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Navigating *Terra Nullius*: The Ababda and the Case for Indigenous Land Rights in Bir Tawil

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Abstract

Located along the border between Egypt and The Sudan, Bir Tawil is the product of a border dispute that goes back over a century, the result of which is that neither country claims it, rendering the 1,290-square-kilometre territory Terra Nullius. Several individuals, misreading the traditional legal ramifications of the designation Terra Nullius, have laid claim to it, though mostly as little more than publicity stunts. Since the discovery of gold in the area, and the extraction operations of the Canadian mining firm Orca Gold Inc. at its Block 14 concession just over the border in Sudan, the local prospectors fear they will lose their livelihood. These locals are primarily made up of members of the Ababda Tribe. This paper provides a brief history of the Ababda's presence in this area, and then offers a look at the strength of their claim over the land and mineral rights from the perspective of international law.

Keywords: Indigenous Land Rights, International Law, Mineral Rights, Ababda, *Terra Nullius*, Bir Tawil

Nestled in the Eastern Desert between Egypt and The Sudan, Bir Tawil is the product of a border dispute that goes back over a hundred years. It stems from a discrepancy between an 1899 delineation of the border between those two countries that traces a straight line from east to west to the Red Sea, and another administrative boundary drawn by the British in 1902, which slips south-east to encompass Bir Tawil, and then traces a jagged course back up, north-eastward, toward the coast. According to the former borderline, the coveted Halayib Triangle falls under Egyptian territory; according to the latter, that of The Sudan. Since there are several villages, access to the coast, and a population of roughly 27,000 people in Halayib, both sides claim it, which by definition means they must renounce any claim to the barren and unpopulated stretch of desert known as Bir Tawil. It truly is *Terra Nullius*—literally, “no man's land.”

Whatever the geopolitical and administrative reasons for it, the 1,290-square-kilometre Bir Tawil Triangle (though its shape can more accurately be described as an isosceles trapezium) holds the dubious distinction of being the only remaining territory on Earth (outside of Antarctica and a few small patches of land between Croatia and Serbia) that is truly a *Terra Nullius*. As such, it exerts an almost magnetic pull to amateur explorers and gentlemen adventurers.

In June of 2014, American Jeremiah Heaton flew to Egypt and made a 14-hour trek across the desert to plant his flag—designed by his children—in the sands of Bir Tawil, proclaiming himself king of his new land, which he dubbed the Kingdom of North Sudan. He received a considerable amount of attention in the press, not least because of his proclaimed motivation for doing so: to make his daughter, then 7-year old Emily, a *bona fide* princess.

This feel-good story has bought Heaton a degree of goodwill despite his clumsy attempts to press his claim officially and seek recognition among the global community of nations. Despite ruling from over 6,000 miles away from his house in southwestern Virginia, Heaton has announced plans to transform the arid land into a center of agricultural production.

In spite of the tenuous legal basis of this claim, Heaton appears intent on pressing the legitimacy of his monarchical status. “This is no-man’s-land, and I have claimed it,” he is reported as saying. Not long after, on 7 November, 2017, a 24-year-old businessman from India, Suyash Dixit, followed Heaton’s lead and reported, via Facebook post, that he too had made the journey to Bir Tawil to plant his own flag—as well as some sunflower seeds: a traditional method of claiming land—and to establish his own kingdom, the Kingdom of Dixit. He, too, declared himself king, as well as acting prime minister, and delegated the position of president to his father. Heaton did not take kindly to this counterclaim, calling Dixit a liar and disputing whether the businessman actually did cross the border into Bir Tawil. A diplomatic impasse soon erupted between these two miniscule kingdoms, which mostly played out on Twitter. Fortunately, the two managed to settle their differences and by all accounts seem to have agreed to develop the land together from their respective homes on other continents (Najarro 2014; Srivastava 2017).

Unfortunately, this new era of peace among micronations did not last long, as a third contender emerged, this one Dmitry Zhikharev, from Russia, who claims to have visited the *Terra Nullius* mere months after Heaton, and who disputed whether either Heaton or Dixit actually made the trek there, instead merely taking photographs of themselves in the desert nearby. For what it’s worth, Zhikharev named his realm Kingdom Mediae Terrae—the Kingdom of Middle Earth, in homage to author J. R. R. Tolkien. Of course, he declared himself king, too (Dahshan 2019).

There have been other claims to Bir Tawil, mostly played out over social media and without the claimants ever having embarked on the trek to the physical location itself—a Grand Dukedom of Bir Tawil and King Henry I of the Kingdom of Bir Tawil among them—until this growing coterie of competing royalty all began to seem something of an inside joke among those with an interest in cartography and the specialist community of micronations.

It was due to this recent interest in Bir Tawil that the author joined an expedition to the territory, to speak to local informants familiar with the situation in order to obtain a perspective on the viability of the aforementioned claims, as well as to determine what the true situation is in the *Terra Nullius* (Karalekas, 2020). Prior to the expedition, every source of information online had indicated that this was, in every way, a veritable no man’s land: A population of zero, according to Wikipedia. This turned out not to be the case. In fact, far from being an unpopulated patch of desert, a people called the Ababda have had a presence there going back at least as far as the Roman Empire.

Although their ethnicity and exact origin is difficult to define, the Ababda are an ancient people of Hamitic origin, and are physically closer than any other African peoples to the ancient Egyptians. They are indigenous to Africa, as opposed to many of their Bedouin neighbours, who trace their origins to the Arabian Peninsula. The Ababda, as part of the Beja conglomerate of clans and tribes (and it should be pointed out that this is far from a widely accepted categorization), may be the descendents of the peoples referred to as the Medjay during the Middle Kingdom (2040-1782 BC) and those dubbed Blemmyes by the Greeks in Greco-Roman and Byzantine times (332 BC-AD 641). The latter were first mentioned 2,500 years ago by Herodotus, the Greek historian, who describes them in “The Histories” as being *Akephaloi*, or headless. Blemmyes would go on to be reinterpreted during the European Middle Ages as a race of people without heads, living at the edge of the known world, whose eyes and mouths are in located in their chests (Lobban 2003; Guirguis 1956; Paul 1954).

Despite Herodotus’s fanciful (and obvious hearsay) description, that this people have inhabited the area for millennia is without doubt. Barnard (2009) points to certain items of material culture widely employed by Beja peoples today that show great similarity with those found in ancient Egyptian tombs, and which have thus been interpreted as evidence for cultural continuity. In a similar vein, Murray (1923) records their use of traps that resemble a wheel with spokes, but without hub, into which a hapless gazelle may place its foot, only to become trapped by the bamboo or wooden spikes within. The contraption is common in The Sudan, but unknown to the Arabs, and its use dates back to the earliest dynastic times in ancient Egypt.

While Murray relays claims from his local informants that the father of the Ababda was Zubayr' ibn el Awwam, he also cites John Lewis Burckhardt who, writing a century earlier in his "Travels in Nubia," places that honor with Selman of the Beni Helal (Burckhardt 1822). Rather more poetically, the Ababda have been called "the sons of the Jinns" (Minahan 2016), referring to the mythical and magical creatures of pre-Islamic folklore known in the West as "Genies:" magical being who are habitually trapped in bottles or lamps and known to confer a trio of wishes upon their inadvertent rescuers. This appellation may date at least as far back as Murray (1923), who had heard from informants among the fellahin near Qena that an Abadi will vanish from sight after going just two or three hundred yards in the desert; a skill that speaks to their mysterious, Jinn-like abilities, and their absolute command of the desert.

Indeed, as a nomadic people, the Ababda ethnic group are extremely knowledgeable about their desert surroundings and how to use whatever this harsh environment provides. They are famed for their hunting skill, their proficiency in animal husbandry, their craftsmanship, and their familiarity with the medicinal properties of desert flora. For this reason, they often found employment as guides, using their knowledge of the desert to help caravans make the arduous journey from the Nile to the Red Sea (Murray 1923; Starkey 2000; Bos-Seldenthuis 2007).

The Ababda have lived through many changes to their environment over the centuries, and as a result have adapted to those changes while managing to retain many of their ancient customs and traditions. Today, modern communication technology and tourism present a new challenge: exposure to the outside world. Time will tell how they adapt to this new change, which when paired with rapid urbanization, the increase in military activity in the area, and foreign-run gold-mining operations near the Egypt-Sudan border puts pressure on the traditional Ababda way of life. This represents a threat to their culture, very little of which has been recorded or studied by anthropologists (Bos-Seldenthuis 2007).

Their pastoral nomadic lifestyle was dealt a particularly hard blow in the 1990s when tourism as an economic activity grew along the Red Sea coast, providing jobs and a more settled existence to many young Ababda men. At the same time, the government was building villages and attempting to push them into a more sedentary lifestyle. As a result, there is something of a generation gap that has developed between the older generation, who have known life in the desert, and the younger generation, which has chosen for various reasons to migrate to a more urban environment—an experience that attenuates desert skills and knowledge, and may cause this place-specific expertise to eventually become lost (Wendrich 2003; Hamed *et al.* 2002).

This is a particularly devastating loss in the case of the Ababda, as according to Guirguis (1956), the ethnic group has managed to uphold its unique identity and traditional lifestyle going back almost to the time of the ancient Egyptians by being what he terms a 'sacred' society—one that maintains its customs for the very reason that they are old, and therefore revered. As such, the ethnic group has avoided becoming assimilated into the larger Egyptian or Sudanese cultures. Indeed, they are characterised as having an intense in-group feeling and being suspicious of outsiders.

The people that operate the gold extraction operation in Bir Tawil are members of the Ashabab—one of the four dominant branches (tribes, or *qaba'il*) of the Ababda; the others being Fuqara' wa Milikab, al-Abudiyya wa Shanatir, and al-Jamaliyya. Murray (1923) presents a detailed genealogy of the succession of Ashabab Sheikhs up to the point at which he was writing (Murray 1923; Nielsen 2004).

This part of the Nubian Desert has long been famous for its gold mining, as well as for the arduous nature of the endeavor. Writing over two thousand years ago, the Greek historian Diodorus of Sicily described mines of gold, silver, iron, and brass at Meroë, as well as the brutal methods by which the Egyptian kings extracted said wealth, including through the use of prisoners of war and "persons convicted by false accusation—the victims of resentment" (Booth 1700). As cited by Wilson (1994), Diodorus continues:

"And not only the individuals themselves, but even whole families are doomed to this labour, with the view of punishing the guilty and profiting by their toil. The vast numbers employed are bound in fetters and compelled to work day and night without intermission, and without hope of escape; for they set over them barbarian soldiers who speak a foreign language, so that there is no possibility of conciliating them by persuasion or through familiar intercourse. No attention is paid to their persons, they have not even a piece of rag to cover themselves; and so wretched is their condition that all who witness it deplore the excessive misery they endure."

Mines dating back to the time of the Romans were successively worked until at least the Middle Ages, and even revived in the early years of the twentieth century, according to the writings of Sir Eldon Gorst, who in 1902 visited the Eastern Desert in his capacity as an advisor to the Egyptian government and found that gold extraction here necessitated higher working expenses and difficult conditions for smaller reward (Starkey 2000). The author found this description echoed in the words of a local informant, to wit: The easy gold had been taken, and only the hard gold remained. The informant, an Abadi named Shady, described how new veins of extractable gold had been discovered in Bir Tawil about fifteen years ago, and how the Ababda people set themselves to the task of mining it, becoming rich in the process. They do so in a way that differs little from the process employed thousands of years ago.

A rare surviving fragment of the lost works of Agatharchides described the process, and the cruelty, employed in the Egyptian gold mines here. A description of these conditions penned by the second-century Greek historian and geographer is cited by Maclaren (1908):

"They put fire to the veins, and the stone thus loosened is carried away and crushed. An expert miner performs the work of tracing the vein, and brings the labourers to those places, dividing the work among them according to the capacity of the individual. The strongest, and those still in the prime of life, are used to break the stones, and to work in the shafts. With nothing but their own strength they break the stone with heavy iron hammers, and follow the ill-defined course of the gold-bearing vein. A light is fixed to their foreheads, and then, under the eyes of their tyrannical overseers, they break the gold-bearing stone. Children bring the broken stone out from the mines; old men carry it to those who have to crush it, a work which is effected by strong men of 30 years of age, using iron pestles in mortars hewn from the solid rock; so they reduce it until the largest piece is no bigger than a pea ... Finally, it is transferred to melters, who melt it in a clay pot, and in proportion to its quantity they add a lump of lead, grains of salt, a little alloy of silver and lead and barley bran. The mouth of the pot being carefully covered and luted round, they keep it fused five days and five nights consecutively; [...] in the end they find none of the things that were put in together, but only a mass of molten gold, but little less than the original matter."

This technique, described almost two millennia ago by Agatharchides, is repeated almost verbatim by a modern-day reporter writing in *Quartz* magazine: Peter Schwartzstein (2015) describes, "a scene like something out of *Mad Max*. Overseers set truck tires alight to soften ground that's been baked solid by the fierce Sahara sun. As the flames relent, newly arrived workers—those who haven't yet earned their stripes—step into the breaches to blast away chunks of the weakened turf with homemade explosives. A series of muffled bangs ring out across the desert encampment."

The scene described by Schwartzstein and Agatharchides alike is largely the scene encountered by the author in Bir Tawil, in an Ababda-run gold-extraction operation that appeared as extensive as it is precarious. Local informants relayed their apprehension and fear that members of a foreign-run mining consortium might set their sights on their bounty. Indeed: immediately south of the Bir Tawil border with Sudan, the Canadian mining firm Orca Gold Inc. is busy extracting the precious metal at its Block 14 concession, which covers 2,170 square kilometers of desert land. According to the company's website, Orca (under its previous name, Shark Metals) acquired the right to purchase a 70 percent interest in the property in 2011 and began exploration that same year. Drilling began in 2012, and has continued since. Orca's exclusive prospecting license for the area was renewed again in May 2017 (Phillips 2015; Block 14 Gold Project n.d.).

It is very likely that the unprecedented geopolitical situation in which Bir Tawil finds itself (to wit: that it is claimed by no actual nation) is the only reason why Western mining concerns have not yet supplanted the Ababda operation there. What then are their rights in the area? According to international law, a strong case can be made for the ethnic group's sovereignty over the land, as well as their rights to what lies beneath it.

Any assessment of international law and what it has to say on the Ababda's rights in this regard would arguably begin with the work of philosopher and theologian Francisco de Vitoria, who was a renowned jurist in Renaissance Spain. Vitoria was a pioneer in his extension of the principles of natural law into the international sphere when he contended that the concept of *jus gentium*, or "law of Nations," (which dates back to the Roman legal system) compels nations as well as peoples, and that without just cause, indigenous peoples could not be dispossessed of their natural dominion over their lands (Vitoria 1991).

Roman law is also the source of the concept, already discussed, of *Terra Nullius*, to wit: land without an owner could be claimed by any nation, providing certain conditions are met. As a result, indigenous occupancy was redefined, or outright ignored, in order to apply *Terra Nullius* as a means to appropriate land. Australia presents a relevant illustration of this point, wherein Aboriginal lands were routinely taken over by the settler population on the basis of this legal interpretation of *Terra Nullius*, citing the nomadism of the Aboriginal peoples as not rising to the standard of permanent occupation.

This legal paradigm is anachronistic, however. It held dominance throughout the colonial era and lasted until the mid 1970s, when a landmark ruling was issued by the International Court of Justice. In the 1975 Western Sahara Case, the ICJ expanded the legally acceptable definition of international land tenure beyond the strictly European notion of land title when it issued the following finding:

“It [is] clear that the nomadism of the great majority of the peoples of Western Sahara at the time of its colonization gave rise to certain ties of a legal character. [...] The tribes, in their migrations, had grazing pastures, cultivated lands, and wells or water-holes in both territories, and their burial grounds in one or other territory. These basic elements of nomads’ way of life [...] were in some measure the subject of tribal rights, and their use was in general regulated by customs” (Gilbert 2014)

This proved to be a small step, however, and it would take decades before an adherence to human rights standards would eventually transform the structure of the international legal system. A 1986 UN report titled “The Problem of Discrimination against Indigenous Populations” looked specifically at the human rights issues raised by mining operations in indigenous peoples’ lands by stating that:

“Where possible within the prevailing legal system, the resources of the subsoil of indigenous land also must be regarded as the exclusive property of indigenous communities. Where this is rendered impossible by the fact that the deposits in the subsoil are the preserve of the State, the state must [...] allow full participation by indigenous communities in respect of: the granting of exploration and exploitation licenses; the profits generated by such operations; the procedures for determining damage caused and compensation payable to indigenous communities as a result of the exploitation of the resources of the subsoil of indigenous land and in the consideration of all consequences of such exploration and exploitation activities.

“No mining whatsoever should be allowed on indigenous land without first negotiating an agreement with the indigenous peoples who will be affected by the mining, guaranteeing them a fair share of the revenue that may be obtained,” the report continued (Orellana 2002; Cobo 1986).

Today, there are a number of legal instruments that reflect a general acceptance of the notion that indigenous peoples have the right to be consulted prior to any law or action, taken by a national government, that affects them. Thus, the right of indigenous peoples over their land is not restricted to demonstrable possession, but also from their spiritual connection and communal stewardship over the land in question (Anaya 2005).

Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples lays this out succinctly:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (Assembly 2007).

This legal recognition is all the more important given the uncomfortable reality that indigenous peoples tend to inhabit underdeveloped areas marked by vulnerability to natural and man-made disasters where they often experience difficulty in eking out an existence, including in such harsh environments as the high mountains, the tundra, and in the case of the Ababda and others, the desert. In such hardscrabble biomes, natural resources take on an added importance, not just because such resources are often inextricably linked to the ethnic group’s culture, traditions, and spiritual and/or religious belief systems, but for mere survival. The right to have a say in how those natural resources are exploited is therefore far more important to indigenous populations than it is to the country’s city dwellers, often living hundreds of miles away.

Moreover, while an argument can be made that such urban populations benefit from national programs to commodify natural resources, it is clear that they share less of the risk of the negative impacts of the extractive industry. These risks are numerous and include forest fires, pollution of drinking water, deforestation, loss of arable and/or grazing land, and the very real risk of forced relocation (Skogvang 2013).

The question remains: what parties are responsible for the extractive industry's impact on indigenous populations? In other words, whom do you sue? Governments themselves are rarely involved directly in the extraction of gold, petroleum or other fruits of the mining industry, limiting their involvement to negotiating that right away to one of the world's large multinational mining or oil companies. Therefore, while the aforementioned UN declaration lays out—albeit in a nonbinding document—the rights and responsibilities of including consultations with affected indigenous populations, this obligation is aimed at the government, not the corporation.

Indeed, the right to own property is the very cornerstone of capitalist economics. It has likewise been deemed an inalienable human right, laid out in such seminal documents of international legal jurisprudence as The Universal Declaration of Human Rights, The European Convention on Human Rights (ECHR), and The American Convention on Human Rights (ACHR). (Skogvang 2013). A number of instruments exist, therefore, that may be used to bolster the Ababda's legal claim over the mineral rights of their traditional land, including that portion currently delineated by the borders of Bir Tawil.

For example, the Committee on the Elimination of Racial Discrimination (CERD)—the body that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination—adopted a General Recommendation XXIII (51) on the rights of indigenous peoples at the Committee's 1235th meeting on 18 August, 1997, which included the following text:

“The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories” (Daes 2001).

Even in cases where the government retains ownership over mineral right to a territory—as opposed to the unique situation in Bir Tawil—there are still duties and responsibilities to the indigenous population. One may turn to Article 15 of the International Labour Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries, or ILO No. 169. On the issue of ownership over sub-surface resources, Article 15 (2) is clear:

“In cases in which the State retains ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands” (International Labour Organization 1989).

The latter applies even when the state “retains ownership of mineral or sub-surface resources,” which is not so cut and dry in a *Terra Nullius* like Bir Tawil. Hence, the Ababda case would seem to be even stronger than it would otherwise be were the state—be it Egypt or Sudan—to claim effective control over the territory. This is a position that the Ababda could use to leverage favourable concessions from the government, especially as the government of Sudan, for example, is reliant upon development assistance from such world bodies as the World Bank, for example.

In the “Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review” (hereinafter EIR), the Eminent Person's Advisory Panel recommends that the World Bank deny funding to any projects that fail to obtain free, prior and informed consent from potentially affected indigenous peoples. Indeed, the EIR goes further, suggesting that such consultations must result in “broad community acceptance” of the project in question. “The Bank Group will only support extractive industry projects that have the broad support of affected communities (including Indigenous Peoples communities).”

This does not mean a veto power for individuals or any group, but it does mean that the Bank Group requires a process of free, prior, and informed consultation with affected communities that leads to broad acceptance by them of the project” (MacKay 2004).

The World Bank, moreover, has not been shy in threatening to withhold funding from officials in Khartoum unless steps are taken to harmonize the Sudanese economy with the norms of the global financial system. It has called on the government of Prime Minister Abdalla Hamdok to address an arrears of US\$16 billion owed to creditors before it will even consider any further lending or debt relief for the country (Abdallatif 2019).

Sometimes it is the case that resource development is used as an opportunity to form partnerships between government and indigenous communities, and can be used as a means of bringing said communities into the fold of the capitalist system. In Australia, for example, partnerships in the mining industry are being used to address some of the poverty endemic to remote Aboriginal communities. By law, these communities have the right to enter into negotiations with the government and mining companies in order to maximize their benefit from any extraction operations. This is a practice that goes back to the Australia High Court’s 1992 Mabo decision, which bolstered the bargaining position of indigenous Australians through legislative protection of their heritage and human rights (Howlett 2010).

The examples cited above represent a good start in any attempt to assess how international law may be used to justify the Ababda people’s right to exercise sovereignty over any mineral extraction operations in Bir Tawil. However, too often it is the case that legal rights—especially given the practical reality of the world order and anarchy in international relations—are akin the rules of sailing at sea: might has right.

States might easily choose to disregard the legal measures and norms outlined above in the absence of any judicial enforcement mechanisms. Fortunately, there are avenues of redress in such cases, such as the African Court on Human and Peoples’ Rights (ACHPR). Established by African countries to protect human rights in Africa as a compliment to the activities of the African Commission on Human and Peoples' Rights, the ACHPR was designed for almost this exact situation. In the past, the court has ruled in favour of the Ogoni people in an action alleging that the government of Nigeria had violated articles of the African Charter. The Ogoni were granted compensation as well as relief and resettlement assistance in a case involving victims of government raids and damage to land and rivers by oil companies. Unfortunately, at the current time, neither Egypt nor Sudan is one of the 30 States that have ratified the Protocol which established the court, and so individuals from there would be unable to bring cases in front of the court. Moreover, the handling of Bir Tawil as a *Terra Nullius* would likewise be precedent-setting, with little in the way of legal precedent on which to rely by means of a blueprint. (Pereira & Gough 2013).

Another option would be the aforementioned ICJ. Although the International Court of Justice has weighed in on the issue, it should not be the first choice for an indigenous people seeking justice for a perceived violation of their rights. The ICJ is primarily a forum for state-to-state contestation of disputes, and is less suited as a venue for non-state actors to press their cases. Moreover, notwithstanding the previous citation of precedent, the ICJ’s record on issues of indigenous land rights is less than progressive. While the court did, in its Western Sahara advisory opinion, invalidate anachronistic doctrines such as discovery, conquest, and *Terra Nullius* as acceptable justifications for advanced nations to secure sovereignty over indigenous lands, it failed to recognise traditional indigenous land tenure systems as valid under international law (Anghie 2007).

A more effective redress mechanism would be the compliance and monitoring bodies erected for various international Human Rights treaties. Unlike the ICJ, the UN Human Rights Council is set up to receive submissions from non-state actors on issues relating to violations of the International Covenant on Civil and Political Rights (ICCPR). As stated above, land and natural resource rights can be construed as falling under the category of human rights in this regard. Moreover, the HRC has a strong record of interpreting Article 27 of the ICCPR as being inclusive of indigenous land rights, though only insofar as these are part and parcel of cultural rights. Likewise, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) has ruled in favour of indigenous rights over natural resources (Pereira & Gough 2013).

While the available venues for a redress of grievances are less than promising, there appears to be ample precedent and legislation within the canon of international law, institutions, and norms to support the interpretation that the Ababda hold effective sovereignty over the mineral rights in Bir Tawil.

Their reaction to the presence of the author and his party was initially defensive, which would seem to have been more symptomatic of an uncertainty over their legal standing in this regard, as well as the presence of a foreign gold-mining company, with operations just across the border, breathing down their necks. These foreign companies, as well as claimant monarchs such as Heaton and Dixit, serve as a constant reminder that the Ababda's sovereignty over the area is under constant threat. Yet as we have seen, a solid and compelling case could be made using the various instruments of international law that sovereignty and mineral rights to Bir Tawil should properly be conferred to the one group that has the longest continual claim to this land: the Ababda people.

Bibliography

- Abdallatif, Mawahib (2019). World bank asks Sudan to pay \$16bn debt arrears. *The East African*, Oct. 14, 2019.
- Anaya, J. (2005). Indigenous peoples' participatory rights in relation to decisions about natural resource extraction: the more fundamental issue of what rights indigenous peoples have in lands and resources. *Ariz. J. Int'l & Comp. L.*, 22, 7.
- Anghie, Antony. (2007). *Imperialism, Sovereignty and the Making of International Law*. United Kingdom: Cambridge University Press.
- Assembly, U.G. (2007). United Nations declaration on the rights of indigenous peoples. *UN Wash*, 12, 1-18.
- Barnard, Hans. (2009) *Archaeology of the Pastoral Nomads Between The Nile and The Red Sea*. In J. Szuchman (ed.), *Nomads, Tribes, and the State in the Ancient Near East: Cross-disciplinary Perspectives*. Chicago: Oriental Institute. pp.15-41.
- Block 14 Gold Project. (n.d.). Retrieved January 15, 2020, from <http://orcagold.com/project/block-14-gold-project>
- Booth, George. (1700). *The Historical Library of Diodorus the Sicilian: In Fifteen Books. The First Five, Contain the Antiquities of Egypt, Asia, Africa, Greece, the Islands, and Europe. The Last Ten, an Historical Account of the Affairs of the Persians, Grecians, Macedonians, and Other Parts of the World. To which are Added, the Fragments of Diodorus that are Found in the Bibliotheca of Photius: Together with Those Publish'd by H. Valesius, L. Rhodomannus, and F. Ursinus*. United Kingdom: Edw. Jones.
- Bos-Seldenthuis, Jolanda E.M.F. (2007) *Life and Tradition of the Ababda Nomads in the Egyptian Desert, the Junction between Intangible and Tangible Heritage Management*. *International Journal of Intangible Heritage*, 2. pp. 31-43. ISSN 1975-4019
- Burckhardt, John Lewis. (1822). *Travels in Nubia*. United Kingdom.
- Cobo, J. R. M. (1986). Study of the problem of discrimination against indigenous populations.
- Daes, M. E. I. A. (2001). Prevention of discrimination and protection of indigenous peoples and minorities. *Indigenous peoples and their relationship to land (Final working paper E/CN. 4/Sub. 2/2001/21)*.
- Dahshan, Mohamed El. (2019). A Fictional Country Is Reigniting Real Territorial Fears. *Foreign Policy*. September 25, 2019.
- Gilbert, Jérémie. (2014). *Nomadic Peoples and Human Rights*. United Kingdom: Taylor & Francis, 2014.
- Guirguis, M. (1956). El-Bega Tribes: A Little Known People of Egypt and the Sudan. *Civilisations*, 6(2), 237-242. Retrieved January 13, 2020, from www.jstor.org/stable/41231322
- Hamed, Nabila, Haithem Ibrahim, Hatem A. Mekki, Irina Springuel, Hoda Yacoub, John Briggs, Alan Roe, and Joanne Sharp. (2002). "Indigenous environmental knowledges and sustainable development in semi-arid Africa."
- Howlett, C. (2010). Indigenous agency and mineral development: a cautionary note. *Studies in Political Economy*, 85(1), 99-123.
- International Labour Organization (ILO), (1989). *Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169*, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169[accessed 26 October 2020]
- Karalekas, Dean (2020). *The Men in No Man's Land: A Journey Into Bir Tawil*. (ISBN-13: 979-8666413401). Global Entertainments Press, London.
- Lobban, Richard A.. (2003). *Historical Dictionary of Ancient and Medieval Nubia*. Ukraine: Scarecrow Press.

- MacKay, F. (2004). Indigenous peoples' rights to free, prior and informed consent and the World Bank's Extractive Industries Review. *Sustainable Dev. L. & Pol'y*, 4, 43.
- Maclaren, James Malcolm. (1908). *Gold: Its Geological Occurrence and Geographical Distribution*. United Kingdom: Mining journal, 1908.
- Minahan, James. (2016). *Encyclopedia of Stateless Nations: Ethnic and National Groups around the World*. Greenwood, an Imprint of ABC-CLIO, LLC, 2016.
- Murray, G.W. (1923) The Ababda. *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, Vol. 53 (Jul. - Dec., 1923), pp. 417-423 Published by the Royal Anthropological Institute of Great Britain and Ireland. Available at: <https://www.jstor.org/stable/2843579>, Accessed: 11-12-2019
- Najarro, Ileana. (2014). Virginia man's claim on African land is unlikely to pass test. *The Washington Post*, September 7, 2014.
- Nielsen, Hans Christian Korsholm (2004): Tribal Identity and Politics in Aaswan Governorate In Hopkins, Nicholas & Reem Saad (Eds.) *Upper Egypt: Identity and Change*; pp. 213-232. Cairo/New York: The American University in Cairo Press.
- Orellana, M. A. (2002). Indigenous peoples, mining, and international law. *Glob. Eenvtl. L. Ann.*, 89.
- Paul, A. (1954). *A History of the Beja Tribes of the Sudan*, Cambridge University Press, 186 pages.
- Pereira, R., & Gough, O. (2013). Permanent Sovereignty over natural resources in the 21st century: natural resource governance and the right to self-determination of indigenous peoples under international law. *Melb. J. Int'l L.*, 14, 451.
- Phillips, James S. (2015) The rights of indigenous peoples under international law, *Global Bioethics*, 26:2, 120-127, DOI: 10.1080/11287462.2015.1036514
- Schwartzstein, Peter (2015). The 21st-century gold rush where people work in 19th-century conditions. *Quartz*. December 11, 2015, Available online: <https://qz.com/568773/the-21st-century-gold-rush-where-people-work-in-19th-century-conditions/>
- Skogvang, S.F. (2013). Legal questions regarding mineral exploration and exploitation in indigenous areas. *Mich. St. Int'l L. Rev.*, pp. 22, 321.
- Srivastava, Priya. (2017). An Indian claims kingship of Bir Tawil, declares it 'Kingdom of Dixit.' *The Times of India*, November 15, 2017.
- Starkey, J. (2000). Gold, emeralds, and the unknown Ababda. In: Starkey, J. and El Daly, O. (eds.) *Desert Travellers from Herodotus to T. E. Lawrence*. Astene Publications, London. pp 183-204
- Vitoria, Francisco de. (1991). *Vitoria: Political Writings*. Cambridge University Press.
- Wendrich, Willeke. (2003). Archaeology and Sustainable Tourism in Egypt: Protecting Community, Atiquities, and Environment. In *Of the Past, for the Future: Integrating Archaeology and Conservation*, Proceedings of the Conservation Theme at the 5th World Archaeological Congress, Washington, D.C., 22–26 June 2003. Pp. 184-190.
- Wilson, Arthur. (1994). *The Living Rock: The Story of Metals Since Earliest Times and Their Impact on Developing Civilization*. United Kingdom: Woodhead.