The Naming of Maritime Features

Viewed from an International Law Perspective

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I. Introduction

Toponymy, the study of place-names, albeit a scientific endeavour, has strong political implications. The appellation of places invokes sentiments of belonging and nationalistic claims. History is replete with examples ranging from fairly benign quibbles over cartography to actual wars being waged over the names of areas. *Mutatis mutandis* similar problems have arisen and continue to endure with respect to hydronyms, the names of bodies of water, especially salt water bodies.

Setting aside for a moment these political, cultural and historical ramifications, we turn our attention in this contribution to the potential *legal* aspects of toponymy as it relates to the sea. So far, not a single piece of scholarship has been devoted to this conundrum. Thus, we can fairly ask: does international law überhaupt come into play in the naming process as regards maritime features?

The first section of this article acknowledges the usefulness of framing this issue from an international law perspective. An initial examination of the right of states to attribute appellations will be followed by an inquiry into the possible legal implications that can be derived from the names of maritime features. The latter will mainly draw upon a discussion of international case law, chiefly the jurisprudence of the International Court of Justice (ICJ).

The second section narrows our scope of analysis to two bodies with specific competence vis-à-vis geographical names. First of all, the work of the United Nations Group of Experts on Geographical Names (UNGEGN) will be singled out. Its procedure and the legal nature of its recommendations highlight this organ's key role as a developer of procedures as well as major promoter of place names.

Secondly, the involvement of the International Hydrographic Organization (IHO) in the naming of maritime features will be studied in some detail. This section examines the possibilities for co-operation between states in the area of hydrography. On the one hand the influence of international organizations on sovereign states in the maritime naming process cannot be underestimated. On the other hand

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limitations to achieving solutions in politically sensitive cases still loom large, as can be observed for areas beyond the outer limits of states' territorial seas.

Finally, this contribution offers some sober thoughts on the lacunae in the current legal framework of naming maritime features.

II. International Legal Framework

A. The right to attribute names to maritime features

States are singularly distinct in that they all share a fundamental attribute, sovereignty. This quality, which is entirely compatible with the notion of international law (after all, the ability to enter into international engagements is precisely an expression of sovereignty; *Wimbledon* 1923, 25), enables states to exercise their competences. The powers that accrue to states by dint of sovereignty are far-reaching, tantamount to freedom of action within the strictures of the law. Could this autonomy encompass the faculty to give names to seas? International law appears to be silent on this issue, containing no express rules regulating this matter. In the absence of a clear-cut answer, we must shed some light on the dual nature of state sovereignty.

Internal sovereignty bestows government structures with exclusive jurisdiction, effectively raising them to the rank of primacy (Shaw 2008, 487). The jurisdictional reach of these governmental institutions is however confined to the territory of the state in question. Thus, territory fulfils a double function. On the one hand, it is an enabler: territory constitutes a title empowering states to exercise their full powers. On the other hand, territory operates as a boundary ("delimited in space", *Island of Palmas* 1928, 838) beyond which the state's competences cannot be exercised (Daillier, Forteau & Pellet 2009, 456-457) (although there are a limited amount of instances in which "extraterritorial" modes of jurisdiction can be exercised, these are exceptions to the general rule of "territoriality" (*Lotus* 1927, 15)). Thus, the fact that a state enjoys jurisdiction to the exclusion of others seems to imply that it can authoritatively give names to areas within its territory. Consequently, the chosen name will be *opposable.* This means that the act of attributing a name will produce legal effects and can be invoked vis-à-vis other international legal actors (Mahinga 1994, 302). 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 Convention on the Law of the Sea (UNCLOS) acknowledges sovereignty of the coastal state over the territorial sea (1982 Convention, Art. 2), stipulating that its breadth may not surpass 12 nautical miles as measured from the baselines pursuant to the rules it establishes (*id.*, Art. 3).

External sovereignty entails the independence and juridical equality of states in the international realm (1970 UNGA Resolution). Many scholars have taken this to mean that states retain their freedom in international relations and thus their actions will be in accordance with international law as long as there is no rule expressly prohibiting such conduct. The adherents of this school of thought approvingly

cite a famous dictum in the *Lotus case* in which the Permanent Court of International Justice (the predecessor of the ICJ) held that "[i]nternational law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law (…). Restrictions upon the independence of States cannot therefore be presumed" (*Lotus* 1927, 15). In other words, one needn't seek a permissive rule that allows a state to take a certain course of action. This categorical take on the *Lotus* principle bears witness to a highly consensual understanding of international law which has rightly been criticized on numerous occasions (for a recent example, see Judge Simma's declaration in the *Kosovo Advisory Opinion* 2010). A better, more nuanced approach would be to accept that external sovereignty *per definitionem* is limited in scope: in a legal system in which all states are equal, the freedom of one state must be partly curtailed by that of all other states (Pellet 2007, 229).

Less extensive powers inevitably have bearing upon the right to attribute names to maritime zones beyond the territory of states. It would be erroneous to treat the waters beyond the territorial sea in a monolithic fashion. The modern law of the sea has brought about a compartmentalization of the seas and other maritime features. The 1982 Convention acknowledges a variety of zones in which certain rights devolve to coastal states. Hence:

- Contiguous zone – "exercise control" in certain instances (exhaustive list) (1982 Convention, Art. 33(1)).

- Exclusive economic zone (EEZ) – "sovereign rights" with respect to exploration and exploitation (*id.*, Art. 56(1) (a)); "jurisdiction" in certain instances (exhaustive list) (*id.*, Art. 56(1) (b)); "other rights and duties" as set out in the Convention (*id.*, Art. 56(1) (c)).

- Continental shelf – "sovereign rights" with respect to exploration and exploitation (*id.*, Art. 77(1)).

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.

The silence of the 1982 Convention does not rule out the possibility for a state to create a new right to impose its chosen nomenclature of a particular maritime feature on the international community. The technique that could give birth to such an entitlement is the *unilateral act*. Indeed, the legal nature of such acts has been acknowledged (*Eastern Greenland* 1933, 69; *Nuclear Tests* 1974, 268) and recent years have seen a sharp rise in their usage: "(…) unilateral acts have become the most frequent tool of State interaction. They weave, so to speak, the daily web of international relations" (Zemanek 1998, 210). It is via this method that subjects of international law can incur obligations and

assert rights. Whether a state can successfully acquire rights via this method depends on several factors. As regards the declaration itself, certain criteria must be met, including the will of the author to claim an entitlement under international law as well as the notoriety or publicity of the act (Shaw 2008, 122). Owing to the principle of sovereign equality, a unilateral act asserting a new right cannot be opposable vis-à-vis third states voicing their protest. In expressing disapproval, they shield themselves from this novel claim. If on the other hand states expressly acknowledge the assertion made by the author, they accept that the act can be invoked against them.

The situation becomes all the more complex when third states do nothing. In other words, the international community remains silent. Can one interpret this lack of condemnation as a form of tacit consent? Much will depend on the specific circumstances *in casu*, such as the amount of time that has passed since the issuance of the declaration, whether or not the situation requires a reaction, etc. But in any event, one must remain wary of deducing the expression of the will of a state from a lack of response. Not all situations call for a reaction and states can remain silent for a multitude of reasons. For this reason, the ICJ has set a high standard for inferring acquiescence from silence (see *e.g. Fisheries case* 1951, 139).

In the context of dispute settlement before the World Court, disagreements on maritime nomenclature have not given rise to noteworthy problems. This can be ascribed to two factors. Firstly, many cases involving disputed maritime features, chiefly islands, have been entertained by the Court as a result of a special agreement (rather than via a unilateral application). In their special agreement the parties are required to indicate not only their identity, but also the subject of their contention (1945 Statute, Art. 40). Inevitably, this will prompt the opposing sides to agree on the names to be used with respect to the disputed maritime features. When a consensus cannot be reached on a single name, the result will be a reference to both names sometimes separated by a slash ("/") with the implicit understanding that the order of the names has no legal significance whatsoever. One practical outcome is the consistent use of both names throughout the judgment as well as in the title of the case (see *Pedra Branca/Pulau Batu Puteh* 2008 and *Kasikili/Sedudu Island* 1999). The Court specifically noted in the former case that "for the purposes of this Special Agreement the order of the use of the names Pedra Branca/Pulau Batu Puteh or vice versa shall not be treated as having any relevance to the question of sovereignty to be determined by the Court" (*id.*, 18). Secondly, in an effort to appear impartial, the Court in collaboration with its Registrar will strive for a high degree of "name neutrality" (Kamto 2001, 12).

B. Legal implications of the names of maritime features

Names as a claim to historic rights

The concept of historic rights with respect to water bodies must be distinguished from historic waters because whereas the latter deals with "waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title," (*Fisheries case* 1951, 130) the former, a broader term, relevant to our study because it concerns rights, deals with claims to exercise "certain jurisdictional rights in what usually are international waters, most particularly fishing rights" (Symmons 2008, 4). In other words, historical waters, usually bays, are zonal claims and need title to prove their existence such as the case of *El Salvador/Honduras*, vis-à-vis the Gulf of Fonseca where the Court established the joint sovereignty of the three coastal states bordering the gulf (see *Island, Land and Maritime Frontier Dispute* 1992, para. 404) whereas historic rights refer to rights claimed to exercise jurisdictional rights in usually international waters. These rights may be fishing rights, pearling rights, etc.

As historic rights are not zonal claims, nor are they exclusive to maritime features, but rather assertions of certain rights over certain zones, states may claim these rights in zones that are not necessarily appurtenant territory by establishing continuous usage and acquiesce by other relevant states. Without the hurdle of the adjacency requirement (Symmons 2008, 6), a necessary condition to claim title over historic waters, states such as Bahrain in *Qatar* v. *Bahrain* claimed historic rights for the purpose of delimitation of territories on the basis of its pearling banks, known as "Bahrain pearling banks" (*Qatar* v. *Bahrain* 2001, 40). Moreover, the whole Qatar peninsula and the islands were recorded in an 1838 map as Bahraini. The ICJ in its judgment held that the nature and ownership of the pearling banks had no bearing on any exclusive recognition of territorial rights, neither was it a relevant circumstance for the purpose of delimiting the boundaries (*id.*, 236-237). Therefore in the event that state parties rely on name giving as an element of claims to historic rights, the Court is of the opinion that the principle of general international law with regard to claims still applies (*id.*, 229).

One may argue that because the adverse interest in relation to this claim is the interests of other states and/or competing claims beyond territorial waters, claims to historic rights must be consistent and traceable to the date of competing claims, a factor that is difficult to prove with toponymy. In other words, it is "evidentially important to prove historic title so as to show evidence of sovereignty" for this will benefit claims of a historic right to a feature (Symmons 2008, 109) and a toponymic argument may be insufficient. Authors such as Keyuan acknowledge that designations of fishing zones in areas such as the East China Sea beyond territorial waters may lack specific arguments in support of such designations (Keyuan 2000, 159) and the ICJ may be troubled by such assumption of rights based on the argument by Keyuan that "there must have been compelling reason" (Keyuan 2001, *id.*).

Names as an act of ownership

The number of cases in the Court's jurisprudence in relation to geographical features may be arguably scarce but the case of *Minquiers and Ecrehos* is a useful starting point to establish the ICJ's jurisprudence in relation to names as a claim to ownership.

In relation to the Ecrehos group, the UK noted that its geographical features had no name. In fact these rocks had various names given by Jersey fisherman (UK Memorial in *Minquiers and Ecrehos* 1953, para. 7). As for the names of the geographical features of the Minquiers group, British admiralty charts gave names solely for navigational purposes (*id.*, para. 11). This absence of naming on the part of the British was highlighted in the French submission. The French submission argued that the lack of name giving by the British constituted a "*caractère limitatif*". The argument here was that failure of the British to name the disputed island in any relevant document implied that the disputed islands were outside the UK government's control (France Counter Memorial in *Minquiers and Ecrehos* 1953, p. 382-383). The French report then noted that the first mention of the Ecrehos island can be found in the grant of the Ecrehos islets by Pierre de Preaux-Bailli du Cotentin in 1203, to the Abbey of Val Richer in the deed of the gift and on this basis these islands are French.

The arguments of the parties in *Minquiers and Ecrehos* case beg the question whether a lack of enumeration of a geographical feature in a key document affects any claim to *effectivités* especially where name giving is claimed by one party as an act *à titre de souverain.*

The British memorial (UK Memorial in *Minquiers and Ecrehos* 1953, Annexes to the Memorial (No. A47), para. 250) argues *au contraire* by focusing more on possession of title through acts of administration such as legislation and deeds. However, the question of where the name for these features comes from remained unanswered. Hence, the British argument that although the deed of Pierre de Preaux was the first document that named the Ecrehos islets, the islets came in the possession of Pierre de Preaux by the charter, by which King John of England in 1200 had given to the Bailli the islands of "Gerse, Gernese and Aurene" (*id.*). The dependency of the deed of Pierre de Preaux and the Ecrehos on the three largest Channel Islands was further proven in the fact that the deed of gift from the Bailli stated that the Islands were given to him by King John (*id.*). So the Pierre de Preaux deed might have named the islets Ecrehos but he was given the islands as a collective gift albeit without a definite name.

Therefore the argument that the UK's lack of name giving was a "*caractère limitatif"* as the onus was on the UK to prove that it had named the islands individually (France Counter Memorial in *Minquiers and Ecrehos* 1952, p. 382-383), was countered by the UK argument that at that time the islands were generally referred to as groups with names such as "les Illes de Guernese", "les Isles" etc. (UK Reply in *Minquiers and Ecrehos* 1953, para. 118, 139).

The Court noted specifically that it "cannot draw any conclusion from the naming of the islands since this question must ultimately depend upon evidence which relates directly to the possession of these groups" (*Minquiers and Ecrehos* 1953, 55). Name giving as an act of ownership did not therefore

feature in the unanimous judgement in favour of the UK for it was taken not to be equivalent to ownership or in this case a proof of *effectivités.*

Name giving as a way of dating claims

There might be instances where states are keen to proceed with the dispute on the understanding that the disputed feature was not *terra nullius* at the commencement of competing claims by the parties. In this instance, proving the origins of the feature's name and its provenance may be a useful way of dating a state's claim to a feature. *Indonesia/Malaysia* is a case where the parties relied upon name giving as a way of dating claims to disputed islands in the past with the intention of preventing any arguments that the feature was at the critical date *terra nullius* (*Indonesia/Malaysia* 2002, para. 108).

The disputed islands in this case were not included in the original cession made in 1878 and in 1903, the "confirmation of cession" made by the Sultan of Sulu with the British North Borneo Company (BNBC), they were not specifically named in the document but as a group. Indonesia argued that this proved that the Sultan of Sulu, the predecessor of Spain, never considered the islands under Malaysian sovereignty. Indonesia argued that its right over these islands lies in the boundary line that specifically attributes the island to the Dutch, subsequently Indonesia (Indonesia Memorial in *Indonesia/Malaysia* 2002, para. 3.68, 5.48-5.50).

Any danger of determining these disputed islands as *terra nullius* due to the island's lack of mention on the "confirmation of cession", argued Malaysia, could be determined from the name, which was Malaysian. In an argument that was more cultural than it was cartographical, Malaysia argued that the names of the islands originated from words such as "Ligit" which means thorns in Bajau and related to the word "Palau Ligitan" which means "Islands of Thorns" (Malaysia Memorial in *Indonesia/Malaysia* 2002, para. 3.10). Sipadan, on the other hand, was argued to have originated from the word "Siparan" and in due course "Sipadan" (*id.*, para. 3.14).

Malaysia further argued that the naming of the islands as a group in the 1903 confirmation can still be proof of ownership and occupation in the absence of which the disputed islands were therefore *terra nullius* (Malaysia Counter Memorial in *Indonesia/Malaysia* 2002, para. 3.16) for these cultural names existed prior to the "confirmation of cession". Indonesia followed on this argument on the basis that not naming an island is not tantamount to a *terra nullius* status (Indonesia Reply in *Indonesia/Malaysia* 2002, para. 4.9 (ii) *et seq.*) and by way of example noted that Turtle Island, unequivocally administered by the BNBC in the nineteen hundreds, was not mentioned by name specifically or generally in the treaty (*id.*, para. 6.18).

Any hopes that the ICJ might consider the issue from the perspective of names was groundless for the Court decided that although "Malaysia does not name any of the islands in any of the relevant legal instruments to prove title or transfer of title" (*Indonesia/Malaysia* 2002, para. 108), it had title based on sufficient proof of *effectivités* (*id.*, para. 149). Note here that the ground of this claim was not based on the cultural significance of the disputed island's names but on proof of *effectivités*, not proof of provenance of name. This leads this study to argue that it may be taken that the issue of name giving

only went to prove and maintain that the islands in question were not *terra nullius* and therefore subject to the laws of occupation (*id.*, para. 108) but this was not the issue under consideration by the Court. The issue under consideration was who has sovereignty over the disputed feature and on what basis.

Limited legal implications

It follows therefore that names are not a basis for determining sovereignty. Although names may feature in competing claims and states may base claims over features on nomenclature, the Court is apt to concern itself with objective proof of sovereignty. Just as maps are taken to represent the "physical expression of the state or states concerned," its "varying reliability or unreliability" (see *Frontier Dispute* 1986, 582-83) may be comparable to the issue of names and are not a contributing factor in the Court's determination of rights and uses over maritime features in international law.

III. Specific Bodies Having Competence Concerning Geographical Names

A. The United Nations Group of Experts on Geographical Names

1. Description

The UNGEGN is one of the seven standing expert bodies of the United Nations (UN) Economic and Social Council (ECOSOC). ECOSOC was established under the UN Charter and comprises at present 54 member governments (1945 UN Charter, Art. 61). It assists the UN General Assembly (UNGA) in promoting international economic and social cooperation and development. The ECOSOC may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the UNGA, to the members of the UN, and to the specialized agencies concerned (1945 UN Charter, Art. 62).

The UNGEGN's origins are to be traced back to the ECOSOC debates held in 1948, during which the problem of standardization of geographical names was raised, particularly with regard to cartographic services (1948 ECOSOC Resolution). It was established in pursuance of ECOSOC Resolutions 715 A (XXVII) (1959 ECOSOC Resolution) and 1314 (XLIV) (1968 ECOSOC Resolution) and the Decision taken by the Council at its 1854 meeting, on 4 May 1973.

Through Resolution 715 A (XXVII), the ECOSOC requested the Secretary-General to set up a small group of consultants to consider the technical problems of domestic standardization of geographical names, including the preparation of a statement of the general and regional problems involved, to prepare draft recommendations for the procedures, principally linguistic, that might be followed in the standardization of their own names by individual countries and to report to the Council on the desirability of holding an international conference on this subject and of the sponsoring of working groups based on common linguistic systems.

On the basis of the recommendations adopted at the first UN Conference on the Standardization of Geographical Names held in Geneva from 4 to 22 September 1967, the ECOSOC approved the terms of

reference for the *Ad Hoc* Group of Experts (Resolution 1314 (XLIV)), which was renamed the "United Nations Group of Experts on Geographical Names" by the ECOSOC Decision of 4 May 1973.

One of the main aims of the Group of Experts consists in emphasizing the importance of the standardization of geographical names at national and international levels and to demonstrate the benefits which could be derived from such standardization. In doing so, it builds on the results of the work carried out by national and international bodies dealing with the standardization of geographical names and proposes principles, policies and methods suitable for resolving problems of national and international standardization (2002 UNGEGN Statute, I.(a)-(c)).

2. Legal Analysis of Method of Functioning

a) Organizational Chart

UNGEGN

The Group of Experts is composed of experts in the fields of cartography and linguistics (2002 UNGEGN Rules of Procedure, Rule 2). Such experts are designated by the governments of member states of the respective geographical divisions (*id.*, Rule 2; 2002 UNGEGN Statute, IV.1.1), or invited in their personal capacity by the UN (2002 UNGEGN Rules of Procedure, Rule 22). The Group of Experts elects a Chairperson, two Vice-chairpersons and two Rapporteurs (2002 UNGEGN Statute, IV.2.1; 2002 UNGEGN Rules of Procedure, Rule 5). The UNGEGN meets every two years, and in years when a UN Conference on the Standardization of Geographical Names is held (2002 UNGEGN Rules of Procedure, Rule 3). One of the basic aims of the Group of Experts is to implement the tasks assigned as a result of the resolutions adopted at the Conferences (2002 UNGEGN Statute, I.(f)). The Group of Experts normally reports to the United Nations Conference on the Standardization of Geographical Names. In addition, the Secretary-General presents a report on each Session of the Group of Experts to the subsequent Session of the Council. To date, twenty-four UNGEGN Sessions and nine Conferences (which are convened every five years) have been held since 1967.

The Group of Experts is organized into 23 linguistic/geographical divisions (*id.*, Annex). As demonstrated in the table below, the number of divisions, participants and countries represented at the Sessions and Conferences has varied over the past Sessions.

Table 1: Participation in the UNGEGN Sessions since 2000

Session	Number of participants	Number of countries	Number of divisions present	Observers
25 (2009)	138	53	22 out of 23	14
24* (2007)	300	90	23 out of 23	29
23 (2006)	250	67	21 out of 22	15
22 (2004)	190	63	21 out of 22	15
21** (2002)	282	88	22 out of 22	na
20 (2000)	131	52	18 out of 22	31

* held in conjunction with the Ninth United Nations Conference on the Standardization of Geographical Names.
** held in conjunction with the Eighth United Nations Conference on the Standardization of Geographical Names.
na not available

Source: Expert Group Session reports (2000-2009).

The divisions support the Expert Group in its activities (2002 UNGEGN Statute, IV.1-2). Countries decide for themselves to which division(s) they wish to belong (*id.*, IV.1.4). Each division, if composed of more than one sovereign state, must select a division chairperson and an alternative representative (*id*., IV.1.5). It is the task of the divisional representative to stimulate activities in the standardization of geographical names within his or her division by all appropriate means. He/she is also responsible for ensuring that the work of the Group of Experts and its potential for technical assistance are brought to the attention of the individual countries in his or her division and for reporting any special problems in the division to the UN (*id.*, IV.1.7-8).

Under the umbrella of the UNGEGN, several working groups have been created to follow up on topics and issues and to carry out special tasks which cut across the divisional structure of the UNGEGN, such as the setting up of training courses in toponymy, the comparative study of the various systems of transliteration towards a single romanization system for each of the non-Roman writing systems and the production of international gazetteers (2001 ECOSOC Report). Currently, there are nine working groups: Working Group on Country Names; Working Group on Toponymic Data Files and Gazetteers; Working Group on Toponymic Terminology; Working Group on Publicity and Funding; Working Group on Romanization Systems; Working Group on Training Courses in Toponymy; Working Group on Evaluation and Implementation; Working Group on Exonyms; Working Group on Pronunciation; Working Group on the Promotion of Recording and Use of Indigenous, Minority and Regional Language Group Geographical Names. Furthermore, the UNGEGN has a task team for Africa and provides assistance in coordinating the efforts of countries developing their toponymic guidelines.

During the Sessions of the Group of Experts, *ad hoc* study groups may be appointed to deal with particular issues (2002 UNGEGN Rules of Procedure, Rule 38). The Group of Experts may establish inter-

sessional working groups composed of specialists to study particular problems between Sessions of the Group (*id.*, Rule 39).

The Group of Experts is assisted by a Secretariat, responsible for making all necessary arrangements for meetings and generally performs all other work which the Expert Group may require (*id.*, Rule 9). The Secretary of the Group of Experts is appointed by the Secretary-General and acts in that capacity in all meetings of the Group of Experts (*id.*, Rule 8).

Conferences

Each state participating in the Conference is represented by an accredited representative. If more than one representative is appointed, one of them is designated as head of the delegation. Each delegation may also include alternate representatives, advisers and experts as may be required (2007 UNCSGN Conference Rules of Procedure, Rule 1).

The Conference elects a President, two Vice-Presidents, a Rapporteur and an Editor-in-Chief among the representatives of the states participating in the Conference (*id.*, Rule 6). The Executive Secretary of the Conference is appointed by the UN Secretary-General.

The Conference may establish such committees as may be necessary for the performance of its functions (*id.*, Rule 39). Each Committee elects its own Chairman, Vice-Chairman and Rapporteur (*id.*, Rule 40). The Rules of Procedure of the Conference apply to the proceedings of the committees (*id.*, Rule 41).

Representatives designated by entities, intergovernmental organizations and other entities that have received a standing invitation from the UNGA to participate in the Sessions and work of all international Conferences convened under its auspices have the right to participate as observers in the deliberations of the Conference and its committees (*id.*, Rule 42). Also representatives designated by the specialized agencies and representatives designated by other intergovernmental organizations may participate in the deliberations of the Conference and its committees on questions within the scope of their activities (*id.*, Rule 43 & 44). Also non-governmental organizations invited to the Conference may designate representatives to sit as observers at the public meetings of the Conference and its committees (*id.*, Rule 45).

b) Founding Documents

UNGEGN

The Statute and Rules of Procedure of the UNGEGN were adopted by the Group of Experts at its fifteenth and sixteenth Sessions and endorsed by the sixth UN Conference on the Standardization of Geographical Names. They were approved by ECOSOC at its substantive Session of 1993, which took place in Geneva from 28 June to 30 July 1993 (1993 ECOSOC Decision). The Statutes and Rules of Procedure have been amended by the Group of Experts at its twenty-first Session and approved by ECOSOC on 25 October 2002. The Group of Experts acts as a collegiate, consultative body. Agreement on non-procedural matters is reached by consensus and not by voting (2002 UNGEGN Statute, II.1). In

the event that consensus is not achieved, the matter is deferred for reworking and re-submission (2002 UNGEGN Rules of Procedure, Rule 23.1). In the absence of a consensus on procedural matters, the chairperson may and at the request of any member must put the proposal to a vote (*id.*, Rule 23.2). Each expert representing a division has one vote, and decisions of the Group of Experts must be taken by a majority of the divisional representatives present and voting (*id.*, Rule 24.1.). If a vote is equally divided, a second vote is taken. If this vote is also equally divided, the proposal or motion is rejected (*id.*, Rule 24.2). Representatives of divisions who abstain from voting are considered as not voting (*id.*, Rule 25).

Conferences

The Conferences' Rules of Procedure were adopted at the ninth UN Conference on the Standardization of Geographical Names on 21 August 2007. A majority of the representatives participating in the Conference constitutes a quorum (2007 UNCSGN Conference Rules of Procedure, Rule 12). Each state represented at the Conference has one vote, and the decisions of the Conference are made by a majority of the representatives of states participating in the Conference present and voting (*id.*, Rule 24), *i.e.*, representatives present and casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting (*id.*, Rule 25). The President can not vote, but may designate another member of his delegation to vote in his place (*id.*, Rule 7). Observers and representatives designated by the specialized agencies or other intergovernmental organizations and non-governmental organizations have no right to vote (*id.*, Rules 42-45).

c) Legal Nature of Output

The decisions of the Group of Experts are submitted as recommendations to the United Nations Conferences on the Standardization of Geographical Names, and, if approved, submitted to ECOSOC for final endorsement, with the request that member states give them the broadest possible publicity and exposure through appropriate means and channels such as professional organizations, research and scientific institutions, and institutions of higher learning. The decisions of the Group of Experts have a recommendatory character (2002 UNGEGN Statute, II.2). ECOSOC may make recommendations, either under Article 62(1) or, without being related to any particular study, under Article 62(2) of the UN Charter. The word "recommendation" signifies the non-obligatory character of the resolution and these are thus not binding upon the member states (Sands & Klein 2009, 59; Sloan 1948, 26). Nevertheless, such 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). In practice, ECOSOC has limited itself to endorsing the recommendations to organize Conferences on the Standardization of Geographical Names and to invite the Secretary-General to take measures, where appropriate and within available resources, to implement the other recommendations adopted at the Conferences (2003 ECOSOC Decision).

3. Substantive Rules Adopted

The UNGEGN is not a geographic names decision-making body, nor an arbiter of disputes. Its functions, as set out in the UNGEGN Statute, are *inter alia* to develop procedures and establish standardization mechanisms in response to national requirements and particular requests. The UNGEGN

encourages discussions and studies on practical and theoretical steps directed towards standardization and makes mapping organizations aware of the importance of using standardized geographical names. In doing so, it liaises with international organizations dealing with related subjects (2002 UNGEGN Statute, III; Palmer 2005, 2). As recognized at the first Conference, it is up to each state to standardize the geographical names within its jurisdiction, *i.e.* to decide what the name should be of every feature, and how that name should be written. In that sense, it was recommended that "each country should have a national geographical names authority (…) having clearly stated authority and instructions for the standardization of geographical names and the determination of names standardization polity with the country" (1967 UNCSGN Resolution I/4). The UNGEGN is thus not mandated to decide on names, to compel countries to establish place names standardization processes or to follow a particular protocol or method. Likewise, the UNGEGN Statute mentions that "[i]n its activities the Group of Experts must adhere to the principle that international standardization of geographical names must be carried out on the basis of national standardization" (2002 UNGEGN Statute, II.4). Moreover, questions involving national sovereignty cannot be discussed by the Group of Experts (*id.*, II.3).

Some recommendations related to maritime features beyond the limits of national jurisdiction have been issued at the UNGEGN Conferences. These recommendations are worded in a general manner and mostly relate to procedural aspects and/or stress the need for cooperation with other relevant organizations: Resolution II/22 recommended the UNGEGN to study existing national and international practices concerning the delimitation and naming of oceans and seas beyond the limits of national jurisdiction, with a view to recommending improvements in nomenclatural practices and procedures; Resolution III/21 recommended the UNGEGN to coordinate its programmes with those of the IHO. Resolution IV/12 observed that the UNGEGN Working Group on Undersea and Maritime Features had completed its tasks with regard to undersea features, but that in regard to maritime features further coordination with the International Hydrographic Office (sic) was required. Therefore, the task of the Working Group was to be limited to maritime features (1982 UNCSGN Resolution IV/12). The UNGEGN Maritime and Undersea Feature Working Group was disbanded in 1984 (Palmer 2005, 5).

Some resolutions relate specifically to the names of maritime features in shared waters or beyond "a singly sovereignty". Resolution I/8 set the stage for a series of subsequent resolutions providing guidance in such cases. With respect to features common to, or extending across the frontiers of two or more nations, this resolution recommended the establishment of a common name or a common application and that in case of conflicting names or applications the nations concerned attempt to reach an agreement (1967 UNCSGN Resolution I/8). Resolution II/23 recommended that the UNGEGN work on a model statement on the treatment of Antarctic undersea feature names which could be suggested for adoption by interested countries (1972 UNCSGN Resolution II/23). Resolution II/25 recommended countries to agree on fixing a single name for features within the sovereignty of more than one country, or which are divided among two or more countries. In case such agreement could not be reached, it was recommended that for international cartographic purposes the name forms of each of the languages be accepted. Only technical reasons, *e.g.* in case of small-scale maps, could make it necessary to dispense with the use of certain name forms belonging to one language or another (1972

UNCSGN Resolution II/25). Resolution II/26 recommended the UNGEGN, for the purpose of drawing up a system for naming undersea features beyond a singly sovereignty, to cooperate with the IHO.

4. Conclusion

The UNGEGN has not been established to decide on names with respect to maritime features outside the sovereignty of a single State, but promotes the consistent use worldwide of accurate place names. The decisions of the Group of Experts are submitted as recommendations to the United Nations Conferences on the Standardization of Geographical Names. The Resolutions adopted by the Conference have a non-binding and recommendatory character. In practice, ECOSOC has limited itself to endorsing the recommendations to organize Conferences on the Standardization of Geographical Names and to invite the Secretary-General to take measures, where appropriate and within available resources, to implement the other recommendations adopted at the Conferences, *e.g.* ECOSOC Decision 2003/294 (2003 ECOSOC Decision).

B. International Hydrographic Organization

1. Description

The IHO was established in 1967 by means of an international agreement (1967 Convention), which entered into force three months after twenty-eight states had become a party to it (1967 Convention, Art. XIX(1)), *i.e.*, on 22 September 1970. It succeeded to the International Hydrographic Bureau (IHB) for only the governments participating in the work of that Bureau on the day of conclusion of the 1967 Convention had an automatic right to become a party to the successor organization (1967 Convention, Art. XVIII(1 & 2)). Other states can only accede to the 1967 Convention if their application is approved by two-thirds of the members (1967 Convention, Art. XX).

The predecessor of the IHO, the IHB, is a good example of the typical early development of an international organization when studied from the perspective of the law of international institutions. Starting from the obvious disadvantages of convening internal *ad hoc* conferences (who takes the initiative; who to invite; how to do away with the rigidity of statements of state policy by the participants; how to do away with the strict rule of equality; *etc.*), more permanent fora were established taking the form of international organizations, especially in the administrative and technical field, where the cooperation between states imposed itself most urgently. One of the basic setups in this respect took the form of periodic conferences working in tandem with a permanent bureau (Sands & Klein 2009, 3-8).

When at the end of the 19th century the need for cooperation in the area of hydrography became apparent, a number of international conferences were convened on this issue: Washington (1899), Saint Petersburg (1908 and 1912), and finally in London (1919) (IHO 2010: About the IHO). By that time, it was agreed that a permanent body should be created. The Director of the French Hydrographic Service of the Navy, M. Joseph Renaud, had already floated the idea at the time of the 1912 Saint Petersburg conference. But *inter alia* because the United Kingdom was not represented at the conference, one had to wait until after the First World War for this initiative to be carried further. London invited all countries possessing hydrographic offices, of which 22 participated in the 1919

Conference (Spicer-Simson 1922, 293-294). The proposal to create a permanent International Hydrographic Bureau was endorsed by the 1919 conference and a triumvirate combining the French, UK and US hydrographic services was instructed to draw up statutes and subsequently obtain the adhesion of maritime states thereto (*id.*, 294).

The election of the Directors and Secretary of the Bureau took place on 21 June 1921, the first meeting of the Directing Board on 6 July, the first full Board meeting on 25 July (1922 Summary of IHB First Annual Report, 358), and the organization started to work actively in September of the same year (Anon 1958, 1074). This multitude of dates, together with the rather peculiar legal technique by which this international organization was established, makes it rather difficult to pinpoint the exact date of establishment of the IHB. Indeed, unlike the majority of international organizations today, the IHB was not established by treaty, but rather by an informal agreement. This process has been described in the following manner: "No parties were named, and there were apparently no signatures nor ratifications. An organization was set up by informal agreement which states could join, and certain duties are established for them" (Eagleton 1934(a), 230). Indeed, the statutes of this organization remained silent about ratification and various governments are said to have "informally signified their approval" (Eagleton 1934(b), 380). And even though other examples exist of international organizations having been established by such a procedure (Syersted 1964, 49), the United States nevertheless made the suggestion during the meeting on 25 July 1922, mentioned above, that it might be more appropriate to conclude an agreement (1922 Summary of IHB First Annual Report, 358). This request should nevertheless be placed against the broader US state practice in this respect. By 1947 this country had adhered to about half of the international organizations it was a party to by way of a mere resolution of a conference, and the other half by way of formal acceptance of a treaty or charter (Klooz 1947, 922). The Directing Board of the IHB, however, considered the American proposal not to be advisable since the process of approval of a mere resolution adopted by an international conference was considered to work quite satisfactorily (1922 Summary of IHB First Annual Report, 358). During this starting up procedure of the IHB, the statutes of the organization were moreover revised in accordance with the wishes expressed by some countries prior to having signified their approval, and these revised statutes were only sent around to members in January 1922.

This results in the fact that one can find different starting dates for this organization. Some take it back to the Conference of 1919, where the initiative was taken (Kunz 1945, 45, mentioning a "treaty" of 30 June 1919; Anon 1924(b), 244, stating it was created by a conference held in 1919), others to somewhere during the course of 1921 or 1922, when states started to signify their approval of a worked out set of statutes. From an international law point of view, the better option appears to be the latter, namely that consent is given at the time states accept a concrete invitation extended to them. The Special Rapporteur of the International Law Commission explicitly referred to the example of the IHB when commenting on his draft article on acceptance of international treaties (Lauterpacht 1953, 122). *In casu*, this uncertainty had specific legal importance for the application of the primary function of the League of Nations, *i.e.*, the promotion of international cooperation and coordination, and thus the relationship between the IHB and the League of Nations. The Covenant of the League of Nations stated in this respect:

> "There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.
> In all matters of international interest which are regulated by general convention but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.
> The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League" (1924 Covenant, Art. 24).

On 27 June 1921 the League decided to postpone placing the IHB under its direction, for it needed more precise information on whether the IHB had been fully constituted (1921 Hanotaux Report, 761). It was only later that same year, namely on 2 October 1921, that the Council decided to place the IHB under the direction on the League, because by that time detailed information had been obtained on the final constitution of the IHB (1921 Bourgeois Report, 1166). It is clear from the motivation of the accompanying report that this was a case of "automatic" application of Art. 24 of the Covenant of the League of Nations, meaning that the League considered the IHB to have been constituted after its own creation (*id.*). Since the London 1919 Conference took place during the month of July, and thus preceded the entry into force on 10 January 1920 of the Treaty of Versailles, which contained as Part I the establishment of the League of Nations, this implies that the League considered the IHB to have been established in 1921, even though the exact date, as mentioned above, remained unclear. It is in this respect indicative that the preamble of the IHO founding document only mentions "June 1921" (1967 Convention, first preambular paragraph).

These Bureaux retained in fact a large measure of autonomy, contrary to the conclusion that could easily be drawn from a strict reading of Art. 24. They were most certainly not merged in the League's organization, and the latter's authority over these Bureaux was in fact confined to giving moral support and did not include the authority to interfere in the internal organization or require amendments to their organizational structures. The most the League could do was to suggest and recommend improvements relative to their way of working (1921 Hanotaux Report, 760). Authors analyzing this particular relationship with respect to other international organizations have concluded that the League has "to all intents and purposes, made no use whatever of any authority that is may be presumed to possess" in this respect (Warner 1932, 291). The League, in other words, quickly realized that a policy of as little disturbance as possible of the existing organizations was to be adhered to (Myers 1939, 320). It should therefore not come as a surprise that only six Bureaux, one of which was the IHB, were formally in this relationship with the League (*id.*, 321). A quick study of the Official Journal of the League of Nations reveals that the IHB used this medium to provide summaries of information exchanges between national offices, one of the goals of the IHB according to its Statute (1922 July Communication IHB, 731-732), as well as to communicate new adhesions to its Statute (1922 September Communication IHB, 1041-1042). The League at times also proposed Bureaux, like the IHB, to participate in international conferences organized by it on topics related to the particular expertise of these Bureaux (1930 Organisation for Communications and Transit, 99), as was the case with the IHB with respect to the Conference for the Unification of Buoyage and Lighting of Coasts (1931 Final Act, 51 and 55; Anon 1926,

294; Anon 1927, 311). The IHB cooperated particularly with the Advisory Committee for Communication and Transit of the League (Anon 1925, 563).

This rather loose relationship is well illustrated by the particular situation of the United States, a non-member to the League of Nations, but which apparently had no problem in joining the IHB later on the same year it was established -- this date of establishment, as discussed above, being located somewhere in 1921. This particular example has been relied upon by others when the United States started to threaten with reservations to the founding documents of other international organizations containing similar provisions of cooperation with the League of Nations (Warner 1932, 292). To treat the IHB as an organ of the League in order to prove the commitment of the United States to the League is therefore probably incorrect (Anon 1924(a), 63). The better approach when undertaking such an analysis seems to stress the cooperation with the League first, and only after concluding that part, state that there are "other Committees on which Americans have served from time to time, or in which American influence has been felt", where the IHB can then be relied upon as an example (Hubbard 1931, 756). Like the Permanent Court of International Justice, which had no direct link with the League, the IHB can best be described as an autonomous international organization related to the League (Anon 1978, 86-87).

The relationship of the IHB with respect to the general international organization competent for shipping has been along the same lines. For a long time, there was no such permanent organization with overall maritime competence in existence (Marx 1946, 1214). Prior to the establishment of the Inter-Governmental Maritime Consultative Organization (IMCO) in 1959, the idea of the creation of an International Maritime Bureau, of which the IHB would form a part, had certainly been suggested, with autonomous decision-making power covering not only the coastal waters, but also beyond (Gidel 1932, 29). But when the *Institut de droit international* adopted its final resolution on the subject in 1934 (1934 *Résolution de l'Institut de droit international*), the final compromise took out the above-mentioned salient features (Okere 1981, 520). The relationship between IMCO and the IHB was mainly one between equals, as evidenced by the practice of attending each other's conferences (Johnson 1963, 43 and 55), certainly not one of subordination. The IHB was not only sending delegates to IMCO conferences, but also to the organization itself (Silverstein 1976, 385), ever since the latter organization decided in 1963 that its Secretary-General must ensure the "maintenance of co-operation and exchange of information on matters of mutual interest" (IHO 2010: MoUs and Agreements).

What appears to be certain is that the IHB had 22 states associated with it at the end of 1922 (1922 September Communication IHB, 1041-1042; Anon 1931, 209). An analysis of the Statutes of the IHB for present purposes is interesting, for it clearly indicates that the IHB has no authority over the national hydrographic services whatsoever. The latter remain entirely independent and retain their complete freedom and right of initiative (1921 IHB Statutes, Art. 7(a)). Moreover, it is explicitly stated that the IHB will never concern itself with questions of international politics (*id.*, Art. 7(b)), nor, as a general rule, with questions which can be directly treated between two hydrographic services (*id.*, Art. 15(b)). The structure created is a permanent Bureau, located in Monaco (*id.*, Art. 20), coupled with five yearly conferences, to which, besides the members of the IHB, also a representative of the League

(without voting power), the Directing Board and the Secretary General of the IHB (*id.*, Art. 49) are invited. These conferences have been said to constitute "the deliberative and legislative assembly" of the IHB (Anon 1952, 636). Most of the decisions of the IHB were taken by simple majority (Klooz 1947, 924), with the admission of new members requiring a two-thirds majority of the existing members (1921 IHB Statutes, Art. 52(b)). In the latter case, moreover, a system of weighted voting applies, with votes being allotted on the basis of the maritime importance of states as reflected in the amount of shipping tonnage sailing under a particular flag (Spicer-Simson 1922, 296). All members had to contribute a flat fee, augmented by a supplement based on the maritime importance measured according to the same system just explained with respect to weighted voting (Klooz 1947, 924).

2. Legal Analysis of Method of Functioning

After having analyzed in some detail its predecessor, the IHB, the present part will treat the IMO mainly by comparing its functioning to that of the IHB.

a) Organizational chart

If one looks at the organs involved, essentially the same structure remains as the one operational at the time of the IHB, but mostly with new names. The IHO, located in Monaco (1967 Convention, Art. 1), still works by means of a permanent Bureau, called the International Hydrographic Bureau in full (*id.*, Art. 4), coupled with five yearly conferences, still called as in the past the International Hydrographic Conferences (*id.*). The Bureau, new style, is still composed of what is now called a Directing Committee and retains three members, as in the past, elected for five years. The Directing Committee is headed this time by a President, who is said to represent the IHO (*id.*, Art. 10), assisted by the necessary technical and administrative staff (*id.*, Art. 9). If the present amendment procedure were to be successful, the IHO would move much more toward a "normal" contemporary international organization, with as main organs an Assembly, a Council, and a Secretariat (2005 Protocol of Amendments, new Art. 4).

On paper, the relationship between the IHO and the UN is of a totally different nature than the preexisting one between the IHB and the League of Nations. If the IHB was placed under the direction of the League of Nations in accordance with the explicit provisions of the Covenant (see *supra sub* III, B, 1), the IHO stayed totally outside of the UN system (Churchill & Lowe, 415). The IHO's founding documents were adopted months before Arvid Pardo gave his speech before the General Assembly of the UN on 1 November 1967, triggering the Sea-bed Committee and later the Third United Nations Conference on the Law of the Sea (UNCLOS III). The IHO made interventions during both processes, highlighting the importance of hydrographic expertise, and thus the role of the IHO, in many areas related to the law of the sea. It indicated that the organization intended to cooperate fully with the work in progress and that it was willing to provide technical assistance if necessary (Kapoor 1974, 70). During UNCLOS III the working relationship between the IMCO and the IHO, mentioned above, was duly recognized (1974 UNCLOS III Document on IMCO, paras 55 and 126). The expertise of the IHO was mainly relied upon during UNCLOS III with respect to the drawing of maps visualizing the outer limits of the continental shelf according to the different formula proposed during the debates (1978 UNCLOS III Document on Illustrating Continental Shelf Formulae; 1979 UNCLOS III Document on Preparing Large-scale Maps). In the ultimate outcome of these long negotiations, *i.e.*, the 1982 Convention, the IHO is finally mentioned

once, namely in Annex II on the Commission on the Limits of the Continental Shelf (CLCS), allowing the latter body to cooperate with the IHO "to the extent considered necessary and useful" (1982 Convention, Annex II, Art. 3(2)). Some proposals made during UNCLOS III would have given the IHB more extended competences with respect to the CLCS, like Canada giving it the power, together with the Intergovernmental Oceanographic Commission (IOC) of UNESCO to appoint the members of the CLCS (Oxman 1979, 20), but they did not succeed.

At present, the IHO has signed Memoranda of Understanding with eight other associations, federations or commissions, concluded two cooperative agreements with the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) and the International Mobile Satellite Organization (IMSO), and enjoys observer status at the UN since the end of 2001 and with IMO (IHO 2010: MoUs and Agreements). The merging of a good number of specialized agencies with maritime interest, including the IHO, under the aegis of the IMO, even though uttered at times because of anticipated financial and operational efficiencies, does not seem realistic(Lampe 1983, 324-325). It has moreover formed, together with the International Association of Geodesy an Advisory Board on the Law of the Sea, staffed by four members of each organization and an additional member from the UN Division for Ocean Affairs and the Law of the Sea (Anon 1996, 239). The International Hydrographic Bureau of the IHO has also concluded an administrative agreement with the Tribunal for the Law of the Sea in Hamburg to foster future cooperation (International Tribunal for the Law of the Sea 2004, 54). In this respect it is also worth mentioning that the proposed amendments to the founding document of the IHO intend to add a preambular paragraph elevating the organization to the status of "competent international organization, as referred to" in the 1982 Convention (2005 Protocol of Amendments, new second preambular paragraph).

b) Founding Documents

A first notable difference with its predecessor, the IHB, is certainly that this time an international agreement was relied upon, which members had to sign, subject to ratification or not, in order to become a party (1967 Convention, Art. 18). If the founding documents of the IHB are hard to find because of the rather informal way of its establishment, this is most certainly not the case with respect to the IHO. On the contrary, even though the General Regulations and the Financial Regulations, which are both attached to the founding document, are explicitly stated in that agreement not to form an integral part thereof (*id.*, Art. 11), both were nevertheless included at the time of publication in the United Nations Treaty Series (*id.*, 65-91 [General Regulations] and 81-99 [Financial Regulations]). All these documents, together with the Rules of Procedure for International Hydrographic Conferences and the Headquarters Agreement, are also to be found on the official webpage of the IHO (International Hydrographic Organization 2007, 3-50). There is even a certain tendency of duplication, for some of the provisions of the Rules of Procedure for International Hydrographic Conferences are a mere copy of identical provisions to be found in the General Regulation (compare for instance 2007 IHO Conference Rules of Procedure, Rule 14, with 2007 IHO General Regulations, Art. 9). The interrelationship between all these documents is structured in the following three leveled manner. If the General Regulations and Financial Regulations thus do not form an integral part of the 1967 Convention, as just mentioned, this implies a superiority of the 1967 Convention over both these Regulations, despite their being published

together in the United Nations Treaty Series. The Rules of Procedure for International Hydrographic Conferences, on the other hand, are said, in case of conflict, to be overridden by the 1967 Convention, including the two regulations annexed thereto (2007 IHO Conference Rules of Procedure, Rule 14).

The 1967 Convention is not as specific as the IHB Statutes with respect to the limitation of the competence of the organization. It simply states that the organization shall only have a consultative and purely technical nature (1967 Convention, Art. 2). One has to turn to the General Regulations to find provisions as detailed as the IHB Statutes, namely that the IHO is a mere consultative agency with no authority over the national hydrographic offices of the member governments (2007 IHO General Regulations, Art. 1) and that its activities, being of a mere scientific or technical nature, do not involve questions of international policy (*id.*, Art. 2).

At present the organization is going through an amendment procedure of its founding document. The proposed amendments, which are yet to enter into force, will move the organization from an intergovernmental to an inter-state level. As already discussed, it will substantially change the structure of the IHO and intends to anchor the organization more securely to the 1982 Convention.

From 22 members at the end of the year of its establishment, *i.e.*, 1921, the membership of the IHB has steadily grown over the years (*e.g.* Anon 1958, mentioning a membership of 37). The IHO has continued this trend and lists at present 80 member states, even though two of them have been suspended since 1983 (International Hydrographic Organization 2010(a), 306-313). Five new demands for membership are listed as pending at present (*id.*, 313). Even is one disregards the landlocked countries, given the fact that this organization relies primarily on the hydrographic services of its member states, the present membership, roughly speaking, still only represents about half of the remaining world community of states.

c) Legal Nature of Output

The Conference, whose function it is to make "decisions in respect of all proposals of a technical or administrative nature submitted by Member Governments or by the Bureau" (1967 Convention, Art. 5(d)), votes these normal questions "by simple majority of the Member Governments represented at the Conference" (*id.*, Art. 6(5)) with each Member Government having one vote (*id.*, Art. 6(4); as restated in 2007 IHO Conference Rules of Procedure, Rule 56). The term "Member Governments represented at the Conference" is defined by the Rules of Procedure for International Hydrographic Conferences as meaning "Members present at the meeting. Participants in the session who are not present at the meeting at which voting takes place shall be considered as not present" (2007 IHO Conference Rules of Procedure, Rule 51). If these decisions contain resolutions to be included in the Repertory of Technical Resolutions, the above mentioned simple majority must moreover include at least one third of the Member Governments (1967 Convention, Art. 6(5); as restated in 2007 IHO Conference Rules of Procedure, Rule 52). Voting on behalf of another Member Government is not allowed (2007 IHO General Regulations, Art. 5; as restated in 2007 IHO Conference Rules of Procedure, Rule 52).

The founding document allows for committees to be created (1967 Convention, Art. 6(7)). Committees are also mentioned in the General Regulations (2007 IHO General Regulations, Art. 8(b)),

but for their way of creation and functioning one needs to consult the Rules of Procedure for International Hydrographic Conferences (2007 IHO Conference Rules of Procedure, Rules 21-26) as well as Resolution 11 of 1962 on the formation of IHO subsidiary organs and subordinate bodies, relating specifically to inter-sessionary subsidiary bodies (International Hydrographic Organization 2010(b), 2). Decisions of committees and subsidiary bodies, according to the Rules of Procedure for International Hydrographic Conferences, are also normally taken by simple majority, with each member having one vote (2007 IHO Conference Rules of Procedure, Rule 25(b)). With respect to the inter-sessionary subsidiary bodies, their Terms of Reference and Rules of Procedure must either be determined by the Conference itself, or the Finance Committee or any subsidiary organ (International Hydrographic Organization 2010(b), 2). For present purposes, only the Sub-committee on Undersea Feature Names (SCUFN) needs to be singled out (see *infra sub* III, B, 3). If one consults the Rules of Procedure of SCUFN, it is stated that this body should strive for consensus. But if consensus proves elusive, simple majority voting will be the rule, with the Chairperson having a casting vote in case of a tie (International Hydrographic Organization (*s.d.*), Rule 2.9). Since this Sub-commission functions under a joint IHO-IOC umbrella, decisions are subsequently submitted to a joint Guiding Committee for consideration and decision, where identical voting rules apply (International Hydrographic Organization/Intergovernmental Oceanographic Commission 2008, Rule 6).

It can be concluded that IHO committees normally follow the same general voting procedures as those applicable to the Conference itself. The outcome of deliberations of these committees, be they reports, conclusions or recommended resolutions, must moreover be submitted for approval either to the appropriate plenary session (2007 IHO Conference Rules of Procedure, Rule 26) or to the supervising body (International Hydrographic Organization (*s.d.*), Rule 2.11).

This means, in practice, that as little as about 30 states can adopt “decisions” containing resolutions to be included in the Repertory of Technical Resolutions. The IHO is moreover well aware of the fact that certain countries with important hydrographic interests are not yet a member of the organization and has expressed the unanimous opinion in a 2009 resolution that the cooperation of these countries would be greatly beneficial in order to further promote the goals of the organization (International Hydrographic Organization 2010(b), 6).

And even though the 1967 Convention, its annexes as well as the Rules of Procedure for International Hydrographic Conferences, remain absolutely silent on the legal nature of these resolutions, it follows from the consultative nature of the IHO, its history, and the fact that is has no authority whatsoever over hydrographic offices of the Member Governments, demonstrated above, that the content of this publication can only have a recommendatory nature for these national hydrographic offices to follow. Neither the IHB Resolution adopted in 1932 to create the said Repertory (International Hydrographic Organization 2010(b), 60), nor the preface of the Repertory itself shed any further light on this point (*id.*, ii). Like all international organizations, of course, as far as internal matters are concerned like the budget, legally binding decisions can be made (Sands and Klein, 284-285). But whether the recommendatory powers of the IHO can lead to legal effects beyond that organization, as is sometimes the case (*id.*, 291-297), 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, but that through the process of harmonization, they probably nevertheless substantially affect the behavior of states in practice. Or, as stated by two US delegates to the fifth international conference held by the IHB in 1947:

> "The technical recommendations, which constituted the bulk of the agenda, are not binding upon the member states, but 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).

3. Substantive Rules Adopted

The involvement of the IHO with geographical place names has already been analyzed in some detail by one of its former directors (Kerr 1998, 153-158). It appears from this study that the IHB already showed an interest in the matter at the 1919 London Hydrographic Conference, where the need was expressed to have the limits of enclosed seas laid down (*id.*, 154). The issue of the limits of oceans and seas was subsequently placed on the agenda of the first International Hydrographic Conference held in 1929 (Anon 1931, 213) and this resulted in a 1929 publication by the IHB entitled "The Limits of Oceans and Seas", a publication which was for the third and last time so far amended in 1953 (International Hydrographic Bureau 1953). The latter states clearly in its preface that the limits it contains have no political significance whatsoever (*id.*, 2).

A second area where the IHB became involved was the transcription of maps using another script into the Latin alphabet (Kerr 1998, 154). The third International Hydrographic Conference adopted in this respect the following resolution:

> "Geographical names
> a) It is desirable that, on Charts and in nautical documents, original place names (as shown on original charts in Latin characters) should be used or, at any rate, they should be inserted in brackets after the place name used;
> b) Place names should be distinguished as far as possible in Sailing Directions by the type and size of the print. The country which issues the original Directions will thus itself indicate that which may be translated and that which may not" (Anon 1932, 186).

A third area finally where the IHB took an interest in the issue of naming relates to the submarine areas. In this area the IHB took interest by means of a circular letter of 1924 and, in a way, continued the work started by the International Geographical Congress in Berlin in 1899 (Kerr 1998, 154).

The IHO has carried the work forward in these three domains and now has a number of resolutions adopted on the issue. It concerns first of all Resolution A4.1, entitled Uniform Policy for Handling Geographical Names (first adopted in 1919; latest amendment in 1974) (International Hydrographic Organization 2010(b), 25-26). The rules of thumb of this resolution are, *primo*, that it is up to the coastal state to name the features on its own coast; *secundo*, in naming features on foreign coasts of states using the Roman alphabet, other states have to show names "in exact agreement" with the names given by the state having sovereignty; *tertio*, same as the previous rule, but relating to the coast of a foreign country not using the Roman alphabet: a UN approved transcription method is to be used;

quarto, with respect to features on foreign coasts, use for the generic part of complex geographical names the word (transcribed if necessary) used by the country having sovereignty; *quinto* states may use on their own charts their own conventional national usage for names of oceans and subdivisions thereof with the possibility of showing the names used internationally in a subordinate manner. The latter rule will be applied "until an international convention by the United Nations on standardization of internationally recognized names has been adopted" (*id.*).

Of more importance for present purposes is Resolution A4.2, entitled International Standardization of Geographical Names (first adopted in 1972; latest amendment in 1974) (International Hydrographic Organization 2010(b), 26-27). The origins of this resolution are to be traced back to the first UN Conference on the International Standardization of Geographical Names held in 1967 (Kerr 1998, 155). Resolution 8 adopted by that Conference, entitled "Treatment of Names of Features Beyond a Single Sovereignty", stated that even though two or more names are sometimes given to such features, the preferred solution should be to have only one common name applied and furthermore recommended states to attempt to reach agreement. More specifically with maritime and undersea features, the same reasoning applied and the Conference recommended that consultations with *inter alia* the IHB should be intensified in order to try to reach such standardization (United Nations 1968, 12). Resolution A4.2 reciprocated by promoting further cooperation with the UN Group of Experts on Geographical Names. Of particular importance for the present study is the last paragraph of this resolution, where it is stated:

> "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" (International Hydrographic Organization 2010(b), 27).

Finally, also Resolution A4.3, entitled Naming of Undersea Features, should be mentioned here (first adopted in 1987; latest amendment in 1991) (International Hydrographic Organization 2010(b), 27)). During the attempt to put together a general bathymetric chart of the oceans, for which the IHB and later the IHO have been working closely with the IOC of UNESCO, the naming issue quickly became important. For this purpose SCUFN was established. It is first of all interesting to note that this Sub-committee is not allowed to consider undersea feature name proposals "that are politically sensitive" (International Hydrographic Organization (*s.d.*), Rule 2.10). In the Guidelines for the Standardization of Undersea Feature Names, one can read as first general guideline, namely I.A, that international concern in this respect is strictly limited to features beyond the 12 nautical mile territorial sea of states (International Hydrographic Organization/Intergovernmental Oceanographic Commission 2008(b), 2-1). This is noteworthy, for it seems to be an issue that the IHO and the IOC were able to clarify. Indeed, Kerr in his 1998 publication still mentions that the term used was jurisdiction, making it unclear whether the exclusive economic zones and continental shelves should be included or not (Kerr 1998, 156). This uncertainty has now been clarified by using the word sovereignty in the first general guideline. What remained unchanged is guideline I.E, stating:

> "In the event of a conflict, the persons and/or agencies involved should resolve the matter. Where two names have been applied to the same feature, the older name generally should be accepted. Where a single name has been applied to two different features, the feature named first generally should retain the name" (International Hydrographic Organization/Intergovernmental Oceanographic Commission 2008(b), 2-1)

to which Kerr attaches the following consideration: "It would seem that the guidelines are just that and do not provide an authority" (Kerr 1998, 156).

4. Conclusion

Based on the above analysis, the conclusion seems to be justified that neither the IHB, nor its successor, the IHO, have the competence to settle issues of naming maritime features beyond the outer limit of the territorial seas of coastal states if different countries insist on different names. If states are not in a position to solve such issues between them, it implies that one is leaving the field of technical consultations and moving into questions of international policy. The latter questions have generally been explicitly excluded from the competence of these organizations *ab initio*, either through a specific provision in the IHB Statutes or in the IHO General Regulations. Politically sensitive issues have, moreover, specifically been excluded with respect to the naming of undersea features through the Rules of Procedure of the SCUFN. Based on its still rather limited membership, where some important players are moreover still missing, and some regions clearly underrepresented, like Africa, this organization has thought it wise to adopt a low profile and leave such sensitive issues to the UN. Until the UN has adopted an international agreement on the standardization of internationally recognized names, therefore, not much is to be expected from the IHO as gremium to settle this kind of disputes. Even though the founding document of the IHO contains a rather far-reaching compulsory arbitration clause, to be used unilaterally since the arbitrator will be designated by the President of the International Court of Justice (1967 Convention, Art. 17), this procedure can hardly be deemed to apply to an issue which has been clearly excluded from the field of application of the treaty from the very beginning, namely the settlement of politically sensitive issues.

IV. Conclusions

In this contribution we have demonstrated that international law is relevant to maritime nomenclature by addressing a number of general legal principles as well as specific rules related to international bodies that are active in this field. At the same time, we have endeavored to highlight the limitations of the law of nations in this area.

At the level of general international law, the appellation of maritime features within the limit of 12 nautical miles can be authoritatively decided by the coastal state. Beyond this zone however, the names of the seas are "up for grabs" so to speak. When the maritime feature in question is a hotspot the end result will be a stalemate, owing to the sovereign equality of all states and the inability of imposing unilateral toponymic choices without considerable international support. How all this applies to the EEZ and continental shelf is not so clear and has given rise to specific difficulties within the UNGEGN as well as the IHO. The distinction between sovereignty and sovereign rights seems detrimental in this respect, and both organizations have been struggling with it.

The current multilateral efforts to standardize maritime nomenclature have not enabled the international community to overcome this problem. Rather, we are faced once more with a malaise common to many international bodies with a technical mandate. Firstly, without the opprobrium of the political powers that be (the governments that created these bodies) the outcome of their work will be merely non-binding. Secondly, by preventing these organs from "trespassing" on politically sensitive issues, their scope of action is severely curtailed. Thirdly, the representativeness of a body such as the IHO leaves to be desired, for even in the eventuality that this organization would receive the power to bind its members, *quod non*, this would only concern the member states of that organization. For all the other members of the world community of states, such decisions would remain a *res inter alios acta* and thus not legally binding on them.

In conclusion, it seems apparent that the law as it stands today (*lex lata*) is poorly equipped for resolving maritime naming disputes in a satisfying and decisive manner. As long as a representative international body, with decision-making competences in this respect, is not created, all future efforts to standardize the names of maritime flashpoints, and thereby meaningfully contribute to interstate stability, will be relegated to the realm of power politics.

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