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Economic Support for Mexico: Hearing Before the House Comm. on International Relations, 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing on The "Obvious Peso Blunder" at Treasury Before the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong., 1st Sess. (1995)

Federal Reserve and Price Stability: Hearing Before the Senate Joint Economic Comm., 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing Before the Banking Oversight Subcomm., 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing Before the General Oversight and Investigations Subcomm. of House Banking and Financial Services Comm., 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing on The Post Devaluation Mexican Economy Before the Senate Banking, Housing and Urban Affairs Comm., 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing on the Impact of the Peso Devaluation and the Adjustment Program on the Banking System and the Economy of Mexico Before the Senate Comm. on Banking, 104th Cong., 1st Sess. (1995)

Mexican Peso Crisis: Hearing on the Banking System and the Economy of Mexico Before the Senate Comm. on Banking, Housing and Affairs, 104th Cong., 1st Sess. (1995).

Restitution of Expropriated Property: Post-Soviet Lessons for Cuba

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This article examines former U.S.S.R. republics' approaches toward restitution of property seized during the Soviet era as possible precedents for Cuba. It identifies as particularly relevant to Cuba the experiences of Estonia, Latvia, and Lithuania. The article provides a broad overview of Baltic restitution schemes, including various definitions of expropriation, classes of eligible claimants, categories of property covered by legislation, forms of restitution, and general procedures. The article then highlights some of the practical problems that have emerged in implementation of Baltic restitution laws and policies. The article concludes with a discussion of lessons for Cuba offered by the post-Soviet experience with restitution.

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I. INTRODUCTION

Since the dissolution of the U.S.S.R. in 1991, Cuba stands as the last bastion of a failed empire and ideology.¹ During this period Cuba has suffered an economic collapse of crisis proportions.² Whether by evolution or revolution, it now seems clear that Cuba soon will attempt to make the transition to a free-market economy and reintegration into the world community.

The still outstanding claims of United States and Cuban citizens for property seized during the first decade of the Cuban revolution constitute a major obstacle to this transition.³ With the rapid deterioration of the Cuban economy and rising international concern,⁴

1. See Fidel Castro, *Speech on the Fortieth Anniversary of the Assault on the Moncada and Carlos de Cespedes Garrisons* (Radio Havana, July 27, 1993), translated in BBC Summary of World Broadcasts, Aug. 3, 1993: "Today Cuba is at this terrible crossroads, but our revolution can never be sold nor surrendered . . . Today we must save the homeland, the revolution and the benefits of socialism, which means defending the right to continue building it in the future. We would never resign ourselves to renouncing it." See Max Azicri, *The Rectification Process Revisited: Cuba's Defense of Traditional Marxism-Leninism, in CUBA IN TRANSITION: CRISIS AND TRANSFORMATION* 37 (Sandor Halebsky et al. eds., 1992) (describing "Cuba's self-appointed role championing revolutionary socialism and traditional Marxism-Leninism").

2. See generally Andrew Zimbalist, *Dateline Cuba: Hanging on in Havana*, 90 FOR. POL'Y 151 (1993). This was illustrated in 1994 when thousands of Cubans took to the high seas in makeshift rafts to escape economic privation at home. See generally George J. Church, *Cubans, Go Home*, TIME, Sept. 5, 1994, at 20; Nancy R. Gibbs, *Dire Straits*, TIME, Aug. 29, 1994, at 28; *The Devil and the Deep Blue Sea*, ECONOMIST, Aug. 27, 1994, at 19. Even Castro himself has acknowledged the dire state of the Cuban economy and has permitted tentative moves toward more market-oriented principles and increased foreign investment and assistance. See Castro, *supra* note 1 (recognizing need for "concessions" and capitalist measures to address severe economic problems); *Castro's Compromises*, TIME, Feb. 20, 1995, at 57 (interview with Fidel Castro discussing economic "compromises" to preserve Cuban socialism). See generally CUBA AT A CROSSROADS: POLITICS AND ECONOMICS AFTER THE FOURTH PARTY CONGRESS (Jorge F. Pérez-López ed., 1994); Jorge F. Pérez-López, *Cuba's Thrust to Attract Foreign Investment: A Special Labor Regime for Joint Ventures in International Tourism*, 24 INTER-AM. L. REV. 221 (1992); Andrew Zimbalist, *Teetering on the Brink: Cuba's Current Economic and Political Crisis*, 24 J. LATIN AM. STUD. 407 (1993). But see Carmen Diana Deere & Mieke Meurs, *Markets, Markets Everywhere? Understanding the Cuban Anomaly*, 20 WORLD DEV. 825 (1992) (describing "Cuban resistance to the use of market mechanisms").

3. See generally MICHAEL W. GORDON, *THE CUBAN NATIONALIZATIONS: THE DEMISE OF PROPERTY RIGHTS IN CUBA* (1975).

4. The United Nations and many foreign countries have condemned the United States embargo of Cuba and its extension under the Cuban Democracy Act of 1992. See Jerry W. Cain, Jr., *Extraterritorial Application of the United States' Trade Embargo Against Cuba: The United Nations General Assembly's Call for an End to the U.S. Trade Embargo*, 24 GA. J. INT'L & COMP. L. 379 (1994); Bridget E. Morrissy, *The United States v. Cuba (and the Rest of the World)*, 1 J. INT'L L. & PRAC. 163 (1993); Kam S. Wong, *The Cuban Democracy Act of 1992: The Extraterritorial Scope of Section 1706(a)*, 14 U. PA. J. INT'L BUS. L. 651

resolution of this issue has become a matter of great urgency.⁵

The Cuban property claims question has attracted considerable attention during the past year alone. It has been the topic of heated debate in the United States Congress, United Nations, Cuban and Western media, scholarly journals, and at several recent conferences. It has also inspired the establishment of a special American Bar Association Task Force on Cuban Technical Assistance.⁶ In all of these fora, there has been sharp disagreement regarding appropriate treatment of outstanding claims. The views expressed range from the two extremes of providing no remedy for property losses to actually returning expropriated property to its original owners.⁷ Although various parties have developed concrete proposals for potential Cuban approaches to restitution, no consensus has emerged as to the optimal timing, format or procedures for such a program.⁸

(1994). The French have been particularly vocal in their opposition to U.S. policy. See Craig R. Whitney, *In a Slap at the U.S., Castro Is Given a Warm Welcome in Paris*, N.Y. TIMES, Mar. 14, 1995, at A5. The embargo originated as an economic sanction against Cuba for its refusal to compensate U.S. corporate and individual owners for expropriated property as required by international law. Thus, despite subsequent political rhetoric and justifications, the embargo is fundamentally economic in nature. Resolution of outstanding property claims remains the prerequisite for lifting the embargo. See John W. Smagula, *Redirecting Focus: Justifying the U.S. Embargo Against Cuba and Resolving the Stalemate*, N.C.J. INT'L L. & COM. REG. 65 (1995).

5. Matias Travieso-Diaz identifies three main reasons for the urgency: "(1) U.S. laws require resolution of U.S. citizen expropriation claims before foreign aid can resume; (2) the Cuban government will need to give early resolution to the outstanding expropriation claims to assure domestic order and political and economic stability, expedite privatization, and foster foreign investment; and (3) resolution of the claims issue will diminish the perceived political risks of investing in Cuba." Matias F. Travieso-Diaz, *Some Legal and Practical Issues in the Resolution of Cuban Nationals' Expropriation Claims Against Cuba*, 16 U. PA. J. INT'L BUS. L. 217, 221 (1995).

6. The Task Force presented its reports and conclusions at the American Bar Association's Annual Meeting in August 1994. Task Force materials can be found in CUBA IN TRANSITION: OPTIONS FOR ADDRESSING THE CHALLENGE OF EXPROPRIATED PROPERTIES (JoAnn Klein ed., 1994) [hereinafter CUBA IN TRANSITION].

7. For a sampling of such views, see Rolando H. Castañeda & George Plinio Montalván, *Transition in Cuba: A Comprehensive Stabilization Proposal and Some Key Issues*, in CUBA IN TRANSITION—PAPERS AND PROCEEDINGS OF THE THIRD ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY 11 (1993), cited in Travieso-Diaz, *supra* note 5, at 218 n.1; Rudi Dornbusch, *Getting Ready for Cuba After Castro*, BUS. WK., May 24, 1993, at 19; Nicholas J. Gutierrez, Jr., *The De-Constitutionalization of Property Rights: Castro's Systematic Assault on Private Ownership in Cuba*, in 1 LATIN AM. BUS. ALERT 5 (1994); Andrew Zimbalist, *Give Castro a Carrot*, N.Y. TIMES, Feb. 17, 1994, at A17.

8. See Rosalind Resnick, *Bringing the Law Back Home*, NAT'L L.J., June 28, 1993, at 1; Nicolas Sanchez, *A Proposal for the Return of Expropriated Cuban Properties to their Original Owners* (Aug. 1994), cited in Travieso-Diaz, *supra* note 5, at 219 n.3; Jorge Sanguinetti, *The Transition Towards a Market Economy in Cuba: Its Legal and Managerial*

Fortunately, architects of a Cuban restitution program are not without precedent. They can draw on the recent experience of several former socialist countries that have grappled with problems similar to Cuba's. A substantial literature exists on restitution approaches in Central and Eastern Europe, especially Czechoslovakia, Germany, Hungary, and Poland.⁹ There are also useful summaries and evaluations of Latin American examples.¹⁰ Some scholars and practitioners have begun to consider general lessons of these programs¹¹ and, to a lesser degree, their potential relevance to Cuba.¹² They have neglected, however, the experience of the former republics of the U.S.S.R. as possible precedent for Cuba. This article proposes to remedy this gap in the literature.

Virtually all of the successor states of the U.S.S.R. have expressly declined to make restitution of property expropriated during the Soviet era. For example, Russian land reform statutes have consistently prohibited the "return of land plots to former owners and their heirs."¹³ Similarly, the Tajikistan Law on Land Reform

Dimensions, in TRANSITION IN CUBA—NEW CHALLENGES FOR U.S. POLICY 463 (Lisandro Perez ed., 1993).

9. See, e.g., Cheryl W. Gray et al., *Hungarian Legal Reform for the Private Sector*, 25 GEO. WASH. J. INT'L L. & ECON. 293 (1992); Dorothy A. Jeffreys, *Resolving Rival Claims on East German Property Upon German Reunification*, 101 YALE L.J. 527 (1994); Michael L. Neff, *Eastern Europe's Policy of Restitution of Property in the 1990s*, 10 DICK. J. INT'L L. 357 (1992); Vratislav Pechota, *Privatization and Foreign Investment in Czechoslovakia: The Legal Dimension*, 24 VAND. J. TRANSNAT'L L. 305 (1991); Jeffrey J. Renzulli, *Claims of U.S. Nationals Under the Restitution Laws of Czechoslovakia*, 15 B.C. INT'L & COM. L. REV. 165 (1992).

10. See, e.g., Roberto Gargarella, *Distributing Ownership of the Land: The Alternatives Facing the New Democratic Government of Nicaragua*, 22 CAP. U. L. REV. 873 (1993); Jaime Wheelock Román, *Changes in Agrarian Property in Nicaragua*, 22 CAP. U. L. REV. 853 (1993); J. David Stanfield & Steven E. Hendrix, *Ownership Insecurity in Nicaragua*, 22 CAP. U. L. REV. 939 (1993).

11. See, e.g., *Forum on Restitution*, 2 E. EUR. CONST. REV. (1993); Anna Gelpert, *The Laws and Politics of Reprivatization in East-Central Europe: A Comparison*, 14 U. PA. J. INT'L BUS. L. 315 (1993).

12. See CUBA IN TRANSITION, *supra* note 6, at 21-137; Juan C. Consuegra-Barguín, *Cuba's Residential Property Ownership Dilemma: A Human Rights Issue Under International Law*, 46 RUTGERS L. REV. 873 (1994); Resnick, *supra* note 8 (describing practitioners' use of laws from Czechoslovakia, Hungary, Nicaragua, and Mexico as models for Cuban legislation).

13. See, e.g., Land Code of the RSFSR art. 7 (Apr. 25, 1991), translated in 7 WILLIAM C. BUTLER, COLLECTED LEGISLATION OF RUSSIA 1, 5 (June 1992). See generally Olga Floroff & Susan W. Tiefenbrun, *Land Ownership in the Russian Federation: Laws and Obstacles*, 37 ST. LOUIS U. L.J. 235 (1993). Although Russian legislation does not permit restitution of property nationalized by Soviet regimes, it does allow limited return or compensation of property confiscated from "victims of political repressions." Thus far, however, such remedies have remained largely symbolic. See generally Carey Goldberg,

stipulates that "Restoration of ownership of lands formerly belonging to ancestors and religious institutions is not permitted."¹⁴

The former Baltic republics (Estonia, Latvia, and Lithuania), in marked contrast, have adopted sweeping schemes for restitution and compensation of property seized after their 1940 annexation into the U.S.S.R. There are three official rationales for these programs. First, restitution promotes rapid, efficient transition to a market economy by transferring state and collective property to private owners and, at the same time, "restoring the value of property"¹⁵ in the minds of citizens. Second, it is "morally the right thing to do"¹⁶ to remedy past "injustices." Third, restitution reinforces governmental claims to continuity with pre-Soviet regimes¹⁷ and thus, serves "as a vehicle for the construction of post-Communist national identity."¹⁸

These goals and the restitution approaches they have inspired reflect the distinctive historical, cultural, and legal backgrounds of each of the Baltic states. They also respond to the specific political and economic imperatives of individual leaderships in this region. Nonetheless, because they are among the earliest and most comprehensive post-communist restitution efforts, Baltic precedents may also provide general guidance for a radically different transforming socialist state, Cuba.

This article will examine key features of recent Baltic approaches

Compensation Program for Property Seized by Soviets Not All-Inclusive; Russia: Tigh Limits on Restitution May Work Against Need to Build Confidence That the State Will Respect Private Ownership, L.A. TIMES, Aug. 24, 1994, pt. A, at 8; *L'goty dlia "vragov naroda." Vosstanavlivaemspravedlivost' po otnosheniiu k zhertvam politicheskikh repressii* [Privileges for "enemies of the people." Restoring justice to victims of political repression], ROSSIISKIE VESTI, Mar. 28, 1995, at 3.

14. Republic of Tajikistan Law on Land Reform art. 2, para. 2 (Mar. 5, 1992), translated in F.B.I.S.-USR, Sept. 1, 1992, at 126, 126.

15. Estonian Prime Minister Mart Laar, cited in Andrew Stuttaford, *Back to Normal: Estonia's Effort to Overcome 50 Years of Soviet Control*, NAT'L REV., Nov. 1, 1993, at 17. Lithuanian Minister of the Economy Julius Veselka stated that a related objective of the Lithuanian privatization process was "to deprive former socialist rulers of the right to control capital as soon as possible." Julius Veselka, *Privatization: Experience and Conclusions*, TIESA, Nov. 9, 1993, at 6, translated in BBC Summary of World Broadcasts, Nov. 20, 1993.

16. Stuttaford, *supra* note 15, at 22. See also Nikolai Lashkevich, *Vozrashcheno pravo sobstvennosti* [Property rights restored], IZVESTIA, June 20, 1991, at 2.

17. Lucja Swiatkowski Cannon, *Personal View: Estonia Draws Up Reformers' Blueprint*, FIN. TIMES, July 13, 1993, at 15.

18. Shlomo Avineri, 2 E. EUR. CONST. REV. 34, 35 (Summer 1993) (describing general restitution objectives). For a discussion of the Estonian "philosophy of restorationism," see Andrus Park, *Ethnicity and Independence: The Case of Estonia in Comparative Perspective*, 46 EUR.-ASIA STUD. 69, 72-74 (1994).

to property restitution and compensation. Part I will provide a broad summary of various definitions of expropriation, classes of eligible claimants, categories of property covered by legislation, forms of restitution, and general procedures.¹⁹ Part II will highlight some of the practical problems that have emerged in implementation of Baltic restitution laws and policies. Finally, Part III will consider potential lessons for Cuba offered by the post-Soviet experience with restitution.

II. BALTIC RESTITUTION SCHEMES

Although all the Baltic states have adopted restitution legislation, the scope and format of these statutes differ significantly. Estonia has the most extensive package of relevant legislation. The basic charter of the Estonian program is the June 13, 1991 Law on the Principles of Property Reform²⁰ (hereinafter Estonian Property Reform Principles), which codifies the fundamental goals, principles, and rules of the restitution process. Subsequently, executive and legislative authorities have supplemented and amended this law largely in response to implementation problems.

Latvia, in contrast, initially approached restitution in a more piecemeal fashion, enacting separate statutes for different categories of property (land, enterprises, housing). On March 31, 1993, however, the Latvian parliament adopted comprehensive legislation covering restoration of former owners' rights to illegally expropriated immovable property. Since that time it has extended its restitution program to encompass additional claimants, including religious organizations.

Lithuania has the most limited restitution program.²¹ Its legislation deals primarily with real property seized during the Soviet

19. It should be noted that this article is based solely on the limited translated materials available to the author. Due to these linguistic and research restrictions, the article is unable to provide comprehensive coverage of all aspects of current Baltic restitution schemes. Rather, it considers some of the general approaches and their implications for the Cuban case.

20. Law of the Republic of Estonia on the Principles of Property Reform (June 13, 1991), translated in ADVIG KIRIS, RESTORATION OF THE INDEPENDENCE OF THE REPUBLIC OF ESTONIA: SELECTION OF LEGAL ACTS (1988-1991) 55 (1991) [hereinafter Estonian Property Reform Principles]. This law was amended on March 24, 1993, June 21, 1993, July 27, 1993, March 5, 1994, April 16, 1994, May 15, 1994, June 16, 1994, July 25, 1994, and December 29, 1994. See Kaj Hobér, *Property and Land Reform in Estonia and its Effect on the Privatization of State-Owned Joint Stock Companies*, 6 S.E.E.L. 1 (June 1995).

21. For a recent summary of Lithuanian land reform and restitution, see William Valletta, *The Hesitant Privatization of Lithuanian Land*, 18 FORDHAM INT'L L.J. 198 (1994).

era. Lithuanian treatment of claimants, conditions, and procedures for restitution is substantially more restrictive than its Estonian and Latvian counterparts.

A. Definitions of Expropriation

Estonia and Latvia have adopted expansive definitions of expropriation. Both countries recognize three broad categories of "illegal expropriation": "nationalization," "collectivization," and "illegal repressions". The first category comprehends property nationalized or expropriated during the 1940-1980's pursuant to laws, decrees, and normative acts that have been formally declared void by post-socialist governments.²² An example of such property is a commercial structure nationalized in accordance with the October 28, 1940 Latvian Presidium Decree on Nationalization of Large Buildings.²³

The second category refers to property seized as part of the Soviet-era collectivization process. The most typical case is private agricultural land that was "unlawfully alienated" by central or local authorities and transferred to collective or state farm management and control.²⁴

The third catch-all category includes property expropriated "through illegal repressions or other methods which violated the rights of the owner."²⁵ Estonian legislation specifies that "illegal repressions" are "repressive" judicial or extrajudicial actions based on resolutions that were illegal at the time or subsequently declared illegal.²⁶ It also extends this definition to "threat[s] of repression" by judicial or extrajudicial organs or personnel.²⁷ Examples of

22. See, e.g., Estonian Property Reform Principles, *supra* note 20, art. 3(1)(1) (referring to documents "declared illegal" by the Dec. 19, 1990 Resolution of the Supreme Council of the Republic of Estonia, "On the Restoration of the Continuity of Property Rights"). Strictly speaking, the terms "nationalization," "expropriation," and "confiscation" are not synonymous. For precise definitions, see GORDON, *supra* note 3, at 119. These terms are used interchangeably, however, in the Baltic context.

23. See, e.g., The Republic of Latvia Law on the Denationalization of Buildings in the Republic of Latvia art. 1, para. 1 (Oct. 30, 1991) (translation obtained from Latvian Embassy) [hereinafter Latvian Building Denationalization Law].

24. See, e.g., Estonian Property Reform Principles, *supra* note 20, art. 14. See generally Cannon, *supra* note 17 (reporting that by mid-1993, three-fourths of Estonian collective farms "ha[d] been dismantled on the basis of resolved restitution claims or leases based on anticipated restitution.")

25. Estonian Property Reform Principles, *supra* note 20, art. 3 (1)(3).

26. *Id.* art. 6(3).

27. *Id.* art. 6(4).

"repression" are capital punishment, imprisonment, exile, or deportation.²⁸ Similarly, Latvian legislation explicitly allows restitution where owners voluntarily abandoned their property (or were compelled to accept "exceptionally unfavorable conditions") as a result of fraud, violence or threats of repression or other "unfavorable consequences."²⁹

Lithuanian legislation appears to recognize only the first two types of expropriation. There is no specific provision regarding "threats of repression." Rather, as stipulated in the June 1991 Law on Procedures and Conditions for Restoration of Citizens' Rights to the Ownership of Extant Real Property (hereinafter Lithuanian Restoration Law), restitution is available for real property that was either transferred to state, public or cooperative organizations under laws of the Soviet Union (or the Lithuanian Soviet Socialist Republic) or "nationalized or socialized by other unlawful means."³⁰

B. Claimants

Estonia defines the circle of eligible claimants broadly to encompass individuals who were Estonian citizens on June 16, 1940, current citizens, and their heirs.³¹ For restitution purposes "heirs" are persons designated to take the property under the former owner's will, if the will was executed prior to the expropriation of the property or after June 20, 1991.³² If the will failed to dispose of the expropriated property or if the owner died intestate, then "heirs" are the former owner's spouse, parents, children (including adoptive parents and adopted children),³³ and brothers and sisters and their descendants.³⁴ Foreign as well as Estonian nationals are eligible claimants if they meet these criteria.³⁵

Estonia also permits restitution applications from local, municipi-

28. *Id.*

29. Republic of Latvia Law on the Return of Buildings to their Legal Owners paras. 5, 7 (Oct. 30, 1991) (translation obtained from Latvian Embassy) [hereinafter Latvian Building Return Law].

30. Lithuanian Republic Law on Procedures and Conditions for Restoration of Citizens' Rights to the Ownership of Extant Real Property art. 1 (June 18, 1991), translated in U.S. Dep't of Commerce PB92-961802, 17 (1992) [hereinafter Lithuanian Restoration Law].

31. Estonian Property Reform Principles, *supra* note 20, art. 7.

32. *Id.* arts. 8(1)-(2).

33. *Id.* art. 8(3).

34. Hobér, *supra* note 20, at 6.

35. Estonian Property Reform Principles, *supra* note 20, art. 7(2).

pal, and regional governmental entities³⁶ and from nonprofit community³⁷ and religious organizations.³⁸ Foreign states, "legal entities," and citizens (other than former Estonian owners or heirs specified above), however, are barred from the ordinary restitution process.³⁹ They must present and resolve their claims through "mutual agreement" by Estonia and their respective state.

The other intriguing aspect of the Estonian definition of claimants is the January 1994 decision to entertain applications from owners of land expropriated in territories that were legally assigned to Estonia under the 1920 Tartu Peace Treaty but are now under Russian jurisdiction.⁴⁰ The prospects for actual return of such property would seem unrealistic at best. Indeed, in November 1994, Estonia's Prime Minister himself admitted that his country's demands for recognition of the Tartu Peace Treaty were "heroic but impractical."⁴¹ Thus, this declaration would appear to be designed largely to promote Estonian nationalist objectives.

Similarly, Latvian restitution legislation applies to "previous owners or their heirs, regardless of their present citizenship."⁴² Initially, Latvia permitted return of farms only to those who would

36. *Id.* art. 7(1)(5).

37. *Id.* arts. 7(1)(4), 9; Estonian Supreme Council Resolution on the Application of the Law on the Principles of Property Reform art. 3 (June 20, 1991), translated in KIRIS, *supra* note 20, at 73.

38. Estonian Property Reform Principles, *supra* note 20, art. 9(1). For discussions of Estonian efforts to return property to the Eastern Orthodox Church and to Jewish communities, see Andrew Huddart, *Estonian Orthodox Church Appeals to Constantinople*, Reuters World Service, Feb. 6, 1995; Jay Bushinsky, *E. Europe Bristles at D.C. Demands*, CHI. SUN-TIMES, Apr. 24, 1995, at 27.

39. Estonian Property Reform Principles, *supra* note 20, art. 7(2). See *Government Issues Appeal on Property Claims* (Radio Tallinn Network, Sept. 16, 1991), in F.B.I.S.-SOV, Sept. 18, 1991, at 45 (appeal by Estonian government to all United Nations member states to make property claims).

40. See *Parliament Approves Property Compensation*, ETA News Release, Jan. 12, 1994, in F.B.I.S.-SOV, Jan. 13, 1994, at 85. Latvia too has considered accepting applications from claimants to property located in areas that were once Latvian but now Russian territory. See *Former Residents of Abrene Appeal for Compensation from Russia* (Latvian Radio, July 20, 1994), in BBC Summary of World Broadcasts, July 22, 1994; *Latvian Spokesman Rebukes Yeltsin's Statement on "Forced Settlers"*, BNS News Agency, Nov. 24, 1994, in BBC Summary of World Broadcasts, Nov. 30, 1994.

41. Andres Tarand, cited in Iuri Maloverian, *Neighbors: Estonia's Positions Soften—New Prime Minister Begins Talking in a New Way About the Border Problem*, SEGODNIA, Nov. 24, 1994, in 46 CDSP, no. 47, at 20.

42. See, e.g., *Latvian Building Return Law*, *supra* note 29, para 1. See generally *Latvian-Canadians Can Reclaim Property*, OTTAWA CITIZEN, June 23, 1992, at A3.

use the property for agricultural purposes.⁴³ More recent regulations appear to have dropped this limitation.⁴⁴ In the past, Latvia rigidly restricted restitution to physical persons and barred claims from partners and shareholders in expropriated enterprises.⁴⁵ In January 1994, however, Latvia extended the class of eligible claimants somewhat to include religious organizations that were legally registered in 1940 and have not discontinued their activity since that time or have been officially "restored [to] the status of legal entities."⁴⁶ Cases involving foreign religious organizations, however, will be decided on an individual basis.

In 1991, the Latvian parliament issued a special resolution that recognizes claims from foreign states, aliens, and juridical persons regarding property illegally seized after the 1940 annexation of Latvia.⁴⁷ It specifically mentions return of former embassy and consular facilities to states that established diplomatic relations with the post-communist Latvian regime. The 1991 resolution refers to future, detailed implementing legislation and procedures regarding foreign claims. It is uncertain whether any such legislation has, in fact, been enacted.

Lithuania's approach to claimants diverges markedly from its Estonian and Latvian counterparts. Lithuania generally restricts restitution to current citizens and permanent residents.⁴⁸ Even heirs

43. See WORLD BANK, *LATVIA: THE TRANSITION TO A MARKET ECONOMY* 93 (1993) [hereinafter WORLD BANK: LATVIA].

44. In fact, according to land commission reports 35% of all applications were from claimants who did not intend to farm their land. See *Deadline Passes for Land Use Requests* (Radio Riga Int'l, June 23, 1991), in F.B.I.S.-SOV, July 8, 1991, at 67.

45. See *Resolution on Property Rights* (Latvian Radio, Mar. 31, 1992), in BBC Summary of World Broadcasts, Apr. 3, 1992.

46. See *Saeima Passes Law on Returning Property to Religious Organizations* (Latvian Radio, Jan. 13, 1994), in BBC Summary of World Broadcasts, Jan. 21, 1994.

47. See *Foreign Countries' Properties Restored*, BALTFAX, Sept. 5, 1991, in F.B.I.S.-SOV, Sept. 5, 1991, at 59; *Property Claims of Foreigners Recognized*, IZVESTIJA, Sept. 9, 1991, in F.B.I.S.-SOV, Sept. 11, 1991, at 54.

48. Lithuanian Restoration Law, *supra* note 30, art. 2. Lithuania has encountered particular criticism for its refusal to provide restitution for property seized from Jewish communities in Lithuania during the occupation period. Many of the former owners and their heirs emigrated from Lithuania and, thus, became ineligible to receive property. Lithuanian authorities have promised a "constructive solution" to the problem in the near future. See *Formal Public Apology on Lithuanian President's Agenda*, MIDEAST MIRROR, Feb. 28, 1995; *Lithuanian President Publicly Apologizes to Jewish People*, XINHUA, Mar. 1, 1995; *Statement Issued on Compensation for Foreigners* (Radio Vilnius Network, Apr. 20, 1995), in F.B.I.S.-SOV, Apr. 21, 1995, at 76. On March 21, 1995, the Lithuanian legislature formally adopted legislation on return of religious communities' property. See *Internal Affairs* (Radio Vilnius, Mar. 21, 1995), in BBC Summary of World Broadcasts, Mar. 25,

of former owners must provide documentary proof of Lithuanian citizenship and permanent residence.⁴⁹ Originally the term "heirs" referred solely to a former owner's living children and parents (including adopted children and adoptive parents), and spouse. Subsequent legislation has expanded this category to include grandchildren and spouses of children.⁵⁰ It should be noted, however, that in the case of agricultural property, heirs must meet an additional requirement. They cannot obtain actual restitution unless "they are engaged in the tilling of land, or are returning for the purpose of engaging in farming activity in accordance with the land-use plans of a given territory that have been drawn up according to established procedures."⁵¹

C. Categories of Property

Estonian legislation allows restitution or compensation for a wide variety of types of property illegally seized during the Soviet era. The earliest statutory scheme, the 1989 Land Law, targeted collectivized agricultural land. It permitted former owners the limited rights to use and retain income from small, individual agricultural plots under two-year leases.⁵² Subsequent land reform and property legislation has lifted these restrictions and offered numerous restitution and compensation options.⁵³ Beginning in 1991, Estonia enlarged its definition of illegally expropriated property to comprehend virtually all forms of immovable and movable property. Thus, the Estonian Property Reform Principles define as relevant "objects" "land and other natural objects, buildings, ships, agricultural invento-

1995. It plans to enact an even more comprehensive Law on Religious Communities in the near future. See *American Jewish Committee Delegation Visiting Lithuania* (Lithuanian Radio, July 7, 1995), in BBC Summary of World Broadcasts, July 10, 1995; *President Discusses Church-State Relations*, ELTA, Aug. 21, 1995, in F.B.I.S.-SOV, Aug. 23, 1995, at 87.

49. Lithuanian Restoration Law, *supra* note 30, art. 2. See David Lass, *Restitution from Lithuania*, JERUSALEM POST, Dec. 6, 1994, at 6.

50. See WORLD BANK, LITHUANIA: THE TRANSITION TO A MARKET ECONOMY 181 (1993) [hereinafter WORLD BANK: LITHUANIA].

51. Lithuanian Restoration Law, *supra* note 30, art. 4.

52. See WORLD BANK, ESTONIA: THE TRANSITION TO A MARKET ECONOMY 101 (1993) [hereinafter WORLD BANK: ESTONIA].

53. See, e.g., Estonian Republic Law on Land Reform, translated in U.S. Dep't of Commerce PB92-966204, 13 (1992) [hereinafter Estonian Land Reform Law]. The Estonian Land Reform Law was amended on March 13, 1992, April 15, 1993, October 27, 1993, December 7, 1993, February 9, 1994, June 28, 1994, November 9, 1994, and December 14, 1994. See Hobér, *supra* note 20, at 8.

ry, factory fittings, stocks and shares, not taking into account the debts associated with them."⁵⁴

Latvian legislation contains detailed provisions on restitution of commercial enterprises, residential complexes, and land.⁵⁵ Particularly distinctive are the elaborate regulations regarding expropriated buildings.⁵⁶ Recent reports, procedures, and draft laws indicate possible extension of restitution to personal property.⁵⁷

Lithuania adopts a narrower interpretation of property. It guarantees "restoration" of former ownership rights solely to "extant real property."⁵⁸ Lithuanian legislation expressly includes within the category of real property "land; forests; structures of an economic and commercial nature with accessories; [and] residential buildings with accessories."⁵⁹ There are substantial restrictions and conditions regarding alienation and use of such property and sweeping provisions for governmental repurchase "for state needs."⁶⁰

D. Forms of Restitution

The three Baltic states offer a wide spectrum of restitution forms. The most prominent of these are natural restitution, substitutional restitution, and compensation.

1. Natural Restitution

Natural restitution refers to return of the actual property

54. Estonian Property Reform Principles, *supra* note 20, art. 11(1).

55. See generally WORLD BANK: LATVIA, *supra* note 43, at 34-37, 43, 93, 157-58.

56. See, e.g., Latvian Building Denationalization Law, *supra* note 23; Latvian Building Return Law, *supra* note 29.

57. See, e.g., *Latvia: Draft Law on Restoration of Ownership Approved by Deputies' Commission* (Econ. News Agency, Jan. 27, 1993), in BBC Summary of World Broadcasts, Jan. 29, 1993.

58. Lithuanian Restoration Law, *supra* note 30, art. 1.

59. *Id.* art. 3.

60. See, e.g., *id.* art. 6 (requiring that a restituted forest area "must be put in order, utilized and restored in accordance with the land-use plan, and for five years from the date of its return or presentation in the form of compensation may not be sold, mortgaged or otherwise transferred without the consent of an agency authorized by the government of the Lithuanian Republic"). Repurchase provisions appear in *id.* arts. 3-4. In 1993, Lithuania relaxed its restrictions somewhat to allow restitution of land to those willing to lease land to farmers as well as those who intended to work the land themselves. See *Lithuania: Land Returned to Former Owners*, NEZAVISIMAJA GAZETA, July 24, 1993, at 3, in REUTER TEXTLINE NOVECON, July 26, 1993. For a detailed description of restrictions on property, see Valletta, *supra* note 21, at 214-17.

expropriated during the communist era. Estonian, Latvian, and Lithuanian statutes all permit, even favor in principle, natural restitution of land, enterprises, and residential buildings.⁶¹ They expressly exempt certain types of property from such claims, however. For example, Latvia excludes "land already containing developed farms, orchards, subsidiary (individual) plots, homes, other existing structures of land needed to maintain the productivity of livestock or other assets formerly belonging to state and collective enterprises; for environmental or historical reasons; or for universities, agricultural schools, research institutions, and experimental stations."⁶² Estonia has made notable efforts to restrain "unconditional return of objects of social, cultural, and state defense importance," even issuing a government regulation in September 1993 that specifically addresses this problem.⁶³

The legislation of all three Baltic states contains numerous size, use, and alienation restrictions, which circumscribe practical implementation of the natural restitution desideratum. The Lithuanian Restoration Law is a prime illustration. It limits claimants to agricultural plots of no more than 50 hectares, to urban parcels of no more than 0.3 hectares (0.2 hectares in certain specified cities), and to forested areas of no more than 10 hectares.⁶⁴ It requires that former owners use restituted agricultural land solely "for the production of agricultural products" and forbids any sale, mortgage, transfer, or lease for five years.⁶⁵ Violation of these conditions results in state confiscation of the land.⁶⁶ Similarly, there are significant limitations on ownership, use, and transfer of residential property. These include a prohibition against eviction of existing tenants for a period of ten

61. See, e.g., Estonian Land Reform Law, *supra* note 53 art. 6: "Land is returned, if possible, within its former borders unless this law or the requirements of the land use system stipulate otherwise." This principle of natural restitution has posed problems in practice, however. A dramatic example occurred in March 1995. Twenty-two former owners 'shocked' Latvian authorities by physically staking claims to a Riga International Airport runway that had recently been renovated with credits from the European Bank for Reconstruction and Development. Apparently, nearly the entire airport is subject to restitution claims. See *Former Owners Claim Territory Occupied by Riga Airport*, ITAR-TASS, Mar. 3, 1995, in BBC Summary of World Broadcasts, Mar. 8, 1995.

62. WORLD BANK: LATVIA, *supra* note 43, at 93.

63. See 'Unconditional' Return of Property Halted, ETA News Release, Sept. 16, 1993, in F.B.I.S.-SOV, Sept. 20, 1993, at 86. This regulation responded to a series of decisions by local authorities to return to their former owners buildings that currently were occupied by government agencies. *Id.*

64. Lithuanian Restoration Law, *supra* note 30, arts. 4-6.

65. *Id.* art. 4.

66. *Id.*

years.⁶⁷

2. Substitutional Restitution

Estonian, Latvian, and Lithuanian statutes also offer former owners restitution in the form of replacement property "equivalent" to that which was illegally expropriated during the socialist era.⁶⁸ This most commonly occurs in cases where the claimant's property no longer exists in its original form or is formally excluded from the natural restitution process.⁶⁹ Substitutional restitution is available in situations where either total or partial return of the actual property is impossible.⁷⁰ It should be noted that replacement property is generally subject to the same legislative restrictions on use, size, and transfer discussed above.⁷¹

3. Compensation

Baltic restitution schemes guarantee "compensation" to former owners who decline other forms of restitution and/or are ineligible to receive natural restitution. Examples of the latter include cases where the expropriated property is no longer in existence, is currently owned by a bona fide purchaser, or has already been privatized.⁷² Estonia has extended compensation as well to expropriated stocks or bonds.⁷³ Compensation falls into two main categories — "financial restitution"

67. *Id.* art. 8. See Nadezhda Popova, *Association of Prospective Homeless Set Up in Kaunas*, MEGAPOLIS CONTINENT, No. 27, at 7, in RUSSIAN PRESS DIGEST, July 13, 1992 (RusData DialLine). Latvian laws provide even more extensive "social guarantees for tenants," including recognition of existing leases, rent control, seven-year prohibition against eviction (unless equivalent housing is located), and non-eviction of invalids and pensioners who live alone. Latvian Building Denationalization Law, *supra* note 23, art. IV.

68. See, e.g., Estonian Land Reform Law, *supra* note 53, at ch. 2.

69. See, e.g., *id.* art. 11.

70. See, e.g., *id.* arts. 6, 7. For detailed coverage of Estonian provisions on substitutional restitution, see Hobér, *supra* note 20, at 8-9.

71. See, e.g., Lithuanian Restoration Law, *supra* note 30, art. 4.

72. See, e.g., Estonian Property Reform Principles, *supra* note 20, art. 12. It should be noted that the definition of "unreturnable" property has caused difficulties and alleged "injustices" in practice. A Lithuanian editorial claimed that bureaucrats have determined eligibility for natural restitution on an arbitrary, discriminatory, and "protectionist" basis. Editorial, *A Law for an Illegal Owner [New Law on Land, State Ownership Criticized]*, RESPUBLIKA, Apr. 1, 1994, at 4, in F.B.I.S.-SOV, Apr. 12, 1994, at 72. This assumes particular importance in light of the Lithuanian land law, enacted March 15, 1994, which declares unreturned land state property and requires only compensation at market value for such property. *Id.* See *News Bulletin No. 457*, ELTA, Mar. 15, 1994, in F.B.I.S.-SOV, Mar. 16, 1994, at 59.

73. Estonian Property Reform Principles, *supra* note 20, art. 13.

and "voucher restitution."

According to Baltic statutes, financial restitution consists generally of lump-sum payments approximating the actual value of property at the time of nationalization.⁷⁴ Estonian legislation provides the most detailed scheme.⁷⁵ It stipulates that such compensation shall not include unreceived profits but shall cover any decline in value of property since its illegal expropriation. In situations where it is impossible to calculate actual value, compensation is effected as directed by the Estonian parliament. In 1993, Estonia created a special "compensation fund" to satisfy claims. It allocates fifty percent of all money received from sales of privatized state-owned property to this fund.⁷⁶

Under voucher restitution, former owners receive vouchers, certificates, bonds, or shares redeemable for property "similar in value"⁷⁷ to their confiscated assets, for shares in a compensation fund, or for stock or "investment checks" in newly privatized enterprises, housing or land parcels.⁷⁸ Baltic statutes give former owners priority in the privatization process and, in some cases,

74. See, e.g., Estonian Land Reform Law, *supra* note 53, art. 13. Estonian Procedures for valuation of property are set out in the Law on Determination of the Value and on Compensation for Unlawfully Seized Property (May 19, 1993) (amended 1994), Government Decree No. 216 "The Determination of Compensation for Unlawfully Seized Property" (July 13, 1993) (amended 1994 and 1995), Law on Valuation of Land, and Government Decree No. 139 "The Determination of the Value of Unlawfully Seized Land" (Apr. 14, 1994). See *Latvian Legislature Passes Compensation Law* (Radio Riga Int'l broadcast, May 15, 1991), in F.B.I.S.-SOV, May 16, 1991, at 45. In Lithuania, however, compensation has approximated only two-thirds of the value of each expropriated parcel of land. See WORLD BANK: LITHUANIA, *supra* note 50, at 181.

75. Estonian Property Reform Principles, *supra* note 20, art. 13.

76. See *Government to Privatize State-Owned Property* (ETA News Agency, Mar. 9, 1993), in BBC Summary of World Broadcasts, Mar. 19, 1993. This "compensation fund" was stipulated in the Addendum to the Resolution of the Supreme Council of the Republic of Estonia on Enacting the Conditions and the Procedure for Privatizing State and Municipal Property, art. 26 (Aug. 13, 1992), translated in U.S. DEP'T OF COMMERCE, CENTRAL & EASTERN EUROPE LEGAL TEXTS PB93-966201, 97, 99 (1992). The Lithuanian Minister of the Economy, Julius Veselka, suggested that there should also be compensation "for savings to the largest possible extent." Veselka, *supra* note 15.

77. See Radio Riga Int'l broadcast, *supra* note 74.

78. On the Estonian approach, see generally Cannon, *supra* note 17. On the Latvian approach, see *Parliament Passes Law Regulating Return of Confiscated Land and Property* (Radio Riga Int'l broadcast, Apr. 3, 1993), in BBC Summary of World Broadcasts, Apr. 8, 1993; Ilze Arklina, *Latvia: Privatization in Full Swing*, BALTIC OBSERVER, July 23-29, 1992, at 2, in F.B.I.S.-USR, Sept. 27, 1992, at 116. On the Lithuanian approach, see *News Bulletin No. 151 [Brazauskas Christmas Message on Wages, Land Reform]*, ELTA NEWS BULL., Dec. 24, 1992, in F.B.I.S.-SOV, Dec. 29, 1992, at 65.

reserve shares of privatizing enterprises for subsequent claimants.⁷⁹ There has been substantial opposition to this approach. Latvian opponents argue that current landowners and residents should have first priority in privatizations and that former owners should receive financial restitution only.⁸⁰ Government leaders point out, however, that monetary compensation, even if preferable, is unrealistic due to Latvia's low hard currency reserves.⁸¹ Interestingly, Estonian and Lithuanian criticism has come from a diametrically opposite direction. There has been strong concern, even culminating in appeals to the Lithuanian Constitutional Court, that parliamentary innovations in agricultural reform and privatization have obstructed and violated the "historically just" principle of natural restitution.⁸²

In addition to financial and voucher restitutions Lithuania offers a third option. In a case of governmental repurchase of real estate, a citizen may elect cancellation of any "monetary obligations to the state that has arisen since alienation of the real property."⁸³ Neither Estonia nor Latvia appears to have adopted this approach.

E. Procedures

The typical Baltic restitution scheme requires former owners to submit claims by a set deadline to the local government authorities

79. See, e.g., *Lietuvos Aidas [Insufficient Land Available for Privatization]*, EKHO LITVY, Sept. 30, 1992, at 5, translated in F.B.I.S.-USR, Oct. 30, 1992, at 117; WORLD BANK: LATVIA, *supra* note 43, at 36; Ildar Nizamudinov, *Estonia: Estonia Well on the Road to Privatization*, BALTIC OBSERVER, July 23-29, 1992, at 2, in F.B.I.S.-USR, Sept. 27, 1992, at 112, 113.

80. See Galina Kuchina, *Latvian Privatization of State Property Viewed*, TASS, June 12, 1991, translated in F.B.I.S.-SOV, June 13, 1991, at 42.

81. See, e.g., Anatolij Gorbunov, cited in *No Large-Scale Privatization in Near Future*, BALTFAX, Jan. 25, 1992, in F.B.I.S.-SOV, Jan. 28, 1992, at 83; WORLD BANK: LITHUANIA, *supra* note 50, at 181.

82. See Sigute Armonaite, *There May Be No Moratorium [Nationalists, Landowners Deem Land Laws 'Unjust']*, TIESA, Apr. 12, 1994, at 4, translated in F.B.I.S.-SOV, Apr. 19, 1994, at 74; Editorial, *supra* note 72; *Seimas Object to Agricultural Reform Decision* (Radio Vilnius Int'l Service, Jan. 19, 1994), translated in F.B.I.S.-SOV, Jan. 26, 1994, at 74. Vytautas Radzvilas, a member of the Council of Ministers of the Union of Lithuanian Liberals, condemned this view as "economic populism." Vytautas Radzvilas, cited in *Liberals Oppose Populist Policy, Call for Legal Reform* (Lithuanian Radio, Dec. 27, 1993), in BBC Summary of World Broadcasts, Jan. 3, 1994. For an example of Estonian criticism, see Editorial, *Owners Criticize Land Reform Law* (Radio Tallinn Network, Oct. 27, 1991), in F.B.I.S.-SOV, Oct. 29, 1991, at 41.

83. Lithuanian Restoration Law, *supra* note 30, art. 16.

with jurisdiction over the expropriated property.⁸⁴ Under a 1992 statute, Latvia offers foreign nationals another alternative — filing applications with “diplomatic establishments or consulates of the Republic of Latvia.”⁸⁵ The designated period for presentation of claims varies substantially in length, from less than four months⁸⁶ to three years⁸⁷ after adoption of the restitution statute. Baltic governments retain the flexibility to extend these deadlines, however.⁸⁸ Thus, Lithuania changed its claim date from January 1, 1992 to January 30, 1992 to accommodate applications from deceased owners’ grandchildren and children’s spouses.⁸⁹ Estonia created a special exemption from its January 17, 1992 deadline for “persons who were physically unable to file before the deadline and persons living overseas who were not aware of the deadline.”⁹⁰

All three restitution schemes mandate that claimants submit with their applications appropriate documentation. This generally entails presentation of legal evidence of ownership (e.g., will, deed, official “confirmation document”);⁹¹ description, dimensions, location, and estimated value of the property;⁹² and name of claimant and proof of relationship to original owner (if deceased) (e.g., birth certificate,

84. See, e.g., Estonian Property Reform Principles, *supra* note 20, arts. 16-17; Latvian Building Denationalization Law, *supra* note 23, art. 2; Lithuanian Restoration Law, *supra* note 17, arts. 9-11, 18-19. See Arklina, *supra* note 78, at 117 (on Latvian land claims).

85. See *Resolution on Property Rights*, *supra* note 45.

86. *Real Estate To Be Returned To Former Owners*, BALTFAX, Apr. 1, 1992, in F.B.I.S.-SOV, Apr. 2, 1992, at 89 (Latvian parliament on March 31, 1992 announced that owners of expropriated real estate must submit claims by July 20, 1992). For a six-month deadline, see Estonian Property Reform Principles, *supra* note 20, art. 16. The Estonian Land Reform Law established a shorter statute of limitations on petitions for substitutional restitution. Estonian Land Reform Law, *supra* note 53, art. 39.

87. See, e.g., Latvian Building Denationalization Law, *supra* note 23, art. 2.

88. See, e.g., Lithuanian Restoration Law, *supra* note 30, art. 10: “The government of the Lithuanian Republic may extend the deadline for the presentation of documents confirming the right of ownership.”

89. See WORLD BANK: LITHUANIA, *supra* note 50, at 181.

90. See *Estonians Can Reclaim Confiscated Property*, AM. BALTIC NEWS, Jan. 1993 (obtained from Estonian embassy). For information on Estonian claims procedures, see Hóber, *supra* note 20, at 6.

91. See, e.g., *id.* Lithuania has the most detailed provisions regarding required documents to confirm the right of ownership. See Lithuanian Restoration Law, *supra* note 30, arts. 9-11; Government Decree No. 349 (May 20, 1992), 14 AGRARINES REFORMOS BIULETENIS 47 (1993), cited in Valletta, *supra* note 21, at 211 n.58; Government Decree No. 470, 14 AGRARINES REFORMOS BIULETENIS 12 (1993), cited in *id.* As will be discussed below, there have been particular problems in practice with one of these prescribed documents, official certificates issued by the state archives. See *infra* note 115 and accompanying text.

92. See, e.g., Lithuanian Restoration Law, *supra* note 30, art. 11.

marriage certificate).⁹³ Lithuania adds several further requirements, most notably proof of a claimant’s Lithuanian citizenship and permanent residence in Lithuania.⁹⁴

Statutory provisions regarding review of applications diverge markedly. For example, Estonian legislation calls for the State Property Department to create a special commission to examine and rule on claims, devise appropriate procedures, and compile a register of previous owners and expropriated properties.⁹⁵ It guarantees judicial resolution of restitution and compensation disputes.⁹⁶

The Latvian scheme for restitution of buildings exhibits a different approach. It assigns review responsibility to commissions formed by municipal or regional deputies’ councils and grants final decisionmaking power to the executive committees of local deputies’ councils.⁹⁷ It provides claimants the right of appeal to the Council of Ministers’ State Property Conversion Department or courts.⁹⁸

The Lithuanian Restoration Law, in contrast, adjusts the review and decisionmaking process according to the type of property claimed. Thus, a “ministry authorized by the government of the Lithuanian Republic” determines the fate of petitions regarding land and forests, municipal or regional bodies rule on claims for residential and commercial buildings, and the relevant “ministry or service” decides restitution applications for “the return of buildings of an economic and commercial nature, and of buildings belonging to research, medical, cultural, educational or communications institutions.”⁹⁹ As a general rule, Lithuania guarantees governmental consideration and determination of claims within three months after

93. See, e.g., *Estonians Can Reclaim Confiscated Property*, *supra* note 90.

94. See Lithuanian Restoration Law, *supra* note 30, art. 2.

95. See *Estonia Adopts Regulations on Property Claims* (Estonian Television Network, May 20, 1991), in F.B.I.S.-SOV, May 24, 1991, at 42; *Estonian Soviet Discusses Land Ownership Reform* (Radio Tallinn Network, June 20, 1991), translated in F.B.I.S.-SOV, June 21, 1991, at 47. According to recent reports, however, Estonia plans to shift to a scheme that will emphasize local-level management of land reform issues. See *Prime Minister Vahi Addresses Parliament* (Radio Tallinn Network, May 31, 1995), in F.B.I.S.-SOV, June 1, 1995, at 84, 86.

96. See Estonian Property Reform Principles, *supra* note 20, art. 19.

97. See Latvian Building Denationalization Law, *supra* note 23, art. 2.

98. *Id.* art. 2, para 6.

99. Lithuanian Restoration Law, *supra* note 30, art. 18. For a detailed description of the Lithuanian process, see Valletta, *supra* note 21, at 210-13.

submission of petitions and required documentation.¹⁰⁰ The Lithuanian Restoration Law also provides claimants the right to appeal administrative decisions about restitution or compensation in the courts within twenty days.¹⁰¹

In 1992 and 1993, Estonia and Latvia amended their legislation to introduce an expedited restitution process. Their objective was to reduce the adverse impact of restitution on national privatization programs. As Latvian Privatization Minister Druvis Skulte explained, "We are not rich enough to wait for five or 10 years."¹⁰²

The Estonian Law on Speeding Up Restitution for Illegally Expropriated Property that has Retained its Individuality¹⁰³ mandates swift resolution of restitution claims in situations where government authorities have determined that there is sufficient, accurate documentation and no decrease in the value of the expropriated property.¹⁰⁴ The statute provides for publication of all restitution decisions "within one week in the newspaper covering that location" and return of the property two weeks later unless valid, conflicting claims are filed in the interim.¹⁰⁵ After the two-week period, the law formally cuts off all other claims for natural restitution of the expropriated property.¹⁰⁶

In 1993, Latvia introduced similar publication and notice requirements. Under this new approach, Latvian officials insert announcements of all prospective privatizations in the government newspaper *Latvijas Vestnesis*. "Legitimate" former owners have a total of two months to file claims. If they fail to do so in a timely manner, the privatization proceeds as scheduled.¹⁰⁷

100. In cases of multiple claims to the same property, however, no such decision is made by the indicated administrative authorities. Any disputes of this sort are resolved in court. Lithuanian Restoration Law, *supra* note 30, art. 19.

101. Lithuanian Restoration Law, *supra* note 30, art. 20.

102. Druvis Skulte, *cited in* BNS, Oct. 12, 1993, in F.B.I.S.-SOV, Oct. 15, 1993, at 59.

103. Law of the Republic of Estonia on Speeding Up Restitution for Illegally Expropriated Property that has Retained its Individuality (Aug. 11, 1992), in F.B.I.S.-USR, Nov. 12, 1992, at 202.

104. *Id.* paras. 1-2.

105. *Id.* paras. 4-5.

106. *Id.* paras. 5-6. Recent announcements by officials of Estonia's new government indicate that Estonia will adopt additional legislation to accelerate restitution in the near future. See, e.g., Tiit Vahi, Speech to Parliament (Oct. 26, 1995), ETA, Oct. 26, 1995, in F.B.I.S.-SOV, Oct. 27, 1995, at 74-75; Mai Vöörmann, *Tiit Vahi Seeking Compromise*, EESTI PAEVALEHT, July 25, 1995, at 3, in F.B.I.S.-SOV, Oct. 10, 1995, at 100.

107. See BNS, *supra* note 102, at 59.

III. IMPLEMENTATION OF BALTIC RESTITUTION PROGRAMS

On the eve of the Estonian parliament's adoption of its pivotal restitution statute, the 1991 Property Reform Principles, the Chairman of the Ownership Reform Commission in a radio interview stated: "I would like to emphasize once again that the law on the foundations, which attempts now to regulate ownership relations as much as it is possible, does not as yet provide solutions. Solutions will only appear in the process of its implementation."¹⁰⁸ All three Baltic states have encountered serious obstacles in their efforts to accomplish "historical justice"¹⁰⁹ through property restitution. A general summary of these implementation difficulties may yield lessons, even solutions, for Cuba.

A. Administrative and Judicial Problems

Estonia, Latvia, and Lithuania introduced restitution schemes shortly after their independence from the U.S.S.R. Apparently, none of the Baltic governments attempted in advance to identify, inventory, and appraise expropriated properties, to estimate the number of likely claims, or to devise appropriate strategies and formulae for calculation and payment of compensation.¹¹⁰ As a result, these states were unable to anticipate the enormous public demand for restitution and the multitude of complex, conflicting claims for the same property.¹¹¹ Indeed, the Baltic governments have only contributed to the problem by their subsequent failure to issue clearcut guidelines for

108. Arvo Junti, *cited in* Radio Tallinn Network, June 13, 1991, translated in F.B.I.S.-SOV, June 14, 1991, at 41.

109. Lashkevich, *supra* note 16, at 60.

110. See Nikolai Lashkevich, *Litva: natsionalizatsia naoborot? [Lithuania: nationalization in reverse?]*, IZVESTIJA, July 31, 1991, at 2; Veselka, *supra* note 15.

111. See, e.g., *Lietuvos Aidas*, *supra* note 79, at 117 (reporting that 415,000 Lithuanian citizens had filed claims for natural or substitutional restitution and 63,000 citizens had applied for compensation). According to Lithuanian Prime Minister Adolfas Slezevicius and Agricultural Minister Rimantas Karazija, as of April 1994, there were still 200,000 people who "want to get their land back." *News Bulletin No. 472*, ELTA, Apr. 6, 1994, in F.B.I.S.-SOV, Apr. 7, 1994, at 73. A significant obstacle to resolution of claims in Estonia is the fact that "previously there existed no functioning land register." Hóber, *supra* note 20, at 9. Problems with land registers continue to plague Baltic countries. See, e.g., Georg Watzlawek, *Latvia Sees Light at the End of the Tunnel: Hopes for Western Companies — Germans Give Up Forerunner Role in Riga*, GENERAL ANZEIGER, May 19, 1995, at 17, in F.B.I.S.-SOV, June 6, 1995, at 103, 104.

enforcement.¹¹²

Baltic administrative and judicial organs have paid a heavy price for this lack of foresight and concrete action. With only a limited number of qualified staff,¹¹³ these bodies have been flooded with literally hundreds of thousands of restitution cases. The result has been significant delay in confirmation, review, and resolution of claims and in ultimate distribution of property or compensation.¹¹⁴ As will be discussed below, this has proven to be a major stumbling block to overall national privatization efforts.

Lithuania provides an excellent illustration of the full dimensions of this administrative catastrophe.¹¹⁵ In October 1991, Lithuanian experts predicted that it would be impossible to complete land reform and privatization until 1996-97. They cited as the prime reason for this "rather distant term" the inability of the Lithuanian state archives

112. In so doing, Baltic governments have given local authorities wide discretion to handle restitution cases. This has encouraged arbitrary decisionmaking, which has created increased delays and has undermined public confidence in the process. See WORLD BANK: ESTONIA, *supra* note 52, at 43, 219; WORLD BANK: LATVIA, *supra* note 43, at 36; WORLD BANK: LITHUANIA, *supra* note 50, at 181. One area that has caused particular problems is citizenship definitions. See, e.g., *Ethnic Russians Organize to Claim Property*, BALTFAX, Feb. 6, 1992, in F.B.I.S.-SOV, Feb. 7, 1992, at 105. In an October 1995 speech, Estonian Prime Minister Tiit Vahi emphasized the need for "clearly defined rules of the game. The state has to guarantee the partners in economy a solidity and clarity of rules, which would enable them to look further into the future than tomorrow." Vahi, *supra* note 106, at 75.

Another problem has been secrecy in the restitution process. See Edgar Savisaar, cited in Tapani Makinen, *Estonia Continues Balancing Economy*, KAUPPALEHTI-OPTIO MAGAZINE SUPP., May 4, 1995, in F.B.I.S.-SOV (Supp.), July 21, 1995, at 103, 106 (noting "lack of information" about "return of assets to former owners").

113. See WORLD BANK: LATVIA, *supra* note 43, at 43; WORLD BANK: LITHUANIA, *supra* note 50, at 226. In Latvia there has been a particular problem with the lack of trained personnel to implement land and ownership reforms. This has prompted calls for more specialized coursework at agricultural and technical universities. See Agnes Jürgens, *Land Reform Not Moving Ahead Because People Do Not Want the Land Back*, RAHVA HAAL, Feb. 5, 1994, at 3, in F.B.I.S.-USR, Mar. 21, 1994, at 41.

114. See WORLD BANK: LITHUANIA, *supra* note 50, at 181; Stuttaford, *supra* note 15. Latvia has been the most successful in carrying out its restitution program. By April 1993, it had "nearly completed returning farms to private hands and restoring urban properties confiscated during Soviet occupation." Pam Green, *Do Business Here Now! The Baltic States of Estonia, Lithuania and Latvia*; 1993 *World Trade Outlook*, BUS. AM., Apr. 19, 1993, at 29. For statistics on Latvian land distribution, see *Land Distribution: From a Report By the Latvian National Statistical Committee*, NEATKARIGA CINA, Oct. 21, 1992, at 4, in F.B.I.S.-USR, Nov. 15, 1992, at 126. Beginning in 1994, however, the Latvian privatization and restitution process slowed significantly. Indeed, in mid-1995, State Statistical Office officials reported a 51% decline in restitution claims. See *Business environment*, EIU Bus. Repts., July 17, 1995. One commentator has argued that Latvian land reform efforts have "stalled" because legal owners do not want to cultivate agricultural land; they prefer unrestricted use of land or compensation. Jürgens, *supra* note 113.

115. See Radio Vilnius Int'l, Oct. 18, 1991, in F.B.I.S.-SOV, Oct. 21, 1991, at 57.

to handle all the requests from former owners for official confirmation documents. Alfonsas Piliponis, the director of the state archives, reported that his staff received more than 14,000 applications in a single month. Yet, his organization had the capacity to manage only 12,000 requests per year. The Lithuanian government ultimately responded by relaxing the requirements for formal confirmation of ownership rights. Under the new scheme, it now permits the submission of any document (or even testimony of witnesses) that evidences claimants' or their parents' pre-1940 ownership of the expropriated land.

B. Inadequate Natural and Capital Resources

A related challenge has been the practical inability of Baltic states to provide all claimants the statutorily guaranteed remedies of natural, substitutional, and financial restitution. As early as April 1991, Lithuanian officials had already determined that there would need to be an adjustment in land restitution approaches. Based on the large number of claims, they argued that henceforth "while recognizing the rights of former property owners, it is also necessary to have a realistic idea of the current potential for satisfying these rights."¹¹⁶

Due to budgetary constraints, Baltic states have been effectively restricted in their capacity to offer extensive financial compensation. All three countries have limited hard currency reserves.¹¹⁷ As discussed above, Estonia has attempted to address this situation by creating a special "compensation fund," consisting of fifty percent of all amounts received from privatization sales.¹¹⁸

Real property claims have also posed significant problems. Baltic states have insufficient land to satisfy all demands for natural or substitutional restitution.¹¹⁹ Lithuania, for instance, has reported particular difficulties with claims by agricultural workers of Polish descent. Thousands of these individuals have requested land parcels near the city of Kaunas to replace the expropriated property they or their ancestors had owned elsewhere in Lithuania. The result has

116. *News Conference*, EKHO LITVY, Apr. 12, 1991, at 1, in F.B.I.S.-SOV, Apr. 24, 1991, at 46.

117. See Gorbunovs, *supra* note 81. Restitution, of course, only contributes to this problem since it allows transfer of state-owned assets without any offsetting generation of revenue.

118. See *supra* note 76 and accompanying text.

119. For statistics on land shortages, see, e.g., *Lietuvos Aidas*, *supra* note 79.

been a severe shortage of land in this area.¹²⁰ Similarly, it has proven impossible to return all nationalized buildings to their former owners. For example, statistics from Estonia indicate that only 2.3 million square meters of the estimated 4.0 million square meters of expropriated structures still remain in existence.¹²¹

Voucher privatization has also encountered problems due to scarcity of land. Estonia offers a prime illustration. As part of its restitution program, Estonia has issued so-called "yellow cards" (privatization securities) in cases where people owned land the government was unwilling or unable to return or where owners themselves did not claim actual or substitutional restitution.¹²² According to recent reports, however, for many Estonians, such certificates have turned out to be little more than a "packet of waste paper."¹²³ The Estonian government allegedly issued an estimated eight to nine times more securities than it had property to sell.¹²⁴

C. Housing Issues

After their 1940 annexation into the U.S.S.R., Estonia, Latvia, and Lithuania nationalized virtually all privately owned residences.¹²⁵ Over the next five decades, the public rental sector increasingly dominated Baltic housing. In fact, by 1991, of the total housing stock in Estonia, Latvia, and Lithuania it constituted 56.5%, 61.7%, and 56.4% respectively.¹²⁶ During the socialist era, there was relatively little investment in maintenance and renovation of expropriated structures and in construction of new housing.¹²⁷ This could be attributed in part to small revenues generated from rent, which remained largely controlled at 1940 rates.¹²⁸ These historic factors

120. See Radio Vilnius Int'l, *supra* note 115, at 58.

121. WORLD BANK: ESTONIA, *supra* note 52, at 219.

122. See Jorma Rotko, *Value of Estonian Privatization Checks Plumets to a Fraction of What It Was*, HELSINGIN SANOMAT, Sept. 22, 1995, at B12, translated in F.B.I.S.-SOV (Supp.), Oct. 30, 1995, at 28.

123. *Id.*

124. *Id.*

125. Moscow-imposed legislation required nationalization of houses over 220 square meters in Tallinn and over 170 square meters elsewhere in Estonia (see WORLD BANK: ESTONIA, *supra* note 52, at 218), over 220 square meters in major Latvian towns and 130 square meters in rural Latvia (see WORLD BANK: LATVIA, *supra* note 43, at 155), and over 150 square meters in Lithuania (see WORLD BANK: LITHUANIA, *supra* note 50, at 221).

126. See WORLD BANK: LATVIA, *supra* note 43, at 152.

127. See *id.* at 151-54.

128. See *id.* at 153.

and trends have made restitution (and privatization) of housing especially troublesome.

The governments of all three Baltic states have made a formal commitment to protection of tenants' rights, which they codified in restitution legislation.¹²⁹ These guarantees have proven to be woefully inadequate in practice, however. There has already been widespread eviction of tenants notwithstanding statutory provisions to the contrary.¹³⁰ This situation is likely to reach crisis proportions in the near future when legislatively prescribed rent ceilings and non-eviction term limitations expire.¹³¹ One commentator estimated that at least 10,000 Lithuanian citizens will be homeless in Kaunas alone.¹³² This has led outside experts to recommend that Baltic governments give serious consideration to "social safety net proposals" in order to "cushion the effects on the poorer and more vulnerable groups."¹³³

There has been wide criticism of the lack of comprehensive, clearly defined rights for tenants. This has posed particular difficulties in the context of single-family residences.¹³⁴ The other major area of concern has been the possible deleterious effects of absentee landlordism by foreign nationals.¹³⁵

Restitution of housing has presented serious problems for former owners as well as tenants. Most notably, existing legislation fails to provide sufficiently detailed rules regarding claimants' responsibility for improvements to their property and/or compensation for deprecia-

129. See *supra* note 67 and accompanying text; *News Bulletin No. 71*, EESTI SENUMID, Apr. 14, 1994, at 1, in ETA, Apr. 14, 1994, in F.B.I.S.-SOV, Apr. 14, 1994, at 64 (reporting that draft Estonian laws and amendments "will guarantee the rights of tenants in a building to be returned to a former owner"); *Political risk monitor in Estonia*, BUS. E. EUR., Feb. 13, 1995 (describing "messy restitution process which will now be further complicated (and possibly even reversed in some cases) by new measures to protect tenants' rights").

130. For example, in Lithuania, landlords have bypassed eviction limitations by requiring payment of rent in hard currency. Most residents are unable to obtain foreign exchange. See Popova, *supra* note 67.

131. Because of this fact, World Bank consultants have warned Baltic governments that "a number of households will need to find alternative accommodations." WORLD BANK: LITHUANIA, *supra* note 50, at 226. See also Albert Maloveryan, *Real Estate in Estonia Recovered to Former Owners*, ITAR-TASS, Oct. 21, 1993 (discussing housing problems in Estonia).

132. See Popova, *supra* note 67.

133. WORLD BANK: ESTONIA, *supra* note 52, at 221.

134. *Id.* at 219.

135. See Lashkevich, *supra* note 110.

tion in value.¹³⁶ As a result, when owners have recovered their expropriated structures, they often have found it prohibitively expensive to make the necessary repairs.¹³⁷

Restitution schemes have also hindered state construction, renovation, and privatization of residential buildings. A prime illustration is Latvian legislation, which requires municipal authorities to reserve land for subsequent restitution cases¹³⁸ and expressly "prohibits the sale, reconstruction or demolition of such buildings . . . until the end of the period for filing claims."¹³⁹

D. Effect on National Economic Development

Post-Soviet Baltic leaderships have defined as their two key economic goals "to privatize as quickly as possible and attract foreign investment."¹⁴⁰ Restitution has directly impeded achievement of both of these objectives.

From its inception, Baltic privatization legislation has expressly excluded property subject to possible restitution claims. Thus, the Lithuanian Law on the Privatization of State Property stipulates, "An object of privatization may not be . . . the property of citizens of the Lithuanian Republic which was nationalized, confiscated, or taken punitively against their will by the state by other means and which may be returned to its owners or their legal successors in conformity with the laws of the Lithuanian Republic."¹⁴¹

136. See WORLD BANK: ESTONIA, *supra* note 52, at 219; WORLD BANK: LATVIA, *supra* note 43, at 157.

137. See Anne Barnard, *Latvians Reclaim Pre-Soviet Property*, MOSCOW TIMES, Feb. 14, 1995; Kuchina, *supra* note 80.

138. See WORLD BANK: LATVIA, *supra* note 43, at 157.

139. Republic of Latvia Supreme Council Resolution on the Order in which the Republic of Latvia Laws "On the Return of Buildings to their Legal Owners" and "On the Denationalization of Buildings in the Republic of Latvia" Take Effect para. 1 (Oct. 30, 1991) (translation obtained from Latvian Embassy).

140. Janis Freimanis, *cited in* BALTFAX, Apr. 1, 1992, in F.B.I.S.-SOV, Apr. 2, 1992, at 89.

141. Law of the Lithuanian Republic on the Initial Privatization of State Property art. 7 (Feb. 28, 1991), translated in U.S. DEP'T OF COMMERCE (1992). See Radio Riga Int'l, Mar. 3, 1992, in F.B.I.S.-SOV, Mar. 4, 1992, at 83; BALTFAX, Nov. 6, 1991, in F.B.I.S.-SOV, Nov. 7, 1991, at 42 (describing similar provisions in Latvian legislation); *Privatization Structure in Baltics Still at Early Stage of Development*, SOV. BUS. L. REP'T, Jan. 24, 1992 (on Estonian privatization exemption). For a discussion of the impact of restitution on Estonian privatization, see Hobér, *supra* note 20, at 10.

Lengthy and indeterminate¹⁴² deadlines and slow administrative and judicial resolution of restitution claims and disputes resulted in an indefinite postponement of the mass privatization process.¹⁴³ Early experiences indicated that restitution programs also took a heavy toll on small-scale privatizations. For example, in 1992 Latvian privatization auctions, municipal authorities ultimately elected not to sell commercial and residential buildings as announced because of their concern that former owners or heirs might subsequently file claims.¹⁴⁴ Some of the small and less risk-averse enterprises have responded with unauthorized "spontaneous" privatizations.¹⁴⁵

Lack of secure, transparent, and marketable property rights has discouraged domestic and foreign investment. In the industrial sector this has translated into only minimal investment by Baltic citizens and companies "in the purchasing and equipment of [business] premises"¹⁴⁶ and into a noticeable 'reluctance' to lease commercial space.¹⁴⁷ Similarly, restitution programs have had a 'disruptive' effect on agricultural productivity. Observers report that "[m]any farmers are confused and apprehensive" and dissuaded from long-term investment due to "unresolved or conflicting ownership claims."¹⁴⁸ Furthermore, real questions remain as to whether the limits on size and use of land parcels have led to inefficient exploitation of agricultural resources. In his 1994 annual report, Lithuanian President Algirdas Brazauskas aptly expressed this reassessment of the restitution process: "While carrying out agricultural reform, the seed of the current confusion was sown which almost turned the reform into a restitution only. As a result of a limited understanding of the problem of social justice, the principles of rational farming were

142. For example, in Estonia there is no fixed deadline for foreign nationals. Applications are decided on a case-by-case basis. See *supra* note 90 and accompanying text.

143. See BALTFAX, *supra* note 81; *Estonia Expects to Complete Privatization of Major Enterprises in 1995* (Estonian Radio, Apr. 20, 1994), in BBC Summary of World Broadcasts, May 13, 1994; *Follow My Leader*, THE BANKER, Dec. 1993; *Shrugging Off History*, THE BANKER, Dec. 1994.

144. See Kuchina, *supra* note 80, at 42.

145. See *Baltic States, PRIVATISATION INT'L*, Sept. 1992, at § 48. Similar experiences in Lithuania prompted an attempted referendum initiative to adopt a law against "illegal privatizations," which allegedly involve property worth 8 to 10 billion lits. See BNS, Apr. 15, 1994, in F.B.I.S.-SOV, Apr. 18, 1994, at 89.

146. Kuchina, *supra* note 80, at 42.

147. WORLD BANK: ESTONIA, *supra* note 52, at 38. See also Jürgens, *supra* note 113, at 41.

148. WORLD BANK: LATVIA, *supra* note 43, at 93, 97.

ignored."¹⁴⁹

Because of the Baltic states' scarce capital reserves, outdated technology, and traditional lack of access to world markets, foreign as well as domestic investment is critical for economic modernization and development. Baltic states offer a number of promising investment sectors, such as tourism, light industry, agribusiness, and sea transport.¹⁵⁰ Nonetheless, thus far, they have failed to attract significant interest from foreign companies. Commentators report that, as in the domestic context, key barriers to investment are unresolved ownership claims and deferred privatization of land and enterprises.¹⁵¹

It is not surprising, then, that Baltic leaders have recently retreated from their initial broad guarantees of property restitution. In practice they have discovered that this sweeping rejection of their communist past has endangered their post-communist future.¹⁵² This experience sends other transforming states, such as Cuba, an unmistakable message.

IV. LESSONS FOR CUBA

The preceding study raises a fundamental question for Cuba: Is restitution an appropriate course for a transforming socialist state?

149. *President Brazauskas Presents Annual Report on Domestic and Foreign Policy* (Lithuanian Radio, Feb. 10, 1994), in BBC Summary of World Broadcasts, Feb. 14, 1994. See also Matthew Kaminski, *Lithuanian Land Reform Yields Crop of Problems—Undersized Farms are Unable to Meet Output Requirements*, FIN. TIMES, Aug. 18, 1993, at 26 (discussing problems in Lithuania with small tracts of land); John Lloyd, *Survey of Latvia*, FIN. TIMES, Nov. 18, 1994, at 31 (describing problems in Latvia with absentee landlords and fragmented land ownership due to restitution); *Economy*, in EIU COUNTRY REPTS., Jan. 27, 1995 (discussing breakup of collectives "into 200,000 small holdings, many of which are not self-sufficient"). The restrictions on alienation may also have been counterproductive. Full ownership rights appear crucial to accomplishing the Baltic states' overall goal of developing a private, market-oriented agricultural sector. See WORLD BANK: LATVIA, *supra* note 43, at ch. 5.

150. See *The Business Outlook: Estonia, Latvia, Lithuania*, BUS. E. EUR., Mar. 29, 1993.

151. *Id.*; Pilvikki Kause, *Privatization Office Fears Dominance of Russian Investments*, HELSINGIN SANOMAT, Nov. 1, 1994, at D2, translated in F.B.I.S.-USR, Dec. 1, 1994, at 106; *Political Risk Monitor in Estonia*, BUS. E. EUR., Feb. 13, 1995; *Latvia: Neste of Finland Hopes to Set Up Oil Terminal in Riga*, KAUPPALEHTI, Sept. 27, 1995, at 9, in Reuter Textline, Sept. 27, 1995 (describing Neste of Finland's problems in obtaining sites in Latvia and Estonia due to claims from former owners).

152. According to World Bank analysts, "lack of progress" in resolving restitution and privatization issues "has fueled uncertainty about the direction and stability of the entire reform program." WORLD BANK: LATVIA, *supra* note 43, at 37.

The former Soviet republics have reached different conclusions. The vast majority has rejected the very notion of restitution. Indeed, only the Baltic states have embraced it as an integral part of their programs for national reconstruction. Thus, as a preliminary matter, Cuba must carefully weigh the advantages and disadvantages of restitution.

On the positive side, restitution would have powerful symbolic value. It would mark the advent of a new post-socialist era. It would formally repudiate Marxist principles and schemes for state and collective ownership and recognize, even exalt, private property rights. It would provide a moral as well as legal condemnation of the past. In so doing, restitution would help a post-socialist Cuban government establish legitimacy in the eyes of the world community. This would dovetail neatly with current Western rhetoric and policy, which make progress toward "democracy" and a "free market economy" prerequisites for foreign assistance and support.

Restitution would also advance the reconstitution of a Cuban national identity. It would allow Cuba to emerge from the rubble of the world communist "empire" with a clearer sense of nationhood and national purpose. It could promote reconnection with former citizens¹⁵³ and ultimately lead to reintegration of emigres into a single community of Cuban nationals.

Restitution could also help Cuba forge ties with the United States. Because of its proximity, wealth, and influence, the United States has the potential to play a major role in securing Cuba's economic future. Yet, until Cuba makes a meaningful effort to recognize and satisfy outstanding U.S. claims for nationalized property, the United States is likely to continue to impede rather than advance Cuban economic development. At the very least, Cuban support for restitution could signal its willingness to acknowledge and discuss U.S. claims.

The Baltic experience reveals, however, potential serious drawbacks to Cuban adoption of a restitution program. Identification, certification, review, and resolution of restitution applications could create a significant burden on inexperienced, inadequately staffed governmental and judicial organs. Cuba, like the Baltic states, has only limited personnel with the legal and real estate expertise to

153. Cuba has already made initial steps in this direction by relaxing limitations on Cuban-Americans' visits to Cuba. See *Cuba: "Revolution within the Revolution." An Interview with Dr. Nelson Valdes (Part I)*, NOTISUR, Nov. 5, 1993.

handle complex property issues.¹⁵⁴

Furthermore, the preceding study suggests that restitution could act as a major brake on overall Cuban national economic modernization. It could delay the establishment of stable, marketable legal title to assets, a critical requirement for both privatization and domestic and foreign investment.¹⁵⁵ Moreover, it could further drain an already depleted Cuban national treasury. A Baltic-style restitution program would obligate the Cuban state either to turn over state and collective property gratuitously or to pay equivalent compensation. In the Cuban case this would be particularly onerous because of the sheer enormity of U.S. claims for "prompt, adequate and effective" compensation for expropriated property.¹⁵⁶

Finally, the examples of Estonia, Latvia, and Lithuania indicate that restitution could have a severe socioeconomic impact on current Cuban citizens. As in these three states, the Cuban government has heavily subsidized the living expenses of its population. It has prevented its citizens from significant acquisition of assets and, until recently, legally prohibited them from accumulating hard currency. Thus, if Cuba should elect to return property to former owners (many of whom are foreign corporations or emigres) and to introduce free market mechanisms, its present population would be at a competitive disadvantage. Similar to the Baltic case, Cuba should expect particularly negative results in the housing sector,¹⁵⁷ including widespread eviction of tenants.

Baltic precedent suggests that if Cuba should ultimately decide

154. For a superb, comprehensive discussion of inadequacies and needed reforms in Cuba's legal institutions, see Matias F. Travieso-Diaz & Steven R. Escobar, *Cuba's Transition to a Free-Market Democracy: A Survey of Required Changes to Laws and Legal Institutions*, 5 DUKE J. COMP. & INT'L L. 379 (1995).

155. In 1993 and 1994, Cuba made tentative moves toward a more market-oriented economy and increased foreign investment. See generally Howard W. French, *Cubans Fondly Embrace Capitalism*, N.Y. TIMES, Feb. 3, 1994, at A4; Kevin Fedarko, *Open for Business*, TIME, Feb. 20, 1995, at 51; *Havana Will Permit Some Private Enterprise*, N.Y. TIMES, Sept. 10, 1993, at A5. Cuba also announced plans to make its economy more efficient and attractive to foreign investors by "restructur[ing] overinflated work forces." Salvador Valdés, cited in Larry Rohrer, *Cuba, in Ideological Retreat, To Lay Off Many Thousands*, N.Y. TIMES, May 13, 1995, at 1.

156. Claims filed with the U.S. Foreign Claims Settlement Commission amount to \$1,851,057,358. FOR CLAIMS SETTLEMENT COMM. ANN. REPT. 55 (1987). See David L. Marcus, *Nurturing a Dream: Cuban Exiles in U.S. Work Toward Democracy but Following Different Paths*, DALLAS MORNING POST, Sept. 21, 1993, at A1 (describing additional claims by Cuban exiles).

157. See Consuegra-Barguin, *supra* note 12 (discussing problems in Cuban housing sector, including shortages, deteriorated premises, and congestion).

to go forward with a restitution program it should take a slow and cautious approach. Cuba must resist the temptation to pronounce a sweeping, moralistic guarantee of restitution. Instead, it should first undertake a comprehensive feasibility study to determine the potential scope, cost, and effects of restitution.¹⁵⁸ Based on this survey and evaluation, Cuba should then devise a set of detailed, easily enforceable rules, definitions, and procedures. Baltic experience reveals that speed and clarity should be the essence of this regulatory scheme. At the same time, Cuba should prepare appropriate social safety net proposals to address the problems to be faced by its current population. Here, the primary aim should be to ensure that "establishing historical juridical justice will [not] beget new injustice."¹⁵⁹

Estonian, Latvian, and Lithuanian law and practice present five main issues for Cuban consideration: definitions of expropriation; claimants; property; forms of restitution; and procedures.

A. Expropriation

Cuba should determine in advance the precise reach of its restitution program. Since 1959, Cuba has employed three distinct methods of property takings:¹⁶⁰ (1) expropriation of Cuban and foreign-owned land, industries, and businesses for economic reform purposes; (2) confiscation of property from alleged "collaborators" of the Batista regime, "counterrevolutionaries," corrupt officials, and other individuals and corporate entities found "liable for offenses against the national economy or public treasury;"¹⁶¹ and (3) seizure of real and personal property "voluntarily" "abandoned" by Cuban citizens who travelled abroad and failed to return within a specified time period.¹⁶² Baltic precedent indicates that all three methods are

158. For a recent move in this direction, see David Barkin & Martin Smolka, *Understanding Land Markets Where None Exist: The Challenge for Cuba*, LANDLINES, May 1995, at 1 (describing proposed joint feasibility study by U.S.-based Lincoln Institute of Land Policy and Cuban organizations "to examine land market dynamics and establish a valuation system" in Cuba). Matias Travieso-Diaz and Steven Escobar recommend the creation of "a Privatization Agency to manage the return of state-owned enterprises to the private sector and a Claims Agency to resolve expropriation claims." Travieso-Diaz & Escobar, *supra* note 154, at 411.

159. Junti, *supra* note 108.

160. Travieso-Diaz, *supra* note 154, at 234-35.

161. Ley Fundamental art. 24, GACETA OFICIAL I (Feb. 7, 1959), translated in *id.* at 230 n.46.

162. Under Resolution 454 of the Ministry of Interior (Oct. 9, 1961), these periods ranged from twenty-nine days for Cubans travelling to the United States to ninety days for those travelling to Europe. See Travieso-Diaz, *supra* note 154, at 235 n.64.

potential sources of restitution claims.

To address the first category of takings, Cuba could follow the Baltic example and offer restitution for property expropriated pursuant to economic reform legislation subsequently declared invalid. If Cuba adopts this model, it should consider several basic questions. Is restitution available solely for property seized under *economic reform* legislation or all invalid legislation? Does such "legislation" encompass centrally issued statutes only or extend as well to executive decrees, administrative regulations, and regional and local enactments? More fundamentally, what is the likelihood that a future Cuban government will in fact be willing or able to declare prior property expropriation laws unlawful? Several commentators have argued that the result would be a "[s]tate of legal chaos . . . [that would] make it difficult for the country to govern itself."¹⁶³

Baltic experience suggests that Cuba could avoid these issues by using a slightly broader definition of expropriation. For example, even the most restrictive Lithuanian scheme includes in addition to property "nationalized or socialized by other unlawful means." This type of definition would shift the focus from legislation to official action and comprehend claims for property expropriated without just cause or adequate compensation.

Under Estonian and Latvian variants, Cuba could also extend its restitution scheme to the second category of property takings, confiscation from a natural or legal person due to alleged misconduct of the owner rather than economic reform purposes. The "illegal repressions" standard would allow Cuba to entertain claims from those who lost property as a result of "illegal" or "repressive" judicial or extrajudicial decisions.

Finally, Cuba could follow Latvian precedent and adopt an expansive definition of expropriation that would embrace all three categories of property takings. Under the Latvian model, it could explicitly offer restitution as well to property "voluntarily" abandoned or transferred under "threats of repression." This approach would appear to reflect and address actual Cuban practice with respect to "voluntary" abandonment of property. According to first-hand accounts, "[i]n reality, those people wishing to leave Cuba after 1961 were required to turn their assets over to the state before being granted final authorization to depart."¹⁶⁴

163. *Id.* at 242.

164. *Id.* at 235 n.65.

B. Claimants

This is likely to be a thorny issue for Cuba because of its particular constellation of major claimants—foreign corporations, Cuban emigres, and current citizens. As a preliminary matter, then, Cuba must decide whether to limit eligibility to citizens. Baltic precedent suggests a number of possible approaches. Under the Lithuanian scheme, Cuba could restrict the class of claimants to present citizens and permanent residents. It could relax this somewhat by allowing former nationals to return to Cuba and reassume Cuban citizenship, but, perhaps, require actual, personal use of restituted property. Under the Estonian and Latvian variants, Cuba could establish a broader definition of eligibility to comprise all former owners who were Cuban citizens at the time of expropriation. This could result in a flood of petitions for restitution from the Cuban emigre community.

Cuba could handle the claims of other foreign nationals, governments, and corporate entities as part of its general restitution program, exclude them altogether, or establish separate procedures. In this area, the Estonian model would appear optimal for Cuba. It would allow flexible resolution of such cases on a bilateral state-to-state basis. Since it is highly improbable that Cuba will have the financial wherewithal to satisfy U.S. corporate claims in full, Cuba will need to negotiate some special form of accommodation.¹⁶⁵

Cuba must also decide in advance whether to entertain claims from legal as well as natural persons. This would have particular importance if Cuba opts to resolve foreign claims in its regular restitution process. In that situation, limitation to natural persons would automatically bar U.S. corporations. Moreover, it would be significant if governmental, religious, and/or nonprofit organizations owned substantial expropriated assets. In this area, Baltic states have tended to prefer a narrow interpretation of eligibility with a gradual expansion to include religious bodies.

Another key issue for Cuba is inheritability of restitution rights. Estonia and Latvia provide valuable lessons. From the start, they have recognized a wide circle of eligible heirs, which encompasses even descendants of the original owner. The result has been myriad restitution applications, including contested claims for identical property, and considerable delay in identification and resolution of claims. Obviously, because Cuban expropriations occurred more

165. For a discussion of possible such arrangements, see Smagula, *supra* note 4, pt. VI.

recently than their Baltic counterparts, there are likely to be fewer problems. Nonetheless, Cuba should seriously consider limiting the class of heirs to promote speedy settlement of restitution cases. In addition, it should set clear guidelines for treatment of multiple claimants.

C. Property

The preceding study indicates that Cuba should also determine the appropriate definition of property for restitution and compensation purposes. Since 1959, the Cuban government has expropriated or confiscated a wide variety of property from foreign and Cuban owners. This ranges from large landholdings nationalized under early agrarian reform laws to personal consumption items seized as "abandoned" property from Cuban emigres.¹⁶⁶ As discussed above, Estonia, Latvia, and Lithuania offer radically different models for Cuba. At one extreme is Lithuania's restricted definition of property as "real estate" only. At the other extreme is Estonia's comprehensive scheme that includes all movable and immovable assets.

Regardless of the model it adopts, Cuba should consider in advance how to handle two issues that have proven problematic in the Baltic context.¹⁶⁷ It should resolve how to deal with claims for assets that have been destroyed or significantly modified over time. It should also decide the appropriate treatment of improvements in property due to government investments.¹⁶⁸ The expansion of joint venture and foreign investment opportunities pursuant to the new September 1995 foreign investment law is only likely to exacerbate this problem.¹⁶⁹

Finally, Cuba should also pay close attention to the issue of whether or not to impose size, use, and alienation limitations. Baltic precedent provides a contradictory message. On the one hand, as

166. See Travieso-Diaz, *supra* note 5, at 240-41 (discussing Cuban confiscation of personal consumption items).

167. Matias Travieso-Diaz and Steven Escobar have identified these as likely problem areas for Cuba as well. Travieso-Diaz & Escobar, *supra* note 154, at 411.

168. See *id.* at 412.

169. See generally Pascal Fletcher, *Cuba Passes New Foreign Investment Law*, Reuters World Service, Sept. 5, 1995; *Foreign Investment Law; Castro says it would be counterproductive to exclude emigres from investing* (Tele Rebelde, Sept. 5, 1995), in BBC Summary of World Broadcasts, Sept. 12, 1995. According to recent reports, Cuba plans to supplement this law in the near future with detailed legislation on foreign investment free trade zones and real estate. Pascal Fletcher, *Cuba to Set Free Trade Zones, Real Estate Rules*, Reuters, Oct. 31, 1995.

Estonian Prime Minister Tiit Vahi observed in a May 1995 interview, the very "success" of the restitution program "is based on the belief that the owners will also start working the land after it has been returned to them."¹⁷⁰ Yet, the practical experience of all three Baltic countries reveals that such restrictions may actually hinder rapid establishment of an efficient, market-oriented economy.

D. Forms of Restitution

Baltic governments initially endorsed programs that made actual restitution the preferred remedy and compensation the exceptional alternative. The results proved to be disastrous in practice. Accordingly, all three leaderships have retreated from their original positions. They have increasingly exempted categories of property from restitution, limited financial compensation, and expanded the use of privatization or investment vouchers, coupons, and certificates.

This experience suggests Cuba should consider reversing the basic principle of early Baltic programs. That is, a Cuban scheme might make compensation the rule and restitution the exception. It might even go so far as to adopt a radical solution proposed for Estonia and "reserve the right with respect to all restitution claims for all types of property to grant compensation rather than restitution of the property being claimed."¹⁷¹

To facilitate rapid settlement of claims for financial compensation Cuba should set out definite standards and methods for valuation of assets. These should cover such key issues as relevant appraisal date (*e.g.*, date of expropriation), calculation formula (*e.g.*, full value, three-quarters value), treatment of depreciation, and payment of interest. It should also identify and activate potential sources of funds. Some possibilities include privatization sales, taxation, and outside loans.

Cuba's low monetary reserves¹⁷² would appear to make it a prime candidate for the voucher restitution approach that has begun to dominate the Baltic process. This would speed enterprise restruc-

170. Tiit Vahi, *cited in* Makinen, *supra* note 112, at 105.

171. WORLD BANK: ESTONIA, *supra* note 52, at 43. *But see* Gutierrez, *supra* note 7 (arguing full restitution "of all non-materially altered industrial, commercial and agricultural properties" is an optimal solution for Cuba for both practical and moral reasons).

172. In July 1993, Fidel Castro formally acknowledged that lack of foreign exchange was "one of the country's serious problems." He responded by announcing radical new currency policies, including decriminalization of the possession and use of foreign exchange. Castro, *supra* note 1.

turing and privatization and preserve Cuba's limited assets and resources for investment in national modernization rather than settlement of outstanding restitution and compensation claims. Given Cuba's uncertain economic future, however, former owners are hardly likely to find this a satisfactory remedy.

E. Procedures

Baltic experience reveals the critical importance of establishing procedures for expedited resolution of restitution cases. At a minimum, Cuba should introduce short, nonextendable deadlines for submission of restitution applications. Similarly, as discussed above, it should limit the pool of eligible claimants and choice of remedies. Furthermore, Cuba should give serious consideration to enactment of a short nonclaim statute of the Estonian variety. This would provide publication and notice to potential claimants and then cut off claims received after a set period. If Cuba decides to extend restitution to former nationals, it should probably adjust the Estonian model to require publication and notice calculated to reach the Cuban emigre community.

Finally, Cuba should make every effort to devise a procedural scheme that limits ad hoc decisionmaking by local authorities. If Baltic precedent is any guide, arbitrary actions by local officials could further delay and undermine public confidence in Cuba's restitution and general economic development programs. Indeed, a key discovery of the Baltic states is that progress in restitution (and privatization) is intimately connected with overall reforms of national governmental, legal, and judicial systems. Accomplishment of restitution (and privatization) goals requires introduction of fair, unambiguous, and predictable legal norms, rules, and procedures and neutral, reliable, and efficient enforcement mechanisms.

V. CONCLUSION

The early Baltic experience with restitution is a useful precedent for Cuba. Ironically, its greatest value may lie in its failures rather than its successes. As one commentator wrote in July 1991, "[T]he lessons coming out of . . . Lithuania are highly instructive: At the very least, they will help others to be more circumspect."¹⁷³

173. Lashkevich, *supra* note 110.

Notes

Education Under Catalonia's Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law

In December 1994, the Spanish Constitutional Court put to rest a long-standing controversy regarding the constitutionality of the regional Catalan government's educational policy of Linguistic Normalization. This policy makes the Catalan language—not Spanish—the primary language of instruction in public schools. The Constitutional Court held that the challenged provisions of the Catalan Law of Linguistic Normalization are constitutional. This decision illustrates the modern trend in Spain towards decentralization and extending important powers to regional governments.

I. INTRODUCTION

On December 23, 1994, the Spanish Constitutional Court entered its judgment on the Constitutionality of a controversial law passed more than a decade earlier by the local government of Catalonia. The Law of Linguistic Normalization, as it is called, had created a model of bilingual education in Spain's Northeast region with the Catalan language as its "center of gravity." This measure is widely seen within Catalonia as necessary to correct the historical suppression of Catalan language and culture over a span of several centuries.¹ Some non-Catalan speakers living within Catalonia, however, perceive the imposition of Catalan as the primary language of instruction as merely turning the tables of linguistic oppression. At issue in the debate are important matters of educational and linguistic rights, as well as the

1. Systematic repression of the Catalan language by the central (Castilian) powers of Spain began in the 16th century. See ANTONI MILIAN I MASSANA, DRETS LINGÜÍSTICS I DRET FONAMENTAL A L'EDUCACIÓ 23-28 (1992). Repression was particularly heavy under the dictatorship of General Francisco Franco, 1939-75, whose authoritarian regime reached into almost every aspect of Spanish society. During that period, printing, public use, and teaching of Catalan were forbidden and punished. See JOSEP BENET, CATALUÑA BAJO EL RÉGIMEN FRANQUISTA (1979); JOSEP MARÍA SOLE I SABATER, CATALUNYA SOTA EL FRANQUISME (1983).