The Naming of Sea Features: Legal Aspects

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The naming of sea features beyond the maritime zone over which the coastal State exercises sovereignty sometimes gives rise to disputes between States. The paper tries to shed some light on the issue from an international legal point of view. Under contemporary international law of the sea the zone of concern for the present paper is that part of the oceans not covered by the territorial seas of coastal states, which normally extend to 12 nautical miles from shore. In this part of the oceans, where coastal States either have only limited rights or cannot claim any sovereignty at all, the naming of maritime features can easily become a bone of contention if States do not agree on a particular denomination. Even though the sovereign rights granted to coastal States in the exclusive economic zone or continental shelf may be rather comprehensive in certain areas, the power to attribute names to particular maritime features is not believed to be one of them, as all these sovereign rights are meant to serve a certain purpose, namely the exploration and exploitation of the natural resources to be found there. By taking the dispute between Japan and the Republic of Korea concerning the denomination of the water expanse located between them as a starting point, the present paper intends to analyse from a legal point of view whether bodies like the Secretariat of the United Nations, the United Nations Group of Experts on Geographical Names or the International Hydrographic Organization have any decisive role to play in this respect. The recent decision of the International Court of Justice in the Whaling in the Antarctic case will finally be given some prominence, and especially its finding that all States Parties to the International Convention for the Regulation of Whaling have a duty to cooperate with two of its bodies, namely the International Whaling Commission and the Scientific Committee, and should give due regard to certain recommendations made by them. The possible impact of this ruling on the issue at hand will be assessed.

1. Introduction

The present paper intends to have a closer look at the legal issues concerning the naming of sea features beyond the maritime zone over which the coastal State exercises sovereignty. Under contemporary international law of the sea, as codified in the United

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Nations Convention on the Law of the Sea, this normally means beyond the territorial sea, i.e. 12 nautical miles from shore.

In this part of the oceans, where coastal States either have only limited rights or cannot claim any sovereignty at all, the naming of maritime features can easily become a bone of contention if States do not agree on a particular denomination. Even though the sovereign rights granted to coastal States in the exclusive economic zone or continental shelf may be rather comprehensive, the power to attribute names to particular maritime features is not believed to be one of them, as all these sovereign rights are meant to serve a certain purpose, namely the exploration and exploitation of the natural resources to be found there. The North Sea, for instance, is today the generally accepted denomination of the waters enclosed by Belgium, Denmark, France, Germany, the Netherlands, Norway and the United Kingdom. It probably dates back to the time of the Roman Empire, when this water area was located at the northern frontier of the empire. But this might have been different if the denomination used by Mercator on his maps in the 16th century for this particular water expanse, namely German Sea, would have prevailed.

By taking the dispute between Japan and the Republic of Korea (ROK) concerning the denomination of the water expanse located between them as a starting point, the present article intends to analyse from a legal point of view whether bodies like the Secretariat of the United Nations (UN Secretariat; Part II), the United Nations Group of Experts on Geographical Names (UNGEGN; Part III); or the International Hydrographic Organization (IHO; Part IV) have any decisive role to play in this respect. The recent decision of the International Court of Justice in the Whaling in the Antarctic case will finally be given some prominence (Part V), and especially its finding that all States Parties to the International Convention for the Regulation of Whaling have a duty to cooperate with two of its bodies, namely the International Whaling Commission and the Scientific Committee, and should give due regard to certain recommendations made by them. The study will finally conclude by drawing a number of conclusions (Part VI).

The issue of designating the sea body surrounded by Japan and the ROK first arose during negotiations between the two countries over a bilateral fisheries agreement in 1965. It was agreed by both parties that each of them would maintain their respective names in each of their authentic texts of the Agreement - that is, *East Sea* in the Korean version and *Sea of Japan* in the Japanese version. The ROK officially raised the

issue at the 6th United Nations Conference on the Standardization of Geographical Names in August 1992 immediately following its admission to the United Nations (UN) as a full member in 1991.

2. The role of the secretariat of the United Nations

Japan has continuously put forward an argument that the denomination *Sea of Japan* is authorized by the UN. The ROK has been refuting this argument. This part discusses the UN practice over geographical names in order to find the legal merits of these two opposing arguments.

1) Argumentation of Japan

Japan argues that the UN recognized Sea of Japan as the standard geographical term in March 2004, and that UN policy states that the denomination Sea of Japan is the standard geographical term to be used in official UN publications. Japan's argument is said to be based on the official reply of the UN Secretariat, dated 10 March 2004, to an enquiry made by Japan. Japan gives the following account of the content of that letter:

In response to the enquiry by the Government of Japan, the United Nations Secretariat officially replied on 10 March 2004, that "*Sea of Japan*" is the standard geographical term and as such is to be used in official documents of the United Nations. It is confirmed that the name "*Sea of Japan*" is authorized by the United Nations which is the most comprehensive and neutral international organization with the participation of 192 Member States including both Japan and the Republic of Korea (ROK), and the most proper forum to represent the collective will of the international community.

Concerning the unfounded argument that it is fair to designate simultaneously different names as each party claims when there is a dispute over the name of geographical features, the United Nations Secretariat clarifies its position that it observes the prevailing practice of the single use of "*Sea of Japan*", explaining that dual designation breaches the prevailing practice and infringes the neutrality of the United Nations, and that fairness and neutrality can be achieved only through the observance

of the practice.

It is expected that the international community including various international organizations pays fullest respect to the policy employed by the United Nations, even though it does not bind directly other international organizations.

Japan thus argues that the UN Secretariat observes the prevailing practice of the single use of *Sea of Japan*. According to Japan, the argument that it is fair to designate simultaneously the different names used by the parties when there is a dispute over the name of geographical features is "unfounded". Japan also argues that dual designation breaches the prevailing practice and infringes the neutrality of the UN. Japan in particular quotes the UN Secretariat to state that "without taking sides on the issue, the simultaneous use of both [*Sea of Japan* and '*East Sea*'] infringes on the neutrality of the United Nations." Japan makes it clear that the international community, including various international organizations, is expected to pay the "fullest respect" to the policy employed by the UN, even though it does not bind directly other international organizations.

2) Argumentation of the Republic of Korea

According to the ROK, the just-mentioned argumentation of Japan regarding the East Sea cannot be accepted because it is flawed. This country argues as follows:

Japan has continuously put forward a false argument that the name "*Sea of Japan*" is authorized by the United Nations. However, this is totally untrue. It is the United Nations Secretariat, not the United Nations itself, that uses the name "*Sea of Japan*." The Secretariat explains that it has been using this name just for practical reason in the absence of an internationally agreed appellation. For certain, the United Nations Secretariat has neither authorized the name "*Sea of Japan*" nor has the authority to do so.

In this regard, the United Nations Secretariat stated that the use of the name "*Sea of Japan*" in the Secretariat's documents is not an official position of the United Nations, but rather a practice of the Secretariat. Furthermore, it has clarified that this practice is without any prejudice to the position of any Member States of the United Nations on a particular appellation and that it does not imply the expression of any opinion whatsoever on the part of the Secretariat. It also emphasized that the practice should

not be interpreted as advocating or endorsing any party's position, and can in no way be invoked by any party in support of a particular position on the matter.

The argument is first of all developed that it is the UN Secretariat, not the UN itself, which uses the name *Sea of Japan*. The UN Secretariat has neither authorized the use of the name *Sea of Japan*, nor has it the authority to do so. According to the ROK, the UN Secretariat explains that it has been using this name just for practical reason in the absence of an internationally agreed appellation. In this regard, the UN Secretariat is said to have stated that the use of the name *Sea of Japan* in the Secretariat's documents is not an official position of the UN, but rather a practice of the Secretariat.

According to the ROK, the UN Secretariat has clarified that this practice is without any prejudice to the position of any Member State of the UN on a particular appellation and that it does not imply the expression of any opinion whatsoever on the part of the UN Secretariat. It also emphasized that the practice should not be interpreted as advocating or endorsing any party's position, and can in no way be invoked by any party in support of a particular position on the matter.

3) United Nations v. United Nations Secretariat

Japan argues that the UN recognized Sea of Japan as the standard geographical term in March 2004. It also argues that the use of the name *Sea of Japan* in official documents of the UN is authorized by the UN and that it is confirmed by the UN Secretariat. Japan appears, intentionally or unintentionally, to identify the UN Secretariat with the UN so that the use of the name *Sea of Japan* looks to be officially and legitimately authorized by the UN. However, the UN is different from the UN Secretariat, and Japan's way of argumentation tries to veil this basic distinction.

(1) United Nations

The UN is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Its founding document, i.e., the Charter of the UN, gives the organization a comprehensive mission, encompassing the maintenance of peace and security, the promotion of human rights, and economic and social progress. The

mandates of the specialized agencies, UN Programmes and Funds and related organizations — which together with the UN make up the UN system — also cover a wide spectrum of concerns and areas for international cooperation.

Specialized agencies comprising the UN system are legally independent international organizations with their own rules, membership, organs and financial resources, and they are brought into relationship with the UN through negotiated agreements. The Funds and Programmes comprising the UN system are created by the UN to meet needs not envisaged in San Francisco, such as Palestine refugees, development assistance, food aid, or the environment. The term "related organization" comprising the UN system has to be understood as a default expression, describing organizations whose cooperation agreement with the UN has many points in common with that of specialized agencies, but does not refer to Articles 57 and 63 of the UN Charter, relevant to specialized agencies. All these organizations have their own governing bodies, budgets and secretariats. Together with the UN, they are known to comprise the UN family or the UN system.

(2) United Nations Secretariat

The UN Secretariat carries out the day-to-day work of the UN. Although it is one of the principal organs of the UN, the UN Secretariat services the other principal organs such as the General Assembly and the Security Council. It carries out tasks as varied as the issues dealt with by the UN such as administering peacekeeping operations, surveying economic and social trends, preparing studies on human rights, among others.

The UN Secretariat consists of the Secretary-General and such staff as the UN may require. The Secretary-General must be appointed by the General Assembly upon the recommendation of the Security Council. Thus, the appointment of the Secretary-General is subject to the will of the Member States of the UN, which make up the General Assembly and the Security Council. The Secretary-General accordingly performs such other functions as are entrusted to him/her by these principal organs.

The principal organs and subsidiary bodies of the UN Secretariat are included under the regular budget of the UN, as authorized by the General Assembly. Member organs of the UN reporting annually to the General Assembly and, as appropriate, through the Security Council or the Economic and Social Council, include the UN Secretariat. The

Secretary-General also makes an annual report to the General Assembly on the work of the UN. Thus, the UN Secretariat is a part of the UN system. It is not the UN system itself. It may consequently not be confused with the UN itself.

4) Impartiality of the United Nations Secretariat

Japan argues that dual designation breaches the prevailing practice and infringes the neutrality of the UN. Japan in particular quotes the UN Secretariat to state that "without taking sides on the issue, the simultaneous use of both [*Sea of Japan* and *East Sea*] infringes on the neutrality of the United Nations." The term neutrality, being neutral, means "not siding with any party to a war or dispute". Thus, the neutrality of the UN may mean that the UN does not side with any party to a dispute, in casu neither with Japan or the ROK over the dual use of *East Sea* and *Sea of Japan*. The Japanese understanding of the neutrality of the UN is curious at best, for the simultaneous use of both *East Sea* and *Sea of Japan* would certainly serve that purpose much better. In addition to the so-called neutrality of the UN, the impartiality of the UN, in particular the UN Secretariat must be stressed here. The UN Secretariat, being an international civil service, must be impartial to all the Member States of the UN, not just some of them.

(1) United Nations Secretariat as international civil service

The Secretary-General is the chief administrative officer of the UN. The Secretary-General is responsible for the activities of the staff members of the Secretariat. Staff members are international civil servants. Their responsibilities as staff members are not national but exclusively international. In relation to the international civil service, the principles of independence (Article 100) and of the "highest standards of efficiency, competence and integrity" (Article 101) in the UN Charter must be the overriding values to which all efforts at advancing a modern international civil service must be geared.

In the performance of their duties the Secretary-General and the staff must not seek or receive instructions from any government or from any other authority external to the UN. Likewise, each Member State of the UN undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff

and not to seek to influence them in the discharge of their responsibilities.

By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with only the interests of the UN in view. Thus, the interests of the UN must prevail over all other interests and must be the only consideration for all staff members when discharging their functions. Loyalty to the aims, principles and purposes of the UN, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants. According to the International Civil Service Commission, it is the international civil service that will enable the UN system to bring about a just and peaceful world.

(2) Impartiality of the United Nations Secretariat

As part of Chapter XV of the UN Charter, Article 100 codifies the ideal of an exclusively international UN Secretariat, whose staff is strongly committed to impartiality and independence, responsible solely to the UN. Staff members of the UN Secretariat must refrain from any action which might reflect on their position as international officials responsible only to the UN. They must avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status. The paramount consideration in the employment of the staff and in the determination of the conditions of service must be the necessity of securing the highest standards of efficiency, competence, and integrity. Staff members are thus required to uphold the highest standards of efficiency, competence and integrity.

The concept of integrity in particular includes probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. According to the International Civil Service Commission, the concept of integrity also embraces all aspects of an international civil servant's behaviour, including such qualities as honesty, truthfulness, impartiality and incorruptibility. These qualities are as basic as those of competence and efficiency. According to the International Civil Service Commission, "[i]f the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organization; their conduct must reflect that independence".

UN Secretariat staff must conduct themselves at all times in a manner befitting their status as international civil servants and must not engage in any activity that is

incompatible with the proper discharge of their duties with the UN. While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members must ensure that those views and convictions do not adversely affect their official duties or the interests of the UN.

As a body of international civil servants, as shown above, the UN Secretariat is required by UN Staff Rules and Regulations to be impartial towards the various contrasting positions of the Member States of the UN. Thus, the UN Secretariat must act in an unbiased manner and not promote or support any particular point of view of any Member State.

(3) Relationship to Member States

It is the Member States that collectively make up — in some cases with other constituents — the UN. The conduct that furthers good relations with individual Member States and that contributes to their trust and confidence in the UN Secretariat strengthens the UN and promotes its interest. It is the clear duty of all international civil servants to maintain the best possible relations with Governments and avoid any action that might impair this. UN Secretariat staff "should not interfere in the policies or affairs of Governments. It is unacceptable for them, either individually or collectively, to criticize or try to discredit a Government". Finally, "[a]ny activity, direct or indirect, to undermine or overthrow a Government constitutes serious misconduct".

5) Policy of the United Nations Secretariat on maps published under the United Nations imprint

Japan argues that the UN policy states that the standard geographical term be used in official UN publications. Japan further seems to intentionally confuse the UN Secretariat with the UN by referring to the "UN Policy". The Japanese Foreign Ministry even posted a special site on Sea of Japan with the following title: "The Policy of the United Nations Concerning the Naming of Sea of Japan". However, this argument made by Japan in favour of the Sea of Japan is not consistent with the UN policy or practice on geographical names in maps of the UN, as discussed below.

(1) Policy of the United Nations Secretariat on cartographic services

For the discussion of the dispute over the dual use of East Sea and Sea of Japan, the UN Secretariat may refer to its Cartographic Section of the Department of Public Information in the UN Secretariat. The Cartographic Section is the cartographic authority for the UN, and is equipped to undertake a range of cartographic services related to the work of the UN Secretariat, including the preparation of small-scale illustrative, large-scale stand-alone maps and GIS products. Many maps produced by the Cartographic Section are an integral part of the UN documents. To date, no complete catalogue of the UN maps has been published.

The UN Secretariat publishes the policy guidelines for the use of maps in documents, publications and other papers, either in hard copy or in electronic format, which are issued by the UN Secretariat. In view of the sensitive nature of cartographic documents, prior to the issuance of any map at any duty station, including dissemination via public electronic networks such as Internet, clearance must be sought from the Cartographic Section. Maps must meet publication standards and may not be in contravention of existing UN policies. Thus, as necessary, the Cartographic Section will confer with the Executive Office of the Secretary-General and the Office of Legal Affairs for this purpose. Maps that have been reviewed previously by the Cartographic Section and are to be reproduced in unaltered form need not be resubmitted to the Cartographic Section prior to issuance unless political or policy changes in the interim suggest such a review is needed. It is the responsibility of the author departments to ensure that this is the case. Whenever possible, the Cartographic Section must be consulted well in advance of map preparation. Ample time must be allotted for review procedures and for the possible execution of revisions. The Cartographic Section, in consultation with the Office of Legal Affairs, may provide a special statement in certain circumstances.

Japan argues that the UN Secretariat, in response to its enquiry, officially replied on 10 March 2004, that Sea of Japan is the standard geographical term and as such is to be used in official documents of the UN. However, this argument seems clearly opposite to the practice and policy of the UN Secretariat. According to the Cartographic Section, the depiction and use of boundaries, geographic names and related data shown on maps and included in lists, tables, documents, and databases on its web site are not warranted to be error free nor do they necessarily imply official endorsement or

acceptance by the UN. Thus, the Cartographic Section makes it clear that its activities relating to geographical names for the work of the UN Secretariat are not necessarily endorsed or accepted by the UN officially. The fact that Sea of Japan is used by the UN Secretariat in official UN documents does not imply the official endorsement or acceptance by the UN which is based on the collective will of the Member States.

In order to reflect this policy or practice on the use of maps in the UN, one of the disclaimer forms is to be used in connection with every map issued under the responsibility of the UN. As for its short form, the disclaimer is that "[t]he boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations". As for its long form, the disclaimer is that "[t]he designations employed and the presentation of material on this map do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries." These disclaimer forms definitely show that the practice of the UN Secretariat over the use of maps is without prejudice to the position of any State Member of the UN regarding a particular appellation.

Finally, those maps annexed to communications prepared by Member States and circulated at their request are not subject to the UN policy discussed above. For example, in verbatim or summary records when a speaker is quoted, when material provided by a Government is circulated, or when a resolution or decision of a deliberative body of the UN is adopted, the Secretariat reproduces, without any change, the terminology used by the speaker, Government or deliberative body concerned. Thus, in the case of maps showing baselines and maritime zone limits, which are based on submissions by States Parties to the 1982 Convention, the UN reproduces the appellations, as contained in the original documents or submissions. That means Member States have full discretion over its use of geographical names in pursuing their policies internally and externally.

(2) The United Nations Group of Experts on Geographical Names and the United Nations Conference on the Standardization of Geographical Names

The international standardization of geographical names for the Member States of the UN is beyond the authority of the UN Secretariat as this task has been specifically

entrusted to other UN bodies, as discussed below. The problem of standardization of geographical names was raised, particularly with regard to cartographic services, during the debates of the UN Economic and Social Council in 1948. The First Regional Cartographic Conference for Asia and the Pacific in 1955 led to the adoption by the Economic and Social Council of Resolution 715A (XXVII) which requested the Secretary-General to report to the Council at an appropriate session on the desirability of holding an international conference on this subject and of the sponsoring of working groups based on common linguistic systems. The further history of the UNGEGN has been described in the following manner:

The first [UNCSGN] convened at Geneva from 4 to 22 September 1967. It was attended by 111 representatives and observers from 54 countries. The report of the First Conference (document E/4477) was presented to the Economic and Social Council at its 44th session in 1968. The Council unanimously adopted Resolution 1314 (XLIV) in which it … requested the Secretary-General, in consultation with the ad hoc group of experts, to consider the desirability of holding a second conference. With this resolution, the future of both the Conferences and of the Group of Experts were firmly established. After a second conference in 1972, the ad hoc experts group was formalized as the [UNGEGN], to carry forward the programme of cooperation between conferences. Today, UNGEGN is one of the seven standing expert bodies of the [Economic and Social Council].

The UNCSGN convenes every five years, and continues to provide a forum

To encourage national and international geographical names standardization; to promote the international dissemination of nationally standardized geographical names information; and to adopt single romanization systems for the conversion of each non-Roman writing system to the Roman alphabet.

The UNGEGN and UNCSGN are thus part of the UN, and the UN system.

6) Conclusions

Japan's interpretation of the UN practice over geographical names with reference to those allegedly mentioned by the UN Secretariat is without any relevance and basis. The examination of the real basis of the policy on the use of geographical names in the UN Secretariat does not sustain the arguments made by Japan. Contrary to the

Japan's argument, the denomination Sea of Japan is not authorized by the UN. The UN does not have any authority to decide the name subject to disputes among its Member States. Contrary to Japan's argument, Sea of Japan is not recognized as such and there is no such UN policy for the use of Sea of Japan. The UN Secretariat, not the UN, has simply been using Sea of Japan in UN maps on its behalf. Contrary to Japan's argument, dual designation of East Sea and Sea of Japan may not infringe the neutrality of the UN, and it may even strengthen the impartiality of the UN Secretariat.

Again, the name Sea of Japan has apparently been used in the publications of the UN. Though, the UN as international organization should be distinguished from its mere organ, the UN Secretariat. The UN Secretariat is just one of the six principal bodies of the UN. If ever the reply of the UN Secretariat, as quoted by Japan, is true, it is the UN Secretariat, not the UN itself, which uses the name Sea of Japan. That is on behalf of the UN Secretariat, not on behalf of the UN.

The UN Secretariat, however, may be criticized for breaching its duty to be impartial towards Member States involved in a dispute over geographical names. It is not the UN Secretariat but the parties concerned that have the power to determine which appellation should be applied to a given geographical feature. The confirmation of the Secretariat's practice on the naming of a particular geographical feature to the advantage of one party in a dispute would undermine the legitimate position of the other party, thus preventing the parties concerned from resolving the dispute in question. In the UN system the UNCSGN with the assistance of the UNGEGN has the mandate for the international standardization of geographical names. The UN Secretariat must seriously consider and respect the authority of the UNCSGN and UNGEGN for its policy on the use of geographical names.

Again, the practice of the UN Secretariat, if any, has nothing to do with the standpoints of the Member States of the UN. The UN Secretariat may not represent certain particular Member States of the UN, and further may not do anything that may affect the relationship between the Member States in dispute. It is to be noted that the UN Secretariat and its staff members must abide by its integrity whose most important property is impartiality. Thus, the practice of the UN Secretariat, as such, may not be regarded as that of the UN or the UN System. Even if the name Sea of Japan has long been employed by the UN Secretariat, such policy may simply not be attributed to the UN and applied to its Member States.

Finally, as Japan describes, the UN is "the most proper forum to represent the collective will of the international community". Even if the Japanese description of the UN is accepted, however, the policy of the UN Secretariat may not be a part of the collective will of the international community. The UN Secretariat is just serving the UN, which is operated and governed by its Member States such as Japan and the ROK. With respect to geographical names in particular, the collective will of the international community is to be materialized by the UNCSGN and the UNGEGN, which are established by the Economic and Social Council of the UN and composed of the Member States of the UN.

3. The United Nations Group of Experts on Geographical Names

As already mentioned in the previous part, the Economic and Social Council, one of the six main organs of the UN, did establish a specialized organ specifically concerned with the standardization of geographical names, namely UNGEGN. In a first instance the method of functioning of this body will be analysed, followed by an overview of the substantive rules adopted so far.

1) Legal Analysis of Method of Functioning

Here a further distinction needs to be made between the UNGEGN and the UNCSGN.

(1) United Nations Group of Experts on Geographical Names

The UNGEGN is composed of experts in the fields of cartography and linguistics. Such experts are designated by the governments of Member States of the respective linguistic/geographical divisions, or invited in their personal capacity by the UN. The UNGEGN elects a Chairperson, two Vice-chairpersons and two Rapporteurs. The UNGEGN meets every two years, and in years when a UNCSGN is held. One of the basic aims of the UNGEGN is to implement the tasks assigned as a result of the resolutions adopted at the Conferences. The UNGEGN normally reports to the UNCSGN. In addition, the Secretary-General presents a report on each Session of the

UNGEGN to the subsequent Session of the Council. To date, twenty-eight UNGEGN Sessions and ten Conferences (which are convened every five years) have been held since 1967.

The UNGEGN is organized into 24 linguistic/geographical divisions at present. 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
28 (2014)	174	53	23 out of 24	19
27*(2012)	279	73	23 out of 23	27
26 (2011)	170	60	20 out of 23	13
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	39
20 (2000)	131	52	18 out of 22	31

* held in conjunction with the Tenth UNCSGN.
** held in conjunction with the Ninth UNCSGN.
*** held in conjunction with the Eighth UNCSGN.
Source: UNGEGN Session reports (2000-2014) and occasionally an UNCSGN Report.

The divisions support the UNGEGN in its activities. Countries decide for themselves to which division(s) they wish to belong. Each division, if composed of more than one sovereign State, must select a division chairperson and an alternative representative. 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 UNGEGN 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.

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. Currently, there are ten 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 Geographical Names as Cultural Heritage. 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 UNGEGN, ad hoc study groups may be appointed to deal with particular issues. The UNGEGN may establish inter-sessional working groups composed of specialists to study particular problems between sessions of the Group.

The UNGEGN 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. The Secretary of the UNGEGN is appointed by the Secretary-General and acts in that capacity in all meetings of the UNGEGN.

The UNGEGN acts as a collegiate, consultative body. Agreement on non-procedural matters is reached by consensus and not by voting. In the event that consensus is not achieved, the matter is deferred for reworking and re-submission. 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. Each expert representing a division has one vote, and decisions of the UNGEGN must be taken by a majority of the divisional representatives present and voting. If a vote is equally divided, a second vote is taken. If this vote is also equally divided, the proposal or motion is rejected. Representatives of divisions who abstain from voting are considered as not voting.

(2) United Nations Conference on the Standardization of Geographical Names

Each State participating in the UNCSGN 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.

The UNCSGN elects a President, two Vice-Presidents, a Rapporteur and an Editor-in-Chief among the representatives of the States participating in the UNCSGN. The Executive Secretary of the UNCSGN is appointed by the UN Secretary-General.

The UNCSGN may establish such committees as may be necessary for the performance of its functions. Each Committee elects its own Chairman, Vice-Chairman and Rapporteur. The Rules of Procedure of the UNCSGN apply to the proceedings of the committees.

Representatives designated by entities, intergovernmental organizations and other entities that have received a standing invitation from the UN General Assembly to participate in the sessions and work of all international UNCSGN convened under its auspices have the right to participate as observers in the deliberations of the UNCSGN and its committees. Also representatives designated by the specialized agencies and representatives designated by other intergovernmental organizations may participate in the deliberations of the UNCSGN and its committees on questions within the scope of their activities. Also non-governmental organizations invited to the UNCSGN may designate representatives to sit as observers at the public meetings of the UNCSGN and its committees.

A majority of the representatives participating in the UNCSGN constitutes a quorum. Each State represented at the UNCSGN has one vote, and the decisions of the UNCSGN are made by a majority of the representatives of States participating in the UNCSGN present and voting, i.e., representatives present and casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting. The President cannot vote, but may designate another member of his delegation to vote in his place. Observers and representatives designated by the specialized agencies or other intergovernmental organizations and non-governmental organizations have no right to vote.

2) Substantive rules adopted

Before turning to the substantive output of the UNGEGN and the UNCSGN, the legal nature of that output deserves some attention. The UNGEGN Statute provides in this respect that

Decisions of the UNGEGN are submitted as recommendations to the UNCSGN, 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 UNGEGN shall be of a recommendatory character.

The Economic and Social Council 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. In practice, the Economic and Social Council has limited itself to endorsing the recommendations to organize the different UNCSGN and at times to invite the Secretary-General to take measures, where appropriate and within available resources, to implement the other recommendations adopted at the different UNCSGN. It also "takes note" of reports of the UNGEGN and decides on its meetings.

It is against this background that the substantive contribution of the UNGEGN and the UNCSGN have to be understood. 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. As recognized at the first UNCSGN, 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". 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 UNGEGN must adhere to the principle that international standardization of geographical names must be carried out on the basis of national standardization". Moreover, questions involving national sovereignty cannot be discussed by the UNGEGN.

This does not mean that the UNGEGN and the UNCSGN have not addressed the issue of sea-naming. After having recognized the problem of features beyond a single sovereignty in general during its first conference, the UNSCGN realized during its second conference that similar issues relating to the improvement in international nomenclature arose at sea and recommended that the UNGEGN would study the standardization of maritime nomenclature in order to recommend improvements. In the absence of any international treaty or guidelines on the subject, the UNCSGN recommended that the UNGEGN should try to elaborate such a document containing technical rules and procedures. It also recommended the UNGEGN to work in particular with the IHO in this respect.

Some recommendations related to maritime features beyond the limits of national jurisdiction have subsequently been issued at the UNCSGN. 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 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.

Some resolutions relate specifically to the names of maritime features in shared waters or beyond "a singly sovereignty". Resolution I/8, which was not focused on maritime features, set the general 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. 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. Resolution II/25, as later reworded by Resolution III/20, 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, "as far as possible". In case such agreement could not be reached, it was recommended that

It should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice. Only technical reasons may sometimes make it necessary, especially in the case of small-scale maps, to dispense with the use of certain names belonging to one language or another.

3) Conclusions

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 UNGEGN are submitted as recommendations to the UNCSGN. The Resolutions adopted by the UNCSGN have a non-binding and recommendatory character. In practice, the Economic and Social Council has limited itself to endorsing the recommendations to organize a new UNCSGN, sporadically also inviting the Secretary-General to take measures, where appropriate and within available resources, to implement the other recommendations adopted at the different UNCSGN.

4. The role of the International Hydrographic Organization

As the IHO was one of the organizations that the UNCSGN in 1972 explicitly referred to for the UNGEGN to cooperate with respect to the standardizing names of maritime features, this implies that this organization too has some competence with respect to the issue of sea-naming. After a short description of origins, this part will analyse the method of functioning of this body, followed by an overview of the substantive rules adopted so far.

1) Origins of the International Hydrographic Organization

The IHO was established in 1967 by means of an international agreement, which entered into force three months after twenty-eight States had become a party to it, 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. Other States can only accede to the 1967 Convention if their application is approved by two-thirds of the members.

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 international 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.

The history and life of the IHB will not be discussed here. Suffice it to say that even though this bureau had been placed under the direction of the League of Nations in accordance with the founding document of that organization, the latter realized that the best way forward was to interfere as little as possible in the work of these organizations, resulting in a rather loose kind of relationship.

2) Legal analysis of method of functioning

The IHO, located in Monaco, still works by means of a permanent Bureau, called the International Hydrographic Bureau in full, coupled with five-yearly conferences, the so-called International Hydrographic Conferences. The Bureau is composed of a Directing Committee of three members, elected for five years. The Directing Committee is headed by a President, who is said to represent the IHO, assisted by the necessary technical and administrative staff. 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.

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, the IHO stayed totally outside of the UN system. 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 UN 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. 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. 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". Some proposals made during UNCLOS III would have given the IHB more extended competences with respect to the CLCS, like the one introduced by Canada giving it the power, together with the Intergovernmental Oceanographic Commission (IOC) of UNESCO to appoint the members of the CLCS, but they did not succeed.

At present, the IHO has signed Memoranda of Understanding with eighteen other bodies, concluded two cooperative agreements with the International Association of Marine Aids to Navigation and Lighthouse Authorities and the International Mobile Satellite Organization, and enjoys observer status at the UN General Assembly since the end of 2001 as well as with International Maritime Organization. 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. The IHO 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. 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. 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.

The interrelationship between the 1967 Convention, the General Regulations and the Financial Regulations is to be understood in the following three leveled manner. If the General Regulations and Financial Regulations do not form an integral part of the 1967 Convention, this implies a superiority of the 1967 Convention over both these Regulations, despite their having been published together in the UN 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.

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. 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 and that its activities, being of a mere scientific or technical nature, do not involve questions of international policy.

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. The IHO has continued this trend and lists at present 82 Member States. Four more countries have been approved for membership but still have to deposit their instrument of accession, while three new demands for membership are still pending at present. Even if 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.

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", votes these normal questions "by simple majority of the Member Governments represented at the Conference" with each Member Government having one vote. The term "Member Governments represented at the Conference" is defined by the IHO Rules of Procedure 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". 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. Voting on behalf of another Member Government is not allowed.

The founding document allows for committees to be created. Committees are also mentioned in the General Regulations, but for their way of creation and functioning one needs to consult the IHO Rules of Procedure as well as Resolution 11 of 1962 on the formation of IHO subsidiary organs and subordinate bodies, relating specifically to inter-sessionary subsidiary bodies. Decisions of committees and subsidiary bodies, according to the IHO Rules of Procedure are also normally taken by simple majority, with each member having one vote. 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. For present purposes, only the Sub-committee on Undersea Feature Names (SCUFN) needs to be singled out. 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. 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.

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 or to the supervising body.

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.

And even though the 1967 Convention, its annexes as well as the IHO Rules of Procedure, 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, nor the preface of the Repertory itself shed any further light on this point. Like all international organizations, of course, as far as internal matters are concerned like the budget, legally binding decisions can be taken. But whether the recommendatory powers of the IHO can lead to legal effects beyond that organization, as is sometimes the case, seems 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.

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. 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. The issue of the limits of oceans and seas was subsequently placed on the agenda of the first International Hydrographic Conference held in 1929 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. The latter states clearly in its preface that the limits it contains have no political significance whatsoever.

A second area where the IHB became involved was the transcription of maps using another script into the Latin alphabet. 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.

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.

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 8/1919. 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".

Of more importance for present purposes is Resolution 1/1972. The origins of this resolution are to be traced back to the first UNCSGN held in 1967. 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 IHO should be intensified in order

to try to reach such standardization. Resolution 1/1972 reciprocated by promoting further cooperation with the UNGEGN. 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.

Finally, also Resolution 2/1987 should be mentioned here. 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". In the Guidelines for the Standardization of Undersea Feature Names, one can read as first general guideline that international concern in this respect is strictly limited to features entirely or more than 50% beyond the limits of the territorial sea of States not exceeding 12 nautical miles in accordance with the 1982 Convention. 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. This uncertainty has now been clarified. What remained unchanged is another guideline, 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.

To which Kerr attaches the following consideration: "It would seem that the guidelines are just that and do not provide an authority".

4) Conclusions

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, 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.

5. The International Court of Justice and the duty to co-operate

In its recent decision in the 2014 Whaling Case the International Court declared that all States Parties to the 1946 IWC have a duty to co-operate with the treaty bodies by reason of their mere membership of that convention. The present part will consist of three sections. Firstly, the organization structure of the 1946 IWC will be analysed, for this proved to be a crucial element on which the Court based its above-mentioned finding with respect to the existence of a general duty to co-operate. Secondly, the argumentation of the Court will be discussed as it relates to this matter. A third and

last section will finally try to evaluate the importance of these recent developments with respect to the bodies described above having a competence in the area of sea-naming.

1) Organizational structure of the 1946 Whaling Convention

Like fur seals, whales were one of these early fishery resources proving that not all sea fisheries were inexhaustible. During the 1930s attempts had been undertaken to start regulating whaling on a multilateral level. But neither the attempt of 1931 nor that of 1937 established a treaty body that would have the competence to enact certain technical regulations. This proved highly impractical, for each time a regulation needed to be changed a new protocol to the agreement had to be concluded between the parties.

One of the major novelties of the 1946 IWC therefore consisted of the fact that it did create such a treaty body, namely the International Whaling Commission. This body has moreover the power to set up "such committees as it considers desirable to perform such functions as it may authorize".

Another novelty concerns the fact that the technical rules and regulations no longer appear in the body of the convention, as they were relegated to a schedule attached thereto. This Schedule forms an integral part of the 1946 IWC, meaning that all references to that treaty automatically include the Schedule in its most recent terms. This does away with the abovementioned inconvenience experienced by the 1937 IWA, namely that for every new technical rule or regulation a treaty protocol was required, because under the 1946 IWC it is the Commission that received the power to do so. The Commission is composed of one member from each government, which shall all have one vote. Decisions by the Commission are taken by simple majority except that when it concerns an amendment of the Schedule a three-fourths majority is required. To this, the present rules of procedure add that the Commission will first "make every effort to reach its decisions by consensus" and that only if all such efforts have been exhausted without success the abovedescribed voting rules apply. These amendments to the Schedule are legally binding. Taking into account the time of its creation, it should not come as a surprise that the 1946 IWC provides for a far-reaching opting-out clause with respect to amendments to the Schedule as such objections do not have to be justified.

When the Commission acts under Article VI, which grants it the power to "make

recommendations to any or all Contracting Governments on any matters which relate to whales or whaling and to the objectives and purposes of this Convention", a simple majority is required. Such "recommendations" are in principle not legally binding as indicated not only by the specific term used, but also by the voting requirements. However, as the Rules and Procedure have in the meantime specified that an attempt to reach consensus needs to precede any voting, this modality may well be of relevance for the interpretation of the 1946 IWC or the Schedule.

At meetings of the committees established by the Commission a simple majority rule applies. The Scientific Committee, established in 1950, does not make binding assessments as it merely assists the Commission in discharging its functions.

As Article VIII forms the centerpiece of the 2014 Whaling Case, special attention will be given to this scientific research clause. The role of the Commission in this particular procedure is rather limited, because it only functions as the body to which the contracting government must address at once its decision to grant a special permit for purposes of scientific research. It is through its subsidiary organ, the Scientific Committee, that a somewhat more substantial role has developed. On the basis of the 1946 IWC the Scientific Committee has become the recipient, ever since it was established in 1950, of the scientific information that the contracting government has to provide, "including the results of the research conducted". This somewhat rudimentary obligation has been given further content by means of an amendment of the Schedule adopted in 1979. There is now an obligation for each contracting government intending to conduct whaling for the purpose of scientific research to provide the secretary of the Commission the proposed scientific permits in sufficient time in advance to allow the Scientific Committee to "review and comment on them". That same committee also has to receive preliminary results of any research resulting from such permits. Finally, since 2005 the Scientific Committee has adopted an annex, revised later on and now entitled "Process for the Review of Special Permit Proposals and Research Results from Existing and Completed Permits", in which it spelled out the process in even greater detail. It not only further elaborates the four elements a permit needs to address according to paragraph 30 of the Schedule but at the same time specifies the timing of their submission to the chair of the Scientific Committee, namely at least six months prior to the annual meeting of that body. This annex was later endorsed by the Commission and approved by consensus.

2) The Court's argumentation on the duty to co-operate

The Court starts its analysis of the organizational setup created by the 1946 IWC by stressing that the main difference when comparing it with the structure of its 1931 and 1937 predecessors has to be found in the fact that substantive provisions regulating the whale stocks and the management of whaling are not to be found in the treaty itself, but were rather relegated to a Schedule, forming an integral part of the Convention. Another novelty is the creation of a separate treaty body, namely the Commission, having exactly the power to amend that Schedule. These amendments, adopted by a three-fourths majority, are automatically binding on all Member States with the exception of those make use of the opting-out clause. This special role attributed to the Commission, according to the Court, has made the 1946 IWC "an evolving instrument".

The Commission can also adopt recommendations by simple majority according to Article VI, but these recommendations, taking the form of resolutions, are not normally legally binding. "However, when they are adopted by consensus or by a unanimous vote, they may be relevant for the interpretation of the Convention or its Schedule".

With respect to Article VIII, the Court holds that this article provides the States parties with a discretionary power to grant permits, but at the same time this does not relieve those States granting such permits from scrutiny whether the permits were indeed granted for purposes of scientific research.

When assessing the meaning of the term "scientific research", the Court is confronted with the diverging postions of the parties as to the exact value of resolutions adopted by the Commission under Article VI. Australia is of the opinion that such resolutions must be taken on board when interpreting Article VIII in accordance with Article 31 of the 1969 VCLT. Japan objects to this position as such resolutions represent mere recommendations, and thus not binding, even though it accepts a duty to give due consideration to such recommendations. The Court disposes of the issue by stressing that resolutions adopted without the support of all States, and especially without the consent of Japan, cannot be considered as a subsequent agreement nor as subsequent practice establishing an agreement, as required by Article 31 of the 1969 VCLT. Those guidelines and resolutions adopted by consensus, on the other hand, did not establish a requirement that lethal methods could only be used when other methods are not available. But at the same time the Court emphazes that all States parties "have a duty to co-operate with the [Commission] and the Scientific Committee and thus should give

due regard to recommendations".

It is only when assessing the reasonableness of Japan's decision regarding the use of lethal methods that this duty to co-operate receives its full application by the Court. Even in the absence of a legal requirment that lethal methods can only be used when other methods are lacking, as indicated in the preceding paragraph, the Court nevertheless reaches the conclusion that Japan did not fulfill its obligation to give due regard to Commission resolutions and guidelines because this country never seriously considered whether non lethal methods were available. The same duty to co-operate should also have incited Japan to revise its original research plan for review as the implementation of the program quickly started to diverge substantially from its original design, even though the Court did not attach any specific consequence to this last finding.

3) Appraisal and conclusions

In the 2014 Whaling Case the Court was apparently guided by the acceptance of Japan that it had a duty to give due consideration to the recommendations of the Commission in order to make a finding that all the parties before it had agreed that a duty of co-operation exists with the Commission and the Scientific Committee. The Court finally broadens the scope of this obligation to all member States of the 1946 IWC. This clearly reaches further than the argument sometimes found in the literature that non-binding resolutions are not devoid of all legal value as the addressees of UN recommendations were said to be under 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. A duty to cooperate seems indeed a more farreaching obligation for the State in question.

The possible impact of this finding on the operation of other similar bodies will most certainly trigger the interst of scholars and governments alike. It is against such general background that this section will try to appraise how this particular finding of the International Court of Justice might impact on bodies like the UNGEGN and the IHO.

Certain similar features are to be noted, it is true, such as the fact that all three work with conferences of the parties every so many years.

Nevertheless, differences have to be noted as well. With respect to UNGEGN, which

is not composed of Member States but rather of experts serving in their personal capacity, it is obvious that this body is of a totally different nature when compared to the role the Commission fulfils under the framework the 1946 IWC. Consequently it is believed that the impact of the recent decision of the Interantional Court of Justice on the duty to co-operate will remain minimal. Whether the resolutions of the Economic and Social Council, which in the final end will have to act on the recommendations of the UNGEGN and the UNCSGN, might be affected by this recent ruling is doubtful given the general structure of the UN and the limited membership of this body.

On the other hand, the IHO has much more affinities with the IWC as an intergovernmental organization, possessing its own body, the International Hydrographic Bureau. Just like the 1946 IWC it tries to promote the interests of its members. However, the International Hydrographic Bureau can hardly be compared with the Commission under the 1946 IWC. Besides the technical and administrative staff, the former is only composed of three members. Its functions are limited and cannot compare with those of the Commission, which has the power the change the Schedule, forming an integral part of the 1946 IWC. Moreover, all Member States are represented in this IWC body and have one vote. Once again, the functions conferred on the International Hydrographic Bureau point in the direction that the convention creating the IHO is not the type of international agreement that the International Court of Justice would qualify as "an evolving instrument", at least not in its present form.

6. General conclusions

Having arrived at the end of this study, it is time to try to draw a number of conclusions. It can hardly be denied the international governmental organizations were created, starting from the 17th century, to fulfil a special need of the international community at that time. Leaving techincal matters that needed harmonization with Bureau's or Commissions, and the general political steering of this inter-state cooperation to conferences of the Member States, which met much more infrequently, the problem of the unanimity rule could somewhat be softened around the edges. Some of these organizations proved rather successful, like the Rhine Commission established in 1815. Others, like the Commission within the framework of the 1946 IWC,

encountered much more difficulties because of the emergence of fundamental difficulties at the political level.

Some of these organizations receive enhanced competences under present-day international law, leading also to ditto responsibilities. Fisheries on the high seas provides a good example, for as their competences increased, so did their responsibilities. Far-reaching opting-out clauses, like the one discussed above in the framework of the 1946 IWR, were common groud in regional fisheries management organizations. Opting-out clauses certainly still exist today, but they are more and more being curtailed in the sense that states wanting to make use of them are normally now required to offer a justification, which can subsequently form the basis for arriving at non-legally binding and even legally binding decisions.

It is believed that the recent decision of the International Court of Justice in the 2014 Whaling Case, and especially its implied duty on Member States to co-operate with resolutions adopted by intergovernmental organizations, has certain affinities with this tendency to enhance the functioning of conventional bodies.

How does this all apply to the three bodies forming the subject of the present analysis? Firstly, as far as the UN Secretariat is concerned, the findings that this body is prevented from contributing to the discussion of sea-naming in its proper name should not surprise, as this body is the executive arm of the UN. Is does not have such competence in a general manner, and it certainly does not have that competence as far as sea-naming is concerned because within the UN framework specific bodies were created to tackle such issues, namely the UNGEGN and the UNCSGN. Secondly, as far as these two latter bodies are concerned, certain similarities can be found, like the Meeting of the Parties at regularly scheduled conferences. Nevertheless, the International Hydrographic Bureau and the Commission under the 1946 IWC have little in common: Not with respect to their competence, nor concerning their composition. Thirdly, a good number of conceptual similarities can found between the IHO and the 1946 IWC. Also as far as their respective structural set-up is concerned, a number of resemblances are to be found. Unlike UNGEGN, which is composed of experts serving in their personal capacity, the IHO organs are composed of representatives of Member States. A greater resemblance consequently exists between the International Hydrographic Bureau and the Commission under the 1946 IWC than between the latter body and the UNGEGN. Nevertheless, the respective competence and membership of the Internatonal Hydrogrpahic Bureau and the Commission under

the 1946 IWR remain at present worlds apart. But the IHO is not a static organization and it is argued that if the recent amendments adopted with respect to its founding document were to become operational, it will move even closer to a modern internaitonal organization as a totally new Council will be created.

In general, of course, the argument remains that since both the UNGEGN and the IHO work with international conferences adopting resolutions there is no reason to doubt that if such resolutions were to interpret that body's own founding document, they could cary a special legal weight as well.