



Council of the
European Union

008435/EU XXVII.GP
Eingelangt am 14/01/20

Brussels, 14 January 2020
(OR. en)

8157/99
DCL 1

CIREA 36

DECLASSIFICATION

of document:	ST 8157/99 RESTREINT
dated:	29 June 1999
new status:	Public
Subject:	Summary of discussions on Sri Lanka

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

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

8157/99

RESTREINT

CIREA 36

NOTE

from: General Secretariat of the Council

to: CIREA

Subject: Summary of discussions on Sri Lanka

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 asking for updated information on the situation in Sri Lanka (telex No. 4643/97 dated 11.11.1997 and 4749/97 dated 19.11.1997). Member States' replies to the questionnaire are included in 5197/98 CIREA 5 RESTREINT + ADD 1 + ADD 2 ⁽¹⁾.

At its meeting held on 19-20 January 1998, CIREA carried out an examination of the situation in Sri Lanka, based on an analysis of these replies. Representatives of UNHCR attended part of the meeting and provided a background paper on Refugees and Asylum seekers from Sri Lanka (see 5465/98 CIREA 8).

Delegations will find attached a summary of the above-mentioned examination, based on the analysis of Member States' replies. It incorporates the main elements of the discussions held at the CIREA meeting on 19-20 January 1998. This summary was submitted to CIREA at its meeting on 26 March 1999, when it was agreed that it would be considered as adopted if no objections were made by the Member States by the 12 April 1999. No comments have been received by the General Secretariat.

⁽¹⁾ Due to its relatively small number of asylum seekers, Spain has not sent a reply to the questionnaire, but has provided some statistical data, included in the Annex.

**Summary of Discussions held on Sri Lanka
at the CIREA meeting on 19-20 January 1998
based on information provided by EU Member States and UNHCR**

1. Overview of the situation

Compared to 1996, six Member States registered a decrease of applications in 1997. Six Member States registered an increase.

The decreasing trend of Sri Lankan applications registered in four Member States during the 1993-1995 period was confirmed in 1996-1997. In two Member States the increasing trend in 1993-1995 turned to a decrease during the period 1996-1997 - in one of them the substantial increase from 1993 to 1995 stopped and the 1997 figure is near to the level of 1993. One Member State registered a relative increase in 1996-1997 compared to 1993-1995, another Member State registered a stabilization of the situation. Two Member States have registered an increase in 1996-97 but figures remain lower than in 1993.

Compared to the 1993-1995 period, the recognition rate has slightly increased in one Member State and decreased in eight Member States. In 1996-1997 the recognition rate varied between 0 % and 42,91 %, and on an EU-wide scale reached 11,84 % compared to 34,81 % in 1993-1995.

Also taking into account the number of asylum-seekers authorised to stay on humanitarian grounds, the rate of applicants authorised to stay varied between 0 % and 42,91 % for 1996-1997, and on an EU-wide scale reached 15,94 %.

Regarding returns, the figures communicated are not sufficient to show the general trend.

The above figures are approximate and are mentioned only with a view to highlighting the general trends. For more detailed information, see the tables annexed.

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One Member State has introduced an efficient system to return refused applicants. With regard to certain Tamils thought to be in opposition to their authorities, they are granted the right to stay. Another Member State is now considering applications with more scepticism.

A Member State explains the slight increase in applications with the publication, in July 1997, of an interministerial circular for the regularisation of exceptional situations. That does not affect the number of recognitions, which is growing only because of family reunion.

A Member State mentions the fact that asylum applicants are mostly Tamils, and that their applications are not recognised because they can obtain protection in the South and the West of Sri Lanka.

A Member State points out that refugees are allowed to stay when they have introduced an appeal before a court or another legal demand.

2. Changes in applications for asylum

There have been no significant changes in general.

One Member State notes that asylum applicants are still in almost all cases Tamils (Jaffna region) and that it also still emerges in many cases that asylum-seekers have relatives in Europe.

One Member State indicates that the allegations remain the same :

- fighting in the north of the country;
- the problem of displaced persons;
- controls in Thandikulan;
- arrests and detentions in Colombo.

One Member State states that asylum applicants have continued to arrive on its territory from Colombo via Singapore, Malaysia or Moscow. A new route has been discovered in addition to the previous ones, namely Sri Lanka - India - Laos by plane, Laos - China by bus and finally from China via Moscow by train.

Two Member States point out that the number of women applicants has increased, sometimes for the stated reasons that the daughters and sisters have been asked to join the LTTE.

In this context, UNHCR referred to reliable reports of forced recruitment for LTTE military operations of young Tamils, including women and minors. Yet asylum applications based on fear of forced recruitment by the LTTE only, may not be sufficient to grant refugee status. As regards reports of LTTE fundraising by force, UNHCR recalled that the LTTE had its own tax collection system, and imposed exit fees on those who wished to leave areas controlled by the LTTE until this system collapsed in October 1996. It is difficult to assess whether an application based on fear of being forced to contribute financially to LTTE activity constitutes a sufficient ground for being granted asylum; additional elements and circumstances specific to the individual's situation need to be assessed.

UNHCR has no information about forced fund raising of the LTTE abroad.

Three changes have been noted by another Member State:

- the increase in the number of applications received from Sri Lankan asylum seekers during the first ten months of 1997;
- a greater proportion of cases have been the subject of persistent legal challenges;
- following recent High Court judgements, a significant increase in the number of purported "fresh" asylum applications made by failed Sri Lankan asylum-seekers. However it is not possible to comment further as this matter is still sub judice.

One Member State reports that there was a slight decline in asylum applications up to October 1997 (compared with 1996). There were also significantly fewer recognitions and positive decisions based on the relevant provisions of the Aliens Law.

3. Changes in the handling of applications for asylum implemented by Member States

There have been no significant changes in general.

One Member State has adopted the practice followed in rulings of the Higher Administrative Courts whereby Tamils from northern Sri Lanka are considered to have an internal flight alternative in the south or west of the country. Accordingly, for younger Tamil men in particular, there is basically no prospect of recognition of the right to asylum.

UNHCR reiterated its position on the notion of internal flight alternative in the context of Sri Lanka. While the Office is generally not opposed to the application of the notion, as long as such an alternative is accessible in safety and durable in character, its application should be assessed in each individual case, taking into account specific circumstances. Although living conditions in Jaffna continue to be difficult, the city appears to be calmer and less problematic these days than Colombo. Those fleeing LTTE abuses in the North may not necessarily find safety in Colombo - much depends on individual circumstances and personal background. If a citizen has a well-founded fear of persecution emanating from the LTTE, he or she cannot find safety in Colombo or elsewhere in the country, since the LTTE may be able to target the person there. Thus, before such an alternative is to be applied, the application should first be examined on its individual merits.

4. Changes of appreciation of the general conditions or specific situations with regard to Sri Lanka

There have been no significant changes in general.

One Member State states that their Immigration Service is aware that Tamils are being checked/interrogated more than before and that there are numerous and extensive security measures in Colombo and other places, particularly at exit points. However, the Immigration Service still believes that these security measures are not sufficient, and not a great enough scale, as to be considered comparable to persecution under the relevant provisions of the Aliens Act (Geneva Convention).

One Member State refers to an updated official report on the situation in Sri Lanka published by its Minister for Foreign Affairs on 24 July 1997 which has been supplied to other delegations (11979/97 CIREA 88). It presented details about four Tamils sent back from EU-countries to Sri Lanka in 1996-97 and who have been subject to problems with the authorities, and estimated that the

incidence of human rights abuses has become worse since the last report. In a letter dated 19 September 1997, the State Secretary for Justice informed the Second Chamber of Parliament that it was continuing the admission policy.

UNHCR reported that monitoring and reporting of human rights abuses, as done in the past by the Human Rights Task Force, appears not to be taken very seriously by its successor body, the Human Rights Commission. The progress made by this Commission appears rather slow, and, until now, it has reportedly not conducted visits to detainees in police and army custody, investigated complaints, or taken effective measures to prevent further abuses. While UNHCR is not aware of a resurgence of a systematic pattern of gross human rights violations, some incidents of torture and ill-treatment of Tamils in police and army custody have been reported. Whereas asylum-seekers may not be able to substantiate applications with reference to systematic and wide-spread human rights violations, the personal background of the applicant and his or her specific circumstances may contribute to a well-founded fear of persecution.

According to UNHCR, there has been no significant change in the political situation or the human rights situation in the country since early 1997. In Colombo and surroundings, however, the LTTE has stepped up its activities, culminating in a car bomb attack in October 1997 which left dozens of civilians dead and has resulted in a tightening of security measures and an increase in arbitrary arrests and short-term detentions. Rejected cases returning under the Swiss-Sri Lankan return programme have been among those who are detained for brief periods; one deportee was ill-treated while in detention, and one was held in custody for a prolonged period, as a result of a letter accusing him of being a LTTE activist. Yet these appear to be isolated incidents since there are no reports that returnees from other countries, including a fairly large group (70 during the last six months) from Australia have been subject to arrest or detention. The intelligence branch of the security forces is now interviewing all returnees upon arrival at Colombo airport, yet implementation of this new procedure has not resulted in any arrest of returnees. The tightening of security measures has not resulted in a climate conducive to increased persecution.

5. Member States' view on the conditions permitting return for rejected applicants

There has been no significant change regarding the fact that most Member States still apply the internal flight alternative to rejected Sri Lankan nationals.

Some details have been given :

- rejected applicants must in all cases be provided with valid travel documents if forcibly repatriated to Sri Lanka.
- there is no general embargo on expulsion, but the handling of returnees is run very carefully (only 135 cases from 4500 refused applicants). Colombo and the Western and Southern parts of the country are all sufficiently safe for rejected asylum-seekers and voluntary returnees.
- the rejected applicants are expelled with travel documents obtained via the Sri Lankan Embassy in another Member State. When the rejected applicant is willing to cooperate, he is expelled without escort, with a letter "To whom it may concern" confirming his status as a rejected asylum applicant. When the rejected applicant is unwilling to cooperate on his return, he is expelled with a police escort. In both cases the Sri Lankan Embassy in the other Member State is informed, as well as different organizations/authorities in Colombo (including UNHCR). If it is impossible to obtain travel documents, the applicant is expelled with a police escort and the Immigration Service in Sri Lanka is informed of the expulsion.
- refused applicants are given a short period of time in which to leave the country voluntarily, inasmuch as they are not covered by the "non refoulement" clause of Article 33 of the Geneva Convention.
- rejected applicants who have no other grounds for remaining in the Member State are treated as illegally present aliens.
- after the Unity of Law Division of the Supreme Court (REK) of one Member State gave a ruling on 13 March 1997 upholding the policy followed by the State Secretary of Justice, deportation to Sri Lanka was resumed following the signature of the return agreement on 10 September 1997, which has been in force since 24 October 1997.

More recent information (November 1997) available on the situation of Tamils in Sri Lanka does not suggest that all Tamils run the risk of inhuman treatment on their return to Sri Lanka: 7 people had been returned by the end of December 1997.

To avoid rejected Tamil asylum-seekers from the North and East of Sri Lanka being taken for LTTE suspects upon their return, they are issued with both a document attesting to their identity and a document which may be used to show that they arrived in Colombo after returning from abroad.

- One Member State returns rejected asylum seekers to Sri Lanka by air, as long as there are no obstacles to doing so under Section 37 of the Aliens' Act (risk of inhuman treatment or punishment or death penalty). Whether such obstacles exist is assessed on the basis of the facts of each individual case. No difficulties in doing so are encountered at present.
- Another Member State considers that there is no obstacle to returning (both on a voluntary and compulsory basis) rejected applicants to Sri Lanka. The authorities do their best to provide returnees with a passport or identity papers, but the absence of identity papers is not considered as an insurmountable obstacle to removal.
- rejected Sri Lankan applicants have been deported to Colombo. They have options of voluntary or forcible return. In the case of forcible return the deportation is implemented by the police which accompanies the returnee to Colombo.

UNHCR has no further information, other than from Switzerland, on arrests or detentions of rejected applicants who have been returned to Sri Lanka. It should be noted that the Office is not undertaking "passive" monitoring in cases of returns other than from Switzerland. UNHCR encourages diplomatic missions of countries which are concluding similar return agreements (the Netherlands, Denmark) to undertake monitoring of the situation of deportees. It is essential for such persons to hold valid travel documents in order to facilitate entry into and, after arrival, free movement within Sri Lanka. The regular security checks in Colombo and elsewhere in the country are proof of the necessity to carry identity documents at all times.

6. Assistance to individuals being returned to their country of origin

No information on this subject was given by some Member States.

Among those who gave information it was stated that:

- five Member States don't provide for assistance. One of them considers that international relief agencies (Amnesty International and the International Committee of the Red Cross) and international organizations (i.e. UNHCR) with a permanent presence in Sri Lanka are better placed to assess the type and scope of assistance required by returnees, in co-operation with the Government of Sri Lanka.
- two Member States do not provide assistance other than that stipulated by the REA programme (IOM) concerning their country; in one of them, as an extension of it, destitute voluntary returnees from 18 countries of origin, including Sri Lanka, can obtain additional return assistance from the Government-Assisted Repatriation Programme (GARP - also administered by IOM).
- one Member State grants assistance in organising and financing the return journey to people who voluntarily withdraw their application for asylum or their appeal pending before a court.
- one Member State grants return assistance and pays travel expenses to voluntary returnees (refugees and asylum-seekers having obtained a residence permit on humanitarian grounds or for protection reasons). Rejected asylum seekers are only granted travel expenses. Families receive a maximum of double the amount of assistance which is given to a single person. In exceptional cases, return assistance may be granted to those who withdraw their applications. The assistance is donated by the community in the Member State where the applicant resides.

7. Involvement of other agencies in the return of rejected applicants to their country of origin

No information on this subject was given by some Member States.

Among those who gave information it was stated that:

- three Member States do not seek the assistance of other agencies.
- three Member States seek the assistance of IOM and/or other organizations (e.g. Caritas).
- two Member States seek the assistance of UNHCR.
- one Member State informs the UNHCR and the Red Cross in Colombo of expulsions.

8. Return agreements with the relevant authorities in Sri Lanka

Only one Member State has concluded a readmission agreement with the Sri Lankan authorities (10 September 1997). In it, an accord was reached on the arrangements for the return of Sri Lankan asylum-seekers whose applications had been rejected after processing. In the first year, 350 persons not in possession of an individual travel document are to be allowed to return to Sri Lanka. The implementation of the Agreement will be assessed in mid-1998. A new estimate of the number of asylum-seekers will then be made. The Sri Lankan authorities have agreed to cooperate in establishing nationality for the purpose of issuing travel documents.

UNHCR mentioned an agreement between the Governments of Switzerland and Sri Lanka about the return from Switzerland of rejected asylum applicants. The agreement was concluded in 1995, and includes a role for "passive monitoring" by UNHCR.

9. Returns to safe third countries

Three Member States report removals to other countries than Sri Lanka.

In reply to questions related to activities by LTTE and the possibility to apply the exclusion clauses (Article 1 F), UNHCR stated that such clauses generally should be applied with utmost caution and never as a means to determine admissibility of an asylum application. Whereas individuals involved in paramilitary or armed LTTE activity can be guilty of excludable acts, mere membership of LTTE is not a sufficient ground to apply the exclusion clauses. UNHCR has not dealt with asylum applications lodged by LTTE members recently, most probably because those involved in LTTE can find protection in LTTE-controlled areas in the North and East. Yet LTTE members who are outside Sri Lanka may have a well-founded fear of persecution upon (forced) return.

In this context, Member States gave confirmation they would not apply the exclusion clauses to members of LTTE. One Member State mentioned that LTTE has an Information Office on their territory, and that LTTE forcibly demands that the Tamils give money to their organization. Another Member State noticed that in one case the "exclusion" of a Tamil refugee was confirmed by the Council of State (art. 1 F Geneva Convention), because of a bombing attempt. A similar case was reported by a second Member State.

One Member State reported that most asylum applicants from Sri Lanka are Tamils who say they have close ties to LTTE, including forcible recruitment. This often can not be proven, thus a decision will be taken later on after reflection how best to handle them.

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Eight Member States return asylum applicants to safe third countries :

- since the relevant records have been kept (October 1996), 2 Sri Lankan applicants were returned from one Member State to Poland, 2 to the Czech Republic and 3 to Switzerland;
- another Member State stated that this has not yet arisen in connection with Sri Lankan nationals;
- a third Member State mentioned that 50 Sri Lankan applicants were returned to safe third countries in 1996, and 55 in 1997 (January - October).

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p.m. : application of the Dublin Convention (Schengen Agreement) for return to EU Member States.

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STATISTICS

(EXTRACTS FROM THE REPLIES TO THE QUESTIONNAIRE ON SRI LANKA)

Former figures for 1996 or 1997 may have been modified in the present tables, as some Member States have updated them since the last analysis.

	B	DK	D	GR	E	F	IRL	I	LUX	NL	A	P	FIN	S	UK ⁽¹⁾	EU
Asylum seekers of Sri Lankan nationality																
1996	99	299	4,982	16	16	1,169	0	1	0	1,463	49	0	37	42	1,340	9,533
1997	144	148	3,989	29	10	1,520 ⁽²⁾	0	8	0	1,497	7	3	25	34	1,830	9,244
Evolution 96/97	+45	-151	-993	+13	-6	+351	-	+7	-	+14	-42	+3	-8	-8	+490	-289
%	+45.45	-50.50	-19.93	+81.25	-37.5	+30.02	-	+700	-	+0.94	-85.71	-	-32.43	-19.04	+36.56	-3.03
TOTAL I (96/97)	243	447	8,971	45	26	2,689	0	9	0	2,980	56	3	62	76	3,170	18,777
Evolution 93/95 %	-90.50	+92.06	+77.31	-33.33	-47.36	-61.07	0	-73.07	-	-30.86	-40.62	-	-70.17	-77.47	+5.34	-2.26
TOTAL (93/95)	236	684	14,141	10	32	5,648	6	46	0	5,028	70	2	92	376	6,385	32,756
Total number of asylum applications																
1996	12,433	5,893	116,367	1,635	4,730	17,405	1,179	675	240	22,857	6,991	216	711	5,753	29,640	226,725
1997	11,787	5,100	104,353	4,376	4,975	20,968 ⁽²⁾	3,883	1,847	427	34,443	6,719	245	973	9,662	32,500	242,258
% Sri Lankan applications / total applications 96	0.79	5.07	4.28	0.97	0.33	6.71	0	1.14	0	6.48	0.70	0	5.20	0.73	4.52	4.21
% 93-95	0.44	2.61	2.43	0.30	0.11	7.65	0.68	0.94	0	4.28	0.44	0.07	2.47	0.57	5.07	2.98

Number of Sri Lankan asylum seekers, in decreasing order : - 1996/1997: D, NL, UK, F, DK, B, S, FIN, A, GR, E, I, P, IRL/ LUX.

- 1993/1995: D, UK, F, NL, DK, S, B, FIN, A, I, E, GR, IRL, P, LUX.

% of Sri Lankan asylum seekers with respect to total number of asylum applications, in decreasing order : - 1996: F, NL, FIN, DK, UK, D, I, GR, S, B, A, E, IRL/LUX/P.

- 1993/1995: F, UK, NL, DK, FIN, D, I, IRL, S, B/A, GR, E, P, LUX.

⁽¹⁾Excluding dependants. Figures are rounded to the nearest 5.

⁽²⁾ Jan. 97 - Nov. 97.

**STATISTICS
(EXTRACTS FROM THE REPLIES TO THE QUESTIONNAIRE ON SRI LANKA)**

	B	DK	D	GR	E	F	IRL	I	LUX	NL	A	P	FIN	S	UK	EU	
	Asylum seekers recognized as refugees																
1996	0	12	646	7	-	632	0	-	0	27	0	0	1	0	0	5	1.330
1997	1	1 ⁽²⁾	252 ⁽¹⁾	-	-	583 ⁽²⁾	0	1 ⁽²⁾	0	16 ⁽²⁾	0 ⁽²⁾	0	0 ⁽²⁾	0 ⁽³⁾	55	909	
TOTAL III	1	13	898	7	-	1.215	0	1	0	43	0	0	1	0	60	2.239	
% Recognition 1996	0	4.01	12.96	43.75	-	48.84	0	0	0	1.82	0	-	2.70	0	0.37	13.95	
% Recognition 1997	0.69	0.67	7.21	0	-	38.35	0	12.50	0	1.06	0	0	0	0	3.00	9.83	
% Recognition 1996-1997	0.41	2.90	10.59	15.55	-	42.91	0	11.11	0	1.44	0	0	1.96	0	1.89	11.92	
% TOTAL III / TOTAL I																	
% Recognition 1993-1995	0.84	7.60	43.32 ⁽⁵⁾	20	21.87	74.68	0	15.21	0	18.73	2.85	0	5.43	0.53	0.62	34.81	
	Asylum seekers authorized to stay on humanitarian or other grounds																
1996	0	64	229 ⁽⁴⁾	0	-	0	-	-	0	202	0	0	2	2	25	524	
1997	0	31 ⁽²⁾	74 ⁽⁴⁾	0	-	0	1	-	0	130	0	0	0 ⁽²⁾	0 ⁽³⁾	15	251	
TOTAL IV	0	95	303	0	-	0	1	-	0	332	0	0	2	2	40	775	
% TOTAL IV / TOTAL I	0	21.25	3.57	0	-	0	-	-	0	11.14	0	0	3.92	3.12	1.26	4.12	
TOTAL 96/97: % recognition + % pers. authorized to stay	0.41	24.16	14.16	15.55	-	42.91	-	11.11	0	12.58	0	0	5.88	3.12	3.15	16.05	
TOTAL 93/95: % recognition + % pers. authorized to stay	0.84	29.53	43.32	20	-	74.68	0	15.21	0	19.38	2.85	0	5.69	0.56	2.7	45.74	

Number of recognized refugees, in decreasing order:

- 1996/1997: F, D, UK, NL, DK, GR, B/IFIN, IRL/A/P/S
- 1993/1995: D, UK, F, NL, DK, S, B, FIN, A, I, E, GR, IRL, P.
- 1996/1997: F, GR, I, D, DK, FIN, UK, NL, B, IRL/A/P/S.
- 1993/1995: F, D, GR, NL, DK, FIN, B, UK, S, IRL/P.

Recognition percentage, in decreasing order:

- ⁽¹⁾Jan. 97 - Oct. 97
- ⁽²⁾Jan. 97 - Nov. 97
- ⁽³⁾Jan. 97 - Sept. 97

⁽⁴⁾From 1995 onwards, persons were protected from expulsion in accordance with paragraph 51 of the German Aliens Law (1996 = 229; 1997 = 58). Where it is established beyond doubt that the pre-conditions exist, the person concerned also benefits from the legal status of a recognized refugee within the meaning of the Geneva Convention.

The figure also includes obstacles to expulsion in accordance with paragraph 53 of the German Aliens Law (1997 = 16).
⁽⁵⁾Including protection from expulsion in accordance with paragraph 51 of the German Aliens Law.

**STATISTICS
(EXTRACTS FROM THE REPLIES TO THE QUESTIONNAIRE ON SRI LANKA)**

	B	DK	D	GR	E	F	IRL	I	LUX	NL	A	P	FIN	S	UK	EU	
Asylum seekers who have been rejected																	
1996	*	99	*	9	-	1,348	0	265 ⁽⁵⁾	0	2,606	36	0	-	-	2,115	6,478	
1997	77	75 ⁽³⁾	3,840 ⁽²⁾	27	-	1,310 ⁽³⁾	0	242 ⁽¹⁾⁽⁵⁾	0	2,115 ⁽³⁾	34 ⁽³⁾	2	-	-	1,710	9,432	
TOTAL V	77	174	3,840	36	-	2,658	0	507	0	4,721	70	2	-	-	3,825	15,910	
% TOTAL V / TOTAL I	31.68	38.92	42.80	80	-	98.84	0	5,633.3	0	158.42	129.6	66.60	-	-	120.66	84.73	
Asylum seekers who have been returned																	
1996	*	*	98	-	-	*	-	12	0	-	0	0	0	-	*	75	185
1997	16 ⁽²⁾	33 ⁽⁴⁾	135 ⁽²⁾	-	-	76 ⁽¹⁾	-	6 ⁽¹⁾	0	-	0	2	-	-	19 ⁽¹⁾⁽⁶⁾	90	377

* Not available - Not provided.

⁽¹⁾ Jan. 97 - Sept. 97.

⁽²⁾ Jan. 97 - Oct. 97.

⁽³⁾ Jan. 97 - Nov. 97.

⁽⁴⁾ From which 26 to Sri Lanka.

⁽⁵⁾ Ordered to leave.

⁽⁶⁾ From which 11 to Sri Lanka.