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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

9747/96

RESTREINT

CIREA 40

DRAFT

NOTE

from : General Secretariat of the Council

to : CIREA

Subject: Draft report on the situation in Iraq

In the context of the examination of the situation in certain third countries or regions from which applicants for asylum come, a questionnaire was sent to Member States regarding the situation in Iraq (telex 5386 of 22.12.95). The replies of Member States to the questionnaire were included in document 4682/96 CIREA 6 + ADD 1, 2 and 3.

At its meeting held on 30 September 1996, CIREA carried out an examination of the situation in Iraq, based on an analysis of these replies, made by a CIREA informal group. A background paper by UNHCR on refugees and asylum seekers from Iraq was also distributed to delegations at that meeting (see doc. 10733/96 CIREA 52). Part of this discussion was attended by representatives of UNHCR.

Delegations will find herewith a draft report on the situation in Iraq, drawn up on the basis of the analysis of the Member States' replies and of the discussion which took place at the CIREA meeting, with a view to facilitating further analysis by Member States of the elements that emerged therein.

DRAFT REPORT ON THE SITUATION IN IRAQ

based on information provided by
the European Union Member States
during the second 1996 quarter
and analysed on 30 September 1996



1. STATISTICS

See tables in annex.

2. DETAILS OF APPLICATIONS FOR ASYLUM FROM IRAQI CITIZENS

a) Profile of applicants

Ethnic origin, religion and geographic area of provenance.

In most Member States, asylum-seekers are principally Muslim Kurds coming from northern Iraq and, to a lesser extent, Muslim (Shiite) Arabs and Christians of Chaldean or Assyrian origin coming from the Baghdad region or, in a small number of cases, from the south of Iraq.

The situation appears to be somewhat different in the case of three Member States where (i) more Arabs than Kurds account for the majority of applications; (ii) two-thirds of applicants are Christians and one-third are Kurds; and (iii) half are Muslims and half are Christians.

In one Member State there is a large number of applicants of Turkoman origin and there is reason to believe that some of them might in fact be Turks.

CIREA inquired of UNHCR whether it is aware of any reason why Marsh Arabs and Yazidis do not feature as asylum seekers. UNHCR has replied that this group does not constitute a particular target, and there is nonetheless a permanent move in slow rate to Iran.

Sex and age.

Applicants are essentially men aged between 20 and 45 years.

Socio-professional origin.

In some Member States, applicants belong to lower and middle social strata, with a small number having secondary or university education. In others, they are of a higher socio-professional background with a middle class, second-level and university education.

b) Basis of claims

The following reasons are given as grounds for application:

- members of or sympathisers with the two principal Kurdish parties (PUK, KDP);
- persecution by the Islamic Movement of Kurdistan (MIK);
- members of or sympathisers with the Iraqi Communist Party;
- members of the Assyrian Democratic Movement;
- members of Al Dawa;
- refusal to join the BAA'TH party or to co-operate with it;
- membership of the Christian faith;
- membership of the Shiite minority;
- conscientious objection, draft evasion or desertion;
- illegal exit from Iraq;
- poor economic situation;
- refusal by medical student or doctor to carry out certain amputations or experiments;
- unfounded accusations of opposition to regime; and
- links with prisoners or with refugees in Western countries.

c) Methods of departure from Iraq

Iraqi asylum-seekers leave their country in two ways:

- illegally, without passport or with false documents, sometimes in company with traffickers who supplied false documents for money and who either take the documents back or recommend that they be destroyed, or
- legally, with visa issued on foot of an invitation from a relative or for medical or study purposes.

One Member State mentions that it has a suspicion that a number of applicants who leave the country legally have their departures organized or encouraged by the Iraqi government in view of its precarious financial situation.

Other Member States have no clear indication to the effect that those leaving the country legally carry out subversive activities, or note that, if there is any evidence of infiltrations, this is not on a large scale. It has also been observed that in countries such as Iraq, those who leave are not necessarily those who are in the highest risk situations and need protection, but often those who have more money and can afford to leave. In fact, some Iraqis arrive after paying enormous amounts of money. Another point made in this respect is that the risk that some asylum seekers could in fact be government agents concern asylum seekers from certain other countries as well.

Likewise, UNHCR does not have any evidence to suggest that applicants are assisted or encouraged to leave by government authorities, for reasons linked to Iraq's present financial situation. In UNHCR's view, there are some indications to the contrary, specifically the increase of the tax levied on exit visas, which discourages asylum seekers from exiting through Jordan. In reply to the question as to what approach UNHCR recommends as regards the asylum seekers who leave the country legally or have no religious or political beliefs or have contacts with the Iraqi authorities abroad, UNHCR does not provide any particular recommendation.

d) Routes followed

Via Turkey, Jordan or Syria, from where they reach EU territory by air or overland (car or train) through eastern European countries or by sea.

e) Documents presented

Applicants who arrive on foot of visas have passports and identity documents (birth certificate, driving licence).

The majority of applicants, however, are not in possession of travel documents. They have an Iraqi identity card or one issued by the authorities in the Kurdish autonomous zone, or a party membership card of PUK or KDP, or educational certificates, "membership certificates", arrest warrants, summonses, judgments, prisoner transfer documents.

Member States take account of the possibility that there can be serious doubts about the authenticity of documents presented. However, based on the few applicants who present documents, one Member State does not regard the authenticity of documents presented as a main issue. In fact, most applicants in that Member State are Kurds and they tend not to have any documents.

In connection with the problem of the authenticity of documents, another Member State raises the issue of the so-called pseudo-Iraqis.

In this respect, two Member States indicate that a large number of "fake Iraqis" are detected by making use of language tests, taking place with the help of interpreters and translators. During the interview process, asylum seekers are asked "check questions": a person claiming to come from a certain geographic area is thus asked questions that a person from that area would normally be able to answer. Although a large number of such "fake Iraqis" are detected yearly (e.g., Jordanians or Palestinians), the problem the authorities are faced with is that they do not know where these people come from and where they should be sent back to. Many asylum seekers do not possess any document upon arrival, but, in any case, because of the large number of false documents in circulation, the documents presented by asylum seekers are not accepted, or are rarely believed as real.

One Member State points out that the practice of language tests is not specific to Iraqi asylum seekers, but applies to all asylum seekers.

3. ASSESSMENT OF APPLICATIONS BY REFERENCE TO THE GENEVA CONVENTION

a) How applications for asylum are analyzed

General situation in the country.

Although described as a dictatorship which does not respect human rights, that alone is not regarded as justifying the grant of refugee status.

Membership of a specific group.

Simple troubles by reason of membership of a particular group (Kurd, Assyrian) is not sufficient; membership of the group must have given rise to personal, individual persecution. Membership of the Kurdish ethnic group on its own does not give rise to political persecution; rather personal opposition activity on the part of the applicant, whether actual or assumed.

Militant activity within opposition parties.

The right to asylum is generally recognised in cases of active support for opposition parties.

Membership of a specific religion.

Most Member States take the view that membership of a specific religion (Shiite, Christian) on its own is not usually sufficient in Iraq to result in persecution such as would qualify for refugee status.

In two Member States, Shiite Muslims are regarded as a vulnerable group, who are treated as suspects and are persecuted for their religious persuasion. The Shiite clergy has been virtually eliminated.

In reply to a question from one Member State, UNHCR states that the Christian community is less discriminated upon than other groups.

Victims of exceptionally severe punishment.

In some Member States, such penalties are not taken into account except where they are imposed on account of the political convictions of the person concerned or where there are other elements which would attract refugee status.

In another Member State, refugee status can be granted to persons who have been the subject of excessive sanctions or of inhuman treatment during detention.

In any case, the imposition of the death penalty or a sentence of corporal punishment acts as an obstacle to the expulsion of the applicant.

Desertion, draft evasion.

Having regard to the penalties imposed for draft evasion and desertion, which constitute political persecution, refugee status is generally granted in some Member States to applicants who offer these reasons in a believable way; in one Member State, there must be discriminatory treatment by comparison with other similar cases or, in another Member State, that "deserters or draft evaders have acted on the basis of personal conviction following inner debate informed by solid argument".

UNHCR states that a new development has occurred in this respect. In 1996, Saddam Hussein abrogated Decree No 113 and draft evaders and deserters could in principle take advantage of the amnesty. As a result, it is not yet clear whether the punishment for this offence is still to be regarded as disproportionate, thus opening the possibility to Convention refugee status.

UNHCR has been asked for a clarification regarding its present approach vis-à-vis draft evaders and deserters and, specifically, whether it is true that it has turned down applications from this category of asylum seekers. In this connection, UNHCR has also been asked whether draft evaders and deserters, and prisoners convicted on account of economic crimes are still subject to amputations. UNHCR's reply is that applications have to be assessed on the basis of the Convention, and it has no concrete information concerning refusal of applications from draft evaders and deserters; it also stresses the difficulties of coping with such a widespread phenomenon. UNHCR also recalls that in Iraq political prisoners are not the only ones to suffer inhuman treatment, and that prisoners convicted on account of other crimes are also subject to inhuman treatment.

Pressure to collaborate with the Government party (BAA'TH).

In some Member States, this is not regarded on its own as giving rise to a right to asylum, but can be taken into account having regard to the personal situation of the applicant.

Another Member State deems that the BAA'TH party exercises effective and complete control; it uses the judicial system as a means of exercising that authority, arbitrary arrests, death sentences on the increase; anyone considered anti-government is at risk.

In reply to a question from one Member State, UNHCR indicates that no precise data are available with regard to Iraqis who refuse to join the BAA'TH party.

Other aspects.

In reply to a question regarding the situation of the Iraqis living abroad for economic reasons, without being members of any political party, UNHCR considers that economic reasons could play a role in granting refugee status.

Further to a question from another Member State, UNHCR has expressed the view that, while refugee status could be withdrawn in the event of long stays back home, short stays in Iraq occurring under particular circumstances (e.g. marriages or funerals) should not result in withdrawal of the refugee status.

b) Is the concept of internal asylum applied?

No, in most Member States.

Yes, in three Member States (Kurds with links to the Kurdish autonomous zone or having stayed in that zone prior to their departure).

c) **How are applications coming from the region north of the 36th parallel (Kurdistan) and from the south of Iraq assessed?**

In a number of Member States, these zones are not regarded as havens from persecution.

In three Member States, the Kurdish autonomous zone is considered in principle as safe from persecution.

UNHCR states that, as a result of the new developments that have recently occurred in Iraq (see below, under section 4), the internal flight alternative to northern Iraq is no longer possible. Northern Iraq seems to have ceased to be a safe haven. There is an anxiety for the situation of local UN and NGO staff in northern Iraq, since the KDP has taken over. A general amnesty has been declared for this region, excluding certain categories, but there is a fear that these staff could be considered as "traitors" and excluded from the amnesty. However, this suspension does not apply to KDP members, since KDP is the new master of the situation.

4. POLITICAL SITUATION

Assessment by Member States.

A political dictatorship is exercised by Saddam Hussein - who is still firmly entrenched in power - and the government party BAA'TH which controls the judicial system. Any attempt at opposition to the regime is repressed. Serious violations of human rights occur: torture, disappearances, arbitrary execution and detention. No change in the situation seems likely in the near future.

Authority exercised by the Kurdish government in the north of the country is both arbitrary and ineffective: there is conflict between the two Kurdish political parties KDP and PUK which, among other things, renders them also guilty of human rights violations.

Information added by UNHCR.

Saddam Hussein still has tight control of the country, and through the military operation launched in Kurdistan on 31 August has recovered his influence on northern Iraq.

As a result of this operation, the KDP has grown stronger than the PUK, which has caused a flow of refugees into Iran. The potential for instability in the region remains.

The socio-economic conditions has greatly deteriorated since the U.N. sanctions were imposed in 1990.

No improvement is reported regarding the human rights situation.

Regarding the attitude of the Iraqi authorities vis-à-vis Iraqi asylum seekers, UNHCR cannot provide any concrete information, but points out that it is not difficult to imagine this attitude. UNHCR cannot provide any specific information either on the means that Iraqis have at their disposal to obtain information about asylum.

On the question of the effects of the recent crisis on the situation of the Kurds displaced in south east Turkey and of the increasing pressure exercised on them from the Turkish authorities to make them return to Iraq, UNHCR informs CIREA that Turkey first closed its frontiers (with a few exceptions), then reopened them in a selective, "arbitrary" manner, and a number of Kurds are blocked in certain areas.

5. BASIC PROCEDURES FOR SCRUTINISING APPLICATIONS: INTERVIEW

The practice of systematic interview of applicants is generally applied in the European Union. Exceptionally, in some Member States, refugee status can be granted without an intensive interview when the reasons are sufficiently evident.

In one Member State, an interview is carried out when it is necessary to obtain information regarding the application, and the application is not manifestly unfounded.

6. EXPULSION: TO WHICH COUNTRY?

Most Member States experience difficulties in expelling people to Iraq. A number of them report no instance of expulsion to Iraq at all. Another Member State explains that expulsion to Iraq are prevented by the insurmountable difficulties due to suspension of air links with Baghdad, the failure of diplomatic efforts with Turkey and Jordan as regards transit through those countries, and the difficulties to obtain travel documents; this Member State envisages concluding bilateral or multilateral readmission agreements with third countries permitting transit through those countries.

One Member State mentions that it undertakes expulsions only to the safe area of Iraq, and only if the applicant consents. In this respect, UNHCR has informed CIREA that until September 1996 repatriation was mainly to northern Iraq. Repatriation to government-controlled areas was episodic and without UNHCR's involvement. Further to the recent developments described above, Iraq claims that international assistance is no longer needed and UNHCR is not in a position to guarantee the safe return of rejected cases.

As far as expulsions to third countries are concerned, various criteria are used by Member States. One criterion is that compulsory expulsion occurs only to a third country regarded as the applicant's first country of asylum. Another one, within the Schengen system, is that expulsion occurs to the Schengen country responsible for investigating the application to the extent that there is no risk of *refoulement*. A third criterion within the framework of the Nordic Passport Control Agreement is the possibility of expulsion to a Nordic third country, where an applicant has entered via that third country.

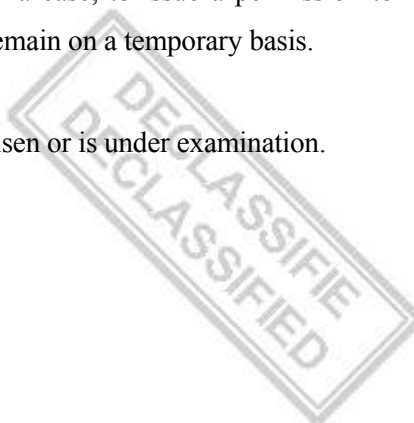
Concerning the specific third countries to which expulsions are undertaken, three Member States mention Jordan. One of these Member States points out that expulsion occurs through its neighbouring States on the basis of readmission agreements or by air to Amman. Another Member State requires that the person concerned must be in possession of a valid passport and must have travelled legally from Iraq to Jordan.

Other third countries mentioned include Turkey, the Czech Republic, Hungary, Romania, as well as western European countries.

7. TREATMENT OF ASYLUM-SEEKERS WHOSE APPLICATIONS ARE REFUSED, IN CASES WHERE THEY DO NOT HAVE LEGITIMATE DOCUMENTS OR HAVE REMAINED ABROAD BEYOND THE AUTHORISED PERIOD

Some Member States refer to the possibility, in such a case, to issue a permission to remain on humanitarian grounds or a conditional permission to remain on a temporary basis.

Other Member States state that the question has not arisen or is under examination.



STATISTICS

(EXTRACTS FROM THE REPLIES TO THE QUESTIONNAIRE ON IRAQ)

	B	DK	D	GR	ESP	F	IRL	I	LUX ⁽¹⁾	NL	A	P	FIN	S	UK	UE
Asylum seekers of Iraqi nationality																
1993	92	718	1.246	335	210	179	0	32		3.229	541	0	179	2.323	495	9.579
1994	83	515	2.066	426	310	204	4	42		2.858	899	1	55	1.668	550	9.681
1995	99	511	6.880	627	129	244	11	180		2.431	659	1	78	1.782	930	14.562
Evolution 93/95	+ 7	-207	+5.634	+292	-81	+65	+11	+148		-798	+118	+1	-101	-541	+435	+4.983
%	+ 7,61 ⁽²⁾	-28,83	+ 452	-87,16	-38,57 ⁽²⁾	+36,31		+462,5		-24,71	+21,81		-56,42	-23,29	+87,88	+52,02
TOTAL I	274	1.744	10.192	1.388	649	627	15	254		8.518	2.099	2	312	5.773	1.975	48.140
Total number of asylum applications																
1993 ⁽³⁾	26.717	14.347	322.599	862	12.645	27.564	91	1.323	225 ⁽⁴⁾	35.399	4.744	2.090	2.023	37.581	28.500	516.710
1994 ⁽³⁾	14.340	6.651	127.210	1.107	10.230	26.044	355	1.834	⁽⁵⁾	52.576	5.082	614	839	18.640	42.200	307.722
1995 ⁽³⁾	11.409	5.112	129.937	1.281 ⁽⁶⁾	4.429	20.170	424 ⁽⁶⁾	1.732	⁽⁵⁾	29.258	5.920	789 ⁽⁶⁾	854	9.046	55.000	275.361
Evolution 93/95	-15.308	-9.235	-192.662	+419	-8.216	-7.394	+333	+409		-6.141	+1.176	-1.303	-1.169	-28.535	+26.500	-241.349
%	-57,29	-64,36	-59,72	+48,60	-64,97	-36,35	+365,93	+30,91		-17,34 ⁽³⁾	+24,78	-165,14	-57,78	-75,92	+92,98	-46,71
TOTAL II	52.466	26.110	579.746	3.250	27.304	73.778	870	4.889		117.233	15.746	3.493	3.716	65.267	125.700	1.099.793
% TOTAL I / TOTAL II	0,52	6,68	1,76	42,7	2,38	0,85	1,72	5,20		7,27	13,33	0,06	8,40	8,85	1,57	4,38

Number of Iraqi asylum seekers, in decreasing order : D, NL, S, A, UK, DK, GR, ESP, F, FIN, I, IRL, P

% of Iraqi asylum seekers with respect to total number of asylum applications, in decreasing order : GR, A, S, FIN, NL, DK, I, ESP, D, IRL, UK, F, B, P.

⁽¹⁾ Did not reply to the questionnaire. Negligible number of asylum seekers.⁽²⁾ Movement in the opposite direction during 1994.⁽³⁾ Source : EUROSTAT (Asylum seekers : I / 1996 Quarterly)⁽⁴⁾ Not taken into account in UE total⁽⁵⁾ Data non available⁽⁶⁾ Source : Statistics CIREA 1995

**STATISTICS
(EXTRACTS FROM THE REPLIES TO THE QUESTIONNAIRE ON IRAQ)**

	B	DK	D	GR	ESP	F	IRL	I	LUX ⁽¹⁾	NL	A	P	FIN	S	UK	UE
Asylum seekers recognised as refugees																
1993	25	96	485	3	429	186	0	19		868	153	0	0	95	185	2,544
1994	5	105	1,013	39	479	125	0	33		1,250	91	1	6	48	380	3,575
1995	10	61	2,346 + 2,184	55	34	129	0	51		1,198	140	0	1	2	570	6,781
TOTAL III	40	262	6,028	97	942	440	0	103		3,316	384	1	7	145	1,135	12,900
recognition 93,95 % TOTAL III/ TOTAL I	14,59	15,02	59,14	6,9	145	70,17	0	40,5		38,92	18,29	50	2,24	2,51	57,47	26,80
Asylum seekers authorized to stay on humanitarian or other grounds																
1993	(2)	431	(2)	(2)	(2)		(2)	(2)		203	(2)	(2)	128	2,379	300	
1994		248								1,082			19	1,480	220	
1995		488								740			15	1,098	175	
TOTAL IV		1,167								2,025			162	4,957	695	
% TOTAL IV/ TOTAL I		66,91								23,77			51,92	85,87	35,19	
TOTAL : % recognition + % pers. who stay in the country		81,93								65,69			54,16	88,38	92,66	

Number of refugees in decreasing order : D, NL, UK, ESP, F, A, DK, S, I, GR, FIN, P, IRL
Recognition percentage in decreasing order : ESP, F, D, UK, [P], I, NL, A, DK, B, GR, S, FIN, [IRL]

(1) Did not reply to the questionnaire. Negligible number of asylum seekers.
(2) Data not available.