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6 February 2012

Comments by the Republic of Korea on the draft Report of S-23 Working Group to Member States

Dear Vice Admiral Alexandros MARATOS,

The Republic of Korea wishes to offer the following comments on the draft Report of the S-23 Working Group to Member States circulated by the IHB on 19 January 2012.

1. General comments on the report

■ On the overall presentation of the WG discussions

It should be noted that the S-23 WG had identified three areas of concern and accordingly, discussions took place on three different topics: The status of the Malacca and Singapore Strait; proposals by China for changes in names and limits in the South China Sea, East China Sea and Yellow Sea; and the naming of the sea area between the Korean Peninsula and the Japanese Archipelago. The current report, however, contains little to no record of various comments made by WG members on the first two topics. The Republic of Korea believes that the very basic mission of the report is to fully and accurately record all deliberations as they took place. The current draft report, in this regard, is in need of improvement.

■ On the presentation of the “Way Forward”

When it comes to the issue of the naming of the sea area between the Korean Peninsula and the Japanese Archipelago, the current draft report accords disproportionate attention to the Chair-Group’s “Way Forward.” The Republic of Korea believes that putting too much emphasis or excessively highlighting the “Way Forward” is inappropriate on the following grounds:

First, the “Way Forward” was simply one part of a proposal made by one of the S-23 WG members (Australia). Moreover, the “Way Forward” had clearly failed to gain support in the WG and was consequently rejected in accordance with the Rules of Procedure of the WG.

Second, although the draft report states that the Chair-Group proposed the “Way Forward” in December 2010 based on the WG members’ views, a careful study of the comments submitted to the Chair from August to October 2010 suggest otherwise. Out of eight responses submitted, only one member showed clear support for the insertion of reservation in an Annex, which the Chair Group proposed as “Way Forward”. Other seven members offered different ideas.

The report notes that the 2002 draft edition of S-23 in which a number of countries had recorded their reservations in an Annex could serve as a precedent. However, it must be noted that the cases of reservations that were shown in the Annex of the 2002 draft 4th edition are mostly about the limits of the sea area, not their names. They cannot serve as a precedent for naming issues such as the issue of the naming of the sea area between the Korean Peninsula and the Japanese Archipelago (please see 3.5 of the attached draft report).

■ On the presentation of the comments and proposals made by WG members

The Republic of Korea further believes that all comments and proposals that were made in the WG should be fully reflected in the final report to the Member States. It should be noted that all the WG members who have put

their ideas forward in the WG have taken time to study the issue and formulate their comments. Their efforts warrant our full recognition. It is also essential that the Chair-Group provide Member States with full account of all the ideas that were deliberated in the WG. The current draft report which omits or provides only sketchy descriptions of various proposals, apart from the Chair-Group's "Way Forward," should be thoroughly revised in this regard (please see 3.1, 3.2, 3.4 and 3.9 of the attached draft report).

2. On "Conclusion-Proposals"

Given that the WG has never come up with an agreed proposal to present to Member States, the Republic of Korea deems it inappropriate to mention "Proposals" in the Conclusion. The report to Member States should be simply a factual record of the WG activities. A simple concluding sentence that states that the work of the WG is complete and that "there is consensus on some issues while in others no consensus has been reached" should be a conclusion for the report.

3. On "Important Notice"

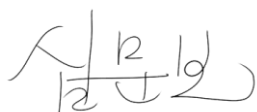
The Republic of Korea believes that, at this stage, it is entirely inappropriate to discuss the wording of the "Important Notice." It is premature and pointless to work on the text when the discussions directly related to it are still under way. The text for "Important Notice" must wait until the main body of the 4th edition of the S-23 is complete. Above all, the current wording "*When States use different names or limits compared to the ones indicated on specific pages, a reservation footnote has been inserted indicating the names(s) of the State(s) expressing reservation(s) and whether it refers to names, limits or both. A special Annex is appended to this document that provides details and arguments of the reservations.*" is totally unacceptable in that it is drafted on the wrong assumption that the "Way Forward" is to be adopted.

The Republic of Korea hopes that its comments on the draft report shall be constructive in producing a report which is more comprehensive, accountable and accurate. We kindly request the Chair-Group to fully reflect our comments in improving the draft report and look forward to seeing a revised report with

necessary improvements and corrections made.

The Republic of Korea agrees with the Chair-Group's opinion that the work of the S-23 WG has been now concluded. However, we will stand ready to engage fully and sincerely in future consultations for the resolution of this issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Moon-Bo SHIM'. The signature is stylized and cursive, with the first part being a large 'M' and the last part being a large 'S'.

Moon-Bo SHIM

Representative of the Republic of Korea to the S-23 WG

Encl. Draft Report of S-23 Working Group to Member States with suggested revision by the Republic of Korea

**REPORT OF S-23 WORKING GROUP TO MEMBER STATES
(SUGGESTED REVISION BY THE REPUBLIC OF KOREA)**

- References:
- a) CL 03/2009/bis1 dated 12 January 2009
 - b) CL 22/2009/rev1 dated 08 April 2009
 - c) Final minutes, S-23 WG first meeting, Monaco, 1st June 2009
 - d) Final minutes, S-23 WG second meeting, Singapore, 5-7 July 2010
 - e) S-23 WG Letter No. 06/2010 dated 20 December 2010
 - f) S-23 WG Letter No. 01/2011 dated 23 February 2011
 - g) S-23 Letter No. 02/2011 dated 21 March 2011
 - h) S-23 Letter No. 03/2011 dated 24 May 2011
 - i) S-23 Letter No. 04/2011 dated 22 July 2011
 - j) S-23 Letter No. 05/2011 dated 26 August 2011
 - k) S-23 Letter No. 06/2011 dated 23 December 2011

1. INTRODUCTION

1.1 S-23 is an IHO technical publication referring to “Limits of Oceans and Seas”. The 3rd edition dated 1953 remains the current edition but is out of date. The XI International Hydrographic Conference (IHC) in 1977 by decision No. 17 tasked the Bureau to undertake a revision of this publication. Regrettably, after 35 years, this work has yet to be completed. A brief background history of the efforts to revise the S-23 Publication and the problems encountered are contained in Annex E of reference c). It may be noted that the different positions taken by Korea and Japan in naming the sea area between the Korean Peninsula and the Japanese Archipelago, are a significant reason for the lengthy deliberations and delay in the progress of the revision of this publication over the last twenty years.

1.2 . Before 2009, ~~bilateral discussions took place between Korea and Japan for more than five years without any agreement.~~ the IHB has made a number of attempts to resolve the issue of naming of the sea area between the Korean Peninsula and the Japanese Archipelago. Recent examples being the idea of leaving the page on the sea area in question blank (see the draft Final Report of the 4th edition of the S-23 circulated in 2002); and publishing the 4th edition of the S-23 in two volumes, first of which would cover all the agreed issues, while the second one, which would be withheld for now, would contain matters that require further consultations (see the Report of Proceedings for XVII IHC vol.1). Various options proposed in naming this sea area have been rejected by either one or both of the interested States or did not receive the support of the appropriate majority of Member States.

◆ Briefly mentioning recent examples of proposals discussed in the context of IHO on naming the sea area in question would help IHO Member States to gain a fuller picture of the issue at hand.

1.3 Member States, in 2009, overwhelmingly supported the proposal of the Directing Committee for the establishment of a WG with, in accordance with the approved Terms of Reference (ToR), the following task to “**Produce a revised edition of Special Publication S-23, Limits of Oceans and Seas, and submit a report of its work together with a draft 4th edition of the publication to the IHB no later than June 2011, for the subsequent approval of Member States**”. Rules of Procedures (RoP) indicate that “**Decisions of the WG should generally be made by consensus**”. References a) and b) provide the details for the establishment of the S-23 WG. The final ToR and RoP are included in Annex G of reference c) and the membership of the WG can be found on the S-23 Working Group page of the IHO website (http://www.iho.int/mtg_docs/com_wg/S-23WG_Misc/S-23_WG_Members.pdf).

2. WORK OF THE S-23 WG

2.1 The S-23 WG, in accordance with its RoP worked mainly by correspondence and had two face-to-face meetings. The first meeting took place in Monaco on the 1st June 2009, organized by the Bureau, prior to

the 4th Extraordinary International Hydrographic Conference (EIHC) and was attended by 39 delegates from fourteen Member States. The second meeting was organized in Singapore by the Hydrographic Department of the Maritime and Port Authority (HD/MPA) and was attended by 42 delegates from thirteen Member States.

First meeting of the S-23 WG

2.2 Vice Admiral Alexandros Maratos, the President of the Directing Committee, chaired the opening of the first meeting providing the history of attempts to revise publication S-23, the importance of the publication and the establishment and task given to the S-23 WG by Member States. Vice Admiral Maratos asked for nominations for the post of the Chair of the WG. Nobody volunteered to Chair the WG. After discussions and an exchange of views France, supported by others, proposed, due to the significance of the work of the WG, that Vice Admiral Maratos should chair it. Although the WG should be chaired by a Member State, Vice Admiral Maratos accepted the proposal asking for positive participation and contribution of all members of the S-23 WG. Rear Admiral Christian Andreasen from USA, and past President of the IHB, was elected as Vice-Chair of the S-23 WG.

2.3 In order to progress its work on S-23 the following steps were agreed:

- Step 1, IHB to set up an S-23 WG on the IHO web site;
- Step 2, France (SHOM) to provide the IHB with standards, definitions and rules of procedures for toponymy. IHB to post these documents on the IHO website;
- Step 3, IHB to circulate a list of areas of possible concern to WG members by end July 2009;
- Step 4, WG members to comment on this list by end September 2009;
- Step 5, IHB to circulate a final list to WG members. Member States in any areas of possible concern then to be asked to provide their comments/positions; and
- Step 6, Based on the comments received from interested Member States in any areas of concern, IHB to draft a paper on the matter, circulate it to WG members and consider whether a face-to-face meeting is appropriate.

2.4 The minutes of the first meeting of the S-23 WG are posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG1/S-23WG1_Minutes_final.pdf .

2.5 In accordance with step 3 of the agreed work plan and the search conducted into the archives of the Bureau, three possible areas of concern were identified:

- The naming of the sea area between the Korean Peninsula and the Japanese Archipelago;
- Whether the Malacca and Singapore Straits should be located in the Indian Ocean or the South China Sea and Eastern Archipelagic Seas; and
- Proposals by China for changes in names and limits in the South China Sea, East China Sea and Yellow Sea.

The details of the “areas of concern” are posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG_Misc/Areas_of_Concern/S-23_Areas_of_concern.pdf .

Second meeting of the S-23 WG

2.6 In accordance with Steps 4 and 5, members of the WG accepted these areas to be examined as “areas of concern”. No additional areas were proposed by the members of the WG. Members of the WG agreed that a second face-to-face meeting was needed to examine in detail the “areas of concern” and take appropriate decisions and actions. The second meeting took place in Singapore as indicated in paragraph 2.1.

2.7 The meeting considered in detail the three areas of concern. The following should be highlighted as the result of the considerations and decisions taken:

- There was consensus between the members of the WG that the Malacca and Singapore Straits should be considered as an independent sea area, forming a separate administrative division in S-23. The meeting also agreed to amend the western limit of the Malacca Strait as proposed by India;
- Concerning the amendments proposed by China the meeting accepted/not accepted some while

for others further information was needed from China before a final decision could be taken by the WG. Details on the decisions taken are indicated in paragraph 11.2 of reference d);

- Concerning the naming of the sea area between the Korean Peninsula and the Japanese Archipelago an extensive discussion took place and the interested States presented their positions. The meeting agreed that Australia, France, Japan and Korea (Rep. of) would provide the Chair with their proposals in order for them to be circulated to the members of the WG for their consideration. It was further decided that the Chair based on the responses received, should propose to the members of the WG “a way forward” for consideration. The details of this issue are given in paragraph 11.3 of reference d).

2.8 The meeting also considered two proposals presented by the members of Oman and Morocco. After detailed discussion the following were decided, as indicated in paragraphs 11.4 and 12.1 of reference d):

- The proposal from Oman to change the “Gulf of Oman” to “Sea of Oman” did not receive enough support;
- The meeting agreed to Morocco’s proposal to change the name “Ras Espartel”, which was misspelled in the 1986 and 2002 draft 4th editions of S-23, to the correct spelling “Ras Spartel” as indicated in the current 3rd edition. There was no support to change the name “Punta Almina” shown in the 2002 draft 4th edition of S-23 to “Ras Al-mina”, as the location concerned is under Spanish jurisdiction.

2.9 The minutes of the second meeting of S-23 WG are posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Minutes/S-23WG2_Minutes.htm .

3. A WAY FORWARD TO PROGRESS S-23

3.1 Members of the S-23 WG were informed on 5th September 2010 of France’s decision to:

- withdraw its proposal, **which suggested inserting a reference table containing all the endonyms and exonyms currently in use for the sea area between the Korean Peninsula and the Japanese Archipelago as it was not supported by the interested States**; and

- ◆ **All proposals and comments that were made in the WG should be fully reflected in the final Report. If their detailed arguments cannot be mentioned, then a gist of these proposals and comments should be included in the report.**
- ◆ **The Republic of Korea never indicated its opposition to the French proposal. We have clearly stated in our letter 『Proposals and Comments by the Republic of Korea to the S-23 Working Group』 dated 28 July 2010 that “*The ROK would like to thank France and Australia for their concrete suggestions... the ROK believes that both proposals are well worth considering.*”**

- cease participating in the S-23 WG activities, due to the diplomatic dimension of the S-23 WG activities and consequently finding it impossible to provide the WG with relevant and neutral technical proposals only.

3.2 Proposals presented by Australia, Korea (Rep. of) and Japan were posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm . Briefly the following can be highlighted:

- **Australia made a proposal with two options** : **First**, when consensus cannot be reached on a name or limit of a sea or ocean, then the alternative position(s) are to be indicated in S-23, with a reservation shown on the first page referring to the sea or ocean and the details of the reservation are to be clearly detailed in an Annex; **Second**, the alternative positions on a name or limit to be shown in a second page for the same sea or ocean area, immediately following the first;

- Rep. of Korea, based on the Australia proposal, proposed that all legitimate names and/or limits of oceans and seas in use be shown on the same page. This method of presentation better serves the S-23's intended function, coincides with the intention of the IHO Technical Resolution and improves navigational safety by providing all relevant information in a straightforward and easily comprehensible fashion ; and
- Japan proposed the "Chartlet Method" for the revision of S-23 which would be based on the current 3rd edition of S-23 which is officially still valid. It would also be possible to revise the S-23 using the 2002 draft edition other than for those oceans and seas where divergent views among Member States existed in 2002 and also for those oceans and seas whose names and/or limits were not considered in 2002, but have subsequently been submitted.

3.3 Responses to the proposals were provided by Japan, Korea (DPR of), Korea (Rep of), Italy, Oman, South Africa, Turkey and UK. The responses have been posted on the IHO web site under

http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see "Comments received on the proposals") and are indicated in paragraphs 2.2 and 2.3 of reference e).

◆ All proposals and comments that were made in the WG should be fully reflected in the final Report. If their detailed arguments cannot be mentioned, then a gist of these proposals and comments should be included in the report.

- Rep of Korea suggested that Japan's proposal has problems in that it would invalidate the progress that the WG has made so far, and that if the revision of the S-23 be based on the 3rd edition of the S-23 as Japan insists, the S-23 would not provide relevant and up-to-date information. Furthermore, the ROK found Japan's arguments that Japan's "Chartlet Method" would allow speedy revision of the S-23 unconvincing as the method requires a lengthy sequential approval process. It also mentioned other more effective means that would not prevent the revision of the entire S-23 despite disagreement on names and/or limits of oceans or seas, such as the unpublished final draft of the S-23 in 2002 and the two volume approach suggested by the Chair of the IHC in 2007.
- Japan indicated that...
- DPR of Korea indicated that...
- Italy indicated that...
- Oman indicated that...
- South Africa indicated that...
- Turkey indicated that ...
- UK indicated that...

From the study of the responses provided the following main points can be highlighted:

- ~~There was no clear support for either of the proposals made by Japan and the Korea (Rep. of);~~
- ~~The proposal made by Australia was recognized by some responders as one that could form the basis for a possible acceptance in naming the sea area between the Korean Peninsula and the Japanese Archipelago.~~

3.4 Based on the presentation, study and analysis of the proposals and comments made, and acknowledging the aim of this technical publication, the Chair Group, at reference e), proposed to the members of the WG the following as "a way forward" to name this sea area, and sought their views as indicated in paragraph 2.4 of reference e):

◆ During the Second meeting of the S-23 WG, it was decided that the Chair based on the responses received, should propose to the members of the WG "a way forward" for consideration. However, the Chair Group came up with the "Way Forward" in December 2010, simply selecting one proposal(first option) out of two proposed by Australia. It should

be noted that out of eight comments as mentioned in 3.4, only one (UK) was in clear support of the first option of the Australian proposal. The remaining seven (ROK, DPRK, Japan, Oman, Turkey, South Africa, Italy) had other ideas.

- The name appearing in the current valid 3rd edition to be used,
- On the same page, the name(s) of the State(s) expressing reservation(s) to appear, with the indication whether the reservation refers to name and/or limit, details of which will be included in an Annex. ~~It has to be noted that the 2002 draft edition of S-23 has followed a similar procedure for a number of sea areas, and reservations in the Annex have been recorded by Australia, Norway, Russian Federation and USA;~~

- ◆ The cases of reservations that were shown on the Annex of the 2002 draft 4th edition are irrelevant to the issue of the naming of the sea area between the Korean Peninsula and the Japanese Archipelago. The reservations recorded were about redefining the limits of the sea, not their names.
- ◆ It should be noted that the examples of concurrent use of different names were found not in the Annex, but on the same page on which the sea area in question appears in the 2002 draft 4th edition: “English Channel(La Manche)”, “Dover Strait(Pas de Calais)” and “Bay of Biscay(Golfe de Gascogne).”

- In the introduction of the publication, a text to be included explaining what reservations are about and how they are presented in the publication; and
- The text that exists in the preface to the S-23 referring to the technical purpose of the publication and stressing that S-23 must not be construed as having any legal or political connotation, to be re-examined in order to make it stronger and clearer, if considered appropriate.

3.5 Sixteen members of the S-23 WG have provided comments to reference e), which have been posted in the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see “Comments received on the proposed way forward”). Brief presentation of the responses is provided in paragraphs 2 and 3 of reference g). From the responses received the following observations can be drawn:

- There was no consensus on the “way forward” proposed by the Chair-Group in naming this sea area;
- Eight members of the WG (Australia, Cyprus, Italy, Japan, Morocco, Nigeria, United Kingdom and USA) agreed with the “way forward” proposed by the Chair-Group;
- Eight members of the WG (Argentina, Pakistan, Turkey, Ukraine, Oman, South Africa, Korea (Rep of), and Iran) did not agree with the “way forward” proposed by the Chair-Group and offered following ideas:
 - Four members of the WG (Argentina, Pakistan, Turkey and Ukraine) indicated that they cannot support the proposed “way forward” or make comments, unless consensus on naming the sea area will be obtained by the relevant parties.
 - One member of the WG (Oman) supported the principle of making the reservations with details in an Annex, but suggested that a methodology on naming sea areas and/or limits should first be decided before pointing to any particular sea area;
 - One member of the WG (South Africa) suggested that the proposal may be changed slightly and proposed that for the sea area in question, the name appearing in the current and still valid 3rd edition, be used with a footnote indicating the Korean name usage for same area;
 - One member of the WG (Rep. of Korea) indicated that the two names “East Sea” and “Japan Sea” must be shown on the same page; and
 - One member of the WG abstained (Iran).

~~4. PROPOSALS TO MEMBER STATES. WAY FORWARD~~

- ◆ The “Way Forward” was simply one of the proposals discussed in the WG that clearly failed to gain support and was consequently rejected in accordance with the Rules of Procedure of the WG. In this regard, having a paragraph entitled “Proposals to Member States: Way Forward” in the report is inappropriate and misleading. Accordingly, a new title should be found for this, or this section should simply be merged with section 3.

3.6 The Chair-Group, ~~based on the views and positions that were expressed by the members of the WG~~, proposed the following to be considered by Member States, as indicated in paragraph 5.2 of reference g):

- ◆ The position of the S-23 WG members on the “way forward” was evenly divided with eight members supporting the proposal and the remaining eight offering different ideas. Therefore, Republic of Korea cannot agree to the statement that the Chair Group has acted “*based on the views and positions that were expressed by the members of the WG.*”

- Malacca and Singapore Straits to be considered as an independent sea area, forming a separate administrative division in S-23;
- Amendments proposed by China in the South China Sea, East Sea and Yellow Sea as indicated in Annex A and accepted by the members of the WG to be included in S-23;
- Whether the name “Japan Sea”, which appears in the 3rd edition, could be used in naming the sea area between the Korean Peninsula and the Japanese Archipelago;
- Whether Member States agree to insert in S-23, reservations which they may have on different positions for certain names and/or limits appearing on the same page. The different name(s) and/or limit(s), the details and arguments of the reservation to be included in an Annex;
- An “Important Notice” to be included in the Preface of S-23 in red, which will indicate the technical character of the S-23 publication, its restriction not to be used for political and juridical purposes and not to be accepted as such by any legal or juridical body indicating also the purpose and use of the Annex; and
- The 2002 draft edition of S-23 to be used as a basis to reflect the positions that will be approved by Member States on the above issues. A draft 4th edition of S-23 to be circulated afterwards to Member States for final comments and approval.

3.7 Nineteen members of the S-23 WG provided comments on the above proposals presented in paragraph 2.1 of reference h). The responses have been posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see “Comments received to S-23WG Letter 02/2011”). From the comments made it can be concluded that there is consensus on all bullets in paragraph 4.1 except bullets three and four, which concern the naming of the sea area between the Korean Peninsula and the Japanese Archipelago, for which the following should be noted:

- Six members of the WG (Cyprus, Japan, Italy, South Africa, UK and USA) agreed with the above way forward¹. ~~Concerning the naming of the sea area between the Korean Peninsula and the Japanese Archipelago, USA indicated that although the WG’s RoP states that “Decisions should generally be made by consensus” without adequately defining the term consensus, US believes that general agreement has been reached in this case;~~

The RoP of the S-23 WG that “Decisions should generally be made by consensus” should be respected as it is. It is not fair to highlight one member’s interpretation of the RoP over others. Furthermore, as shown below, a greater number of WG members concurred that there is no consensus in the WG.

- Thirteen (13) members of the WG (Korea (DPR. Of), Korea (Rep.of), Guatemala, Australia, Argentina, Ecuador, Iran, Pakistan, Nigeria, Denmark, China, Ukraine, Turkey) did not agree with the above way forward proposed by the Chair-Group and suggested the following:
 - Three members of the WG ~~did not agree with the way forward~~ (DPR of Korea, Rep. of Korea

and Guatemala²) proposed that ~~Their position is that~~ in naming this sea area both names “East Sea” and “Japan Sea” should be used simultaneously on the same page **in accordance with the IHO Technical Resolution A4.2.6**. Rep. of Korea also indicated that it is not appropriate to seek positions from the entire membership of the IHO on matters on which the WG could not establish its consensus. Rep. of Korea also stressed the need to produce the report as a fact-based, accurate record of WG discussions, stating that consensus has not been reached in the WG;

- One member of the WG (Australia) proposed **the alternative proposal of including a second page immediately following the first for the sea area between Japan and Korea, but indicated that this attempt to seek a compromise was unsuccessful and should not be pursued**;
- Six members of the WG (Argentina, Ecuador, Iran, Pakistan, Nigeria and Denmark) indicated that the naming of the sea area should be a consensus between the relevant parties;
- One member of the WG (China) indicated that decisions should generally be made by consensus as it is clearly stated in the RoP of the WG established and this should be strictly complied faithfully;
- One member of the WG (Ukraine³) supported the use of the second name “East Sea” concurrently with the name “Japan Sea”, but the way of inclusion of the second name should be decided by agreement and consent of the relevant parties.
- **One member of the WG (Turkey) proposed ...**

3.8 The Chair-Group considering the work of the S-23 WG and the comments provided by its members on the various issues under examination, prepared a “draft Report to Member States”. This report was presented as Annex C to reference h) to members of the WG for their consideration. **Twenty one (21) members of the S-23 WG provided comments on this “draft Report to Member States.”** The responses have been posted on the IHO web site under http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see “Comments received to S-23WG Letter 03/2011”). The majority of the responses refer to the issue of naming the sea area between the Korean Peninsula and Japanese Archipelago, for which the following should be noted:

- ~~• Those which support one name with the reservations to be inserted in an Annex;~~
- ~~• Those which support the different names to appear on the relevant page and not in the Annex; and~~
- ~~• Those, being the majority, indicating that the Countries concerned must come to an agreement before moving to an update and that more time be given for that.~~

- ◆ All proposals and comments that were made in the WG should be fully reflected in the final Report. If their detailed arguments cannot be mentioned, then a gist of these proposals and comments should be included in the report. Some members (Belgium, Denmark, Peru) presented their views for the first time, and their comments should be reflected in the report.
- ◆ The following text has been extracted from the S-23 WG Letter No.04/2011 with some editorial changes added by the ROK. The IHB has succinctly summarized the comments made by the WG members, and this should not go to waste.

- Five members of the WG (Greece, UK, USA, Japan, South Africa) agreed with the way forward as contained in the “draft Report to Member States.”
- Sixteen (16) members of the WG (Argentina, Australia, Belgium, China, Denmark, Ecuador, Guatemala, Iran, Korea(DPR. Of), Korea (Rep of.), Nigeria, Oman, Pakistan, Peru, Singapore, Turkey) did not agree with the way forward as contained in the “draft Report to Member States” and suggested the following:
 - Argentina indicated that any proposal to be put forward should be supported by all relevant parties. Due to the divergent positions expressed by the relevant parties, Argentina regrets that it cannot support any proposal until consensus is obtained;
 - Australia indicated that consensus has not been reached amongst S-23 WG members. It does not agree with the statement that “the work of S-23 WG has been completed”, and does not

see any value to be gained by requesting all Member States to comment on the bullet points in paragraph 4.1. It further indicates that the root cause of not reaching consensus on S-23 is due to political pressures in relation to strong national positions rather than differences over technical depiction of names and limits;

- Belgium indicated that the Federal Public Service of Foreign Affairs has noted that in accordance with the procedural rule within the S-23 WG, decisions should generally be made by consensus and therefore invites the concerned parties to restart a dialogue on this issue, with the help of the chair of the group;
- China indicated that the S-23 WG should strictly abide by the RoP of “decision-making by consensus” and further consultations should be conducted on dissented “areas of concern” until an acceptable resolution is agreed upon by all relevant parties.
- Denmark found that a revision of the 1953 edition is highly needed and supports any initiative taken by IHO to advance a new revision. It attaches importance to a solution being found which all parties involved can support;
- Ecuador recognized the importance of achieving consensus in the controversial issues and indicates that it is inappropriate to seek positions from the entire membership of the IHO on the Chair Group’s Way Forward as there was no consensus;
- Guatemala indicated that “it is wise to maintain the present denomination as it appears on the nautical charts and the IHO publication S-23, for the benefit of the mariners, considering that such issue has not been sufficiently discussed and that there is no consensus”;
- Iran firmly believed that this matter due to its nature could be solved in a diplomatic manner and therefore agreement shall be reached by both parties involved. As consensus has not been reached it suggests this issue should be removed from S-23 WG reporting to Member States;
- Korea (DPR of) reiterated its support for the depiction of two names on the same page;
- Korea (Rep of) believed that “East Sea” should be used concurrently with “Japan Sea”. It is in line with IHO Technical Resolution A4.2.6. It further indicates that the Chair Group’s attempt to seek the position of the entire Membership of IHO on a proposal that had failed to win consensus in the WG is not in accordance with the established procedures, and that the report should simply be a fact-based, accurate record of its deliberations since its establishment in 2009. Korea (Rep. of) provides specific comments and proposed changes on the draft S-23 WG Report;
- Nigeria indicated that the S-23 WG has not reached consensus on naming the specific sea area. It further noted that considering that there has been no unified document supporting any of the claims made by three parties (Japan, ROK and North Korea), this should have given the WG the latitude to support both names (Japan Sea and East Sea) concurrently on the same page;
- Oman recommended to remove the suggested geographical limits of the Strait of Hormuz as detailed in the 2002 edition as no limits are depicted in the S-23 3rd valid edition. It further questions the way that consensus should be achieved;
- Pakistan considered that more time should be given to develop consensus between Korea and Japan prior to finalizing any proposal on naming the sea area between Korea and Japan. It supports the insertion of the “Important Notice” in red in the preface, which will indicate the technical character of the publication;
- Peru attached importance to a solution being found between the parties involved following the rules and resolutions recommended by the IHO;

- Singapore supported the aim of S-23 WG to produce a revised publication, noting that S-23 is a technical WG that deals with technical hydrographic matters, urging Member States to refrain from politicizing discussions at the S-23 WG. It indicates that all concerned parties work to achieve a resolution in line with the S-23 WG's rules of procedures for decisions to be generally made by consensus;
- Turkey indicated that it will not support and/or make any comment on any proposal(s) for the sea areas around China and Taiwan and between the Korean peninsula and Japanese archipelago, unless the relevant parties are in agreement. It also indicates that the details and arguments of reservations be placed on the page immediately following the relevant one and not in an Annex and agrees with the Important Notice, if it is amended to reflect the above position. It also agrees with the use of the 2002 draft edition of S-23 if it reflects its position on its proposed change to the southern limit of the Aegean Sea as it proposes it;

3.9 Based on the views expressed by the majority of the members of the WG, the Chair-Group proposed the following, for which there was an overwhelming support, presented in paragraphs 4.1 of reference i) and 2. of reference j):

- Extend the work of the WG till early 2012 in order to give more time for progressing the issues where agreement has not been reached;
- To ask the Directing Committee to inform Member States that the report of the S-23 WG will be provided in early 2012 (this was done through CL 55/2011 dated 31 August 2011);
- Korea and Japan considering the comments expressed, to make use of the time available to try and find a way forward in naming the sea area between the Korean peninsula and the Japanese archipelago. The Chair-Group to be available to consider any assistance that would support progressing the issue;
- The Chair-Group to continue progressing those Chinese proposals for which agreement has not yet been reached; and
- The Chair-Group to improve/amend the Important Notice, considering the comments that have been provided.

3.10 In implementing the previous decisions taken by the WG, the following actions took place as reported in reference k):

- **Naming the sea area between the Korean Peninsula and the Japanese Archipelago:** The Chair and Secretary of the S-23 WG held separate meetings with delegations from Japan and Rep. of Korea on 10 and 18 October respectively. The aim of these meetings was to discuss this specific issue, to consider the positions of the two delegations and to explore possible ways forward. The two delegations remained firm on the positions they have expressed in the past and which are known to the members of the S-23 WG. Japan's position is that only the name "Japan Sea" should appear in S-23. However it could go along with the Chair-Group's proposal stated in reference e), i.e. one name on the appropriate page of S-23, with the inclusion of reservation(s) and the details to be provided in an Annex, if a consensus could be formed around that proposal. Rep. of Korea's position is that the name "East Sea" should be used concurrently with the name "Japan Sea". A bilateral meeting that took place between Japan and Rep. of Korea in Tokyo on 4 November 2011 had the same unsuccessful results, without finding a compromise. The reports of these three meetings have been posted on the IHO web site under S-23 WG http://www.iho-ohi.net/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see "Meetings involving Japan and Rep. of Korea").
- **Proposals by China:** Two of the Chinese proposals that had previously been discussed without reaching an agreement, namely to rename "Beibu Gulf the existing Gulf of Tonkin" and to consider "Bo Hai" as a separate body from the "Yellow Sea", needed further action. The Chair-Group communicated with those members of the WG that had expressed comments/reservations

on these two issues in order to investigate whether they can accept the views expressed by China. The conclusions of these deliberations resulted in establishing consensus for the “Bo Hai” issue, but not for the “Beibu Gulf/Gulf of Tonkin” issue;

- An improved text of the Important Notice was prepared by the Chair-Group, considering the comments provided.

3.11 Japan and Rep. of Korea provided comments to reference k) that have been posted on the IHO web site under http://www.iho.int/mtg_docs/com_wg/S-23WG/S-23WG2/Proposals/S-23_Proposals.htm (see “Comments received following S-23WG Letter 06/2011”).

4. CONCLUSIONS –~~PROPOSALS~~

◆ ~~WG has never come up with an agreed proposal to present to Member States. Hence it is inappropriate to mention ‘Proposals’ in the conclusion.~~

4.1 ~~Considering the above, the S-23 WG proposes the following to Member States, for which~~ There is consensus of the members of the S-23 WG on the following:

- Malacca and Singapore Straits to be accepted as an independent sea area, forming a separate administrative division in S-23, ~~and~~
- [The Chinese proposals presented in the attached Annex B to be accepted for inclusion in S-23 and]

◆ ~~Taking into account the Comments by China on S-23 WG Letters submitted to the IHB on 31 January 2012~~

- ~~The inclusion of the “Important Notice” indicated in Annex A, in the preface of S-23.~~

◆ ~~Please refer to the ROK’s note on “Important Notice”~~

4.2 There is no consensus between the members of the S-23 WG on the issue of naming the sea area between the Korean peninsula and the Japanese archipelago, ~~Member States are requested to provide their views on possible ways forward for progressing a new edition of S-23.~~

¹ Venezuela subsequently expressed support "to keep all names of the Asian seas the way they are at present and not to change any worldwide historical terms, nor that one sea is called with two different names".

² Guatemala subsequently changed its position, saying "It is wise to maintain the present denomination as it appears on nautical charts and in the IHO publication S-23".

³ Ukraine subsequently withdrew its comments.

IMPORTANT NOTICE

(Preface to S-23 4th Edition)

The 4th edition of IHO publication S-23 has been drawn up and [approved by Member States] taking into account proposals put forward by Member States, established WGs, the IHB and others since 1977, when decision was taken by the XI International Hydrographic Conference to update this publication. Although several attempts have been made to update it, the latest official edition of S-23 is the 3rd one published in 1953. Since 1953, areas of certain water bodies as well as their names and names of adjacent land features have changed. Some of these areas and names are clearly recognized; however, other areas and names are controversial. These subjects are politically sensitive in nature and are likely to remain sensitive. The IHO Member States that have voted to approve this new publication of S-23 recognize the overwhelming need to move forward on a new edition of S-23 as a reference for modern, technical hydrographic purposes. The IHO Member States are fully aware that controversies over names and areas remain. They strongly urge users of this publication not to use this document as support for any political claims or disputes, as that is not the purpose for which it was intended. S-23 does not have any legal or political connotation whatsoever and must not be accepted as such by any legal or juridical body. The limits prescribed in this publication are not IHO endorsements of a coastal State's legal position with regard to the Law of the Sea.

◆ The text for “Important Notice” must wait until the main body of the 4th edition of the S-23 is complete. The current wording of “new way of highlighting potential controversial subject” is unacceptable in that it is drafted on the assumption that the “Way Forward” is to be adopted.

~~This latest revision of S-23 offers a new way of highlighting potential controversial subjects, as follows:~~

~~1. Some States that are adjacent to certain water bodies have accepted and use names and limits of oceans and seas that are different from the ones appearing in this publication. Where States use different names or limits compared to the ones indicated on specific pages, a reservation footnote has been inserted indicating the name(s) of the State(s) expressing reservation(s) and whether it refers to names, limits or both. A special Annex is appended to this document that provides details and arguments of the reservations.~~

~~2. The Annex is a useful technical tool through which the various producers of hydrographic products and users are informed of different or alternative names and limits that various States are using. In this way, hydrographic products that are derived from S-23 definitions are technically more~~