SANTA'S SANCTUARY

JOLLY OLD ELF'S BEEN ON TOP OF THE WORLD FOR NEARLY 150 YEARS, BUT IS HIS TERRITORIAL CLAIM LEGALLY VALID?

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At first glance, Santa's home at the North Pole would seem a safe distance from the rest of the world's problems and the ideal place to operate a toy workshop.

But the Arctic of late has become a knot of international disputes and obscure legal concepts, making activities there anything but simple. Recently discovered reserves of oil and natural gas and increasingly accessible shipping routes put formerly theoretical questions about territorial rights at the center of a global debate.

Denmark, Canada and Russia all stake claims to the North Pole -- assertions others contest. And as more governments make a grab for the increasingly valuable Arctic, Santa unwittingly sits at the center of what promises to be a clash over conflicting international policy.

So, can a large-scale venture like Santa's workshop operate in the North Pole without treading on international law?

His current legal status is fairly solid. Despite contrary claims, no one owns the North Pole. Maritime law considers the northern polar cap to be high seas, so Santa is free to set up shop there. That doesn't mean it's easy to do, lacking sovereignty and without military might.

Some of Santa's tangled situation is of his own doing. His mythos depends on universality -- he belongs to the world, not just one nation. It's a heartwarming notion, certainly, but one that could mean a world of trouble for him. Without backing from a specific government, Santa's workshop falls under free-lancer status. That's a risky undertaking on the high seas. With no government to back you up, you're easy pickings for any band of well-armed criminals.

"Marauders and ice pirates would be much less likely to attack a place with sovereignty," says Christopher Joyner, director of the Institute of International Law & Politics at Georgetown University.

We could assume that nations would aid Santa in an emergency, but assumptions don't carry much weight with investors and insurance companies. "You'd want to have the backing of economic investors, and the only way you can do that is to have sovereignty," Joyner says. "No one wants to invest in an enterprise with no nation behind it."

When Santa Dials 911, Who Answers?

Santa could declare himself an agent of "common heritage of mankind," Joyner suggests. The legal concept goes back some 40 years and gives international protection to resources that profit all of humanity. As Santa's legal counsel, Joyner would present his client as "an agent of wealth redistribution" based on his yearly gift- giving jaunts.

But the very few instances of successful application make it a long shot. Only the deep sea bed has wide acceptance as common heritage, while the moon and other celestial bodies have limited acceptance. Chile's campaign to deem Antarctica a common heritage of mankind went nowhere. An ongoing campaign seeks that status for the human genome.

Joyner points out another complication: "You've got to believe in Santa to get gifts." Such a stipulation virtually eliminates many Third World and Far Eastern nations where Santa rarely gets mentioned. And that casts significant doubt on any claims of global beneficence.

But if he beat the odds and attained common heritage status, Santa would enjoy the protection of a specially created international agency. This agency might also take on sundry law-and- order issues. For instance, let's say there's a drunken brawl between elves that ends in tragedy. Without a national affiliation, who investigates and tries the accused? The free-lance Santa could appeal to any government for assistance -- but who would bring that kind of trouble on themselves?

It's not as far-fetched as it sounds. The legal snags of polar murder date back to the 1909 expedition led by explorer Robert E. Peary, the first human being to reach the North Pole (historical disputes aside). The alleged murder didn't surface until the 1920s, when two Inuits supposedly confessed to killing a member of Peary's team. They were never tried because no one knew who had jurisdiction. In the late 1960s, with jurisdictional issues still unsettled, a researcher allegedly shot and killed a co-worker on an ice island floating between U.S. and Canadian waters. Canada begrudgingly ceded jurisdiction, and U.S. courts eventually acquitted the accused worker.

Santa Comes To The North Pole In The 1860s

The North Pole of the 19th century was a wonderfully mysterious place, and it's no wonder Thomas Nast made it Santa's home in his famous drawings for Harper's Weekly in the 1860s. People wondered who, or what, lived there. Could the polar ice cap cover an entrance to other worlds within the Earth?

Even before Superman built his Fortress of Solitude there, the North Pole was a symbol of loneliness. It's been a pretty crowded place, nonetheless. Besides Santa (and later, elves and the Mrs.), the explorers of Jules Verne's books made regular trips there. A society of despotic Martians also made the North Pole their new home in German author Kurd Lasswitz's "Two Planets."

The North Pole could also claim the brief residency of Frankenstein's monster, who traveled there near the end of Mary Shelley's novel in a desperate attempt to flee humanity. He'd have a tough time of it now, when anyone with a few thousand dollars to burn can join a group and go skiing or hot-air ballooning at the top of the world. And global warming is making it more accessible.

That many legal issues remain unresolved in the Arctic hasn't caused much trouble until now. Frankly, no one cared that much. But a melting ice cap could open a treasure of fossil fuels buried in the sea floor. Researchers estimate Arctic basins contain 25 percent of the world's undiscovered fuel reserves. Adding to the region's value is the Northwest Passage, a route through the Arctic that links the Atlantic to the Pacific. It has evolved from a quasi-mythical idea to something you could get through with a large ice breaker. It could soon have more commercial value than the Panama Canal.

"Global warming means the ice would recede and make it possible for commercial shipping to go through the Arctic," says Donald McRae, professor of common law at the University of Ottawa. "That will raise the issue of who has control."

Canada claims ownership of the Northwest Passage and insists that nations ask permission to use it. Others consider it international waters. U.S. officials notify Canadian officials as a courtesy before using the passage, but take the position that no one can stop them from using it.

There are other Arctic disputes. Russia and Norway clash over territory in the Barents Sea. Canada and Denmark are scrapping over little Hans Island, off Greenland. Nations also disagree over whether Arctic territory is determined by continental shelf formations or by the "sectoral theory," which relies on meridian lines.

Denmark, the most recent country to make a bid for the region, argues that an underwater formation connects its territory of Greenland to the North Pole. Russia and Canada have made similar claims. Although the United States is funding research into these issues, the U.S. has no say in the matter unless and until it ratifies the U.N. Law of the Sea treaty.

"These are all international disputes, though I hardly think they would become armed conflicts," says George Newton, chairman of the U.S. Arctic Research Commission. "But who knows?"

So, again, what to do about old St. Nick? Newton suggests his best hope might be to simply rely on the good faith of the international community, although that would leave it to "who thought Santa was a close ally, and who supported him."

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