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Competing Land Rights, Legal Redress, and Political Settlement in Cyprus

Laura Matson†

Introduction

“Today, the keys do not need us anymore. They will stay as a memento to remind us that we once had a house in the village which became a ruin. . . . In the foundations they buried our whole life, our culture, our history, spiritual treasures, dreams and traditions.”¹

After many decades of conflict between Greek Cypriot and Turkish Cypriot residents of Cyprus, the Turkish army invaded the Republic of Cyprus (RoC) on July 20, 1974.² This military endeavor displaced approximately 200,000 Greek Cypriots and 65,000 Turkish Cypriots; the Greek Cypriots migrated to the southern portion of the island, while the Turkish Cypriots sought refuge in the Turkish-controlled North.³ When the Turkish Republic of Northern Cyprus (TRNC) declared its autonomy in 1975,⁴ the already inequitable distribution of land resources

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1. PETER LOIZOS, *IRON IN THE SOUL: DISPLACEMENT, LIVELIHOOD AND HEALTH IN CYPRUS* 173 (2008) [hereinafter *IRON*] (quoting a letter written by displaced Greek Cypriot Loizos Pipis to his father).

2. For a more comprehensive background of the history and conflict in Cyprus, see CLEMENT DODD, *THE HISTORY AND POLITICS OF THE CYPRUS CONFLICT* 20–277 (2010).

3. INTERNAL DISPLACEMENT MONITORING CTR., *PROTRACTED INTERNAL DISPLACEMENT IN EUROPE: CURRENT TRENDS AND WAYS FORWARD* 9 (2009) [hereinafter *PROTRACTED INTERNAL DISPLACEMENT*]; see also Murat Metin Hakki, *Property Wars in Cyprus: The Turkish Position According to the International Law*, 12 *TURKISH STUD.* 79, 80 (2011). Contemporary displacement figures are inconsistent, reflecting different political perspectives on the issue of property—the RoC claims that 200,500 people remain internally displaced in Cyprus; the Turkish Republic of Northern Cyprus puts the figure at zero. *Id.*

4. Terminology surrounding the different governmental players in Cyprus is used inconsistently in the literature. In this Note, I will refer to the separate governments as the TRNC and RoC. References to “Cyprus” or “Cypriot” (without any governmental, Greek or Turkish-specific modifiers) are meant to indicate the island and the island’s population as a whole. The TRNC is recognized only by Turkey; the RoC and the international community do not view it as an independent

shifted from possession by the majority Greek Cypriot population to the minority Turkish Cypriots.⁵ After the 1974 invasion, Turkish Cypriots, who comprised less than one-fifth of the island's population, had control over half of its natural resources in the North.⁶ By September 1975, only about 130 Turkish Cypriots remained in the South, and no more than 500 Greek Cypriots currently reside in the North.⁷ Today, Cyprus represents the longest-standing situation of internal displacement in Europe.⁸

As in many circumstances of displacement, the personal, cultural, and political significance of land in Cyprus cannot be understated.⁹ The issue of contested land rights manifests in the national and regional political spheres. It factors heavily into settlement negotiations, as well as in the lives of those displaced, and of those who exercise concurrent rights to or physically occupy contested lands.¹⁰ Contestations over land in Cyprus have been a factor in localized acts of aggression, and have inspired initiatives of reconciliation among Greek and Turkish Cypriot civil society groups and individuals.¹¹

nation. See Robert I. Rotberg, *Timing Is Almost Everything: Obstructionist Leadership, Cypriot Style*, 28 FLETCHER F. WORLD AFF. 199, 200 (2004); Hakki, *supra* note 3, at 82.

5. Deniz Senol Sert, *Cyprus: Peace, Return and Property*, 23 J. REFUGEE STUD. 238, 244–45 (2010) (arguing that in 1972, about seventy percent of Cyprus's total gross output originated from land adjacent to and occupied by the Turkish army in 1974, including fertile agricultural land and well-developed tourism and industrial sectors).

6. *Id.* The country was divided by the U.N.-administered "Green Line" which bisects the country and the capital city, Nicosia. Rotberg, *supra* note 4, at 202.

7. AYLA GÜREL & KUDRET ÖZERSAY, THE POLITICS OF PROPERTY IN CYPRUS: CONFLICTING APPEALS TO 'BIZONALITY' AND 'HUMAN RIGHTS' BY THE TWO CYPRIOT COMMUNITIES 4 (2006) [hereinafter CONFLICTING APPEALS]; IRON, *supra* note 1, at 182 (explaining that a small number of Karpassi Greek Cypriots, known as *englovismeni*, remained under Turkish occupation; they numbered no more than 500 in 2004).

8. Sert, *supra* note 5, at 239.

9. Kudret Özersay & Ayla Gürel, *Property and Human Rights in Cyprus: The European Court of Human Rights as a Platform of Political Struggle*, 44 MIDDLE EASTERN STUD. 291, 291 (2008) [hereinafter *Property and Human Rights*]; see also Roger Zetter, *Reconceptualizing the Myth of Return: Continuity and Transition Amongst the Greek-Cypriot Refugees of 1974*, 12 J. REFUGEE STUD. 1, 7 (1999). In analyzing refugee's responses,

[I]t became clear that the myth of return was contingent on the 'constructed notion' of home as physical territory, space and symbol [T]here is an implicit assumption, in the concept of displacement and return, that 'a natural identity exists between people and places bounded territories which demarcate their distinct cultures.'

Id. (citations omitted).

10. *Property and Human Rights*, *supra* note 9, at 291.

11. A. Marco Turk, *Cyprus Reunification Is Long Overdue: The Time Is Right for Track III Diplomacy as the Best Approach for a Successful Negotiation of This*

Though legal and policy-oriented measures have attempted to provide redress for lost access to land and resources, communities forced to migrate have felt the impacts of dispossession in many ways. Directly following displacement, many families were in a state of destitution, and were forced to move frequently between overcrowded temporary housing situations.¹² For the majority of those displaced, their loss of home,¹³ livelihood,¹⁴ cultural institutions,¹⁵ and community¹⁶ was compounded by higher rates of mental and physical illness,¹⁷ and integration challenges.¹⁸

Although Greek Cypriots have fared relatively well compared to other European internally displaced people (IDPs),¹⁹ many displaced Greek Cypriots have resisted integration in the RoC.²⁰ A large percentage of Greek Cypriots report a strong desire to return, and a significant number of them have pursued various national and international means to reclaim access to their abandoned properties in the North.²¹

Ethnic Conflict, 28 LOY. L.A. INT'L & COMP. L. REV. 205, 218–19 (2006) [hereinafter *Reunification*].

12. Peter Loizos, *Displacement Shock and Recovery in Cyprus*, 33 FORCED MIGRATION REV. 40, 40 (2009) [hereinafter *Displacement Shock*] (basing his conclusions upon research with Greek Cypriot refugees who fled from the village of Argaki, in what is now the TRNC).

13. *Id.* at 40–41 (detailing the various Emergency Plans that the Cyprus government implemented in order to alleviate housing and unemployment concerns among displaced populations).

14. *Id.*

15. See, e.g., *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 293–94 (7th Cir. 1990) (analyzing the theft of Greek Orthodox cultural and religious artifacts from northern Cyprus after the 1974 Turkish invasion).

16. See Rebecca Brubaker, *From Ethnic Insiders to Refugee Outsiders: A Community Level Ethnography of Greek Cypriot Identity Formation and Transference Since Displacement* 21 (Refugee Stud. Ctr., Working Paper No. 59, 2010) (explaining how the displaced individuals she interviewed tried to build group cohesion as their community was dispersed within Cyprus and throughout the world).

17. Peter Loizos et al., *Hearts, As Well As Minds: Wellbeing and Illness Among Greek Cypriot Refugees*, 20 J. REFUGEE STUD. 86, 93–97, 101–02 (2007) [hereinafter *Hearts*] (reporting increased depressive illness and cardiovascular illness rates among the displaced Greek Cypriot village than among the non-displaced Greek Cypriot village).

18. See Zetter, *supra* note 9, at 3 (“Since 1974, the idea of returning has been a dominant theme for all the Greek Cypriots, not just the displaced; for some refugees, return remains a profound conviction.”).

19. PROTRACTED INTERNAL DISPLACEMENT, *supra* note 3, at 12 (“IDPs in Cyprus are the exception in the region in terms of housing, since they live in conditions similar to their non-displaced neighbours thanks to government assistance, a stable economy and their own initiative.”).

20. See Brubaker, *supra* note 16, at 16–21.

21. See Sert, *supra* note 5, at 239, 246–49. For a discussion of the sentimental

However, existing mechanisms to resolve land disputes remain inadequate. Political negotiations are currently slow-moving, and litigation as a primary source of redress has not been satisfying, due in part to the challenge of responding to such a wide breadth of disputed land claims on a case-by-case basis.²² The Immovable Property Commission, the only domestic mechanism for submitting claims in the North, has announced that it will close its doors in December 2013, leaving no local remedy for those with outstanding grievances.²³

Circumstances of widespread, conflict-based displacement are certainly not unique to Cyprus, and present an ongoing challenge for states and international bodies.²⁴ Many states, including Kosovo, Hungary, South Africa, and Australia, have established remedies for grievances arising from widespread takings and dispossession of land.²⁵ The challenge for Cyprus, of course, is how

and psychological value of Cypriot land, see *id.* at 245; INT'L CRISIS GROUP, CYPRUS: BRIDGING THE PROPERTY DIVIDE 16 (2010) [hereinafter BRIDGING THE PROPERTY DIVIDE]; Loizidou v. Turkey, App. No. 15318/89, 23 Eur. H.R. Rep. 513, 522 (1997) (adjudicating claims related to the loss of property due to the Cyprus conflict through the European Court of Human Rights); Case C-420/07, Apostolides v. Orams, 2009 E.C.R. I-3571 ¶2 (determining the enforceability of a judgment concerning the purchase of land formerly owned by Greek Cypriots who were displaced).

22. See A. Marco Turk, *Rethinking the Cyprus Problem: Are Frame-Breaking Changes Still Possible Through Application of Intractable Conflict Intervention Approaches to This "Hurting Stalemate"?*, 29 LOY. L.A. INT'L & COMP. L. REV. 463, 488–93 (2007) [hereinafter *Rethinking*] (laying out the role of property in each party's negotiating stance); *Cypriot Leaders Discuss Property Issues in UN-Sponsored Talks on Reunification*, U.N. NEWS CENTER (Sept. 6, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39466>.

23. Press Release, Turkish Rep. of N. Cyprus, Ministry of Foreign Affairs, Pub. Relations Dep't, *Deadline for the Application of Greek Cypriots to Immovable Property Commission Has Been Extended for Two Years* (Oct. 27, 2011), available at <http://www.trncinfo.com/tanitma/en/index.asp?sayfa=haberdetay&newsid=1029> [hereinafter *Press Release*, Turkish Rep. of N. Cyprus]. The IPC had originally announced that it would close on December 11, 2011, but later extended the deadline by two years. Stefanos Evripidou, *Two Months Left to Apply to IPC*, CYPRUS MAIL (Oct. 20, 2011), <http://www.cyprus-mail.com/cyprus/two-months-left-apply-ipc/20111020>.

24. PROTRACTED INTERNAL DISPLACEMENT, *supra* note 3, at 9 (noting that in Europe alone, there are around 2.5 million IDPs).

25. The UN-led mission in Kosovo created a reparations program that provided rights to restitution or compensation to any persons who were dispossessed of property as a result of discrimination from 1989 to 1999. See U.N. Interim Admin. Mission in Kos., *On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*, § 2.2, U.N. Doc. UNMIK/REG/2000/60 (Oct. 31, 2000). Hungary enacted a series of compensation laws in the early 1990s designed to provide compensation for property owners who were dispossessed as a result of either Communist era expropriations or Holocaust era displacement. See, e.g., ISTVAN POGANY, *RIGHTING WRONGS IN EASTERN EUROPE* 155–65 (1997) (explaining

to create a redress mechanism that takes into account the relief already granted, and is an agreeable and enforceable method of resolving competing claims to land in an unrecognized State.

This Note analyses the challenges of Cypriot land disputes, particularly with regard to the rights that have already been recognized and the remedies used to gain access to these rights, and envisions a way forward. Part I of this Note will explore the property grievance mechanisms that Cypriot claimants have previously utilized. In particular, this section will assess the rights, expectations, opportunities, and precedents created by these mechanisms, and their impact on future land adjudication implements. Part II will discuss the options available for Cypriots once the Immovable Property Commission closes, and evaluate the challenges of ongoing litigation, negotiated settlement, and balancing the interests of local, national, and international actors as they attempt to resolve displacement-oriented land claims going forward. Part III envisions how to incorporate a locally legitimate and equitable land solution that will fill the relief gap until a broader settlement of the Cyprus situation is reached.²⁶

I. National and International Remedies

In 1989, a Greek Cypriot named Titina Loizidou filed the first 1974-oriented land dispossession case with the European Court of Human Rights (ECtHR).²⁷ Since that time, a variety of cases and mechanisms have shaped the opportunities for redress. This Part will discuss the remedies afforded by the ECtHR, the European Court of Justice (ECJ), and local mechanisms, as well as the potential for resolution of property concerns through political

the property restitution and compensation schemes instituted in post-Communist Hungary in the late 1980s and early 1990s). In South Africa, the 1994 Restitution of Land Rights Act established a system of restitution in the wake of Apartheid. Restitution of Land Rights Act of 1994 s. 2(1) (S. Afr.). The principle of restitution or redress was later codified in the South African Constitutions. S. AFR. CONST. (1996) § 25(7); Bernadette Atuahene, *Things Fall Apart: The Illegitimacy of Property Rights in the Context of Past Property Theft*, 51 ARIZ. L. REV. 829, 833, 851, 860 (2009) [hereinafter *Things Fall Apart*]. Australia's system included a twenty-year period in which Aboriginal people could make collective property claims to land that was taken during conquest. *Aboriginal Land Rights Act 1976* (NT) (Austl.).

26. This Note will focus on the mechanisms for resolving property disputes; discussion of the appropriate distribution of property is beyond its scope. This Note does not promote a pro-Greek Cypriot or pro-Turkish Cypriot perspective on the conflict. However, due to the greater number of cases, and wider breadth of literature reflecting on Greek Cypriot claims, there will be a disproportionate focus on Greek Cypriot property claims in this Note. This focus is not intended to reflect a political bias.

27. *Loizidou v. Turkey*, App. No. 15318/89, 23 Eur. H.R. Rep. 513, 513 (1997).

negotiation and settlement.

A. *The European Court of Human Rights*

The ECtHR has been the most widely-visited international forum for adjudicating Cypriot land claims.²⁸ Yet, the ECtHR has been a controversial venue for these claims for a number of reasons. First, the ECtHR has generally declined to hear property cases where the alleged violations occurred before the European Convention on Human Rights fully entered into force in the relevant state.²⁹ This was not the case for Cyprus.³⁰ Because Turkey did not recognize the ECtHR's jurisdiction until January 1990, the court broke from its past practice and found that dispossession since 1974 represented a "continuing violation" of Greek Cypriot property rights to the present.³¹ By determining that a "continuing violation" existed, the court justified its decision to hear grievances filed after 1990.³²

Second, Turkey has contended that it should not be held responsible for violations in a region controlled by the autonomous and democratic constitutional state of the TRNC.³³ The ECtHR has rejected these claims, holding Turkey liable for property-based human rights violations, and compelling Turkey to pay substantial damages.³⁴ The ECtHR's focus on the RoC has given the

28. See, e.g., *id.*; Cyprus v. Turkey, App. No. 25781/94, 35 Eur. H.R. Rep. 30 (2001); Xenides-Arestis v. Turkey, App. No. 46347/99, 52 Eur. H.R. Rep. 16 (2011); Demades v. Turkey, App. No. 16219/90, Eur. Ct. H.R. at 2 (2003); Alexandrou v. Turkey, App. No. 16162/90, Eur. Ct. H.R. at 2 (2009). The jurisdiction of the ECtHR is rooted in the Convention for the Protection of Human Rights and Fundamental Freedoms. Convention for the Protection of Human Rights and Fundamental Freedoms art. 32, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights].

29. Rhodri C. Williams & Ayla Gürel, *The European Court of Human Rights and the Cyprus Property Issue: Charting a Way Forward* 4 (Peace Research Inst. Oslo, Working Paper No. 1/2011, 2011) ("[T]he Court has ruled that it has no jurisdiction over claims arising from Cold War era property nationalizations, regarding such nationalizations as 'instantaneous' acts that took place entirely before the local entry into force of the Convention, rather than 'continuing violations' that extended into this period.").

30. *Id.* at 4.

31. *Id.* Though Turkey ratified the European Convention on Human Rights in 1954, it was not until 1990 that it recognized the ECtHR's jurisdiction. *Id.* The RoC ratified the Convention in 1962, and recognized the court in 1980. *Id.* Jurisdiction is further complicated by the fact that the TRNC is neither internationally recognized nor a Convention signatory. *Id.*

32. *Id.*

33. *Property and Human Rights*, *supra* note 9, at 294.

34. Jenna C. Borders, *Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots*, 36 N.C. J. INT'L L. & COM. REG. 689, 711 (2011). The

impression, particularly to TRNC supporters, that it views the RoC as Cyprus's sole governing body, and the TRNC as a puppet of the Turkish government.³⁵ Despite these perceptions, certain ECtHR holdings suggest that the ECtHR has moved closer to recognizing the legitimacy of the TRNC in recent years, which has been controversial among Greek Cypriots.³⁶

ECtHR holdings on Cypriot land claims have given rise to divisive perspectives on both sides.³⁷ Nonetheless, the court's holdings have had a tremendous impact on the Cyprus land question.³⁸ The rights recognized and created by the ECtHR surrounding post-1974 property distributions in northern Cyprus are extremely important to the present and future of Cypriot land disputes.³⁹ Three particularly significant cases have shaped the ECtHR's jurisprudence on these land claims: *Loizidou v. Turkey*, *Xenides-Arestis v. Turkey*, and *Demopoulos v. Turkey*.

Loizidou v. Turkey was the first of the modern claims made by Greek Cypriots against Turkey in the ECtHR.⁴⁰ This case opened the door to international redress for Greek Cypriots. The significance of *Loizidou* was due, in particular, to the ECtHR's recognition that: a) property rights may persist after displacement, and b) such displacement may constitute "continuing violations" long after the initial violation.⁴¹ Titina

ECtHR in *Loizidou* held:

The concept of 'jurisdiction' under Article 1 of the Convention is not restricted to the national territory of the Contracting States The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.

Loizidou v. Turkey, 23 Eur. H.R. Rep. 513, 530, 535 (1997).

35. *Borders*, *supra* note 34, at 710–11; *Cyprus v. Turkey*, App. No. 25781/94, 35 Eur. H.R. Rep. 30 (2001). However, the ECtHR's recognition of the Immovable Property Commission in *Demopoulos v. Turkey* signals a move toward the ECtHR's implicit recognition of the TRNC and its jurisdictional authority over northern properties. *Borders*, *supra* note 34, at 712–13; *see also Loizidou*, 23 Eur. H.R. Rep. at 529.

36. *See, e.g., Williams & Gürel*, *supra* note 29, at 7–8; *Demopoulos v. Turkey*, App. No. 46113/99, 50 Eur. H.R. Rep. SE14, ¶ 51 (2010).

37. *Property and Human Rights*, *supra* note 9, at 292. Özersay and Gürel argue that the ECtHR holdings have divided Greek and Turkish Cypriots over a number of issues, namely whether the Court should be deciding a "political issue," whether Greek Cypriots have a genuine grievance or are merely using the Court as a political platform, and whether the Court is doling punishment based on political preference. *Id.* at 295–98, 301–02, 307–09.

38. *Id.*

39. *See Williams & Gürel*, *supra* note 29, at 18–19, 22.

40. *See supra* notes 30–35 and accompanying text.

41. *Williams & Gürel*, *supra* note 29, at 4.

Loizidou, a Greek Cypriot, grew up in northern Cyprus, and retained land there after moving to Nicosia.⁴² After the 1974 invasion, she was no longer able to access her land, and in 1989 she filed a petition with the ECtHR alleging that her rights to enjoyment of property under Article 1 of Protocol 1 of the European Convention on Human Rights were violated by Turkish forces keeping her from her property.⁴³ In 1996, the ECtHR held that Mrs. Loizidou retained rights to her property, despite contrary laws in the TRNC, and that she was entitled to damages for violations of her rights under the European Convention on Human Rights.⁴⁴ Turkey heatedly protested this holding, although it eventually paid compensatory damages of more than one million U.S. dollars to Mrs. Loizidou.⁴⁵ The significance of *Loizidou* is primarily rooted in the fact that it established the ECtHR's jurisdiction over Turkey, imputed TRNC policy to Turkey, and recognized ongoing Greek Cypriot land rights.⁴⁶

In November of 1998, Myra Xenides-Arestis approached the ECtHR, claiming that the Turkish invasion and subsequent dispossession from her property in the northern Cyprus town of Famagusta had violated her rights to respect for home and peaceful enjoyment of her possessions.⁴⁷ Turkey argued that the court should not resolve the land issue until the TRNC could

42. *Loizidou v. Turkey*, App. No. 15318/89, 23 H.R. Rep 513, 518 (1997).

43. *Id.* at 513; Borders, *supra* note 34, at 722; European Convention on Human Rights, *supra* note 28, at art.1, Protocol 1 ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.")

44. *Loizidou*, 23 H.R. Rep. at 524, 534. While the court found a violation of Article 1 Protocol 1 of the E.U. Human Rights Convention, it did not find a violation of Article 8. However, it did not bar future Article 8 claims in similar future cases. Since in 1974 Loizidou did not reside in Kyrenia, where the disputed property was located, Turkey's taking of this property did not violate Article 8's guarantee of a right of respect for one's home. *Id.* at 534.

45. *Turkey Compensates Cyprus Refugee*, BBC NEWS (Dec. 2, 2003, 7:24 PM), <http://news.bbc.co.uk/2/hi/europe/3257880.stm>.

46. Loukis G. Loucaides, *The Protection of the Right to Property in Occupied Territories*, 53 INT'L & COMP. L.Q. 677, 684 (2004).

47. *Xenides-Arestis v. Turkey*, App. No. 46347/99, 52 Eur. H.R. Rep. 16, 490, 490 (2005). European Convention on Human Rights, *supra* note 28, at art. 8. The Convention states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Id.

review and make its own determination. The court rejected these claims and held that the TRNC's mechanism was inadequate to provide proper relief.⁴⁸ *Xenides-Arestis* took an important step toward recognition of the TRNC as a body capable of administering a legitimate remedy for Greek Cypriot grievances when the ECtHR held that the TRNC, through Turkey, was required to "introduce a remedy which secures the effective protection of the rights laid down in article 8 of the Convention and article 1 of Protocol No.1 in relation to the present applicant as well as in respect of all similar applications pending before the Court."⁴⁹

By compelling the TRNC government to create a viable mechanism to respond to property grievances, *Xenides-Arestis* held the TRNC's Immovable Property Commission to a higher standard, and set the stage for the 2010 case *Demopoulos v. Turkey*, in which the ECtHR rejected the application of several dispossessed Greek Cypriots.⁵⁰ Notably, the ECtHR stated that it would not hear the case until the claimants had exhausted local remedies through the IPC, pursuant to the court's instructions in *Xenides-Arestis*.⁵¹ The applicants argued unsuccessfully that since the TRNC was an illegal entity, it did not have the legal authority to establish domestic remedies⁵² and "requiring exhaustion" through the TRNC "lent legitimacy to an illegal occupation" of Cyprus.⁵³ Further, the applicants argued that since the IPC was a product of an authority widely resented and distrusted by Greek Cypriots, that it was not an acceptable form of relief.⁵⁴ Ultimately, the court found the IPC remedy viable and required its

48. *Id.*

49. *Xenides-Arestis*, 52 Eur. H.R. Rep. 16, at 490; see also Williams & Gürel, *supra* note 29, at 7–8 (affirming that recent court decisions have legitimized the TRNC).

50. *Xenides-Arestis*, 52 Eur. H.R. Rep. 16, at 490; Rhodri C. Williams, *Demopoulos v. Turkey (Eur. Ct. H.R.), Introductory Note*, 49 INT'L LEGAL MATERIALS 816, 816 (2010).

51. *Demopoulos v. Turkey*, App. No. 46113/99, 50 Eur. H.R. Rep. SE14, ¶ 51 (2010). *Demopoulos* does not necessarily represent a departure from precedent, but merely "an attempt to return the property issue to the political sphere" after many years of litigation. Williams & Gürel, *supra* note 29, at 11.

52. *Demopoulos*, 50 Eur. H.R. Rep. SE14 at ¶¶ 58, 92. "Many property owners felt unable to submit to, or effectively collaborate with, an occupying power in such a way." *Id.* at ¶ 58. However, "the mere fact that there is an illegal occupation does not deprive all administrative or putative legal or judicial acts therein of any relevance under the Convention." *Id.* at ¶ 94.

53. *Id.* at ¶ 92.

54. *Id.* at ¶ 58.

exhaustion.⁵⁵

The *Demopoulos* decision was important for a number of reasons. First, the decision foreclosed a remedy that had the jurisdictional reach to compel enforcement within the TRNC, something that could not be accomplished through local litigation.⁵⁶ Second, in *Demopoulos* the ECtHR took a step toward acknowledging the existence of present occupants' competing rights to the property in question.⁵⁷ The decision also gave significant latitude to TRNC authorities to determine policies for compensation or restitution in IPC practice.⁵⁸ This discretionary recognition challenged one of the more extreme of the Greek Cypriot political positions: that full restitution of all land was the fundamental right of dispossessed Greek Cypriots.⁵⁹

The ECtHR has made significant strides in recognizing that dispossessed persons retain rights to their property.⁶⁰ In addition, the ECtHR has established a framework for evaluating the

55. *Id.* at ¶ 98.

56. *See, e.g.*, Case C-420/07, *Apostolides v. Orams*, 2009 E.C.R. I-3571 ¶ 1 (granting relief through litigation in the European Court system, after claimant could not have verdict enforced by the Republic of Cyprus court system or in the United Kingdom).

57. *Williams & Gürel*, *supra* note 29, at 1; *see also id.* at 18 (arguing that “the passage of time” from 1974 to the present, and the failure of the TRNC and the RoC’s political leadership to arrive at a negotiated resolution may have “eroded the validity of Greek Cypriot claims”; and that certain protections under Article 8 of the European Convention on Human Rights may extend to current users of the contested properties). To this end, *Demopoulos* states:

[T]he Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court’s interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.

Demopoulos, 50 Eur. H.R. Rep. SE14 at ¶ 85 (2010). In its petition, the respondent government stated, and the ECtHR agreed, that the new IPC law, pursuant to the holding in *Xenides-Arestis*, “was designed to establish a fair balance between these conflicting rights.” *Id.* at ¶ 52.

58. *Id.* at ¶ 116. *Williams*, *supra* note 50, at 15.

59. *Demopoulos*, 50 Eur. H.R. Rep. at ¶ 116. The court remarked:

[S]ome 35 years after the applicants, or their predecessors in title, left their property, it would risk being arbitrary and injudicious for it to attempt to impose an obligation on the respondent State to effect restitution in all cases, or even in all cases save those in which there is a material impossibility, a suggested condition put forward by the applicants and intervening Government which discounts all legal and practical difficulties barring the permanent loss or destruction of the property.

Id.

60. *See supra* note 42 and accompanying text.

adequacy of local remedies,⁶¹ and has sought to engage domestic political leadership and civil society in the resolution of on-going land conflicts.⁶² However, the foreclosure of the ECtHR as a viable international forum after *Demopoulos* encouraged one Cypriot claimant to seek redress through another international forum, the ECJ.

B. *The European Court of Justice*

The ECJ is a significantly less traveled route for Greek Cypriot claimants than the ECtHR, and there is little indication that this court will become a more popular or accessible venue. Nonetheless, it bears mentioning due to the complications that ECJ engagement has created for establishing a consistent regional approach to the Cyprus land problem, and the impact of the ECJ's most significant case, *Apostolides v. Orams*, on foreign holders of Cypriot property.⁶³

In 2003, a Greek Cypriot man named Meletis Apostolides returned to the North to find that a British couple, the Orams, was occupying his property.⁶⁴ The Orams had purchased Apostolides's land in good faith and built a vacation home on the plot.⁶⁵ In 2004, Apostolides sued the Orams in the district court of Nicosia, RoC, seeking repossession of his land.⁶⁶ The court found in favor of Apostolides, but lacked the capacity to directly enforce the holding in the TRNC.⁶⁷ Apostolides then turned to the English court system to enforce the judgment.⁶⁸ On appeal, the Court of Justice (of England and Wales) referred the case to the ECJ, which upheld the judgment by the Republic of Cyprus, and denied the Orams' claim that defective service of process gave English courts a basis to refuse to recognize or enforce the Cyprus court's verdict.⁶⁹ In addition to granting Mr. Apostolides rights to his land, the court mandated that the Orams demolish the villa they built and pay

61. See *supra* note 49 and accompanying text.

62. See *supra* note 51 and accompanying text.

63. Case C-420/07, *Apostolides v. Orams*, 2009 E.C.R. I-3571 ¶¶ 21, 26. Around 2004, the TRNC economy was largely driven by property development. DODD, *supra* note 2, at 256.

64. Thomas D. Grant, *Introductory Note to the European Court of Justice (GC): Apostolides v. Orams*, 48 INT'L LEGAL MATERIALS 788, 788 (2009). In 2003, the TRNC government opened the borders between the RoC and TRNC for Greek Cypriots to visit the land from which they had fled. DODD, *supra* note 2, at 236–37.

65. Grant, *supra* note 64, at 788.

66. *Id.*

67. *Id.*

68. Case C-420/07, *Apostolides v. Orams*, 2009 E.C.R. I-3571 ¶¶ 21, 29–31.

69. Grant, *supra* note 64, at 788–89.

Apostolides back rent for the time that they had occupied the land.⁷⁰

Apostolides recognized, as the ECtHR had done in *Loizidou* and *Xenides-Arestes*, that land rights persist beyond displacement.⁷¹ Yet, *Apostolides* changed the stakes significantly by creating an avenue for Greek Cypriot claimants to pursue foreign and third party buyers in order to seek redress.⁷² *Apostolides* demonstrates the potential vulnerabilities of foreign investors in contested properties, and internationalizes the problem of the Cypriot land dispute. Though the ECJ route is not a frequent venue for these types of claims, *Apostolides* also highlights the lengths to which Cypriot claimants may go to regain access to their land rights, and the complex legal avenues that may be available to the most determined.⁷³

C. Domestic Remedies Remain Inadequate

Though these international legal forums are imperfect solutions to a widespread and systematic set of grievances, the ECtHR and ECJ have filled gaps where domestic remedies have been inadequate.⁷⁴ Yet, the TRNC and RoC do have specific policies dealing with property rights of the dispossessed. Though these policies are not comprehensive, they represent important efforts to address the grievances locally.

The TRNC established the Immovable Property Commission (IPC) in 2003 and modified it after the ECtHR's decision in *Xenides-Arestis*.⁷⁵ The IPC officially began its operations on March 17, 2006.⁷⁶ As of October 2012, 3,839 applications had been filed with the IPC; 272 have been concluded through friendly settlement and 7 through formal hearings.⁷⁷ Although the ECtHR

70. *Apostolides*, 2009 E.C.R. I-3571 at ¶ 26.

71. See *supra* notes 40–49 and accompanying text.

72. See *supra* note 65 and accompanying text.

73. See *supra* text accompanying notes 65 and 68.

74. See *supra* note 49 and accompanying text.

75. *Xenides-Arestis*, 52 Eur. H.R. Rep. 16 at 490, 493. Prior to the IPC, the TRNC Constitution, enacted in May 1985, attempted to codify a formal transfer of property ownership. TRNC CONSTITUTION, art. 159 (1)(b)–(c) (TRNC). Article 159(1)(b) provides that all immovable properties, buildings, and installations which were found or legally considered abandoned or ownerless on February 13, 1975 and which were within the boundaries of the TRNC on November 15, 1983 are to be considered the property of the TRNC, regardless of how they are registered with the Land Registry Office. *Id.*

76. IMMOVABLE PROPERTY COMMISSION, <http://www.tamk.gov.ct.tr/english/index.html> (last visited Oct. 13, 2012).

77. *Id.*

has found the IPC to be a viable local remedy, and the IPC itself claims to be founded on the “principles of bi-zonality and bi-communality,”⁷⁸ many Greek Cypriots struggle with the idea of submitting to a jurisdiction that is not recognized locally or internationally.⁷⁹ Moreover, IPC policy favors compensation over restitution, which many Greek Cypriots view as an unacceptable exchange.⁸⁰ Procedurally, Greek Cypriots have complained that the IPC is costly and unduly burdensome.⁸¹ Nevertheless, the IPC, after its modification pursuant to *Xenides-Arestis*, has been the most viable local mechanism, and, barring a further extension, its December 2013 closure will leave property claimants with no domestic recourse.⁸²

Though Turkish Cypriots seeking to reclaim property in the South occurs less frequently, the RoC has established policies for dealing with abandoned Turkish Cypriot properties.⁸³ The RoC formally regards Turkish Cypriots as legal owners of their property in government controlled areas, despite the 1991 enactment of a policy that places these properties under government custodianship.⁸⁴ The RoC maintains the option of restitution for Turkish Cypriot lands, but only if the Turkish Cypriot applicant has resided in the RoC for six months or more—a policy which poses significant burdens for many potential Turkish Cypriot claimants.⁸⁵

These different approaches to land rights and obligations have also been reflected in each government’s negotiating stance

78. *Id.*

79. See *Demopoulos*, 50 Eur. H.R. Rep. SE14 at 183 (“The Court recalls that applicants have not infrequently been required to exhaust domestic remedies even where they did not choose voluntarily to place themselves under the jurisdiction of the . . . State . . .”); see also Williams, *supra* note 50, at 842 (acknowledging that the intervening Government’s argument before the ECtHR discussed territorial-restriction, as well as the problem for Greek Cypriots required to utilize the remedies of a jurisdiction to which they do not submit).

80. Sert, *supra* note 5, at 248. Thus far, the IPC has paid the equivalent of over 100 million U.S. dollars in compensation. In two cases it ruled for exchange and compensation, in one case it ruled for full restitution, in five cases it ruled for restitution and compensation, and in one case it ruled for partial restitution. IMMOVABLE PROPERTY COMMISSION, *supra* note 76.

81. *Demopoulos*, 50 Eur. H.R. Rep. SE14 at 171, 173.

82. See Press Release, Turkish Rep. of N. Cyprus, *supra* note 23; *Demopoulos*, 50 Eur. H.R. Rep. SE14 at 176–77 (2010). The ECtHR initially found the IPC to be inadequate, which prompted the reforms mandated by *Xenides-Arestis*. *Xenides-Arestis*, 52 Eur. H.R. Rep. 16 at 499 (2011).

83. See BRIDGING THE PROPERTY DIVIDE, *supra* note 21, at 3.

84. *Id.* at 3. This measure prohibits the sale, exchange, or transfer of abandoned properties, without the consent of the custodian. *Id.*

85. Sert, *supra* note 5, at 249.

in the long process of Cypriot settlement negotiations.⁸⁶

D. Settlement Negotiations Have Yet To Be Successful

Political negotiations have been ongoing in Cyprus since 1975.⁸⁷ Land continues to be a central source of contention between Greek and Turkish Cypriot leaders. Each side has intricate and diverse positions, and these positions have complicated settlement efforts and highlighted the crux of property conflicts in Cyprus.⁸⁸ It is helpful to illuminate, as much as possible, some of the primary positions on either side.⁸⁹

The RoC seeks restitution of land claims, freedom of return, and reinstatement of original property rights for displaced Greek Cypriots.⁹⁰ In the RoC outcome, the Greek Cypriot state would retain at least seventy-five percent of the land on the island, restoring as much as possible of the pre-1974 land distribution.⁹¹ Furthermore, the RoC insists that it should remain the only internationally recognized, independent, and sovereign government in Cyprus,⁹² representing both Greek and Turkish Cypriots.⁹³ Structurally, the RoC would like to maintain a unified state with a strong federal system.⁹⁴

Conversely, the TRNC has advocated for restricted access to displaced persons,⁹⁵ as well as a system of “global compensation and exchange,” which does not include restitution of Greek Cypriot lands in the North.⁹⁶ The TRNC wants an assurance that Turkish Cypriots have continued access to land and resources, and that the TRNC retains twenty-nine percent or more of the island’s total

86. *Id.* at 254.

87. DODD, *supra* note 2, at 91–223. There is a perspective among some scholars that political leaders have compromised negotiations through aggressively divisive positions and an interest in reaping personal and political benefits rather than a genuine attempt to reach an agreement. See A. Marco Turk, *The Negotiation Culture of Lengthy Peace Processes: Cyprus as an Example of Spoiling that Prevents a Final Solution*, 31 LOY. L.A. INT’L & COMP. L. REV. 327, 337–42 (2009).

88. *Property and Human Rights*, *supra* note 9, at 292–93.

89. *Id.*

90. Sert, *supra* note 5, at 254; *Property and Human Rights*, *supra* note 9, at 293.

91. Ahmet Sözen & Kudret Özersay, *The Annan Plan: State Succession or Continuity*, 43 MIDDLE EASTERN STUD. 125, 126 (2007) [hereinafter *Annan Plan*]; *Property and Human Rights*, *supra* note 9, at 293. In addition, the RoC’s position is that Turkish settlers should return to Turkey. *Id.* at 128.

92. *Property and Human Rights*, *supra* note 9, at 293.

93. *Id.*

94. *Annan Plan*, *supra* note 91, at 127.

95. *Id.* at 128.

96. *Property and Human Rights*, *supra* note 9, at 292.

land mass.⁹⁷ The TRNC argues that bizonality should preserve the distribution of land after 1974 and allow for Turkish Cypriots to remain the majority in the North.⁹⁸ Structurally, the TRNC favors the creation of two sovereign states, with the TRNC acting as an independent sovereign.⁹⁹ Contemporary negotiations have unsuccessfully attempted to reconcile these two positions.¹⁰⁰

The contemporary era of U.N.-sponsored negotiations between the TRNC and the RoC began in 2001.¹⁰¹ These negotiations contributed to the formation of the “Annan Plan,” the most recent version of which, “Annan V,” was widely viewed by regional and international actors as the most comprehensive and sophisticated solution to the political dispute in Cyprus.¹⁰² Despite this perception, Annan V was complicated from the outset by international actors exerting pressure over the two communities¹⁰³ and effectively overshadowing non-elite citizens’ access to the

97. *Annan Plan*, *supra* note 91, at 128.

98. *Property and Human Rights*, *supra* note 9, at 292.

99. *Id.*

100. DODD, *supra* note 2, at 223–68.

101. *Id.* at 212. Talks between the leaders of the two Cypriot communities have been occurring intermittently since Turkey’s invasion in 1974. *Id.* at 91–223. For the purposes of this Note, I will focus only on the most recent rounds of negotiations, which culminated in Annan V.

102. See DAVID HANNAY, *CYPRUS: THE SEARCH FOR A SOLUTION* 220 (2005). Annan V included three primary property provisions meant to address the inequities created by the 1974 invasion: territorial adjustments, one-third rule, and significant improvement. Sert, *supra* note 5, at 250. Adjusting the territorial mass of the TRNC in the plan would ostensibly return properties to more than half of those displaced in 1974. *Id.* at 256 n.9. The one-third rule provided that Greek and Turkish Cypriots who had been dispossessed of property—but were not eligible for restitution based upon the territorial adjustments—could reclaim up to one-third of their property value and area, and be paid compensation for the remainder, subject to certain conditions. *Id.* The current user of a property could claim significant improvements, if they had been made during the period of displacement, prior to Dec. 31, 2002. *Id.* This was conditioned upon the current owner paying compensation in order to gain legal title to the property. *Id.* In addition, the Annan Plan provided for the creation of a property commission that promoted compensation and global property exchange. *Id.*

103. VAN COUFOUDAKIS, *CYPRUS: A CONTEMPORARY PROBLEM IN HISTORICAL PERSPECTIVE* 35 (2006). The U.S. embassy in Nicosia allegedly distributed “project funds” only to groups and individuals who were in favor of the passage of Annan V. *Id.* Turkey’s attempts to gain membership in the E.U. have had an impact on Turkey’s relationship to the negotiations. See Patrick R. Hugg, *Accession Aspirations Degenerate: A New Chapter for Turkey and the E.U.*, 9 WASH. U. GLOB. STUD. L. REV. 225, 255–58 (2010). The E.U.’s attempt to provide negotiating incentives for the parties was compromised by tying the RoC’s membership bid “[t]o the negotiation process for resolution of the conflict, but disengag[ing] it from an absolute requirement that such a resolution be reached” Thomas Diez et al., *The European Union and Border Conflicts: The Transformative Power of Integration*, 60 INT’L ORG. 563, 576 (2006).

negotiations.¹⁰⁴ This facilitated an additional layer of inequalities and compromised Greek Cypriot trust in the settlement process.¹⁰⁵

The Annan Plan proposed territorial adjustment and return for a substantial portion of displaced Greek Cypriots; however, referendum voters perceived inadequate security infrastructure to create safe return, as well as unacceptable political and economic power shifts.¹⁰⁶ Many Greek Cypriots believed that the Annan Plan's land provisions would also violate their property rights as recognized by the ECtHR (prior to 2004) and legitimize Turkey's illegal occupation.¹⁰⁷ The compromises embedded in Annan V were not strong enough to gain popular support and in some ways stoked greater divisiveness between the TRNC and RoC positions.¹⁰⁸ When put to vote, Annan V passed among Turkish Cypriots generally, but was rejected by over seventy-five percent of voting Greek Cypriots.¹⁰⁹

Though Annan V was insufficient to establish local legitimacy with the Greek Cypriot population, in its wake localized efforts have emerged in an attempt to bring Greek and Turkish Cypriots together around a common goal of political resolution.¹¹⁰ In the late 1990s, a group of Greek and Turkish Cypriots began meeting, first in Oslo and later domestically, to discuss Cyprus's political problems.¹¹¹ Though these meetings did not ultimately sway the course of the Annan negotiations, this initiative is important for a number of reasons. First, the meetings of the "Oslo Group" demonstrated that numerous individuals from the "opposed" Greek and Turkish Cypriot communities were willing to bridge their divisions to negotiate a mutually agreeable outcome.¹¹² Second, the negotiations demonstrated the ability of the group to identify creative and contextually appropriate solutions that had

104. See *Reunification*, *supra* note 11, at 221–22 (detailing how influences from political and military elites have historically tainted the peace-building process).

105. *Id.* at 253 ("[T]he fact of the matter is that Greek and Turkish Cypriots for the most part do not trust each other . . .").

106. Sert, *supra* note 5, at 250–51; COUFOUDAKIS, *supra* note 103, at 39–40.

107. COUFOUDAKIS, *supra* note 103, at 40.

108. *Id.* at 38. The elitist approach taken to the Annan negotiations did not create enough local trust to overcome the lingering prejudices and fraught history between the two communities. See *Reunification*, *supra* note 11, at 217–18.

109. COUFOUDAKIS, *supra* note 103, at 38.

110. See *Reunification*, *supra* note 11, at 222–28.

111. *Id.* Similar movements have emerged through other localized initiatives. OLIVER WOLLEH, BERGHOF RES. CTR. FOR CONSTRUCTIVE CONFLICT MGMT., LOCAL PEACE CONSTITUENCIES IN CYPRUS: REPORT NO. 8, at 6–12 (2001). The bi-communal Conflict Resolution Trainer Group began in 1993, and by 1997 included over 1,500 people facilitating reconciliation programs. *Id.*

112. See *Reunification*, *supra* note 11, at 227–28.

not been used in negotiations with political elites.¹¹³ The Oslo Group drafted a number of bi-communal and mutually acceptable solutions to the conflict and land dilemma.¹¹⁴ This process was a strong alternative to the status quo practice of confining negotiations to political elites.¹¹⁵ Third, because the solutions proposed came from both of the affected communities, they had more local legitimacy than solutions cultivated by an external body.¹¹⁶ Unfortunately, political elites failed to take such grassroots initiatives seriously, and the recommendations of the Oslo Group have not been included in the broader settlement process.¹¹⁷

More recently, a Greek Cypriot named Mike Tymvios reached a private agreement with the IPC over fifty-one plots of land owned by his company in the northern village of Tymvou.¹¹⁸ Tymvios initiated suit against Turkey at the ECtHR, which was dropped in 2007 after Tymvios and the Government of Turkey informed the court that Tymvios had reached a settlement with the IPC to exchange ownership of the northern land with land in the South that had belonged to the Turkish Cypriot Muslim Schools of Larnaca.¹¹⁹ The ECtHR determined the agreement to be valid, and despite controversy within the RoC, the RoC cabinet approved the land swap in July 2012.¹²⁰ Though it remains to be seen whether land swaps such as this will be more widely practiced, cooperation between Greek and Turkish Cypriots facilitated through the IPC indicates the potential for mutually agreeable solutions to land grievances, and the possibility of a

113. *Id.* See *Things Fall Apart*, *supra* note 25, at 860. Atuahene explains that cost-benefit analysis with regard to political transition and property policy is different for political elites than it is for non-elite persons. *Id.*

114. See *Reunification*, *supra* note 11, at 228.

115. *Id.* (“Nevertheless, it is informative to see what they accomplished in the process, especially when comparing their success at the level of [elite] diplomacy with the historical failures of the elite diplomats . . .”).

116. See *id.* at 218–19 (arguing that outside powers have dominated the negotiations and compromised Cypriot ability to determine their own fate).

117. See *id.* at 243–44 (describing how, in the wake of the completion of the Oslo Group’s report, committee members sought to present their findings to government officials, the press, and those on both sides of the conflict but were rejected and criticized for their “pointless psychological effort”).

118. *Eugenia Michaelidou Dev. Ltd. v. Turkey*, App. No. 16163/90, Eur. Ct. H.R. ¶ 11 (2008).

119. *Id.* at ¶¶ 13–15; Stefanos Evripidou, *IPC Insists Tymvios Case Sets Precedent*, CYPRUS MAIL (July 12, 2012), www.cyprus-mail.com/Cyprus/ipc-insists-tymvios-case-sets-precedent/20120712#comments.

120. *Eugenia Michaelidou Dev. Ltd.*, Eur. Ct. H.R. at ¶ 16; *Greek Cyprus Approves Land-Swap Agreement With KKTC*, TODAY’S ZAMAN (July 10, 2012), www.todayszaman.com/newsDetail_getNewsById.action?newsId=286107.

property commission playing a greater role to facilitate remedies between private parties.

Currently, the remedies that exist for Cypriot property claimants remain insufficient. Furthermore, the status of current occupants' rights is far too uncertain to provide any real guarantees for these persons.¹²¹ The uncertainties of property ownership in the TRNC have created serious problems for foreign property purchasers, dispossessed claimants, and those currently residing on contested land.¹²² This uncertainty has had a measurable impact on the TRNC's economy and has inspired Greek Cypriot claimants to pursue even more aggressive means to lay claim to their northern land rights, including litigation in foreign jurisdictions.¹²³

II. Resolving Land Grievances in Cyprus: Identifying Gaps and Ways Forward

The precedent established by the ECtHR, ECJ, and IPC has recognized competing rights and responsibilities with regard to contested Cypriot properties.¹²⁴ As noted, in the wake of the IPC closing, there will be limited mechanisms to fill the gap and resolve the issue of competing land rights in Cyprus. The remainder of this Note evaluates the efficacy and issues that arise from a) pursuing further litigation, b) navigating the various local, regional, and international interests in negotiated settlement, and

121. See Rebecca Bryant, *A Dangerous Trend in Cyprus*, 235 MIDDLE EAST REP. 30, 37 (2005); *Greek Cypriots 'Can Reclaim Land'*, BBC NEWS (Apr. 28, 2009, 11:59 PM), <http://news.bbc.co.uk/2/hi/europe/8022238.stm>.

122. See Case C-420/07, *Apostolides v. Orams*, 2009 E.C.R. I-357154; see also Nigel Howarth, *Cypriot Real Estate Sales in Freefall*, CYPRUS PROP. NEWS (Oct. 5, 2011), <http://www.news.cyprus-property-buyers.com/2011/10/05/cypriot-real-estate-sales-in-freefall/id=009044>; Nigel Howarth, *Many Properties Will Remain Unsold*, CYPRUS PROP. NEWS (Oct. 28, 2011), <http://www.news.cyprus-property-buyers.com/2011/10/28/many-properties-will-remain-unsold>.

123. See Class Action Complaint at 2, *Toumazou v. Turkey*, (No. 1:09-CV-01967), 2009 WL 3453887 (D.D.C. 2009); Class Action Complaint at 12, *Fiouris v. TRNC*, (No. 1:10-CV-01225), 2010 WL 7378418 (D.D.C. 2010); Kerin Hope, *Bank Caught in Crossfire in Property Battle*, FIN. TIMES (June 2, 2005), <http://www.ft.com/cms/s/1/bed4a57c-d2d8-11d9-bead-00000e2511c8.html#axzz2AkOjLu69>; Poly Pantelides, *Lawyer Tells Greek Cypriots to Seek Redress in American Courts*, CYPRUS MAIL, Feb. 23, 2011, available at 2011 WLNR 3557059; see also *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 279-93 (7th Cir. 1990) (detailing a suit brought by the RoC to recover antiquities stolen from a church in Cyprus that later surfaced in an art gallery in Indiana).

124. Williams & Gürel, *supra* note 29, at 8 (recognizing the confusion that remains regarding the relationship between the ECtHR's *Demopoulos* decision and the ECJ's holding in *Apostolides*).

c) the possibility of establishing a cooperative land policy mechanism in the interim of a broader political settlement. These options are not mutually exclusive, and in practice, there is likely to be significant overlap between them.¹²⁵ Yet, disaggregating these categories and evaluating these options distinctly illuminates some of the central land tensions in Cyprus and the benefits and challenges of each path. Namely, this analysis asks and seeks to identify how land remedies in Cyprus can be constructed in a way that recognizes the rights established by the ECtHR, provides some relief for ongoing grievances, despite a lack of optimism for political settlement, and facilitates local legitimacy through bizonal cooperation. Of course, any viable remedy must take into account the incredible complexity of the political situation, as well as the great personal, cultural, and regional significance of the disputed land.¹²⁶

A. *Litigation Is Not an Ideal Option for Resolving Claims Going Forward*

Litigation has been an imperfect tool for addressing widespread claims such as land disputes in Cyprus.¹²⁷ The RoC federal courts are unable to enforce judgments in the TRNC, and many Greek Cypriots view using TRNC courts as an implicit

125. See *supra* notes 50–59, 101–110 and accompanying text.

126. See DODD, *supra* note 2, at 277; Hugg, *supra* note 103, at 233, 244–49 (discussing the complicated role of Cyprus in Turkey’s E.U. accession bids).

One could hardly construct a “problem case” more fully illustrative of the complexity of world politics in our time than the real-life case of Cyprus, that island beset by traditional antipathies between ethnic groups, torn by the pulls and pressures exerted by neighboring states interested in the fate of its constituent nationalities, agonized by the conflict between majority rule and minority rights, . . . and exposed to the political winds of both the East-West and the North-South struggles.

Benjamin M. Meier, *Reunification of Cyprus: The Possibility of Peace in the Wake of Past Failure*, 34 CORNELL INT’L L.J. 455, 455 (2001). The process of establishing a solution includes a complex discussion of the future governance structure that is beyond the scope of this Note. See DODD, *supra* note 2, at 259–66; see also *supra* note 9 and accompanying text; IRON, *supra* note 1, at 11–12 (“There are not . . . simply two ethnic communities in conflict in Cyprus, for within each ethnic community are several political groupings with radically opposed ideas on political life—moderate nationalists, more extreme nationalists, and several kinds of leftists.”).

127. See, e.g., REBECCA BRYANT & METE HATAY, GLOBAL POL. TRENDS CTR., SUING FOR SOVEREIGNTY: PROPERTY, TERRITORY, AND THE EU’S CYPRUS PROBLEM 1 (2009), available at <http://www.gpotcenter.org/dosyalar/PolicyBrieff.pdf> (explaining that property disputes that have resulted in recent lawsuits have yielded inconsistent results with no clear indication of a central “position” on the legal or political status of these lands “not controlled by the government of Cyprus”).

affirmation of TRNC sovereignty and jurisdiction.¹²⁸ Further, though litigation has established important precedents, it cannot of its own accord create and maintain the institutions necessary to resolve the Cyprus land problem.¹²⁹ However, since no local remedy pursuant to the requirements of *Xenides-Arestis* and *Demopoulos* will be available once the IPC closes, it is likely that claimants will continue to turn to external forums for resolution where they are accessible.

The ECtHR's holding in *Demopoulos* was based upon the fact that a local remedy existed in the IPC and provided sufficient potential for relief to claimants.¹³⁰ Once the domestic remedy is no longer operable, Greek Cypriots may attempt to return to the ECtHR to seek relief due to their earlier recognition and successes.¹³¹ However, four primary considerations make this option problematic: the ECtHR's recognition of competing property rights in *Demopoulos*, the pressure put on the RoC and TRNC by the ECtHR to develop localized forms of redress, a pre-*Demopoulos* backlog of Greek Cypriot property cases filed with the ECtHR, and the boundaries of the ECtHR's mandate.

First, *Demopoulos* acknowledged the competing claims held by current occupants of the contested properties.¹³² *Demopoulos* recognized that continuing to uphold Greek Cypriot property rights despite the passage of over thirty years could have a detrimental or inequitable effect on the rights of those who currently occupy the land.¹³³ Further, *Demopoulos* stated that

128. See *Demopoulos v. Turkey*, App. No. 46113/99, 50 Eur. H.R. Rep. SE14 ¶ 92 (2010) (indicating that most of the objections raised by the Greek Cypriots derive from the argument that exhausting local remedies offers the illegal occupation implicit legitimacy); see also Sert, *supra* note 5, at 248 (characterizing the Greek Cypriots as "afraid" of "international recognition of a TRNC institution").

129. See *supra* notes 50–55 and accompanying text for a discussion of past litigation, such as *Xenides-Arestis* and *Demopoulos*, which established precedent recognizing the TRNC and IPC as bodies capable of adjudicating adequate domestic remedies. However, the IPC will discontinue operation by 2013. See Press Release, TRNC, *supra* note 23.

130. *Demopoulos*, 50 Eur. H.R. Rep. SE14 at ¶ 127.

131. See, e.g., Sert, *supra* note 5, at 248. The ECtHR found that "Cypriot national Titina Loizidou's right 'to the peaceful enjoyment of (her) possessions' guaranteed under Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was violated by Turkey." The court awarded Ms. Loizidou 1.2 million euros in damages. *Id.* Prior to the decision in *Demopoulos*, there were hundreds of Cypriot property claims pending before the ECtHR. U.N. Secretary-General, *Report of the Secretary-General on the United Nations Operation in Cyprus*, ¶ 8, U.N. Doc. S/2005/353 (May 27, 2005).

132. See *Demopoulos*, 50 Eur. H.R. Rep. SE14 at ¶¶ 83–85.

133. *Id.* But see LOUKIS G. LOUCAIDES, *ESSAYS ON THE DEVELOPING LAW OF HUMAN RIGHTS* 133 (1995). Loucaides argues that the passage of time does not

unconditional support for a Greek Cypriot right of return was not a requirement of the Convention and, in fact, may lead to further human rights violations.¹³⁴ *Demopoulos's* concern for the passage of time and the rights of current occupants indicates that the ECtHR route may not proceed as favorably for Greek Cypriots as it has in the past.¹³⁵

Second, the ECtHR has clearly stated its preference that the claimants seek localized forms of redress.¹³⁶ The ECtHR's ongoing frustration with Cyprus's leaders' inability to negotiate a settlement is evident through its admonition in *Demopoulos* that the court is once again hearing a case "flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level."¹³⁷ Even though the obligation is stated directly in the European Convention for Human Rights, both *Xenides-Arestis* and *Demopoulos* clearly established that local redress was an obligation of the state parties.¹³⁸ It is unlikely that the ECtHR will be keen to revisit this determination.¹³⁹

Third, the ECtHR's interest in relieving some of the backlog of Greek Cypriot property cases in the ECtHR system may have partially motivated the preference for local redress voiced in

pardon human rights violations:

The forcible transfer of populations and the implantation of settlers are prohibited by international law and qualify as international crimes. These methods entail by definition long[-]term situations. If it is accepted *a priori* that passage of time legalizes the effects of such methods the role of law becomes pathetic.

Id.

134. *Demopoulos v. Turkey*, App. No. 46113/99, 50 Eur. H.R. Rep. SE14 ¶¶ 116–17 (2010); Williams & Gürel, *supra* note 29, at 9.

135. For the argument made by Williams and Gürel that several factors, including the passage of time, work against the continued validity of the Greek Cypriots' claims, see Williams & Gürel, *supra* note 57 and accompanying text.

136. See European Convention on Human Rights, *supra* note 28, at art. 35 § 1; see also Grant, *supra* note 64, at 789 (explicating that both the ECJ and the ECtHR have affirmed that judicial systems at the national level have "procedural autonomy" in adjudicating land disputes in northern Cyprus).

137. *Demopoulos*, 50 Eur. H.R. Rep. SE14 at ¶ 85.

138. European Convention on Human Rights, *supra* note 28, at art. 35 §1 ("The Court may only deal with the matter after all domestic remedies have been exhausted . . ."). *Demopoulos* addressed the capacity of domestic agents to create appropriate remedies:

[T]he Court maintains its view that it must leave the choice of implementation of redress for breaches of property rights to contracting states, who are in the best position to assess the practicalities, priorities[,] and conflicting interests on a domestic level even in a situation such as that pertaining in the northern part of Cyprus.

Demopoulos, 50 Eur. H.R. Rep. SE14 at ¶ 118.

139. *Id.*

Xenides-Arestis and *Demopoulos*.¹⁴⁰ If that is the case, the ECtHR may be unwilling to reopen the floodgates to further property litigation.¹⁴¹

Finally, the ECtHR is not mandated to hear any matter that “is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.”¹⁴² If the ECtHR determines that no “relevant new information” will arise in further Greek Cypriot property claims, it may refer to its mandate as a means to encourage local resolution and dissuade future filings of Cypriot property claims stemming from the 1974 migration.¹⁴³ For the aforementioned reasons, it is unlikely that the ECtHR will remain as hospitable to Greek Cypriot property claimants as it was before *Demopoulos*.¹⁴⁴

It is possible that the limitations now upon the ECtHR may inspire applicants to go the route of Meletis Apostolides—to have judgments enforced by the ECJ through other E.U. member states.¹⁴⁵ However, as a policy matter, wider reliance on this particular recourse will create litigation burdens for a large group of foreign nationals who purchased what they believed to be legitimate titles to land.¹⁴⁶ In addition, because the TRNC is not recognized by the E.U., this recourse may have little impact for applicants seeking to enforce claims against Turkish Cypriots. This form of redress is primarily unsustainable due to procedural barriers and potential inconsistencies with other jurisprudence on the issue.

140. Williams & Gürel, *supra* note 29, at 11–12. For a discussion of the pre-*Demopoulos* backlogged cases regarding property rights, see the U.N. Secretary-General’s Report, *supra* note 131.

141. Cf. Williams & Gürel, *supra* note 29, at 12–13 (arguing that the ECtHR would be justified in continuing to defer complaints to local mechanisms even if there were no backlog).

142. European Convention on Human Rights, *supra* note 28, at art. 35 § 2(b).

143. Williams & Gürel, *supra* note 29, at 12.

144. See *supra* notes 56–59 and accompanying text.

145. For discussion of Apostolides’s case and his attempts to bring his land claims to courts, see *supra* notes 63–73 and accompanying text; see also Borders, *supra* note 34, at 745 (discussing how Apostolides was ultimately able to enforce these judgments).

146. See Case C-420/07, *Apostolides v. Orams*, 2009 E.C.R. I-3571 ¶¶ 21, 26; Bruno Waterfield, *Landmark Court Ruling Means Britons Could Be Forced to Return Homes in Northern Cyprus*, TELEGRAPH (Apr. 29, 2009), <http://www.telegraph.co.uk/news/worldnews/europe/cyprus/5242294/Landmark-court-ruling-means-Britons-could-be-forced-to-return-homes-in-Northern-Cyprus.html>. For background on the building and development boom of abandoned properties, see DODD, *supra* note 2, at 256.

For one thing, most claimants do not possess the resources required to see a case through the meandering trajectory traced by Mr. Apostolides.¹⁴⁷ Relying on this course will likely produce a significant economic and practical burden for many with legitimate grievances.¹⁴⁸ Additionally, the ECJ generally requires that national legal bodies carry out the dictates of the Court.¹⁴⁹ The questions of jurisdiction, enforcement, and recognition of authority that plagued Mr. Apostolides's case in Nicosia federal court may replicate themselves in future ECJ judgments that rely on the cooperation of RoC or TRNC courts.¹⁵⁰

Further, it remains unclear what the relationship is between *Apostolides* and *Demopoulos* and how these two cases will be interpreted side by side in future decisions.¹⁵¹ This problematic inconsistency stems from the fact that *Demopoulos* requires redress through a legitimate local remedy (the IPC), whereas *Apostolides* allows claimants to sidestep this remedy and have judgments from RoC courts enforced in other E.U. member states against occupiers of their land in the TRNC.¹⁵²

Relying solely on the European Courts may undermine negotiations and create a problem of inconsistent judgments and enforcement.¹⁵³ However, in the absence of other viable mechanisms for redress, individuals will likely continue to seek relief through whatever forum is available.¹⁵⁴ The ECtHR and ECJ have recognized that many claimants retain some rights to property left behind, and, at the very least, have a right to some form of redress.¹⁵⁵ Any future resolution for Cypriot land claims

147. See, e.g., BRIDGING THE PROPERTY DIVIDE, *supra* note 21, at 8 (explaining that both the Turkish and Greek Cypriots face the prospect of heavy economic burdens associated with challenging and defending property titles in court).

148. *Id.*

149. Grant, *supra* note 64, at 789.

150. *See id.*

151. Williams & Gürel, *supra* note 29, at 8. Since the IPC is closing, the vacuum of local remedies will likely complicate the confusion between these two judgments.

152. For a description of these cases and their disparate outcomes, see *supra* notes 50–73 and accompanying text.

153. Williams & Gürel, *supra* note 29, at 8; see also *supra* note 37 and accompanying text.

154. For examples of the varying routes Greek Cypriot claimants have attempted to regain their land rights within the past several years, see *supra* note 123.

155. The ECJ has upheld a judgment in *Apostolides* declaring that Greek Cypriots maintain land rights in the North and are entitled to damages. See *supra* notes 66–70 and accompanying text. The ECtHR upheld Greek Cypriots' rights to both return and use their land and determined that the Greek Cypriots could claim damages in *Loizidou*. See *supra* note 44 and accompanying text. In *Xenides-Arestis*, even though it did not decide on the merits of the case, the ECtHR

must reflect these rights and reconcile the rights of prior owners and current occupiers of contested property.¹⁵⁶

B. Negotiated Settlement Provides a Viable, Though Uncertain, Solution

There is a viable argument that Cypriot property claims will not be settled until the dispute between the RoC and TRNC is effectively negotiated and a political settlement has been reached.¹⁵⁷ Relying on negotiated settlement to deal with land disputes has a number of benefits.

Negotiations will undoubtedly clarify the boundaries of Greek and Turkish Cypriots' rights and obligations to property,¹⁵⁸ and develop a consistent interpretation of the principles established by the European Court judgments.¹⁵⁹ The ECtHR has long advocated for the land issue to be resolved through settlement, and the property regime laid out in the Annan Plan does not contradict any of the ECtHR's established standards.¹⁶⁰ The precedent established by the ECtHR has significantly excised the most radical proposals from either side, leaving plenty of room for negotiators to carve out a more specific, sustainable, and concrete solution.¹⁶¹

Negotiations with the weight and resources of political elites and governmental structures behind them may also have a better capacity to develop strong and sustainable enforcement and compensation structures.¹⁶² To create land settlements through

determined that the TRNC and Turkey are required to establish and maintain an institution to which Greek Cypriots can bring land claims. *See supra* note 49 and accompanying text.

156. *Demopoulos*, 50 Eur. H.R. Rep. at ¶ 10; Williams, *supra* note 50, at 818.

157. *See* Williams & Gürel, *supra* note 29, at 25. Williams and Gürel argue that the ECtHR's position in *Demopoulos* is only significant insofar as it establishes parameters for resolution of the property issue—excluding the most radical proposals (i.e., that restitution is called for by the Convention, or on the contrary, that no compensation or exchange is necessary for widespread takings of Greek Cypriot property). *Id.* at 9, 22.

158. *Cf. id.* at 8.

159. *Id.*

160. *Id.* at 23.

161. For a discussion on the range of solutions that ECtHR has left open, see *supra* note 157.

162. Williams & Gürel, *supra* note 29, at 26 (arguing that normalization can come only through negotiated settlement); see also *Loizidou v. Turkey*, 23 Eur. H.R. Rep. 513, 542–43 (1997). *Loizidou's* preference for localized redress was clearly stated:

[I]t is also far from established whether the "TRNC" *de facto* Government will survive or not, and if it will, in what form—as a federal or confederal unit, an independent state, or in some other form The final outcome

other means could remove bargaining tools from both sides, and may compromise settlement of important questions of governance.¹⁶³

There are also disadvantages. First and foremost is the possibility that settlement will not be reached on a timeline that reflects the interests of either the dispossessed or those who are tentatively occupying northern properties.¹⁶⁴ Cyprus's political and social divisions were cut over multiple decades, and, despite many attempts at settlement, political determinations are not likely to be resolved quickly in current negotiations.¹⁶⁵ The RoC's recent offshore drilling and Turkey's vocal opposition may further deter an expedient resolution.¹⁶⁶

Moreover, negotiations that primarily focus on the interests and cost-benefit calculations of elites may not reflect the needs and interests of local populations.¹⁶⁷ This kind of miscalculation of needs and interests across a wider swath of the Greek Cypriot population may have contributed to the poor response to Annan

of the conflict—in the form of a *post facto* international or bilateral settlement—will have to resolve in one way or another the issue of recognition of the acts of the “TRNC” from the commencement of its existence, and/or of reversion to the original status prior to such acts.

Id.

163. See Williams & Gürel, *supra* note 29, at 8–9.

164. For example, political negotiations have been ongoing since 1974. Dodd, *supra* note 2, at 91–223; see also *supra* note 87 and accompanying text. Such lengthy negotiations will only exacerbate the problems the courts have noted in *Demopoulos* and *Apostolides* of the competing rights of the present occupants and the Greek Cypriots who have been previously dispossessed. See *supra* notes 56, 62 and accompanying text.

165. See Dan Lindley, *Historical, Tactical, and Strategic Lessons from the Partition of Cyprus*, 8 INT'L STUD. PERSP. 224, 235 (2007) (characterizing the negotiations over the Cyprus problem as “seemingly perpetual”). Optimism about the most recent round of negotiations has been felt before, to no avail. See, e.g., *Cyprus: Byzantine Diplomacy*, ECONOMIST, July 26, 1997, at 44 (reflecting optimism about resolution during the 1997 negotiations); Makarios Droushiotis, *Closest Ever to a Cyprus Deal*, CYPRUS MAIL (Nov. 6, 2011), <http://www.cyprus-mail.com/cyprus/closest-ever-cyprus-deal/20111106> (reporting that both sides are committed to reaching an agreement, and that a source close to negotiations has indicated that they are closer to a solution than ever before).

166. See *Cyprus Begins Controversial Oil and Gas Drilling*, BBC NEWS (Sept. 19, 2011, 12:01 PM), <http://www.bbc.co.uk/news/world-europe-14968737>; Cem Barber, *Turkey Threatens Naval Action Over Cyprus Drilling*, FAMAGUSTA GAZETTE (Sept. 6, 2011), <http://famagusta-gazette.com/turkey-threatens-naval-action-over-cyprus-drilling-p12883-69.htm>; Alexia Saoulli, *Nothing Will Stop Drilling*, CYPRUS MAIL (Aug. 17, 2011), <http://www.cyprus-mail.com/cyprus/nothing-will-stop-drilling/20110817>.

167. For a description of the grassroots organization called the Oslo Group, which did not gain support from political elites, despite its popular backing, see *supra* notes 109–117 and accompanying text.

V.¹⁶⁸ As discussed above, disenfranchising Greek and Turkish Cypriot populations from the negotiating table forecloses more localized opportunities at reconciliation and cooperation.¹⁶⁹ In order to be most effective and equitable, a negotiated settlement, particularly with regards to property, must create space for the voices of non-elite Turkish and Greek Cypriots and reflect their interests.¹⁷⁰

C. Navigating Levels of Interest: Local to International Stakes and the Challenges of a Top-Down Approach

Establishing a bi-communal land policy, even in the absence of an overarching political settlement, will require balancing the interests of multiple stakeholders, from the local to the international. The international community, including the U.N., the E.U., and individual states, has been deeply involved in the Cyprus conflict and negotiations.¹⁷¹ International third party oversight has facilitated nearly all of the negotiations to the present.¹⁷² Indeed, much of this support has been positive, though international priorities have complicated the negotiations.¹⁷³ However, two primary concerns support an argument for limiting the scope of international intervention with regard to the resolution of land disputes.

First, the complicated relationship between the E.U. and the RoC, TRNC, and Turkey provides a stumbling block to successful settlement.¹⁷⁴ In the second half of 2012, the RoC is set to hold the E.U. presidency, which has contributed to concerns about E.U. bias and whether the E.U. will be able to balance the interests of both groups during this time.¹⁷⁵ Turkish Cypriots' perception of

168. COUFOUDAKIS, *supra* note 103, at 41–42.

169. *See supra* notes 111–117 and accompanying text.

170. *Rethinking*, *supra* note 22, at 466; *see also* DODD, *supra* note 2, at 276 (arguing that no settlement option would be viable if Greek Cypriots do not feel that it is in their interest).

171. *See, e.g., supra* note 103 and accompanying text.

172. Michele Kambas, *U.N. Calls Cyprus Peace Summit in January*, REUTERS (Nov. 2, 2011), <http://in.reuters.com/article/2011/11/01/idINIndia-60251720111101>; *see also Reunification*, *supra* note 11, at 218–19.

173. *See Reunification*, *supra* note 11, at 218–19.

174. *Id.*

175. *See, e.g.,* Jonathon Burch, *Turkey to Freeze E.U. Ties if Cyprus Gets E.U. Presidency*, REUTERS (Sept. 18, 2011), <http://www.reuters.com/article/2011/09/18/us-turkey-cyprus-idUSTRE78H20L20110918>. Part of the E.U.'s leverage in assisting with conflict negotiations in Northern Ireland, for instance, was based in the fact that both Britain and Ireland were members and that the E.U. could utilize economic incentives as a part of the settlement package. Diez, et al., *supra* note 103, at 582. Turkey's uncertain E.U. future, the TRNC's lack of recognition, and

E.U. bias may compromise any attempt to resolve land claims in which the E.U. or RoC's interests are too widely represented.¹⁷⁶

Second, and more generally, is the concern that internationally developed and administered conflict solutions will fail to incorporate important local interests and will overlook significant social inequalities in their design.¹⁷⁷ If an international or regional third party is to provide successful support for political and land-based negotiations in Cyprus, it must be able to build a wider social base beyond political elites and to remember that a dearth of local, non-elite representation contributed to the failure of the Annan Plan.¹⁷⁸ In addition, international attempts to resolve Cypriot land grievances must draw lessons from the legitimacy problems embedded in other contexts of external oversight,¹⁷⁹ in order to ensure that the mechanism does not replicate old inequalities and animosities in the TRNC and RoC legal systems going forward.¹⁸⁰

Nevertheless, international involvement in land settlement is appealing. First, international clout may provide a more definitive

the RoC's impending E.U. presidency create a more challenging landscape for the E.U.'s involvement. Cf. *The Insoluble Cyprus Problem: Sad Island Story*, ECONOMIST, Mar. 31, 2011, at 51 (positing that changes in local politics mean long talks still await the Cypriot leaders in 2013, despite the extensive negotiations that have already occurred).

176. *But see* Lindley, *supra* note 165, at 236 (arguing that the E.U. gave up its leverage over the RoC when it failed to condition RoC accession to the E.U. on successful resolution).

177. *See supra* notes 103, 116.

178. *See supra* notes 109, 113; Diez, et al., *supra* note 103, at 581.

179. *See Displacement Shock*, *supra* note 12. The property redress mechanism established by the United Nations Mission in Kosovo (UNMIK) reveals some of the problems that can arise through international institution building out of conflict. The mechanism was formulated from the top down with very little local involvement or input. Bernadette Atuahene, *Property and Transitional Justice*, 58 UCLA L. REV. 65, 89–90 (2010). This gave one primary agency the exclusive jurisdiction to address and remedy any unlawful or coerced dispossession of property rights during the relevant timeframe. PRAXIS, COMMENTS ON UNMIK'S PROTECTION OF ICCPR-GUARANTEED RIGHTS IN RELATION TO CERTAIN ASPECTS OF PRIVATE IMMOVABLE PROPERTY CLAIMS RESOLUTION IN KOSOVO 3 (2006), available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Praxis.pdf>. Consequently, UNMIK established the standards for restitution and compensation without sensitivity to the inequities between Albanian and non-Albanian property holders that were ingrained in prior property arrangements and fomented concerns that the property mechanism would transcend international oversight and replicate old inequalities and animosities going forward. *Id.*

180. PRAXIS, *supra* note 179, at 3. Also, as UNMIK created a legal property structure in Kosovo, parallel courts in Serbia continued to deal with property issues, thus creating a confusing system of parallel, and often contradictory, judgments. Elena Baylis, *Parallel Courts in Post-Conflict Kosovo*, 32 YALE J. INT'L L. 1, 12–13 (2007). *See supra* notes 114–116 and accompanying text.

settlement of boundaries and governance issues.¹⁸¹ Second, international bodies have a greater arsenal of procedural expertise to establish mechanisms and enforce property rights, obligations, and requirements.¹⁸² International actors have learned many lessons through their engagement with other conflict situations, some of which may be apt for the Cyprus context.¹⁸³ Furthermore, third party mediation may facilitate communication between conflicting parties, improve credibility of a property institution, and limit the involvement of external interests.¹⁸⁴

The Annan referendum illustrated that even a well-structured internationally celebrated plan will not succeed without local legitimacy.¹⁸⁵ While expertise and neutrality are necessary, international involvement must not proceed at the expense of representative input.¹⁸⁶ Local legitimacy, to the best that it can be achieved among both Greek and Turkish Cypriots, is paramount to successful settlement of the property situation.¹⁸⁷

III. Constructing a Bi-communal and Locally Legitimate Solution to Move Forward on the Land Issue

The next step for resolving Cypriot land claims must reflect the rights and obligations of both dispossessed and current occupiers of contested properties.¹⁸⁸ These will not disappear when

181. See Ronald J. Fisher, *Methods of Third-Party Intervention*, in THE BERGHOF HANDBOOK FOR CONFLICT TRANSFORMATION 157, 160–63 (Beatrix Austin et al. eds., 2011).

182. *Id.*

183. See, e.g., Hans Das, *Restoring Property Rights in the Aftermath of War*, 53 INT'L & COMP. L.Q. 429, 430 ("In Bosnia and Kosovo, the international community has experimented with institutional and procedural models to resolve large numbers of property restitution claims . . . [V]aluable lessons can be drawn from . . . the institutional machinery and the procedural mechanics of property restitution . . .").

184. HANS J. GIESSMANN & OLIVER WILS, BERGHOF RES. CTR. FOR CONSTRUCTIVE CONFLICT MGMT., CONFLICT PARTIES' INTERESTS IN MEDIATION 4–5 (2009). International actors may also be able to facilitate the inclusion of divergent political perspectives, because they do not possess the biases and loyalties that local actors bring to the table. WOLLEH, *supra* note 111, at 22.

185. See *supra* note 109 and accompanying text.

186. Baylis, *supra* note 180, at 11, 48. Competing claims to sovereignty and legitimacy between the Serbian-state legal system and the internationally established claims system in Kosovo (controlled primarily by the United Nations Mission in Kosovo) have created great inconsistency in judgment and enforcement, and compromised legitimacy of both systems among different segments of society. *Id.* Truly representative input must also include participation by non-elites. See *supra* note 113.

187. *Id.*

188. See *supra* notes 57, 111–117. Despite Turkey's argument that the negotiations create a bar to Greek Cypriot property claims in the ECtHR, *Xenides-*

the IPC ceases its operations, and neither do the grievances that gave rise to Loizidou's original claim before the ECtHR.¹⁸⁹

Comprehensive negotiated settlement is the ideal outcome.¹⁹⁰ However, history has demonstrated that this solution may not come to pass within a reasonable timeframe.¹⁹¹ Further, in prior Cypriot negotiations, international arbiters have demonstrated a preference for dealing only with political elites.¹⁹² This has prevented many non-elite sectors of society from presenting creative alternatives.¹⁹³ Greek and Turkish Cypriots should not have to wait for an uncertain political settlement to exercise rights or clarify obligations to property that they have previously owned or currently inhabit.¹⁹⁴

Given the uncertainty of negotiated settlement, the best contemporary solution for Cypriot property disputes is the formation of a bi-communal body, incorporating elements from the IPC and Annan Plan. This body, however, must have local legitimacy, participation from both Greek and Turkish Cypriots, and it must represent the interests of all persons who lay claim to contested land.¹⁹⁵ An alternate local remedy could take many forms, which is both a strength and a weakness.¹⁹⁶ Local input can positively shape the structure and form of the mechanism; however, deciding on the most appropriate mechanism and mandate may create additional conflicts.¹⁹⁷ Despite the challenges, the well-documented relationship between property grievances and social unrest provides a strong incentive for establishing some

Arestis held that settlement negotiations between Greek and Turkish Cypriots could not serve as a justification for violations of the Convention. *Xenides-Arestis v. Turkey*, App. No. 46347/99, 52 Eur. H.R. Rep. 16, 491, 496–98 (2011).

189. *See supra* notes 40, 133.

190. *See supra* notes 162–163.

191. *See supra* notes 57, 63, 87 and accompanying text.

192. *See supra* notes 112, 113, 117, 178 and accompanying text.

193. *Id.*

194. *Xenides-Arestis v. Turkey*, App. No. 46347/99, 52 Eur. H.R. Rep. 16, 491, 496–98 (2011) (showing the difficulties Cypriots faced due to uncertainties).

195. *See supra* notes 57, 108, 112–117 and accompanying text.

196. *See* Albrecht Schnabel, *One Size Fits All? Focused Comparison and Policy-Relevant Research on Violently Divided Societies*, in *RESEARCHING VIOLENTLY DIVIDED SOCIETIES: ETHICAL AND METHODOLOGICAL ISSUES* 193, 205 (Marie Smyth & Gillian Robinson eds., 2001); WOLLEH, *supra* note 111, at 21–22. Establishing the structure of the Conflict Resolution Trainer Group was complicated by questions about appropriate representation. For instance, equal (fifty percent Greek Cypriot, fifty percent Turkish Cypriot) versus representative (reflecting the majority Greek Cypriot and minority Turkish Cypriot population demographics) membership in the group; as well as how best to represent both left-wing and right-wing political perspectives. *Id.*

197. Wolleh, *supra* note 111, at 21–22.

form of redress.¹⁹⁸ Outbreaks of unrest in the wake of the Annan V referendum highlight the fact that the absence of recourse for aggrieved persons increases the threat of further violence.¹⁹⁹

Furthermore, the commission must be tasked with reconciling the holdings of prior courts, and embedding the rights of displaced and current property holders into both a broad land policy and a system for addressing individual grievances.²⁰⁰ It is essential that the complicated calculations about property–restitution, compensation, and mobility–reflect the interests of dispossessed and current occupiers of Cypriot land, and provide opportunities for reconciliation on smaller scales.²⁰¹

This mechanism should be structured as an administrative land redress commission, like the IPC or the commission envisioned by the Annan Plan,²⁰² but should have an administrative board that is more representative of the bi-communal interests of both Greek and Turkish Cypriots.²⁰³ In this way, the policies established by the commission could create the parameters for negotiation of wider political territory disputes.²⁰⁴ In addition, this form of redress creates opportunities for non-elites to contribute meaningfully to the settlement of an important aspect of the broader political dispute and provides opportunities to facilitate mutually beneficial exchanges between displaced Greek and Turkish Cypriots.²⁰⁵ The interest and capacity to create such a bi-communal, reconciliatory commission already exists in the Greek and Turkish Cypriot communities.²⁰⁶

Due to the aforementioned concerns about political elites dominating the process, it makes sense to organize the commission

198. *Things Fall Apart*, *supra* note 25, at 838–41 (discussing the myriad of literature on the relationship between property-related grievances and social unrest); *see also* Bernadette Atuahene, *Legal Title to Land as an Intervention Against Urban Poverty in Developing Nations*, 36 GEO. WASH. INT'L L. REV. 1109, 1130 (2004) (arguing that legal title to land can remove structural barriers that contribute to cycles of poverty).

199. *See supra* note 198; *see also* Bryant, *supra* note 121, at 30.

200. *See supra* note 57. For more on the complications of restitution and property distribution and compensation mechanisms, *see* Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY J. INT'L L. 462, 474–84, 495 (2010); Bernadette Atuahene, *From Reparation to Restoration: Moving Beyond Restoring Property Rights to Restoring Political and Economic Invisibility*, 60 SMU L. REV. 1419, 1444, 1470 (2007).

201. *See supra* note 57, 200; Bryant, *supra* note 121, at 30.

202. *See supra* note 102 and accompanying text.

203. *See supra* notes 53, 79.

204. *See supra* notes 112–117 and accompanying text.

205. *See supra* notes 111–120 and accompanying text.

206. *See supra* notes 111–117 and accompanying text.

through a neutral third party.²⁰⁷ That said, local bi-communal representatives should determine the commission's policies, mandate, and authority.²⁰⁸ International stakeholders, particularly the U.N., can offer a great body of procedural expertise and a sense of neutrality so long as third party interests are not prioritized.²⁰⁹ In this way, third party international actors may be well situated to recruit commission members and establish the skeletal structure of the institution.²¹⁰ In addition, international involvement can provide incentives for cooperation that may not otherwise exist.²¹¹

By limiting international actors to the basic organization of the commission, and leaving local actors to establish the policies and parameters of the commission's operations, the benefits of international involvement may be maintained, while the legitimacy hurdles of international oversight are curbed. For instance, concerns about local legitimacy and sensitivity to underlying inequalities are better handled by local parties, particularly those who have incentives to work bi-communally and cooperatively.²¹² Further, by decentralizing solutions from political elites, this commission may diffuse some of the complex regional and international tensions that have played out in past negotiations.²¹³

There are drawbacks to this approach. First, there is the possibility that the establishment of a local system for negotiating property disputes would compromise negotiations or create inconsistencies in the parameters of settlement.²¹⁴ However, both the TRNC and the RoC must face the task of determining how to interpret and incorporate the judgments of the European Courts and the interests of both populations into a viable and long-term

207. *But see supra* notes 103, 175 and accompanying text. The U.N. has done a better job of preserving neutrality than the E.U. *See supra* notes 101–103, 172 and accompanying text.

208. *See supra* notes 103–110, 112–117 and accompanying text.

209. *See supra* notes 101–103, 172, 175, 181–184 and accompanying text.

210. *Id.*

211. *Cf. supra* notes 181–184 and accompanying text (outlining benefits of third party international involvement). *Contra supra* notes 103, 175 (discussing negative results of third party international involvement).

212. *See supra* notes 112–117, 178–180 and accompanying text.

213. *Cf. supra* notes 103, 112–117, 175 and accompanying text (displaying some benefits and challenges that can come with decentralizing solutions away from elites).

214. *See supra* notes 103, 116; Patrick R. Hugg, *The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion*, 23 *FORDHAM INT'L L.J.* 606, 608–14, 626 (2000) (discussing the complications that have resulted from such a pluralist set of players, institutions, and influences in the Cyprus negotiations).

political solution.²¹⁵ Creating a bi-communal property commission would incorporate multiple voices and interests into the fabric of the resolution and would establish parameters for larger political negotiations consistent with the rights protected by the European Courts.²¹⁶

Second, incorporating a wider range of individuals into a commission to define and implement land rights may inflame underlying unrest.²¹⁷ And yet, the sorts of "ancient hatreds" that are often assumed to exist in post-conflict societies do not appear salient in Cyprus.²¹⁸ On the contrary, individual Greek and Turkish Cypriots have demonstrated the willingness and ability to work together on issues of reconciliation and political solution.²¹⁹ Incorporating such perspectives into a property commission would afford individuals the opportunity to contribute productively to problem-solving and dispute resolution, and facilitate reconciliation.²²⁰

Establishing a problem-solving body comprised of local stakeholders and multiple interests creates an opportunity for the people of Cyprus to contribute to the resolution of long-standing land disputes and move toward communal reconciliation.²²¹ At the very least, empowering Greek and Turkish Cypriots to participate in a cooperative analysis of the costs and benefits involved in various modes of property settlement will be more likely to achieve local legitimacy and succeed where *Annan V* did not.²²²

Conclusion

At best, the current piecemeal range of remedial mechanisms for aggrieved Cypriots represents a problem of inconsistency for the claimants, property occupiers, TRNC and RoC, and enforcing bodies. And yet, grievances of the dispossessed, and uncertainty for present occupants of contested land, persist. Establishing clear and consistent land policies that reflect the interests of both communities is an important part of creating economic and social stability.²²³ Though resolving land disputes through negotiated

215. *See supra* note 57.

216. *See supra* notes 57, 111–117 and accompanying text.

217. *See supra* notes 198–199 and accompanying text.

218. Lindley, *supra* note 176, at 236.

219. *See Rethinking*, *supra* note 22, at 161.

220. *See supra* notes 111–117 and accompanying text.

221. *See supra* notes 111–117.

222. *See supra* notes 111–117 and accompanying text.

223. *See supra* notes 195–201 and accompanying text.

settlement is the most desirable solution, past practice has indicated that waiting on a settlement may further impede the resolution of claims and creation of remedies.²²⁴ The ECtHR has implied that property solutions must balance the rights of both the former property owners and the current occupants.²²⁵ International actors have the capacity to supplement this rights-based approach to property settlement, so long as they do not impede local action and legitimacy. Ultimately, a bi-communal commission, taking the best of each of these potential solutions, can represent a plurality of actors, facilitate local legitimacy, and establish the most equitable and just land policy going forward.

224. *See supra* notes 57, 63, 87, 162 and accompanying text.

225. *See supra* note 57.

