Territorial Disputes by Proxy: The Indirect Involvement of International Courts in the Mega-politics of Territory

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I. Introduction

International Courts (ICs) are increasingly called to rule upon mega-political disputes. These are legal issues concerning social, economic, and political conflicts that create cleavages at the national and international levels across or between societies.[1] Defined as such, mega-political disputes concern issues that divide societies, with the result that, whatever the outcome of an IC ruling on such matters, important and sizable social or political groups will be antagonized.[2] This makes the involvement of ICs in mega-political disputes extremely risky, especially in terms of backlash. This article explores whether, and under which conditions, ICs can serve as suitable venues for resolving mega-political territorial disputes. It focuses on a set of specific ICs—regional economic and human rights ICs—dealing with a specific type of mega-political disputes that we label Territorial Disputes by Proxy (TDbP). Concisely, regional ICs deal with TDbP when they do not directly decide on who should lawfully exercise sovereignty over a particular territory or whether a people have the right to independence. Instead, they are called to address specific legal questions only indirectly related to the territorial dispute, such as the property rights of ethnic minorities or free movement of goods within contested territories.

The empirical focus is on three regional courts that thus far have been particularly active in adjudicating TDbP: two economic courts, the Central

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1 Karen J. Alter & Mikael R. Madsen, *The International Adjudication of Mega-Politics*, 84 Law & Contemp. Probs (2021).

2 *Id*.

American Court of Justice (CACJ) and the Court of Justice of the European Union (CJEU), and a human rights court, the European Court of Human Rights (ECtHR).

II. Territorial Disputes by Proxy And The Mega-politics of Territory

Not all territorial disputes are litigated by proxy, and not all controversies involving contested territories are mega-political. Disputes become mega-political before they reach an international bench, if political divisions emerge in the societies driven by three main types of controversies—inter-state conflict, social cleavages or sovereignty concerns.[3] Territorial disputes become political mostly due to inter-state driven politics.[4] This can happen for national security reasons—when the states involved are willing to use (or threaten to use) force and military action—or when a territorial dispute is also linked to broader issues concerning ethnic minorities who inhabit the contested territories.

There can also be economic reasons for the public to have a strong stake in the outcome of a territorial dispute. For example, Western Sahara is a sparsely populated territory, and the export of phosphate and fisheries are a big part of the economy. A territorial dispute can also qualify as mega-political due to domestic politics that frames the issue as a divisive line in national electoral campaigns. Such developments can mobilize at least one of the national societies of the parties to the conflict and turn the issue into a question of extraordinary politics. More rarely, territorial disputes can also become mega-political due to sovereignty concerns,[5] but due to the potential for EU member states to perceive a decision on the right of separatist movements to self-determination as a limitation of their own sovereignty.

Ruling on territorial controversies was for long time—and to a certain extent still is today—the province of international arbitrators and of ICs with a global reach, such as the International Court of Justice (ICJ) and the International Tribunal of the Law of the Sea (ITLOS). Regional economic and human rights ICs generally do not have jurisdiction over territorial matters. This article, however, argues that a limited focus on inter-state arbitral and global courts provides only a partial view of how contemporary

3 Alter & Madsen, *supra* note 1, at 8.
4 *Id*.
5 Alter & Madsen, *supra* note 1, at 11.

ICs engage the mega-politics of territory in their practices. This is because arbitration and inter-state ICs share important institutional features that may well be key to explaining the positive findings of the above-mentioned literature, but in the end say little about the capacity of ICs to concretely and effectively deal with the mega-politics of territory.

For this reason, this article focuses on what can be called international adjudication of TDbP. As mentioned before, TDbP occurs when regional economic and human rights ICs with compulsory jurisdiction, private access, and a lack of direct jurisdiction over territorial matters adjudicate economic and human rights disputes that arise from an underlying territorial controversy. This means that the litigants do not ask the ICs to actually solve the territorial dispute. Rather, they want the courts to address certain underlying legal issues that are only indirectly linked to a territorial dispute in the sense that they have arisen as a consequence of a dispute over territory. Such disputes can be about the tariffs applicable to products crossing a contested border or the property rights of people displaced due to a territorial conflict.

We identify three main types of mega-political TDbP adjudicated by economic and human rights ICs: commercial, rights-based, and institutional. *Commercial TDbP* are highly divisive economic issues arising out of an ongoing or past territorial disputes. This type of dispute occurs, for instance, when one state imposes additional—often illegal—tariffs against another state that belongs to the same regional economic organization as a countermeasure for an alleged violation of territorial boundaries with the clear intent of isolating the state in the regional bloc. There are various types of *Rights-Based TDbP*, including the violation of the right to property of certain ethnic minorities, the limitation or suspension of the free movement of peoples or, more generally, the violation of basic rights of the citizens inhabiting contested territories. The third, transversal category of TDbP, *Institutional TDbP*, occurs when a territorial dispute gives rise to legal disputes before economic and human rights ICs concerning the broader functioning, responsibilities, and nature of the regional organizations in which the various courts adjudicating such a dispute are entrenched.

III. *Commercial and Institutional Territorial Disputes by Proxy in The Practice of Regional Economic Courts*

A number of commercial and institutional TDbP have been adjudicated by the CACJ and the CJEU. The CACJ has been particularly active, having

ruled upon several community law disputes arising out of a territorial conflict between Nicaragua and Honduras over the maritime boundaries of the Caribbean Sea. The CACJ also ventured into ruling upon an environmental and community law case arising from a territorial dispute between Nicaragua and Costa Rica on the protected area of the Rio San Juan. For its part, the CJEU has been called upon to address issues related to the import of products from the Turkish controlled area of Northern Cyprus into the EU and on issues regarding the import of products from occupied territories in the EU's Mediterranean neighborhood. The following part presents these cases and describes how the two ICs have dealt with them in their rulings.

A. *The Mega-politics of Territory in The Practice of The Central American Court of Justice*

In 1999, the CACJ was called to rule upon two disputes linked to a politically heated, long-standing dispute between Nicaragua and Honduras over the maritime boundaries of the Caribbean Sea.[6] The conflict involved notable disagreements between the two countries over their territorial and maritime boundaries, at times almost leading to military confrontations between the two countries. In 1986, Honduras and Colombia began negotiations to draft the *Lopez-Ramirez Treaty*, through which they redrew the maritime boundaries in the Caribbean Sea against the will of Nicaragua.[7] Although the latter repeatedly expressed discontent with the situation, the conflict did not escalate until 1999, the year in which Honduras—basically overnight—ratified the Treaty.

The Nicaraguan reaction was forceful. First, Nicaragua filed a case before the CACJ, asking it to suspend the ratification of the Treaty.[8] The position of Nicaragua was that Central American community law was characterized by the principles of progressivity and irreversibility and that, accordingly, the Central American states' power to conclude international treaties had to be exercised in compatibility with the purposes of the integrationist enterprise.[9]

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6 CACJ 25–05–29–11–1999 and 26–06–03–12–1999.

7 Diemer, Christian, and Amalija Šeparović, *Territorial Questions and Maritime Delimitation with regard to Nicaragua's Claims to the San Andrés Archipelago*, 66 Heidelb. J. Int. Law, 168.

8 *Id*. at VIII.

9 *Id*. at VIII letter a.

Despite the heated protests of the Honduran government, the CACJ declared itself to have jurisdiction to hear the case, basing its conclusion on a disposition of the Preamble to its Statute, which explicitly attributes to the Court the role of transforming the Central American isthmus into a unified and pacified nation.[10] Finally, the Court ruled that the SICA was not a mere economic community, it being, among other things, tasked to: "[r]eaffirm and consolidate the Central American self-determination,"[11] and "promote, in an harmonic and equilibrated way, the economic, social, cultural, and political development of the Member States and of the region."[12]

A second, mega-political TDbP was filed by Honduras. This dispute originated from when, in response to the ratification of the Lopez-Ramirez Treaty, Nicaragua had imposed additional taxes on Honduran and Colombian import goods, and suspended all commercial activities with Honduras; all behaviors that Honduras deemed in violation of SICA law.[13] In this case, the CACJ ruled that the Treaties of the Central American economic integration obliged the SICA Member States to respect free commerce between the Members of the Community and to treat the goods coming from other SICA Member States as though they were national goods.[14]

Finally, in 2011 the CACJ got involved in another mega-political TDbP. This time, it was linked to a dispute between Costa Rica and Nicaragua concerning the protected natural area of the Rio San Juan. The fact that the case was against Costa Rica added an additional layer of complexity and tension as, for a long time, Costa Rica had refused to be submitted to the jurisdiction of the CACJ on the grounds that it had not ratified the Statute of the Court.[15] In its decision, the CACJ initially declared itself competent to rule against Costa Rica regardless of whether that state had failed to fully ratify the Court's Statute.[16] The CACJ also also condemned Costa Rica for the damages to the environment that was protected by several international and regional Treaties of which Costa Rica was a signatory.

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10 *Id*. at considerando IX.
11 *Id*. Article 2 letter f) of the Protocol.
12 *Id*. at Article 3 letter h).
13 CACJ 26–05–29–11–1999, at resulta I) and II).
14 *Id*. at considerando X and XI.
15 For a detailed discussion of the CACJ's incomplete institutionalization, see Salvatore Caserta, International Courts in Latin America and the Caribbean: Foundations and Authority (Oxford University Press. 2020).
16 CACJ 12–06–12–2011, at considerando IV.

The societal and political responses to the TDbP cases of the CACJ are interlocutory at best. Ultimately, it could be argued that the Court's interventions exacerbated the conflicts, rather than channeling them toward a solution. There are many reasons for the CACJ's struggle to handle these TDbP, ranging from the nature of national politics of many of the Court's Member States, the controversies linked to the Court's actual jurisdiction over such disputes, the lack of substantial legal mobilization around the Court, and other similar contextual socio-political issues. Particularly important is the fact that, although all these cases were brought to the Court as commercial or community law cases, or both, the Court has often used these decisions to expand its judicial outreach to the actual underlying territorial dispute. In other words, the CACJ has refrained from bringing them into the realm of economic community law and has directly engaged with the underlying mega-political nature of the territorial disputes at hand.

The CJEU has only extremely rarely dealt with cases in which two states face each other as parties.[17] In 2018, Slovenia brought a case against Croatia, asking the CJEU to use EU law to force Croatia into compliance with a contested arbitration decision issued within the framework of the Permanent Court of Arbitration.[18] Here, the CJEU ruled that deciding territorial disputes and determining the boundaries of territories of EU member states was beyond the scope of EU law.

This, however, did not prevent the Court's involvement in a number of mega-political TDbP. In particular, the procedural arrangements, the lack of express jurisdiction on EU's territorial boundaries, and the CJEU's commitment to further supranational integration in the EU[19] made the CJEU particularly likely to deal with TDbP. This sub-part focuses on two cases, one located officially within the borders of the EU—the Northern Cyprus case—and the other in its southern neighborhood—the Western Sahara case.

The Republic of Cyprus joined the EU on 1 May 2004 with an ongoing territorial dispute about the northern part of the island.[20] Formally, the

17 Graham Butler, *The Court of Justice as an Inter-State Court*, Y.B. Of Eur. L. 179, 179–80 (2017).

18 Case C-457/18, Slovenia v. Croatia, 2020.

19 Renaud Dehousse, The European Court of Justice: The Politics Of Judicial Integration 78–79 (1998).

20 For context on the conflict, *see generally* Divided Cyprus: Modernity, History, and an Island in Conflict (Yiannis Papadakis, Nicos Peristianis & Gisela Welz eds., 2006).

whole island joined the EU. But a territorial exception was put in place for the territory of Northern Cyprus, controlled by Turkey.[21] This means that EU Treaties do not apply to the northern Cypriot territory, but only to its population. The series of three *Anastasiou* cases dealt with the status of products stemming from Northern Cyprus.[22]

In *Anastasiou* (1994) a British court asked the CJEU whether goods originating in the northern part of Cyprus were excluded from the preferential treatment granted by the 1972 Agreement establishing an association between the European Economic Community and the Republic of Cyprus. In this case, the CJEU ruled that these goods were indeed excluded and, accordingly, did not award the authorities from southern Cyprus the competence to issue certificates for products from the northern part.[23]

Another instance in which the CJEU had to indirectly touch upon the Cypriot dispute is the *Apostolides* case decided in 2009.[24] This case concerned the enforcement of a judgment rendered by a Cypriot court about property in Northern Cyprus before British courts. In this case, the CJEU relied on one of the most conservative and least controversial techniques of legal interpretation. Following a literal interpretation of Art. 1 of Protocol 10, the CJEU ruled that EU legislation applied to decisions of Cypriot courts based in the south of the island, even if those decisions concerned the territories in the northern part.[25] The Court also emphasized that, in principle, EU law applied to the whole territory of an acceding Member State and that exceptions to that rule have to be interpreted narrowly.[26]

A second case study concerns the CJEU adjudication regarding the import of products from occupied territories in the EU's Mediterranean neighborhood. In the landmark case *Brita* (2010), a controversy arose around the treatment of products originating in Israeli settlements in the West Bank, Gaza Strip, East Jerusalem and the Golan Heights—areas that

21 *Id.*

22 Case C-432/92, The Queen v. Minister of Agric., Fisheries and Food, *ex parte* S.P. Anastasiou (Pissouri) Ltd. and others, 1994; Case C-219/98, Regina v. Minister of Agric., Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. and others, 2000; Case C-140/02, Regina on the application of S.P. Anastasiou (Pissouri) Ltd and others v. Minister of Agric., Fisheries and Food, 2003.

23 Case C-432/92, *Anastasiou*, 1994, ¶ 42.

24 Case C-420/07, Meletis Apostolides v. David Charles Orams & Linda Elizabeth Orams, 2009.

25 *Id*. at ¶ 37.

26 *Id.* at ¶¶ 33–34.

have been placed under Israeli administration since 1967.[27] Israeli authorities issued a movement certificate for home water-carbonators. Although the products were produced in the West Bank, the certificates attested to the Israeli origin of these products. Upon import to the EU, the German authorities refused to acknowledge this origin as a basis for entitlement to preferential treatment under the EU-Israel Agreement. The company Brita challenged this decision in German courts and eventually obtained a preliminary ruling referring the case to the CJEU.

In this case, the CJEU had to decide whether the EU-Israel Agreement or the EU-Palestinian Authority Agreement would be applicable to products originating in the occupied territories.[28] As both Agreements provide for the same preferential treatment, the national judges could have also just decided not to apply tariffs to the products in question, without specifying which Agreement to apply.[29] The CJEU ruled that products from the West Bank fall outside of the scope of application of the EU-Israel Agreement.[30] In its judgment, the Court even expressly stated the EU's (Commission's) position with regard to the goods stemming from the occupied territories:

> "The European Union takes the view that products obtained in locations which have been placed under Israeli administration since 1967 do not qualify for the preferential treatment provided for under that agreement."[31]

This approach shows that the Court can harvest political support for its rulings already at the moment of their issuing.

Similar issues arose in the cases concerning products from Western Sahara—a non-self-governing territory occupied by Morocco.[32] In December 2016, the Court ruled that the EU-Morocco Association Agreement was not applicable to Western Sahara, and hence denied Front Polisario (recognized as representatives of Western Sahara) standing to bring an

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27 For more recent rulings on the topic, *see, e.g.*, Case C-363/18, Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l'Économie et des Finances, 2019.

28 Opinion of AG Bot, *supra* note , at ¶ 5.

29 *Id.* at ¶¶ 105–106.

30 *Id.*

31 *Brita*, *supra* note , at ¶64.

32 *See* Case T-512/12, Front Polisaro v. Council, 2015; Case C-104/16, Council v. Front Polisaro, 2016; Case C-266/16 Western Sahara Campaign UK v. Comm'rs for Her Majesty's Revenue and Customs & Sec'y of State for Env't, Food, and Rural Affs.

annulment case. In this decision, the CJEU relied on its own interpretation of international law to determine that the Moroccan occupation is not in conformity with the principle of self-determination.[33] Contrary to *Brita* (2010), the rulings regarding Western Sahara were not in line with the political will of the majority of the EU member states in the Council who wished to apply the economic cooperation with Morocco also to the territory of Western Sahara. This potential stand-off between the CJEU and the EU's political institutions illustrates the mega-political nature of this TDbP.

When analyzing the impact of the framing adopted by the CJEU when dealing with these commercial TDbP, this analysis so far has shown that decisions were largely determined by the scope of jurisdiction assigned in EU law. The CJEU has been careful in staying within the narrowly defined limits of its jurisdiction and underlining those limits. Contrary to the CACJ, it did not use those politically sensitive cases to expand the scope of its powers. The CJEU did, however, rule on commercial disputes arising from the background of territorial disputes. As a result, the CJEU rulings were subject rather to academic criticisms, but did not trigger wider political backlash.

IV. Right-Based And Institutional Territorial Disputes by Proxy in The Practice of The European Court of Human Rights

The ECtHR can be expected to be dealing with the rights-based type of proxy for territorial disputes. The ECtHR clearly does not have jurisdiction to decide over the territorial boundaries of the High Contracting parties to the Convention. As a human-rights court, it does, however, provide broad access for individual complaints regarding political and economic rights of the civilian population residing in the area concerned by an international territorial conflict. The ECtHR has dealt with many territorial and armed conflicts and developed its own doctrine about extra-territorial application of human rights and effective control.[34] The focus of this analysis lies with the rights-based cases arising in the context of the territorial conflict in Cyprus.

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33 Jed Odermatt, *Council of the European Union v. Front Populaire Pour La Libération De La Saguia-El-Hamra Et Du Rio De Oro (Front Polisario)*, 3 Am. J. Int'l L. 731 (2017), 735.

34 *See generally* Marko Milanović and Tatjana Papić, *The Applicability of the ECHR in Contested Territories*, 67 Int'l & Compar. L. Q. 779 (2018).

The territorial dispute in Cyprus discussed above in Part III.b., gave rise to a number of mega-political rights-based TDbP before the ECtHR. The cases can be broadly divided into two categories: individual complaints focusing on the violation of the human right to enjoy private property, and the inter-state cases raising a broader scope of human rights violations. Turkey has perceived both type of cases as a "political attack" and, in its responses to the judgments, continued to emphasize the ongoing inter-communal negotiations, questioning the ECtHR's legitimacy to intervene in the territorial dispute.[35]

This first relevant case to discuss in this context is the *Loizidou* case, in which the Court was asked to rule on the compatibility with the Convention of the deprivation of the applicant, Mrs. Titina Loizidou, of access to her property in Northern Cyprus as a consequence of the Turkish occupation and to grant compensation for the lost access to their property.[36] Property is protected in the ECHR under Art. 1 of Protocol 1 of the Convention, which has been ratified by Turkey. The *Loizidou* case pushed the ECtHR to provide an answer as to whether Turkey was exercising extraterritorial jurisdiction with regard to Northern Cyprus; a question which is perhaps the most contentious and debated issue of admissibility before the Strasbourg Court.[37]

The ECtHR ruled separately on the substance of the legal dispute, in 1996, confirming that Turkey had violated the right to private property by refusing Mrs. Loizidou and other refugees from Northern Cyprus access to their property. The Turkish side has been critical of the Court's engagement in the process, pointing to the ongoing inter-communal negotiations under the auspices of the UK. They pointed to the fact that the Turkish community of Cyprus has no standing before the ECtHR in a case where Turkey was the respondent state.[38] Such criticism already signaled the long path to the full enforcement of the Court's unfavorable ruling.

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35 Kudret Özersay & Ayla Gürel, *The Cyprus Problem at the European Court of Human Rights*, *in* Cyprus: A Conflict at the Crossroads 273 (Thomas Diez & Nathalie Tocci eds., 2013).

36 Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A) (1995); Loizidou v. Turkey, 23 Eur. Ct. H.R. 513 (1996).

37 In this regard, the ECtHR developed a test of "effective control" applied to establish when states are responsible for violations happening outside of their territory. *See* Al-Skeini v. United Kingdom, App. No. 55721/07, 53 Eur. H.R. Rep. 589 (2011) (the Court argued that Turkey exercised direct effective control over Northern Cyprus through its occupation by Turkish military troops).

38 Özersay, *supra* note 35.

The enforcement of this case is often cited as an example of the limited success of the ECtHR.[39] At first, the Turkish government was opposed to paying the damages as a matter of principle. As published in 1999 on the website of the Turkish Ministry of Foreign Affairs, the main concerns of the Turkish government revolved around the effects of the ruling on the *de facto* dormant bilateral peace negotiations led by the UN.[40] Eventually, in 2003, seven years after the judgment, Turkey paid Loizidou compensation for temporary deprivation of access to property, amounting to over $1 million.[41] However, Loizidou did not regain access to her property in Northern Cyprus.

The *Loizidou* judgment was followed by a series of similar complaints, brought by groups of applicants deprived of access to their properties in Northern Cyprus.[42] The ECtHR has relied on the same legal framing, assuming the responsibility of Turkish authorities for the human rights violations happening on the ground in Norther Cyprus. The pattern of compliance was also comparable – although the victims could obtain compensation as a result of political pressure within the Council of Europe, the violations were not actually ceased.[43]

The broadest engagement of the ECtHR with the Cyprus dispute, however, took place in the inter-state case decided by the Strasbourg Court in 2001, *Cyprus v. Turkey*.[44] In this case, the Cypriot government brought a case against Turkey for human rights violations resulting from the 1974 territorial conflict.

In its 2001 decision, the ECtHR condemned Turkey for a plethora of human rights violations relating to the situation that had existed in Cyprus since the start of Turkey's military operations in Northern Cyprus in July 1974. These included the right to life and prohibition of inhumane and de-

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39 Rick Lawson, *How to Maintain and Improve Mutual Trust amongst EU Member States in Police and Judicial Cooperation in Criminal Matters? Lessons from the Functioning of Monitoring Mechanisms in the Council of Europe*, http://hdl.handle.net/10900/66771 (2009).

40 Zaim M. Necatigil, *The Loizidou Case: A Critical Examination*, SAM PAPERS (Nov. 1999), http://www.mfa.gov.tr/the-loizidou-case_-a-critical-examination-by-zaim-m_necatigil_-november-1999.en.mfa.

41 *Turkey Compensates Cyprus Refugee*, BBC News, (Feb. 12, 2003), http://news.bbc.co.uk/2/hi/europe/3257880.stm.

42 *See* Yasa v. Turkey, App. No. 44827/08, Eur. Ct. H.R. (1998); Djavir An v. Turkey, App. No. 20652/92, Eur. Ct. H.R. (2003); Xenides-Arestis v. Turkey, App. No. 46347/99, Eur. Ct. H.R. (2005).

43 *Report*, *supra* note 98.

44 App. No. 25781/94 (May 10, 2001), Eur. Ct. H.R.

grading treatment with regard to missing persons, the right to private life and property with regard to displaced persons, and violation of freedom of religion in respect of Maronites living in Northern Cyprus.[45] Importantly, the ECtHR did not confirm any of the alleged violations in respect of the rights of Turkish Cypriots in Northern Cyprus. As a result, the Court did not touch on the question that was more divisive on the internal domestic rather than the international plane. The ruling was not received well by the Turkish Government, which expressed its discontent in a press release which claimed that the Court's decision "is contrary to the realities in Cyprus, devoid of legal basis, unjust and impossible to be implemented by Turkey."[46]

As a follow up to this first ruling, in 2010 the Cypriot government submitted an additional claim asking for damages in the name of the groups of its citizens that had suffered from the human rights violations. This led to the 2014 judgement of the ECtHR, by means of which the Court awarded Cyprus 30 million EUR for non-pecuniary damage suffered by the relatives of the missing persons and 60 million EUR for the Greek Cypriots enclaved in the Karpas peninsula.[47] Moreover, in its judgement on the *Güzelyurtlu and others v. Cyprus and Turkey* case of January 2019, the ECtHR has found, for the first time, a violation of Article 2 ECHR on the sole basis of Turkey's failure to cooperate with the Republic of Cyprus on criminal matters. This was a case brought by individual applicants against both Cypriot and Turkish authorities.

The *Loizidou v. Turkey* and *Cyprus v. Turkey* rulings have not been fully implemented by Turkey. The Committee of Ministers has not closed their procedure with regard to those two judgments, which means that full implementation has not taken place. The Committee of Ministers deals with each of the violations separately. It has declared satisfactory certain reforms implemented by the Turkish authorities, in particular with regard the right to education and religious freedom of the Greek Cypriots in Northern Cyprus.[48] The EU has also been contributing to the pressure on Turkey to comply with the Strasbourg judgments. The European Commission issues a yearly round of reports on progress of candidate countries to

45 *Id*.

46 *Press Release on the Cyprus v. Turkey Decision of the ECHR*, Turkish Ministry of Foreign Affairs (May 10, 2001) http://www.mfa.gov.tr/press-release-on-the-cyprus-v_-turkey-decision-of-the-echr_br_may-10_-2001.en.mfa.

47 Cyprus v. Tukey, App. No. 25781/94, Eur. Ct. H.R. (Dec. 12, 2014).

48 Resolution Concerning the Judgment of the European Court of Human Rights in the Case of Cyprus Against Turkey CM/ResDH (2007).

the EU. In its 2019 report on Turkey, the Commission points out the non-implementation of judgments of ECtHR as one of the serious problems in Turkey-EU relations.[49] The Council, composed of ministers from the EU member states, followed up on this criticism in its yearly round on enlargement package, stating: "The Council notes that Turkey continues to move further away from the European Union . . . . the Council notes that Turkey's accession negotiations have therefore effectively come to a standstill."[50]

The analysis of the cases related to the territorial dispute about Northern Cyprus before the ECtHR illustrates the possible escalation of rights-based territorial disputes by proxy into a mega-political dispute. This can happen due to several factors. The inter-state procedure provides a forum for a high-level exchange between the two parties of the conflict. The mega-politics leads the states to directly oppose the implementation of any judgments from the courts relating to a particular territorial conflict. The gradual development of the case law amounts to systemic judgments about the illegality of the occupation by one side of the conflict, which stretches the jurisdiction competences of the ECtHR. The ECtHR is, however, also an important case study for the strategies that courts can deploy to avoid or slow down such an escalation. The ECtHR has interpreted its standing rules restrictively. It has been consistent in a human-rights framing of the disputes before it and has focused on stabilizing rather than solving the conflict.

V. Conclusions

In the twenty-first century, the global governance architecture has grown such that a multiplicity of judicial actors can be engaged with the same territorial dispute. They include regional economic courts, regional human rights courts, the ICJ, and bilateral arbitration. This article has focused on regional courts, which do not have the jurisdiction to directly decide on the territorial boundaries of the states, but deal with TDbP. The analysis

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49 *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions,* COM (2019) 260 final (May 29, 2019).

50 *Council Conclusions on Enlargement and Stabilization and Association Process*, Council of the EU (June 18, 2019), https://www.consilium.europa.eu/en/press/press-releases/2019/06/18/council-conclusions-on-enlargement-and-stabilisation-and-association-process/.

focused in particular on three types of disputes before regional courts. First, commercial disputes regarding trade and branding of products from the contested territories are crucial for the economic viability of any separatists' projects. Second, rights-based disputes focusing on individual rights are crucial for guaranteeing that the civilian population can live in human conditions, in spite of the conflict. Third, institutional disputes that raise the question of delegating political responsibility of dealing with the conflict.

The territorial disputes by proxy are linked with particular procedural arrangements before the regional courts, where cases are brought by individual applicants or national courts. As a result, it often happens that a court would deal with a question regarding a territorial conflict without one or both parties to that conflict being represented in the judicial proceedings. Although it might seem that this would negatively affect the legitimacy of such an adjudication, in practice, this arrangement allows the courts to maneuver around the potentially mega-political nature of a dispute, which would otherwise prevent them from being effective. It appears that what triggers the backlash is the presence of the highest diplomatic representative of a state before an international court and the adversary nature of proceedings. Regional courts can also adjudicate inter-state disputes and those tend to be mega-political, even if handled by legal proxy. It is only in those disputes that the legitimacy concern resulting from the lack of jurisdiction of those courts over territorial disputes becomes relevant.

We conclude that it is an extremely difficult task for the regional courts to have influence over stabilizing the civilian situation around a territorial dispute. International adjudication has proven effective in avoiding armed conflicts and settling territorial disputes on the international plane. International adjudication directly dealing with territorial disputes, however, involves inter-state judicial bodies with express competences to adjudicate upon such disputes and guarantee both parties influence over the appointments and the procedure. Importantly, such inter-state adjudication is also very time consuming. Therefore, while the territorial disputes remain unsolved, irreparable harm can happen to the economic development and rights of the civilian population in the region. TDbP create a possibility for international courts to affect the commercial, institutional and human-rights situation in such conflict regions. If they manage to avoid the mega-political framing of a dispute and guarantee the implementation of their rulings relating to commercial issues, human rights, and institutional competences, they could effectively improve the human security situation in a conflict zone without directly deciding upon a territorial dispute. The analysis of the selected case studies from the CACJ, CJEU

and ECtHR, shows how difficult this task is for regional courts. Those new-generation international courts appear to still trigger backlash, even if they deal with the territorial disputes only by proxy. The irreconcilable nature of a conflict can be brought up either more immediately, by the regional courts strategy of using highly sensitive cases as opportunities to extend their own jurisdiction, or by the adversary nature of inter-state cases. Alternatively, it can be brought up over time, as a court deals with series of cases regarding various conflicts, which subject its jurisprudence to political debates. Those cases of regional courts dealing with territorial disputes by proxy show how the mega-political nature of a question is related to its substance and the institutional and procedural strategies of avoiding and de-politicizing those questions are clearly limited, but not entirely ineffective at times.

Our iCourts experience

Salva: I was among the first batch of PhDs hired at iCourts, together with Mihreteab and Carolina. I heard of iCourts when I was pursuing my LL.M at Berkeley, and Professor Malcolm Feeley had just received an email from Karen Alter advertising the opening of the centre. As he knew I was dating a Danish girl at the time (Mette), he advised me to try to apply for it. He also mentioned he knew the young man that had established the centre, Mikael: "a good guy that not too long ago passed through Berkeley as well". So I applied to it and after an embarrassing Skype interview with Mikael and Henrik, I incredibly got the job. And now I am Assistant Professor at iCourts.

Pola: My first contact with iCourts was at an academic retreat in the countryside of Normandy. I have read a book by a French political sociologist and decided to ditch a conference in my field of expertise (EU foreign policy) to explore the academic debates in the French province. I did not expect any other lawyers to participate in the retreat. Little did I know that there would be one, deeply embedded in this circle of scholars and that six months later, I would be sitting across from him in a job interview. Even though, I have spent less than two years as a Postdoc at iCourts (2016-18), its academic community has shaped me significantly as a scholar. I continue the research agenda set out in Copenhagen until today, working as an Assistant Professor in European Law at the University of Amsterdam.

Collaboration story: We met at probably the least successful iCourts conference – The Missing Link in January 2016. But for us that marked the beginning of a pleasant and fruitful collaboration, and of a good friendship. Soon after the conference, we started sharing office at iCourts and started working on some of our projects. We participated in many conferences together, we travelled a lot (Oslo, Lillehammer, Jerusalem, Washington, Mexico City, Toronto & the Great Lakes), and we went through many parties and hangovers. After one of the iCourts Christmas dinners, Pola broke her leg and was nursed back to health by Salva's dog and the rest of the iCourts team. Salva got many more white hair, two kids and a house in the meanwhile.

It is difficult to identify the best memory at iCourts as for us it is a constellation of many good memories. Rather than a memory, we then point to a period of iCourts 2015-2018, which for us was the most intense and pleasant, both academically and personally. It was the period when Juan and Günes were still here, Jed and Pola arrived as postdocs, Salva did not have kids yet. We extended conference trips, organized collaborative conferences or panels and took intensive Danish classes together with Yannis. We lived up to the Italian and Polish stereotypes by proposing to present to career trajectories of young researchers to the Danish Science Foundation as *via crucis* (Stations of the Cross). The couch in our office has been softened by regular visitors stopping for a chat on their way to the pantry.

Our story of collaborations and friendship is by far not the only one at iCourts. The centre has woven together an academic community through common reading lists at the onset, weekly exchanges on work-in-progress papers as well as yearly retreats and summer schools. The core pillars of this academic community are the premise of the rise of international adjudication as a global phenomenon, the study of international courts and tribunals in their historical, political and social context, interdisciplinarity and attention methods. Producing the methodological shift in the study if international courts and reflecting on it go hand in hand.