



IHB File No. S3/7020

CIRCULAR LETTER 22/2009/Rev¹
08 April 2009

**WORKING GROUP ON THE REVISION OF SPECIAL PUBLICATION 23
"LIMITS OF OCEANS AND SEAS" (S-23WG)**

Reference: IHB CL 03/2009 dated 12 January

Dear Hydrographer,

1 The Directing Committee would like to thank the following fifty-two (52) Member States who responded to the Circular Letter referenced above: Algeria; Argentina; Australia; Bangladesh, Belgium; Brazil; Canada; Chile; China; Croatia; Cuba; Cyprus; Denmark; Ecuador; Estonia; Finland; France; Germany; Greece; Guatemala; Iceland; India; Iran; Italy; Japan; Korea DPR; Korea Rep of; Latvia; Mexico; Morocco; Netherlands; New Zealand; Nigeria; Norway; Pakistan; Peru; Poland; Portugal; Romania; Russia; Singapore; Slovenia; South Africa; Spain; Sri Lanka; Suriname; Sweden; Turkey; Ukraine; United Kingdom; United States of America and Venezuela.

2 The breakdown of the Member States' replies is as follows:

- .1 Fifty (50) Member States agree with the proposed establishment of the S-23 WG contained in the referenced Circular Letter.
- .2 Two (2) Member States do not agree with the establishment of the S-23 WG.

3 The establishment of the Working Group of Special Publication 23 has been approved, having received the simple majority in accordance with paragraph 6 of article VI of the IHO Convention. The replies and comments from Member States are given in Annexes A and B respectively. Details of the participants in the Working Group are provided in Annex D.

4 Based on the comments raised by the Member States, the Bureau has:

- .1 Amended the Terms of Reference and Rules of Procedure as indicated in the attached Annex C. However the WG needs to consider specific issues raised by the Member States at their first meeting (number of representatives and participation of experts, chairmanship, et cetera).
- .2 Proposes that the Working Group holds its first meeting prior to the 4th Extraordinary International Hydrographic Conference at 1400 on Monday 1st June at the Auditorium Rainier III.

On behalf of the Directing Committee
Yours sincerely,

Vice Admiral Alexandros MARATOS
President

- Annex A: Table of replies
Annex B: Member States' comments
Annex C: Amended version of ToR and RoP
Annex D: List of nominations for membership of the Working Group

¹ This CL22/2009/Rev applies to the English version only

| Member States | YES | NO | Comments |
|--------------------|-----|----|----------|
| 1. Algeria | X | | |
| 2. Argentina | X | | YES |
| 3. Australia | X | | YES |
| 4. Bangladesh | X | | |
| 5. Belgium | X | | |
| 6. Brazil | X | | |
| 7. Canada | X | | |
| 8. Chile | X | | |
| 9. China | X | | YES |
| 10. Croatia | X | | |
| 11. Cuba | X | | |
| 12. Cyprus | X | | |
| 13. Denmark | X | | YES |
| 14. Ecuador | X | | |
| 15. Estonia | X | | |
| 16. Finland | X | | |
| 17. France | X | | YES |
| 18. Germany | X | | |
| 19. Greece | X | | YES |
| 20. Guatemala | X | | |
| 21. Iceland | X | | |
| 22. India | X | | |
| 23. Iran | X | | |
| 24. Italy | X | | |
| 25. Japan | X | | YES |
| 26. Korea D.P.R | | X | YES |
| 27. Korea Rep Of | X | | YES |
| 28. Latvia | X | | |
| 29. Mexico | X | | YES |
| 30. Morocco | X | | |
| 31. Netherlands | X | | |
| 32. New Zealand | X | | |
| 33. Nigeria | X | | YES |
| 34. Norway | X | | YES |
| 35. Pakistan | X | | |
| 36. Peru | X | | YES |
| 37. Poland | X | | |
| 38. Portugal | X | | YES |
| 39. Romania | X | | |
| 40. Russia | X | | |
| 41. Singapore | | X | YES |
| 42. Slovenia | X | | |
| 43. South Africa | X | | |
| 44. Spain | X | | |
| 45. Sri Lanka | X | | |
| 46. Suriname | X | | |
| 47. Sweden | X | | |
| 48. Turkey | X | | |
| 49. Ukraine | X | | |
| 50. United Kingdom | X | | YES |
| 51. USA | X | | YES |
| 52. Venezuela | X | | YES |

MEMBER STATES' COMMENTS:

ARGENTINA

The need to have, as soon as possible, a new edition of the Publication S-23 is clear and, in order to facilitate the task of the Working Group, to prevent new discrepancies between any Member States and the IHO as a whole and to have a draft of such publication without disagreements, which could slow down its approval process, I believe it is essential to include the following concepts:

Terms of Reference:

1. That the solution for the concerned area should be exclusively sought within the Working Group, without adding new elements of controversy or discussion;
2. That the unified concept of the 3rd edition of this publication should be kept; this implies not to divide it into regions in order to maintain a global perspective;
3. That the timeframe for the work of this WG should be calculated, from the establishment of the group and the commencement of its work;

Rules of Procedure:

1. That the WG should make a maximum effort to get a consensus on the proposal;
2. That, if it does not obtain a consensus, the WG should limit to draft a report on the status, including alternatives to continue looking for a resolution for this publication.

AUSTRALIA

Propose an initial face to face meeting to set up the WG and introduce members on Monday 1 June during the registration day for 4th EIHC. If any subsequent face to face meetings are required these should be linked with meetings of the HSSC or IRCC.

IHB's comments:

The Bureau agrees with Australia's suggestion for a meeting.

CHINA

- (1) China does not agree with the simple majority voting mechanism in S-23 WG's Rules and Procedure.
- (2) In considering the sensitive feature of this publication, China suggests that S-23 WG submit all voting issues required to all Member States of IHO for approval.
- (3) China suggests that the last paragraph of S-23 WG's Rules and Procedure be replaced with the following: *the WG should work by consensus.

IHB's comments:

The Bureau has amended the voting process in the Rules of Procedure based on the wording that is being used by the Working Groups under the HSSC and proposed by USA. See Annex C.

DENMARK

Denmark finds that a formal working group is the best solution under the current circumstances.

FRANCE

5¹ Terms of Reference

SHOM suggests that the ToR be modified as follows:

5.1 ToR

Re-number b) to f) the items a) to e) under the first bullet and insert the following additional item a):

- a) **Relevant technical recommendations of the IHO (TR A4.2; specifications B550 to B552 from publication M-4) and of the Group of Experts on Geographical Names (UNGEGN)²**

² See for example the Agenda for the 25th UNGEGN session which includes the preparation/publication of **Toponymic guidelines for map editors** as well as the agenda for the 10th UN Conference on the **Standardization of Geographical Names**. The Working Group should also refer to UNGEGN publications : <http://unstats.un.org/unsd/geoinfo/documents.htm>

5.2 Rules of Procedure

SHOM recommends ensuring that the WG respects the purely technical nature of the IHO and therefore suggests the following changes:

1. Replace the first two bullets by the following text:

- Participation in the WG is open to all Member States **with one representative per Member State;**
- **Working Group members are qualified persons who act on an individual basis.**
- **The Chair shall be a member of the IHB Directing Committee;** the Vice-Chair shall be elected by the Members of the WG;
- The IHB will provide secretarial support if required.

2. Delete the rule referring to support from the RHCs.

IHB's comments:

Terms of Reference

The Bureau believes that there is no need to insert a new item a); the proposed documents and any other material needed are included under the current item e) of the Terms of Reference.

1. Rules of Procedure

The number of representatives from Member States is a matter for the Working Group to consider at its first meeting and so is the number of experts or qualified persons. As for the Chairmanship of the Working Group, the Directing Committee feels that it would be more appropriate that this position remain with a member of the Working Group.

2. The Directing Committee considers that this clause should be maintained in the case of an issue arising in which the RHCs need to be consulted.

JAPAN

Japan is willing to participate in the discussion on the revision of S-23. Therefore, Japan supports the establishment of the Working Group (WG) and will take part in the WG.

However, as for the draft ToR and RoP distributed by the Directing Committee, Japan is of the view that they need to be further refined. Japan would like to propose adding some elements to the draft ToR and RoP as follows.

(1) WG's nature

The primary purpose of the WG is to produce a draft 4th edition of Special Publication 23 "Limits of Oceans and Seas" (S-23). For this purpose, the WG should work technically and scientifically and each Member State should make its argument based on substantial evidences. This point should be mentioned explicitly in the ToR. Such nature of WG is consistent with that of IHO which is provided for in Article 2 of the Convention on the International Hydrographic Organization.

(2) Modality of Decision-making

Decisions should not be made by simple majority vote, but by consensus, for adopting the draft S-23 in the WG. It is important to ensure that the draft 4th edition of S-23 is fully acceptable to all Member States because S-23 is a guideline which should be used universally. If the draft 4th edition of S-23 is not adopted by consensus at the WG and is submitted to IHB with the participants of the WG being divided, the subsequent approval by the Member States of the International Hydrographic Conference will be difficult. For this reason, Japan believes that the WG should make its utmost effort to reach consensus. Thus, Japan cannot accept the current draft RoP, which allows the WG to hastily make decisions by a simple majority vote in a case where the WG cannot reach consensus.

(3) Timeframe

Japan supports the tenor of the Directing Committee's proposal which sets a deadline for the submission of a report. However, Japan is of the view that the proposed deadline, i.e. the end of year 2010, is too short, because the starting day of the WG is yet to be confirmed. In order to ensure

sufficient working period, we propose to set a deadline as “within two years after the establishment of the WG”. According to the draft ToR, a report shall be submitted with a draft 4th edition of S-23. However, Japan is of the view that the WG should submit only its status report of the work if the WG cannot reach consensus on the draft as mentioned above. Requiring the WG to submit a draft S-23 will lead to the premature drafting of S-23 and will adversely affect the subsequent discussion.

(4) Others

In addition to the above, Japan would like to submit some comments on the draft RoP from an operational viewpoint of the WG.

(a) The impartiality of the chair and the vice-chair

In order to ensure the impartiality of the WG, the chair and vice-chairs should be elected from WG members that have not made any proposals in relation to the revision of S-23 to date.

(b) IHB's secretarial support

In order to facilitate the WG's activity, IHB should provide full secretarial support.

(c) Holding the first session of the WG back to back with the 4th Extraordinary International Hydrographic Conference (EIHC)

In order to encourage the widest possible participation of Member States, Japan proposes to hold the first session of the WG back to back with or at the margin of the 4th EIHC.

(d) Voting method

As mentioned above, decisions should not be made by simple majority vote, but by consensus, for adopting the draft S-23 at the WG. ‘Consensus’, in this context, does not need unanimity. Any Member State which cannot clarify the reasons for its opposition to the draft S-23 on the basis of substantial evidence should not be eligible for blocking consensus.

IHB Comments:

- 1) There is no need to be explicit about the nature of the Working Group as it is very clear under Article II of the Convention. It goes without saying that the Convention should be followed by all bodies established by the Organisation.
- 2) Please refer back to Bureau's comments for China.
- 3) The Directing Committee has amended the submission date to June 2011 which will allow 2 years after the establishment of the WG.
- 4) The Rules of Procedure have been amended to indicate that the Bureau will provide the Secretarial support.

KOREA DPR

As suggested by some Member States in Annex B to CL03/2009, we think that the IHB must become master in settlement of the problems raised in the process to issue the 4th Edition S-23 by IHO, based on Technical Resolution thoroughly.

Reminding you that the IHO has been historically fair in dealing with the raised matters, based on the Technical Resolution, we believe that the problems related to the issue of the 4th Edition S-23 must be also dealt in that fair way.

In view of the fact that there are authoritative IHO Technical Resolutions, we think that the establishment of the S-23 Revision Working Group should not be originally discussed and it exerts a bad influence upon the working authority of IHO. As a full-fledged Member State of IHO and direct concerned State with the problems raised in issue of S-23, the DPRK is carefully studying the items 2, 3, 4 of the voting form.

KOREA Rep Of

We firmly believe that the mandate of the WG should be to consider all possible means and ways to produce a revised version of S-23, and report them to the International Hydrographic Conference. Based on this position, we would like to raise the following concerns regarding the Terms of Reference and Rules of procedure of the WG.

First, considering the mandate of the WG as mentioned above, we would like to propose replacing part "c" of the Terms of Reference, "the positions and comments expressed by States in response to CL78/2008", with "the positions and comments expressed by States in response to the previous IHB Circular Letters." This will enable the WG to review all of the constructive proposals made so far.

Second, while we are not opposing the proposal that the WG should work by consensus, we believe that it would be illogical and inappropriate to give the WG the authority to take decisions. This is especially so, since the only willing States will be participating in the WG. The Conference, in which all Member States participate, will be the right place to make decisions. Therefore, we would like to request that the reference on decision-making be deleted from the Rules of Procedure.

The specifics regarding the Terms of Reference and Rules of Procedure may be discussed further once the WG is established.

IHB's comments:

In reply to the first issue, this point is covered by paragraphs d) and e) of the Terms of Reference. For the second issue please see the Bureau's comments for China concerning the decision-making process.

MEXICO

Except for the last item concerning the voting, it mentions that "the decisions should be taken by simple majority of the Working Group Members who are present and voting". This is against item n° 4, in which it is mentioned that the Working Group must work essentially by correspondence, and this makes voting more convenient through means like this one.

IHB comments:

Please refer back to Bureau's comments for China

NIGERIA

The proposed ToR's are robust enough to guide the S-23 WG. However, the RoP's need to be more explicit considering the sensitivities of nations regarding limits and names of oceans and seas. The location of the secretariat should be specified and the S-23 WG would need to meet twice before submission of the final draft in December 2010.

NORWAY

A minor change the ToR could be to give the WG some more time, we propose 2 years.

IHB's comments

Please refer to our comments for Japan ref 3).

PERU

We agree with the updating of the 4th edition of the Publication: "Limits of Oceans and Seas" (S-23). We agree with the recommendations of Australia and USA; we think that the procedure of the data collection and the updating of the S-23 Publication through the Regional Hydrographic Commissions will be complicated. We believe that the Terms of Reference and the Rules of Procedure must be more accurate. We also think that, to solve the potential difficulties caused by such updating, a bigger environment than the regional one will be required and, as this publication has a global approach, the outcome of the Working Group's work should finally be submitted to the plenary session of the Conference (Assembly), as has been the case in previous situations.

PORTUGAL

IHPT recognizes that resolution needs to be achieved concerning publication of a new edition of Special Publication nr 23.

SINGAPORE

Singapore is of the view that the establishment of an S-23 revision WG would **not** be necessary as:

- (i) the technical work in producing a draft of the S-23 4th Edition has been done previously; and
- (ii) Recognising that the issue is non-technical in nature, we do not see how the establishment of a new WG could resolve the issue.

UNITED KINGDOM

1. Each of the following points individually highlights an urgent need to find a pragmatic solution to the issue: combined they make it imperative:

- the purpose of S-23 is to show the limits of oceans and seas;
- the revision of S-23 has been in hand for 40 years;
- the IHO must remain a credible international organization.

2. To deliver the required solution in the desired time-scale, it is important that the Working Group, if established, is guided by Terms of Reference and Rules of Procedure which provide strong guidance on its *modus operandi*, combined with sufficient flexibility to enable its members to bring original thinking to the issue. It will need a strong Chairman giving firm, clear, leadership to ensure it delivers a credible solution in a timely manner. UK's detailed responses on Terms of Reference and Rules of Procedure follow.

3. Terms of Reference (ToRs)

- The recent discussions on S-23 (XVIIth IHC, IHO CL 86/2007, IHO CL 78/2008) have been in the context of identifying potential ways to make the information in the draft 4th Edition of S-23 available to interested parties. At present, this high level approach is not reflected in the Terms of Reference. Indeed, point b) as it currently stands, risks re-opening the whole revision of S-23 since 1953.
- Given the long running nature of this issue, UK considers that the proposed Working Group should be given a sufficiently flexible remit to enable its members to bring original thinking to the issue to consider all options, eg web-based solutions, to identify a credible way forward. To encourage this, UK would prefer to see wording such as "version" rather than "edition" in the ToRs.
- It is worth spelling out that the WG should use technology as far as possible. The ISPWG WG was a model of efficient operation under strong leadership.

4. Rules of Procedure

Subject to the minor caveats set out below, UK supports the proposed Rules of Procedure, as they accord with normal IHO practice. Consensus will be particularly important in advancing this issue.

Point 4. In the event of any face-to-face meetings being convened, it could be useful to include an indication of any limit on delegation size.

Point 5 Again, in the event of any face-to-face meetings being convened, it could be useful to include an indication of any limit on the number of experts.

Point 7 It could be helpful to clarify that each Member State will have one vote.

IHB's comments:

The task of the Working Group is to revise the Publication S-23 based on the work conducted in the past and on all the documents that should contribute to the work of the WG.

The other issues should be considered by the Working Group.

UNITED STATES

The United States of America has two comments concerning this circular letter.

The first comment is that the last bullet in the Rules of Procedure should be revised to the following. "Decisions should generally be made by consensus. If votes are required on issues or to endorse proposals, only MS may cast a vote. Votes shall be on the basis of one vote per MS represented.

The second comment is that the United States of America would like to recommend that the WG adopt the approach outlined in the US comments to IHO CL78/2008.

IHB's comments:

The Bureau agrees with the first comment. Secondly, the approach to be followed will be up to the Working Group to decide.

VENEZUELA

Venezuela is committed to the earliest publication of the 4th Edition of S-23 and applauds any attempt to achieve this. Also we believe that the S-23 has to be maintained as a unique product and subject to a comprehensive revision, and we recommend that S-23 become an online digital publication.

**WORKING GROUP ON THE REVISION OF SPECIAL PUBLICATION S-23
(S-23WG)
LIMITS OF OCEANS AND SEAS**

Terms of Reference

The S-23WG shall:

- Produce a revised edition of Special Publication S-23, Limits of Oceans and Seas, making use of :
 - a) the current 3rd edition of S-23;
 - b) the work that has been done in the past years;
 - c) the positions and comments expressed by States in response to CL 78/2008,
 - d) other views that may come forward during the deliberations of the WG;
 - e) any other documents or material that may be considered appropriate.
- Submit a Report of the work of the WG together with a draft 4th edition of Special Publication S-23 to the IHB no later than June 2011, for the subsequent approval of Member States.

Rules of Procedure

- * Participation in the WG is open to all Member States;
- * The Chair and Vice-Chair shall be elected by the Members of the WG;
- * The IHB will participate as an observer and provide secretarial support;
- * The WG should work primarily by correspondence. Face-to-face meetings may be arranged if considered necessary by the WG;
- * If needed, experts can be invited to participate with the agreement of the Members of the WG;
- * RHCs should be involved, if required, to support the work of the WG.
- * Decisions should generally be made by consensus. If votes are required on issues or to endorse proposals presented to the WG, only Member States may cast a vote. Votes shall be on the basis of one vote per Member State.

Note: The IHB, under the guidance of the Chair, shall open a section on the IHO website where the List of Members of the WG as well as all the working documents will be posted.

| NOMINATIONS FOR MEMBERSHIP OF THE WG (Ref CL03/2009) | |
|--|--|
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