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**The Situation of the
Indigenous People of
Rapa Nui and
International Law:
Reflections on
*Indigenous Peoples and
the Ethics of
Remediation***

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My colleague Leonardo Crippa and I have advised and provided some legal assistance during the past four years to the indigenous people of Rapa Nui, often called Easter Island. This brief account of that situation and the applicable international law relating to indigenous peoples, self-determination, lands, sacred sites, and environmental protection may perhaps add something to the consideration of Professor Tsosie's article, *Indigenous Peoples and the Ethics of Remediation: Redressing the Legacy of Radioactive Contamination for Native Peoples and Native Lands*.

Rapa Nui is a small island, just over 63 square miles in area, lying almost 2,200 miles west of the coast of Chile.¹ The island has been inhabited continuously since time immemorial by a Polynesian people who continue to live there.² According to the Rapa Nui people's accounts to my colleague and me, they are organized into 36 clans. As we observed in our visits, they have their own language that is widely spoken and used, as well as a very vital culture. The island is most famous for the ancient Moai—the huge, carved stone figures.

The population of the island is about 5,761,³ and of these, about 60% are indigenous Rapa Nui people.⁴ There is rapid immigration from Chile, so population numbers are changing.⁵

Rapa Nui was not colonized by any European country. Rather, French missionaries and businessmen purported to buy land from Rapa Nui individuals, and later sold these interests to Chile.⁶ In 1888, Chile entered into a purported, fraudulent treaty with a few Rapa Nui leaders, and thus annexed or claimed to annex the island.⁷

Chile leased the land for sheep farming, and the Rapa Nui themselves were forced to live behind barbed wire in the island's one town of Hanga Roa.⁸ They were not permitted to leave Hanga Roa until 1960 or later.⁹

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1. Basic data about Rapa Nui is collected at *Easter Island*, WIKIPEDIA, http://en.wikipedia.org/wiki/Easter_Island (last visited Apr. 30, 2014).
 2. The history of Rapa Nui is controversial and open to doubt in many respects. An important historical account by an indigenous Rapa Nui scholar, which includes indigenous oral history, is Santi Hito, *Vaii Hanga Kainga Giving Care to the Motherland: Conflicting Narratives of Rapanui*, SAVE RAPANUI (Aug. 31, 2010), http://saverapanui.org/?page_id=187. One general history is STEVEN ROGER FISCHER, *ISLAND AT THE END OF THE WORLD: THE TURBULENT HISTORY OF EASTER ISLAND* (2005).
 3. See *supra* note 1.
 4. See Rapanui, IC MAG., <http://intercontinentalcry.org/peoples/rapanui/> (last visited Apr. 30, 2014). Similar estimates were provided to the author by indigenous Rapa Nui individuals in 2011.
 5. See Hito, *supra* note 2, at 9.
 6. See *id.* at 8-9; FISCHER, *supra* note 2, at 106, 133.
 7. See Hito, *supra* note 2, at 2-7 (examinations of the treaty shows the differences of intent between the Chilean government and the Rapa Nui Chiefs).
 8. See *id.* at 8.
 9. *Id.*

Chile has not acknowledged Rapa Nui as a colony, at least not through the usual processes of the United Nations. Chile has not listed Rapa Nui as a non-self-governing territory, nor as a colony subject to the oversight of the Special Committee on Decolonization, otherwise known as the “Decolonization Committee.” There is a local government on the island, but that government is subordinate to the government of Chile.

In 2010, serious violence erupted over indigenous land rights, when Rapa Nui people sought to assert their rights, occupied areas of land, and protested the development of a large hotel on their land.¹⁰ We were able to secure an order from the Inter-American Commission on Human Rights, calling for precautionary measures to avoid further violence.¹¹ Rapa Nui clans and families are actively seeking to recover the lands that were taken from them.¹²

The greatest and most fundamental concern expressed to us in public meetings is the desire for self-determination—for a genuine right of self-government in order to gain substantial control over immigration, land use, environmental protection, and sacred and cultural sites, among other matters.¹³ Rapa Nui leaders are deeply concerned by the Chilean government’s dominant role and the very flawed democracy that—the Rapa Nui leaders generally agree—characterizes their present local government.

Immigration to Rapa Nui is promoted by Chile, and this raises political fears by increasing the proportion of nonindigenous individuals on the island.¹⁴ The increased population also brings increased environmental concerns such as waste disposal, pressure on the water supply, and pressure on fishing and other ocean resources.

Rapa Nui people are also deeply concerned about access to and protection of the many sacred and cultural sites on the island.¹⁵ Today, as we observed in our visits to the island, the Chilean government controls most of these sites. Rapa Nui people are either excluded from the sites or they must pay money to visit

10. See Michael Warren, *Easter Island Tense as Police, Rapa Nui Regroup*, ASSOCIATED PRESS, Dec. 3, 2010, available at <http://www.foxnews.com/world/2010/12/03/dozens-rapanui-hurt-easter-island-land-fight/>; Federico Quilodran, *Dozens Injured in Easter Island Land Disputes*, ASSOCIATED PRESS, Dec. 3, 2010, available at http://www.boston.com/news/world/latinamerica/articles/2010/12/03/dozens_injured_in_easter_island_land_disputes/.

11. Pueblo Indígena Rapa Nui v. Chile, Inter-Am. Comm’n H.R., Prec. Measure No. 321/10, OEA/Ser.L/V/II.10, doc. 69 (2011), available at <http://www.oas.org/en/iachr/decisions/precautionary.asp> (last visited Sep. 6, 2014).

12. See Hito, *supra* note 2, at 11.

13. These and other concerns described in this article were expressed to the author and to Leonardo Crippa by Rapa Nui individuals at public meetings in Hanga Roa, Rapa Nui, August 1–2, 2011. See Hito, *supra* note 2, at 13.

14. *Id.*

15. *Id.*

them. They hope the Chilean government will return these sites to the Rapa Nui to manage.

Though environmental remediation is not the most urgent issue for the indigenous people of Rapa Nui, it is certainly important, and it is very closely related to the urgent matters of self-determination, land rights, and environmental protection. International law provides some legal standards with regard to all of these issues as well as a possible remedial path for Rapa Nui in regard to self-determination. A brief review of this international law framework and its application to Rapa Nui may suggest some further insights about the issues explored by Professor Tsosie.

Self-Determination

Some of the foundational elements of the law of self-determination are found in the UN Charter, Article 73, regarding non-self-governing territories, and Articles 75 to 85, concerning the international trusteeship system. Article 73 obligates UN member states that administer “territories whose peoples have not yet attained a full measure of self-government” to promote the well-being of the inhabitants of the territories, give respect to the culture of the peoples concerned, and ensure their “political, economic, social, and educational advancement, their just treatment, and their protection against abuses.”¹⁶ Among other obligations, administering states are required by Article 73 of the Charter “to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free institutions”¹⁷ The trusteeship system of the UN, applicable to a limited number of non-self-governing territories administered pursuant to agreements, also includes requirements that administering states promote the political advancement and development toward self-government of the inhabitants.¹⁸

Perhaps the most familiar element of the international law of self-determination is the rule that colonial territories are entitled to freely determine their political status (including complete independence), and to control their own lands and resources.¹⁹ This rule was created and elaborated

16. U.N. Charter art. 73; *see generally* LASSA OPPENHEIM, OPPENHEIM’S INTERNATIONAL LAW: VOLUME 1: PEACE 282–95 (Robert Jennings & Arthur Watts eds., 1992).

17. U.N. Charter art. 73, para. b.

18. U.N. Charter art. 76; *see generally* OPPENHEIM, *supra* note 16, at 295-318 (stating that territories under the trusteeship system are those held under a mandate from the League of Nations, those detached from enemy states after World War II, and territories voluntarily placed in the trusteeship system).

19. There are relatively few rules of customary international law about self-determination, and these

primarily in three resolutions of the UN General Assembly.²⁰ The first resolution, entitled the Declaration on the Granting of Independence to Colonial Countries and Peoples, is the classic formulation of self-determination in the context of decolonization, and its operative paragraphs are:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.
7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States,

are set forth in ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 67-140 (1995). The other rules are: (1) the right belongs to the whole people of a territory and does not include a right to change colonial boundaries; (2) the whole people of a state or territory has the right to be free from foreign military occupation; (3) a distinct racial group or people subjected to extreme oppression and denial of political participation may have a right to access to and participation in government; and (4) except for peoples of colonial and non-self-governing territories, the right of self-determination does not include a right to independence or secession, that is, to separate statehood.

20. G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/1514, at 66-67 (Dec. 14, 1960).

and respect for the sovereign rights of all peoples and their territorial integrity.²¹

The second resolution, adopted the following day, added several important elements to the Declaration.²² It provides, among other things, that a country's obligation to transmit information on non-self-governing territories under Article 73(e) of the UN Charter continues until "a territory and its peoples attain a full measure of self-government."²³ Further, a territory is considered non-self-governing if it is "geographically separate and is distinct ethnically and/or culturally from the country administering it."²⁴ A non-self-governing territory is one that is in a "position or status of subordination" to the administering country. Perhaps most important is the identification of three options that such territories may choose in exercising their right of self-determination. These are independence, "free association" with an existing state, or integration on the basis of equality with an existing state.²⁵

The third important resolution is the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations.²⁶ This resolution declared that states have the affirmative duty to actively promote the realization of the principle of self-determination and the obligation to assist the United Nations in ending colonialism. The resolution, among other things, also provided further detail about the modes or options for implementing the right of self-determination, as follows: "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."²⁷

In addition, common Article 1 of the Covenant on Economic Social and Cultural Rights and the Covenant on Civil and Political Rights provides:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.

21. G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684, at 66 (Dec. 14, 1960).

22. G.A. Res. 1541 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4651, at 29 (Dec. 15, 1960).

23. *Id.*

24. *Id.*

25. See also Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1 (1993).

26. G.A. Res. 2625 (XXV), at 123-24, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970).

27. *Id.*

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.²⁸

Common Article 1 thus incorporates into treaty law much of what was declared in the General Assembly resolutions on the right of self-determination. It further provides that all people of ratifying states, as well as trust territories (in addition to colonial and non-self-governing territories), have the right of self-determination, the right to be free from external interference, and the right to control and benefit from their “natural wealth and resources.”

Finally, mention must be made of the Vienna Declaration and Programme of Action adopted at the 1993 United Nations World Conference on Human Rights.²⁹ The Vienna Declaration strongly reaffirmed the principles of self-

28. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), art. I, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16, 1966), *entered into force* Jan. 3, 1976; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. I, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 53 (Dec. 16, 1966), *entered into force* Mar. 23, 1976.

29. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, pt. I, ¶ 2, U.N. Doc. A/CONF.157/23 (July 12, 1993), states in part:

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social, and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

See also U.N. Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, G.A.

determination and decolonization established by the General Assembly resolutions and by the Covenants.

Soon after the General Assembly adopted its historic resolutions on self-determination in 1960, it also created a permanent body to monitor the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and to report regularly to the General Assembly.³⁰ The Special Committee on Decolonization was given the mandate—which it still holds—to “examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly”³¹ The Special Committee currently monitors 17 territories. The administering powers of these territories include the United Kingdom, the United States, New Zealand, and France.³² The Special Committee, among other activities, reviews the situations of all 17 territories, receives information and statements from the territories, holds annual seminars to receive and discuss information, occasionally sends missions to the territories, and makes recommendations and reports to the General Assembly.³³

In a development of considerable relevance to Rapa Nui, the General Assembly last year placed French Polynesia back on the list of territories to be monitored by the Special Committee on Decolonization and requested France to facilitate rapid progress toward self-determination for the territory.³⁴ French Polynesia is comprised of some 118 islands in the South Pacific, including Tahiti, with a total population of about 270,000.³⁵ France had ceased reporting to the Special Committee on the territory in 1947.³⁶ The resolution to place the territory back on the list of the Special Committee was sponsored by UN member states the Solomon Islands, Nauru, Tuvalu, Samoa, Vanuatu, and East Timor, and was adopted by consensus without a vote.³⁷

Res. 50/6, U.N. GAOR, 50th Sess., Supp. No. 49, U.N. Doc. A/50/49, at 13 (Oct. 24, 1995) (incorporating substantially the same terms).

30. G.A. Res.1654 (XVI), U.N. GAOR, 16th Sess., Supp. No. 17, U.N. Doc. A/5100 (Nov. 21, 1961).

31. *Id.*

32. *Non-Self-Governing Territories*, THE UNITED NATIONS AND DECOLONIZATION, <http://www.un.org/en/decolonization/nonselvgovterritories.shtml> (last visited Apr. 28, 2014).

33. *Committee of 24*, THE UNITED NATIONS AND DECOLONIZATION, <http://www.un.org/en/decolonization/specialcommittee.shtml> (last visited Apr. 28, 2014).

34. G.A. Res. 67/225, at 2, U.N. Doc. A/RES/67/265 (March 1, 2013).

35. *See French-Polynesia*, ONE WORLD NATIONS ONLINE, http://www.nationsonline.org/oneworld/french_polynesia.htm (last visited Apr. 28, 2014).

36. *See General Assembly Adopts Texts on Items Ranging from Self-Determination to Peace in South Atlantic; Supports Extension of Impunity Commission in Guatemala*, UNITED NATIONS (May 17, 2013), <http://www.un.org/press/en/2013/ga11374.doc.htm>.

37. *Id.*

In addition to the law of self-determination that applies to colonial and non-self-governing territories, the UN Declaration on the Rights of Indigenous Peoples recognizes a distinct right of self-determination held by indigenous peoples within countries.³⁸ This distinct right may prove to be a useful option for the indigenous people of Rapa Nui, so long as Rapa Nui continues in its present status. The Declaration on the Rights of Indigenous Peoples, though technically non-binding, recognizes the right of indigenous peoples within nation states to self-determination, including the right of autonomy, the right to form and be ruled by their own governments with regard to their internal and local affairs, the right to make their own laws, and the right to define their own membership.³⁹ There are at least 16 separate articles in the Declaration that recognize one or more aspects of the right of self-determination held by indigenous peoples, including the right to own and control their lands and resources, the right to control development, and many other rights.⁴⁰ The exercise of many of these rights by the Rapa Nui people could possibly move them far toward remediation of the harms done to them and to their lands and culture.

Likewise, International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples presumes the existence of indigenous peoples' own governing bodies and the capacity of indigenous peoples for self-government and management of their lands, resources, and communities.⁴¹ Chile is a party to the Convention.⁴² Though the Convention does not purport to address "self-determination" as such, it nevertheless contains more than 14 articles that plainly imply the right of self-government on the part of indigenous peoples, including rights to control lands and other resources,⁴³ the right to control development,⁴⁴ and the collective right to participate in decision-making.⁴⁵

38. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 3–5, 21, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

39. See generally Robert T. Coulter, *The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples*, 15 UCLA J. INT'L L. & FOREIGN AFF. 1 (2010) [hereinafter Coulter, *Law of Self-Determination*] (discussing self-determination of indigenous peoples in the Declaration).

40. See Declaration on the Rights of Indigenous Peoples, *supra* note 38, at art. 3–5, 14, 16, 18–19, 21, 23, 26–27, 32–33, 37, 40.

41. International Labour Organization, Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, reprinted in 28 I.L.M. 1382 (1989) [hereinafter ILO Convention No. 169].

42. *Observations made by employers' and workers' organizations of Chile*, NORMLEX INFO. SYS. ON INT'L LABOUR STANDARDS, http://www.ilo.org/dyn/normlex/en/?p=1000:14101:0::NO:14101:P14101_COUNTRY_ID,P14101_ARTICLE_NO:102588,22 (last visited Jan. 3, 2015).

43. ILO Convention No. 169, *supra* note 41, art. 14-15.

44. *Id.* at art. 7.

45. *Id.* at art. 6.

Right to Environmental Protection

International human rights law about the right to environmental protection could also be useful in creating a path toward an ethic of remediation. The UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, and some of the decided cases in the Inter-American human rights system provide some international standards.

The UN Declaration, Article 29 provides an explicit right to environmental protection and related measures by states to protect the health of individuals:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.⁴⁶

These newly declared rights may not yet be binding international law, but because they were adopted by the General Assembly, and because they now enjoy a worldwide consensus among states, we may venture the opinion that they are in a process of crystalizing or becoming binding as customary international law.⁴⁷

ILO Convention No. 169, Article 7, paragraphs 3 and 4 deal with environmental protection of territories inhabited by indigenous peoples. Paragraph 3 addresses planned development activities, requiring states to cooperate with indigenous peoples to ensure that studies are done assessing the social, spiritual, cultural, and environmental impact of such activities on indigenous peoples. Paragraph 4 requires that states take measures to protect and preserve the environment of the territories indigenous peoples inhabit.

Likewise, cases decided by the Inter-American Court of Human Rights have given jurisprudential substance to rights relating to environmental protection.

46. Declaration on the Rights of Indigenous Peoples, *supra* note 38, at art. 29.

47. Customary international law is defined as the general practice of states, which is regarded by states as obligatory or legally binding. See Statute of the International Court of Justice, U.N. Charter, Annex, art. 38; *see also* OPPENHEIM, *supra* note 16, at 25-31; Coulter, *Law of Self-Determination*, *supra* note 39, at 27.

For example, in the *Case of the Kichwa People of Sarayaku v. Ecuador*, the Court elaborated on the requirement of ILO Convention No. 169 to carry out environmental and social impact studies and required that such assessments be performed in conformity with relevant international standards and best practices.⁴⁸

Lands and Sacred Sites

Exercise by indigenous peoples of the right of self-determination would place governing control over certain lands and areas in indigenous hands collectively, but however important this would be, it would not necessarily resolve the issues of private land holding and land use. Resolving issues of past harm and preventing future conflicts in Rapa Nui and elsewhere depend on finding just legal rules regarding land ownership and use generally, and regarding sacred sites in particular. Again, the UN Declaration, the ILO Convention No. 169, and a few human rights decisions offer useful rules and standards.⁴⁹

Articles 25 and 26 of the UN Declaration are the most recent standards. Article 25 declares that indigenous peoples have “the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories,” and other resources.⁵⁰ This article should be considered in connection with Article 12 concerning access to indigenous religious and cultural sites, which is discussed below.

Article 26 is the principal provision describing indigenous peoples’ right to own and control their lands and resources. The most relevant portion of the Article is as follows:

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.⁵¹

48. *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶¶ 205–06 (June 27, 2012). *See also* *Saramaka People v. Surinam*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007).

49. Among the more relevant decision are *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001); *Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, OEA/Ser.L.V/II.122, doc. 14 (Oct. 12, 2004).

50. Declaration on the Rights of Indigenous Peoples, *supra* note 38, at art. 25.

51. *Id.* at art. 26.

Article 26 guarantees true ownership and legal control over lands presently held by an indigenous people. Lands that were taken wrongfully from indigenous peoples are covered by Article 28. Article 28 requires that where indigenous lands have been confiscated, taken, used, occupied or damaged without the consent of the indigenous people concerned, states must provide for a return of the land or, when this is not possible, for fair compensation.

The narrower issue of sacred sites is covered by Article 12. The relevant part of the article is:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to repatriation of their human remains.⁵²

This is the article that speaks most directly to the concern of the Rapa Nui people about access to their sacred and cultural sites on the island.

The ILO Convention No. 169 deals only slightly with sacred and cultural sites. Article 5 requires that in applying the Convention “the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected”⁵³ In addition, Article 13 on lands provides:

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of the relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.⁵⁴

Moreover, Article 27 of the International Covenant on Civil and Political Rights provides: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁵⁵ The Human Rights Committee, the monitoring body for this Covenant, has interpreted Article 27 as protecting the rights of indigenous peoples to conduct land-based traditional cultural and spiritual activities.⁵⁶

52. *Id.* at art. 12.

53. ILO Convention No. 169, *supra* note 41, art. 5.

54. *Id.* at art. 13.

55. International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI), art. 27, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

56. U.N. Human Rights Committee, General Comment No. 23 on Art. 27, ¶¶ 7, 9, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994).

Finally, the Inter-American Court of Human Rights, in the *Case of Awas Tingni (Sumo) Mayagna Community v. Nicaragua*, concluded that “[i]ndigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.”⁵⁷ The Court reaffirmed this view in the *Case of Sawhoyamaxa Indigenous Community v. Paraguay*.⁵⁸ This link between spiritual practices and rights to lands and particular places may well be useful in building an ethics of remediation in some settings.

Concluding Observations

Peoples such as those inhabiting Rapa Nui have a right of self-determination because the island is a colony within the long-established rules regarding decolonization. Thus, the people of Rapa Nui have a right to decide upon their political status: to be independent, to associate with a state, or to integrate with a state. The exercise of this right could be through the UN system or outside it, but either way, it is surely a complex and usually lengthy process. As Professor Tsosie rightly observes, self-determination is essential to redressing harms to indigenous peoples.

It appears that recovery of their lands, protection of the environment, and access to sacred sites may depend largely on the Rapa Nui people gaining a measure of self-determination. The Rapa Nui people require, and indeed have a right to, additional legal authority to recover their lands and to govern the island. Among other things, they need to be able to effectively control immigration and development in their territory.

In addition, the indigenous people of Rapa Nui could seek justice and remediation by demanding that Chile recognize and respect rights that are spelled out in ILO Convention No. 169 or those declared in the UN Declaration on the Rights of Indigenous Peoples. The human rights processes of the UN and of the Organization of American States are available for the Rapa Nui people to advocate for respect of these rights.⁵⁹

57. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (Aug. 31, 2001).

58. *Sawhoyamaxa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 128 (Mar. 29, 2006).

59. See Robert T. Coulter, *Using International Human Rights Mechanisms to Promote and Protect Rights of Indian Nations and Tribes in the United States: An Overview*, 31 AM. INDIAN L. REV. 573, 573 (2006-2007).

