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TE PITO TE HENUA:

The Inspiring Rapa Nui Nation's Efforts to Rebuild Its Government and Regain Control of Its Territory

LEONARDO A CRIPPA*

This paper aims to reflect the plight of the Rapa Nui People, the Indigenous people of Easter Island, who seek to fully exercise their right of self-determination. It studies the relationship between the Rapa Nui Nation and Chile, particularly how both historical and contemporary actions of Chile demonstrate the continued imposition of colonial rule onto a non-self-governing territory, leading to the subordinate status of the Rapa Nui Nation. This paper covers both the legal acts performed and also the Chilean State policies that advance concepts that aim to eliminate, assimilate, and intimidate the people of Rapa Nui. These actions and policies are considered with regard to the UN Charter, and UN Declarations and Resolutions concerning the right of self-determination and the obligations of the UN Member States to cooperate to end colonialism.

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** The author has made all English translations in this article.

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I INTRODUCTION

This paper seeks to reflect the plight of the Indigenous people of Rapa Nui — a native people seeking full exercise of the right of self-determination. It does not unfold the legal theory about the right of self-determination of peoples under international law.¹ Instead, this paper focuses on the concrete situation of a distinct people entitled to the right of self-determination, which has been marked by its relationship with a particular western nation-state. Both historical and contemporary acts by this State demonstrate the continued imposition of colonial rules onto a non-self-governing territory that lead to the subjugation of a native people in the 21st century.²

State and non-state actors have marked the life of Rapa Nui. While this paper refers at some point to non-state actors, especially transnational business enterprises that exploited Rapa Nui, it mainly focuses on the relationship between the Rapa Nui Nation and a specific nation-state: Chile. This is critical for the purpose of understanding the status of subordination that Rapa Nui occupies today. This paper lays out not only the legal acts that Chile performed to the detriment of the Rapa Nui Nation’s governmental authority and territorial integrity, but also the state policy that aims to eliminate, assimilate, and intimidate the people of Rapa Nui. These acts are contrary to the *UN*

¹ For a discussion of the rules of customary international law pertaining to self-determination, see Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995) 67–140; For a discussion on Indigenous peoples’ right of self-determination in the UN Declaration on the Rights of Indigenous Peoples, see also Robert T Coulter, ‘The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples’ (2010) 15 (Spring) *UCLA Journal of International Law & Foreign Affairs* 1.

² A territory is considered as non-self-governing if it is ‘geographically separate and is distinct ethnically and/or culturally from the country administering it’: GA Res 1541, UN GAOR, 15th sess, Supp No 16, UN Doc A/4651 (15 December 1960); Principle IV should guide members in determining whether or not an obligation exists to transmit the information called for under art 73e of the *Charter of the United Nations* (*UN Charter*).

Charter,³ UN General Assembly Resolutions,⁴ and UN treaties and declarations concerning the right of self-determination and the UN Member States' obligation to cooperate to end colonialism.⁵

³ *UN Charter* art 73 states that:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. 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 political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

⁴ *Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res 1514 (XV), UN GAOR, 15th sess, Supp No 16, UN Doc A/RES/1514(XV) (14 December 1960); Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under art 73e of *UN Charter*: GA Res 1541, UN GAOR, 15th sess, Supp No 16, UN Doc A/4651 (15 December 1960) cl IV; *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations*, GA Res 2625 (XXV), UN GAOR, 25th sess, Supp No 28, UN Doc A/8028 (24 October 1970).

⁵ The main UN Human Rights Treaties share a common art 1, which states that:

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.
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.

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 1; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1; 'Indigenous 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'; *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) art 3.

Particular attention is also given to the Rapa Nui people's efforts to assert full collective ownership over their ancestral lands and to regain governmental control over clan issues. While these claims are complex issues to deal with for any nation-state, they are more difficult for Unitarian states such as Chile.⁶ The challenges for Chile are to understand the fairness of a distinct people's claims relating to self-determination; to share governmental authority with a native Nation located beyond its continental boundaries;⁷ and to comply with relevant rules of international law aiming to end colonialism. Some states in the region (Nicaragua and the United States, for example) have considerably improved their relationships with native Nations by taking appropriate legal and administrative measures that acknowledge and respect native Nations' territorial and governmental authority.⁸

II THE RAPA NUI PEOPLE, GOVERNING SYSTEM, AND TERRITORY

Rapa Nui is a native Nation because of its very distinctive people, territory, and governing system. The people of Rapa Nui descend from the Maori people, and share with them many of the Polynesian native characteristics that clearly differ from those of the Chilean society. Aside from their native language of Rapa Nui, the people of Rapa Nui speak Spanish and English due to the overwhelming tourism to Rapa Nui promoted by Chile. The Rapa Nui people make up 60 per cent of the overall population living in the

⁶ "The State of Chile is unitary. Its territory is divided into regions. The law shall provide that administration thereof be functional and territorially decentralized": *Constitution of the Republic of Chile* art 3.

⁷ Generally, it is understood that Rapa Nui is a "special Territory" of Chile, which was annexed to Chile's Territory in 1933. Administratively, Rapa Nui is part of Valparaíso, one of Chile's fifteen regions.

⁸ For the statutory document that established the autonomy of the regions where Indigenous communities are located in the Atlantic Coast of Nicaragua, see *Ley 28, Estatuto de la Autonomía de las Regiones de la Costa Atlántica de Nicaragua* [Statute on Autonomy of Atlantic Coast Regions of Nicaragua] 7 September 1987; For Nicaraguan law that states that Indigenous communities are entitled to a collective ownership right over their lands, and calls for national and municipal State agencies to respect said rights, see *Ley 445, Ley del Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de las Regiones Autónomas de la Costa Atlántica de Nicaragua y de los Ríos Bocay, Coco, Indio y Maíz 29, 31* [Law on Indigenous Peoples' Collective Property Rights in the Atlantic Coast and the Bocay, Coco, India and Maiz Rivers] 22 January 2003; For the United States see, eg, *Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012* ('HEARTH Act of 2012') <<https://www.govtrack.us/congress/bills/112/hr205/text>>; See also *United States Code of Federal Regulations* tit 25, pt 162.

main island,⁹ and a significant portion of the Rapa Nui people reside in mainland Chile and other Polynesian islands.¹⁰

Since time immemorial, the Rapa Nui Nation has owned the main island (Easter Island), which is about 63 square miles, or 163 square kilometers, as well as three small islets. These islands constitute the Nation's ancestral territory: *Te Pito Te Henua* (The Navel of the World), as the people of Rapa Nui call it. Rapa Nui is located '2150 miles west of South America and 1300 miles east of Pitcairn, its nearest inhabited neighbor'.¹¹ As we shall see, the main island was divided up into around 12 areas, each one occupied by one of the 12 foundational clans. This is how the people of Rapa Nui occupied the island prior to contact with western nation-states.

The Rapa Nui Nation has a unique attachment to its lands, territory, and territorial sea — which it depends upon for physical and cultural survival. The Rapa Nui clans' lifestyle is focused around *Kainga* (Mother Earth), a Rapa Nui concept that refers to both the ancestral territory occupied by a clan and the maternal womb.¹² *Kainga* 'signifies an umbilical connection to the land'.¹³ As further explained by Mati Hitorangi, member of the Hitorangi clan:

The *moais* are spiritual tombstones; build to protect the land and the blood matrix to which each clan belongs. At the top of the *moai*, sits the *Pukao*, or hat, representing a *Henua* (a mother's womb). The place in which the *moai* reaches into the *pukao*, is the *komari*, or clitoris, the sacred key that opens the space for the *kuhane* (soul) to come into each newborn of the clan. The *moais* stand on top of the *Ahus*. The *Ahus* are enormous rock catacombs. When someone died his or her body was left on the *Ahu*, so the flesh could disintegrate, so the bones could be buried underneath. Beside it, women buried their placentas after each birth. Both traditions were done as a gift to

⁹ In 2002 there were 2671 Rapa Nui individuals living in Chile's Region V, which includes Easter Island: Chile's Instituto Nacional de Estadísticas [Chile's National Institute of Statistics], '2002 National Population Census' (Census Report, March 2003) 23 <<http://www.ine.cl/cd2002/sintesisencensal.pdf>>.

¹⁰ For example, 1169 Rapa Nui individuals were living in Chile's Region XIII, which includes the Santiago Metropolitan area: Ibid 23.

¹¹ Hannah Bloch, 'Easter Island: The Riddle of the Moving Statues' (2013) 222(1) *National Geographic* 40 <<http://ngm.nationalgeographic.com/2012/07/easter-island/bloch-text>>.

¹² 'Declaración Pública sobre el Conflicto Rapa Nui [Public Statement on the Rapa Nui Conflict]' (Public Statement, Asociación de Arqueólogos de Chile [Chile's Archaeologist Association], 14 September 2010) 2 (on file with author).

¹³ Santi Hito, 'Vaai Hanga Kainga. Giving Care to the Motherland: Conflicting Narratives of Rapanui' (2004) 25(1) *Journal of Intercultural Studies* 21, 26; Santi Hito is one of the few Rapa Nui scholars that has provided an important account of the history of Rapa Nui, a history that is controversial in many respects.

Kainga (Mother Earth) so that it would always nourish the clan. Our *moais* represent conception, birth and death.¹⁴

The Rapa Nui clans' relationship to their ancestral lands goes beyond a western material and economic perspective. The nearly one thousand *moais* (anthropomorphic rock statues) placed throughout the island indicate the various locations of each clan's ancestral land area. The *moais* and *Ahus* constitute a clear expression of the spiritual element of the Rapa Nui people's special relationship to their lands and traditions, which they continue to practice today. Rapa Nui is not an uninhabited island. On the contrary, it is a native Nation whose culture, language, and people are still vibrant and flourishing.¹⁵ In Rapa Nui, oral history is 'a very strong aspect of passing from generation to generation the history and culture of the people of Rapanui [sic] people'.¹⁶

The *Tangata Manu* (birdman) competition illustrates the connection between the living Rapa Nui traditions and the islets. As Santi Hito, member of the Hito clan, explains:

The annual ceremony of the birdman competition is carried out at the village of *Orongo*. Brave warriors representing the various clans descend down a steep slope and plunge into the sea to swim nearly 2 miles to a small islet called *Motu Nui* where they wait for the first egg to be laid by a sooty tern. The one who finds this first egg must swim with it through the heavy seas and pounding waves to the foot of the cliff and then scale a difficult nearly vertical cliff. When this warrior reaches *Orongo* the egg is presented to the Chief and is consequently designated the next *Tangata Manu* (birdman).¹⁷

The Rapa Nui clan members depend on the natural and marine resources located within and around the island for their physical survival. The Rapa Nui people have used and occupied the island in a sustainable manner. While some scientists have theorised that the people of Rapa Nui cut down all the trees in the island for the purpose of using them to transport the *moai*,¹⁸ recent scientific research concludes that they used ropes to transport and raise the *moai*, not trees.¹⁹ This conclusion is consistent with the Rapa Nui

¹⁴ Mati Hitorangi, 'The Unknown Truth Behind the Moais', *IC Magazine* (online), July 25 2013 <<http://intercontinentalcry.org/the-unkown-truth-behind-the-moais/>>.

¹⁵ Hito, above n 13, 22.

¹⁶ *Ibid* 26.

¹⁷ *Ibid* 28.

¹⁸ See generally Bloch, above n 11.

¹⁹ See Terry Hunt and Carl Lipo, *The Statues that Walked: Unravelling the Mystery of Easter Island* (Free Press, 2012).

elders' stories of the walking *moai*. Suri Tuki, member of the Tuki clan, states: 'The experts can say whatever they want ... But we know the truth. The statues walked'.²⁰ As archaeologists explain, 'in the Rapanui oral tradition, the *moai* were animated by *mana*, a spiritual force transmitted by powerful ancestors'.²¹

A governing system composed of approximately 12 interrelated kinship clans under a monarchy was in force in Rapa Nui prior to contact with western nation-states.²² Hotu Matu'a, the first Rapa Nui king, determined his successors' legacy by dividing up the territory among them. While the oldest son inherited from the king, the youngest inherited from the queen.²³ This ancestral succession led to the establishment of two *mata* (confederations) in Rapa Nui.²⁴ The around 12 foundational clans that populated the main island were distributed between these *mata*.²⁵ In 1899, Riro Kainga, the last king in Rapa Nui, was murdered (poisoned) in mainland Chile while he was there seeking a change in Chile's policies towards Rapa Nui that had led to the subjugation of its people and taking of their ancestral lands.²⁶

Today, that traditional governing system is returning to Rapa Nui. Despite more than a hundred years of subjugation and human rights abuses, the Rapa Nui population continues to grow and their Indigenous identity is resurging.²⁷ That is, there are now 24 more clans than the foundational 12. In July 2012, an assembly of clans proclaimed Valentino Riroroko Tuki, the octogenarian grandson of the last king, as the new Rapa Nui king.²⁸ While Riroroko's coronation could be seen as merely symbolic, it may prove critical to the Rapa Nui Nation's overall efforts to rebuild its government and regain control of its territory.

²⁰ Bloch, above n 11, 43.

²¹ Ibid.

²² Hito, above n 13, 27–8.

²³ For a study that provides a unique account of the Rapa Nui genealogy, see Consejo de Ancianos de Rapa Nui [Rapa Nui Council of Elders], *Te Mau Hatu o Rapa Nui: Los Soberanos de Rapa Nui* [Te Mau Hatu o Rapa Nui: The Rapa Nui's Sovereign] (2nd ed, 2007) 7–8.

²⁴ Ibid.

²⁵ Ibid 8.

²⁶ Comisión de Verdad Histórica y Nuevo Trato de Isla de Pascua, *La Verdad Histórica de Rapa Nui* [Commission for the Historical Truth and New Treatment of Easter Island] (Report, 2001) 12–13 (on file with author). In compliance with Chile's Decree 19 (2001), this report provides an important historical account of Rapa Nui. It is the actual outcome of thorough research carried out by Rapa Nui individuals that formed the Commission for the Historical Truth and New Treatment of Easter Island.

²⁷ 'Some 2,000 Rapanui live on the island ... [and] they numbered only 111 in 1877, after slave traders and disease had decimated the population': Bloch, above n 11, 32.

²⁸ See Aaron Nelson, 'A Quest for Independence: Who Will Rule Easter Island's Stone Heads?', *Time* (online), 30 March 2012 <<http://content.time.com/time/world/article/0,8599,2110365,00.html>>.

III CHILE'S HISTORICAL SUBJUGATION OF RAPA NUI

Since 1888, neither democracy nor human rights have governed Chile's relationship with the Rapa Nui Nation. Among others, there are three main actions taken by the State that have significantly undermined the rights of Rapa Nui as a distinct people: (1) failure to fulfil its obligations from the 1888 "treaty" signed by the Rapa Nui representatives and Chile's agents;²⁹ (2) confinement of the people of Rapa Nui to a small area in the island; and (3) annexation of the Rapa Nui Island in 1933 by registering it as part of Chile's territory. These three acts infringed upon the Rapa Nui people's right to self-determination, territorial integrity,³⁰ and permanent sovereignty over natural resources.³¹

Throughout 1896–1900, Chile confined the Rapa Nui people to a small area that can only be likened to a concentration camp. Chilean navy officials restricted the people of Rapa Nui to Hanga Roa,³² an area of about a thousand hectares that was surrounded by a stone fence and wires. The rest of the island was leased to a Scottish company, which managed the island as a giant sheep ranch until 1953.³³ The people of Rapa Nui were denied freedom of movement, access to the sea to harvest fish, or access to other natural resources upon which they depended for shelter and food.

During this period of confinement, the Rapa Nui people endured death, hunger, and significant health problems. They suffered especially from tuberculosis, which had been introduced to the island by whalers, as well as other diseases brought by European colonisers and slave traders.³⁴ In 1888, leprosy was introduced into the island via the

²⁹ In 1888, Chile entered into a "treaty" and thus annexed or claimed to annex the island. For further information and analysis of the text and history of the treaty, see Hito, above n 13.

³⁰ Territorial integrity is a principle of international law that protects States' political unity and territorial integrity: see Coulter, above n 1, 9–11.

³¹ Permanent sovereignty over natural resources is the principle of international law in virtue of which 'peoples and nations must have the authority to manage and control their natural resources and in doing so to enjoy the benefits of their development and conservation': Erica-Irene A Daes, *Final Report of the UN Special Rapporteur on Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous Peoples' Permanent Sovereignty Over Natural Resources*, UN Doc E/CN.4/Sub.2/2004/30 (13 July 2004) para 6; Indigenous peoples' permanent sovereignty over natural resources entails 'legal, governmental control and management authority over natural resources, particularly as an aspect of the right to self-determination': Erica-Irene A Daes, *Final Report of the UN Special Rapporteur on Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous Peoples' Permanent Sovereignty Over Natural Resources*, UN Doc E/CN.4/Sub.2/2004/30 (13 July 2004) para 18.

³² Bloch, above n 11, 42.

³³ *Ibid.*

³⁴ Comisión de Verdad Histórica y Nuevo Trato con los Pueblos Indígenas de Chile, Informe de la Comisión de Verdad Histórica y Nuevo Trato con los Pueblos Indígenas [Chile's Commission for the Historical Truth and New Treatment of Indigenous Peoples] (Report, 2008) 270. Former President of Chile, Patricio Aylwin, led all research and writing completed by this Commission, which was composed of various

Chilean navy.³⁵ Their health problems were compounded by the fact that until 1966 the State did not provide any health services at all to the clan members.

Chile's annexation of the island was done without the knowledge and consent of the Rapa Nui Nation: the landholder. In 1933, Chile registered ownership over the island in the name of the Chilean Treasury. It was done based on *Civil Code* art 590, which states 'all lands that are located within the territorial boundaries, and lack an owner, are considered State assets'.³⁶ In 1966, Chile recognised citizenship to the people of Rapa Nui. Chile did so as a result of a Rapa Nui revolt held in 1964.³⁷

IV CHILE'S CONTEMPORARY THREATS AGAINST RAPA NUI

Rapa Nui continues to be subject to state threats against its people. These threats are deliberate, not whimsical. They are perpetrated for the purpose of silencing the Rapa Nui people, implanting continental Chileans into the island's overall population, and assimilating the Rapa Nui natives into Chilean society. Not surprisingly, the Rapa Nui clans have consistently requested that Chile take appropriate measures towards the full realisation of the Rapa Nui people's right of self-government, collective ownership of their lands, and permanent sovereignty over their natural resources. Because of these ongoing threats, the people of Rapa Nui sought international legal support to prevent further violation of their right to humane treatment and to life. As per the Rapa Nui clans' request, the author filed for, and secured, protection measures from the Inter-American Commission on Human Rights in favour of the Rapa Nui people.³⁸

The State has resorted to these threats, which have taken the form of both omissions and actions, in a systematic and consistent manner over time. These omissions include, among others, the lack of redress of the past wrongdoings mentioned earlier, especially the taking of the Rapa Nui clans' ancestral lands. Unfortunately, the Government's effort to address land rights issues with the Rapa Nui people via "working tables" that started

experts, including Indigenous leaders. On 28 October 2003, the report was officially presented to former President of Chile, Ricardo Lagos Escobar. In 2008, former President of Chile, Michelle Bachelet Jeria, made it public.

³⁵ Rapa Nui Council of Elders, above n 23, 5.

³⁶ *Chilean Civil Code* art 590.

³⁷ Bloch, above n 11, 42.

³⁸ *Pueblo Indígena Rapa Nui v Chile* (2011) MC-321-10, Inter-American Commission on Human Rights (on file with author). Precautionary measures were granted to protect the life and personal integrity of the Rapa Nui People by requesting Chile to stop the use of armed forces to evict members of the Rapa Nui People from public and private properties.

functioning since mid-2010 fell short in meeting their goals. First, they failed to be comprehensive enough to include the situations in which ancestral lands were taken by both state and private actors. The latter situation, which was intentionally left out of the working tables, affected the situations of various clans, such as the *Hitorangui* clan, whose ancestral lands were taken for the purpose of building the Hanga Roa Hotel.³⁹ Secondly, according to most of the Rapa Nui clans, their legitimate representatives were not allowed to participate in discussion taking place in the working tables. Finally, there was a lack of transparency. Surprisingly, while the Government entered into discussions with some of the Rapa Nui clans, its security forces evicted some of those same clans. For example, the *Tuko Tuki* clan, whose representatives were part of the discussions taking place within the working tables, was violently evicted on 3 December 2010.⁴⁰ As a result, most of the Rapa Nui clans were unsatisfied with the functioning and results of the working tables.⁴¹

Other omissions include lack of control over immigration to the island and lack of adequate health services provided to those living on the island. Uncontrolled immigration to the island threatens the Rapa Nui Nation's identity, unity and self-determination rights.⁴² Clearly, this omission seeks to implant a significant non-native population in Rapa Nui and assimilate the Rapa Nui people into Chilean society. Chile neither institutes

³⁹ Indeed, the Valparaiso's Municipal Governor asked the *Hitorangui* Clan to leave their lands as a prerequisite for participating in the working tables; see Intendente de Valparaíso [Valparaiso's Municipal Governor], 'Declaración y Constancia para Familia Hito [Statement for the Hito[rangui] Family]' (11 December 2010) (on file with author).

⁴⁰ About five *Tuko Tuki* clan members were wounded with pellets. Three women and two men were violently evicted while sleeping. Before the deployment of this violent police action, members of other clans tried to intervene — resulting in 20 wounded with pellets. Richard Tepano, one of those wounded, lost an eye; see, eg, 'Informe Urgente: El Estado Chileno Desata la Violencia en Rapa Nui [Urgent Report: The Chilean State Unleashed Violence in Rapa Nui]' *Rapa Nui Press*, 3 December 2010 (on file with author); see also Hito Clan, 'Rapa Nui (Eastern Island) Under Fire By Chilean Troops' (Press Release, 3 December 2010) (on file with author).

⁴¹ See 'Clanes Rapa Nui en Conflicto No Adoptaran Resoluciones de Mesas de Trabajo del Gobierno [Rapa Nui Clans in Conflict Won't Accept Results of Working Tables]', *El Ciudadano*, 24 October 2010 (on file with author); see also 'Pascuenses Afirman que el Gobierno No los Considera en la Mesa de Trabajo sobre Rapa Nui [Easter Islanders Affirm the Government Does Not Include Them in the Working Tables]', *Radio Universidad de Chile*, 25 October 2010 (on file with author).

⁴² For a statement that the Chilean State's policies and practices are leading to a silent genocide of the Rapa Nui people since such actions jeopardise the Rapa Nui identity, language, and culture in a silent fashion, see Rafael Tuki Tepano, Counsel Member of the National Corporation of Indigenous Development, 'As a Rapa Nui People We Are Facing a Silent Genocide', *CNN Chile* (online), 10 September 2010 <<http://www.cnnchile.com/nacional/2010/09/10/como-pueblo-rapa-nui-estamos-viviendo-un-genocidio-silencioso/>> (only available in Spanish; last visit at 28 September 2010).

policies to manage and control immigration from continental Chile,⁴³ nor does it recognise any authority of the Rapa Nui Nation to institute its own controls. Continental Chileans have migrated to the island to find work, but their numbers have led to a collapse of the already inadequate social services.⁴⁴ The small island cannot support this influx of outsiders. Uncontrolled immigration has also led to an environmental crisis on the island,⁴⁵ shortage of limited water supply,⁴⁶ and major concerns due to the 'lack [of] a sewer system and a place to put the swelling volume of trash'.⁴⁷

Health services provided on the island are inadequate and fall well below the standard of services currently provided to Chileans living on the mainland.⁴⁸ This is a discriminatory health policy towards Rapa Nui that affects each clan members' human right to health and life. There is only one hospital available on the island, the Hanga Roa Hospital, which is in an alarmingly precarious condition, lacking basic medical supplies, and human resources.⁴⁹ The hospital's situation forces doctors to perform improvised medical procedures on the Rapa Nui people who come seeking medical services.⁵⁰

Actions include those perpetrated for the purpose of consistently intimidating the Rapa Nui clans' chiefs and spokespersons. They not only include resorting to armed forces to evict them from repossessed ancestral lands, but also using criminal charges to persecute and eventually jail them. Needless to say, these actions violate the chiefs' and spokespersons' right to humane treatment and freedom of liberty, among other human rights.

Because of the existing lack of political will to address the Rapa Nui situation, nearly 36 clans are engaged in the recovery of their ancestral lands. Since 31 July 2010, the clans have been peacefully reoccupying the land illegally taken from their grandparents as a means to call attention to the need for serious constructive dialogue with Chile to

⁴³ Angelica Baeza Palavecino (Member of the Rapa Nui Parliament), 'La isla se tiene que independizar de Chile', *Latercera* (online), 8 March 2010 <<http://www.latercera.com/noticia/nacional/2010/08/680-281441-9-miembro-del-parlamento-ropa-nui-la-isla-se-tiene-que-independizar-de-chile.shtml>>.

⁴⁴ *Ibid.*

⁴⁵ Overfishing has reduced the quantity and quality of fish available for the Rapa Nui Nation: see 'El empobrecimiento del mundo submarino de Rapa Nui', *El Correo Del Moai* (online), November 2009. The Rapa Nui people are also concerned about waste and the contamination of their fresh water.

⁴⁶ Bloch, above n 11, 48.

⁴⁷ *Ibid.*

⁴⁸ See Letter from Martin Hereveri to Government's Sub-Secretariat, Minister of Interior and Easter Island Association, 20 October 2009.

⁴⁹ Rapa Nui Council of Elders, above n 23, 5.

⁵⁰ This is why, for example, doctors at Hanga Roa Hospital placed a contaminated metallic artefact into the broken leg of Mr Hereveri's son, which caused a serious infection: see above n 48.

resolve the conflict.⁵¹ These actions were performed in a peaceful manner by numerous members of the clans, including elders, women, and children.

In response, Chile resorted to violent means to silence and intimidate the clans.⁵² This response led to violent clashes between Chilean armed forces and unarmed Rapa Nui men and women, as well as collective violent evictions of the clans from their ancestral lands.⁵³ The Chilean National Human Rights Institute,⁵⁴ Chile's Archeologists Association,⁵⁵ and some members of the Chilean Congress repudiated this state violence.⁵⁶ International human rights organisations and members of the United States' Congress denounced said violence and asked Chile to seek a peaceful solution to the conflict in Rapa Nui.⁵⁷

In mid-2010, the State started to charge numerous Rapa Nui clan members with criminal offenses and persecute them. For example, an arrest warrant was issued for Rodolfo Santi Hito, member of the Hito clan, for his peaceable involvement in the

⁵¹ See SaveRapaNui.org, 'Chilean Troops Flown in to Supres Rapanui — On the Verge of Extinction' (Press Release, 29 September 2010) <<http://saverapanui.org/>>.

⁵² See Michael Warren, 'Easter Island Tense as Police, Rapa Nui Regroup', *Star Advertiser* (online), 3 December 2010 <http://www.staradvertiser.com/news/breaking/20101205_Easter_Island_tense_as_police_Rapa_Nui_regroup.html?id=111344529>; 'Easter Island land dispute clashes leave dozens injured', *BBC Americas* (online), 4 December 2010 <<http://www.bbc.com/news/world-latin-america-11917511>>.

⁵³ 'Calls for calm in violence-hit Easter Island', *TVNZ* (online), 8 December 2010 <<http://tvnz.co.nz/world-news/calls-calm-in-violence-hit-easter-island-3955127>>; '24 injured in Easter Island land protests', *Stuff* (online), 7 December 2010 <<http://www.stuff.co.nz/world/south-pacific/4430922/24-injured-in-Easter-Island-land-protests>>; 'Violence in Easter Island clan protests', *UPI* (online), 4 January 2011 <http://www.upi.com/Top_News/World-News/2011/01/04/Violence-in-Easter-Island-clan-protests/UPI-52471294171018/>.

⁵⁴ Instituto Nacional de Derechos Humanos de Chile's Press Release, 'Rapa Nui: Declaración Pública del Instituto Nacional de Derechos Humanos [Rapa Nui: National Human Rights Institute's Public Statement]' (Press Release, 30 December 2010) <<http://www.indh.cl/rapa-nui-declaracion-publica-del-instituto-nacional-de-derechos-humanos>>.

⁵⁵ See Chile's Archaeologists Association, above n 12, 1–2.

⁵⁶ See Juan Pablo Leteriel Morel, 'Informe Preliminar sobre los Incidentes Ocurridos el 3 de Diciembre y Visita Inspectiva a Rapa Nui [Preliminary Report on the December 3 Incidents and the Inspection Visit to Rapa Nui]' (Report, 8 December 2010) (on file with author). Mr Leteriel Morel is a Senator of Chile and the President of the Asociación Latinoamericana para los Derechos Humanos [Latin American Association for Human Rights]. He visited Rapa Nui to assess the human rights situation that the people of Rapa Nui were facing because of collective violent evictions.

⁵⁷ See, eg, Amnesty International, 'Chile: Amnesty International concerned about human rights violations committed against the Rapa Nui, in the context of unresolved land claims of Indigenous Peoples' (Press Release, 9 December 2010) <<http://www.amnesty.org/en/library/asset/AMR22/006/2010/en/6add9ea2-fd2c-4b23-8937-debcc745da3d/amr220062010en.pdf>>; Congressman Eni Faleomavaega 'Calling for a Peaceful Solution to Easter Island Crisis' (Speech delivered in Congress, Chile, 8 February 2011) <<https://scout.sunlightfoundation.com/item/speech/CREC-2011-02-08-pt1-PgH544-2.chunk1/rep-eni-faleomavaega-calling-for-peaceful-solution-to-easter-island-crisis>>.

movement to restore the ancestral lands to the full ownership of the Rapa Nui clans.⁵⁸ The arrest warrant prevented Mr Hito from returning to Chile from the United States. Other clan members have been charged with criminal trespass and their freedom to travel abroad has been curtailed.

V CONCLUSION

The Rapa Nui people are a distinct people within the Unitarian State of Chile. This paper illustrated the dynamics and the complexity of the relationship between a distinct native people and a western nation-state, which continues to impose colonial rules onto them and perform actions to subjugate them. Both the Rapa Nui people's right of self-determination and the island's situation as a colony of Chile are governed by rules of international law. Therefore, Chile should comply with and take into account said rules in order to properly address the right of the Rapa Nui people to self-determination. Failure to do so compromises Chile's international responsibility, which cannot be justified in light of domestic law issues, such as those relating to Chile's Unitarian form of government, among others. Article 27 of the *Vienna Convention on the Law of Treaties* prevents such a justification by stating that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.⁵⁹

⁵⁸ See National Public Radio, 'For Chile, Colossal Trouble on Easter Island', *National Public Radio News*, 9 September 2010 <<http://www.npr.org/templates/story/story.php?storyId=129723910>>.

⁵⁹ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 27.

REFERENCE LIST

A Articles/Books/Reports

Bloch, Hannah, 'Easter Island: The Riddle of the Moving Statues' (2013) 222(1) *National Geographic* 40 <<http://ngm.nationalgeographic.com/2012/07/easter-island/bloch-text>>

Cassese, Antonio, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995)

Chile's Instituto Nacional de Estadísticas [Chile's National Institute of Statistics], '2002 National Population Census' (Census Report, March 2003) <<http://www.ine.cl/cd2002/sintesis censal.pdf>>

Comision de Verdad Historica y Nuevo Trato con los Pueblos Indigenas de Chile, Informe de la Comision de Verdad Historica y Nuevo Trato con los Pueblos Indigenas [Chile's Commission for the Historical Truth and New Treatment of Indigenous Peoples] (Report, 2008)

Comision de Verdad Historica y Nuevo Trato de Isla de Pascua, La Verdad Historica de Rapa Nui [Commission for the Historical Truth and New Treatment of Easter Island] (Report, 2001) (on file with author)

Daes, Erica-Irene A, *Final Report of the UN Special Rapporteur on Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous Peoples' Permanent Sovereignty Over Natural Resources*, UN Doc E/CN.4/Sub.2/2004/30 (13 July 2004)

Hito, Santi, 'Vaai Hanga Kainga. Giving Care to the Motherland: Conflicting Narratives of Rapanui' (2004) 25(1) *Journal of Intercultural Studies* 21

Hunt, Terry and Carl Lipo, *The Statues that Walked: Unravelling the Mystery of Easter Island* (Free Press, 2012)

Leteriel Morel, Juan Pablo, 'Informe Preliminar sobre los Incidentes Ocurridos el 3 de Diciembre y Visita Inspectiva a Rapa Nui [Preliminary Report on the December 3 Incidents and the Inspection Visit to Rapa Nui]' (Report, 8 December 2010) (on file with author)

B Cases

Pueblo Indígena Rapa Nui v Chile (2011) MC-321-10, Inter-American Commission on Human Rights (on file with author)

C Legislation

Chilean Civil Code

Constitution of the Republic of Chile

Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012
<<https://www.govtrack.us/congress/bills/112/hr205/text>>

Ley 28, Estatuto de la Autonomía de las Regiones de la Costa Atlántica de Nicaragua [Statute on Autonomy of Atlantic Coast Regions of Nicaragua] 7 September 1987

Ley 445, Ley del Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de las Regiones Autónomas de la Costa Atlántica de Nicaragua y de los Rios Bocay, Coco, Indio y Maiz 29, 31 [Law on Indigenous Peoples' Collective Property Rights in the Atlantic Coast and the Bocay, Coco, India and Maiz Rivers] 22 January 2003

United States Code of Federal Regulations tit 25

D Treaties

Charter of the United Nations

Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations, GA Res 2625 (XXV), UN GAOR, 25th sess, Supp No 28, UN Doc A/8028 (24 October 1970)

Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV), UN GAOR, 15th sess, Supp No 16, UN Doc A/RES/1514(XV) (14 December 1960)

Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007)

GA Res 1541, UN GAOR, 15th sess, Supp No 16, UN Doc A/4651 (15 December 1960)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

E Other

'24 injured in Easter Island land protests', *Stuff* (online), 7 December 2010 <<http://www.stuff.co.nz/world/south-pacific/4430922/24-injured-in-Easter-Island-land-protests>>

Amnesty International, 'Chile: Amnesty International concerned about human rights violations committed against the Rapa Nui, in the context of unresolved land claims of Indigenous Peoples' (Press Release, 9 December 2010) <<http://www.amnesty.org/en/library/asset/AMR22/006/2010/en/6add9ea2-fd2c-4b23-8937-debcc745da3d/amr220062010en.pdf>>

Baeza Palavecino, Angelica (Member of the Rapa Nui Parliament), 'La isla se tiene que independizar de Chile', *Latercera* (online), 8 March 2010 <<http://www.latercera.com/noticia/nacional/2010/08/680-281441-9-miembro-del-parlamento-rapa-nui-la-isla-se-tiene-que-independizar-de-chile.shtml>>

'Calls for calm in violence-hit Easter Island', *TVNZ* (online), 8 December 2010 <<http://tvnz.co.nz/world-news/calls-calm-in-violence-hit-easter-island-3955127>>

'Clanes Rapa Nui en Conflicto No Adoptaran Resoluciones de Mesas de Trabajo del Gobierno [Rapa Nui Clans in Conflict Won't Accept Results of Working Tables]', *El Ciudadano*, 24 October 2010 (on file with author)

Congressman Eni Faleomavaega, 'Calling for a Peaceful Solution to Easter Island Crisis' (Speech delivered in Congress, Chile, 8 February 2011) <<https://scout.sunlightfoundation.com/item/speech/CREC-2011-02-08-pt1-PgH544-2.chunk1/rep-eni-faleomavaega-calling-for-peaceful-solution-to-easter-island-crisis>>

Consejo de Ancianos de Rapa Nui [Rapa Nui Council of Elders], *Te Mau Hatu o Rapa Nui: Los Soberanos de Rapa Nui [Te Mau Hatu o Rapa Nui: The Rapa Nui's Sovereign]* (2nd ed, 2007)

'Declaración Pública sobre el Conflicto Rapa Nui [Public Statement on the Rapa Nui Conflict]' (Public Statement, Asociación de Arqueólogos de Chile [Chile's Archaeologist Association], 14 September 2010) (on file with author)

'Easter Island land dispute clashes leave dozens injured', *BBC Americas* (online), 4 December 2010 <<http://www.bbc.com/news/world-latin-america-11917511>>

'El empobrecimiento del mundo submarino de Rapa Nui', *El Correo Del Moai* (online), November 2009

Hito Clan, 'Rapa Nui (Eastern Island) Under Fire By Chilean Troops' (Press Release, 3 December 2010) (on file with author)

Hitorangi, Mati, 'The Unknown Truth Behind the Moais', *IC Magazine* (online), July 25 2013 <<http://intercontinentalcry.org/the-unkown-truth-behind-the-moais/>>

'Informe Urgente: El Estado Chileno Desata la Violencia en Rapa Nui [Urgent Report: The Chilean State Unleashed Violence in Rapa Nui]', *Rapa Nui Press*, 3 December 2010 (on file with author)

Instituto Nacional de Derechos Humanos de Chile's Press Release, 'Rapa Nui: Declaración Pública del Instituto Nacional de Derechos Humanos [Rapa Nui: National Human Rights Institute's Public Statement]' (Press Release, 30 December 2010) <<http://www.indh.cl/rapa-nui-declaracion-publica-del-instituto-nacional-de-derechos-humanos>>

Intendente de Valparaíso [Valparaiso's Municipal Governor], 'Declaración y Constancia para Familia Hito [Statement for the Hito[rangui] Family]' (11 December 2010) (on file with author)

Letter from Martin Hereveri to Government's Sub-Secretariat, Minister of Interior and Easter Island Association, 20 October 2009

National Public Radio, 'For Chile, Colossal Trouble on Easter Island', *National Public Radio News*, 9 September 2010
<<http://www.npr.org/templates/story/story.php?storyId=129723910>>

Nelson, Aaron, 'A Quest for Independence: Who Will Rule Easter Island's Stone Heads?', *Time* (online), 30 March 2012
<<http://content.time.com/time/world/article/0,8599,2110365,00.html>>

'Pascuenses Afirman que el Gobierno No los Considera en la Mesa de Trabajo sobre Rapa Nui [Easter Islanders Affirm the Government Does Not Include Them in the Working Tables]', *Radio Universidad de Chile*, 25 October 2010 (on file with author)

SaveRapaNui.org, 'Chilean Troops Flown in to Supres Rapanui — On the Verge of Extinction' (Press Release, 29 September 2010) <<http://saverapanui.org/>>

Tuki Tepano, Rafael (Counsel Member of the National Corporation of Indigenous Development), 'As a Rapa Nui People We Are Facing a Silent Genocide', *CNN Chile* (online), 10 September 2010 <<http://www.cnnchile.com/nacional/2010/09/10/como-pueblo-rapa-nui-estamos-viviendo-un-genocidio-silencioso/>>

'Violence in Easter Island clan protests', *UPI* (online), 4 January 2011
<http://www.upi.com/Top_News/World-News/2011/01/04/Violence-in-Easter-Island-clan-protests/UPI-52471294171018/>

Warren, Michael, 'Easter Island Tense as Police, Rapa Nui Regroup', *Star Advertiser* (online), 3 December 2010
<http://www.staradvertiser.com/news/breaking/20101205_Easter_Island_tense_as_police_Rapa_Nui_regroup.html?id=111344529>