

Korea Hydrographic and Oceanographic Administration

1-17, Hang-dong 7-ga, Jung-gu, Incheon 400-800

Republic of Korea

Tel: (+82) 32 880-0495, Fax: (+82) 32 880-0569



Vice Admiral Alexandros MARATOS

Chairman of the Working Group on the Revision of Special Publication 23

International Hydrographic Bureau

4, quai Antoine 1^{er}

B.P. 445 - MC 98011 MONACO Cedex

Principality of Monaco

24 June 2011

Comments by the Republic of Korea

With reference to the S-23 WG Letter No.03/2011(“S-23 Working Group Reporting to Member States”) dated 24 May 2011 and further to its letter (Comments by the Republic of Korea on S-23 WG Letter No.03/2011) dated 2 June 2011, the Republic of Korea wishes to make the following comments:

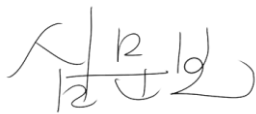
1. The ROK’s position on the naming of the sea area between the Korean Peninsula and the Japanese Archipelago

- The issue of the naming of the sea area between the Korean Peninsula and the Japanese Archipelago has been the subject of debate in the IHO for some time. The Republic of Korea believes that “East Sea”, the other legitimate name which is used both domestically and internationally, should be used concurrently with “Japan Sea”. While enjoying historical and cultural validity, this position is the most simple and reasonable solution which does not exclude one name at the expense of the other. Moreover, it is also in line with the relevant international resolutions: IHO Technical Resolution A4.2.6 and Resolution III/20 of the UNCSTGN.
- The Republic of Korea, recognizing the need to revise the 4th edition of the S-23 at the earliest date, has demonstrated a considerable degree of flexibility for the speedy resolution of the issue. We have rendered support for the various proposals raised within the IHO, such as the unpublished final draft of the S-23 in 2002, the publication of two volumes of the S-23 in 2007, and the trilateral meeting between the IHB, Japan and ROK in 2008.

2. Work of the S-23 Working Group

- In the same spirit of cooperation and flexibility, the ROK also agreed to the establishment of the S-23 Working Group in 2009, and participated in its discussions in a cooperative manner. The ROK appreciated the valuable proposals made by France and Australia, and presented a compromise solution of its own based on those two proposals. Throughout the WG process the ROK has reiterated its commitment to finding a fair solution to the issue while maintaining a flexible and open-minded approach.
 - However, the current draft of the S-23 WG's report to the Member States as presented by the Chair Group does not fairly reflect the work of the WG. The Chair Group's attempt to seek the position of the entire Membership of the IHO on a proposal that had failed to win consensus in the WG is not in accordance with the established procedures. In this respect, we would like to point out the following:
 - The Chair Group's proposal to include Section 4 "Proposals to Member States: Way Forward" in the Report of the S-23 WG is inappropriate. If the WG is to make a particular proposal to the IHO Member States, it should first be endorsed in the WG through its consensus rule. The WG has never endorsed the proposed way forward and the Chair Group is in no position to raise this proposal to the IHO Member States.
 - Any decision of the WG should generally be made by consensus. This is the principle stipulated in the Rules of Procedure (ROP) of the S-23 WG. Currently, there is no consensus among the members of the WG and the WG is without a common position. Under such circumstances, the report of the S-23 WG should simply be a fact-based, accurate record of its deliberations since its establishment in 2009, stating that consensus has not been reached in the WG.
3. The Republic of Korea would like to emphasize that it remains open to any constructive suggestions for a resolution of this pressing issue, and that we are ready to engage fully and sincerely in the consultations among the parties directly concerned.
4. The Republic of Korea's comments on the draft S-23 WG Report are attached as an Annex.

Moon Bo SHIM



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

Annex : S-23 WG Report (with suggested revision)

**REPORT OF S-23 WORKING GROUP TO MEMBER STATES
(SUGGESTED REVISION)**

- 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 -- May 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 with its 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 is contained in Annex E of reference c). It may be noted that the different positions of Korea and Japan in naming the sea area between the Korean Peninsula and the Japanese Archipelago, is a significant reason for the lengthy deliberations and delay in the progress of the revision of this publication.

1.2 Bilateral discussions have taken place between Korea and Japan for more than five years without any agreement. Various options proposed in naming this sea area have been rejected by one or both of the interested States or did not receive the appropriate majority by Member States.

1.3 Member States overwhelmingly supported the proposal of the Directing Committee for the establishment of a WG with the following task in accordance with the approved Terms of Reference (ToR) 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.

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 VAdm 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. VAdm 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 VAdm Maratos should Chair it. Although the WG should be chaired by a Member State, VAdm Maratos accepted the proposal asking for positive participation and contribution of all members of the S-23 WG. RAdm 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/S23WG_Misc/Areas_of_Concern/S23_Areas_of_concern.pdf.

Second meeting of the S-23 WG

2.6 In accordance with Steps 4 and 5, members of the WG examined and 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 coming from Oman and Morocco. After detailed discussion the following were decided, as indicated in paragraph 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 in 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/mtgMdocs/comMwg/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 as it was not supported by the interested States; and
- 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, DPR of Korea, Rep. of Korea, and Japan have been posted on the IHO website 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:

◆ Comments by DPR of Korea, a party directly concerned, should be considered as a proposal of its own instead of being treated as one of the responses received on the proposals presented by Australia, Rep. of Korea and Japan. The DPR of Korea submitted its views to the IHB on August 13th 2010.

- Australia proposed that 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 or in a second page for the same sea or ocean area, immediately following the first;
- Rep. of Korea based on the Australian proposal, proposed that all legitimate names and/or limits of oceans and seas in use on the same page;
- DPR of Korea proposed that the name of the sea area is left blank and the reference and note be indicated in the lower part of the page, or that two depictions of the sea area in question be provided on the same page in which one will be show “Japan Sea” and the other will show “East Sea” 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 have been provided by Japan, ~~Korea (DPR of)~~, Korea (Rep. of), Italy, Oman, South Africa, Turkey and UK. The responses 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 proposals”) and are indicated in paragraphs 2.2 and 2.3 of reference e). From the study of the responses provided the following **three** main points can be highlighted:

- There is no a clear support for either of the proposals made by Japan and the Korea (Rep. of)
- **Two out of three countries directly concerned, namely DPR of Korea and Rep of Korea proposed that all legitimate names and/or limits in use be shown on the same page and;**
- The proposal made by Australia is recognized by ~~most of the responders~~ **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.

◆ **Japan, Korea (Rep. of), Italy, Oman, South Africa, Turkey and UK have provided responses to proposals. Out of these 7 respondents, 3 member states- Italy, South Africa and Turkey have not indicated any support for the Australian proposal, and abstained from making any comments considering the sensitivity of the issue.**

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 proposed to the members of the WG the following as “a way forward” to name this sea area, and sought their views as it is indicated in paragraph 2.4 of reference e):

- 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, Russia Federation and USA;

◆ **The previous 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 Korean Peninsula and the Japanese Archipelago. Among the seven cases of reservations recorded, five were about redefining the limits of the sea, not their names. The other two cases that dealt with the names are also irrelevant. One is about a particular sea area(Davis Strait) being a part of a greater sea area (the Atlantic Ocean); and the other, proposes another name that comprises multiple number of seas without changing their names (Lazarev Sea- King Hakon VII Hav). None of them deal with the concurrent use of different names in accordance with IHO Technical Resolution A.4.2.6. It has to be noted that such cases were found not in the Annex, but on the same page on which the sea area in question appears: “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, 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 is no consensus on the proposed “way forward”;
- ~~Eight Nine~~ members of the WG (Australia, Cyprus, Italy, Japan, Morocco, Nigeria, ~~South Africa~~, United Kingdom and USA) agree with the “way forward” proposed by the Chair-Group ~~and one (Oman) supports most of the proposal;~~

◆ *South Africa indicated in its letter that “It (Korean name usage) cannot be reflected as a reservation in the Annex. I believe this will be in accordance with TR.A4.2 Paragraph 6.” Chair Group’s Letter(S-23 WG Letter No.02/2011) also stated that “Eight members of the S-23 WG agree with the ‘way forward’ proposed by the Chair Group.”*

- One member of the WG (Oman) suggested that a methodology on naming sea areas and limits of the sea in question should first be decided before pointing out 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.
- Four members of the WG (Argentina, ~~Italy~~, ~~Pakistan~~, Turkey and Ukraine) indicated that they cannot support the proposed “way forward” or make comments, unless consensus, on the naming the sea area will be obtained by the relevant parties. ~~On this point paragraphs 1.1 and 1.2 have to be taken into consideration;~~

◆ *It seems that the second sentence is unnecessary. The suggested change is to reflect faithfully all the comments made by the member states as they were submitted to the IHB.*

- 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~~

~~4.1—The Chair Group consider that the work of the S-23 WG has now been completed and, based on the views and positions that have been expressed by the members of the WG, propose the following to be considered by Member States:—~~

- ~~● Malacca and Singapore Straits to be considered as an independent sea area, forming a separate administrative division in S-23, noting that it has received the agreement of the members of the WG;—~~
- ~~● 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” appearing in the 3rd edition could be used in naming the sea area between the Korean Peninsula and the Japanese Archipelago, noting that consensus has not been achieved between the members of the WG and considering the positions and views expressed;—~~
- ~~● Whether Member States agree to the insertion in S-23 of reservations, which they may have on different positions for certain names and/or limits. The different name(s) and/or limit(s) with the details et cetera, and the details and technical arguments of the reservations to be included in an Annex (this can apply in the case of naming the sea area between the Korean Peninsula and the Japanese Archipelago);—~~
- ~~● 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. A draft text of the “Important Notice” proposed by USA and improved by comments expressed by members of the WG is provided in Annex B for your consideration; 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 final draft 4th edition of S-23 to be circulated afterwards to Member States for final approval.—~~

◆ Considering the fact that the WG does not have a common position to present to the IHO Member States at this point, it seems more appropriate to replace the “4. PROPOSALS TO MEMBER STATES. WAY FORWARD” with the following 3.6.

3.6 The Chair-Group proposed to the members of the WG that following issues to be presented to Member States to seek their position before a 4th edition of Publication S-23 is submitted for approval:

- 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 China 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” could be used for 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 on certain names, or limits or both, appearing on the same page. The details and arguments of the reservations 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 publication, its restriction not to be used for political and juridical purposes; and the purpose and use of the Annex.
- 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~~ ~~Sixteen~~ members of the S-23 WG have provided comments on the above proposals ~~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 02/2011”). The following brief comments can be made:

- There is no consensus on the Chair Group’s proposal;
- Six members of the WG (Cyprus, Japan, Italy, South Africa, UK and USA) have agreed with the above way forward. Concerning the naming of the sea area between the Korean Peninsula and the Japanese Archipelago, USA indicates 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.
- Four members of the WG (DPR of Korea, Rep. of Korea, Ukraine and Guatemala) supported the use of the second name “East Sea” concurrently with the name “Japan Sea”. 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.
- 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 of which accepts part of the proposals to Member States~~.
- One member of the WG (Australia) indicated that an attempt to seek a compromise that may be acceptable to both Japan and Korea through an alternative proposal was unsuccessful and should not be pursued;

- One Member of the WG (Turkey) proposed to insert details and arguments of the reservations in the following page(s) of the relevant page in order to make the document more user-friendly; and
- 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. ~~and~~
- ~~● One member of the WG (Ukraine) supported to 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.—~~

~~5. Member States are requested to study carefully this report, the references and the views and positions expressed by members of the S-23 WG, as posted on the IHO web site, and provide their positions and comments on paragraph 4.1. Based on the responses of Member States the S-23 WG will prepare the final draft of the 4th edition for the approval of Member States before the end of 2011.~~

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| <ul style="list-style-type: none">◆ Report should be a factual record of WG’s deliberations. It is improper to include proposals on matters which have failed to reach an agreement among the WG members. |
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