

# THE LITTLE ISLAND THAT COULD: HOW REFORMING CULTURAL PRESERVATION POLICIES CAN SAVE EASTER ISLAND AND THE WORLD’S HERITAGE

*Abby L. Barfelz\**

AN INTRODUCTION TO EASTER ISLAND .....	150
A. History .....	150
B. Tourist Economy.....	152
I. MASS TOURISM AND THE WORLD’S HERITAGE .....	153
A. The “Catch-22” .....	153
B. The People’s Right to Heritage.....	155
II. EASTER ISLAND PRESERVATION EFFORTS.....	156
A. Preserving the Moai & the Emergence of Sustainable Tourism on Easter Island.....	156
III. DEVELOPING NATIONAL POLICY TOWARD CULTURAL PRESERVATION.....	158
A. Proposed Reformation of Chilean Cultural Policy: Economic Approaches to Cultural Heritage .....	158
1. <i>Determining the Value of Cultural Heritage</i> .....	159
2. <i>Attributing a “Direct Use” Value</i> .....	159
3. <i>The Difficulty with Economic Measurement</i> .....	160
4. <i>Maximizing the Value of Cultural Heritage</i> .....	161
5. <i>Cultural Heritage as a Commodity</i> .....	161
6. <i>The “Urbanization” of Easter Island</i> .....	162
7. <i>Assessing the Chosen Economic Strategy</i> .....	163
8. <i>Implementation of the Reformed Policy</i> .....	164
9. <i>Local versus National Policy Management</i> .....	165
10. <i>Agency Cooperation</i> .....	166
11. <i>Community Support for Preservation</i> .....	166
B. Necessity of International “Fallback Provisions” .....	168
1. <i>Been There, Done That</i> .....	168
2. <i>A National Economic Policy toward Cultural Preservation             Might not be Enough</i> .....	169
IV. INTERNATIONAL POLICY TOWARD CULTURAL PRESERVATION .....	169
A. Development of the Current International Legal Framework and How It Fails the World’s Heritage.....	169
1. <i>UNESCO Framework</i> .....	170
2. <i>The Framework’s Failure</i> .....	172
B. Proposed Reformation of International Cultural Policy: Enforcement, Intervention and Appointment .....	173

1. <i>The Right of Intervention</i> .....	174
2. <i>Appointing a Heritage Trustee</i> .....	175
C. A Word of Caution .....	176
CONCLUSIONS.....	177

“As the traveler who has once been from home is wiser than he who has never left his own doorstep, so a knowledge of one other culture should sharpen our ability to scrutinize more steadily, to appreciate more lovingly, our own.” –*Margaret Mead*

## AN INTRODUCTION TO EASTER ISLAND

### A. History

Nestled in the South Pacific nearly 2,400 miles off Chile’s west coast and roughly 2,500 miles East of Tahiti, Easter Island is one of the most remote places on Earth.<sup>1</sup> This tiny island, called Rapa Nui (“Big Island”) by natives, is a mere 64 square miles in area<sup>2</sup> and is home to approximately 4,000 people and 7,000 wild horses.<sup>3</sup> Originally settled in 300 A.D., the island was annexed by Chile in 1888 and officially declared a Chilean province in 1966<sup>4</sup> though natives of Easter Island are descendents of the Maori people<sup>5</sup> and identify themselves as Polynesians rather than Latinos like their mainland countrymen.<sup>6</sup>

Although the South Pacific has long been a vacation destination, the landscape of Easter Island is not typical of many South Pacific islands and

---

\* J.D. Candidate, Michigan State University College of Law (expected May 2012). B.S., Grand Valley State University (2006). I would like to acknowledge and thank my brother for his unwavering support and faith in me, and my mom, whom I don’t thank as often as I should. This article is dedicated in loving memory to my grandfather, who by his wisdom and kindness truly led by example.

1. Easter Island Crib Sheet, A Profound Journey, <http://www.apj.co.uk/rapanui/easter-island-fact-sheet.asp> (last visited May 15, 2011) [hereinafter Crib Sheet].

2. Jayne Clark, *Easter Island Looks to the Future*, USA TODAY (Jan. 4, 2007), [http://www.usatoday.com/travel/destinations/2007-01-04-easter-island\\_x.htm](http://www.usatoday.com/travel/destinations/2007-01-04-easter-island_x.htm).

3. Will Weissert, *Record Tourism Could Harm Easter Island Statues*, USA TODAY (June 24, 2008) [http://www.usatoday.com/travel/destinations/2008-06-24-easter-island-moais\\_N.htm](http://www.usatoday.com/travel/destinations/2008-06-24-easter-island-moais_N.htm).

4. *Crib Sheet*, *supra* note 1.

5. The Maori are an indigenous people of New Zealand. *See Maori Culture*, VIRTUAL NEW ZEALAND, <http://www.virtualoceania.net/newzealand/culture/maori/> (last visited July 16, 2011).

6. Clark, *supra* note 2.

not nearly as accessible.<sup>7</sup> Yet Easter Island “ranks on many a traveler’s places-to-see-before-you-die list.”<sup>8</sup> Travelers are lured to Easter Island by hundreds of giant-headed stone statues called Moai, carved from the 11<sup>th</sup> through 17<sup>th</sup> centuries by native islanders with rudimentary basalt tools.<sup>9</sup> Almost nine-hundred such statues exist, comprising over half of the island’s 1,524 archaeological sites.<sup>10</sup> Found across the island, Moai stand guarding ancient settlements, all facing inland except seven statues at Ahu Akivi which gaze out over the ocean.<sup>11</sup> The statues are almost exclusively male,<sup>12</sup> and each is unique.<sup>13</sup> While the average height is 13 feet and weight approximately 12.5 tons,<sup>14</sup> the largest Moai ever carved is known as “El Gigante” and stands 70 feet high.<sup>15</sup> “El Gigante’s” enormous dimensions are perhaps why it was never removed from the quarry; the largest ever *moved* measured only 30 feet and weighed 87 tons.<sup>16</sup>

Like “El Gigante,” many Moai were never transported to their final destinations. Over 300 can be seen in various stages of completion and transit amidst the bedrock of one of the island’s three extinct volcanoes.<sup>17</sup> Locals call this area “the nursery” because it is from here that 95% of the stone used to carve the Moai was taken,<sup>18</sup> but some statues were moved as far as 12 miles.<sup>19</sup> Today, hundreds of Moai remain here, partially buried and keeping watch over the volcano.<sup>20</sup> Visitors can still see where islanders carved the side of the volcano in order to move the giant statues.<sup>21</sup>

Much of the allure and intrigue surrounding Easter Island is the mystery of *how* the Moai were transported to their various locations across the island. Though local folklore would have visitors believe “they walked,”<sup>22</sup> a more commonly-accepted theory holds the island’s palm forests were cut down and the logs used to roll the statues.<sup>23</sup> Whatever the actual reason for

---

7. *Id.* (“The island is difficult to get to. Its landscape is not lovely in the traditional sense.”).

8. *Id.*

9. *Id.*

10. Weissert, *supra* note 3.

11. *Id.*

12. Of the 887 Moai on Easter Island, only ten unearthened statues are believed to have some female characteristics. *Id.*

13. *Id.* (“[E]ach is unique, with sizes and features—even ears, lips and torsos—that vary.”)

14. *Id.*

15. Weissert, *supra* note 3.

16. *Id.* (emphasis added).

17. *Id.*

18. *Id.*

19. Clark, *supra* note 2.

20. Weissert, *supra* note 3.

21. *Id.*

22. Clark, *supra* note 2.

23. Weissert, *supra* note 3.

the deforestation, its toll on the island is well-documented.<sup>24</sup> With the removal of the trees came devastating tribal warfare, increasingly scarce resources, eventual cannibalism, and finally the toppling of many of the Moai altars.<sup>25</sup> It is also shortly after this time that the carving of Moai and the erection of new altars ceased.<sup>26</sup> The mysterious end to the Moai-building era and its place in the Island's history remain popular topics of academic publication and speculation.

Although deforestation, tribal warfare, and cannibalism did not fully eradicate the Rapa Nui population, much of Easter Island's population that *did* survive was eventually wiped out by slave raids and disease.<sup>27</sup> In the 1860s, slave raids removed many of Easter Island's inhabitants, and most would never return.<sup>28</sup> Those who did return brought smallpox and, as a result, the number of native inhabitants had dwindled to 110 by the 1870s.<sup>29</sup>

### B. Tourist Economy

The mysterious statues and near tragic history of the Rapa Nui people have drawn travelers to Easter Island for decades, but interest in the island saw a dramatic increase when Rapa Nui National Park, which covers 60 percent of the island, was designated a UNESCO<sup>30</sup> World Heritage Site in 1995.<sup>31</sup> Each year, more and more people venture to this remote corner of the Earth to experience this unique and mysterious culture. In the 1990s, supply ships arrived at Easter Island only once per year; now they do so every 40 days.<sup>32</sup> Estimates place the number of visitors to the island in 2006 at 52,000—almost ten times the annual visitors in the 1990s.<sup>33</sup> This increase in visitors has had a positive impact on the island: with increased tourism came increased tourist spending, and now the island “depends largely on the hoardes of tourists who flock to visit its archaeological sites and monumental Polynesian statues each year.”<sup>34</sup>

---

24. See, e.g., Weissert, *supra* note 3; Crib Sheet, *supra* note 1; Whitney Dangerfield, *The Mystery of Easter Island*, SMITHSONIAN.COM (Apr. 1, 2007), [http://www.smithsonianmag.com/people-places/The\\_Mystery\\_of\\_Easter\\_Island.html](http://www.smithsonianmag.com/people-places/The_Mystery_of_Easter_Island.html); JENNIFER VANDERBES, *EASTER ISLAND* (2003); JO ANNE VAN TILBURG, *EASTER ISLAND: ARCHAEOLOGY, ECOLOGY AND CULTURE* (1994).

25. Weissert, *supra* note 3.

26. Crib Sheet, *supra* note 1.

27. Clark, *supra* note 2.

28. *Id.*

29. *Id.*

30. United Nations Educational, Scientific and Cultural Organization. For further information, see <http://www.unesco.org> (last visited Sept. 29, 2011).

31. Weissert, *supra* note 3.

32. Clark, *supra* note 2.

33. Weissert, *supra* note 3.

34. Natalie Muller, *Sustainable Tourism Projected for Chile's Easter Islands*, MERCOPRESS (June 27, 2009), <http://en.mercopress.com/2009/06/27/sustainable-tourism-projected-for-chiles-easter-islands>.

The tourism boom also created a demand for increased tourist accommodations. Since by law only Rapa Nui people can own land,<sup>35</sup> outside entrepreneurs must partner with local land owners on development projects, creating a direct revenue stream to the native population. In 2008, a local dive-shop owner partnered with Santiago, Chile-based hotel company Explora to build the island's first "upscale lodging" on his land.<sup>36</sup> In addition to more hotels and resorts, there were plans to build an art museum and school of archaeology—firsts for the island—and a "guide school to formally educate islanders in the richness of the 16,000 [sic] archaeological sites."<sup>37</sup>

## I. MASS TOURISM AND THE WORLD'S HERITAGE

### A. The "Catch-22"

As the largest industry in the world, tourism, particularly "cultural tourism," brings countless economic benefits but also can threaten the more fragile sites.<sup>38</sup> Today, the Moai are threatened by both tangible and intangible enemies. They face many environmental predators<sup>39</sup> and "a host of natural enemies" including the "sun, surf, winds and humidity . . . blights, lichen and moss."<sup>40</sup> When these are combined with the negative effects of an increased human presence,<sup>41</sup> it seems the Moai may be in graver danger than previously acknowledged.<sup>42</sup> The local population has not remained silent as the strain on the island increased, but the Rapa Nui people have not exactly been heard either; any opposition has been met with rough resistance rather than the sought-after policy reform.<sup>43</sup> These protests

35. Clark, *supra* note 2.

36. *Id.*

37. *Id.*

38. Henry Cleere, *The World Heritage Convention in the Third World*, in *CULTURAL RESOURCE MANAGEMENT IN CONTEMPORARY SOCIETY* 99, 104 (Francis P. McManamon & Alf Hatton eds., 2000).

39. According to Hanga Roa's Mayor, Pedro Edmunds, there are "54 types of blights feast on Moais." Weissert, *supra* note 3.

40. *Id.*

41. *See, e.g., id.* ("Most tourists are careful not to harm Moais, but some unknowingly walk or climb on them, exacerbating natural deterioration. Others deface them deliberately, including a Finnish tourist who was fined \$17,000 after hacking an ear lobe off [a] statue.").

42. *Id.* ("More tourism, more deterioration. More visitors, more loss" observed one archaeologist. "We are at the point where, either we protect what we have or we lose it.").

43. *See* PETER J. MEYER, *CONG. RESEARCH SERV., R40126, CHILE: POLITICAL AND ECONOMIC CONDITIONS AND U.S. RELATIONS* (2011).

Frustrated by the lack of government response to their concerns, some Rapa Nui activists have engaged in land occupations. In August 2009, a Rapa Nui group blocked the airport for two days to demand greater immigration controls. Conflict erupted again in March 2010, when locals learned that the individual President Piñera appointed as governor of the territory had reportedly received his position as a result of his ties to a business group with

expressed legitimate concerns: projections indicate increased visitors will eventually overwhelm the existing waste management and water sanitation systems and, left unchecked, the development will be unsustainable.<sup>44</sup> These so-called “congestion costs” caused by overcrowding may result in physical damage to the heritage sites.<sup>45</sup> Tragically, these dangers are not unique to Easter Island.<sup>46</sup>

The world’s heritage is under siege from cultural tourism.<sup>47</sup> Many factors have contributed to the destruction of some of the world’s heritage and the endangerment of the rest, not the least of which is mass cultural tourism.<sup>48</sup> “[C]ultural tourism’ in its broad mass-tourism sense means large numbers of people, a matter of particular concern to superstar attractions such as . . . heritage locations, which have to deal with the pressures of visitor numbers on a daily basis.”<sup>49</sup> This “mass tourism” can create “adverse cultural consequences . . . when the cultural integrity of a site or community is threatened by a flood of visitors.”<sup>50</sup>

Many world heritage sites face a similar “Catch-22” to that of Easter Island: more tourists bring more revenue which enables greater preservation efforts, but the increased tourism bringing the revenue is the source of the threat creating the need for protection and preservation, and the best way to reduce the threat may be to reduce the tourists. The vicious cycle of destruction to the world’s heritage created by mass tourism almost seems a necessary evil: “[f]or many heritage sites and attractions, tourism is virtually

intentions to acquire land the Rapa Nui had ceded to the government for public purposes. Since then, Rapa Nui activists have occupied lands and taken over buildings, demanding stricter immigration controls, the return of their ancestral lands, and a stronger role in governance. In February 2011, a number of Rapa Nui activists were injured when police forcibly removed them from a hotel that they had been occupying.

*Id.* at 9. (footnotes omitted)

44. *Impacts of Tourism on Easter Island*, EASTER ISLAND FOUND., [http://islandheritage.org/wordpress/?page\\_id=58](http://islandheritage.org/wordpress/?page_id=58) (last visited May 15, 2011) [hereinafter *Impacts of Tourism*].

45. DAVID THROSBY, *THE ECONOMICS OF CULTURAL POLICY* 151 (2010).

46. Many other countries face similar tourist-overcrowding issues. See Tracy McVeigh, *Tourist Hoardes Told to Stay Away from World Heritage Sites by the Locals*, THE OBSERVER (London) (Sept. 5, 2009), <http://www.guardian.co.uk/environment/2009/sep/06/mass-tourism-environmental-damage>.

47. Throsby, *supra* note 45, at 146 (“The term *cultural tourism* is used to relate to both aspects of tourist activity.” *Id.* “*Mass tourism*, characterized in business terms as being a high-volume low-yield operation, and *niche tourism*, referring to tourism products that cater to small numbers of discriminating tourists with high revenue yield per person.” *Id.*) (emphasis in original).

48. CRAIG FORREST, *INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE* 224 (2010) (“[H]eritage was threatened in a great number of ways[;] . . . increasing urbanization, industrialization, social and economic upheaval, pollution and climate change were all contributing to the decay, degradation and destruction of this ‘world heritage’.”).

49. Throsby, *supra* note 45, at 146.

50. *Id.*

their only source of revenue; thus investment in restoration, conservation, etc., is heavily dependent on future income streams from this source.”<sup>51</sup>

There are different theories as to why cultural tourism became such a global phenomenon. One scholar credits increased living standards and education levels for “permitt[ing] a substantial portion of the population not only to visit but also to enjoy what other countries and their past ha[ve] to offer.”<sup>52</sup> Whatever the source of tourists’ interest in world heritage, “excessive commercialisation of cultural property” must be addressed because “the preservation of the cultural goods themselves must always prevail over their exploitation.”<sup>53</sup> Recognizing the heritage dichotomy, scholars and economists alike now acknowledge the “dangers of over visitation of particular places” and how it is “more than a challenge to . . . respond adequately and preserve” threatened cultural heritage sites.<sup>54</sup> So how can we approach cultural preservation to effectively convey the dangers to heritage sites and gain additional support?

#### B. The People’s Right to Heritage

Cultural heritage has already garnered attention from those who believe it should be recognized and protected as a fundamental right under international law. One scholar proposes it is the “notion of inheritance” which serves as the foundation of cultural heritage: “[a]ll that we are is an expression of the culture we inherited . . . [i]t is this notion of inheritance, of receiving something from one generation and possibly passing it on to the next which intuitively underpins the notion of cultural heritage.”<sup>55</sup> Similarly, there does appear to be a recognition of the “‘human right’ to culture”<sup>56</sup> and the acknowledgement by governments they “have a responsibility for the social and cultural well-being of society.”<sup>57</sup> International texts and agreements speak of rights to “benefit from the cultural heritage[,] contribute towards its enrichment” and to “exercise[] the right to cultural heritage.”<sup>58</sup>

---

51. *Id.* at 149.

52. UGO MIFSUD BONNICI, AN INTRODUCTION TO CULTURAL HERITAGE LAW 58 (2008).

53. *Id.* at 57.

54. *Id.* at 58.

55. Forrest, *supra* note 48, at 7.

56. BONNICI, *supra* note 52, at 26 (“Articles 22 and 27 of the Universal Declaration of Human Rights of 1948 and article 27 of the International Covenant on Civil and Political Rights as well as article 15 of the Covenant on, [sic] Economic, Social and Cultural Rights, clearly point towards recognition of this right.”).

57. THROSBY, *supra* note 45, at 33.

58. BONNICI, *supra* note 52, at 29.

Despite their recognition in international agreements as “basic elements of civilization and national culture,”<sup>59</sup> cultural rights may be the “most neglected category of human rights.”<sup>60</sup> This is particularly true with respect to indigenous peoples<sup>61</sup> such as the Rapa Nui of Easter Island. In this context, preserving their culture is key to their fundamental rights.<sup>62</sup> There is a “powerful movement [] underway to secure a safe anchorage of [indigenous peoples’] rights to international law. These rights are largely cultural, in so far as they tend to guarantee the survival of the language, religion . . . and distinct way of life.”<sup>63</sup>

Though many visitors to Easter Island undoubtedly come to see the Moai, others come for a more comprehensive cultural experience. One scholar attributes “[m]uch of the significance of Rapa Nui . . . not to the remarkable statues but rather to the extraordinary remains of the way of life of the early Polynesian settlers.”<sup>64</sup> Ensuring the survival of the Moai as remnants of ancient traditions, religious beliefs, and other cultural practices of the Rapa Nui people would seem a necessary and basic human right entitled to protection under international law. Merely preserving access to sites for indigenous people may not be enough, however—ensuring some local control over, or at least participation in, the preservation process may be “an essential condition for the enjoyment of their internationally recognized cultural rights.”<sup>65</sup>

## II. EASTER ISLAND PRESERVATION EFFORTS

### A. Preserving the Moai & the Emergence of Sustainable Tourism on Easter Island

There have already been restoration and conservation efforts implemented on Easter Island. About 50 Moai have been restored at 11

---

59. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, pmbl., Nov. 14, 1970, 823 U.N.T.S. 231; See JAMES CUNO, WHO OWNS ANTIQUITY? MUSEUMS AND THE BATTLE OVER OUR ANCIENT HERITAGE 26 (2008).

60. Ana Filipa Vrdoljak, *Self-Determination and Cultural Rights*, in CULTURAL HUMAN RIGHTS 41, 41 (Francisco Francioni & Martin Scheinin eds., 2008).

61. Federico Lenzerini, *Indigenous Peoples’ Cultural Rights and the Controversy over Commercial Use of Their Traditional Knowledge*, in CULTURAL HUMAN RIGHTS 119, 127 (Francisco Francioni & Martin Scheinin eds., 2008).

62. “Indeed, preservation of the cultural identity of peoples represents the central element and simultaneously the very *ratio* of the protection of cultural rights. The cultural identity of any human being is, in fact, shaped by the collective cultural context to which he/she belongs.” *Id.* (emphasis in original).

63. Francesco Francioni, *Culture, Heritage and Human Rights: An Introduction*, in CULTURAL HUMAN RIGHTS 1, 5 (Francisco Francioni & Martin Scheinin eds., 2008).

64. Cleere, *supra* note 38, at 103.

65. FORREST, *supra* note 48, at 141.

sites,<sup>66</sup> but the restoration efforts have only hastened their deterioration:<sup>67</sup> “[r]epairing and replacing Moais upright can cause them to deteriorate faster since they are more exposed than statues that remain face down and buried.”<sup>68</sup> Though some preservation efforts have accelerated deterioration, others yielded promising results: in 2003, five Moai were treated with a sealant to protect against humidity and lichen.<sup>69</sup> Although early results of the treatment were positive, it was simply too expensive for widespread use.<sup>70</sup>

In 2009, the Chilean government and UNESCO developed a plan for sustainable tourism on Easter Island.<sup>71</sup> The plan “aim[ed] to develop tourism strategies that respect the outstanding universal value of the Rapa Nui National Park” by “promot[ing] training and involvement of the local communities . . . in sustainable ecotourism.”<sup>72</sup> Entitled “Training in Sustainable Ecotourism in Easter Island,” the plan was implemented during the second half of 2009 thanks to a large grant by the Government of Japan and supported by a U.S. contribution of \$200,000.<sup>73</sup> According to UNESCO, “[t]he initiative aim[ed] to enable participants<sup>74</sup> to acquire the skills they need for the island’s natural and cultural resource management.”<sup>75</sup> UNESCO officials believe that by balancing the need for heritage preservation with that of community development the program will be able to successfully reduce the negative impact of tourism.<sup>76</sup>

Another preservation project which hoped to reduce the strain on the island’s fragile ecosystem began in 2009.<sup>77</sup> This project, known as the “Integral Management of Tourist Destination Easter Island,” was financed by InnovaChile<sup>78</sup> and introduced by the EuroChile Business Foundation<sup>79</sup>

66. Clark, *supra* note 2.

67. Weissert, *supra* note 3.

68. *Id.*

69. *Id.*

70. *Id.* Preservation estimates are “well into the millions.” Clark, *supra* note 2.

71. *UN and Chile Launch Sustainable Tourism Initiative for Easter Island*, UN NEWS SERVICE (May 29, 2009), <http://www.un.org/apps/news/printnewsAr.asp?nid=30958> [hereinafter *Sustainable Tourism Initiative*].

72. *Id.*

73. *UNESCO Sets in Motion Easter Island Eco-tourism Training Program*, UNESCO (December 6, 2009), [http://portal.unesco.org/geography/en/ev.php-URL\\_ID=11376&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/geography/en/ev.php-URL_ID=11376&URL_DO=DO_TOPIC&URL_SECTION=201.html) [hereinafter *Eco-tourism*].

74. The program will benefit “institutions, businesses and individuals who have involvement in the island’s tourist trade.” *Id.*

75. *Id.*

76. *Eco-tourism*, *supra* note 73.

77. Muller, *supra* note 34.

78. InnovaChile is an initiative that supports research in science and technology as well as entrepreneurship. See <https://csrg.inf.utfsm.cl/twiki4/bin/view/ACS/Innova-Chile> (last visited July 16, 2011).

79. The EuroChile Business Foundation is the Chilean branch of the Enterprise Europe Network, an organization dedicated to the advancement and foreign expansion of businesses. See *Gateway to the World for Small Business*, ENTERPRISE & INDUSTRY ONLINE

and seeks to benefit as many as 289 of the island's small tourism businesses.<sup>80</sup> The program was implemented as a coordinated effort between the Easter Island Tourism Board, Easter Island's Provincial Government, and other organizations.<sup>81</sup> Similarly, additional efforts have focused on the island's limited resources and how they are affected by increased tourism. International Help Fund Australia<sup>82</sup> has been "working to alleviate some of the[] pressures on Easter Island by promoting recycling and composting programs, water sanitation projects and installing composting toilets at the most heavily-visited sites."<sup>83</sup> Since this and other restoration efforts were only recently implemented, their long-term successes or failures have yet to be determined.

### III. DEVELOPING NATIONAL POLICY TOWARD CULTURAL PRESERVATION

#### A. Proposed Reformation of Chilean Cultural Policy: Economic Approaches to Cultural Heritage

Despite the efforts of international relief organizations, the threats to the Moai of Easter Island continue. As one scholar points out, "no matter how unobtrusive the tourist tries to be, some adverse impact may be inevitable, pointing to a need for careful planning and management of tourism projects in indigenous areas."<sup>84</sup> Mass tourism affects every aspect of "cultural enterprise" and "brings with it enormous economic potential."<sup>85</sup> The trend toward an emphasis on the economic potential of cultural heritage<sup>86</sup> suggests this as a logical focal point for the reform and development of cultural heritage policy. First, the host nation must recognize the economic value of the heritage site and should determine which theory of cultural policy as it relates to economics is best suited for that particular country.<sup>87</sup> Developing a domestic economic-based cultural policy begins with applying basic economic concepts such as supply and demand to the national heritage sites.

---

MAGAZINE (Aug. 26, 2010), [http://ec.europa.eu/enterprise/magazine/articles/smes-entrepreneurship/article\\_10558\\_en.htm](http://ec.europa.eu/enterprise/magazine/articles/smes-entrepreneurship/article_10558_en.htm).

80. Muller, *supra* note 34.

81. *Id.*

82. International Help Fund Australia is a nonprofit, nongovernmental organization whose mission is "[t]o collaborate with Pacific Islanders, governments, and businesses to improve the quality of life by developing practical environmental management initiatives as well as economic, cultural, health and education programs and projects that promote ecologically sustainable development and self reliance." *Who We Are*, INT'L HELP FUND AUSTL., <http://www.internationalhelpfund.org/> (last visited July 16, 2011).

83. *Impacts of Tourism*, *supra* note 44.

84. THROSBY, *supra* note 45, at 153.

85. *Id.* at 151.

86. *Id.* at x.

87. *Id.*

### *1. Determining the Value of Cultural Heritage*

Items of cultural heritage such as monuments and archaeological sites must first be identified as an asset having value.<sup>88</sup> Determining the value of heritage is important because the “consumption behavior of individuals is motivated by the value they attach to the goods and services they consume . . . and value to society at large guides . . . the decisions of government.”<sup>89</sup> Although there are “[f]our sources of cultural value [that] can be identified,”<sup>90</sup> this paper focuses on the value derived from the “consumption” of cultural heritage and its “preservation and continuity.”<sup>91</sup>

### *2. Attributing a “Direct Use” Value*

Attributing value to cultural heritage can be achieved through the process of “valuation,” also known as “evaluation.”<sup>92</sup> This process should “underlie[] consideration of policy in any area of public concern” but will be specifically discussed as applied to cultural heritage policy.<sup>93</sup> In his book “The Economics of Cultural Policy,” David Throsby argues that a “full assessment of the economic value must account both for the direct use value as revealed in the markets for cultural goods and services, and the non-use value as estimated by alternative analytical procedures.”<sup>94</sup> This “use value” of cultural heritage is identified as “the value that accrues to individuals, households or firms through the direct consumption of heritage services.”<sup>95</sup> One type of use value of particular interest to monuments and cultural heritage sites is that of their “direct use value,” which Throsby identifies as “accru[ing] to tourists visiting heritage sites” whose “relevant value can be measured by entrance fees, or . . . by travel-cost analysis.”<sup>96</sup> In other words, a particular cultural heritage item’s value may be measured based on how much people are willing to pay to access the site.<sup>97</sup> As of July 2011,

88. *Id.* at 107.

89. *Id.* at 17.

90. THROSBY, *supra* note 45, at 42. The four sources of cultural value identified by Throsby are: “arts production and consumption; cultural identity and symbolism; cultural diversity; and cultural preservation and continuity.” *Id.*

91. *Id.*

92. *Id.* at 17. “The process by which value is assigned to something is referred to as *valuation* or *evaluation*, described . . . as the process of ‘estimating, ascribing, modifying, affirming and even denying value.’” *Id.* (emphasis in original). The word “*valorization*” is also used occasionally and refers to “a process by which value is imparted to some object as a result of deliberative action or external event, such as the increase in value accorded to sites of cultural heritage when they are added to the World Heritage List.” *Id.* (emphasis in original).

93. THROSBY, *supra* note 45, at 17.

94. *Id.* at 20.

95. *Id.* at 109.

96. *Id.*

97. *Id.* at 19.

accommodations alone on Easter Island cost several thousands of dollars, while flights to Easter Island from the United States cost thousands more.<sup>98</sup>

Another way the value of a cultural heritage site might be established is to determine the characteristics of that particular site and how they contribute to its value. Ascribing economic value to a monument or site “requires a recognition of the fact that such goods fall into the category of *mixed goods*, i.e., goods that have both private-good and public-good characteristics.”<sup>99</sup> These characteristics can help determine the value of cultural heritage as an asset, but a comprehensive valuation requires an examination of “non-market benefits” as well.<sup>100</sup> Throsby identifies three “sources” of these non-market benefits as they relate to cultural heritage: *existence* value,<sup>101</sup> *option* value,<sup>102</sup> and *bequest* value,<sup>103</sup> collectively known as “non-use values.”<sup>104</sup> He argues that *all three* of these sources must be addressed to establish an accurate economic value.<sup>105</sup>

### 3. The Difficulty With Economic Measurement

Though Throsby suggests that a way to measure these values is to determine how much people are willing to pay to access the site from which they will derive these value benefits,<sup>106</sup> the exact value of cultural heritage can be hard to measure. Part of the difficulty in measuring the value of cultural heritage is due to the fact that sites “yield *cultural value* in addition to whatever commercial value they may possess, and that this cultural value may not be fully measurable in monetary terms.”<sup>107</sup> Considering the diverse

---

98. A check of the Explora website listed single accommodation rates ranging from \$3,360 to \$4,800 U.S. for three nights, which includes roundtrip airport transfers, three meals per day, as well as daily island explorations. See <http://www.explora.com/explora-rapanui/rates-and-conditions/> (last visited July 16, 2011). Sample airfare found on the popular travel website Kayak.com listed the cheapest roundtrip airfare from Chicago to Easter Island at \$1,570 per person on LAN Airlines (fare found July 16, 2011 on [www.kayak.com](http://www.kayak.com) with sample travel dates in August 2011 chosen at random).

99. THROSBY, *supra* note 45, at 19 (emphasis in original). Public goods are described by Throsby as “those whose benefits accrue to everyone in a given community,” while private goods are “those whose benefits accrue entirely to private agents.” *Id.*

100. *Id.*

101. Existence value refers to the value that people attribute to the arts “simply because they exist.” *Id.*

102. Option value refers to peoples’ retention of the option to “consume the arts at some time in the future.” *Id.*

103. THROSBY, *supra* note 45, at 19 (emphasis in original). Bequest value refers to the belief that “it is important to pass the arts on to future generations.” *Id.*

104. *Id.* at 110 (emphasis in original).

105. *Id.* at 19.

106. *Id.*

107. *Id.* at 16 (emphasis added). “In other words, cultural goods and services are valued . . . for social and cultural reasons that are likely to complement or transcend a purely economic evaluation. These reasons might include spiritual concerns, aesthetic considerations, or the contribution of the goods and services to community understanding of

benefits heritage sites can bring, Throsby ultimately recognizes that “[i]dentifying cultural value is one thing, measuring it is another” and acknowledges that “it is hard to see how the value of identity can be expressed in financial terms at all.”<sup>108</sup>

#### 4. *Maximizing the Value of Cultural Heritage*

Once a host nation assesses a value to its cultural heritage, it must focus on maximizing that value while simultaneously preserving and conserving the sites themselves. One such way to maximize the value yet minimize the effects of mass tourism might be to establish a “threshold carrying capacity.”<sup>109</sup> This involves identifying the maximum number of tourists in a given period—per day, per month, etc.—that a monument or heritage site can sustain without becoming at risk.<sup>110</sup> This “threshold carrying capacity” concept is already in use for other types of endangered areas<sup>111</sup> and could likely be implemented as part of a cultural heritage preservation policy with relative ease.<sup>112</sup> Many administrators that already implement a threshold carrying capacity do so by simply imposing “quantitative controls” on the admission to sites.<sup>113</sup> The only real foreseeable difficulty that may arise is in determining the particular threshold for each heritage site.<sup>114</sup> Leaving the threshold number too low may cost the island’s businesses valuable tourism revenue. On the other hand, setting the threshold number too high will inevitably result in continued exploitation and endangerment of the site.

#### 5. *Cultural Heritage as a Commodity*

Other scholars suggest effective cultural heritage preservation can be achieved by viewing heritage as a commodity. In his book “International Law and the Protection of Cultural Heritage,” Craig Forrest states that “[a]ny cultural heritage, irrespective of its origin, may be considered as

---

cultural identity” *Id.* “Cultural value in this context is a multifaceted concept reflecting qualities such as the aesthetic, symbolic, spiritual or historical values attaching to a particular item.” THROSBY, *supra* note 45, at 20.

108. *Id.*

109. *Id.* at 152.

110. *Id.*

111. “The concept has been used in connection with natural heritage sites such as national parks, coral reefs, [and] wilderness areas.” *Id.*

112. *Id.*

113. THROSBY, *supra* note 45, at 152.

114. *Id.*

Local and national governments that are keen to exploit the economic potential of the mass tourism market will frequently engage the cultural sector as one of the drawcards for attracting visitors, but in doing so they need to be aware of both the positive and negative impacts that exposure to mass tourism can bring for individual businesses in the arts and cultural industries.

*Id.*

being of value to the State, who directly benefits from its presence as a tourist attraction.”<sup>115</sup> Forrest’s approach highlights a different perspective on cultural heritage: since heritage is viewed as having several types of economic value,<sup>116</sup> its increasing relevance in the public policy sphere can lead to the “commodification of heritage.”<sup>117</sup> The process of commodifying cultural heritage “involves the re-interpretation and packaging of existing heritage resources as new heritage products to be used by contemporary society and which in most cases produces direct economic benefits.”<sup>118</sup>

In fact, it “may be possible to raise particular goods to a level above that of a commodity when those goods are considered of such importance that they are ‘priceless’ and not susceptible to exchange.”<sup>119</sup> Elevating cultural heritage beyond a commodity can also add legal value to the site.<sup>120</sup> The attribution of legal value in turn further “elevat[es] this selected material above other material”<sup>121</sup> and the “development of legal protection regimes has acted to then reinforce and bolster . . . cultural heritage management in general.”<sup>122</sup> Despite this elevation and the increasing importance of cultural heritage relative to other industries,<sup>123</sup> Forrest cautions against the liability of elevating cultural heritage beyond the level of a commodity: “attempt[s] to ‘protect’ cultural heritage by its elevation to a legal position above that of a commodity . . . only results in [the] market going underground.”<sup>124</sup> From this perspective, *overprotection* of cultural heritage appears potentially as hazardous to the monuments and heritage sites as under-protection.

### 6. The “Urbanization” of Easter Island

Whether viewed as an asset having value, a basic commodity, or something elevated triggering increased legal protection, a common theme among the discussions of cultural policy economists is the application of basic economic principles to cultural heritage policies. Although specifically focused on urban conservation and planning as they relate to cultural heritage, many of the principles outlined by scholars Harry

---

115. FORREST, *supra* note 48, at 7.

116. “These objects are not only economically valued in terms of the direct price paid for their acquisition, but also in terms of insurance premiums and evaluations, taxation values and security costs.” *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 6.

120. *Id.* at 18.

121. Forrest, *supra* note 48, at 18.

122. *Id.* at 19.

123. “[C]ultural heritage is no longer a burden to national budgets but an important industry both in itself and to other industries, such as biomedicine, sustainable agriculture and international tourism.” *Id.* at 7.

124. “The protection of cultural heritage in this way has led to a black market of a billion dollars.” *Id.* at 6.

Coccosis and Peter Nijkamp are equally applicable to conservation and planning strategies in less-urbanized settings such as Easter Island.<sup>125</sup> Coccosis and Nijkamp emphasize the importance of recognizing that cultural heritage “as with most artifacts [goes] through a long-term life cycle in terms of physical condition and quality. Then society has to face the choice between development and conservation.”<sup>126</sup>

The increased tourist interest in Easter Island has led to the recent construction of resorts, schools, and museums mentioned previously in this paper.<sup>127</sup> This expansive development in the tourist sector could be viewed as one type of “urbanization” of Easter Island. Like Throsby, Coccosis and Nijkamp recognize the potentially devastating effects of increased development: “[w]hile it is generally acknowledged that urban development means the creation of new assets in terms of physical, social and economic structures, it is at the same time recognized that each development process often also destroys traditional physical, social and cultural assets derived from our common heritage.”<sup>128</sup> Although monuments and other sites do in fact “represent part of the historical, architectural, and cultural heritage,” aside from tourist revenues they “do not usually offer a direct productive contribution to the economy.”<sup>129</sup> These competing interests may require that a different sort of economic policy be applied to heritage.

### *7. Assessing the Chosen Economic Strategy*

In order to weigh the value of monuments and sites and their influence on cultural heritage, Coccosis and Nijkamp advocate for the use of “impact assessments.”<sup>130</sup> Also referred to as “impact analyses,” Coccosis and Nijkamp identify these as a “necessary component of any meaningful economic evaluation methodology.”<sup>131</sup> In order to perform an effective impact analysis, a host nation must consider not only multiple criteria surrounding cultural heritage, but “all relevant consequences of all feasible alternatives.”<sup>132</sup> This allows the nation to determine which policy is best suited for the specific heritage sites located within its boundaries as well as identify the reasons why other policies may not be the best fit.

---

125. See H. Coccosis & P. Nijkamp, *Urban Conservation and Planning, in* PLANNING FOR OUR CULTURAL HERITAGE (Harry Coccosis & Peter Nijkamp eds., 1995).

126. *Id.* at 3.

127. See *supra* text accompanying note 37.

128. Coccosis & Nijkamp, *supra* note 125, at 4.

129. *Id.*

130. *Id.* at 6.

131. *Id.* at 8.

132. *Id.* at 13.

At the heart of the “multi-dimensional nature of a compound evaluation of the cultural built heritage”<sup>133</sup> is the “need for an integrated cultural and functional economic urban development strategy, in which economic, social, architectural, and historical aspects” are addressed.<sup>134</sup> The form of multi-dimensional theory advocated by Lichfield, which is perhaps best applied to Easter Island development, is the “community impact evaluation,” a modification of the traditional Cost Benefit Analysis.<sup>135</sup> Using a “community impact evaluation” method of Impact Analysis allows the host nation to focus on both the economic impact of development and “all impacts affecting the welfare of that community, thus also embracing social, natural environment, hazard, etc.”<sup>136</sup> When determining the impact of development on individual sites and monuments, the *value* of that particular site or monument must be considered. Each site’s value is based on many factors,<sup>137</sup> and using this “multiple criteria analysis” demonstrates the site’s value “not only in the case of ‘hard’ (cardinal) information, but also in the case of ‘soft’ (qualitative) information.”<sup>138</sup>

#### 8. Implementation of the Reformed Policy

Once a site has been valued and its impact upon the heritage is analyzed, the host nation must devise and implement policies for cultural resource management that will ensure preservation of the heritage. First, the host nation should consider “why the resource has been set aside for special treatment, its nature and significance, and the contemporary setting of the site.”<sup>139</sup> Next, “[o]nce the decision is made to manage a resource actively, a management plan should be prepared that documents the rationale for the treatment and describes in detail how the management is to be

---

133. N. Lichfield, *Community Impact Analysis for the Cultural Built Heritage*, in PLANNING FOR OUR CULTURAL HERITAGE 39, 46 (Harry Coccossis & Peter Nijkamp eds., 1995). “Cultural Built Heritage” or “CBH” is defined as “that quantitatively minor part of the built environment which the contemporary generation resolves has cultural value, and accordingly merits special protection from erosion, in order that it can be better enjoyed by the current generation and passed on to the future.” *Id.* at 39.

134. Coccossis & Nijkamp, *supra* note 125, at 13.

135. Lichfield, *supra* note 133, at 46.

136. *Id.* at 47. “[T]he community in question is defined in relation to the extent (in geography and time) of the impact which is under consideration. In conservation this could range from the quite local (where the monument or site has only village value) to the international (where a world heritage site is concerned).” *Id.*

137. Coccossis & Nijkamp, *supra* note 125, at 13. “Its value for society is determined by various attributes such as age, uniqueness, artistic value, style period, integration in urban structure, and economic revenues.” *Id.*

138. *Id.*

139. Francis P. McManamon & Alf Hatton, *Introduction: Considering Cultural Resource Management in Modern Society*, in CULTURAL RESOURCE MANAGEMENT IN CONTEMPORARY SOCIETY 1, 8 (McManamon & Hatton eds., 2000).

implemented.”<sup>140</sup> The final step toward “[e]ffective management of cultural resources requires decisions about how the resources can be best protected, preserved, utilized and interpreted.”<sup>141</sup>

Some argue that modern cultural resource management extends beyond archaeological resources to the management of all culture-related activities at all levels of government.<sup>142</sup> Of course, the specific culture-related activity with which this paper is concerned is that of cultural tourism. The cultural tourism phenomenon “has developed a distinct section within its broader sphere of interest which deals with the management of travel, access to, marketing and interpretation of heritage sites.”<sup>143</sup> In light of the growing mass tourism industry, modern cultural resource management recognizes that managing large scale visitation to cultural sites has become increasingly important in the effective management of those sites.<sup>144</sup>

### 9. *Local versus National Policy Management*

The ultimate objective of modern cultural resource management is to minimize “[t]he impacts of the visitors . . . while enhancing visitor experiences.”<sup>145</sup> Scholars Francis P. McManamon and Alf Hatton contend that while cultural resource management must be implemented locally, it must also have strong national legal and financial support.<sup>146</sup> Effective cultural resource management, they argue, must not only clearly define what the cultural resources are, but also consist of a minimum degree of national intent to preserve the heritage, political support, and agency cooperation.<sup>147</sup> McManamon and Hatton also advocate the unification of cultural resources policy with as many other public policy objectives as possible to create a stronger, heritage-oriented policy.<sup>148</sup> Simply aligning the

140. *Id.*

141. *Id.*

142. “[A]ll the activities covered by the various terms include both policy making at local, regional, national and international levels of government, as well as the day-to-day business of managing both the organizations that administer ‘heritage’ and the cultural resources themselves.” *Id.* at 3.

143. *Id.* at 5.

144. *Id.*

145. McManamon & Hatton, *supra* note 139, at 5. “The visitor experience must be accomplished in such a manner and by such means as will leave the primary resources unimpaired for the continued enjoyment and multiple experience use of future generations.” *Id.*

146. *Id.* at 6.

147. *Id.* at 6-7.

148. “The greater the number of other interests, such as housing, revenues, pipelines, etc., that can be required to take into account the protection and preservation of cultural resources as part of their activities, the stronger will be the public policy for cultural resources. . . . Likewise, the wider the range of circumstances in which the protection and preservation of cultural heritage sites must be considered, the stronger will be the public policy.” *Id.* at 7.

policies won't be enough: "[u]nless equal consideration or priority is given to cultural resource protection and preservation as a result of public policy, the policy is not effective."<sup>149</sup>

### 10. Agency Cooperation

Agency cooperation may also be one factor in determining the success or failure of cultural resource management. McManamon and Hatton argue that "[m]inistries responsible for heritage preservation and those responsible for economic development, tourism, law enforcement and other related areas must work cooperatively" to ensure the cultural resource management policies are "implemented forcefully and diligently."<sup>150</sup> Similarly, and perhaps the most vital aspect of public policy as it relates to cultural resource management, is *public* involvement: "[l]ocal attitudes about preservation of historic structures is recognized as a key aspect for the preservation of these kinds of cultural resources."<sup>151</sup> Local involvement, both political and community-based, is essential for the success of cultural resource management policy.<sup>152</sup>

### 11. Community Support for Preservation

In fact, McManamon and Hatton emphasize the importance of local support: "[c]ommunities residing near or among the locations of cultural resources have important, sometimes critical, influences on the protection and preservation of these resources."<sup>153</sup> Perhaps the best way to garner local public support is to portray the cultural heritage as a thing of value and source of not only economic revenue but community pride, as well as cultural resources as "precious things to be preserved, protected and interpreted."<sup>154</sup> The local community could also be persuaded to "envision the resources as linked personally or culturally to them and as resources . . . that are to be protected as part of their community's heritage"<sup>155</sup> by creating a sense of community identity.<sup>156</sup>

---

149. *Id.*

150. McManamon & Hatton, *supra* note 139, at 7.

151. *Id.* at 11.

152. *Id.* at 10. "The actions of local officials and local communities increasingly are of importance in cultural resource preservation, protection and interpretation." *Id.*

153. *Id.* For specific discussions of how local populations have responded to threats to their cultural heritage, see McVeigh, *supra* note 46.

154. McManamon & Hatton, *supra* note 139, at 12.

155. *Id.* at 11.

156. *Id.* at 12. "Opportunities for local communities to learn about cultural resources and how they are studied and preserved, help to maintain a constituency that will support these activities, even to build larger and stronger public support." *Id.*

McManamon and Hatton suggest four methods to “develop supportive local preservation attitudes and actions”: education,<sup>157</sup> development controls,<sup>158</sup> integration,<sup>159</sup> and “partnerships in resource stewardship.”<sup>160</sup> While each of these methods plays an important role in local cultural heritage preservation, education is perhaps the best way to ensure local support for cultural heritage management. In fact, leaders in cultural heritage management and many related fields “have embraced public education and outreach as an important tool for preservation.”<sup>161</sup> While information specific to the local community and its heritage are important, public education initiatives should also focus on “general points related to the value of cultural resources, the care that must be used when studying or treating or using these resources, and the often fragile, sometimes non-renewable, nature of cultural resources.”<sup>162</sup>

Once the local public has been educated in their heritage and the importance of its preservation, the next step is to involve local citizens in the actual process of preservation. As McManamon and Hatton point out, locals are “among the most effective means of working for the protection of sites in local development schemes and land use plans.”<sup>163</sup> After the public has been educated and involved in the preservation process, the cultural heritage preservation efforts should become assimilated or “integrated” into overall local development plans. Viewing preservation as separate and distinct from the entire community development may make it more difficult to see it as an integral part of the whole. Ultimately, “archaeological sites should be considered and incorporated into the overall cultural resource protection and preservation programme of a nation rather than as distinct from . . . other kinds of cultural resources.”<sup>164</sup> Perhaps the most valuable result of public education and integration into the preservation process, coupled with the cooperation of local and national agencies, is the ability of the local community to see the fruits of its labor. Whether it results in the preservation of a monument or heritage site or the conservation of natural cultural resources, local citizens and communities can see tangible evidence of the difference they have made.

---

157. They suggest both formal and informal education programs. *Id.*

158. “[N]ational and local statutes or development controls.” *Id.*

159. “[T]he integration of resource interpretation and preservation into local economic development programmes.” McManamon & Hatton, *supra* note 139, at 12.

160. “[P]artnerships in resource stewardship that link national, state and regional preservation programmes with local communities.” *Id.*

161. *Id.*

162. *Id.* at 12-13.

163. *Id.* at 13.

164. *Id.* at 16.

## B. Necessity of International “Fallback Provisions”

### 1. *Been There, Done That*

One of the ways McManamon and Hatton have identified to develop local support for preservation projects is to establish “partnerships in resource stewardship.”<sup>165</sup> By creating an atmosphere of shared responsibility and local and national cooperation, they believe that cultural preservation goals can be more quickly and effectively realized. When it comes to Easter Island, however, the opposite appears true: Some of the current and former preservation efforts on Easter Island identified *supra* do seem to have incorporated McManamon and Hatton’s “four methods” of public participation. The UNESCO eco-tourism project on Easter Island, for example, set as one of its objectives “to enable participants to acquire the skills they need for the island’s natural and cultural resource management.”<sup>166</sup>

Another goal is to encourage and facilitate “community development of a resource management plan for sustainable tourism . . . with approval from local officials and counterparts.”<sup>167</sup> Once these plans are developed and approved, the UNESCO program would expand to oversee “implementation of micro eco-tourism and sustainable development programs.”<sup>168</sup> This joint effort by UNESCO and the local Easter Island community was heralded by Chilean President Michelle Bachelet as “an outstanding initiative to transform the community into a key protagonist that values and fosters its own heritage”<sup>169</sup> and for allowing “the local community [to take] a leading role in the enhancement and promotion of their own heritage.”<sup>170</sup>

While local and national cooperation sounds good in theory, it has proven difficult in practice. The 2003 experiment discussed earlier which treated five Moai with a sealant not only eventually proved too costly, but experts from both Japan and UNESCO who jointly spearheaded the project “complained that problems with preservation [on Easter Island] are exacerbated by the fact that the island must report to Chile.”<sup>171</sup> While part of the difficulty arose due to the lack of control and involvement of the Rapa Nui people,<sup>172</sup> the Mayor of Easter Island’s only town, Hanga Roa, has stated the physical distance between the mainland and its island province is also to blame. “They don’t leave us room to be creative” he told USA

---

165. McManamon & Hatton, *supra* note 139, at 12.

166. *Eco-tourism*, *supra* note 73.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Sustainable Tourism Initiative*, *supra* note 71.

171. Weissert, *supra* note 3.

172. *Id.*

Today. “Everything is in Santiago, where so many have never even visited the island.”<sup>173</sup>

## 2. *A National Economic Policy toward Cultural Preservation Might Not be Enough*

Regardless which theory of economics ultimately underlies Chile’s reformed attitude toward cultural preservation, the UNESCO experiment serves as a reminder that often there are logistical problems with solely nationalist policies and preservation efforts. Although the host nation may have “progressively assumed a primary responsibility for the protection, at law and . . . in practice, of the cultural heritage, [it] does not mean that other entities, societies, and common citizens have been exonerated from the positive duty of caring, protecting and maintaining cultural property.”<sup>174</sup> Similarly, though the duty of heritage preservation has traditionally been reserved to the states, “global threats to cultural heritage [have] necessitated the creation of international systems to assist States in their primary protective role.”<sup>175</sup> As cultural heritage scholar Ugo Mifsud Bonnici observed, “[w]hilst the concept of special protection through law to the cultural heritage was evolving in the individual nation states, it was also becoming evident that this protection should also be extended to the sphere of International Law, public and private.”<sup>176</sup>

### IV. INTERNATIONAL POLICY TOWARD CULTURAL PRESERVATION

#### A. Development of the Current International Legal Framework and How It Fails the World’s Heritage

Despite acknowledging that international involvement in heritage preservation would clearly benefit endangered sites, developing cultural heritage beyond the national level has been slow.<sup>177</sup> Though many countries have developed heritage preservation plans “within their own national boundary . . . the Conventions, Charters and Declarations which now form the basis of International Cultural Heritage protection Law have arrived, step by step, only during the twentieth century.”<sup>178</sup>

---

173. *Id.*

174. BONNICI, *supra* note 52, at 49.

175. FORREST, *supra* note 48, at 17.

176. BONNICI, *supra* note 52, at 29.

177. *Id.* at 167.

178. *Id.*

### 1. UNESCO Framework

Scholars have long identified the importance of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) to preservation efforts. Founded in 1945, UNESCO is the arm of the United Nations entrusted with the duty of preserving cultural heritage.<sup>179</sup> As such, it has “fallen to UNESCO to provide the legal framework for heritage protection, a function that is central to preservation around the world.”<sup>180</sup> In fact, “the recognition that the protection of cultural heritage is the common concern of humankind[] provides the basis for a principle of international co-operation, best implemented through the co-ordinating function of UNESCO.”

Although the earliest recognition of the special protection enjoyed by cultural heritage under international law came from the 1907 Hague Convention,<sup>181</sup> in 1967 UNESCO members met in Mexico City to discuss “what they understood cultural policy to mean, and describe[] the practice of cultural policy in their own country.”<sup>182</sup> This meeting set the stage for and then spawned a series of reports while demonstrating changing attitudes toward the protection of cultural heritage. Though there is “no shortage of legal texts dealing with culture and cultural rights,”<sup>183</sup> perhaps the most important work directed at preserving cultural property was the Convention Concerning the Protection of the World Cultural and National Heritage, otherwise known as the World Heritage Convention.<sup>184</sup>

An “international regulatory arrangement[] which provide[s] incentives to governments to act responsibly towards globally significant heritage sites in their care,”<sup>185</sup> the World Heritage Convention was passed in response to the “merging of two separate movements: the preservation of cultural sites and the conservation of nature.”<sup>186</sup> Adopted in 1972 by the UNESCO General Conference and entered into force in 1975,<sup>187</sup> the purpose of the

---

179. For a thorough discussion of the founding and history of UNESCO, see *The Organization's History*, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (last visited Sept. 29, 2011); see also Lyndel V. Prott, *UNESCO International Framework for the Protection of Cultural Heritage*, in *CULTURAL HERITAGE ISSUES: THE LEGACY OF CONQUEST, COLONIZATION, AND COMMERCE* 257 (James A.R. Nafziger & Ann M. Nicgorski eds., 2010).

180. *Id.*

181. BONNICI, *supra* note 52, at 29.

182. THROSBY, *supra* note 45, at 1.

183. Francioni, *supra* note 63, at 2.

184. Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151 (entered into force Dec. 15, 1975) [hereinafter World Heritage Convention], available at <http://whc.unesco.org/en/conventiontext>.

185. THROSBY, *supra* note 45, at 49.

186. CUNO, *supra* note 59, at 44.

187. World Heritage Convention, *supra* note 184.

convention was to “recognize heritage items in particular countries that [were] of ‘universal significance’ and seek to ensure their conservation and proper management.”<sup>188</sup> By signing the Convention, “each country pledges to conserve not only the World Heritage Sites situated on its territory, but also to protect its natural heritage’ and ‘integrate the protection of the cultural and national heritage’” into local preservation efforts.<sup>189</sup>

Another purpose of the Convention was to “encourage the establishment of an inventory of endangered sites.”<sup>190</sup> Enter the World Heritage List, an international database of sites deemed to have worldwide cultural significance. To be included on the List, heritage sites must be nominated and, if the individual site meets certain criteria,<sup>191</sup> the nomination is either accepted or rejected by a representative committee.<sup>192</sup> There are many benefits for countries to have their heritage sites chosen for inclusion on the World Heritage List, including international recognition, which may in turn “make it easier for governments to allocate funds to support the capital or operating expenditures involved” in their management.<sup>193</sup> Listing on the World Heritage List not only creates notoriety and economic advantages for the site, it also “carries with it responsibilities for ensuring the preservation of the site and for the regulation of its management such that the natural or cultural values that were the justification for its listing are properly maintained.”<sup>194</sup>

---

188. THROSBY, *supra* note 45, at 126. The conference recognized “that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.” World Heritage Convention, *supra* note 184, at 1. Most notably, the conference also considered that “deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of all the nations of the world.” *Id.*

189. CUNO, *supra* note 59, at 45.

190. *Id.*

191. The particular criteria for nomination and selection to the UNESCO World Heritage List can be found at <http://whc.unesco.org/en/criteria> (last visited Sept. 29, 2011).

192. THROSBY, *supra* note 45, at 119 (“The main mechanism that public authorities around the world use to regulate the built heritage is listing, i.e., the establishment of lists of properties within a given jurisdiction . . . that are considered to be of cultural significance. Criteria are generally laid down to specify the characteristics that define cultural significance such that any property meeting these criteria will be eligible for inclusion on a particular list.”); *Id.* at 126 (“Countries nominate particular buildings, collections of buildings, locations, etc., for inscription onto the List, and their acceptance or otherwise is determined by a representative committee.”).

193. *Id.* at 126, 127.

194. *Id.* at 127.

## 2. *The Framework's Failure*

Easter Island was designated a World Heritage Site in 1995 when it was added to the listing category of “cultural landscape.”<sup>195</sup> With its listing came recognition of the island’s “ecological and patrimonial value” as significant to the world’s heritage.<sup>196</sup> As Throsby points out, however, “[l]isting can on occasion be a double-edged sword, [such as] when it attracts such an increase in tourist numbers that threshold visitation levels are exceeded and damage to the site ensues.”<sup>197</sup> As discussed in the section entitled “MASS TOURISM AND THE WORLD’S HERITAGE: *The ‘Catch-22’*,” this is precisely what happened on Easter Island, and led to the increased and continued threats to the Moai. As an UNESCO World Heritage Site, Easter Island is entitled to the full protection of the 1972 Heritage Convention and its predecessors. Therein, however, lies the problem: “International Conventions themselves do not have the force of law.”<sup>198</sup> The conventions are merely “awareness-raising Convention[s]”: they cannot prevent destruction of cultural heritage nor guarantee its protection or preservation.<sup>199</sup>

Among the “fundamental principle[s] of the law governing conventions” are that conventions are binding to the parties and must be executed in good faith.<sup>200</sup> When a State chooses to enter into an International Convention, it “agrees that it will assume certain international obligations in regard to [its] cultural heritage and which will require it to act (or refrain from acting) in certain ways.”<sup>201</sup> These conventions are “essentially ‘law making,’ or ‘standard setting’ conventions in the sense that they are intended to have affect [sic] generally and to introduce into international law new norms.”<sup>202</sup> As such, however, the UNESCO conventions do not actually provide any protection for cultural heritage; instead, “[i]t is the States Parties to the Conventions who provide the protection for cultural heritage through the implementation of the convention in good faith.”<sup>203</sup>

Since the UNESCO Conventions themselves don’t offer heritage protection, Forrest Argues they are more like a contract because the Conventions “create[] mutual obligations between each state that is a party . . . and each other State Party,” and “should one State breach its obligations under the Convention, the State which has thereby suffered from the breach

---

195. *Crib Sheet*, *supra* note 1.

196. Muller, *supra* note 34.

197. THROSBY, *supra* note 45, at 127.

198. CUNO, *supra* note 59, at 43.

199. *Id.* at 45.

200. FORREST, *supra* note 48, at 48.

201. *Id.*

202. CUNO, *supra* note 59, at 49.

203. *Id.* at 48.

may seek a remedy against the other State.”<sup>204</sup> Regardless of whether viewed as a contract or an otherwise binding agreement, there is no clear way to internationally enforce the Convention.<sup>205</sup> Conventions are implemented when ratified by individual nations who then pass enforcing legislation—legislation with only “national jurisdiction.”<sup>206</sup> In the event any State or group of States “contravene the terms of the national legislation, they can only be held accountable locally, *not* internationally.”<sup>207</sup> It is this lack of “teeth” that has failed the world’s heritage. Unless and until existing International Agreements become enforceable *internationally*, their fate lies in the hands of national governments, and their status as “convention[s] that can be ignored” remains.<sup>208</sup>

B. Proposed Reformation of International Cultural Policy:  
Enforcement, Intervention and Appointment

Though drafted and implemented with the best intentions, it has become clear that the existing international legal framework is insufficient to protect the world’s heritage. Many believe it is “time to question whether the nation-state bias of UNESCO and its Conventions has proven to be a help or hindrance to the protection of the world’s cultural heritage.”<sup>209</sup> UNESCO’s failure to protect heritage has led many scholars and academics to believe that some action is now necessary.<sup>210</sup> Much of the current debate surrounding the protection of cultural heritage at the international level arises in the context of ‘*what sort of action is required?*’

First, the host nation should be given the opportunity to protect its own heritage through national preservation policies and efforts. This falls within the current international legal framework. Where this framework falls short, however, is in failing to provide for international recourse if the host nation’s policies and practices have failed and the heritage is endangered as a result. It is in such circumstances, where the host nation has first been given every opportunity to protect its own heritage, where enforcement by way of international intervention (enforcement?) becomes necessary.<sup>211</sup> Unfortunately, “none of the existing treaties specifically authorizes a right of intervention in the national policies of a host state which fails to provide adequate protection for culturally important property.”<sup>212</sup>

---

204. *Id.* at 49.

205. *Id.* at 27.

206. *Id.*

207. *Id.* (emphasis added).

208. CUNO, *supra* note 59, at 27, 28.

209. THROSBY, *supra* note 45, at 153.

211. M. Catherine Vernon, *Common Cultural Property: The Search for Rights of Protective Intervention*, 26 CASE W. RES. J. INT’L L. 435, 448 (1994).

212. *Id.* at 455.

### 1. *The Right of Intervention*

The right to intervene is not a new concept. Over a decade before the dramatic increase in tourism on Easter Island threatened the Moai, there were proposals for action which could have saved them. In 1992, the Italian government “proposed that U.N. inspectors monitor the world’s cultural heritage, and that the international community share responsibility for cultural sites on UNESCO’s World Heritage List” but soon “withdrew the proposal when it met stiff opposition from the Executive Board of UNESCO.”<sup>213</sup> Though the idea was rejected nearly twenty years ago, recent failures to protect cultural heritage, such as that which led to the destruction of the Bamiyan Buddhas by the Taliban,<sup>214</sup> now “provide a basis for the argument that the current protective regime, which does not authorize intervention, should be improved upon by adding the right of intervention.”<sup>215</sup>

As indicated, the right of intervention would be regarded as a virtual last resort, invoked only in the direst situations. As they currently exist, international conventions require states to agree to protect their own cultural heritage.<sup>216</sup> While still imposing this obligation, future conventions would go even further—requiring states to consent to intervention in the event their national policies fail.<sup>217</sup> The authority for intervention would be clearly stated in the proposed text of any future conventions, thereby requiring nations to consent to UNESCO’s (or whichever other organization or nation is so chosen by the delegates) right to intervene as a condition of adoption and ratification.

There have been recent glimpses of a possibly growing acceptance toward the idea of international intervention. The Universal Declaration on Cultural Diversity was adopted by the UNESCO General Conference in 2001<sup>218</sup> and outlined such cooperative ventures but ultimately was little more enforceable than its predecessors.<sup>219</sup> UNESCO members, recognizing a declaration alone would be insufficient, began the process of forming a “new international treaty that would be established and implemented through the United Nations systems and that would carry with it all the authority the world body could muster.”<sup>220</sup> This in turn led to the adoption

---

213. *Id.* at 444.

214. “This is the organization that by the terms of its charter had no grounds on which to act to prevent the Taliban from shooting rockets at the Bamiyan Buddhas.” CUNO, *supra* note 59, at 148.

215. Vernon, *supra* note 211, at 440.

216. FORREST, *supra* note 48, at 48.

217. *Id.* at 49.

218. Universal Declaration on Cultural Diversity, UNESCO, Res. 25, 31st Sess., UNESCO Doc. 31 C/25 (Nov. 2, 2001), *available at* <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>.

219. THROSBY, *supra* note 45, at 175.

220. *Id.*

and ratification of the Cultural Diversity Convention in 2007<sup>221</sup> which “pays particular attention to the need for sustainable culture and economic development . . . [and] deals with threats . . . by affirming the right of countries to take protective action if vulnerable forms of cultural expression are in danger of extinction or serious curtailment.”<sup>222</sup> This convention also does not go far enough to ensure the protection of the endangered world heritage.

Once a right to intervention is established, the permissible scope of that intervention must also be determined. The nationalist traditions of the existing UNESCO conventions have recognized the authority of nation-states to control their own heritage. When a host nation fails to protect its heritage, however, there must be a method by which to enforce the international agreement in which the host nation became obligated to preserve it. This method arises through intervention and the delegation of responsibility for the heritage. Among the rights of control given to the nation states under current legal framework is the right of delegation: “[t]he state can delegate the management or the custody, maintenance and exhibition of objects of cultural value to other entities.”<sup>223</sup> UNESCO or other international body will not necessarily be required to physically intervene, though certainly if that is necessary to protect the heritage site it would be within its power to do so; instead, the designated international monitoring body will assume control over the preservation and protection efforts until the host nation is able to show it is once again capable of managing its own heritage.

## *2. Appointing a Heritage Trustee*

The “right of delegation” serves as the authority upon which UNESCO may demand consent to intervene. There is already national precedent for such international action; similar policies are currently in place in Japan, where “in cases in which an owner cannot be located, damages or fails to adequately protect a designated cultural property . . . the government [has] the authority to name a custodian . . . for the cultural property.”<sup>224</sup> The idea of an “international trusteeship” was similarly broached by James Cuno in his book “Who Owns Antiquity?” but he goes on to acknowledge such is

---

221. U.N. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO General Conference, 33<sup>rd</sup> Session, Paris, 20 Oct. 2005, available at <http://www.unesco.org/new/en/culture/themes/cultural-diversity/cultural/expressions/the-convention/convention-text/> (last visited Sept. 30, 2011).

222. THROSBY, *supra* note 45, at 179.

223. BONNICI, *supra* note 52, at 45.

224. WHO OWNS THE PAST?: CULTURAL POLICY, CULTURAL PROPERTY, AND THE LAW 334 (Kate Fitz Gibbon ed., 2005).

already the function of UNESCO and highlights many of the shortcomings addressed elsewhere in this paper.<sup>225</sup>

Though the idea of an internationally enforceable right of intervention has been proposed (and subsequently rejected) for decades, the fact remains true that there have been no workable alternatives in place and the world's heritage remains in danger. Without any realistic alternatives being implemented, intervention remains the best option for heritage preservation. As such, international interference "in the form of protective intervention becomes justifiable" when "a nation is not fully equipped to manage common cultural property located within its territorial boundaries."<sup>226</sup> Actually implementing an international trusteeship-based intervention policy, however, may depend on "increased international advocacy for a team of knowledgeable cultural property advisors with an internationally recognized right to enter, inspect, recommend, and implement protective action for the common cultural heritage."<sup>227</sup>

### C. A Word of Caution

Lurking in the shadows, however, are the "notions of traditional private property rights under domestic law, and the concept of territorial sovereignty under international law . . . which support the right to exclude anyone or anything from interfering with a recognized property right."<sup>228</sup> It is this delicate balance between common cultural heritage rights—the rights to access and enjoy the heritage, the right to preserve it for future generations—and the long-accepted nationalist ideas of ownership and property which makes rallying in support of intervention difficult for the many who oppose it. Walking this fine line, maintaining this delicate balance, is also why *proper* safeguards and actual, imminent danger to world heritage must be required before *any* intervention can occur.

Premature intervention could have devastating diplomatic effects. Scholar and economist David Throsby warns of the dangers of hasty action and urges application of the "Precautionary principle"<sup>229</sup> in cases where intervention is considered.<sup>230</sup> Applying this principle would therefore "requir[e] decisions that may have irreversible consequences to be taken with extreme caution."<sup>231</sup> Such decisions clearly would include those

---

225. CUNO, *supra* note 59, at 147.

226. Vernon, *supra* note 211, at 448.

227. *Id.* at 444-45.

228. *Id.* at 454.

229. THROSBY, *supra* note 45, at 195. Throsby explains the idea behind the precautionary principle: "When facing decisions with irreversible consequences, such as the destruction of cultural heritage or the extinction of valued cultural practices, a risk-averse position must be adopted." *Id.*

230. *Id.* at 164.

231. *Id.*

regarding any action taken against a host nation on behalf of its heritage: “[t]reatment and care of cultural resources raise many questions, and it is important to approach any intervention carefully and conservatively.”<sup>232</sup> Intervention is certainly not something to be taken lightly; the right to intervene should only be invoked when all else fails, when the individual host nation has either willfully or negligently failed to protect its heritage.

#### CONCLUSIONS

Allowing international relief organizations and other non-governmental organizations, as well as UNESCO, to not only participate in Easter Island’s cultural heritage preservation, but to establish and oversee the efforts and, where necessary, to intervene on behalf of the endangered heritage, may be the only ways to ensure adequate preservation efforts and the continued existence of the world’s cultural heritage. Chile should be given every opportunity to reform its national policies to ensure adequate protection of the Moai and other heritage sites. So should every other country in which heritage sites are found. But once the host country fails, it is the duty of all mankind to ensure that the legacy of the heritage of those who came before us endures for those who come after. The heritage cannot protect itself—it is up to the individual host nations to implement policies and develop plans to preserve it. If those national policies should fail, it is up to the rest of the world to step in and preserve our common heritage or risk losing it forever.

---

232. McManamon & Hatton, *supra* note 139, at 16.









