

Sovereignty in naming maritime geographical features

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I. Introduction

Geographical names often cause international conflicts and disputes to the detriment of international peace and safe navigation. These matters are seriously dealt with by international organizations such as the UN, including the UN Conference on Standardization of Geographical Names (UNCSGN) and the UN Group of Experts of Geographical Names (UNGEGN), and the International Hydrographic Organization (IHO). There are important rules to be applicable to the international standardization of geographical names in the form of resolutions adopted by those international organizations.

Given the existence of rather solid international systems for geographical naming, there are still serious problems easily noticed from a viewpoint of international law. First, the international rules such as the resolutions of the IHO and the UNCSGN are not fully understood and often ignored in discussing the international standardization of geographical names. Second, the international law expertise is not well represented in the IHO and the UNCSGN unlike other international organizations. From this observation, this presentation intends to discuss briefly the sovereignty issue in the naming of geographical features for a better understanding of the related international rules.

II. Sovereignty discussed in the resolutions regarding geographical names

Handling geographical names, such as naming geographical features, is directly related to the sovereignty of countries. It is found in the important resolutions of the IHO and the UNCSGN.

1. Uniform policy for handling geographical names

One of the objects of the IHO, according to the Convention on the International Hydrographic Organization (hereinafter 'Convention'), is to bring about "the greatest possible uniformity in nautical charts and documents".¹ This object involves standardization of geographical names. In this regard the IHO adopted a technical resolution called "8/1919 as amended (A4.1): Uniform Policy for Handling Geographical Names".² This resolution is relevant for national standardization of geographical names which is an essential preliminary to international standardization.

The importance of this resolution may be found in that it was originally adopted in 1919. In that year, twenty-four countries met in London for a hydrographic conference to decide the creation of a permanent body in hydrography. Japan was one of them and Korea, under the unlawful colonial rule of the former, was not.³

Resolution 8/1919 as amended (A4.1) provides for recommendations for each national hydrographic office of maritime countries to follow for the purpose of obtaining approximate uniformity in the geographical names appearing on the nautical documents of those countries. This presentation does not intend to look at those recommendations in the resolution. It intends to look at a rather simple matter: a relevance of sovereignty in naming geographical features.

Under paragraph 1(c) of the resolution each national hydrographic office is recommended to: "On its charts and other nautical documents of foreign coasts where the script of the sovereign country is other than the Roman alphabet, show names that are obtained by applying the various international systems for romanization approved by the United Nations to the names appearing on the most authoritative sources of the country having sovereignty or confirmed by

¹ Convention Article II(b).

² This resolution was last amended in 1974.

³ In that year, there was a national demonstration of Korean people for independence from the Japanese colonial rule where a significant number of Korean people were tortured and killed by the former.

correspondence with that country." (emphasis added) In other words, with respect to the names of foreign coasts, those names obtained by applying certain international Romanization systems to "the names appearing on the most authoritative sources of the country having sovereignty" or confirmed by correspondence with that country" are to be shown. It is noted that only sovereign countries are respected in handling geographical names of foreign coasts. Those countries without sovereignty are not entitled to represent their own geographical names for their own coasts.

2. International standardization of geographical names

Geographical names should be standardized internationally as well as domestically for the safety of navigation in particular. In this regard, there are at least two important resolutions adopted by the IHO and the UNCSGN respectively. They are the IHO's "Resolution 1/1972 as amended (A4.2): International Standardization of Geographical Names" and the UNCSGN's "Resolution III/20: Names of features beyond a single sovereignty". These two resolutions provide for recommendations to be followed for international standardization of geographical names. This presentation does not intend to look at those recommendations in these resolutions.⁴ It intends to look at a rather simple matter: a relevance of sovereignty in naming geographical features.

The title of the UNCSGN's Resolution III/20 is "names of features beyond a single sovereignty." The UNCSGN in this resolution considers 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." Thus, the nexus for international standardization in Resolution III/20 is sovereignty.

The UNCSGN's Resolution III/20 in its title appears to specify its scope of application: "features beyond a single sovereignty." The IHO's Resolution 1/1972 as amended (A4.2) in paragraph 6 describes geographical features as "such as, for example, a bay,

⁴ With respect to a legal examination of Resolution 1/1972 as amended (A4.2), see Nohyoung Park, "International Norms on the naming of features common to two or more States" (presented in the 16th International Seminar on Sea Names organized by the Society for East Sea in 2010).

strait, channel or archipelago." This provision expects a possible existence of another geographical features by using the terms "such as, for example". The UN Convention on the Law of the Sea (UNCLOS) exactly provides for 'enclosed or semi-enclosed sea' as another geographical feature. An enclosed or semi-enclosed sea is defined as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."⁵ An enclosed or semi-enclosed sea is to be applied by both the IHO's Resolution 1/1972 as amended (A4.2) and the UNCSGN' Resolution III/20 because it is certainly a typical geographical feature. It is also to be applied by the UNCSGN's Resolution III/20 in particular because the exclusive economic zones (EEZs) of two or more coastal States forming an enclosed or semi-enclosed sea are beyond a single sovereignty. As discussed later, coastal States do not have sovereignty over the EEZ.

The East Sea or the Sea of Japan is surrounded by Japan, the two Koreas and Russia and connected to the Pacific Ocean through the Tugaru Strait, to the East China Sea through the Korea Strait, and to the Okhotsk Sea through the La Perouse Strait. It also consists entirely of the territorial seas and EEZs of those coastal States. Thus, the East Sea or the Sea of Japan is a semi-enclosed sea under the UNCLOS. It is not the high seas for the purpose of geographical naming.⁶ Accordingly both the UNCSGN's Resolution III/20 and the IHO's Resolution 1/1972 as amended (A4.2) should apply to the East Sea or the Sea of Japan.

The UNCSGN in Resolution III/20 considers the need for "international standardization of names of geographical features that are under the sovereignty of

⁵ Article 122 of the UNCLOS. States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under the UNCLOS. Article 123 of the UNCLOS. The areas of cooperation in an enclosed or semi-enclosed sea are quite related to the definition of hydrography in the IHO. For the definition of hydrography, *see* footnote 25 and its text.

⁶ Japan considers the East Sea or the Sea of Japan as the high seas. The Ministry of Foreign Affairs of Japan, *Sea of Japan* 6 (2009). The high seas are different from the territorial sea and the exclusive economic zone which then form an enclosed or semi-enclosed sea. Article 86 of the UNCLOS.

more than one country or are divided among two or more countries.” Strictly interpreted, this consideration appears to confine the international standardization of geographical names to the situation where two or more countries share sovereignty over a given geographical feature or share common borders over it. The former case seems to be difficult to find at present.⁷ But the Danube may be a good case of the latter in that it flows through the borders of ten countries in Europe: Germany, Austria, Slovakia, Hungary, Croatia, Serbia, Bulgaria, Moldova, Ukraine and Romania.

Then, there is an interesting argument about the applicability of the two resolutions of the IHO and the UNCISG: “these resolutions presume that the geographical feature concerned is under the sovereignty of two or more countries, such as in the case of a bay or strait.”⁸ This argument has certain flaws. First, it intentionally specifies the geographical features in the case of a bay or strait. As examined above, the geographical features to be applied by the IHO’s Resolution 1/1972 as amended (A4.2) in particular are open and broad in scope. Second, it intentionally ignores the second consideration of the UNCISG’s Resolution III/20. As examined above, the UNCISG in this resolution considers 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.” It is to be noted that the UNCISG also considers the need for international standardization of names of geographical features that are divided among two or more countries in addition to those that are under the sovereignty of more than one country. Here it is important to find the meaning of the term ‘divide’. It has several related meanings such as “to separate or be separated into parts or groups; split up; part” and “to share or be shared out in parts; distribute.”⁹ (emphasis added) Thus, the second consideration of the UNCISG’ resolution is interpreted for geographical features that are shared among two or more countries. This interpretation is reasonably in consonance with the contents of the resolutions. The contents of both the resolutions specifically point

⁷ There are certainly many cases of claiming sovereignty over a particular place by two or more countries. But it is not the case of being under the sovereignty of more than one country with no dispute.

⁸ The Ministry of Foreign Affairs of Japan, *Sea of Japan* 5-6 (2009).

⁹ *Collins English Dictionary*, <http://www.thefreedictionary.com/divide>.

out to a geographical feature shared among two or more countries. For example, the IHO's Resolution 1/1972 as amended (A4.2) provides that "two or more countries share a given geographical feature", and the UNCISG's Resolution III/20 provides for "countries sharing a given geographical feature."

An enclosed or semi-enclosed sea under the UNCLOS intrinsically involves two or more countries sharing a given geographical feature in that it is "a sea surrounded by two or more States ... or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States." Thus, an enclosed or semi-enclosed sea is a typical geographical feature which is beyond a single sovereignty so as to be applied by both the resolutions concerned of the IHO and the UNCISG. And the East Sea or the Sea of Japan is exactly a semi-enclosed sea.

III. Sovereignty in the sea

The term 'sovereignty' is basic to international law. It may be defined as the "totality of international rights and duties recognized by international law".¹⁰ Sovereignty is a firmly established description of statehood. There is also a variation of sovereignty such as sovereign rights in international law. In respect of sovereignty and sovereign rights the territorial sea, the exclusive economic zone and the high seas matter.¹¹

1. Sovereignty over the territorial sea

A coastal State enjoys sovereignty over the territorial sea. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.¹² This sovereignty extends to the air space over the territorial sea

¹⁰ J. Crawford, *The Creation of States in International Law* 32 (2006).

¹¹ The high seas are often confused with the term 'international waters.' The latter is defined as "A nonlegal term that refers to those waters subject to the high seas freedom of navigation and overflight, i.e., contiguous zone, EEZ, and high seas." IHO, *Hydrographic Dictionary* (5th ed., 1994). Thus, it is irrelevant for geographical naming.

¹² Article 2(1) of the UNCLOS.

as well as to its bed and subsoil.¹³ States with the territorial seas are coastal States.

2. Sovereign rights over the EEZ

In the EEZ, the coastal State has 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 sea-bed and of the sea-bed 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.¹⁴ It also has jurisdiction¹⁵ as provided for in the relevant provisions of the UNCLOS with regard to:¹⁶ (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; and (iii) the protection and preservation of the marine environment.

Sovereign rights, which may be exercised by coastal States, are not complete sovereignty in that they are recognized only for certain specific purposes.¹⁷ Thus, the coast State is responsible for determining both "the allowable catch of the living resources in its exclusive economic zone"¹⁸ and "its capacity to harvest the living resources of the exclusive economic zone."¹⁹ In exercising its rights and performing its duties under the UNCLOS in the EEZ, the coastal State should have due regard to the rights and duties of other States.²⁰ For example, all States in the EEZ enjoy,

¹³ Article 2(2) of the UNCLOS.

¹⁴ Article 56(1)(a) of the UNCLOS.

¹⁵ Jurisdiction is often confused with sovereignty. As a matter of fact, jurisdiction is an attribute of State sovereignty. A State's jurisdiction refers to the competence of the State to govern persons and property by its municipal law. R. Wallace, *International Law* 108 (2002). A State's domestic law governs the exercise or the non-exercise of its jurisdiction. International law concerns itself principally with the propriety of the exercises of State jurisdiction.

¹⁶ Article 56(1)(a)(b) of the UNCLOS.

¹⁷ Article 77(1) of the UNCLOS provides for sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources of coastal States.

¹⁸ Article 61(1) of the UNCLOS.

¹⁹ Article 62(2) of the UNCLOS.

²⁰ Article 56(2) of the UNCLOS.

subject to the relevant provisions of the UNCLOS, the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms.²¹

The EEZ being a new type of a sea under the UNCLOS may have a significant element for sea names. First, the EEZ is formally recognized to form an enclosed or semi-enclosed sea which is a geographical feature.²² Second, the coastal States are allowed to exercise sovereign rights over the EEZ.²³ Those sovereign rights over the EEZ are mainly for economic exploitation and exploration.²⁴ These activities in the EEZ are quite related to the activities of the IHO, *i.e.* hydrography. Hydrography is defined by the IHO as “the branch of applied sciences which deals with the measurement and description of the physical features of oceans, seas, coastal areas, lakes and rivers, as well as with the prediction of their change over time, for the primary purpose of safety of navigation and in support of all other marine activities, including economic development, security and defence, scientific research, and environmental protection”.²⁵ (emphasis added) Thus, geographical naming for the EEZ should also be relevant for the IHO because international standardization may be required.

IV. Conclusion

As examined above, sovereignty is a very important element in standardization of geographical names. The names of foreign coasts of sovereign countries are only respected by other countries. Geographical features beyond a single sovereignty include an enclosed or semi-enclosed sea so as to be applied by the relevant resolutions of the IHO and the UNCSGN. The East Sea or the Sea of Japan is such a semi-enclosed sea.

²¹ Article 58(1) of the UNCLOS.

²² Article 122 of the UNCLOS.

²³ Article 56(1) of the UNCLOS.

²⁴ Coastal States have also jurisdiction with regard to scientific research and environmental protection.

²⁵ http://88.208.211.37/srv1/index.php?option=com_content&view=article&id=299&Itemid=289.

There are two points made with respect to standardization of geographical names. Standardization of geographical names involves many important international organizations such as the UN and the IHO. For example, the UNGEGN is to study “existing national and international practices concerning the delineation and naming of oceans and seas, including their integral subdivisions, beyond the limits of national jurisdiction, with a view to recommending improvements in current nomenclatural practices and procedures.”²⁶ (emphasis added) In this regard, the International Hydrographic Bureau (IHB) of the IHO is recommended to co-operate with the UNGEGN with the object of achieving international standardization of names of maritime and undersea features.²⁷ Accordingly these international organizations may have to be responsible for any lack or no progress in standardization of geographical names, although they are mainly driven by their members who are sovereign countries.

Resolution 8/1919 as amended (A4.1) expects an adoption of “an international convention by the United Nations on standardization of internationally recognized names” for the names used internationally.²⁸ The names used internationally include names of “the oceans and international subdivisions thereof.”²⁹ There are certain maritime geographical features to be applied by such an international convention. This issue should be seriously raised in the meetings of the coming UNCISG.

²⁶ Resolution 1/1972 as amended (A4.2) paragraph 4(a).

²⁷ Resolution 1/1972 as amended (A4.2) paragraph 3.

²⁸ Resolution 8/1919 as amended (A4.1) paragraph 1(e).

²⁹ Resolution 8/1919 as amended (A4.1) paragraph 1(e).

