The buffer zone in Cyprus: Clarifying the concepts of legal status and legal responsibility

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THE BUFFER ZONE IN CYPRUS: CLARIFYING THE CONCEPTS OF LEGAL STATUS AND LEGAL RESPONSIBILITY

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TRNC: The Turkish Republic of Northern Cyprus (TRNC) is only recognised by the Republic of Turkey. While for Turkey and the Turkish Cypriots, Ersin Tatar serves as President of the TRNC, the international community considers him the communal leader of the Turkish Cypriots. As the government of the Republic of Cyprus remains internationally recognised as the government of the whole of the island, the entire island is now considered to be a member of the European Union. However, the acquis communautaire is suspended in northern Cyprus pending a political settlement to the Cyprus problem (see Protocol no. 10 of the Accession Treaty)
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INTRODUCTION

The buffer zone in Cyprus has been described as entirely devoid of human activity. In fact, the area, which is larger than the whole of Malta, is teeming with life. It is precisely because humans engage in a number of activities in the buffer zone that it becomes necessary to have a clear understanding of its legal status and settle any lingering debates about who has legal responsibility there. This report seeks to address the ‘lack of general understanding of the concept of the buffer zone’, a persistent problem first identified by the UN Secretary-General in 1978. Our analysis is divided into three parts. Part 1 provides a brief description and history of the buffer zone, from its establishment in 1974 to today. Part 2 offers an overview of the ways various stakeholders understand and perceive the legal status of the buffer zone. On the one hand, Greek Cypriots argue that the Republic of Cyprus (RoC) has legal sovereignty and effective control over the buffer zone. On the other hand, Turkish Cypriots describe the area as being effectively empty, marking a border between two states – the (internationally recognised) RoC and the (internationally unrecognised) Turkish Republic of Northern Cyprus (TRNC). Further confusing the situation is the fact that, for both the RoC and the TRNC, there is some discrepancy between their verbal declarations and practices on the ground. Finally, the UN has neither clearly nor publicly expressed its position.
on the legal status of the buffer zone; nevertheless, its practices in relation to the area
suggest that its position differs from both the Greek Cypriot and the Turkish Cypriot ones.
Part 3 delves into a more practical question, namely determining who exercises jurisdiction,
and therefore who could have legal responsibility, in the buffer zone. Building on the
jurisprudence of the European Court of Human Rights (ECtHR), we argue that the RoC always
has jurisdiction in the buffer zone and, depending on the circumstances, this may concurrently also be held by Turkey.

Before proceeding with the analysis, a terminological point is in order. The TRNC has been
declared by the ECtHR to be a ‘subordinate local administration’ of Turkey, which exercises
effective control over it. Thus, for the ECtHR, actions of TRNC agents can be attributed to,
and are the legal responsibility of, Turkey. Since many of the sources relied on in the first part
of the report refer to the position of Turkish Cypriots and the TRNC, Parts 2 and 3 adopt
the same terminology. Conversely, Part 4, which focuses on the ECtHR’s case law, refers to
Turkey because this is the state that is responsible under the European Convention on
Human Rights for what is happening in the part of the island that is not under the effective
control of the RoC.

5 Loizidou v. Turkey (Preliminary Objections) (ECtHR), 23 March 1995, App. no. 15318/89, para. 62.
A BRIEF DESCRIPTION AND HISTORY OF THE BUFFER ZONE

Technically, the buffer zone is the demilitarised area between the 1974 ceasefire lines of the Turkish armed forces on the one hand, and the National Guard of the RoC, on the other.6 It stretches over 180 kilometres from the east to the west of Cyprus and has a varying width of four metres in the centre of Nicosia to seven kilometres elsewhere on the island, covering a total of 346 square kilometres.7 Although the buffer zone itself is demilitarised – in that no troops, military aircrafts or sea vessels with the exception of those of the United Nations Force in Cyprus (UNFICYP) can pass through or over it8 – approximately 1,000 armed soldiers are deployed behind the ceasefire lines.9 High numbers of military personnel around the buffer zone notwithstanding, no violent military incident has been reported in the area since 1996.10

It is perhaps surprising in light of its longevity, that the boundaries of the buffer zone are not well defined. Although a large number of separate local ceasefires have been negotiated through UNFICYP, there has been no overall agreement as to the delineation of the positions of the Turkish armed forces and the RoC National Guard.11 As a result,

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6 The concept of a ‘demilitarised area’ is discussed in Marco Roscini and Marco Longobardo, ‘Demilitarised Zones’ in Eric P.J. Myjer and Thilo Maraugh, Research Handbook on International Arms Control Law (Edward Elgar 2022), 467-480. See also, Kees Kingma and Nico Schrijver, ‘Demilitarization’ Max Planck Encyclopedia of Public International Law (last updated October 2015).


8 Within the buffer zone and as part of UNFICYP, currently there are stationed 740 troops and 68 police. (UNFICYP Fact Sheet, available at https://peacekeeping.un.org/en/mission/unficyp).


10 ‘Strategic Review of the United Nations Peacekeeping Force in Cyprus: Report of the Secretary-General’ (28 November 2017, S/2017/1008), para. 8. Nevertheless, tensions and near-misses have been recorded. The same report describes in para. 20, an incident in 2008, when, during a mortar training exercise, the Turkish Forces/Turkish Cypriot Security Forces accidentally fired a non-explosive, training mortar bomb across the buffer zone into a residential area of Nicosia. There were no reported casualties, and the incident was resolved when the Turkish Cypriot leader apologised to the RoC President.

11 These local ceasefire agreements relate to specific parts of the ceasefire line, but not the whole of it.
considerable stretches of the [ceasefire] lines are still supervised on an ad hoc basis, which either side can – and does – challenge on occasion. […] Even where an understanding concerning the cease-fire lines has been reached, movements forward and encroachments occur.¹²

These forward movements are long-standing military violations of the buffer zone, which, according to the UN Secretary-General, neither side has made a genuine effort to resolve.¹³ Coupled with its geographical fluidity is the fact that what has come to be called ‘the buffer zone’ has had many names over the years. Different UN Secretary-General reports have referred to it as ‘the area between the forward lines’, ‘the forward defended localities’, ‘sensitive localities in the vicinity of the forward lines’, and ‘the area forward of the positions held at 1600 hours on 16 August 1974’.¹⁴ The term ‘buffer zone’ was first used by the UN Secretary-General in 1976 and became the standard name used for the territory in 1981.¹⁵

Yet, what makes the buffer zone a contested concept are neither disagreements about its geographical extent nor its different names. Rather, it is the fact that the buffer zone, in practice, arguably consists of many different parts within it.¹⁶ Who can enter each of these, what they can do, and who has authority or control there, depends on the characteristics of the specific part that one happens to be referring to. For instance, there are five inhabited villages within the buffer zone – Dhenia, Athienou, Mammari, Troulli and Pyla – which UNFICYP has designated as ‘civilian use areas’.¹⁷ The villages have a combined population of around 9,000 persons, the vast majority of whom are Greek Cypriots (Dhenia, Athienou, Mammari and Troulli are exclusively Greek Cypriot, while Pyla is a bicommmunal village, inhabited by Greek Cypriots and Turkish Cypriots). Greek Cypriot police officers are allowed to enter and make arrests in Dhenia, Athienou and Mammari, but they are not allowed to wear a uniform or any RoC insignia; in Troulli, uniformed police can enter and make arrests. Different still is the situation that exists in Pyla, where plain-clothed police officers must be accompanied by the United Nations Police (UNPOL). Other parts of the buffer zone include those that fall behind the ‘farming security line’ and are being used by Greek Cypriots and

¹² ‘Report by the Secretary-General on the United Nations Operation in Cyprus (For the period 1 June to 30 November 1980)’ (1 December 1980, S/14275), Annex, para. 10.
¹⁵ Ibid.
¹⁶ In addition to the different parts within the buffer zone, note also the existence of the small village of Strovilia (which is outside of the buffer zone, isolated between it and the Dhekelia Sovereign Base Area), which the UN has designated a ‘special status area’. See, ‘Report of the Secretary-General in Connection with the Security Council’s Comprehensive Reassessment of the United Nations Operation in Cyprus’ (22 November 1993, S/26777), para. 11.
¹⁷ Interview with members of UNFICYP (12 May 2023).
A brief description and history of the buffer zone

Turkish Cypriots for farming and grazing purposes. According to UNFICYP, before an individual can use their property in this manner, they must secure its permission (which is not the case, for example, if someone is growing vegetables or is raising animals in their back garden in one of the buffer zone villages). Finally, different rules appear to apply within 400 metres of the two ceasefire lines, where no farming or grazing is allowed at all.

In addition to the above, special restrictions apply within the village of Pyla in order to accommodate its bicommunal character. For instance, the UN has set down strict rules regarding the use of flags: only the flags of Greece and Turkey are to be used, and those just three times a year on predetermined national holidays of each community. UNFICYP maintains the only permanent police presence in the village (albeit with no executive authority), which acts as the first point of contact for the local inhabitants who want to report a crime. In practice, the TRNC police deal with criminal activities involving Turkish Cypriots, and the RoC police deal with those involving Greek Cypriots and third-country nationals. However, since many crimes and tensions are intercommunal, they require the intervention of UNPOL and cooperation between the two law enforcement agencies.

What is also disputed in relation to the buffer zone is how it was created and who was responsible for this. Following the 1974 Turkish invasion of Cyprus, and complying with Security Council Resolution 353 of 20 July 1974, which called for Greece, Turkey and the UK to enter into negotiations for restoring peace on the island, the Foreign Ministers of the three countries began discussions and agreed on the text of the Geneva Declaration of 30 July 1974. This provided that:

a security zone of size to be determined by representatives of Greece, Turkey and the UK in consultation with UNFICYP should be established at the limit of the areas occupied by the Turkish armed forces. This zone should be entered by no forces other than those of UNFICYP, which should supervise the prohibition of entry.

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18 The ‘farming security line’ is up to 400 metres from the ceasefire line of the other side. (‘Report of the Secretariat Review Team on the United Nations Peace-Keeping Force in Cyprus: Note by the Secretary-General’ (7 December 1990, S/21982), para. 18.)
19 Ibid.
23 Interview with members of UNFICYP (12 May 2023).
25 This happens through the Joint Communications Room, which currently operates two offices in the buffer zone – one in Nicosia and another in Pyla. For more information on this, see Nasia Hadjiegergiou and Dina Kapardis, ‘Police Cooperation in Cases of Unrecognised Secessions: The Joint Communications Room in Cyprus’ (2022) Ethnopolitics.
While a second military invasion was launched in August 1974, which changed the locations of the ceasefire lines that had been agreed in Geneva, the general principles that established the ‘security zone’ remained in force. In light of the way in which the buffer zone was created, it is unsurprising that there is ambiguity as to whether ‘the UN created a demilitarized zone in Cyprus’\textsuperscript{27} or if this was ‘established by agreement between the governments of Greece, Turkey and the UK.’\textsuperscript{28} In either case, it appears that the RoC itself did not have a say in whether or how the buffer zone would be formed.

\textsuperscript{27} Kees Kingma and Nico Schrijver, ‘Demilitarization’ \textit{Max Planck Encyclopedia of Public International Law} (last updated October 2015).

\textsuperscript{28} Avril McDonald and Hanna Brollowski, ‘Security Zones’ \textit{Max Planck Encyclopedia of Public International Law} (last updated April 2011).
THE LEGAL STATUS OF THE BUFFER ZONE

There are no academic writings dedicated exclusively to the legal status of the buffer zone in Cyprus. Nevertheless, statements made in passing about the issue point to the existence of oversimplified positions on this debate. Polyvios Polyviou, for example, argues that while the buffer zone enjoys no special legal status and is subject to the sovereignty of the RoC, in actual fact, it is under the control of UNFICYP, with the Force’s decisions and acts having paramount force. This is supported by Theodora Christodoulidou, who notes that civilian activities in the buffer zone must have been authorised by UNFICYP, which enjoys absolute discretion in this regard. This position, however, which on occasion seems to have been endorsed by the UN, is in line with neither the Greek Cypriot nor the Turkish Cypriot views on the subject. On the one hand, the RoC maintains that the buffer zone is part of its territory, over which it exercises effective control; in exercising this control, the RoC chooses not to send its troops in the area in order to avoid escalation of the conflict. On the other hand, the TRNC accepts that the buffer zone is outside both its claimed sovereignty and control, yet maintains that it must remain empty and devoid of human activity until the resolution of the Cyprus issue. In light of the diametrically different positions about the legal status of the buffer zone, it is unsurprising that ‘both parties have reservations regarding the role of UNFICYP in the area between the lines’.

Given the above, academic conclusions (and, as it will be seen later, ECtHR findings) that UNFICYP exercises absolute discretion within the buffer zone are not in line with the positions

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29 Each buffer zone is sui generis and can have a different legal status. For a description of past and present buffer zones in the world, see Marco Roscini and Marco Longobardo, ‘Demilitarised zones’ in Eric P.J. Myjer and Thilo Maraugh, Research Handbook on International Arms Control Law (Edward Elgar 2022), 467-480; Kees Kingma and Nico Schrijver, ‘Demilitarization’ Max Planck Encyclopedia of Public International Law (last updated October 2015).


33 ‘Report by the Secretary-General on the United Nations Operation in Cyprus (For the period 1 June to 30 November 1980)’ (1 December 1980, S/14275), Annex, para. 5. Because it has not been agreed to by the parties, despite frequent references to this document in UN Secretary-General reports, the aide-memoire is not publicly available. (Interview with members of UNFICYP (12 May 2023)).
of the two interested parties. These disagreements have resulted in a regrettable failure to reach a consensus as to what is permitted within the buffer zone, who can use it, and who has control (and legal responsibility) over the area. This is also reflected in the fact that the aide-memoire, a document that sets out the arrangements followed by UNFICYP in order to comply with its mandate in the area, has been accepted by neither the Greek Cypriots nor the Turkish Cypriots. Instead, there appears to exist, at best, a loose, de facto agreement about its implementation. This state of affairs is regularly criticised by the UN Secretary-General, who has identified ‘frequent instances where [UNFICYP’s] authority was disputed’ and various decisions ‘taken in complete disregard for the mission’s position on the issues at hand.’ In the absence of a principled agreement about the legal status of the buffer zone, this section aims to infer the positions of the key stakeholders – Greek Cypriots, Turkish Cypriots, the EU, and the UN – through the practices they have adopted and statements they have made over the years.

The Greek Cypriot position on the buffer zone
The position of the RoC is that in the buffer zone its jurisdiction is de jure exercisable and is also de facto exercisable. To put it differently, in the eyes of the RoC, the buffer zone is not particularly different to any other part of its territory: the area is within both its sovereign territory and its actual control. As a result, many governmental functions are carried out in the area, with RoC officials visiting it, either alone or aided by UNFICYP. This is, for instance, the case in villages in the buffer zone, where all administration is conducted by the RoC. In practice, therefore, the RoC is responsible, among other things, for organising elections, issuing building permits, operating schools, and collecting taxes in the buffer zone. The position of the RoC on the buffer zone has been clearly and expressly communicated to the UN. When the UN Secretary-General’s 1993 report included a description of the buffer zone as ‘United Nations-controlled’, the then President of the RoC responded with a letter noting that the RoC

34 The UN Secretary-General noted in 2023 that ‘Both sides continued, at times, to challenge the mission’s authority as mandated by the Security Council. The challenges concerned mainly two points: first, the exact location of the ceasefire lines and, second, the mission’s authority when implementing its mandate, especially in and around the buffer zone’ (United Nations operation in Cyprus: Report of the Secretary-General (3 January 2023, S/2023/3)), para. 25.
The legal status of the buffer zone

has the duty of safeguarding and protecting its sovereign rights. In this connection *the Republic has exclusive jurisdiction and authority in the area between the cease-fire lines*, where UNIFICYP, acting in accordance with its mandate, also uses its best endeavours to prevent a recurrence of fighting and thus conduces to the maintenance of law and order. (emphasis added by the author)

The view that the buffer zone is not fundamentally different to other parts of the RoC has been confirmed in *Latomia Estate Ltd v. Κυπριακή Δημοκρατία [Latomia Estate Ltd v. Republic of Cyprus]*, when the RoC Supreme Court noted that ‘the sovereignty of the Republic undoubtedly extends to the whole of its territory, as this is defined by the Treaty of Establishment and there has been no assignment of this right to the United Nations or to UNFICYP.’38 The facts of the case – relating to the government’s decision to build part of the (public) University of Cyprus within the buffer zone – are also illustrative of the position that this geographical area is not somehow exceptional. When the RoC expropriated private properties within the buffer zone for the development of the University of Cyprus, it decided that owners should be compensated just as if their properties were found in other areas under its effective control. By refusing to distinguish between property that is within and property that is outside the buffer zone, both the executive and judiciary that confirmed the decision protected the individual owners who would otherwise have been awarded a lower compensation amount, and rejected the idea that the buffer zone had a different status and value compared to land in the rest of the RoC.39

While, however, the RoC’s position is clearly articulated on paper, it is hard to reconcile with repeated assurances reportedly received by UNFICYP from the highest political levels of the government that its authority to regulate civilian activities in the buffer zone is recognised.40 It is also hard to reconcile with the actions of UNFICYP, which as the RoC maintains, is on the island subject to its consent. These incompatibilities between the RoC’s and UNFICYP’s view of the buffer zone are discussed in more detail below.

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38 *Latomia Estate Ltd v. Κυπριακή Δημοκρατία, Μέσω Υπουργικού Συμβουλίου και/ή Υπουργείου Παιδείας και Πολιτισμού και/ή Γενικού Εισαγγελέως της Δημοκρατίας* (1997) 4 ΑΑΔ 3058 (author’s translation). This has also been repeated in *Latomia Estate Ltd v. Κυπριακή Δημοκρατία, Μέσω Υπουργικού Συμβουλίου και/ή Υπουργείου Παιδείας και Πολιτισμού και/ή Γενικού Εισαγγελέως της Δημοκρατίας* (2001) 3 ΑΑΔ 672.

39 *Κυπριακή Δημοκρατία, Μέσω Γενικού Εισαγγελέα της Δημοκρατίας v. EPCO Cyprus Ltd* (2007) 1 ΑΑΔ 883.

The Turkish Cypriot position on the buffer zone

The Turkish Cypriot position on the legal status of the buffer zone is arguably more confused than that of the RoC. The TRNC maintains that the two ceasefire lines mark the borders of two separate states – itself and the RoC – and that the buffer zone between them is exclusively controlled by the UN.\(^\text{41}\) This is expressly stated on the website of the TRNC Ministry of Foreign Affairs, which notes that:

All forces other than those of UNFICYP are strictly prohibited from entering the Buffer Zone. Certain civilian and humanitarian activities are permitted from time to time in designated areas but no other civilian movement or activity is permitted unless specially authorized by UNFICYP.\(^\text{42}\)

The position that the RoC exercises any control in the buffer zone is also strongly protested by the TRNC. Thus, when, in view of UNFICYP pronouncements about its control of the buffer zone, Greek Cypriot officials stated that the area was part of the territory and under the jurisdiction of the RoC, this immediately led to a public protest by Mr Ertugruloglu, the (then) TRNC Foreign Affairs Minister. Mr Denktash, who was at the time President of the TRNC, also protested, arguing that the TRNC has equal rights over the buffer zone and that it was impossible ‘to allow the erosion of this right’.\(^\text{43}\)

The idea that the buffer zone should remain empty was reiterated in 2006, when the Permanent Representative of Turkey to the UN noted that:

Pending a comprehensive settlement, it is among the prime responsibilities of UNFICYP to preserve the status quo in the buffer zone. It is obvious that condoning such construction activities will inevitably change the status quo in the buffer zone. Apart from its negative ramifications on the military status quo, allowing such construction activities in the buffer zone will also have a direct effect on the territorial aspect of a future comprehensive settlement of the Cyprus problem by prejudging as of today the status and ownership of the buffer zone in such a settlement.\(^\text{44}\)

While this is the TRNC position on paper, in practice, Turkish Cypriot civilians do enter the buffer zone. Aside from the obvious case of Pyla, a village within the buffer zone where approximately 400 Turkish Cypriots reside, individual instances of Turkish Cypriot activities in the buffer zone are regularly reported by the UN Secretary-General. Even more contradictory to


\(^{43}\) Bayrak Radio, 8 February 1999, 16:30.

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The TRNC’s stated position, however, are a series of events that took place in 2022 and early 2023. At the initiative of the (TRNC) Ministry of Foreign Affairs, and with authorisation from UNFICYP, the renovation of a football field that belongs to a Turkish Cypriot sports club located in the buffer-zone took place. When the football players started entering the football field through a staircase that connected the TRNC with the buffer zone, rather than one of the designated checkpoints, UNFICYP closed the staircase with wires. In response, the TRNC government condemned the Force’s actions, with the Minister of Foreign Affairs threatening that ‘if they [i.e. the UNFICYP] do not remove the wires from the stairs, we will’.45 To date the wires remain untouched.46

These events challenge the TRNC official position on the buffer zone in three ways. First, if civilian activities, including construction, in the buffer zone are not allowed in the first place, it is unclear why the Ministry of Foreign Affairs initiated the renovation of the football field. Second, since, according to (TRNC) Prohibited Military Areas Law 5/1979 and Council of Ministers decrees, the buffer zone is a ‘prohibited military zone’, which can only be entered through the designated checkpoints, the UN’s blocking of the stairway should have been applauded by the TRNC, not condemned. And finally, if the ‘border’ of the TRNC is at the ceasefire line, with UNFICYP exercising ‘full control of the Buffer Zone’,47 it is not clear on what basis the TRNC protested the UN’s decision to take action in this area.

The EU position on the buffer zone

The lack of clarity on the legal status of the buffer zone and who exercises effective control there is also reflected in EU Law: Article 1 of Protocol No 10 to the Act of Accession provides that, while the RoC joined the EU as a whole, ‘[t]he application of the acquis shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control’ (in other words, the TRNC).48 Although the Protocol does not expressly mention the buffer zone, it describes it as ‘the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control.’49 Despite this cumbersome, yet factually accurate, description of the zone, there is no discussion in the Protocol itself about whether EU law applies there. This

46 The 2023 report of the UN Secretary-General noted that, after months of engagement, a solution was found to ensure that the status of the buffer zone would not be altered in any way (‘United Nations operation in Cyprus: Report of the Secretary-General’ (3 January 2023, S/2023/3), para. 27.) No information is provided on what this solution entails.
48 By ‘acquis’ or ‘acquis communautaire’, we mean the totality of EU Law.
49 Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus, Article 2(1).
ambiguity as to whether the acquis applies to the buffer zone is carried over to the Green Line Regulation (Council Regulation [EC] No. 866/2004 of 29 April 2004). The Regulation acknowledges the existence of the buffer zone, but does not in any way clarify the law that will apply there.

So, EU Law describes three areas: the areas that are under the effective control of the RoC, the areas that are not under its effective control, and the line between these two areas that forms the buffer zone. However, for the purposes of determining where in Cyprus the acquis will apply, EU law distinguishes between only two types of areas: those where the RoC exercises effective control and those where it does not. Thus, to the extent that the RoC can implement and enforce its laws in the buffer zone, it should also implement and enforce the acquis. In practice, EU Law does apply in the buffer zone, since farmers who have their land there, for example, are eligible to benefit from EU funds and subsidies. Ultimately, whether EU Law applies in the area is perhaps a moot point in light of a legal opinion UNFICYP reportedly received from the European Commission affirming that the EU is obliged to respect the mandate of UNFICYP established by a resolution of the Security Council before Cyprus’s accession to the EU. The European Commission stated that the authority of UNFICYP in the buffer zone allowed it to prohibit civilian activities in case of security concerns and that the acquis communautaire should not be allowed to challenge this mandate and authority. It is also in light of this that it becomes necessary to understand how UNFICYP itself views the legal nature of, and its mandate within, the buffer zone.

The UN position on the buffer zone

While the buffer zone was formed in 1974, UNFICYP – which, in practice has become responsible for policing the area – was established a decade earlier, in 1964, in order to contain the inter-communal violence that had erupted on the island. Thus, in order to understand UNFICYP’s powers, most of which are today exercised in the buffer zone, it is necessary to return to the UN Security Council Resolutions of the time. Security Council Resolution 186 of 4 March 1964 recommended ‘the creation, with the consent of the Government of Cyprus, of a United Nations Peacekeeping Force in Cyprus’. The functions of the Force were, in the interest of preserving international peace and security, twofold: ‘to prevent the recurrence of fighting’ and ‘to contribute to the maintenance and restoration of law and order and a return
The legal status of the buffer zone

Following the 1974 invasion, the Security Council adopted Resolution 353 of 20 July 1974, which called for three things. First, for all parties ‘to cease all firing’; second, for Greece, Turkey, and the UK to enter into negotiations for the restoration of peace; and third, for all parties to cooperate fully with UNFICYP ‘to enable it to carry out its mandate’. The third action called upon by the Security Council suggests that UNFICYP was expected to continue functioning, under the same mandate, despite the radically changing circumstances on the island. This was confirmed by Security Council Resolution 364 of 13 December 1974, which noted that UNFICYP still needed to perform its tasks ‘in [the] existing circumstances […] if the cease-fire is to be maintained on the island’. The position was also reiterated by the UN Secretary-General, who noted in 2004, that

Since its inception, the mandate of UNFICYP has remained unchanged. It was provided by the Security Council in resolution 186 (1964) […] The mandate has proven to be broad and flexible enough for the Force to adjust its tasks in response to changes on the ground, particularly in the aftermath of the events of 1974.

Thus, in 1964 UNFICYP was given – and continues to have today – a mandate to operate over the whole of Cyprus (with the exception of the Sovereign Base Areas). Since 1974, and because of the facts on the ground, its efforts have been concentrated in the buffer zone. The existence of the buffer zone, however, does not change the mandate of the Force or the fact that it was established and remains on the island subject to the consent of the RoC.

The UN’s mandate ‘to prevent the recurrence of fighting’

The first of the two functions that UNFICYP was given in 1964, and which has been carried over to the post-1974 context, is ‘to prevent the recurrence of fighting’. This is also the typical purpose of demilitarised zones and has generally been interpreted and complied with, without any controversies. During the 1990 Secretariat Review of UNFICYP, the UN Secretary-General identified seven main ceasefire violations that UNFICYP is required to report and respond to as part of its mandate to prevent the recurrence of fighting. These are (a) military

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54 Ibid, para. 5. In ‘Exchange of Letters dated 31 March 1964 constituting an Agreement between the United Nations and the Government of the Republic of Cyprus concerning the status of the United Nations Peace-Keeping Force in Cyprus’ the powers of UNFICYP are outlined, but naturally, there is no reference to the buffer zone, which had not been established yet.
55 Ibid, para. 2.
56 Ibid, para. 5.
59 On the Sovereign Base Areas in Cyprus more generally, see Nasia Hadjigeorgiou, ‘Sovereign Base Areas’, Max Planck Encyclopedia of Public International Law (last updated June 2021).
60 This is reiterated on a biannual basis when the UN Security Council renews the mandate of the Force. Importantly for the RoC, no state other than itself and no other grouping or entity (namely, the Turkish Cypriots), has any legal right to demand its consent to or concurrence in the stationing of UNFICYP in its territory.
moves forward of each side’s respective ceasefire line into the buffer zone, especially along the northern ceasefire line; (b) discharging weapons or explosives, without prior notification, along the ceasefire lines or up to a distance of one kilometre behind them; (c) building new or strengthening existing military positions less than 400 metres of the opposing ceasefire line; (d) building new or strengthening existing military positions more than 400 metres from the opposing ceasefire line, if UNFICYP considers this incompatible with the spirit of the ceasefire; (e) flights over the buffer zone by military or civilian aircraft of either side; (f) troop deployment and training exercises in an area closer than one kilometre from their ceasefire line without prior notification; and (g) provocative acts between the two sides, such as shouting abuse, indecent gestures or throwing stones. Since 1990, one more violation of the ceasefire has arguably been added to the list; namely, the installation along the southern ceasefire line of a wire fence and surveillance technology in order to deter irregular migrants and asylum seekers from entering the areas under the effective control of the RoC. This, coupled with the RoC establishing a 300-person-strong official law and order force tasked with patrolling inside the buffer zone in order to prevent migrants and asylum seekers from crossing the southern ceasefire line, have been described as a ‘significant violation’.

While the vast majority of ceasefire violations that UNFICYP responds to as part of its mandate to prevent the recurrence of fighting concern the military, two more types of activities involving civilians have been identified over the years as potentially posing a threat. The first concerns large crowds of demonstrators within the buffer zone, like the ones that materialised during the Greek Cypriot ‘Women Walk Home’ demonstrations in the early 1990s. In that case, ‘UNFICYP troops and United Nations Civilian Police (UNCIVPOL) [were] deployed in considerable numbers to prevent demonstrators from entering the buffer zone’ because of concerns that the protesters’ sheer numbers would provoke a reaction from the Turkish Cypriot side and risk the recurrence of fighting. The second example involved civilian concerns over hunting in the area. While for many years hunting had taken place in certain parts of the buffer zone and UNFICYP had even marked ‘hunting security lines’ with barrels, the Force sought a ban in 1992 because of the massive time spent policing this activity, as well as breaches of the hunting security lines leading to safety and security concerns. The rationale behind this decision is sound: the possibility of a hunter wearing military fatigues and holding a rifle, accidentally firing at a soldier rather than a wild animal, or straying too close to the ceasefire line and overreacting to a perceived threat, is not insignificant. Coupled with the high number of (often inexperienced) armed soldiers deployed across both ceasefire

61 This is also confirmed in ‘Report of the Secretary-General on the United Nations operation in Cyprus for the period from 6 June to 6 December 1976’ (9 December 1976, S/12253), para. 19.
The risk that a hunting incident would escalate into more serious violence was unacceptably high. It is in light of these considerations that one should understand part of the Secretary-General’s statement that ‘activities such as illegal hunting and rubbish-dumping in the buffer zone […] represent a direct challenge to [UNFICYP’s] authority’. What becomes harder to justify is why rubbish-dumping also represents such a challenge. Arguably, this falls under the second function that UNFICYP was tasked with, to which we now turn.

The UN’s mandate ‘to contribute to the maintenance and restoration of law and order and a return to normal conditions’

The reason why the second function within UNFICYP’s mandate is more controversial than the first is because, while the area is a demilitarised zone, the Force insists that ‘[m]aintenance of the status quo in the buffer zone also includes civilian activities and the exercise of property rights.’ In fact, the civilian activities that UNFICYP regulates or seeks to control are fairly extensive, with 85 per cent of all unauthorised activities recorded by the Force involving civilian incidents rather than military violations. According to UNFICYP, “return to normal conditions” has been interpreted differently across the decades. This is helpful because any issue, really, falls under the “return to normal conditions”. Activities that UNFICYP regulates under this function, and that it considers to be ‘putting at risk the integrity of the buffer zone’ (a phrase that is regularly used in UN Secretary-General reports, even though it does not stem from any particular Security Council Resolution), include unauthorised construction, unauthorised farming, unauthorised grazing, illegal dumping, and the continuing operation without UNFICYP authorisation of a university in Pyla.

At first glance, it is unclear why any civilian activity, especially as innocent as farming, grazing, or the renovation of one’s house, could be perceived as somehow compromising the maintenance of law and order. In fact, one could argue that the most credible indication that there is some sort of ‘return to normal conditions’ (to the extent that these can exist in the absence of a comprehensive peace settlement) is when people get on with their daily lives. Yet, past experience suggests that when such activities are left entirely unchecked in

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68 ‘Report by the Secretary-General on the United Nations Operation in Cyprus (For the period 1 June to 30 November 1980)’ (1 December 1980, S/14275), Annex, para. 5.
70 Interview with UNFICYP members (12 May 2023).
the buffer zone, they can indeed escalate. For instance, unauthorised construction could increase tensions because of the fundamentally different ways in which Greek Cypriots and Turkish Cypriots understand the legal status of the buffer zone.\textsuperscript{76} UNFICYP’s insistence on authorising construction projects, therefore, arguably seeks to strike a balance between the views of the two sides and maintain the order between them. Security concerns also justify UNFICYP’s insistence that individuals should be given authorisation before using their properties for farming or grazing purposes.\textsuperscript{77} This is confirmed by the fact that when responding to media reports that Greek Cypriot farmers intended to work beyond the farming security line, the Turkish Forces/Turkish Cypriot Security Forces increased their presence in the buffer zone.\textsuperscript{78} Finally, also likely to increase tensions is the fact that, according to UNFICYP’s estimates, a high proportion of arable land in the buffer zone is currently cultivated by members of both communities, and about 20 per cent of plots are being farmed without the authorisation of their owners.\textsuperscript{79} If UNFICYP does not step in to regulate these activities, they are likely to result in disagreements among farmers which, unless are quickly resolved, could escalate into more serious levels of violence.

At the same time, however, UNFICYP’s interpretation of its mandate in the buffer zone is subject to both principled and practical challenges. As a matter of principle, while most of the civilian activities that UNFICYP seeks to regulate can plausibly be connected to its mandate, this is not the case for all of them. It is unclear, for example, why UNFICYP considers rubbish dumping, admittedly a growing environmental problem, to threaten the integrity of the buffer zone, or why it believes that it is its responsibility to flag and respond to this issue.\textsuperscript{80} UNFICYP insisting that it is its responsibility raises questions as to whether it is operating as if it has more general administrative functions in the buffer zone, which neither the RoC nor the TRNC would consider acceptable.

The most important practical challenge with how UNFICYP interprets its mandate relates to the fact that it does not have law and order functions on the island of Cyprus, or indeed, within the buffer zone. This is supported by Security Council Resolution 186 of 4 March 1964, which established the Force and asked ‘the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary
The legal status of the buffer zone

The position was also reiterated in a later part of the Resolution, which ‘[r]ecommends […] the Force […] to use its best efforts to […] contribute to the maintenance and restoration of law and order’. Since the support function of UNFICYP to the RoC has remained unchanged following the events of 1974, it follows that the only authority exercising law and order functions within the territory of the RoC, including in the buffer zone, is the RoC itself. As a result, even after unauthorised activities have been identified, UNFICYP cannot do much more than contact the authorities and request or advise that they take action to respond to these. The UN Secretary-General has often urged the authorities to take prompt action about incidents that took place in the buffer zone, including through judicial proceedings. Whether UNFICYP’s requests are addressed depends entirely on the authorities themselves, with the UN lacking any enforcement mechanism of its recommendations.

This was expressly acknowledged by the UN Secretary-General, who noted in 2015 that

UNFICYP continues to play an important role on the island by exercising authority in the buffer zone and contributing to keeping the peace and resolving various issues that affect the daily lives of individuals in both communities. Its ability to play this role, however, depends by and large on the commitment of the two sides to refrain from challenging its authority and legitimacy in the buffer zone.

Despite the clear need for cooperation, this has not always been forthcoming. Thus, time and again, the UN Secretary-General has deplored ‘the frequent disregard shown by the two sides towards the mandated authority of UNFICYP, especially when dealing with security-related issues in and around the buffer zone.’ An example can be used to illustrate this disregard. As already explained, UNFICYP insists on issuing (building/ farming/ grazing) permits to those who want to use their property within the buffer zone. Despite this insistence, UNFICYP does not have access to cadastral records in a form that allows it to confirm title deeds presented by individuals applying for permits, and lacks the means to enforce compliance without the intervention of the relevant local law enforcement agencies. In the absence of

81 Security Council Resolution 186 of 4 March 1964, para. 2 (emphasis added).
82 Ibid, para. 5 (emphasis added).
84 While a strict interpretation of the law suggests that the only authorities to be contacted in such an instance are those of the RoC, in practice, when a Turkish Cypriot commits an offence in the area, it is not the RoC’s law enforcement agencies that are asked to arrest him, but those of the TRNC Interview with UNFICYP members (12 May 2023).
87 In practice, when UNFICYP identifies an instance of unauthorised construction, it informs the relevant district officer, so that they can take action. What that entails and what is its impact exactly, is not clear. (Interview with UNFICYP members. (12 May 2023)).
formal endorsement by the authorities, many in the buffer zone do not feel compelled to comply with UNFICYP requirements. As a result, the Force estimates that only 40 per cent of UNFICYP’s recommendations in the buffer zone are complied with.\(^8\) UNFICYP noted on numerous occasions that it has received assurances from the highest political levels of government that its authority to regulate civilian activities in the buffer zone is recognised.\(^8\) Nevertheless, the need to remind the parties that such assurances have been made suggests that the necessary cooperation on the ground is not always forthcoming.

Thus, to conclude, there are two key points to bear in mind about the way the UN interprets its mandate in the buffer zone. First, this is quite extensive, and relates not only to military, but also to civilian activities. While, technically, all UNFICYP activities should fall within one of two functions of the Force that were spelled out in Resolution 186 of 1964, the UN Secretary-General often lumps together UNFICYP activities in the buffer zone, deeming them necessary to safeguard ‘the integrity of the buffer zone’. This, in turn, arguably confuses the situation and creates doubts as to whether the Force has exceeded its mandate in the area. Second, UNFICYP’s mandate in the area is – at least on certain occasions – disputed by the two sides, who have diametrically opposite perceptions of the buffer zone: the Turkish Forces and Turkish Cypriots see it as a sterile area, whereas the RoC encourages Greek Cypriot civilian activities there.\(^9\) When taken together, the two points suggest that there is a fundamental lack of clarity about what is permitted in the buffer zone and who is the one permitting it. Thus, when the UN states that ‘[i]t is an essential element of the cease-fire that neither side can exercise authority or jurisdiction beyond its own forward military lines or make any military moves beyond those lines’,\(^9\) it is not clear what kind of authority or jurisdiction it is referring to. Undoubtedly it is, at the very least, referring to military authority, as all sides agree with ‘the position of the United Nations that the National Guard and the Turkish and Turkish Cypriot forces are required to remain behind their respective cease-fire lines’.\(^9\) What remains uncertain is who exercises jurisdiction (and, thus, has ultimate legal responsibility) in the buffer zone under international law, especially in situations when allegations of human rights violations have taken place. It is to this question that the last part of the report now turns.

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LEGAL RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS IN THE BUFFER ZONE

Having discussed the legal status of the buffer zone and the different claims made in relation to the area, one practical question that arises is who, if anyone, is responsible for any human rights violations that take place there. Answers to this question very much depend on the facts of the specific case and no abstract legal analysis can result in decisive conclusions. For instance, who has responsibility for a human rights violation will depend, among others, on where in the buffer zone the alleged violation took place (was it in a civilian use area, or very close to one of the two ceasefire lines, or within the abandoned Nicosia International Airport which has a special status as housing UN staff) and by whom. This section provides the basic rules that have been established by the ECtHR in relation to jurisdiction and legal responsibility, and applies them to the factual situation at hand. The legal analysis focuses on the ECtHR case law, rather than general public international law principles, because this is the forum in which all litigation on the Cyprus conflict has taken place.

The starting point under the European Convention on Human Rights is that jurisdiction is ‘primarily territorial’.\(^93\) This essentially results in two basic (but refutable) rules. First, a state only exercises jurisdiction within its borders. France, for example, is only responsible for what happens on French territory, and does not have any responsibility for alleged violations of human rights in Germany. Second, a state exercises jurisdiction throughout the whole of its territory. To continue the analogy, France is equally responsible for what is happening in the outskirts of Lyon, as it is for incidents at the centre of Paris. Both rules raise difficulties with regards to the buffer zone. Since the buffer zone is technically within the territory of the RoC, it would follow that the RoC (and only the RoC) has jurisdiction there. But does this conclusion apply even in situations where a state does not have any (or only has limited) control over what is happening in its territory? Moreover, if someone else is exercising control within the buffer zone – whether that is the TRNC/Turkey or UNFICYP – is it possible that they can be found responsible for the human rights violations?

\(^93\) Banković and Others v. Belgium and Others (ECtHR, 12 December 2001, App. no. 52207/99), para. 59.
The following three subsections point to an apparent contradiction in the ECtHR’s case law. On the one hand, the general principles established by the Court suggest that, at all times, at least one state is exercising jurisdiction in the buffer zone. To hold otherwise would be to create what the ECtHR called in a slightly different context, ‘a regrettable vacuum in the system of human-rights protection’. On the other hand, a specific ECtHR case (briefly, but explicitly) discussing jurisdiction in the buffer zone concluded that neither the states that have jurisdiction on either side of the buffer zone, nor the UN itself, were responsible for the alleged human rights violations there. The argument that is developed here suggests that Stephens v. Cyprus, Turkey and the United Nations grossly oversimplifies a complex legal situation. In fact, the buffer zone is interesting not because no one exercises jurisdiction there, but because of the possible existence of concurrent jurisdictions by more than one state. The RoC exercises jurisdiction at all times because of its sovereign status in the area, and Turkey might exercise extraterritorial jurisdiction if a number of conditions are satisfied.

**Exercising jurisdiction in the absence of effective control**

The first general rule of the ECtHR referred to above is that the sovereign state retains jurisdiction in the whole of its territory, even when it is not in control of that territory. This has been confirmed in a number of cases by the Court, which noted in Sargsyan v. Azerbaijan for example, that ‘[e]ven in exceptional circumstances, when a State is prevented from exercising authority over part of its territory … it does not cease to have jurisdiction’. The rule was most recently reiterated in Ukraine and the Netherlands v. Russia, when the ECtHR concluded that

a State may be prevented from exercising its authority in part of its territory. This could be as a result of military occupation by the armed forces of another State which effectively controls the territory concerned, acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist state within the territory of the State concerned. This does not mean that the territorial State’s jurisdiction is excluded entirely.

In typical cases when a state exercises control within its territory (for example, French authorities acting in Paris), having jurisdiction implies that this state must avoid infringing, and must also take positive steps to protect, the Convention rights of individuals within this territory. In – the much rarer – instances where a state does not exercise effective control within its own territory (for example, the RoC in the north of Cyprus) it only has the positive

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94 Cyprus v. Turkey (ECtHR, 10 May 2001, App. no. 25781/94), para. 78.
96 Sargsyan v. Azerbaijan (ECtHR, 12 December 2017, App. no. 40167/06), para. 130.
97 Ukraine and the Netherlands v. Russia (ECtHR, 30 November 2022, App. no. 8019/16), para. 554 (References omitted).
obligation to take all the appropriate measures which it is still able to take. In practice, this means that the state should be trying to re-establish control over the territory in question and ensure respect for the applicant’s individual rights.\textsuperscript{98} If a state partially or totally fails to do any of the above, the Court will determine to what extent a minimum effort towards the achievement of these tasks was, nevertheless, possible and whether it should have been made.\textsuperscript{99} Put simply, a sovereign state always retains jurisdiction over the whole of its territory, but it will have more human rights obligations in cases where it has effective control over that territory, as opposed to situations where it does not.

This analysis is relevant when one seeks to assess whether the RoC has legal responsibility in the buffer zone. When the RoC signed and ratified the European Convention on Human Rights in 1961, it did so as a whole; ‘the whole’ included both the territory that is currently under the effective control of Turkey, and the buffer zone. An application of the general rule established in the cases cited above suggests that, as the sovereign state, the RoC exercises jurisdiction. The only way in which the RoC might not be exercising jurisdiction in the buffer zone is if it is successfully argued before the ECtHR that its sovereignty (rather than just effective control) has been suspended.\textsuperscript{100} In light of UN Security Council Resolutions, the ECtHR’s case law on Cyprus, and the position of the RoC itself, it is extremely unlikely that such line of argument will be successful, or even pursued. In this respect, simply arguing that the RoC cannot be responsible for alleged violations in the buffer zone because it does not have effective control there, would be incorrect. Effective control shapes the extent to which the sovereign state exercises jurisdiction; it is irrelevant as to whether jurisdiction exists in the first place. Of course, the mere fact that the RoC has jurisdiction in the buffer zone does not mean that it also has responsibility for whatever human rights are allegedly infringed there. It might be that, on the facts of the case, the RoC did everything it could have done to address the violation and has, therefore, discharged its duty under the Convention.

With this in mind, two questions must be answered before concluding whether the RoC is responsible for an alleged human rights violation in the buffer zone. The first is whether the buffer zone is within the sovereign territory of the RoC. The answer to this is unambiguously ‘yes’ – this is supported by a plethora of ECtHR cases, which accept that the RoC exercises legal sovereignty over the whole of the island, minus the Sovereign Base Areas.\textsuperscript{101} It is also the stated position of both the RoC and the UN. The second question is whether the RoC exercises effective control in the part of the buffer zone where the facts of the case took

\textsuperscript{98} Iliescu and Others v. Moldova and Russia (ECtHR, 8 July 2004, App. no. 48787/99), para. 313, 333, 335 and 339; Sargsyan v. Azerbaijan (ECtHR, 12 December 2017, App. no. 40167/06), para. 130-31.

\textsuperscript{99} Iliescu and Others v. Moldova and Russia (ECtHR, 8 July 2004, App. no. 48787/99), para. 334. For an application of these positive obligations, see Mozer v. The Republic of Moldova and Russia (ECtHR, 23 February 2016, App. no. 11138/10), para. 151-154.

\textsuperscript{100} Azemi v. Serbia (ECtHR, 5 November 2013, App. no. 11209/09).

\textsuperscript{101} See, for example, Loizidou v. Turkey (Preliminary Objections) (ECtHR, 23 March 1995, App. no. 15318/89); Loizidou v. Turkey (Merits) (ECtHR, 18 December 1996, App. no. 15318/89).
place. If it does exercise effective control, it will be legally responsible for violations there in exactly the same way as it would have been for alleged violations in the city centre of Limassol. If it does not exercise effective control, all the Court will assess is whether the RoC did what it could (in light of the absence of such control) to ensure respect for the applicant’s rights. Thus, it is possible for the RoC to be found not to have violated the human right in question, even if the same action could have resulted in finding a violation, had it taken place within the areas where it exercises effective control.

Two examples could be used to illustrate the practical application of the above legal analysis. The first concerns the facts of Isaak v. Turkey, in which a Greek Cypriot was beaten to death by Turkish agents while in the buffer zone. The RoC was not a party to this case simply because the applicants did not bring proceedings against it (i.e., the applicants themselves only considered Turkey, and not the RoC, responsible for the death of their relative). Had the RoC been sued, however, it is likely that it would not have been found to be in violation of the right to life. On the facts of the case, Isaak was killed very close to the northern ceasefire line, where (in practice) the RoC did not, at the time, exercise effective control. Thus, the RoC would have jurisdiction, but would only be expected to comply with its human rights obligations to the extent it was possible. This is what it, in fact, did: the RoC made diplomatic efforts to ensure that the murderers were punished for the death of Isaak (efforts that were ultimately unsuccessful), and also provided support in terms of investigating the murder in question by having a coroner from the RoC examine the body.

The second example concerns the decision of the RoC to expropriate public property in the buffer zone for the benefit of the (public) University of Cyprus.\textsuperscript{102} Unlike the Isaak case, this part of the buffer zone arguably falls within the effective control of the RoC. It is very close to the southern ceasefire line and the RoC would presumably not have decided to build a public university in a part of the buffer zone that it did not fully control. The question that must be answered, therefore, is whether the right to property was protected in the same way that it should have been protected in the rest of the area of Cyprus where the RoC exercises effective control. The answer to this is that, arguably, no violation took place because any limitations to the right to property were proportionate. When deciding to expropriate these properties, the RoC compensated the owners using a formula that assumed that their land was close to, but not in the buffer zone itself. In this way, the compensation amount they received was significantly higher than in the alternative, since, according to the RoC, the owners should not have been detrimentally affected by the fact that their land was in the buffer zone. Combined, the two examples suggest that, extrapolating from basic principles established by the Court, the RoC will always exercise jurisdiction in the buffer zone. What exact legal obligations this creates for the RoC will depend on whether it is also exercising effective control in the part of the buffer zone where the facts of the case took place.

\textsuperscript{102} These are the facts of the Latomia Estate Ltd cases cited above.
Exercising extraterritorial jurisdiction

The second rule of the ECtHR is that a state only exercises jurisdiction within its own territory. It is well accepted that this rule can be refuted in certain exceptional circumstances. There are two main exceptional circumstances in which the Court will find a state responsible for actions it has taken outside its territory (in other words, find that there is extraterritorial jurisdiction). The first arises when a state exercises ‘effective overall control’ in the territory of another state, usually as a result of military action. The Court has clarified that it is irrelevant whether the military action that gave the respondent state effective overall control was lawful or unlawful. It is also not necessary to determine whether the state actually exercises detailed control over the policies and actions of the territory in question; merely having a significant military presence in the area provides evidence of exercising effective overall control in the territory. Following this reasoning, and even though the area north of the buffer zone is technically under the sovereignty of the RoC, Turkey has been found to exercise jurisdiction there and has been held responsible for the actions of the TRNC authorities. The effective overall control test, which the ECtHR established in relation to Cyprus, was watered down in *Ilascu v. Moldova and Russia* when the Court noted that extraterritorial jurisdiction will exist when there is ‘decisive influence’ of the respondent state in the area outside its sovereign territory. Such decisive influence exists when the respondent state is providing ‘military, economic, financial and political support’ in the area where the alleged violation has taken place. As a result, the ECtHR has found that Russia exercises extraterritorial jurisdiction in Transnistria, an internationally unrecognised state within the sovereign territory of Moldova, and in Abkhazia and South Ossetia, two unrecognised states within the sovereign territory of Georgia. The Court has not necessarily appreciated or acknowledged that the ‘effective overall control’ and ‘decisive influence’ tests are different to each other, since in cases like *Chiragov v. Armenia* relating to Nagorno-Karabakh, it applied both tests interchangeably. If an applicant can prove that Turkish or TRNC agents are exercising ‘effective overall control’ or ‘decisive influence’ in part of the

103 *Loizidou v. Turkey (Preliminary Objections)* (ECtHR, 23 March 1995, App. no. 15318/89), para. 62. This has been summarised in *Ukraine and the Netherlands v. Russia* (ECtHR, 30 November 2022, App. no. 8019/16), para. 560-564.

104 *Loizidou v. Turkey (Preliminary Objections)* (ECtHR, 23 March 1995, App. no. 15318/89), para. 62.

105 *Loizidou v. Turkey (Merits)* (ECtHR, 18 December 1996, App. no. 15318/89), para. 16 and 56; *Al-Skeini and Others v. United Kingdom* (ECtHR, 7 July 2011, App. no. 55721/07), para. 139.

106 *Cyprus v. Turkey* (ECtHR, 10 May 2001, App. no. 25781/94); *Loizidou v. Turkey (Preliminary Objections)* (ECtHR, 23 March 1995, App. no. 15318/89); *Loizidou v. Turkey (Merits)* (ECtHR, 18 December 1996, App. no. 15318/89).

107 *Ilascu and Others v. Moldova and Russia* (ECtHR, 8 July 2004, App. no. 48787/99), para. 392.


110 *Georgia v. Russia (II)* (ECtHR, 21 January 2021, App. no. 38263/08).

111 *Chiragov and Others v. Armenia* (ECtHR, 16 June 2015, App. no. 13216/05).

112 Nagorno-Karabakh is an unrecognised state within the sovereign territory of Azerbaijan over which Armenia exercises control.
buffer zone (for example, very close to the northern ceasefire line), then Turkey is likely to be responsible for an alleged human rights violation there. Nevertheless, the control that the UN exercises in the area, coupled with the TRNC’s own statements that the buffer zone is outside its claimed sovereignty and that it should remain empty, make this a very difficult task.

The second exceptional circumstance that gives rise to extraterritorial jurisdiction concerns acts of a state’s authorities that produce effects outside its own borders.\textsuperscript{113} The ECtHR has identified three instances in which this can happen. First, through acts of diplomatic or consular agents who are present on foreign territory in accordance with the provisions of international law, and who exert authority and control over others.\textsuperscript{114} Second, when through the consent, invitation or acquiescence of the government of the territory in question, the extra-territorial state exercises public powers that would have been exercised by the government.\textsuperscript{115} This, for example, was the case in \textit{Al-Skeini v. United Kingdom}, in which a violation was found.\textsuperscript{116} Following the removal from power of the Ba’ath regime and until the accession of the interim Iraqi government, the UK (together with the USA) assumed authority and responsibility for the maintenance of security in southeast Iraq. In this instance, the actions of British soldiers engaging in security operations resulted in a finding of legal liability for the UK, even though southeast Iraq was, and remains, well outside its sovereign territory. Finally, a state may exercise extraterritorial jurisdiction when one of its agents is operating outside its sovereign territory.\textsuperscript{117} In turn, this results in a finding of extraterritorial jurisdiction in two distinct, but potentially, related scenarios: when state agents exercise physical power or control over the victim or property in question, or when an act of violence by agents acting outside the territory of the state in question has taken place.\textsuperscript{118}

These exceptions will be useful for someone who wants to argue that Turkey exercises extraterritorial jurisdiction in the buffer zone. The ECtHR case of \textit{Isaak v. Turkey} already provides precedent for this.\textsuperscript{119} Here, the Greek Cypriot victim, along with other Greek Cypriot motorcyclists, crossed the southern ceasefire line and entered the buffer zone, despite repeated instructions from UNFICYP that they should turn around immediately. While in the buffer zone Isaak was killed by Turkish agents. The ECtHR held that this act of violence by the

\textsuperscript{113} Loizidou v. Turkey (Preliminary Objections) (ECtHR, 23 March 1995, App. no. 15318/89), para. 62; Loizidou v. Turkey (Merits) (ECtHR, 18 December 1996, App. no. 15318/89), para. 52.
\textsuperscript{114} Banković and Others v. Belgium and Others (ECtHR, 12 December 2001, App. no. 52207/99), para. 73; Al-Skeini and Others v. United Kingdom (ECtHR, 7 July 2011, App. no. 55721/07), para. 134. M v. Denmark (European Commission on Human Rights, 14 October 1993, App. no. 17392/90).
\textsuperscript{115} Banković and Others v. Belgium and Others (ECtHR, 12 December 2001, App. no. 52207/99), para. 71; Al-Skeini and Others v. United Kingdom (ECtHR, 7 July 2011, App. no. 55721/07), para. 135.
\textsuperscript{116} Al-Skeini and Others v. United Kingdom (ECtHR, 7 July 2011, App. no. 55721/07), para. 149.
\textsuperscript{117} Al-Skeini and Others v. United Kingdom (ECtHR, 7 July 2011, App. no. 55721/07), para. 136; Georgia v. Russia (II) (ECtHR, 21 January 2021, App. no. 38263/08), para. 117.
\textsuperscript{118} For a detailed summary of this, see Ukraine and the Netherlands v. Russia (ECtHR, 30 November 2022, App. no. 8019/16), para. 568-570.
\textsuperscript{119} Isaak v. Turkey (ECtHR, 24 June 2008, App. no. 44587/98).
Turkish agents, irrespective of the fact that they operated in an area where Turkey does not exercise effective overall control, resulted in a finding of extraterritorial jurisdiction. Building on this finding, the Court swiftly proceeded to find that the actions of the state agents constituted a violation of the right to life under Article 2 of the European Convention.120 Interestingly, the ECtHR noted in Isaak that ‘[t]he civilian demonstrators from both sides violated the ceasefire lines and entered into the buffer zone. To this extent, both sides bear responsibility for the tragic course the demonstration took.’ It is unclear whether the Court is referring to legal or moral responsibility and what is the practical impact of their responsibility, if any, on the case.

A similar conclusion was reached by the Court in Kallis and Androulla Panayi v. Turkey,121 which concerned the killing of a Greek Cypriot soldier by a Turkish agent. On the facts of the case, an unarmed soldier had crossed from the southern ceasefire line and into the buffer zone, where he was shot by Turkish agents standing behind the northern ceasefire line. Although not put in these terms by the ECtHR, its rationale in finding Turkey responsible for the death is that it exercised effective control and, therefore, jurisdiction north of the ceasefire line. Its agent shot the victim while in this area, which meant that jurisdiction and, ultimately, legal responsibility travelled with the bullet into the buffer zone.

An assessment of Stephens v. Cyprus, Turkey and the United Nations

The ECtHR case that most directly dealt with who has jurisdiction in the buffer zone is Stephens v. Cyprus, Turkey and the United Nations. In Stephens, the owner of a house in the buffer zone complained against a violation of the right to property, as she was prevented from accessing and using the house. The Court, finding the case inadmissible, held that neither of the two respondent states nor the UN were responsible for violations of the right. On the facts of the case, it might have been correct to reach this conclusion. Nevertheless, the Court’s extremely concise legal analysis oversimplifies, and potentially misrepresents, the thinking that shaped this conclusion.

The only part of the decision that refers to jurisdiction and legal liability – and, in fact, unhelpfully merges the two – notes that:

120 A case with very similar facts was reported in the security zone in Transnistria, where a Russian soldier killed a civilian at a peacekeeping checkpoint (Pisari v. The Republic of Moldova and Russia (ECtHR, 21 April 2015, App. No. 42139/12). Other similar cases also exist in Cyprus. See, for example, Kakoulli v. Turkey (ECtHR, 22 November 2005, App. No. 38593/97), in which a man collecting snails in the buffer zone was killed by Turkish agents. Finally, the European Commission on Human Rights reached a similar conclusion about Turkey exercising jurisdiction and having responsibility for the actions of its agents in the buffer zone in Chrysostomos Papachrysostomou v. Turkey (ECtHR, 4 March 1991, App. No. 15299/89).

In so far as the complaint is directed against Cyprus and Turkey, the Court observes that these States do not have effective control over the buffer zone in which the applicant’s house is located. The applicant has not challenged a particular action or inaction by these States or otherwise substantiated any breach by the said States of their duty to take all the appropriate measures with regard to the applicant’s rights which are still within their power to take (see, mutatis mutandis, Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99, § 221, ECHR 2004-VII). It follows, that this complaint must be declared inadmissible as manifestly ill-founded pursuant to Article 35 § 3 and 4 of the Convention.

This statement is in need of extensive unpacking. On the one hand, Cyprus has prima facie jurisdiction in the buffer zone and the test of effective control referred to by the Court is only relevant for determining whether it also has liability for its actions and inactions there. Since the applicant in Stephens did not point to actions or inactions of Cyprus that breached the Convention, the complaint against it is manifestly ill-founded. On the other hand, Turkey does not prima facie have jurisdiction in the buffer zone and the test of effective control is relevant for determining whether extraterritorial jurisdiction should, nevertheless, exist. The failure of the applicant to prove the existence of effective control by Turkey makes the complaint against it inadmissible on grounds of ratione loci. It is unfortunate that, in the same paragraph, the ECtHR conflated not only questions of jurisdiction and legal liability, but also the different positions of the two respondent states. By doing this, it referred to the same test of ‘effective control’ in two distinct and entirely unrelated instances: when assessing whether Cyprus has legal liability and when determining whether Turkey exercises extraterritorial jurisdiction.

One last remaining question in the case was whether the UN – through one of its subsidiary organs, UNFICYP – could be responsible for what is happening in the buffer zone. The Court’s finding in relation to the UN was that the organisation has a separate legal personality to that of its members and, since it is not itself a party to the European Convention on Human Rights, the ECtHR does not have jurisdiction to hear a case against it. In addition to unequivocally finding that UNFICYP cannot be held responsible for its decisions and actions in Cyprus, the Court’s finding in this respect is interesting because of its conclusion that ‘UNFICYP [has] control over the buffer zone’. As the preceding analysis suggests, this is far from uncontroversial and could explain why the ECtHR has recently agreed to hear arguments in a pending case with similar facts to Stephens.

122 A similar conflation of jurisdiction and legal responsibility is found in the judgments of the District and Supreme Courts of the Republic of Cyprus in Merian Shiarmen Miltiade Ioannide v. Attorney General of the Republic of Cyprus, which relied on Stephens v. Cyprus, Turkey and the United Nations. The District Court case (Case No. 4645/07) was decided on 15 March 2012 and the Supreme Court case (Case No. 163/2012) on 11 January 2018.

123 Ioannidou v. Cyprus (pending before the ECtHR).
CONCLUSION

This report has attempted to shed some light on the buffer zone in Cyprus. It argued that there is lack of clarity about the buffer zone on a number of levels: in terms of its actual geographical boundaries, its name and, most crucially, its legal status. In relation to its legal status, on the one hand, the RoC insists that the buffer zone is not fundamentally different to any other part of its territory south of the ceasefire line, where it is sovereign both in law and in fact. On the other hand, Turkish Cypriots argue that the buffer zone is (or at least, it should) remain devoid of any human activity, marking a no-man’s land between the sovereign territories of two states. The UN position seems to be different to both of these. UNFICYP prohibits all military activity in the area, and while it allows civilian activities in the buffer zone, it insists that these should be authorised by itself, rather than left to the sole discretion of any de jure or de facto authority on the island. While legal sovereignty, therefore, rests with the RoC, UNFICYP sometimes has control over the area. What appears to actually be happening in the buffer zone is a negotiation of these three positions on a case-by-case basis.

It is this situation that makes it necessary to return to general principles derived from ECtHR case law in order to determine who has legal responsibility in the buffer zone. Thus, the final part of the report argued that the RoC, and in certain exceptional circumstances Turkey, might be responsible for alleged human rights violations in the area. An analysis of the Court’s jurisprudence suggests that the RoC, as the sovereign state, always exercises jurisdiction. If, in addition to sovereignty, it also exercises effective control in the part of the buffer zone where the alleged violation took place, it will have the same human rights obligations that it has in the rest of the country. If it is an area of the buffer zone where it does not exercise effective control, it will retain its jurisdiction, but the liability to which the RoC will be exposed is significantly less. Turkey, on the other hand, will be presumed not to have jurisdiction in the buffer zone, unless an exceptional circumstance applies; for instance, one of its agents is acting in the area. If such a scenario exists, it is technically possible that Cyprus and Turkey will exercise jurisdiction concurrently.124

124 The Court has reached this conclusion in other frozen conflict contexts, but not Cyprus (see, for example, Ilaşcu and Others v. Moldova and Russia (ECtHR, 8 July 2004, App. no. 48787/99)). For more information on concurrent jurisdiction, see Alexandros Demetriades, ‘Reconceptualising Extraterritoriality under the ECHR as Concurrent Responsibility: The case for a principled and tailed approach’ (2020) 12(1) European Journal of Legal Studies 157-194.
Human activity in the buffer zone in Cyprus makes it necessary, first, to develop a clear understanding of this area’s legal status and, second, to settle any lingering debates about who has legal responsibility there. The report addresses these questions in three parts. Part 1 provides a brief description and history of the buffer zone, from its establishment in 1974 to today. Part 2 offers an overview of the ways various stakeholders understand and perceive the legal status of the buffer zone. On the one hand, Greek Cypriots argue that the Republic of Cyprus (RoC) has legal sovereignty and effective control over the buffer zone. On the other hand, Turkish Cypriots describe the area as being effectively empty, marking a border between two states – the (internationally recognised) RoC and the (internationally unrecognised) Turkish Republic of Northern Cyprus (TRNC). Further confusing the situation is the fact that, for both the RoC and the TRNC, there is some discrepancy between their verbal declarations and practices on the ground. Finally, the UN has neither clearly nor publicly expressed its position on the legal status of the buffer zone; nevertheless, its practices in relation to the area suggest that its position differs from both the Greek Cypriot and the Turkish Cypriot ones. Part 3 delves into a more practical question, namely determining who exercises jurisdiction, and therefore who has legal responsibility, in the buffer zone. Building on the jurisprudence of the European Court of Human Rights, we argue that the RoC always has jurisdiction in the buffer zone and, depending on the circumstances, this may concurrently also be held by Turkey. Whether the existence of jurisdiction also translates to legal responsibility depends on the facts of each case.