Is the East Sea a feature beyond a single sovereignty?

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Abstract

In 1992 the issue of the name *East Sea* was first raised at the 6th United Nations Conference on the Standardization of Geographical Names. Resistance to the name was countered by taking recourse to resolution 20 of the 3rd UN Conference on the Standardization of Geographical Names. The solution to continuing dissention was found in the United Nations Convention on the Law of the Sea (UNCLOS), which recognizes the sovereign right of each country to standardize the geographical names in the territories under its jurisdiction. These territories include the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf. Sovereign rights over these waters cannot reasonably exclude the right to name them. International recognition may be achieved by means of United Nations resolutions and promoting the preferred name in terms of relevant Articles of the UNCLOS.

Key words

East Sea, maritime feature names, sovereignty, jurisdiction, coastal states, United Nations resolutions.

Introduction

At the 6th United Nations Conference on the Standardization of Geographical Names held in New York in 1992, Ambassador Suh Dae-Won, then Ambassador of the Republic of Korea to the United Nations, informed the Conference that *East Sea* is the name preferred by the Republic of Korea for the body of water between the Korean peninsula and the Japanese archipelago, a name "used since antiquity in Korea, for the sea known as the Sea of Japan" (LI 2010: 65). Ambassador Suh's statement was met with protest from the delegation of Japan. Considering the sea between Korea and Japan to be a shared feature, the discussants were referred to resolution 20 of the 3rd United Nations Conference on the Standardization of Geographical Names (resolution III/20). This resolution reads as follows:

> "*The Conference*,
>
> *Considering* the need for international standardization of names of geographical features that are under the sovereignty of more than one country or are divided among two or more countries,
>
> 1. *Recommends* that countries sharing a given geographical feature under different names should endeavour, as far as possible, to reach agreement on fixing a single name for the feature concerned;
> 2. *Further recommends* that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice. Only technical reasons may sometimes make it necessary, especially in the

> case of small-scale maps, to dispense with the use of certain names belonging to one language or another".

For the past twenty years the Republic of Korea has implemented the resolutions and has promoted the use of both names, *East Sea* and *Sea of Japan*, for the feature in question, which signifies this country's commitment to "a trust and cooperation that transcends aggression and conflict" (Chung 2010).

United Nations resolution III/20 is similar in essence to Paragraph 6 of Technical Resolution 1/1972 (A4.2) of the International Hydrographic Organization (IHO), which reads as follows:

> "It is recommended that where two or more countries share a given geographical feature (such as, for example, a bay, strait, channel or archipelago) under a different name form, they should endeavour to reach agreement on fixing a single name for the feature concerned. If they have different official languages and cannot agree on a common name form, it is recommended that the name forms of each of the languages in question should be accepted for charts and publications unless technical reasons prevent this practice on small scale charts, e.g. English Channel/La Manche."

"Shared feature"

Franckx (2010: 13-14) has pointed out that implementation of resolutions is dependent on two factors: whether the feature in question is indeed a shared feature, and whether the countries concerned are bound by the resolutions. Both the United Nations resolution and the IHO resolution have hitherto been ineffectual because not all parties agree that the sea between Korea and Japan is a shared feature.

Park (2010: 3-4) provides arguments to show that the sea between Korea and Japan is indeed a shared feature. He refers to Article 122 of the United Nations Convention on the Law of the Sea (UNCLOS), in which an *enclosed sea* is defined *inter alia* as "a sea surrounded by two or more States and connected to another sea or the

ocean", and explains: "The sea area between the Korean Peninsula and the Japanese Archipelago is surrounded by Japan, Korea (Republic of Korea), and North Korea; it is connected to another ocean in the south; it is a given geographical feature, because it is an enclosed sea. And it is under different names of 'East Sea' and 'Japan Sea'."

Woodman (2010) is of the opinion that United Nations Resolution III/20 is not relevant because it refers to terrestrial features, and not to maritime features. However, there is nothing in the wording of the United Nations resolution, which refers to "countries sharing a given geographical feature", to suggest that it applies only to terrestrial features. The United Nations definition of *geographical name* is "name applied to a feature on Earth" (Kadmon 2002: 18), and a *feature* is defined as a "portion of the surface of Earth ... that has recognizable identity" (Kadmon 2002: 11). Such features thus include both terrestrial and maritime features.

Park (2010: 2) points out that United Nations Resolution III/20 uses the word *map* instead of the word *chart*, indicating that the recommendation is not necessarily concerned with sea names only, and concludes that Resolution III/20 refers to geographical names in general, namely names of both terrestrial and maritime features, whereas paragraph 6 of Resolution 1/1972 (A4.2) of the IHO specifically refers to sea names, since it cites maritime features as examples of shared features.

Referring to IHO resolution 1 (A 4.2) paragraph 6, Park points out that the first part of the recommendation, namely "*that ... two or more countries ... should endeavour to reach agreement on fixing a single name ...*", applies to the countries concerned; and that the second part, namely "*that the name forms of each of the languages in question should be accepted for charts and publications ...*", applies to member countries of the International Hydrographic Organization (IHO). In the United Nations resolution, on the other hand, the second part of the recommendation, namely "*that the name used by each of the countries concerned will be accepted*", refers to cartographers universally. In this case, the name *used* by each of the countries is respectively 동해 (*Donghae)* and the Japanese script form of *Nihonkai*. Park notes that in terms of the IHO resolution the *name forms of each of the languages in question*, i.e. the name forms of Japanese and Korean, are to be accepted. These name forms are the Korean and Japanese forms respectively,

namely 동해 and the Japanese script form of *Nihonkai*.

The names *East Sea* and *Japan Sea* are not in the official languages of Japan, Korea (ROK) and North Korea. As Park points out, “if Japan, Korea (ROK) and North Korea could not agree on a single name, then the international community, not those countries concerned, is recommended to accept ‘East Sea’ and ‘Japan Sea’ for its charts and publications.”

Since, as Park pointed out, the addressees of the resolution are international cartographers, internationally used names are to be entered on maps. When the maps are in English, and in other contexts in which English is used, each coastal state under the jurisdiction of which the sea is, has the sovereign right to have its preferred English name used. A more accurate rendering of the recommendatory clause in paragraph 2 of UN resolution III/20 would be: “*it should be a general rule of international cartography that the name **preferred** by each of the countries concerned will be accepted.”*

Force of resolutions

As regards the second proviso of the implementation of resolutions, namely their enforceability, Franckx (2010: 13-14) has pointed out that “The word ‘recommendation’ signifies the non-obligatory character of the resolution and these are thus not binding upon the member states”, and that “The Resolutions adopted by the Conference have a non-binding and recommendatory character.” With reference to the International Hydrographic Organization (IHO), Franckx (2010: 21-22) indicates that this body “has no authority whatsoever over hydrographic offices of the Member Governments”; that “the technical recommendations, which constituted the bulk of the agenda, are not binding upon the member states”, that the resolutions of the IHO are “only of a recommendatory nature for national hydrographic offices to follow”, and that “whether the recommendatory powers of the IHO can lead to legal effects beyond that organization ... seems highly unlikely. The conclusion to be reached about the binding nature of the resolutions adopted by the IHO must consequently be that they are not legally binding on member states.”

On the other hand, United Nations resolutions “are not devoid of all legal value. It has often been argued that the addressees of UN recommendations have a duty to

consider their content in good faith. Thus, if a state does not wish to comply with the recommendation, it must give its reasons" (Conforti 2005: 292-293; Franckx 2010: 12). And the resolutions of the IHO "probably nevertheless substantially affect the behaviour of states in practice" (Franckx 2010: 22) since "experience has shown that they will be put into practice in nearly all instances and thereby preserve and extend a high degree of uniformity in the nautical charts and books that must, in many instances, serve the mariners of all nations" (Glover and Cobert 1947: 1204). Park (2010: 5) points out that "If the IHO and its Member States do not follow the second recommendation, then they are violating the rule as provided in para. 6 of the Resolution 1/1972 (A4.2), which was adopted by them. Even if para. 6 of the Resolution 1/1972 (A4.2) itself does not bind the IHO and its Member States, it should be respected and implemented in good faith by them."

Sovereignty

The solution to the dispute over the name is given by United Nations Convention on the Law of the Sea (UNCLOS) and in the fundamental attribute of sovereignty. In terms of international law, *sovereignty* means that a government possesses full control, or supreme independent authority, over its own affairs within a territorial or geographical area or limit. The powers that states enjoy by dint of sovereignty are "tantamount to freedom of action within the strictures of the law" (Franckx 2010: 2). However, the area over which a state has sovereignty is confined to the geographical area or territory over which it has jurisdiction. From the perspective of international law, the territory of a state not only includes the land but "extends to the internal waters and territorial sea of every State and to the air space above its territory" (*Military and Paramilitary Activities* 1986, 111).

The United Nations recognizes the sovereignty of each member state to standardize the geographical names within the territory over which it has jurisdiction. Each state can thus authoritatively give names to areas within the territory over which it has sovereignty, which includes the names of maritime features. Kadmon (2010: 96) points out that "According to the Law of the Sea (1982, 1994) '….jurisdiction refers to the power of a state to affect persons, property and circumstances within its territory', which includes its maritime zones. Over those parts of the sea which come under the

definition of territorial waters, the respective states have authority of conferring maritime names – which comes under the term ‘circumstances’ mentioned above.”

Compartmentalization

The seas and oceans of the world form a mono-aquatic entity, for which reason it has been necessary to fix limits, as indicated in the IHO publication *Names and Limits of Oceans and Seas*. Franckx (2010: 3) points out that “The modern law of the sea has brought about a compartmentalization of the seas and other maritime features. The 1982 Convention (The United Nations Convention on the Law of the Sea (UNCLOS)) acknowledges a variety of zones in which certain rights devolve to coastal states.” These zones are the Territorial Sea (UNCLOS Part II), the Exclusive Economic Zone (EEZ) (UNCLOS Part V) and the Continental Shelf (UNCLOS Part VI).

The Territorial Sea

Part II, Section 1, Article 2 of the United Nations Convention on the Law of the Sea (UNCLOS) defines the legal status of the waters under the jurisdiction of a coastal State as follows:

> “1. The **sovereignty** of a coastal State extends, beyond its land territory and internal waters, ... to an adjacent belt of sea, described as the territorial sea.
>
> 2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
>
> 3. The **sovereignty over the territorial sea** is exercised subject to this Convention and to other rules of international law.”

As regards the limits of the Territorial Sea, Article 3 specifies that

> “Every State has the **right** to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.” Article 5 determines that “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State”.

Exclusive Economic Zone

Part V, Article 57, specifies that

> "The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."

Continental shelf

Part VI, Article 76 (1) describes the continental shelf as follows:

> "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, **or** to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

Paragraph 5 of Article 76 specifies the extent of the continental shelf:

> "The fixed points comprising the line of the outer limits of the continental shelf on the seabed ... either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres."

Paragraph 6 of Article 76 specifies that

> "Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured."

Sovereignty, sovereign rights, etc.

Territorial Sea

As noted above, Part II, Section 1, Article 2, of the United Nations Convention on the

Law of the Sea (UNCLOS) states that "The **sovereignty** of a coastal State extends, beyond its land territory and internal waters, ... to an adjacent belt of sea, described as the territorial sea", and that "This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil."

Exclusive Economic Zone

In addition to sovereignty over the Territorial Sea, the coastal State has sovereign and other rights over the Exclusive Economic Zone and the Continental Shelf. Article 56 determines that "In the **exclusive economic zone**, the coastal State has:

> (a) **sovereign rights** for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (b**) jurisdiction** as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> (c) **other rights and duties provided for in this Convention."**

Also in connection with the Exclusive Economic Zone, **Article 60** determines that:

> "1. In the exclusive economic zone the coastal State shall have the **exclusive right** to construct and to authorize and regulate the construction, operation and use of:
>
> (a) artificial islands;
>
> (b) installations and structures for the purposes provided for in article 56 and other economic purposes;

(c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have **exclusive jurisdiction** over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations."

Continental shelf

Part V, Article 77 specifies the sovereign rights that a coastal State has over the continental shelf, and reads as follows:

"1. The coastal State exercises over the continental shelf **sovereign rights** for the purpose of exploring it and exploiting its natural resources.

2. The **rights** referred to in paragraph 1 are **exclusive** in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

Article 80 determines that Article 60, which refers to artificial islands, installations and structures in the Exclusive Economic Zone, applies *mutatis mutandis* to these features on the continental shelf.

Article 81 determines that "The coastal State shall have the **exclusive right** to authorize and regulate drilling on the continental shelf for all purposes."

"Sovereignty" and "sovereign rights"

The Articles quoted above clarify the authority that the coastal State has in the different zones. As noted, a coastal State has *sovereignty* over the territorial sea and *sovereign rights* over its Exclusive Economic Zone (EZZ) and Continental Shelf. There seems to be unanimity that a coastal State has the sovereign right to bestow names within its

territorial waters. However, the question of whether the right to name also applies in the EEZ and the Continental Shelf is debatable. On the one hand, Franckx (2010: 24) refers to a distinction between "sovereignty" and "sovereign rights", and points out that "The wording used to describe the rights connected to the contiguous zone and the EEZ enumerated in Art. 56(1) (b) and in pursuance of Art. 56(1) (c) of the 1982 Convention are clearly limited in scope. Therefore, they cannot be reasonably interpreted as encompassing an entitlement to authoritatively impose toponymic choices on other states. The sovereign rights coastal states enjoy in the EEZ (Art. 56(1) (a)) and the continental shelf are broader in scope, especially the continental shelf, which respect to which the sovereign rights of the coastal state are 'exclusive' (art. 77(2)). Nonetheless, these rights are meant to serve a certain purpose, namely exploration and exploitation, which does not seem to include the power to attribute names" (Franckx 2010: 3).

On the other hand it may be argued that there is no real distinction between the concepts of sovereignty and sovereign rights, and that "sovereignty" is the attribute which empowers the state to exercise its sovereign rights over the territory under its jurisdiction; "sovereignty" is the collective noun for all of the rights which are incorporated under the concept of *sovereignty*. These rights may perhaps include the power to attribute names. Dealings with other states necessitate communication with those states. In order to refer to the features within the maritime zones, names are required, and the features to which those names refer fall under the jurisdiction of the coastal State concerned. The rights of the coastal State may thus *ipso facto* include the right to name the features concerned, including the sea area under the jurisdiction of the State. In terms of paragraphs 5 and 6 of Article 76, that area extends from the low water baseline to a distance of at least 200 nautical miles, and to a distance of 350 nautical miles where the outer edge of the continental margin allows it. If a State has sovereign rights over a territory, those sovereign rights should reasonably include the right to name the territory or parts of it. Since all sovereign States enjoy equal sovereignty, each coastal State has the same sovereign right to bestow names in the zones under its jurisdiction, and recognition of the names preferred by each State would be in accordance with the primary objective of the United Nations to keep peace and avoid conflict between nations.

International Cooperation

Referring to the promotion of international cooperation, Section 2, Article 242 of the United Nations Convention on the Law of the Sea specifies that:

> "1. States and competent international organizations shall, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit, promote international cooperation in marine scientific research for peaceful purposes.
>
> 2. In this context, without prejudice to the rights and duties of States under this Convention, **a State,** in the application of this Part, **shall provide**, as appropriate, other States with a reasonable opportunity to obtain from it, or with its cooperation, **information necessary** to prevent and control damage to the **health and safety of persons and to the marine environment**."

This information necessarily includes the names of the various maritime features in the territory under the sovereignty of the coastal State, and of the body of water in question. Without these names reference to the features in question is impossible, and communication is impossible. The provision of the necessary information is also facilitated by means of a proclamation and media releases.

Favourable conditions

Article 243 of the United Nations Convention on the Law of the Sea determines that:

> "States and competent international organizations shall cooperate, through the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of marine scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them."

Here again "favourable conditions" would necessarily include relevant information on geographical names, including maritime feature names, for effective communication regarding the marine environment, and the phenomena and processes occurring in that

environment.

Publication and dissemination of information and knowledge

Having recognized the sovereignty and sovereign rights of the coastal State over the territorial sea, the EEZ and the continental shelf, the UNCLOS requires that the relevant information be made known and disseminated. Thus Article 84 specifies that:

"1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority."

In respect of paragraph 1 above, the demarcation is also applicable to the limits of the respective seas, the East Sea and the Sea of Japan. In the process of giving due publicity to this information, these charts or maps may also be circulated to all cartographic publishers, including those of electronic maps and other publications, e.g. Google, Encyclopaedia Britannica Online, Wikipedia, GeoHack, Philips, Bartholomew, Collins, Demart, and so forth.

As regards **publication and dissemination,** Article 244 of the United Nations Convention on the Law of the Sea determines that:

"1. States and competent international organizations shall, in accordance with this Convention, make available by **publication and dissemination** through appropriate channels information on proposed major programmes and their

objectives as well as **knowledge** resulting from marine scientific research.

2. For this purpose, States, both individually and in cooperation with other States and with competent international organizations, shall actively **promote the flow of scientific data and information and the transfer of knowledge** resulting from marine scientific research, especially to developing States, as well as the strengthening of the autonomous marine scientific research capabilities of developing States through, *inter alia*, programmes to provide adequate education and training of their technical and scientific personnel."

The scientific data and information that must be promoted, and the information and knowledge that must be published and disseminated through appropriate channels, again include geographical names, without which reference to the maritime features is impossible, and which facilitate effective communication.

Draft Resolution

In order to acquaint the world that the United Nations Convention on the Law of the Sea recognizes the sovereignty, sovereign rights and other authority of coastal States, and mindful of the primary objective of the United Nations of avoiding conflict and maintaining peace among nations, a resolution could perhaps be considered for submission to the 10th UN Conference on the Standardization of Geographical Names, to be held in 2012:

"The Conference,

Recognizing that national standardization of geographical names is a necessary prerequisite to international standardization;

Recognizing that each country has the sovereign right to standardize geographical names in the territories under its jurisdiction;

Aware that the United Nations Convention on the Law of the Sea recognizes the sovereign rights of a coastal State over its Exclusive Economic Zone and

Continental Shelf;

Aware that such sovereign rights may *ipso facto* include the right to bestow and standardize geographical names for national and international use, provided that there is an historical basis for doing so;

Recommends that the name preferred by the coastal State for the waters over which it has sovereign rights be recognized and used for international purposes."

Conclusion

The sea between Korea and Japan is physically a shared feature, but sovereignty is not shared. Each country has sovereignty over the territorial sea, and sovereign and other rights over the Exclusive Economic Zone and Continental Shelf. These rights may include the right to give and standardize names. When the limits of the seas over which Korea and Japan have sovereignty have been determined, they will be valid in terms of the United Nations Convention on the Law of the Sea, the United Nations, and internationally recognized. Each country has its own name in its own language for the waters under its jurisdiction, Romanized respectively as *Donghae* and *Nihonkai* or variants. Each country also has its name of preference in English, namely *East Sea* and *Sea of Japan/ Japan Sea*. These two different names of preference apply to two different sections of the sea, namely *East Sea* for the sea area extending eastwards from the baseline of the coast of Korea, and *Sea of Japan* (or *Japan Sea*) for the sea area extending westwards from the baseline of the coast of Japan. It is recommended that, until negotiations between these two countries result in agreement on a name acceptable to both countries, United Nations resolution III/20 continues to be implemented, namely that the name preferred by each country be indicated, a practice legitimized by the relevant Articles of the UNCLOS.

IHO Special Publication 23, *Names and Limits of Oceans and Seas*

Disagreement over the enforceability of resolutions, and uncertainty as to whether the sea between Korea and Japan is a shared feature, has delayed the publication of the 4th edition of the IHO Special Publication 23, *Names and Limits of Oceans and Seas*, and is still causing division among member countries of the International Hydrographic

Organization (IHO).

The Preface to the draft 4th edition of the IHO Special Publication 23, *Names and Limits of Oceans and Seas*, states that "The limits used in the S-23 have **no legal or political significance whatsoever**." The limits shown in SP-23 are for the convenience of the member states of the IHO. That being the case, the limits of the sectors of the sea between Korea and Japan may be indicated in the 4th edition of SP-23 to the best of the data available. The detailed demarcation is the concern of the respective Governments. If that is the case with the limits as laid down by the IHO, so much more would be the case for the names of the maritime feature involved.

If the limits of sovereignty and sovereign and other rights as detailed in the relevant Articles of the UNCLOS are accepted, two different names of preference in English apply to two different halves of the sea, namely *East Sea* for the sea area extending from the baseline of the coast of Korea to a distance of 200 or 350 nautical miles, and *Sea of Japan* or *Japan Sea* for the sea area extending westwards 200 or 350 nautical miles from the baseline of the coast of Japan.

The "way forward" does not recognize the equal sovereignty of the two countries concerned, nor does it take cognizance of decolonization, progress, political maturity, and scientific and other developments over the fifty-seven years since the 1953 publication of SP-23. The logical and practical method of settling the dispute is contained in the recognition by the UN, the IHO and the UNCLOS of the sovereignty of each country to name the geographical features under its jurisdiction, which may be seen as including the territorial sea, EEZ and continental shelf.

The SP-23 Working Group may wish to consider publishing SP-23 revised edition with equal treatment of the two sea names: no reservations, appendixes, parentheses, differences in font or font size, or any other prejudicial devices which may be construed as favouring one sovereign State over another.

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