

DETAILED ANALYSIS
Proposals for the ISU 50th Ordinary Congress 2004
Amendments to the Constitution and the General Regulations

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(Acton/Djilas/Duanmu/Ibsen/Remarque/Sakharov/Sakigake/Zola)
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V. Proposed “New 2006 Constitution”
(see separate Introduction)

There are two overall flaws in the Proposal to adopt a new Constitution effective as of the commencement of the 51st Congress in 2006 (the proposed “New 2006 Constitution”):

- 1 Creation of additional levels of management and increased power and authority of the “Secretary General” and the “Board of Directors” effectively reduces the ability of the Members to supervise and control the overall operations of the ISU. That approach is contrary to the following fundamental protections of Members based upon provisions of Swiss law:**
 - (a) The Constitution of the ISU cannot modify or supersede requirements of Swiss law. [Civil Code Article 63 para 2]
 - (b) The Congress of the ISU is “the highest organ” of it as an association recognised under Swiss Law. [Civil Code Articles 60 para 1 and 64 para 1]
 - (c) Specifically, the Congress “has control of the other organs” of the ISU and “can at any time revoke the authority conferred upon them”. [Civil Code Article 65 para 2]
 - (d) Moreover, the “power of revocation on material grounds is an absolute right granted” to the Congress by law. [Civil Code Article 65 para 3]
 - (e) Quite tellingly, the law requires that resolutions affecting the ISU (including those which result in amendment of the Regulations) must be passed by the Congress. [Civil Code Article 66 para 1]
 - (f) Use of the term “Board of Directors” is both erroneous and misleading as the members of it are not elected by the Members. It also leaves great potential for confusion as Swiss law provides that the “directors have the right and duty to manage the affairs of the association”. Do the Members anticipate those persons will be the members of an organ elected by them (the Council) or of an organ which they do not elect and over which they have no direct power of supervision (the newly-created “Board of Directors”)? [Civil Code Article 69]

2 The Proposal will have the effect of making the Sections of the Congress (both Speed and Figure) at least powerless and potentially meaningless.

- (a) It will have the effect of moving significant portions of the Special Regulations into the General Regulations and thus matters of a technical nature unique to either branch of the sport (Speed or Figure) will be subject to decisions by delegates and representatives of the other branch having no expertise or even experience in the matters covered.
- (b) It will have the effect of removing from the Sections the exclusive power over the portions of the technical rules unique to either branch of the sport which remain in the Special Regulations. Those can be modified, adopted, superseded or suspended by vote of the applicable Technical Committee, subject to the approval of the one organ in the ISU which has absolutely **NO** expertise in technical aspects of the sport: the Board of Directors. Indeed, the Sections (Speed and Figure) will no longer consider and vote on motions to amend the Special Regulations except in the context of “take-it-or-leave-it” objections.
- (c) The Members in each Section will have the opportunity to object to Special Regulations adopted (or proposed for adoption) by the Technical Committees and approval by the Board of Directors, but they will not have the authority to submit proposals or modify ones submitted by the applicable Technical Committee: the choice will be to accept a proposed Regulation as written or to object to reject it outright.

Those very significant defects in the Proposal to adopt the proposed New 2006 Constitution will come at the expense of the Members and the rights which they have as creators of the ISU. Instead, they would become creatures of it. The following table identifies additional serious flaws in the identified portions of the Proposal (each identified as a “2006 Provision” corresponding to the indicated Article/Paragraph of the proposed New 2006 Constitution):

2006 Provision	Topic Description	Observations / Comments / Recommendation(s)
7/7	Obligations of Office Holders, etc.	The New 2006 Constitution brings an innovation to the Constitution by specifying the obligations of the listed persons holding official positions with the ISU. That list, however, omits the most important obligation: to respect and preserve the best interests of the Members as a collective group. The obligations may actually be interpreted as requiring the listed persons to withhold information from the Members or to present an artificial and false impression of unanimity even on controversial issues.
8	Bodies and Office Holders of the ISU	Under Swiss law, the ultimate authority within the ISU is the Members acting in Congress. The current Constitution recognises that authority and at the same time recognises the authority and obligations of the Council between proceedings

2006 Provision	Topic Description	Observations / Comments / Recommendation(s)
8 cont.		of the Congress. The presentation set forth in the New 2006 Constitution dilutes the stature of both by including them as merely part of the inventory of levels of authority within the ISU. In any event, this listing does not change either the ultimate authority under applicable law of Members acting in Congress and it does not change either the authority or obligations of the Council. It might, however, result in disputes which could otherwise be avoided by failing to note clearly that all of the bodies and Office Holders of the ISU set forth in that list are subject to the ultimate authority and control of the Members acting in Congress.
9/6	Congress decisions are final	This provision is identical to the corresponding provision of the current Constitution (Article 9 para 6). It is important to note, however, that those decisions are in fact NOT final to the extent specified in Swiss law. Indeed, one or more Members should submit an Urgent Proposal for the 50th Congress to clarify that <u>“Decisions of the Congress taken in accordance with the requirements of this Constitution and the Code of Obligations of Swiss law are not subject to appeal within the ISU or to any external tribunal except as specified in this Constitution or as provided under applicable law.”</u> If the Constitution is to be restated in its entirety by approval of the New 2006 Constitution, this provision should also be revised accordingly before approved by the Members.
11/2	Parties which can propose changes to the Constitution and Regulations	<p>If the Appeals Commission (or Disciplinary Commission if Proposal No. 52 is approved) are actually to be “independent,” they must have the ability to submit proposals directly to the Congress rather than rely upon the Council to do so for them.</p> <p>The text indicates that the indicated parties are “entitled to propose to Congress alterations in the Constitution, its Procedural Provisions, and in the Regulations.” In fact, the Members are NOT entitled under the New 2006 Constitution to make such proposals with respect to the Special Regulations. Instead, their rights will be limited to (1) making proposals to the applicable Technical Committee, and (2) objection to actions taken by the Technical Committees to adopt, amend, rescind or suspend Rules within the Special Regulations.</p>

2006 Provision	Topic Description	Observations / Comments / Recommendation(s)
11/2	Majorities for alterations	This provision interferes with the authority of the Members otherwise assured under Swiss law to modify or amend all of the Regulations, including the Special Regulations.
16/2	President	This provision of the New 2006 Constitution grants additional authority to the President, but it eliminates the component of responsibility. This change could be used to claim that the President is essentially unaccountable except with respect to “commercial, media/communications and legal areas” for which the President is subject to the “supervisory duties” (not authority) of the Council. This provision appears innocent but at the very least leaves open an avenue for abuse if it does not actually encourage it.
17	Functions of Council	While this provision appears to grant authority to the Council, it actually interferes with it. First, it removes the power of the Council over the “management of the affairs of the ISU”. Either that is in violation of Article 69 of the Swiss Civil Code or the effect of the New 2006 Constitution is to shift the power granted by that provision to some other organ of the ISU which is NOT elected by the Members acting in Congress: the “Board of Directors. Second, it limits the power of the Council by providing that dismissal of the Director General requires a supermajority of 2/3rds <u>and</u> even then cannot be done if the President does not agree with such dismissal.
18	Director General	These provisions appear to grant exclusively to the Director General the authority for management of the ISU which is otherwise reserved under Swiss law to the Council. Many key actions of the Director General are not even subject to the approval of the Council but instead merely must be reported to it.
19/2	Chairman of the Board of Directors	This nature of this position and the qualifications of the person who would fill it are remarkably vague. In order for that person actually to be “independent” as required by the New 2006 Constitution, the position almost certainly will be filled by a paid executive. The Members should be informed of the budgetary implications of this position. As with the Director General, the Chairman of the Board reports to the President and it may thus be necessary to provide the Chairman with a salary on a parity with that paid to the Director General.

2006 Provision	Topic Description	Observations / Comments / Recommendation(s)
19/2 cont.		The Chairman of the Board is obligated to “endeavor” to discharge the duties of the office “in accordance with the decisions of the Congress, the Council and the Board of Directors. Failure to do so should, instead be grounds for immediate dismissal.
19/3	Directors	A “Board of Directors” of an association such as the ISU would be elected by the Members and as such would be the organ delegated by them to manage the affairs of the ISU between Congresses. As used in the New 2006 Constitution, the “Board of Directors” is merely a committee of persons who have the word “Director” in their title. Use of the term “Board of Directors” merely leads to a serious potential for confusion as to whether the Council actually has the authority <u>and duty</u> required under Swiss law
19/4	Assistance to the Board of Directors	This provision would more accurately be labelled “ <u>Assistants</u> to the Board of Directors”. It requires the Technical Committees to provide assistance to the Board of Directors (again, actually merely a committee of persons having the word “Director” in their title) rather than the other way around. Indeed, this provision authorises this committee of “directors” to “oversee and supervise” specified areas of ISU activity -- including the activities of the Technical Committees. In other words, a group of appointed (and potentially remunerated) individuals will have authority over an organ elected by the Members and acting on their behalf: the Technical Committees.
19/5	Functions of the Board of Directors	This provision of the New 2006 Constitution actually grants to this group of appointed (and potentially remunerated) individuals the collective ability to <u>veto</u> actions and decisions of the Technical Committees. Even the Council does not currently have that authority.
20/2/e)	Technical Committees members and Eligibility	Each Technical Committee will have 6 members: 4 elected by the Members (including the Chair) and 2 appointed by the Council. Only the 4 elected members will have the experience and expertise currently required of all 5 members of the Technical Committees. The Members should also give serious consideration to the specific exemption from the eligibility requirements of Rule 102 as there are non-financial reasons why a person might lose eligibility but

2006 Provision	Topic Description	Observations / Comments / Recommendation(s)
20/2/e) cont.		such person would still be permitted to serve on the Technical Committee if she or he is a coach.
20/3	Functions of the Technical Committees	The current powers of the Technical Committees with respect to evaluations and assessments of officials would continue <u>except</u> for “disciplines where an ISU Officials Assessment Commission is established.” The New 2006 Constitution provides for such Commission for only the Figure Skating Branch and further provides that it is appointed by the Council. As a result, the Technical Committees in that branch will have virtually no meaningful role even though a majority of the members of each will continue to be elected by the Members.
22	Officials Assessment Commission for the Figure Skating Branch	This provision is apparently designed (1) to make the Technical Committees irrelevant, and/or (2) to play a key role in the New Judging System. It actually provides that it will be “completed/amended depending on the New Judging System implementation” but gives no guidance even as to the general topics of such modifications much less the specific content upon which the Members would need to make an informed decision on whether to accept or reject this provision specifically or the New 2006 Constitution as a whole.
VII/A/2	Proposals to Congress	<p>Members are currently entitled to receive printed copies of all Proposals by not later than February 15 preceding a Congress. The New 2006 Constitution would result in the Members getting a “summary” of Proposals 15 days earlier but would not actually receive the text of Proposals until April 30 -- well after the World Championships when they would otherwise have an opportunity to discuss the Proposals and the specific ideas behind them.</p> <p>Members will be able to submit proposals for the Special Regulations to the Technical Committees, but must do so by not later than September 1 of the year prior to the Congress. That is unreasonable.</p>
VII/A/25	Invalid Ballots	This Provision would require Members to vote for the full number of positions being elected, even if the did not believe there were qualified candidates for those positions. This Provision would also prohibit “write-in” votes. Both restrictions interfere with the rights of the Members.

If required to vote on the “New 2006 Constitution” as a whole instead of on whether to adopt specific and separately identified provisions of it, the Members should **REJECT** the proposal to adopt it.

The following provisions of the “New 2006 Constitution” are addressed in the Observations / Comments / Recommendations regarding ISU Council Proposals to amend the Constitution (Part I of this Analysis):

2006 Provision	Proposal
13/2	23
15/8 & 9	34
27/3	51
VIII/A/24	68
VII/B/10	71
VII/E/1	38 & 80

2006 Provision	Proposal
13/3	24
23 - 26	52
VII/A/3	58
VII/A/29	69
VII/C/6	75
V11/I/4	82

2006 Provision	Proposal
15/4 & 5	33
27/2	50
VII/A/6	59
VIII/B/7	70
VII/D/6	77

The following provisions of the “New 2006 Constitution” are not included in any of the Proposals for amendment of the Constitution but should be offered by one or more of the Members as Urgent Proposals in the event that the full “New 2006 Constitution” is not otherwise approved by the Members acting in Congress:

2006 Provision	Topic / Description
13/6	Alternating the position of First Vice President between each branch of the sport (Speed and Figure) each time an election is held for the positions of Vice President
21	Formal recognition of the Medical Commission

2006 Provision	Topic / Description
16	Succession of Vice Presidents and jurisdiction of Council members
24	Specifying that the Appeals Commission is to be an “independent body” within the ISU.

2006 Provision	Topic / Description
VII/A/7,18&20	<p data-bbox="432 212 1008 244">Role of a Parliamentarian</p> <p data-bbox="432 276 1008 786">NOTE: These provisions are similar to Proposal Nos. 60 and 63-66 with the following significant exceptions: (a) the concept in the New 2006 Constitution would be discretionary to the Council, rather than a procedural safeguard for the Members, (b) the provisions of the New 2006 Constitution do not specify that the “Parliamentarian” must have professional qualifications to serve in that capacity, and (c) the provisions of the New 2006 Constitution do not include a procedure which would allow the Parliamentarian to preside over portions of the proceedings when the Chairman chooses to be an active participant.</p>