

## I. Introduction

Navigation of ships should be safe and efficient. For this purpose, nautical information, such as nautical charts, notices to mariners, sailing directions, and data for integrated navigation systems, is provided. Nautical information should also be accurate and up-to-date so as to benefit facilitation of maritime trade and other marine activities. Because navigation is an international activity, it is necessary to have a means of coordinating the work of national agencies and of standardizing products and services, in order to provide an effective world-wide service for mariners.

Naming of geographical features, one of nautical information, is simple, when they are located in a territory of a sovereign State. That State may designate them in its own way. In this case, however, it should keep "the greatest possible uniformity in nautical charts and documents."<sup>1</sup> Naming of geographical features, however, may not be so simple, when they are related to more than one State. If the States concerned claim their own names, there might arise a dispute between them and also inconvenience or risk for navigators.

The International Hydrographic Organization (IHO) works for the cooperation in hydrography on an intergovernmental basis. The IHO, like other international organizations, has been working on the basis of its own rules including its founding Convention of 1967. However, it seems that the IHO and its Member States have not paid full attention on these rules which are relevant and to be applicable to the disputes over the matters of the IHO. One of the rules is Technical Resolution A4.2 "International Standardization of Geographical Names" originally adopted in 1972 and last amended in 1974. This resolution is now renumbered as "1/1972 as amended."<sup>2</sup> Its paragraph 6 provides the rule for the naming of geographical features common to two or more States.

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<sup>1</sup> The IHO Convention, Art. II(b). For this purpose, A4.1 "Uniform Policy for Handling Geographical Names", a technical resolution, was adopted. Resolution A4.1 is now renumbered as "8/1919 as amended." The IHO, *The Resolutions of the International Hydrographic Organization* (Publication M-3, 2<sup>nd</sup> Edition-2010).

<sup>2</sup> The IHO, *The Resolutions of the International Hydrographic Organization* (Publication M-3, 2<sup>nd</sup> Edition-2010).

Para. 6 of the Resolution 1/1972 (A4.2) states as follows:

It is recommended that where two or more countries share a given geographical feature (such as a bay, a strait, channel or archipelago) under different names, they should endeavour to reach agreement on 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.

## II. Legal Nature of Resolution 1/1972 (A4.2)

Resolution 1/1972 (A4.2) is a resolution of the IHO, and thus is specifically concerned with sea names. In this respect, it is different from the similar resolutions, including Resolution III/20 of 1977, of the UN Conference on Standardization of Geographical Names (UNCSSGN) which are supposed to be generally applicable for international standardization of geographical names. Hence, para. 6 of the Resolution 1/1972 (A4.2) of the IHO is a special rule for sea names, while Resolution III/20 of the UNCSSGN is a general rule for geographical names. It was also argued that the latter resolution of the UNCSSGN was adopted for international standardization of land names, not of sea names.<sup>3</sup> The fact that Resolution III/20 of the UNCSSGN uses the word 'map' instead of the word 'chart' may show that the former is not necessarily concerned with sea names only.<sup>4</sup> Nevertheless, Resolution III/20 of the UNCSSGN should be consulted for the issues which are not clearly provided in para. 6 of the Resolution 1/1972 (A4.2).

Resolution 1/1972 (A4.2) recommends to Member States of the IHO, and thus is not legally binding on them. The words used in the resolution, such as "should endeavour to" or "it is recommended" show this non-binding nature. Considering that the IHO has "a consultative and purely technical nature"<sup>5</sup>, however, Resolution 1/1972 (A4.2), which is a technical resolution adopted for a specific purpose, cannot be totally ignored by the IHO Member States. Under the special nature of the IHO, para. 6 of the Resolution 1/1972 (A4.2) must be regarded as an optimal norm applicable to the international standardization of geographical names at sea. Thus, Resolution 1/1972 (A4.2) must be a guiding principle for the IHO and its Member States to

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<sup>4</sup> A chart is defined as "a special-purpose map generally designed for navigation or other particular purposes." See the IHO, *International Hydrographic Dictionary* (S-32). International Hydrographic Dictionary(S-32) is a multi-language dictionary produced by the IHO.

<sup>5</sup> The IHO Convention, Art. II.

observe in the matters concerned.

### III. Interpretation of para. 6 of the Resolution 1/1972 (A4.2)

Para. 6 of the Resolution 1/1972 (A4.2) is applicable to the situation "where two or more countries share a given geographical feature under different names". "A given geographical feature" refers to "a bay, a strait, channel or archipelago". A bay and archipelago are defined in the 1982 UN Convention on the Law of the Sea (UNCLOS)<sup>6</sup>, while a strait and channel are not so defined there.<sup>7</sup> "A given geographical feature" may cover other than these explicitly mentioned geographical features, because the words "such as" are used in para. 6 of Resolution 1/1972 (A4.2). There are such other geographical features provided in the UNCLOS. For example, "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."<sup>8</sup> An example of an enclosed sea is the Caspian Sea, and those of a semi-enclosed sea are the Baltic Sea, the Black Sea, and the Mediterranean Sea.

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<sup>6</sup> A bay is defined as "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast," while archipelago is defined as "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such." See the UNCLOS, Art. 10.2 and 46(b) respectively.

<sup>7</sup> Straits are more extensively regulated than channels in the UNCLOS, although they are not defined there. However, they are defined in the IHO as follows. A strait is defined as "a passage connecting two larger bodies of water," while a channel is defined as "that part of a body of water (sometimes dredged) deep enough for navigation through an area otherwise not navigable." It is also the deepest part of a stream, bay or strait through which the main current flows. In this respect, a channel may at times be a part of a strait. See the IHO, *International Hydrographic Dictionary* (S-32). On the other hand, a channel ordinarily refers to "a wide strait, as between a continent and an island", while a strait refers to "a narrow passage of water connecting two large bodies of water." Accordingly they may be different in size.

<http://dictionary.reference.com/browse/channel>; <http://dictionary.reference.com/browse/strait>.

<sup>8</sup> The UNCLOS, Art. 122. Enclosed sea is also defined in the IHO as "a gulf, basin, or sea surrounded by two or more States and connected to another sea or the ocean". See the IHO, *International Hydrographic Dictionary* (S-32). In this respect, the definition of "enclosed sea" is almost the same in both the UNCLOS and the IHO.

The sea area between the Korean Peninsula and the Japanese Archipelago is thus to be governed by para. 6 of the Resolution 1/1972 (A4.2) for international standardization of geographical names. It is shared by Japan, Korea (ROK), and North Korea. It is a given geographical feature, because it is a semi-enclosed sea. And it is under different names of "East Sea" and "Japan Sea."

Para. 6 of the Resolution 1/1972 (A4.2) may be divided into two recommendations. The first recommendation is for the countries concerned to reach agreement. Now that para. 6 of the Resolution 1/1972 (A4.2) applies to the sea area between the Korean Peninsula and the Japanese Archipelago, those countries, i.e. Japan, Korea (ROK) and North Korea, "should endeavour to reach agreement on a single name for the feature concerned." The word "should", different from the word "shall", is not fully obligatory. The words "endeavour to" mean to try something. Consequently, the words "should endeavour to" together do not mean any direct obligation to try something. Those countries are requested or urged to just try or make an effort to reach agreement on a single name for the sea area concerned. Even making an effort to reach agreement is only recommended, because the first sentence of para. 6 of the Resolution 1/1972 (A4.2) starts with "It is recommended that."

The second recommendation is for the international community to accept the names of each of the languages in question. It is applicable to the situation where the countries concerned have different official languages and cannot agree on a common name form as provided in the first recommendation. Those three countries have their own different official languages such as Japanese and Korean.<sup>9</sup> They have not been able to agree on a common name form as the Working Group on the revision S-23 (LIMITS OF OCEANS AND SEAS) has been established to find a settlement since 2009.<sup>10</sup> Thus the second recommendation is now applicable. 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. Like the first recommendation of para. 6 of the Resolution 1/1972 (A4.2), the second recommendation is non-binding.

There arises an interesting question about the recipient of the two recommendations in para. 6 of the Resolution 1/1972 (A4.2). In other words, it is a matter of who is supposed to follow the recommendations. The first recommendation is upon the countries sharing a given geographical

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<sup>9</sup> CIA, *the World FactBook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>.

<sup>10</sup> For the work of the Working Group, see <http://www.iho-ohi.net/english/committees-wg/s-23wg.html>.

feature. The second recommendation is quite different from the first recommendation. First, there is no explicit recipient of the second recommendation. Second, the second recommendation does not seem to be upon the countries concerned because they are naturally expected to accept and use the name forms of their own languages for their charts and publications in any way. Third, the object of the second recommendation for acceptance is “the name forms of each of the languages in question” (emphasis added). It means that the name forms of each of the languages in question, i.e. the name forms of Japanese and Korean are to be accepted for charts and publications unless technical reasons prevent this practice on small scale charts. Thus, this second recommendation is upon the IHO and its Member States rather than the countries concerned. If the countries concerned fail to agree on a single name, then the IHO and its Member States are recommended to accept the name forms of each of the languages in question.

There might be a problem in applying para. 6 of the Resolution 1/1972 (A4.2), in particular the second recommendation to the sea area between the Korean Peninsula and the Japanese Archipelago. “East Sea” and “Japan Sea” are not in the official languages of Japan, Korea (ROK) and North Korea.<sup>11</sup> “English Channel” and “La Manche”, the examples shown in the end of para. 6 of the Resolution 1/1972 (A4.2), are in the official languages of the U.K. and France. Nevertheless, the key point of para. 6 of the Resolution 1/1972 (A4.2) is as follows: first, the countries concerned are requested first try to agree on a single name; and, if failed, the name forms of each country are recommended to be accepted. If Japan, Korea (ROK) and North Korea could not agree on a single name, then the international community, not those countries concerned, is recommended to accept “East Sea” and “Japan Sea” for its charts and publications. If the IHO and its Member States do not follow the second recommendation, then they are violating the rule as provided in para. 6 of the Resolution 1/1972 (A4.2), which was adopted by them. Even if para. 6 of the Resolution 1/1972 (A4.2) itself does not bind the IHO and its Member States, it should be respected and implemented in good faith by them.

#### IV. Conclusion

The IHO, as a consultative and technical organization, has its own rules. Many of them are in the form of technical resolutions considering the special nature of the IHO. Para. 6 of the Resolution 1/1972 (A4.2) is one of those rules for the IHO Member States to respect in dealing with the matters in the realm of the IHO. Although it is not binding, being just a recommendation, it is a governing principle for the IHO and its Member States to keep. If it could be disregarded, the IHO

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<sup>11</sup> Most probably those governments were not so knowledgeable about endonyms, i.e. local usage, i.e. name written in a local language and exonyms, i.e. foreign/international usage, i.e. name written in a language which is not spoken in the place it designates.

could not work properly to achieve its own purposes. It is strongly urged that the IHO and its Member States go back to the basics including para. 6 of the Resolution 1/1972 (A4.2) to settle the matter in question.