

The Man Who Would Be King, Daddy's Little Princess, and their Territorial Claim

There are many dads who have played make-believe with their little girls, perhaps taking the part of kindly king to his daughter's princess. Not many people have turned this game into an international legal incident concerning state formation. But at least one man has. According to [the *Washington Post*](#):

Jeremiah Heaton was playing with his daughter in their Abingdon, Va., home last winter when she asked whether she could be a real princess.

Heaton, a father of three who works in the mining industry, didn't want to make any false promises to Emily, then 6, who was "big on being a princess." But he still said yes.

"As a parent you sometimes go down paths you never thought you would," Heaton said.

Within months, Heaton was journeying through the desolate southern stretches of Egypt and into an unclaimed 800-square-mile patch of arid desert. There, on June 16 — Emily's seventh birthday — he planted a blue flag with four stars and a crown on a rocky hill. The area, a sandy expanse sitting along the Sudanese border, morphed from what locals call Bir Tawil into what Heaton and his family call the "Kingdom of North Sudan."

There, Heaton is the self-described king and Emily is his princess.

Wow. Heaton just upped the ante for all non-royal dads. *The Washington Post* also reports:

Heaton says his claim over Bir Tawil is legitimate. He argues that planting the flag — which his children designed — is exactly how several other countries, including what became the United States, were historically claimed. The key difference, Heaton said, is that those historical cases of imperialism were acts of war while his was an act of love.

"I founded the nation in love for my daughter," Heaton said.

That's sweet. Really. But let's turn to the international legal argument...

Heaton contends that Bir Tawil is *terra nullius*, territory legally belonging to no-one, and that by planting a flag he has occupied the land and can claim it, not just as private property but as a new state. From this point, he will now seek formal recognition from Sudan, Egypt, other states and from the African Union

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Let's look at the various components of his argument.

First : the status of Bir Tawil. Heaton searched for examples of terra nullius and found an interesting territorial issue in Bir Tawil. [According to Wikipedia](#) (yeah, I know,):

Its status as unclaimed territory results from a discrepancy between the straight political boundary between Egypt and Sudan established in 1899, and the irregular administrative boundary established in 1902. Egypt asserts the political boundary, and Sudan asserts the administrative boundary, with the result that the Hala'ib Triangle is claimed by both, and Bir Tawil by neither.

(If you don't like Wikipedia, here's what the [CIA World Factbook](#) states in its entry on Egypt: "Egypt no longer shows its administration of the Bir Tawil trapezoid in Sudan on its maps." There is no mention of Bir Tawil in the Sudan entry.)

Article I of [the Sudan Convention of 1899](#), between the governments of Britain and Egypt, states that Sudan would refer to the territories south of the 22nd parallel. Bir Tawil would be in Sudan. However, according to a [1962 international boundary study \(.pdf\)](#) issued by the Office of the Geographer of the Department of State:

The administrative boundary was first created by an arrete on July 25, 1902, and activated by a decree on November 4, 1902, both by the Egyptian Minister of the Interior. The boundary was to facilitate the administration of nomadic tribes along the international boundary and to retain the continuity of certain tribal areas.
[Citation Omitted.]

This would place Bir Tawil in Egypt. Egypt bases its territorial claim on the 1899 treaty; Sudan on the 1902 administrative act.

At issue is whether the fact that Egypt and Sudan each view a different act as defining the boundary line, with the result that neither claims Bir Tawil for themselves, makes Bir Tawil *terra nullius*. At first blush there seem to be some support for this. *Oppenheim's (Ninth)* states that *terra nullius* can include land that "once belonged to a state but has been afterwards abandoned..." (sec 250, pp. 687-88.) However it is not clear that Bir Tawil is best described as land that is unclaimed. As there are *two* states involved, as opposed to one state abandoning some of its territory, what we actually have is a dispute over which legal text is dispositive. Inasmuch as they can't both define the boundary line, depending on which text is controlling, Bir Tawil will be the responsibility of one state or the other. Until that is resolved, it is in a sort of limbo, in

the responsibility of one state or the other. Until that is resolved, it is in a sort of limbo, in which it could potentially be in one of two states. Rather than *terra nullius*, this may be more like a territorial version of [Schrodinger's cat](#). Someone needs to open the box. (Perhaps, inadvertently, Heaton did this.)

But let's assume for the sake of argument that it is *terra nullius*.

James Crawford wrote in *The Creation of States in International Law* that “[t]he effective and exclusive governmental control of territory necessary for its acquisition is rarely sustainable by a collection of individuals lacking a previous political organization.” (p.274.) In other words, it is usually a state or people acting on behalf of an existing state (such as colonists) that occupies *terra nullius* and claims that territory to be part of its sovereignty. It is rarely simply a group of people (or an idealistic dad). Crawford does note some counter-examples: Liberia, The Boer Republics, the Free State of the Congo, Israel, and Taiwan. (Although none of these fall into the “formed by an idealistic dad” category.)

Moreover, it is doubtful that simply planting a flag is enough. *Oppenheim's (Ninth)* notes that

[e]arlier editions of this volume suggest that settlement is a *sine qua non* of effective occupation. While this is doubtless true in large areas of habitable terrain, it might not apply to, for example offshore islets.

(p. 689, Sec. 251, note 2). Bir Tawil is habitable terrain, so settlement is probably required.

Thus the issues of who is claiming the territory by occupation and the problem of settlement are two very significant problems for Heaton's claim. (As well as potential domestic law issues, like a U.S. citizen trying to found a kingdom.)

Perhaps obtaining recognition from Egypt, Sudan, and other countries would resolve any technical deficiencies. But [while recognition is a political decision, it takes place within a legal framework](#). And the above noted problems, along with the fact that the putative Kingdom of North Sudan would have difficulty meeting the customary criteria for statehood (defined territory, a permanent population, a government, and the capacity to enter into international relations) make recognition by any existing state highly unlikely.

So, while yes, Virginia, there is a Santa Claus, there probably isn't a Kingdom of North Sudan.

Hat tips to Tony Arend, Vikram Raghavan, and Brad Roth for having pointed out Heaton's story in recent days.



Chris Borgen

Chris Borgen is Professor of Law and Co-Director of the Center for International and Comparative Law at St. John's University School of Law in New York City.

Twitter: [@Chris_Borgen](#)

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