



**Recognised refugees and
asylum seekers in the
Sovereign British Bases
in Cyprus**

February 2006

1. Factual Background:

Some years ago a group of asylum seekers came directly from third countries to the Sovereign British Bases (SBA's) in Cyprus. It is a mixed group, some of them are Syrian Kurds, some of them Iraqis and some of them from other Arab countries. These migrants have sought asylum in the SBA's and they remain there since then. Some of them have been recognised as refugees from eligibility officers of the U.K. Home Office and some have been rejected without however been deported or given any other international protection status from the SBA's.

The majority of these persons have been living in the SBA's for more than seven years, some of them even nine years. They have been provided up to now with housing, welfare benefits, medical care and schooling for the children from the SBA's.

In 2004 and while Cyprus was in the process of acceding to the European Union, the U.K. Ministry of Foreign Affairs initiated discussions with the Cyprus Ministry of Foreign Affairs in order to come to an agreement about the luck of asylum seekers coming directly to the SBA's after Cyprus' accession to the E.U., in the light also that the E.U. asylum rules were not applicable in the SBA's.

The result of these discussions was the signing of a Memorandum of Understanding (MOU) (hereby attached) between the two Governments regulating the cooperation of the two countries with regard to processing asylum seekers applications coming to the island of Cyprus directly from the SBA's. This MOU had no retrospective effect and thus it did not cover the situation of the asylum seekers already in the SBA's for some years. Although discussions took place as to the luck of the refugees and asylum seekers already in the SBA's, there was no result at the time. The recognised refugees have long been putting pressure on the authorities of the SBA's to resettle them to the U.,K. and the rejected asylum seekers to be allowed to enter the U.K. as asylum seekers in order for their applications to be re-examined or to be granted the right to remain in the U.K. on humanitarian grounds, taking also into account the number of years that they have been residing in the SBA's. However, the authorities of the SBA's although initially assured them that they would be resettled to the U.K. or other countries, step by step they have been abandoning this position.

Moreover, two years ago they were told that they could not send their children to the SBA's schools and that they have to send them to Cypriot schools, something that has created a lot of problems to the children due to the language. One year ago, medical care was also cut off from the SBA's and refugees and asylum seekers were told to visit the Cypriot hospitals for medical care.

The refugees were devastated as they realised that step by step the authorities of the SBA's were trying to put them under the responsibility of the Cyprus Government rather than resettling them to the U.K. or any other country as promised. UNHCR in Cyprus was always assuring them that the authorities of the SBA's cannot force them to leave the bases.

Recently, on 14 February 2007, all refugees and asylum seekers of the SBA's were send a letter by the authorities of the Bases informing them that their files have been transferred under the responsibility of the Government of the Republic of Cyprus. At the same time, the Asylum Service of the Ministry of Interior informed them also that their files have been transferred to the Asylum Service and has also send refugees with the necessary letter of recognition as a refugees informing them that they have to arrange their papers with the Government, and to the asylum seekers a confirmation letter that they are asylum seekers under the responsibility of the Asylum Service of the Government of the Republic of Cyprus.

Apparently, there was an agreement, written or oral, between the two Governments that the MOU signed in 2004 would be also applied to the refugees and asylum seekers already in the SBA's before 2004.

2. The main provisions of the MOU

The main provisions of the MOU are the following:

- International responsibility with regard to asylum seekers and refugees coming to the island of Cyprus directly to the SBA's rests with the U.K. through the SBA's
- The U.K. and the Republic of Cyprus should respect their international obligations with regard to asylum seekers particularly under the 1951 Geneva Convention on Refugees including the prohibition of direct or indirect refoulement.

- The applications of all asylum seekers arriving at the SBA's shall be processed by the competent authorities of the Republic of Cyprus (Asylum Service and Refugee Reviewing Authority) with the authorisation of the authorities of the SBA's.
- Asylum seekers and recognised refugees of the SBA's shall be entitled to all the rights and benefits provided in the Refugee Law of the Republic of Cyprus as if they have been under the responsibility of the Republic of Cyprus.
- The U.K. shall indemnify the RoC for all the net costs incurred regarding the processing the application and the granting of benefits to asylum seekers and refugees.
- The U.K. through the SBA's and with the cooperation of the Government of the Republic of Cyprus shall repatriate all illegal migrants of the asylum seekers whose applications have been rejected.
- The U.K. through the SBA's, undertakes to repatriate persons recognised as refugees or granted any other form of international protection as soon as the conditions necessitating asylum have ceased to exist.
- The U.K. shall endeavour to resettle recognised refugees or other persons entitled to other forms of international protection to other countries willing to accept them, no later than one year after the recognition of international protection to the persons concerned.

3. Legal status of the 1951 Geneva Convention and the 1967 Protocol in the Sovereign British Bases

The United Kingdom signed and ratified the 1951 Convention in 1954 and with a declaration in 1956 it has extended it, under article 40 (1) of the Convention, to its then colony, Cyprus.

With the independence of the Republic of Cyprus in 1960, the Treaty of Establishment of the Republic of Cyprus provided in Article 8 that “all international obligations and responsibilities of the Government of the United Kingdom shall henceforth, *insofar as they may be held to have application to the Republic of Cyprus*, be assumed by the Republic of Cyprus.

The United Kingdom, did not at the same time however denounce in accordance with article 44 (3) of the Convention, the extension made in 1954 with the ratification of the Convention, in that part of Cyprus that remained under British Sovereignty, the SBA's. Therefore, the Convention is applicable in the SBA's.

Article VII (4) of the 1967 Protocol, provides that “declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary General of the United Nations. ”

The United Kingdom, has never addressed a notification that the 1967 Protocol does not apply in the SBA’s, nor has it denounced the 1967 Protocol with respect to the SBA’s in accordance with article 44 (3) of the Convention which applies *mutatis mutandis* to the 1967 Protocol.

Even if from the above it is not clear enough that both the 1951 Convention and the 1967 Protocol are binding international instruments for the United Kingdom applicable in the SBA’s, and this is subject to interpretation, the Vienna Convention on the Law of the Treaties can be applied. Article 45 of the Vienna Convention provides that “ A state may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 62 (fundamental change of circumstances – that could include the independence of Cyprus) if, after becoming aware of the facts:

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.”

The conduct of the SBA’ s administration, in the last wave of asylum seekers, which processed themselves all the asylum seekers applications, with the help of the UNHCR, and also recognised some asylum seekers as refugees under the 1951 Geneva Convention proves that the United Kingdom considers both the 1951 Convention and the 1967 Protocol valid with regard to the SBA’s.

Finally in the 2004 MOU signed between the U.K. and the Republic of Cyprus it is expressly stated that the responsibility for the asylum seekers and recognised refugees or persons in need of other forms of international protection rests with the U.K..

4. Why asylum seekers and refugees in the SBA’s do not want to be transferred under the responsibility of the Republic of Cyprus

The Republic of Cyprus has only adopted the Refugee Law in 2000 and developed refugee determination procedures and structures since 2002. The up to date results of the refugee

determination procedures of both the Asylum Service and Refugee Reviewing Authority are quite disappointing as only 1.04% of all asylum applicants have been recognised either as refugees or persons with subsidiary protection status. The majority of the applications rejected on first degree examination by the Asylum Service are also rejected by the Refugee Reviewing Authority as well as the Supreme Court of Cyprus.

Asylum seekers find it very difficult to even survive in Cyprus as, even though under the Refugee Law and the relevant Regulations, they are entitled to a set of minimum reception conditions including welfare benefits, housing, education and working permits under certain conditions, in practice these rights are not enforced due to the practices followed by the authorities mainly of the Ministry of Labour and Social Insurance. The procedures for determining who is a refugee and who is not are very long and in the majority of the cases asylum seekers either have to work illegally to survive or they depend on friends e.t.c. thus facing exploitative and humiliating conditions. There have also been cases where the prohibition of refoulement was violated or where the principle of confidentiality was not respected at all as asylum seekers were taken to their Embassies to be issued with travel documents. Rejected asylum seekers who de facto cannot be returned to their countries of origin, such as the group of asylum seekers under discussion, remain detained for periods as long as sometimes 20 months in order to finally agree to their cooperation for the issuance of travel documents and their return to their countries of origin.

Persons under subsidiary protection, who are majority of those recognised some form of international protection, have the same rights of asylum seekers for the first year and then they have the same rights as recognised refugees. Unfortunately, persons under subsidiary forms of protection face the same problems as asylum seekers.

Recognised refugees although they have a much stronger legal status in terms of their residency and other rights, they are facing a lot of problems due the lack of any integration policy on behalf of the Government as well due to widespread discrimination and racism. Even recognised refugees are not entitled to permanent residency rights as their residence permits are renewed every three years. They can apply for citizenship after 5 or 7 years (the application of the law and practices followed by the Migration Department are not clear) however the Cypriot citizenship is not granted easily by the relevant authorities.

Moreover, if eventually those persons accept their transfer to the Republic of Cyprus, they lose any rights that may have been derived from their long residence in the SBA's on the basis of the Cypriot law. Nobody has assured them that the years of residence in the SBA's will be recognised as years of residence in the Republic of Cyprus so that recognised refugees will be entitled at least to submit a citizenship application immediately. Moreover no assurances were given to the rejected asylum seekers who have been residing for more than seven years in the SBA's that they will not be deported immediately.

In the light of all the above, it is understandable why the SBA's asylum seekers and recognised refugees refuse to leave the SBA's and to transfer to the Republic of Cyprus.

Their demands are:

1. As the U.K. is responsible under international law for their protection-
 - a. recognised refugees should be resettled to the U.K. or any other country willing to accept them if they also agree,
 - b. asylum seekers should be resettled to the U.K. and to be given a legal status that corresponds to the many years they have been residing in the SBA's in accordance with international human rights law.

alternatively,

2. If they are to be transferred to the Republic of Cyprus-
 - a. this should be done voluntarily and not by force
 - b. refugees should be immediately given travel documents by the Government of the Republic of Cyprus
 - c. asylum seekers should be given the status of residence permit at least on humanitarian grounds without any reconsideration of their case by the Asylum Service on the basis of the many years they have been residing in the SBA's.
 - d. the years of residence in the SBA's for both asylum seekers and recognised refugees or persons under other forms of international protection should be recognised for all purposes as years of residence in the Republic of Cyprus.