11. On 11 October 2022, the members of the Group of Seven ("G7") condemned and rejected the *"illegal attempted annexation by Russia of Ukraine's Donetsk, Luhansk, Zaporizhzhya and Kherson regions"* and reiterated that they will never recognise this annexation.

12. On 30 September 2022, Switzerland – the country in which the IOC has its seat and the laws of which govern the IOC – has also officially condemned what it described as a *"serious violation of Ukraine's territorial integrity and sovereignty"* and confirmed that Switzerland *"does not recognise the incorporation of the Ukrainian territories into the Russian Federation"*.

13. On 4 September 2023, a new Russian legal entity entitled "Regional Public Organisation Olympic Council of the Kherson Region" was constituted and entered in the Russian register of legal entities.

14. On 22 September 2023, a new Russian legal entity entitled "Regional Public Organisation Olympic Council of the Lugansk People's Republic" was constituted and entered in the Russian register of legal entities.

15. On 26 September 2023, a new Russian legal entity entitled "Regional Public Organisation Olympic Council of the Zaporozhye Region" was constituted and entered in the Russian register of legal entities.

16. On 5 October 2023, a new Russian legal entity entitled "Regional Public Organisation Olympic Council of the Donetsk People's Republic" was constituted and entered in the Russian register of legal entities.

17. Each "Regional Public Organisation" sent a letter to the ROC in order to request their affiliation as a member of the ROC.

18. On 5 October 2023, the ROC Executive Board decided to accept these requests, and it recognised, as its members, the Regional Sports Organisations representing the Regions.

19. On 7 October 2023, the IOC sent a letter to the ROC saying that it had been informed of the recent admission by the ROC of Regional Sports Organisations from Ukraine territories. The letter continued [emphasis in the original]:

"This may constitute a violation of the jurisdiction of the National Olympic Committee of Ukraine, which is protected by the Olympic Charter. As you know, the territorial integrity of each NOC must be fully respected, in accordance with the Olympic Charter, in particular Rules 28.5 and 30.1. In view of the above, we offer your NOC the opportunity to be heard and to provide us with an official written explanation ***by Tuesday 10 October 2023 at 2 pm (Swiss time) at the latest****, so that this matter can be discussed at the IOC Executive Board meeting next week Mumbai".*

20. On 10 October 2023, the ROC replied to this letter saying:

"Please be assured of the willingness by the ROC to comply, to the fullest possible extent, with the Olympic Charter and all our obligations toward the Olympic movement, including a globally challenging situation like this. … the ROC does not intend to 'expand' its scope of jurisdiction outside the borders of the Russian Federation, but simply followed a Statutory provision and accepted applications from non-governmental and non-commercial organisation associated in territories listed – in compliance with article 76 of the Russian Constitution – as constituent elements (subjects) of the Russian Federation".

21. The ROC's reply then proceeded to make a number of points which it has repeated on this appeal and which are discussed later in this Award. In summary, it stated that it was not exercising jurisdiction outside the limits of the Russian Federation, as defined by the Russian Constitution.

22. On 12 October 2023, the Executive Board of the IOC issued the decision which lies at the heart of this appeal (the "Decision") as follows:

"The unilateral decision taken by the Russian Olympic Committee on 5 October 2023 to include, as its members, the regional sports organisations which are under the authority of the National Olympic Committee (NOC) of Ukraine (namely Donetsk, Kherson, Luhansk and Zaporizhzhia) constitutes a breach of the Olympic Charter because it violates the territorial integrity of the NOC of Ukraine, as recognised by the International Olympic Committee (IOC) in accordance with the Olympic Charter.

In view of the above, the IOC Executive Board (EB) today decided that:

1. The Russian Olympic committee is suspended with immediate effect until further notice.

2. The suspension has the following consequences:

a. The Russian Olympic Committee is no longer entitled to operate AS A National Olympic Committee, as defined in the Olympic Charter, and cannot receive any funding from the Olympic Movement.

b. As stated in the IOC's position and recommendations of 28 March 2023, which remain fully in place, the IOC reserves the right to decide about the participation of individual neutral athletes with a Russian passport in the Olympic Games Paris 2024 and the Olympic Winter Games Milano Cortina 2026 at the appropriate time.

The IOC EB also reserves the right to take any further decision or measure depending on the development of this situation".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 31 October 2023, the ROC filed a Statement of Appeal with the Court of Arbitration for Sport in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code") to challenge the Decision. In the Statement of Appeal the Appellant nominated Mr David W. Wu, Attorney-at-Law in Shanghai, P.R. of China, as an arbitrator.

24. On 2 November 2023, the CAS Court Office forwarded the Statement of Appeal to the Respondent, and requested it, *inter alia*, the nominate an arbitrator.

25. On 10 November 2023, the Respondent informed the CAS Court Office that it proposed that the arbitration be conducted on an expedited basis, pursuant to Article R52 of the CAS Code, and nominated Professor Fumagalli, Attorney-at-Law in Milan, Italy, as an arbitrator.

26. On 23 November 29023 the CAS Court Office was informed that the Parties had failed to agree on a procedural calendar and therefore that the procedure would not be expedited.

27. On 27 November 2023, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

28. On 5 December 2023, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President:	The Rt. Hon Lord John A. Dyson, Arbitrator, 39 Essex Chambers, London, United Kingdom
Arbitrators:	Mr David W. Wu, Attorney-at-Law in Shanghai, P.R. of China
	Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy.

29. On 28 December 2023, the CAS Court Office informed the Parties that the hearing would be held on 26 January 2024 by video-conference.

30. On 15 January 2024, the Respondent filed its Answer with the CAS Court Office.

31. On 16 January 2024, the CAS Court Office communicated to the Parties the Order of Procedure issued on behalf of the President of the Panel, which was signed by the Appellant on 19 January 2024 and by the Respondent on 22 January 2024.

32. On 16 January 2024, a hearing was held in the present matter by videoconference. In addition to the Panel and Mr Giovanni Maria Fares, CAS counsel, the following persons attended the hearing virtually:

For the Appellant: Mr X. […], counsel, Mr Victor Berezov, Deputy Secretary General and Professor Yves Nouvel, expert, assisted by Ms Gaëlle Le Gall, interpreter.

For the Respondent: Mr Antonio Rigozzi and Mr Patrick Pithon, counsel.

33. At the hearing, the Parties submitted by counsel their pleadings, answered questions asked by the Panel and pursued their claims for the relief they respectively sought. Professor Yves Nouvel, an expert called by the Appellant, also gave evidence.

34. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect of the composition of the Panel and their right to be heard and to be treated equally in the arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

35. The following is a bare outline of the parties' submissions. The Panel sets out and discusses the Parties' submissions in more detail in Section VIII of this Award.

A. The Appellant's Submissions

36. ROC's case is that the Decision was unlawful and should be set aside for four reasons. These are that it violated (i) the Principle of Legality, (ii) the Principle of Equality, (iii) the Principle of Predictability, and (iv) the Principle of Proportionality. There is a degree of overlap between these reasons. The central submission of the ROC is that its decision to include the Regional Sports Organisations of the Regions as its members was not a violation of the OC and that the IOC acted unlawfully in holding that it was. The ROC also submits that the Decision was unlawful because the IOC's treatment of the ROC differed unjustifiably from its treatment of other NOCs in similar circumstances and that this difference of treatment amounted to a violation of the Principles of Equality and Predictability. In particular, it contrasts the way in which the IOC treated the ROC over the annexation of the Regions with its treatment of the ROC following Russia's annexation of Crimea and Sevastopol in 2016. Finally, the ROC submits that the sanction imposed for its alleged violation of the OC violated the Principle of Proportionality.

B. The Respondent's Submissions

37. The Respondent disputes the submission that the Decision was unlawful for any of the reasons advanced by the ROC. In particular, in relation to the first reason it submits that the ROC's decision to include the Regional Sports Organisations of the Regions as its members was a violation of Rule 28.5 when read with Rule 30.1 of the OC. As regards the second and third reasons, it submits that the differences in treatment of which the ROC complains cannot properly form the basis of a violation of the Principles of Equality and Predictability. As for the fourth reason, the IOC submits that the sanction imposed by the Decision was proportionate to the seriousness of the violation of the OC.

V. JURISDICTION OF CAS

38. Article R47 of the CAS Code provides as follows:

"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 Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

39. The IOC accepts CAS jurisdiction in the present arbitration.

VI. ADMISSIBILITY

40. Article R47 of the CAS Code provides as follows:

"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 it prior to the appeal, in accordance with the statutes or regulations of that body. […]".

41. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

42. The IOC does not dispute that the ROC's Statement of Appeal and Appeal Brief have been filed within the applicable time limits and that the ROC's appeal is thus admissible.

VII. APPLICABLE LAW

43. Article R58 of the CAS Code provides as follows:

"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

44. It is agreed between the Parties that the present dispute is to be decided primarily according to the OC (in force from 8 August 2021) and, subsidiarily, by Swiss law.

VIII. MERITS OF THE APPEAL

45. By a Statement of Appeal dated 31 October 2023, the ROC appealed against the Decision and sought the following relief, confirmed in the Appeal Brief, namely that:

(i) The Appeal be upheld;

(ii) The Decision be set aside;

(iii) The ROC be reinstated as a National Olympic Committee recognised by the IOC benefitting from all rights and prerogatives granted by the Olympic Charter;

(iv) The IOC shall bear the arbitration costs, if any, and be ordered to reimburse the minimum court office fee of CHF 1,000 as well as any other advances of costs, if any paid by ROC;

(v) The IOC be ordered to pay ROC a contribution towards the legal costs and other costs incurred in the framework in these proceedings in an amount to be decided by the Panel.

46. The Panel will examine in sequence the grounds relied on by the Appellant in support of its appeal, *i.e.*, the alleged violation of the principles of legality, equality, predictability and proportionality. Finally, the Panel will set out the consequences of its analysis.

A. Violation of the Principle of Legality

47. Before addressing the issues that have been raised in relation to this allegation, the Panel sets out the principal provisions of the OC that are relevant to it.

*"27 **Mission and role of the NOCs***

1. The mission of the NOCs is to develop, promote and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter.

2. The NOC's role is

2.1 to promote the fundamental principles and values of Olympism in their countries, in

particular, in the fields of sport ….

…

3. The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games …

4. The NOCs have the exclusive authority to select and designate the interested hosts which may apply to organise Olympic Games in their respective countries

6. The NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Olympic Charter.

…

9. Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken.

28 ***Composition of the NOCs …***

5 The area of jurisdiction of an NOC must coincide with the limits of the country in which it is established and has its headquarters.

30 ***Country and name of an NOC***

1. In the Olympic Charter, the expression "country" means an independent State recognised by the international community.

41 ***Nationality of competitors***

1. Any competitor in the Olympic Games must be a national of the country of the NOC which is entering such competition.

2. *All matters relating to the determination of the country which a competitor may represent in the Olympic Games shall be resolved by the IOC Executive Board".*

48. There are several strands to the ROC's case that the Decision violates the principle of legality.

(i) The mischaracterisation of the ROC decision of 5 October 2023

49. The first strand is that the Decision mischaracterised the ROC decision of 5 October 2023 as

being a decision *"to include, as its members, the regional sports organisations which are under the authority of the* [*NOC*] *of Ukraine"*. The ROC submits that by its decision it *"simply recognised new entities – constituted as per Russian law – representing the four territories … that Russia considers as being part of its territory since September 2022"*.

50. It is not in dispute that the ROC admitted the sports organisations of the Regions as members of the ROC on 5 October 2023. The Panel considers that the Decision did not mischaracterise the ROC's decision. The reference to regional sports organisations *"under the authority of the [NOC] of Ukraine"* when read together with the statement that the ROC decision violated *"the territorial integrity of the NOC of Ukraine"* was clearly a reference to organisations within the territorial scope of the NOC of Ukraine. The ROC could have been in no doubt as to the decision that the Decision was impugning. If, contrary to the Panel's opinion, the ROC decision was misdescribed, the misdescription was immaterial and of no effect.

(ii) Matters of public international law

51. The second strand is that questions of determining the *"limits"* of a country or deciding whether its "territorial integrity" has been breached are typical matters of public international law that fall outside the authority of the IOC and of the CAS. In support of its position, ROC relies on the opinion dated 22 November 2023 produced by Professor Nouvel, who is an expert in public international law.

52. These principles are not in doubt and have not been contested by the IOC. The ROC says that, in the absence of specific provisions in the OC granting the IOC the authority to define the *"limits"* of a country in a manner that would depart from public international law principles, *"the IOC [and the CAS] have no choice but to apply international public law"*. The Panel finds it surprising that the ROC has made this statement because it is inconsistent with the ROC's primary position that the IOC and the CAS cannot determine matters of public international law.

53. But for the reasons given by IOC, the Panel considers that these agreed principles are not relevant in the present context. The issues in the present case are not whether, as a matter of international law, Russia's annexation of part of the Ukraine was lawful or where the lawful boundary lies between the two countries. These issues raise questions of sovereignty and politics and cannot and should not be resolved by IOC or CAS or national courts.

54. The IOC, however, is an autonomous private association which under Swiss law can regulate and determine its own affairs[1]. The ROC rightly accepts that, based on the autonomy of association under Swiss civil law, the IOC is free to adopt rules defining the territorial jurisdiction of an NOC that it recognises. The question is whether it has done so. The IOC submits that it has done so by enacting Rules 28.5 and 30.1 of the OC.

55. The IOC is not subject to international law, but its activities are governed by the OC which is described in its Introduction as *"a basic instrument of a constitutional nature"*. The Introduction also states that the OC *"sets forth and recalls the Fundamental Principles and* essential *values of Olympism"*. It is, therefore, unsurprising that it defines what constitutes a *"country"*. The definition imports

[1] Swiss Supreme Court decision ATF 97 II 108, dated 17 June 1971.

an international element, namely *"an independent State recognised by the international community"*. This definition is not meant to solve territorial disputes under international law. It is required solely for the purposes of applying the OC. The definition is required for a number of OC purposes, such as those set out in Rule 27.

56. Let us suppose that two NOCs seek to exercise jurisdiction over the same *"country"*. Which NOC has the role to perform the important functions described in Rule 27.1; which has *"the exclusive authority for the representation of their countries at the Olympic Games"* (Rule 27.3); and which has *"the exclusive authority to select and designate the interested hosts which may apply to organise Olympic Games in their respective countries"* (Rule 27.4)? The ROC's case is that any dispute between NOCs which concerns their *"area of jurisdiction"* can only be resolved at the level of public international law and is not amenable to determination by the IOC under Rule 59 of the OC or, in the event of a dispute, by the CAS. The Panel considers that this cannot have been intended by those who drafted the OC. In its opinion, there is no reason for interpreting the OC in this way. The *"limits"* of a *"country"* are to be determined as a matter of private law in accordance with the OC. The IOC is therefore required to reach a conclusion on this issue for the purposes of deciding whether to impose a sanction under Rule 59.

57. So what the IOC could lawfully do was to consider whether the acts of the ROC amounted to a violation of the OC and, in the event of finding a violation, to take the measures or sanctions set out in Rule 59.1. The Panel accepts the submission of the IOC that by the Decision it did not purport to decide whether the annexation of part of the Ukraine was lawful *as a matter of public international law* or where *according to public international law* the boundary between the two countries was to be drawn. That would have been beyond its competence. Instead, it purported to apply Rules 28.5 and 30.1 of the OC to determine the territorial jurisdiction of the ROC *under the OC*. That was made clear by the terms of IOC's letter dated 7 October 2023, viz: *"the territorial integrity of each NOC must be fully respected, in accordance with the Olympic Charter, in particular Rules 28.5 and 30.1"*.

(iii) Rules 28.5 and 30.1 of the OC

58. The third strand is that, if in principle IOC could have the authority to decide on the *"limits"* of jurisdiction of NOCs, the OC does not *clearly* confer that authority on IOC. The ROC submits that Rules 28.5 and 30.1 (the Rules relied on by IOC) do not have that effect. IOC submits to the contrary.

59. In more detail, the ROC submits that the language of the text of these rules is clear and they should be given their plain and literal meaning. Rule 30.1 addresses the situation of an NOC representing a territory that is not recognised by the international community in an independent State capacity, such as Gibraltar or Faroe Island. Gibraltar is not an independent State recognised by the international community. But the Russian Federation is a State recognised by Switzerland and the international community. Full and final recognition of the ROC as the legal successor of the Soviet Olympic Committee by the IOC was received in September 1993.

60. The ROC submits that the recognition of it as the representant of the Russian Federation has never been contested. Accordingly, it submits that Rule 30.1 addresses an issue which is not

applicable in the present case.

61. The ROC also submits that Rule 28.5 simply means that an NOC cannot exercise jurisdiction outside a sovereign State of its own. Rule 28.5 does not refer to the limits of the country as recognised by the international community: it refers to the *"limits of the country in which it is established and has its headquarters"*. Any other interpretation would be contrary to the text of the rule. Even if the wording were unclear, it would have to be interpreted against the IOC on the basis of the *contra proferentem* principle.

62. For the reasons given by the IOC, the Panel rejects the ROC's interpretation of Rule 28.5 when read with Rule 30.1. Rule 28.5 defines the territorial jurisdiction of an NOC and provides that the geographical area of over which an NOC exercises jurisdiction must coincide with the geographical limits of the *"country"* in which it established and has its headquarters. Rule 30.1 defines *"country"* wherever the expression appears in the OC (*i.e.* including in Rule 28.5) as meaning *"an independent state recognised by the international community"*.

63. The Panel considers that the meaning of Rule 28.5 when read in conjunction with Rule 30.1 is clear and there is no need to have recourse to the *contra proferentem* principle. An NOC can only exercise territorial jurisdiction within the limits of the boundary of an independent State recognised by the international community.

64. It follows that, if the international community recognises the Regions as part of Ukraine, then the ROC's decision to admit sports organisations from those regions as members violated the territorial integrity of the Ukrainian NOC, as protected by Rule 28.5 and Rule 30.1.

65. The ROC submits that the concept of *"the international community"* is vague and insufficiently clear and certain to be enforceable and form the basis of sanctions in the event of an alleged violation of Rule 28.5. The Panel does not accept that the concept of the international community is vague or uncertain. In most cases, it will be clear whether an independent State is recognised by the international community. Where a dispute arises as to this, it can be resolved in accordance with the dispute resolution procedure provided by Rule 61.

66. The IOC relies on Resolution ES-11/4 of the UN General Assembly adopted on 12 October 2023 as evidence of where the boundary lay between Russia and Ukraine *i.e.* that it lay where it was before the Russian annexation of the Regions. By this resolution, the General Assembly declared that:

"the referendums held in the Donetsk, Kherson, Luhansk and Zaporizhzhia oblasts which were conducted under disputed circumstances and unrecognized by the international community, as well as their subsequent annexation by Russia, are invalid and illegal under international law. It calls upon all states to not recognize these territories as part of Russia. Furthermore, it demands that Russia 'immediately, completely and unconditionally withdraw' from Ukraine as it is violating its territorial integrity and sovereignty".

67. This resolution was passed with a vote of 143 in favour, 5 against and 35 abstentions. Professor Nouvel says that resolutions of the UN General Assembly are not binding, and are no more than recommendations. The ROC submits that the UN General Assembly has no authority to rule on territorial disputes. It follows that neither the IOC nor CAS can under public

international law principles rely on the resolution of 12 October 2023 to determine the boundaries between Russia and Ukraine with respect to the Regions.

68. The Panel accepts that the resolution cannot be relied on as a decision which as a matter of law determines were the boundary lay at the time of the Decision. But a resolution by an overwhelming majority of members of the UN General Assembly as to the location of the boundaries of an independent State is sufficient evidence of the recognition by the international community of the *"limits"* of that State within the meaning of Rule 28.5.

69. The Panel considers that Resolution ES-11/4 is overwhelming evidence that the international community did not recognise the boundaries that Russia sought to achieve by its annexation of the Regions, and that accordingly the international community recognised as an independent State a Ukraine which included Regions.

70. But this resolution does not stand alone. Reference can also be made to the fact that:

(i) The European Council of the EU condemned and rejected the *"illegal annexation by Russia of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions"* stating that *"the European Union will never recognise this illegal annexation"*;

(ii) The members of the CoE, of which Russia was a member until March 2022, condemned an *"illegal annexation by Russian"* and expressly stated that *"Crimea, Kherson, Zaporizhzhia, Donetsk and Luhansk are Ukraine"*; and

(iii) The members of the G7 condemned and rejected the *"illegal attempted annexation by Russia of Ukraine's Donetsk, Luhansk, Zaporizhzhya and Kherson regions"* stating that the principles enshrined in the UN Charter *"do not give Russia a legitimate basis to change Ukraine's borders"*.

(iv) Legal basis for the suspension of the NOCs

71. The ROC relies on the jurisprudence of the CAS[2] that *"every sanction requires an express and valid rule providing that someone could be sanctioned for a specific offence; and an athlete or official, when reading the rules, must be able to clearly make the distinction between what is prohibited and what is not"*[3]. It contends that Rules 28.5 and 30 together with the provisions for measures and sanctions in Rule 59 of the OC do not satisfy the requirement of certainty and predictability.

72. Although the ROC relies on a violation of the principle of predictability as a ground of appeal that is distinct from a violation of the principle of legality, there is a considerable degree of overlap between the two allegations. It is convenient to deal with them both here.

73. The ROC submits that there is nothing in the OC that indicates that an NOC can be suspended if it accepts the inclusion of sports organisations which are incorporated in accordance with the law of the country of that NOC, but which belong to disputed territories.

[2] CAS 2014/A/3832 para 84.
[3] CAS 2007/A/1437.

(v) Crimea and Sevastopol

74. The ROC submits that the violation of the principle of legality is further emphasised or confirmed by the fact that in December 2016 the sports councils of Crimea and Sevastopol were included as members of the ROC, but the ROC is not aware that either the IOC or the NOC of Ukraine complained or objected to this inclusion, although a majority of the international community had not recognised and still has not recognised Crimea or Sevastopol as part of the Russian Federation.

75. The ROC submits that there was no justification for the IOC not to have suspended Russia for the annexation of Crimea and Sevastopol in 2016, but to have decided to suspend Russia for its annexation of the Regions in 2023. This unexplained difference in response to materially similar circumstances shows that the Decision did not respect the principle of legality and must be set aside for that reason.

76. In support of its case, the ROC relies on the fact that *"some media mention that the suspension of the ROC by the IOC 'appears to highlight rising frustration from the IOC and its President, Thomas Bach, who can ultimately decide to impose a blanket ban on all Russian athletes from Paris'"*.

77. The Panel can dispose of this last point shortly. The IOC rightly dismisses it as speculation and irrelevant. It is speculation because the Panel has seen no evidence to support it. It is irrelevant because the IOC's motives are of no consequence. The question is whether the Decision was lawful. In any event, the statements attributed to the media were wrong, because, by a decision of 8 December 2023, the IOC allowed Russian athletes to compete in the Paris Games under a number of conditions.

78. But to return to the main argument, the Panel does not accept that what the IOC did in relation to Crimea and Sevastopol in 2016 can be prayed in aid by the ROC in support its case on violation of the principle of legality. First, even if there was no material distinction between the Crimea/Sevastopol circumstances and the circumstances relating to the Decision, that would not avail the ROC. As a matter of Swiss law, for previous practice to constitute a source of law within an association, it must reach a level of *"Observanz"*[4]. The ROC does not dispute this and does not contend that the IOC's previous applications of Rule 28.5 when read in conjunction with Rule 30.1 have passed this threshold in relation to Crimea and Sevastopol.

79. The IOC says that there is no analogy between the two cases in any event. In 2016, it was not informed of the ROC's admission of Crimea and Sevastopol as members and the Ukrainian NOC did not express any concerns at the time. There has been no challenge by the ROC to this statement and the Panel sees no reason not to accept it.

80. In any event, the IOC has never recognised Crimea or Sevastopol as part of the ROC's area of jurisdiction within the meaning of Rule 28.5. This is because the international community considers these territories to be part of Ukraine[5]. The IOC relies on the fact that (as it puts it) between 2016 and 2019 it confirmed to the International Tennis Federation ("ITF"), World

[4] HEINI/PORTMANN/SEEMANN, Grundriss des Vereinsrecht, Basel 2009, para 56.
[5] Resolution of the UN General Assembly 68/262, dated 27 March 2014

Rugby and World Sailing among others that it did not recognise Crimea as part of Russia, but rather as part of Ukraine. There are various emails to consider.

81. In an exchange of emails dated 23 March 2016, the ITF asked the IOC whether it had a *"position"* on Crimea. The IOC responded that *"at international level there is a self-explanatory UN Resolution about the territorial integrity of Ukraine"* and referred to the resolution of 27 March 2014. It added that concerning the hosting sports events in Crimea, this was a matter for each International Federation to consider.

82. In an exchange of emails dated 16 and 25 September 2016, in response to World Rugby's question of whether the IOC had a *"position"* on sport in Crimea, the IOC said that the question of organising specific international sports events/promoting international sports activities in Crimea *"in this very sensitive context is, of course, a matter for each IF to consider and decide"*. It added that it strongly believed that the International Federation concerned should *"take into consideration the position of the international community/United Nations in relation to this territory"*. It continued that the International Federation should:

"consult and coordinate with the two National Federations concerned (UKR and RUS) to find a potential agreement before considering any international sports activities in the region and/or discuss the most appropriate solutions for the athletes and the sport concerned in the region".

83. In an exchange of emails dated 1 and 8 June 2017, the IOC responded to World Sailing on this *"very delicate matter"* by referring to the UN General Assembly Resolution of 27 March 2014 about the territorial integrity of Ukraine and said *"concerning the question of hosting sports events in Crimea in this very sensitive context, this is primarily a matter for each UIF to consider and decide together with their national federations concerned (UKR and RUS)"*.

84. The ROC makes the point that the IOC did not say that the annexation of Crimea and Sevastopol was a violation of the OC which justified the imposing of a sanction under Rule 59. It says that the IOC took a neutral position and said that it was for each International Federation to decide what to do: that response was very different from the response to the annexation of the Regions that appeared in the Decision.

85. The Panel acknowledges that the responses differed, but does not accept that the differences cast doubt on the legality of the Decision. The IOC was not informed that the sports organisations of Crimea and Sevastopol had been admitted as members of the ROC (if indeed they had been admitted). That makes a crucial difference because if they had not been admitted as members of the ROC, there would be no basis for alleging a violation of Ukraine's area of jurisdiction within the meaning of Rule 28.5 when read with Rule 30 and no basis for the IOC to impose sanctions for violation of the OC. Similarly, as regards the other cases relied on by the ROC (World Rugby, World Sailing and International Tennis), there is no evidence that the IOC was informed that the relevant sports organisations had been admitted as members of the ROC.

86. The Panel, therefore, does not accept that the IOC's treatment of the ROC in other cases can properly form the basis of an allegations of unequal treatment. Even if that were wrong, the cases relied on by the ROC do not meet the level of *Observanz* required under Swiss law and

referred to at paragraph 78 above.

(vi) Rule 27.9

87. The IOC relies on Rule 27.9 as an alternative legal basis for the Decision. Since the Panel considers that Rules 28.5 and 30.1 provide a good and sufficient legal basis for the Decision, it is not necessary to deal with the Rule 27.9 issue in detail. The rule provides:

> *"Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken".*

88. The IOC submits that Rule 27.9 was a lawful basis for the Decision because *"the constitution, law or other regulations in force"* in Russia caused the activity of the ROC to be *"hampered"*. In support of its submission, the IOC relies on the letter dated 10 October 2023 from the ROC to the IOC the relevant part of which is set out at paragraph 20 above.

89. The ROC responds by relying on what it said in its letter and additionally says that (i) Rule 27.9 has been *"mainly"* used in relation to Government interference *"through the national sports law or to address internal governance issues within the NOCs"*; and (ii) the present dispute is different: the Russian Government is not trying to interfere in the sports area through the law and the IOC has never mentioned any internal governance issues within the ROC.

90. The Panel notes that the ROC concedes that the scope of Rule 27.9 is not limited to what it has been *"mainly"* used for. The language of Rule 27.9 would not justify such a limited interpretation. It is clear from its letter of 10 October 2023 that the ROC considered that it was obliged by Article 65 of the Russian Constitution to accept the sports organisations of the Regions as members of the ROC. In the opinion of the Panel, the effect of that obligation was to *hamper* the ROC's activity within the meaning of Rule 27.9 and permit the IOC Executive Board to suspend the ROC.

91. There remains that question of whether the IOC did in fact exercise the Rule 27.9 power. The text of the operative part of the Decision makes no reference to Rule 27.9. The substance of the text referring to a violation of the territorial integrity of the NOC of Ukraine was clearly a reference to a violation of Rule 28.5 when read in conjunction with Rule 30.1. Further support for this is to be found in the IOC's letter to the ROC dated 7 October 2023, which said of the ROC's admission of regional sports organisations from Ukrainian territories that this may constitute a violation of the jurisdiction of the NOC of Ukraine, which *"must be fully respected in accordance with the OC in particular Rules 28.5 and 30.1"*.

92. It is true that the IOC's Decision Proposal dated 12-13 October 2023 includes a reference to Rule 27.9 in the *"Statement of Reasons"*, but the Panel considers that this does not mean that the Decision itself was made under Rule 27.9. The principle of legality requires that, when imposing a sanction, the IOC should clearly identify the legal basis for the decision. The importance of

this can be demonstrated by the language of Rule 27.9 itself, which requires the IOC Executive Board to offer the NOC an opportunity to be heard before any decision is taken. The Panel considers that this means that the NOC must be informed of the legal and factual basis for the proposed decision. A clear distinction is drawn in the text of Rule 27.9 between (i) an infringement of the OC and (ii) circumstances which cause the activity of the NOC or the making or expression of its will to be hampered. An NOC cannot avail itself of the opportunity to be heard unless it knows whether it is to respond to (i) or (ii).

93. If it had been necessary to decide the point, the Panel would have held that the IOC could have based the Decision on Rule 27.9, but instead chose to base it on Rules 28.5 and 30.1. In these circumstances, it cannot (but does not need to) rely on Rule 27.9.

(vii) Conclusion

94. In conclusion, the Panel finds that the IOC, by adopting the Decision, did not breach the principle of legality.

B. Violation of the Principle of Equality

95. The ROC's case is as follows. The CAS has regularly ruled that the principle of equality shall apply in sports law. According to CAS jurisprudence, *"similar cases must be treated similarly, but dissimilar cases could be treated differently"*[6]. The same is true, and widely recognised under Swiss law.

96. The ROC submits that an historical analysis shows that the IOC has never reacted in these cases as it did with respect to the ROC in the instant case, which demonstrates that it did not have any legal basis to suspend an NOC for such reasons. Indeed, in the following cases, the IOC has never suspended an NOC because of a disputed territorial boundary. The Panel has already dealt with the ROC's submissions in relation to Crimea and Sevastopol.

97. The dispute over the territory of Kashmir between India, Pakistan and then China, began in 1947 and has not been settled since. In this context, Art. II of the Constitution of the Pakistan Olympic Committee explains that the jurisdiction of the Pakistan Olympic Committee extends to Pakistan, the acceding States and the Territories under the control of Pakistan. This Constitution had to be approved by the IOC Executive Board according to the OC. The Bye-law to Rules 27 and 28 requires the approval of an applicant's statutes by the IOC Executive Board, which is a condition for the recognition of the NOC.

98. The Turkish invasion of Cyprus began on 20 July 1974 and progressed in two phases over the following months. This invasion lasted 4 weeks and 1 day and the result was that Turkey occupies 36.2% of Cyprus. However, as far the ROC knows, the IOC did not suspend Turkey's NOC in response to this invasion.

99. Armenia and Azerbaijan have an unresolved 27-year-long conflict over the territory of Nagorno Karabakh. Fierce tension has indeed existed between those two countries ever since they

[6] CAS 2020/A/6745 §90; CAS 2012/A/2750 §133.

received independence in 1991 following the break-up of the Soviet Union over ownership of Nagorno-Karabakh, a region in the South Caucasus which lies within Azerbaijan's internationally recognised borders. In this case to the best of the ROC's knowledge, the IOC has never reacted and has never suspended any of the NOCs of those countries.

100. In the long-lasting Israeli-Palestinian conflict, the IOC did not suspend any NOC. On the contrary, the IOC expressly underlined its dedication to the principle of individual responsibility, stressing that athletes should not be held accountable for the actions of their respective governments. Nevertheless, in September 2022, on the occasion of a visit by Thomas Bach in Palestine, the President of the Palestine Olympic Committee expressly *"called on the IOC to stop any Israeli sports activities on the internationally recognized Palestinian territories as per the Olympic Charter as the term of reference in both the regional and international sport context"*. The ROC says that it is not aware of any reaction by the IOC, or the imposition of any sanction or measures against the Israeli NOC.

101. According to the ROC, this is in contrast to the IOC's suspension of the ROC in the instant case, which amounts to sanctioning the ROC and Russian athletes as a result of a territorial dispute and/or the decision by the Russian Federation to consider as being part of its own territory several regions, which are not recognised as such by the majority of countries forming the General Assembly of the United Nations.

102. The ROC submits that these examples show that:

(i) In situations very similar to that in the present case, the IOC has never reacted by suspending an NOC;

(ii) The current suspension of the ROC is contrary to the principle of equality as between the NOCs;

(iii) The IOC has always refrained from deciding on a territorial dispute and/or referring to concepts of international public law such as *"territorial integrity"* when referring to the area of jurisdiction of NOCs.

(iv) The IOC acknowledged that the jurisdiction of an NOC can depend on the territories *de facto* occupied by a country, as for example the part of Kashmir occupied by Pakistan or the territories occupied by Israel. It therefore cannot now argue that this jurisdiction depends on the limits recognised by the international community.

103. In summary, the IOC may not lawfully apply double standards. Either it suspends all NOCs which recognise as their members entities by extending their jurisdiction *"over territories, that are considered by the countries of such NOCs as being an integral part of their* territories*, but which are considered by other countries as being illicit occupation, or the IOC considers (rightly) that such territorial disputes are outside the scope of its jurisdiction, and it applies the same standards to all concerned NOCs, by not issuing any sanction"*.

104. The IOC submits that the situations referred to by the ROC in its Appeal Brief differ significantly from the present case. Notwithstanding the foregoing, in each of these situations,

the IOC has consistently relied on the borders recognised by the international community to determine the jurisdiction of the relevant NOC.

105. The ROC's references to the conflicts over the territory of Kashmir, the conflicts over the territory of Nagorno Karabakh and the conflicts in Palestine are misplaced as these situations differ significantly from the present case. In contrast to the present case, the relevant NOCs did not extend their area of jurisdiction over that of another NOC or outside their own area of jurisdiction. As a result, the IOC had no grounds to impose sanctions on these NOCs. If issues arose, the IOC would simply defer to the position of the international community, as provided for in Rules 28.5 and 30.1 OC.

106. Similarly, the IOC submits that the ROC's further reference to the Turkish Cypriot occupation of Northern Cyprus is misguided. In this particular case, the IOC also followed the position of the international community, as provided for in Rule 30.1 OC, to ascertain the territorial jurisdiction of the Cyprus NOC. The IOC explicitly confirmed in writing to the Cyprus NOC that its jurisdiction covers the entire island, in accordance with the position of the international community. Importantly, the IOC formally confirmed that it had never recognised any NOC for "Northern Cyprus" and that the Turkish NOC had never claimed to include this territory under its area of jurisdiction. This situation differs significantly from the present case and is therefore irrelevant, except to emphasise that the IOC consistently relies on the position of the international community to define the area of jurisdiction of an NOC.

107. By the same token, on 28 September 2013, ahead of the Olympic Winter Games of Sochi 2014, the IOC formally clarified to the Georgian NOC that the IOC does not recognise an NOC for either Abkhazia or South Ossetia. The IOC confirmed that the Georgian NOC has jurisdiction over the entire territory of Georgia as recognised by the United Nations and the international community. Therefore, over the years, the IOC has consistently relied on the position of the international community to determine the jurisdiction of a NOC.

108. With particular reference to the Israel/Palestine conflict, there is no evidence that the NOC of Israel has been recognising Palestinian sporting organisations as its members or violating Rule 28.5 when read together with 30.1. Accordingly, there is no inconsistency between the IOC's stance as regards NOCs in relation to Israel/Palestine and NOCs in relation to Russia/Ukraine.

109. In the light of the above, the ROC's claims are clearly unsubstantiated. The Panel has seen no evidence that the IOC has applied "double standards" in relation to Rules 28.5 and 30.1. The IOC has always relied on Rule 30.1 and the position of the international community to determine the area of jurisdiction of an NOC. Furthermore, the IOC has never been in a position where it knew it had grounds for suspending an NOC for a violation of Rules 28.5 and 30.1 but decided not to do so.

110. Consequently, the IOC did not breach the principle of equality by suspending the ROC in the instant case.

C. Violation of the Principle of Predictability

111. As already noted at paragraph 72 above, the Appellant's submissions regarding the principle of

predictability overlap with its submissions in relation to the principle of legality, and indeed with its submissions in relation to the principle of equality. The principles of equality and predictability are both aspects of the principle of legality.

112. As a result, the analysis developed at paragraphs 73 to 110 above is repeated here. It leads to the same conclusion, namely that there has been no breach. The IOC did not breach the principle of predictability by suspending the ROC in the instant case.

D. Violation of the Principle of Proportionality

113. Rule 59 of the OC provides, so far as is material:

"In the case of any violation of the Olympic Charter, the World Anti-Doping Code, the Olympic Movement Code on the Prevention of Manipulation of Competitions or any other decision or applicable regulation issued by the IOC, the measures or sanctions which may be taken by the Session, the IOC Executive Board or the disciplinary commission referred to under 2.4 below are: …

1.4 with regard to NOCs:

a suspension (IOC Executive Board); in such event, the IOC Executive Board determines in each case the consequences for the NOC concerned and its athletes;

b withdrawal of provisional recognition (IOC Executive Board);

c withdrawal of full recognition (Session); in such a case, the NOC forfeits all rights conferred upon it in accordance with the Olympic Charter;

d withdrawal of the right to organise a Session or an Olympic Congress (Session)".

114. The ROC submits that the Decision exceeds what is reasonably required for a number of reasons.

115. The first reason is that there was no justifiable goal or objective for the Decision. The territorial integrity of Ukraine – as a State – could not be the justification. On the contrary, *"sports organisations within the Olympic Movement shall apply political neutrality"*[7]. The interest of a country or of a State cannot therefore be a legitimate basis for a decision within the Olympic Movement. This is also emphasized by the fact that in similar situations, the IOC did not react and did not suspend the NOC of the country concerned.

116. Secondly, it is not possible to understand why the measure taken by the IOC was necessary to reach the declared goal, *i.e.* protection of the territorial integrity of the NOC of Ukraine. The ROC has no power in relation to the armed conflict in Ukraine, and even less in relation to the Russian Constitution that treats the Regions as part of the Russian territory.

117. Thirdly, the suspension was disproportionate because the constraints which the ROC and the

[7] 5th Fundamental Principle of Olympism.

athletes will suffer as a consequence of the Decision are not justified by the interest in achieving the declared goal of protecting the territorial integrity of the NOC of Ukraine.

118. Fourthly, the 4th Fundamental Principle of Olympism states that *"[t]he practice of sport is a human right. Every individual must have the possibility of practising sport,* without *discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play"*. The Decision affects Russian athletes, as their participation in the 2024 Paris Olympic Games will have to rely entirely on the good will of the IOC.

119. Fifthly, the sanction of suspension is disproportionate because the IOC did not even set a deadline for the end of the suspension. A suspension that is unlimited in time violates the principle of proportionality. The decision to suspend the ROC *"until further notice"* makes the ROC totally dependent on the goodwill and judgement of the IOC, in the absence of any criteria laid down by the IOC.

120. In this context, the ROC submits that a time limit expiring at the end of the war in Ukraine would not be proportionate. Such a territorial dispute could last for decades. Moreover, the suspension of the ROC until the resolution of the conflict between Ukraine and Russia would make this suspension dependent on events external to the parties to this dispute, *i.e.* the IOC and the ROC. The end of the territorial dispute and the recognition by the international community of any treaty or *de facto* situation defining the borders between Ukraine and the Russian Federation is a matter of public international law, on which neither the IOC nor the ROC can have influence.

121. The IOC submits that the Panel can only amend a disciplinary decision if it considers that the IOC has acted *"arbitrarily and exceeded the margin of discretion afforded to it by the principle of association autonomy"*; and even if the Panel disagrees with the sanction imposed by the IOC, it should only amend it *"if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence"*[8].

122. The Panel does not understand the ROC to challenge this last submission, which is supported by CAS authority. It means that the ROC has a high hurdle to surmount in order to succeed with its disproportionality argument.

123. The Panel addresses each of the reasons advanced by the ROC in turn.

124. As regards the first reason, it is true that the 5th Fundamental Principle of Olympism mandates political neutrality among sports organisations within the Olympic Movement. This means that the IOC is obliged to ensure that each NOC applies political neutrality and complies with the OC. This includes preventing any NOC from interfering with the territorial jurisdiction of another NOC. That is achieved by ensuring compliance with Rule 28.5 read together with Rule 30.1, if necessary, by imposing sanctions in accordance with Rule 59 in the event of a violation. Therefore, the Panel cannot accept the submission that protecting the territorial integrity of the NOC of Ukraine cannot be a justification for the Decision.

125. As for the second reason, it is not to the point that the ROC has no influence over the armed

[8] CAS 2014/A/3562; CAS 2009/A/1817; CAS 2009/A/1844; CAS 2015/A/4271.

conflict. The Decision did not sanction the ROC for the armed conflict. Rather, as the IOC submits, the Decision sanctioned the ROC because it had accepted regional Ukrainian organisations as members in violation of Rules 28.5 and 30.1.

126. The third reason is without a factual foundation. On 8 December 2023, the Executive Board of the IOC decided that athletes with a Russian passport who qualified through the existing qualification systems of international federations would remain eligible to compete at the 2024 Paris Olympic Games as Individual Neutral Athletes subject to a number of conditions. In the opinion of the Panel, these conditions are fair and carefully calibrated to ensure that individual athletes are in fact politically neutral.

127. As for the fourth reason, the rights of individual athletes are sufficiently protected if they are and remain neutral. Their right to participate in the Paris Olympic Games does not depend on the goodwill of the IOC, but on the application of the OC.

128. As regards the fifth reason, suspension was the least intrusive measure that the IOC Executive Board could have imposed under Rule 59.1.4. It could have imposed the more serious sanctions mentioned in Rule 59.1.4 b to d. The IOC was entitled to take the view that the ROC's violation of Rule 28.5 in conjunction with rule 30.1 was serious and merited the imposition of a substantial sanction. It could have said that the suspension would remain in place until the dispute between Russia and Ukraine was resolved, although that would not have met the ROC's argument based on the alleged need for certainty. Instead, the IOC decided to suspend the ROC's membership *"until further notice"* so that, for example, the suspension could be lifted if this was justified by future circumstances. Indeed, the possibility of this occurring was foreshadowed in the Decision itself (*"the IOC EB also reserves the right to take any further decision or measure depending on the development of this situation"*). The Panel considers that this was an entirely reasonable response by the IOC to a serious violation of the OC. It was far from being an evidently and grossly disproportionate response to the ROC's violation of the OC. In these circumstances, there are no grounds for the Panel to interfere with the Decision for lack of proportionality.

E. Conclusion

129. In light of the foregoing, the Panel holds that the Decision did not breach the principles of legality, equality, predictability or proportionality. As a result, the appeal must be dismissed. The Decision stands. The Panel wishes to repeat with emphasis that the issues in the present case are not whether, as a matter of international law, Russia's annexation of part of the Ukraine was lawful or where the lawful boundary lies between the two countries. These issues raise questions of sovereignty and politics and cannot and should not be resolved by IOC or CAS or national courts.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 31 October 2023 by the Russian Olympic Committee against the decision rendered by the Executive Board of the International Olympic Committee on 12 October 2023 is dismissed.

2. The decision rendered by the Executive Board of the International Olympic Committee on 12 October 2023 is confirmed.

3. The present arbitral award is pronounced without costs, except for the Court Office fee of CHF 1,000, which is retained by the Court of Arbitration for Sport.

4. (…).

5. All the other motions or prayers for relief are dismissed.