

Constitution Committee Minutes



The Constitution Committee met at 09:30 – 18:00 hours on Monday 7 and at 09:30 – 13:30 on Wednesday 9 November 2011 at the Caribe Hilton Hotel, San Juan, Puerto Rico

Please refer to the ISAF website www.sailing.org for the details of the submissions on this agenda/referred to in these minutes.

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Present:

Philip Tolhurst – Chairman
Tom Schubert – Vice Chairman
Jack Caldwell
John Crebbin
Balazs Hajdu
Peter Hall
Stanislav Kassarov
David Kellett
Graham McKenzie
Jon Napier
Lorenz Walch
Vice-President Eric Tulla - for parts of the meeting

In Attendance

Cor van Aanholt - Item 8(a) only
Jerome Pels – Secretary General
Helen Fry – Head of Administration - Item 8 only
Trish Merrick – Governance Services Administrator

Apologies:

Nilufer Cakmakli
Abdelkarim Derouiche
Elena Dimitrakopoulou
Joseph Melino
Carlo Rolandi
Vladimir Sakovich
W. Scott Perry

Before commencing the business of the meeting, those present stood in memory of Fernando Pombo.

1. Opening of the Meeting

The Chairman welcomed the committee members and advised that the item 4 of the agenda would be considered at the second meeting otherwise matters would be considered in order. The observers present were also welcomed and apologies were noted. Committee members were informed about the procedure regarding interests in accordance with Regulation 7.7.

2. Minutes of the Previous Constitution Committee Meeting

(a) Minutes

The minutes from the meetings of 8 and 10 November 2010 having been approved previously, were noted and signed by the Chairman. The minutes can be downloaded at www.sailing.org/meetings

(b) Matters Arising

There were no matters arising not covered elsewhere in the agenda..

3. Matters Arising from Council Meeting of 6 and 7 May 2011

There were no matters arising from the Council Meeting of 6 and 7 May 2011.

4. Outstanding Matters from the Working Parties

(a) Revision of Schedule A (Article 42), Groups of National Authorities

Changes to the current MNA groupings are of prime concern to our members and following the decision in November 2010 for the MNA Grouping Working Party to prepare proposals to amend Schedule A it was agreed that:

- i) the Working Party will finalise a proposal by the end of February 2012 for the consideration of the Constitution Committee;
- ii) ISAF members will be informed and consulted on the proposed changes by the end of April 2012;
- iii) an updated report will be given to Council at the Mid-Year meeting in May 2012;
- iv) a submission will be put forward by the 1 August deadline for consideration in November 2012 and inclusion on the agenda for the General Assembly for ratification.

(b) Classification and Racing Rule 69 issues

Jon Napier reported that one Rule 69 case went to the Tribunal in July 2011 and confirmed that the procedure is working satisfactorily.

(c) Conflict of Interest

It was noted that, when established, the proposed ISAF Code of Ethics will cover conflict of interest (*see item 10(a)*).

(d) Constitution

The work of the Working Party during the year was reflected in the Special Resolutions to be put to the AGM, and Submissions 029-11, 030-11, and 031-11.

5. ISAF AGM 10 November 2011

(a) It was noted that :

- i) Special Resolution 1 on the AGM agenda for 10 November was to ratify the decision made by Council in November 2011:
- ii) Special Resolution 2 was on the AGM agenda pending the decision of Council on submission 029-11.
- iii) Special Resolution 3 was on the AGM agenda pending the decision of Council on submission 030-11.

(b) There were no other Special Resolutions for inclusion on the AGM agenda..

6. Submissions Deferred from Previous Council Meetings

Please refer to the 2011 Submissions Booklet for details of all submissions also available online at www.sailing.org/meetings

- (a) Submission 141-10 International Measurer - Race Officials

Opinion: Approve with the following amendment

Amend Regulation 31.13.1 and 31.13.2:

31.13.1 The appointment is made for a specific Class. **For the purpose of this Regulation a Rating System, except where otherwise stated, shall be treated be deemed to have the status of a Class.**

31.13.2 An International Measurer can only be appointed to a maximum of three Classes except **that** the Race Officials Committee may authorise additional Classes if they are very similar to measure as a Class the International Measurer is already appointed to.

31.13.3 A candidate for appointment as International Measurer shall:

- (a) have acted as an Equipment Inspector in at least two principle events (as defined by the International Measurers Sub-committee) of the Class he is applying for, within the last four years prior to 1 September of the year of application;
- (b) have attended an ISAF International Measurer's seminar within the last four years prior to 1 September of the year of application but not later than 14 October in that year; and
- (c) have an intimate knowledge of the relevant Class rules and the ISAF Equipment Rules of Sailing.
- (d) be recommended by the relevant class association **or, for Rating Systems, by an ISAF Rating class** and another International Measurer.

31.13.3 A candidate for re-appointment as International Measurer shall:

- (a) have acted as an Equipment Inspector in two principle events (as defined by the International Measurers Sub-committee) within the last four years prior to 1 September of the year of application; one of the events shall be of the Class **or Rating System** he is applying for. As an alternative, one of the events may be substituted by one hull prototype measurement of the Class he is applying for;
- (b) have an intimate knowledge of the relevant class **or Rating System** rules and the ISAF Equipment Rules of Sailing.
- (c) be recommended by the relevant class association **or Rating System**.

31.13.4 Once appointed, an International Measurer shall not be employed by or act as a consultant to or regular official measurer at a builder for that class **or Rating System**.

- (b) Submission 142-10 - *Withdrawn*

7. Submissions November 2011

Please refer to the 2011 Submissions Booklet for details of all submissions also available online at www.sailing.org/meetings

- (a) To consider submissions for which the Constitution Committee is the Reporting Committee and make recommendations to Council:
- i) Submission 029-11 regarding the rearranging and renumbering of the ISAF Articles from the Chairman of the Constitution Committee

Recommendation: Approve

Recommend to Executive Committee to approve this for consideration at the AGM 10 November 2011

- ii) Submission 030-11 regarding Associate Membership, Article 4(b) from the Chairmen of the Constitution Committee, Events Committee, ISAF Classes Committee and Regional Games Committee

Recommendation to Council: Approve

- iii) Submission 031-11 regarding Election of President and Vice-Presidents from the Executive Committee

Opinion: Reject

1. Although this submission follows on from a decision of a working party established by Council, and relates ostensibly to a Regulation, the manner in which ISAF Full Members elect their officers is principally one of corporate Governance and should therefore be determined by the Members in General Meeting.
 2. More generally the Committee must draw to your attention that this may not achieve the intended objective but would also effect a potential major shift in decision making power of ISAF. This may have unintended consequences that are difficult to forecast and necessitate further changes. The Constitution Committee considers that, if ISAF wishes to proceed with this system, more consideration will have to be given to the drafting to avoid unexpected consequences.
 3. The Articles reflect this and the concept of nominating a 'slate' is not envisaged by Articles 71 – 74, which in our view would need amending to facilitate this concept. The Committee has considerable doubts that the submission does not infringe the rights of Full Members to nominate an individual for election under Article 72.
 4. The Committee also has a number of concerns about the submission as it is firstly unclear whether the slate is established at the date of nomination or when the various nominations for Vice President are confirmed as eligible by the Election Committee
 5. Further it is unclear if an individual on a slate is ruled subsequently ineligible by the Election Committee
 6. Further, if at present a female nominee on a slate drops out the current provisions protecting minimum representation by women are not reflected.
- iv) Submission 032-11 regarding requests for interpretation from the Chairman of the Race Officials Committee

Recommendation to Council: Reject

Unnecessary and could leave to numerous interpretive arguments, and involve unnecessary procedural delays.

The reasons given for the submission confirm that regulation 6.2.3 already obliges the Committee to liaise with committees as appropriate, and that includes seeking both from them and elsewhere facts and background information.

The committee follows those principles.

The submission could be construed as going beyond those principles, and that could lead to perception that any interpretation had been particularly influenced by the views of a particular committee, particularly if that committee chose to articulate a particular interpretation which the Regulations make very clear is the exclusive purview of the Constitution committee.

The wording is also flawed, in that it firstly fails to respect Reg.16.4, secondly creates a potentially contentious scenario in determining which terms of Reference are relevant, and thirdly introducing an indefinable time period for response. (To ensure a timely response to the request this could be no more than 7 –10 days). Also by saying that the CC must do this "Before", rather than "In" considering a request, it creates a wholly unnecessary timing and procedural complication.

- (b) To consider submissions for which the Executive Committee is the Reporting Committee and the Constitution Committee is the Other Committee:
- i) Submission 001-11 regarding the ToR of the Development and Youth Committee and establishment of ISAF Trainer

Opinion: Approve with the following amendment:

6.3.3 The Development and Youth Committee shall:

- (a) ~~be responsible for the certification appointment and removal of ISAF Trainers-nominated experts to run ISAF technical courses for coaches;~~

Note: Definition of "Nominated Expert" may be required.

- ii) Submission 002-11 regarding the ToR the Class Rules Sub-committee and administrative process for Class Rule changes from the Chairman of the Equipment Committee

Opinion: Approve with the following amendment:

6.4.5.3 The Class Rules Sub-committee shall:

- (a) ~~monitor and advise the process for Class Rule changes of ISAF Classes in accordance with Regulation 10.11~~ **establish, maintain and publish the policies for the approval process of proposed class rules changes referred to in Regulation 10.11.4;**

- iii) Submission 003-11 regarding Regulation 6.12 and Windsurfing or Kiteboarding expertise from the chairman of the International Kiteboarding Association.

Opinion: Reject

Not consistent with most Committee Terms of Reference.

- iv) Submission 004-11 regarding Regulation 7 and the conduct of committees from the Chairman of the Constitution Committee.

Opinion: Approve

- v) Submission 005-11 regarding Regulation 7 and the Minimum Quorum for meeting of committees from the Chairman of the Constitution Committee from the Chairman of the Constitution Committee

Opinion: Approve with the following amendment

7.6.4 The quorum for meetings of a Committee is one third of the number of members of that Committee, except the Executive Committee for which

the quorum is one half of its members entitled to vote ~~and~~ if a meeting takes place by electronic means (see Regulation 7.1.1) then all members shall be sent any motion proposal by electronic means and any decision shall be determined by the votes of the majority of members who respond within the timescale prescribed by the Chairman of that Committee ~~which shall be not less than 7 days.~~

- vi) Submission 006-11 regarding the ToR for the Athletes' Commission and representation of non-Olympic classes from the Chairman of the Constitution Committee

Opinion: No Recommendation

Until the policy is determined by Council.

- vii) Submission 007-11 regarding the establishment of an ISAF Ethics Commission from the Chairman of the Constitution Committee.

Opinion: Defer

- viii) Submission 008-11 regarding Regulation 10 and Membership Fee to be paid to National Class Associations of ISAF Classes from the Executive Committee.

Opinion: Approve

- ix) Submission 009-11 regarding the ISAF Advertising Code, Regulation 20.2.31 and Authorization to Display Advertising from the Executive Committee.

Opinion: Approve

- x) Submission 010-11 - *Withdrawn*
- xi) Submission 011-11 regarding the ISAF Advertising Code, Regulation 20.7.1 and manufacturer's Marks from the Executive Committee.

Opinion: Approve with the following amendment

20.7.1 The display of the **manufacturer's and sailmaker's** marks is permitted at all times **as detailed in Table 2 but ~~in any case not on areas detailed in Regulation 20.4 and Table 1~~** and shall not **constitute** ~~be deemed as~~ a limitation to the rights to display Advertising as set forth in the Code, in the **class rules** and in the rules of a System.

- xii) Submission 012-11 regarding the ISAF Advertising Code, Regulation 20 Table 1 Events Advertising from the Executive Committee.

Opinion: Approve

- xiii) Submission 013-11 regarding the ISAF Advertising Code, Regulation 20 Table 2 Manufacturer's and Sailmaker's Marks from the Executive Committee.

Opinion: Approve

- xiv) Submission 014-11 regarding the ISAF Anti-Doping Code Regulation 21.4.3 from the Executive Committee.

Opinion: Approve

- xv) Submission 015-11 regarding the ISAF Sailor Classification Code Regulation 22, Definitions / Competitor Classifications from the Executive Committee.

Opinion: Approve with the following amendment

22.2.3 Group 3

If a Group 3 competitor has ~~raced~~ in ~~the~~ an Olympic Sailing Competition, ~~the~~ a Volvo Ocean Race or any racing which forms part of the events connected with the America's Cup (as determined by the Commission (which shall issue prior written notice of such determinations)), whether or not the competitor was Group 3 at that time, then:

- xvi) Submission 016-11 regarding the ISAF Sailor Classification Code Regulation 22, Procedures and Requirements from the Executive Committee.

Opinion: Approve

- xvii) Submission 017-11 regarding the ISAF Sailor Classification Code Regulation 22.2 from the Executive Committee.

Opinion: Approve

- xviii) Submission 018-11 regarding Regulation 25.14, Betting and Gaming Rights from the Executive Committee.

Opinion: Approve with the following amendment

25.14.1 ISAF exclusively owns and controls all commercial rights in and to the ISAF Events, such ~~C~~ommercial ~~R~~ights to include, without limitation and in each case on a worldwide basis, all:

25.14.2 ISAF shall be entitled to exploit the ~~C~~ommercial ~~R~~ights in such manner as it considers appropriate, including granting licences in respect of the same (or part thereof) to relevant Member National Authority or other third party(ies) from time to time.

- (c) To consider submissions for which the Equipment Committee is the Reporting Committee and the Constitution Committee is the Other Committee:
- i) Submission 051-11 regarding ISAF Classes Regulations and the restructure of Regulations 10 and 25 from the chairmen of the Equipment Committee, Events Committee and ISAF Classes Committee.

Opinion: Approve

As amended by submitters.

- ii) Submission 052-11 regarding the 29erXX for the Women's Skiff for the 2016 Olympic Sailing Competition from Federacion Argentina de Yachting, Chinese Yachting Association, Federacion Ecuatoriana de Yachting, Federacion Ecuatoriana de Yachting, Estonian Yachting Union, Finnish Sailing and Boating Federation and International 29er Class Association, Yachting Association of India, Polish Yachting Association, South African Sailing, Russian Yachting Federation, Yacht Club Uruguayo.

The committee noted that Stanislav Kassarov, President of the 470 Class, declared a potential conflict of Interest and abstained from voting.

Opinion: Reject

Proposal is not in line with the procedures for selecting events and equipment for the Olympic Sailing Regatta in the ISAF Regulations, in particular 23.1.3 (c). Council is bound by the Regulations as they stand as per Article 43 (c). To effect a change the relevant Regulations must first be changed by Council.

- iii) .Submission 054-11 regarding Regulation 10.5(h) and In-House Certification from the Royal Yachting Association.

Opinion: No Recommendation

Until the policy is determined by Council

- iv) Submission 055-11 regarding ERS Interpretations, Regulations 29.3.5 and 29.3.6 from IRC.

Opinion: Defer

The submission needs amending to include both definitions and to make appointments to the panel.

- (d) To consider submissions for which the Events Committee is the Reporting Committee and the Constitution Committee is the Other Committee:

- i) Submission 099-11 regarding Olympic Events Selection, Regulation 23.1.3 from the Chairman of the Events Committee.

Opinion: No Recommendation

Subject to policy being determined by Council. Constitution Committee to finalise the wording

- ii) Submission 100-11 regarding Selection of Core Events, Regulation 23.1.5 from the Chairman of the Events Committee.

Opinion: No Recommendation

Subject to policy being determined by Council. Constitution Committee to finalise the wording

- iii) Submission 101-11 regarding Olympic Events Selection - Voting Process, Regulation 23.1.9.

Opinion: No Recommendation

Subject to policy being determined by Council. Constitution Committee to finalise the wording

- iv) Submission 102-11 regarding ISAF Youth Sailing World Championship, Regulation 24.4.4 from the International 420 Class Association.

Opinion: Approve

Subject to Council approving the policy.

- v) Submission 104-11 regarding ISAF Youth Sailing World Championship, Regulation 24.4.9 from the Chairman of the Events Committee.

Opinion: Approve

Subject to Council approving the policy.

- vi) Submission 105-11 regarding ISAF Youth Sailing World Championship, Regulation 24.4.9 - Housekeeping from the Chairman of the Events Committee.

Opinion: Approve

Subject to Council approving the policy.

- vii) Submission 106-11 regarding ISAF Youth Sailing World Championship, Regulation 24.4.9 from the Chairman of the Events Committee.

Opinion: Approve

Subject to Council approving the policy.

- viii) Submission 107-11 regarding ISAF Youth Sailing World Championship, Regulation 24.4.9 the Chairman of the Events Committee.

Opinion: Approve

Subject to Council approving the policy.

- ix) Submission 108-11 regarding ISAF Sailing World Championships, Regulation 24.2.6 from the Canadian Yachting Association.

Opinion: Approve with the following amendment:

(a) ISAF shall determine the Continent on which the event is to be run 6 years before the championship, taking into account previous locations for the event and the need to ensure a worldwide rotation.

- x) Submission 109-11 regarding ISAF Sailing World Cup, Regulations 24.3.1 and 24.3.2 from Austrian Sailing Federation, Canadian Yachting Association, Royal Spanish Sailing Federation, Finnish Sailing and Boating Federation, Deutscher Segler-Verband, Hellenic Sailing, Italian Sailing Federation, Slovenian Sailing Federation, Serbian Sailing Association, US SAILING and the International Access Class Association.

Opinion: No Recommendation

Subject to policy being determined by Council. Wording needs to be revised.

- xi) Submission 110-11 regarding ISAF World Sailor Rankings, Regulation 27.1 from the Chairman of the Events Committee.

Opinion: Approve with the following amendment

27.1.1 Criteria applying to all grades of events

- (c) ~~In principle the event shall be sailed using a~~ **The Notice of Race shall be published at least 6 months before the event. The** Notice of Race and the Sailing Instructions ~~shall be in line~~ **comply** with the Notice of Race Guide and the Sailing Instructions Guide in the *Racing Rules of Sailing* and the event ~~should~~ **shall** be organised according to the principles laid out in the ISAF Race Management Manual.

- (e) Submissions for which the Match Racing Committee is the Reporting Committee and the Constitution Committee is the Other Committee:
 - i) Submission 119-11 regarding Grading Criteria for Grading of Events, Regulation 27.2.3(c) from the Chairmen of the Match Racing Committee and Race Officials Committee.

Opinion: Approve

As amended by submitters.

- ii) Submission 120-11 Women's Match Race Rankings Skipper Points in Open Events, Regulation 27.2.3(d) from the Chairman of the Oceanic and Offshore Committee.

Opinion: Approve

- (f) Submissions where the Oceanic and Offshore Committee is the Reporting Committee and the Constitution Committee is the Other Committee:

Submission 126-11 Special Regulations Administration, Regulation 30.2.1 from the Chairman of the Oceanic and Offshore Committee.

Opinion: Approve with the following amendment:

30.2.1 Changes in the Special Regulations shall take effect only ~~once~~ every two years on 1 January of an even year, except as provided in Regulation 30.1.2. No changes to Special Regulations shall, after 31 December 2009, become effective until 2012 except as provided in Regulation 30.1.2

- (g) Submissions where the Race Officials Committee is the Reporting Committee and the Constitution Committee is the Other Committee:
- i) Submission 132-11- *Withdrawn*
 - ii) Submission 133-11 regarding ISAF appointment of International Juries, Regulation 25.12.9 from the Chairman of the Race Officials Committee.

The Committee noted that Graham McKenzie, Jon Napier and Lorenz Walch declared a potential conflict of interest and abstained from voting on this submission.

Opinion: Reject

A new regulation to comply with an existing rule is not required.

- iii) Submission 134-11 regarding International Race Officials Administration, Regulation 31.12.1(b) from the Chairman of the Race Officials Committee.

Opinion: Approve

8. ISAF Members

- (a) Netherlands Antilles
 - i) The committee noted the IOC decision in July 2011 confirming that as result of the formal dissolution of the Netherlands Antilles in October 2010 and withdrawal of recognition of the Netherlands Antilles NOC temporary measures were put in place for athletes from the Netherlands Antilles to qualify and compete at the 2012 Olympic Games under the Olympic flag.
 - ii) Cor van Aanholt from the Netherlands Antilles Sailing Federation informed the committee of the situation regarding Bonaire, Curacao and St Maarten.
 - iii) The Committee noted that the NOC's membership of the federation could continue, but limited to its representation of Curacao and St Maarten.

- (b) Applications Membership

It was agreed that Kosovo may proceed to apply for Full Membership status.

- (c) Challenge to Existing Member

The Chairman reported that, following successful mediation, the issues between ISAF Member Yacht Club Ypacarai (YPY) and the Federacion Paraguaya de Vela (FEPAVE) have been resolved, and advised that an application from FEPAVE should be received in due course

- (d) Libya

The situation regarding the NOC in Libya, as monitored by the IOC, was noted.

9. Annual Report

The Chairman summarised the items that would be included in the verbal report on the activities of the Constitution Committee presented to the ISAF Council meeting on 10 November 2011.

10. Any Other Business

- (a) Ethics Commission Working Party

Decision:

Following the recommendation to Council to defer submission 007-11 Philip Tolhurst, Graham McKenzie, Jon Napier and were appointed to a Working Party to review the IOC Code of Ethics and other Codes from International Federations to review as applicable to Sailing. A report will be made to Council at the Mid-Year meeting in May 2012.

- (b) Age discrimination

The decision of the Court of Justice of the European Union was noted.

- (c) Interpretations

The chairman summarised the activity regarding the request for an interpretation received in April which was found to be subject of a Review Board Case. Since decisions of the Review Board govern all ISAF activity, and had addressed the matters raised, it had been decided that it was not appropriate to pursue the matter, and the National Authority in question had been so advised.

There being no further business the meeting was closed.