

**INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

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**TRIBUNAL PÉNAL INTERNATIONAL
POUR L'EX-YOUGOSLAVIE**

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DECISION**THE REGISTRAR,**

CONSIDERING the Statute of the Tribunal as adopted by the Security Council under resolution 827 (1993) of 25 May 1993, as subsequently amended, and in particular Articles 18 and 21 thereof;

CONSIDERING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended;

CONSIDERING the Code of Professional Conduct for Counsel Appearing before the International Tribunal (IT/125) as adopted by the Tribunal on 12 June 1997, as subsequently amended;

CONSIDERING the Directive on the Assignment of Defence Counsel (“the Directive”) as adopted by the Tribunal on 28 July 1994, as subsequently amended, and as last amended on 28 July 2004;

CONSIDERING the proposal for amendments to the Directive, approved by the Permanent Judges of the Tribunal at the plenary session of 29 June 2006;

HEREBY PROMULGATES Revision eleven of the Directive, as attached.

Hans Holthuis
Registrar

Dated this eleventh day of July 2006
at The Hague,
The Netherlands

**DIRECTIVE ON THE ASSIGNMENT OF DEFENCE COUNSEL
(DIRECTIVE NO. 1/94)**

(AS AMENDED 30 JANUARY 1995)
(AS AMENDED 25 JUNE 1996)
(AS AMENDED 1 AUGUST 1997)
(AS REVISED 17 NOVEMBER 1997)
(AS AMENDED 10 JULY 1998)
(AS AMENDED 19 JULY 1999)
(AS AMENDED 15 DECEMBER 2000)
(AS AMENDED 12 JULY 2002)
(AS AMENDED 28 JULY 2004)
(AS AMENDED 29 JUNE 2006)

(IT/73/REV. 11)

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I - PREAMBLE

The Registrar of the Tribunal,

Considering the Statute of the Tribunal as adopted by the Security Council under resolution 827 (1993) of 25 May 1993, as subsequently amended, and in particular Articles 18 and 21 thereof;

Considering the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 42, 45 and 55 thereof;

Considering the host country agreement between the United Nations and the Kingdom of the Netherlands concerning the seat of the Tribunal signed at New York on 29 July 1994, and in particular Articles XIX and XX thereof;

Considering the Directive on the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended, and as last amended on 28 July 2004;

ISSUES REVISION 11 OF THE DIRECTIVE ON THE ASSIGNMENT OF DEFENCE COUNSEL AS FOLLOWS:

II – GENERAL PROVISIONS

Article 1

Purpose and Entry into force

- (A) In accordance with Rule 45 of the Rules, the Registrar establishes this Directive to codify the Tribunal's system of assignment of counsel. The Tribunal's system of assignment of counsel seeks to provide legal assistance to indigent suspects or accused in the most efficient, economical and equitable manner in order to safeguard the rights afforded to suspects and accused under the Statute and Rules. This Directive establishes objective criteria to be used in the Registrar's determination of the eligibility of a suspect or accused for assignment of counsel and codifies the modalities of payment of assigned counsel and their support staff.
- (B) This Directive shall enter into force on the first day of August nineteen hundred and ninety four (1 August 1994).

Article 2

Definitions

Under this Directive, the following terms shall mean:

- Association of
counsel: an association of defence counsel practicing before the Tribunal recognised by the Registrar in accordance with Rule 44(A)(iii) of the Rules;
- Accused: a person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47 of the Rules;
- Code of
Conduct: the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal as promulgated by the Registrar on 12 June 1997 as amended;
- Counsel: a person representing or eligible to represent a suspect or accused pursuant to Rules 44, 45 and 45 *bis* of the Rules;

Defence team:	Counsel assigned by the Registrar to represent a suspect or accused and other persons assigned or approved by the Registrar to assist counsel in this task;
Directive:	Directive No. 1/94 on the Assignment of Defence Counsel as amended;
President:	the President of the Tribunal elected pursuant to Article 14 of the Statute;
Prosecutor	the Prosecutor of the Tribunal appointed pursuant to Article 16 of the Statute;
Registrar:	the Registrar of the Tribunal appointed pursuant to Article 17 of the Statute;
Rules:	the Rules of Procedure and Evidence adopted by the Tribunal on 11 February 1994, and as subsequently amended;
Stage of procedure:	each of the stages of procedure laid down in the Rules in which a suspect or accused may be involved (investigation, pre-trial proceedings, trial proceedings, appellate proceedings, and review proceedings);
Statute:	the Statute of the Tribunal adopted by the Security Council under Resolution 827 (1993) of 25 May 1993, as subsequently amended;
Suspect:	a person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction;
Tribunal:	the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

In this Directive, the masculine shall include the feminine and the singular the plural, and vice versa. All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Tribunal.

Article 3
Authentic texts

The English and French texts of the Directive shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute, Rules and the Directive shall prevail.

Article 4
Amendment of the Directive

- (A) Proposals for amendments to the Directive may be made by a Judge, the Registrar, an association of counsel, or the Advisory Panel. Such proposals shall be directed to the Registrar. Amendments shall be promulgated by the Registrar following the approval of the permanent Judges, as provided for in the Rules.
- (B) Without prejudice to the rights of the accused in any pending case, an amendment of the Directive shall enter into force seven days after the day of issue of an official Tribunal document containing the amendment.

III – RIGHT TO HAVE COUNSEL ASSIGNED
Chapter 1 : Basic principles

Article 5
Right to counsel

Without prejudice to the right of a suspect or an accused to conduct his own defence:

- (i) a suspect who is to be questioned by the Prosecutor during an investigation;
- (ii) an accused upon whom personal service of the indictment has been effected; and
- (iii) any person detained on the authority of the Tribunal, including any person detained in accordance with Rule 90 *bis*;

shall have the right to be assisted by counsel.

Article 6
Right to assigned counsel

- (A) A suspect or accused who lacks the means to remunerate counsel shall have the right to have counsel assigned to him and paid for by the Tribunal in accordance with this Directive. The Registrar shall inform a suspect or accused in a language which he understands of his rights and duties pursuant to this Directive.
- (B) A suspect or accused lacks the means to remunerate counsel if he does not have the means which would enable him to cover the costs of his defence as determined by the Registrar in accordance with Section VII of this Directive.
- (C) For an accused who has the means to partially remunerate counsel, the Tribunal shall pay that portion of his defence costs which the accused does not have sufficient means to cover, as determined in accordance with the Registry Policy for Determining the Extent to which an Accused is able to Remunerate Counsel.

Chapter 2 : Procedure for assignment of counsel

Article 7
Request for assignment of counsel

- (A) Subject to the provisions of Article 18, a suspect or accused who wishes to have counsel assigned to him shall make a request to the Registrar on the form provided by the Registrar. The request shall be lodged with the Registrar, or transmitted to him, by the suspect or accused himself or by a person authorised by him to do so on his behalf.
- (B) A suspect or accused requesting the assignment of counsel is required to make a declaration of his means on the form provided by the Registrar.
- (C) A declaration must, to the extent possible, be certified by an appropriate authority, either that of the place where the suspect or accused resides or is found or that of any other place that the Registrar considers appropriate in the circumstances.
- (D) The declaration must include an attestation by the suspect or accused that the information contained therein is true and complete to the best of his knowledge.

- (E) To ensure that the provisions of Article 8 are met, a suspect or accused must update his declaration of means at any time a change relevant to his declaration of means occurs.

Article 8
Burden of proof

- (A) A suspect or accused who requests the assignment of counsel must produce evidence establishing that he is unable to remunerate counsel.
- (B) Where the Registrar has opened an inquiry into the means of a suspect or accused pursuant to Article 9, the suspect or accused shall provide or facilitate the production of information required to establish his ability to remunerate counsel.
- (C) Where a suspect or accused fails to comply with his obligations under Articles 8(A) and (B) to the extent that the Registrar is unable to properly assess the suspect or accused's ability to remunerate counsel, the Registrar may deny the request for the assignment of counsel after warning the suspect or accused and giving him an opportunity to respond.

Article 9
Authority to gather information

- (A) For the purpose of establishing whether the suspect or accused is able to remunerate counsel, the Registrar may inquire into his means, request the gathering of any information, hear the suspect or accused, consider any representation, or request the production of any document likely to verify the request.
- (B) In exercising his authority under Article 9(A), the Registrar may request any relevant information at any time, including after counsel has been assigned, from any person who appears to be able to supply such information.

Article 10
Determination of the means of suspects and accused

- (A) The Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel by taking into account means of all kinds of which the suspect or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank

accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect or accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account.

- (B) For the purpose of determining whether the suspect or accused has an ownership interest in any property, the Registrar may consider the apparent lifestyle of a suspect or accused, and his enjoyment of that or other property, and whether or not he derives income from it.

Chapter 3 : The decision

Article 11

Decision by the Registrar

- (A) After examining the declaration of means referred to in Article 7 and any information obtained pursuant to Article 9, and having informed the suspect or accused of his findings with respect to those means, the Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel, and shall decide, providing reasons for his decision:
 - (i) without prejudice to Article 19, to assign counsel from the list drawn up in accordance with Rule 45(B) of the Rules and Article 14; or
 - (ii) without prejudice to Article 19, that the suspect or accused disposes of means to partially remunerate counsel and to assign counsel, in which case the decision shall indicate which costs shall be borne by the Tribunal; or
 - (iii) not to grant the request for assignment of counsel.
- (B) In the interests of justice, to ensure that the right to counsel is not affected while the Registrar examines the declaration of means referred to in Article 7 and the information obtained pursuant to Article 9, the Registrar may temporarily assign counsel to a suspect or an accused for a period not exceeding 120 days.
- (C) If a suspect or an accused:
 - (i) requests the assignment of counsel but does not comply with the requirements set out above within a reasonable time; or
 - (ii) fails to obtain or to request the assignment of counsel; or

(iii) fails to elect in writing that he intends to conduct his own defence;

the Registrar may nevertheless, in the interests of justice, and without prejudice to Article 19, assign him counsel from the list drawn up in accordance with Rule 45(B) of the Rules.

- (D) Where the Registrar decides to assign counsel in accordance with this Article, the Registrar shall:
- (i) assign the counsel selected by the suspect or accused from the list drawn up in accordance with Rule 45(B), provided that there is no impediment to the assignment of that counsel; or
 - (ii) if the suspect or accused fails to select a counsel from the list drawn up in accordance with Rule 45(B) or if the Registrar determines that there is an impediment to the assignment of the counsel selected, assign other counsel from that list after hearing the suspect or accused.

Article 12

Notification of the decision

The Registrar shall notify the suspect or accused of his decision, and shall also notify the counsel so assigned and the association of counsel of which he is a member.

Chapter 4 : Remedy

Article 13

Remedy against the Registrar's decision

- (A) The suspect whose request for assignment of counsel has been denied may, within fifteen days from the date upon which he is notified of the decision, file a motion before the President for review of that decision. The President may either confirm the Registrar's decision or rule that a counsel should be assigned.
- (B) The accused whose request for assignment of counsel has been denied or who has been found to have sufficient means to remunerate counsel in part, may within fifteen days from the date upon which he is notified of that decision, file a motion to the Chamber before which he is due to appear for review of the Registrar's decision. The Chamber may:
- (i) confirm the Registrar's decision; or

- (ii) quash the Registrar's decision and rule that counsel be assigned; or
- (iii) direct the Registrar to reconsider the extent to which the accused is able to remunerate counsel.

IV - PREREQUISITES FOR ASSIGNMENT AS COUNSEL

Article 14

Qualifications and standing of counsel

- (A) Any person may be assigned as counsel to a suspect or accused if the Registrar is satisfied that he is admitted to the list of counsel envisaged in Rule 45(B) of the Rules. A person is eligible for admission to the list if:
 - (i) he is admitted to the practice of law in a State, or is a university professor of law;
 - (ii) he has written and oral proficiency in one of the two working languages of the Tribunal;
 - (iii) he possesses established competence in criminal law and/or international criminal law/international humanitarian law/ international human rights law;
 - (iv) he possesses at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings;
 - (v) he has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Conduct, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;
 - (vi) he has not been found guilty in relevant criminal proceedings;
 - (vii) he has not engaged in conduct whether in pursuit of his profession or otherwise which is dishonest or otherwise discreditable to counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the International Tribunal or the administration of justice, or otherwise bring the International Tribunal into disrepute;
 - (viii) he has not provided false or misleading information in relation to his qualifications and fitness to practice and has not failed to provide relevant information;
 - (ix) he has indicated his availability and willingness to be assigned as counsel by the Registrar to any suspect or accused who lacks the means to remunerate counsel, under the terms set out in this Directive; and
 - (x) he is a member in good standing of an association of counsel practising at the Tribunal.

- (B) Any person may be assigned as duty counsel to an accused for the purposes of the initial appearance if the Registrar is satisfied that he is admitted to the list of counsel envisaged in Rule 45 (C) of the Rules. A person is eligible for admission to that list if:
- (i) he fulfils all the requirements of Article 14(A); and
 - (ii) he has informed the Registrar that he is readily available for assignment to an accused for the purposes of the initial appearance in accordance with Rule 62 of the Rules.
- (C) A person who does not have written and oral proficiency in either of the two working languages of the Tribunal but who speaks a language spoken in the territory over which the Tribunal has jurisdiction, and who fulfils all other requirements set out in Article 14(A), may be admitted to the list envisaged in Rule 45(B) of the Rules, if the Registrar deems it justified. Such person can be assigned only as co-counsel in accordance with Article 16(D).
- (D) The Registrar may, after giving counsel a warning and an opportunity to respond, remove the name of counsel from the lists referred to in Rules 45(B) and (C) of the Rules:
- (i) upon a decision by a Chamber under Rule 46(A)(i) of the Rules, after consulting with the Chamber; or
 - (ii) where counsel has been found to be in contempt pursuant to Rule 77 of the Rules, after consulting with the Chamber; or
 - (iii) where counsel has been found guilty of a disciplinary offense under the Code of Conduct, after consulting with the Chamber; or
 - (iv) where the Registrar has determined that counsel has provided false information in relation to his or her qualifications to be admitted to the list, or has failed to provide relevant information.

Counsel may seek review of the Registrar's decision before the President within fifteen days from the date upon which he is notified of that decision.

- (E) The Registrar shall remove the name of counsel from the lists referred to in Rules 45(B) and (C) of the Rules:
- (i) upon a decision by a Chamber under Rule 46 (A)(ii) of the Rules;
 - (ii) upon a final decision of the Disciplinary Panel or Disciplinary Board that counsel is banned from practicing before the Tribunal pursuant to Article 47(C)(vi) of the Code of Conduct;
 - (iii) where counsel no longer satisfies the requirements of Article 14(A).

- (F) The Registrar may deny a request for the assignment of a counsel where a procedure pursuant to Rule 77 of the Rules or Part Three of the Code of Conduct has been initiated against that counsel. Counsel may seek review of the Registrar's decision before the President within fifteen days from the date upon which he is notified of that decision.
- (G) A counsel admitted to the lists referred to in Rules 45(B) and (C) of the Rules shall:
- (i) confirm his continued availability to be assigned to indigent suspects or accused every two years from the date of his admission to the list; and
 - (ii) immediately advise the Registrar if he is no longer available to represent a suspect or accused for a period of more than 6 months.

If counsel fails to confirm his availability, the Registrar may, after giving notice to counsel, remove his name from the list.

Article 15

Professional certification

- (A) An applicant for admission to the lists envisaged in Rules 45(B) and (C) of the Rules shall supply the Registrar with:
- (i) a certificate of professional qualification issued by the competent professional or governing body, including a certificate of current practice and good standing;
 - (ii) for applicants whose native language is not English or French, a certificate from a language institute or other evidence of proficiency in English or French. The Registrar may also require such applicants to demonstrate their language ability by means of a language proficiency test;
 - (iii) a resume which evidences established competence in criminal law and/or international criminal law/international humanitarian law/international human rights law and a minimum of seven years of relevant experience in criminal proceedings;
 - (iv) the names and addresses of two referees, who practice in the fields of criminal law, international humanitarian law, international human rights law or international criminal law, and who are in a position to advise the Registrar as to the professional competence of the applicants in these fields;
 - (v) certification that the applicant has not been found guilty in any criminal proceeding or to indicate the acts for which he has been found guilty;

- (vi) certification that the applicant has not been found guilty in any disciplinary proceedings or to indicate the acts for which he has been found guilty; and
 - (vii) any other documentation that the Registrar may deem necessary.
- (B) The Registrar may refer an applicant for admission to the lists referred to in Rules 45(B) and (C) of the Rules to a panel composed of senior legal officers in chambers, and/or counsel on the Rule 45(B) list who possess a minimum of 15 years experience in criminal proceedings, to interview the applicant and to make a recommendation to the Registrar on his application.
- (C) An applicant who has been denied admission to the lists or who has been removed from the lists pursuant to Article 14(E)(iii) may seek review of the Registrar's decision before the President within fifteen days from the date upon which he is notified of that decision.

V – SCOPE OF ASSIGNMENT

Article 16 Basic principles

- (A) A suspect or accused shall be entitled to have one counsel assigned to him. Where suspects or accused are jointly charged or tried pursuant to the same indictment, each shall be entitled to have a separate counsel assigned.
- (B) The counsel assigned to represent a suspect or accused shall be referred to as the lead counsel and shall be responsible for all aspects of the defence of the suspect or accused before the Tribunal. Subject to Article 16 (C), the lead counsel shall sign all documents submitted to the Tribunal.
- (C) In the interests of justice and at the request of lead counsel, the Registrar may assign a second counsel to assist with the defence of the suspect or accused. This counsel shall be called the co-counsel. Acting under the authority of lead counsel, the co-counsel may deal with all stages of the proceedings and all matters arising out of the defence of the suspect or accused. The co-counsel may also be authorised, in writing, to sign documents on behalf of the lead counsel.
- (D) At the request of the lead counsel and where the interests of justice so require, the Registrar may assign a co-counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate.

- (E) At the request of the lead counsel, the Registrar may assign other persons such as legal assistants, consultants, investigators and interpreters, as required, to provide support to counsel. Only persons assigned or approved by the Registrar may assist counsel with the defence of the suspect or accused. The lead counsel and the persons assisting him shall be referred to as the defence team. The lead counsel is responsible for selecting and supervising all defence team members, including co-counsel.
- (F) Members of the family or close friends of suspects, accused and counsel are not eligible for assignment under the Directive as counsel, expert, legal assistant, investigator, translator or interpreter, unless the Registrar determines that the assignment is in the interests of justice.
- (G) No counsel shall be assigned to more than one suspect or accused at a time, unless:
 - (i) each accused has received independent legal advice from the Registrar and both have consented in writing and
 - (ii) the Registrar is satisfied that there is no potential or actual conflict of interest or a scheduling conflict, and that the assignment would not otherwise prejudice the defence of either accused, or the integrity of the proceedings.
- (H) Counsel assigned pursuant to Rule 62 of the Rules shall only represent the accused for the purpose of the accused entering a plea, unless the Registrar, in accordance with Article 25(B), deems it appropriate for the duty counsel to perform work which exceeds the mandate of duty counsel but is required to protect the rights of the accused until permanent counsel is assigned by the Registrar or retained by the accused, or the accused elects in writing to conduct his own defence pursuant to Rule 45(F) of the Rules.
- (I) Lead counsel shall keep a complete and accurate case file of all documentation related to the case and of all work performed by the defence team during the representation of the suspect or accused. Subject to his obligations under the Code of Conduct, lead counsel shall retain the case file for five years after the completion of proceedings relating to the suspect or accused before the Tribunal.

Article 17
Counsel – client privilege

- (A) Notwithstanding counsel-client privilege as defined in Article 13(A) “Confidentiality” of the Code of Conduct, the Registrar may, if he determines that reasonable cause exists, require assigned

counsel to provide information and documentation, including that which is otherwise privileged or confidential, as may be reasonably necessary for the Registrar to determine whether work for which Tribunal legal aid funds have been claimed or paid, has been performed. For this purpose, counsel shall allow the Registrar or the legal and investigative staff of the Office for Legal Aid and Detention Matters to examine, on a strictly confidential basis, any part of the case file, in accordance with Article 17(B). Disclosure of privileged or confidential information or documentation under this article does not negate or constitute waiver of counsel-client privilege.

- (B) Counsel-client privilege shall extend to the Registrar or the legal and investigative staff of the Office for Legal Aid and Detention Matters, in respect of information or documentation obtained under Article 17(A).
- (C) The general prohibition on the disclosure of privileged or confidential information and documentation under Articles 17(A) and (B) shall not apply to the Registrar or the legal and investigative staff of the Office for Legal Aid and Detention Matters, where:
 - (i) the Registrar initiates a disciplinary proceeding against counsel under Part III of the Code of Conduct in connection with Tribunal legal aid funds which have been claimed or paid, and to which the claimant or payee was not entitled;
 - (ii) the Registrar initiates proceedings in a national jurisdiction in connection with the administration of the Tribunal's legal aid system, including the misappropriation of Tribunal legal aid funds; or
 - (iii) disclosure is essential to establish a claim for recovery of funds from a person to whom legal aid was granted in accordance with Article 11.

Article 18

Assignment of counsel away from the seat of the Tribunal

- (A) Away from the seat of the Tribunal, in a case of such urgency that the procedure established in Article 7 cannot be followed, a suspect who, during the investigation, requests assignment of counsel, may indicate the name of a counsel whose name does not appear on the list envisaged in Rule 45(B) of the Rules, but who may be assigned in accordance with this Directive.
- (B) Where the suspect requesting assignment of counsel is unable to provide the name of a counsel in accordance with Article 18(A), the Prosecutor, or a person authorised by her or acting under her direction, shall obtain the name of a counsel who may be assigned in accordance with the provisions of this Directive, and may contact the local bar association for this purpose.

- (C) In the situations envisaged in Articles 18(A) and (B), the procedure for assignment of counsel as set out in this Directive shall apply *mutatis mutandis* but shall be accelerated where necessary.

VI – SUSPENSION AND WITHDRAWAL OF ASSIGNMENT

Article 19

Ability of suspects or accused to remunerate counsel

- (A) Where counsel has been assigned, the Registrar may withdraw the assignment of counsel if information is obtained which establishes that the suspect or accused has sufficient means to remunerate counsel. In such cases, the Registrar may recover the cost of providing counsel in accordance with Rule 45(E) of the Rules.
- (B) Where counsel has been assigned, the Registrar may modify his decision on the extent to which the suspect or accused is able to remunerate counsel if it is established that the means of the suspect or accused:
- (i) have changed since the Registrar issued his decision on the extent to which the suspect or accused is able to remunerate counsel; or
 - (ii) were not fully disclosed, or were otherwise not known to the Registrar, as of the date he issued his decision.
- (C) The Registrar's decision shall be reasoned and notified to the suspect or accused and to the counsel assigned, and shall take effect from the date of notification.
- (D) The provisions of Article 13 shall apply *mutatis mutandis* where a suspect or accused seeks a review of a decision made pursuant to Articles 19(A) or (B).

Article 20

Withdrawal and suspension of assignment

- (A) In the interests of justice, the Registrar may:
- (i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
 - (ii) at the request of lead counsel, withdraw the assignment of co-counsel.

Where a request for withdrawal has been denied, the person making the request may seek the President's review of the Registrar's decision within fifteen days from the date upon which he is notified of that decision.

- (B) The Registrar may suspend the assignment of counsel for a reasonable and limited time after consulting with the Chamber if:
- (i) a disciplinary procedure under Part Three of the Code of Conduct has been initiated against that counsel; or
 - (ii) contempt proceedings have been initiated against that counsel pursuant to Rule 77 of the Rules.

The counsel may seek the President's review of a decision to suspend within fifteen days from the date upon which he is notified of that decision.

- (C) The Registrar shall withdraw the assignment of counsel:
- (i) upon a decision of a Chamber under Rule 46(A)(ii); or
 - (ii) where counsel no-longer satisfies the requirements of Article 14(A); or
 - (iii) where counsel has been found to be in contempt pursuant to Rule 77 of the Rules, unless the Chamber rules that the assignment should continue.

Where the assignment of counsel has been withdrawn pursuant to Article 20(C)(ii), counsel may seek review of the Registrar's decision before the President within fifteen days from the date upon which he is notified of that decision.

- (D) In such cases, the withdrawal or suspension shall be notified to the accused, to the counsel concerned, to the association of counsel of which he is a member, and to his professional or governing body.
- (E) Where the assignment of counsel is suspended, the Registrar shall immediately assign replacement counsel to the suspect or accused. Where the assignment of counsel is withdrawn, the Registrar may, subject to Article 21, assign a replacement counsel. Where the assignment of counsel is withdrawn pursuant to Article 20(C), the Registrar shall assign a replacement counsel.

Article 21
Duties of counsel upon withdrawal

- (A) Assigned counsel shall continue to act until:
- (i) a replacement counsel has been assigned by the Registrar; or
 - (ii) a replacement counsel has been retained by the suspect or accused pursuant to Rule 44 of the Rules; or
 - (iii) the suspect or accused has elected in writing to conduct his own defence pursuant to Rule 45(F) of the Rules and his election has been accepted by the Chamber.
- (B) In the interests of justice, the Registrar may instruct the previously assigned counsel to continue to act or to assist the replacement counsel where one has been retained or assigned, for a period not exceeding 30 days from the date upon which replacement counsel is assigned or retained. During this period, the costs necessarily and reasonably incurred by both assigned counsel shall be met by the Tribunal.

Article 22
Payment *pro rata temporis*

Where an assigned counsel is replaced by another assigned counsel, he and his replacement shall be remunerated *pro rata temporis*.

VII – COSTS OF REPRESENTATION

Article 23
Responsibility for remuneration and expenses

- (A) Where counsel has been assigned, the costs of legal representation of the suspect or accused necessarily and reasonably incurred shall be met by the Tribunal in accordance with the Statute, the Rules, this Directive and related policies and subject to the budgetary provisions, rules, regulations, and practice set by the United Nations. All costs are subject to prior authorisation by the Registrar. If authorisation was not obtained, the Registrar may refuse to meet the costs.

- (B) The Tribunal shall meet the following costs in so far as those costs are reasonable and necessary in the circumstances to ensure that the rights of the suspect or accused enshrined in Article 21 of the Statute are upheld:
- (i) the remuneration of assigned counsel and assigned members of the defence team;
 - (ii) expenses related to the production of evidence for the defence and the ascertainment of facts;
 - (iii) expenses related to temporary consultancy on specific questions;
 - (iv) expenses related to the production of expert reports, which are paid at the rates established in Annex I;
 - (v) expenses related to the accommodation and transportation of witnesses testifying in court in accordance with the Directive on Allowances for Witnesses and Expert Witnesses; and
 - (vi) expenses related to travel, travel taxes and similar duties.
- (C) General office costs which include but are not limited to costs for telephone and mail or express mail, photocopies, books and journals, lease of office space, purchase of office equipment, office supplies and secretarial support, are included in the remuneration of counsel. Where assigned counsel satisfies the Registrar that the costs of international shipping of case related material exceeds ordinary office costs and is reasonable and necessary, the Registrar shall meet those costs.
- (D) The Registrar shall pay the costs referred to in Article 23(B) upon approval of a statement of fees or expenses from lead counsel. The statement of fees or expenses must be made out in accordance with the guidelines established by the Registrar and, unless otherwise provided for, must be presented to the Registrar within 120 days from the last day of the month during which work was performed or the expense was incurred.

Article 24

Remuneration of assigned counsel and assigned members of the defence team

- (A) From 1 December 2004, during pre-trial proceedings, assigned counsel and assigned members of the defence team shall be remunerated in accordance with the Defence Counsel Pre-Trial Legal Aid Policy. In cases where pre-trial proceedings commenced before 1 December 2004, assigned counsel and assigned members of the defence team shall continue to be remunerated on the basis of a maximum allotment of working hours paid at a fixed hourly rate as established in Annex I to this Directive, for the work reasonable and necessary for the preparation of the defence case for trial.
- (B) During trial proceedings, assigned counsel and assigned members of the defence team shall be remunerated in accordance with the Defence Counsel Trial Legal Aid Policy.

- (C) During appellate proceedings, assigned counsel and assigned members of the defence team shall be remunerated on the basis of a maximum allotment of working hours paid at a fixed hourly rate as established in Annex I to this Directive, for the work reasonable and necessary to the preparation and presentation of the defence case.
- (D) Without prejudice to Article 6(C), assigned counsel and assigned defence team members who receive remuneration from the Tribunal shall not accept remuneration for the assignment from any other source.

Article 25

Remuneration of duty counsel

- (A) Duty counsel assigned pursuant to Rule 62 of the Rules shall be remunerated at a fixed rate of €1,688 in accordance with the Defence Counsel Pre-Trial Legal Aid Policy.
- (B) Where exceptionally, the circumstances of the case require work to be performed which exceeds the mandate of duty counsel, the duty counsel shall obtain authorisation from the Registrar prior to performing such work. Where authorisation is granted, the Registrar shall remunerate duty counsel for such additional work at the rates established in Annex I to this Directive.

Article 26

Travel expenses

- (A) Subject to prior authorisation by the Registrar, travel expenses of assigned counsel and where applicable, assigned members of the defence team shall be met in accordance with the Registry Defence Travel and Daily Subsistence Allowance Policy.
- (B) Travel expenses of assigned counsel and where applicable, assigned members of the defence team who do not usually reside in the territory of the host country or in the country where the particular stage of the procedure is being conducted, shall be met by the Registrar on the basis of one economy class standard fixed-date round trip air ticket or one first class train ticket by the shortest route to and from the country where the procedure is being conducted and within the limits set out in the Registry Defence Travel and Daily Subsistence Allowance Policy.

- (C) Travel expenses of assigned counsel and where applicable, assigned members of the defence team who usually reside in the territory of the host country but not in the town where they are acting, shall be met by the Registrar on the basis of either first class public transportation tickets or fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of Countries and Territories, per kilometre travelled on the outward and return journeys by the shortest route, within the limits set out in the Registry Defence Travel and Daily Subsistence Allowance Policy.
- (D) All travel authorisation requests and amendments thereof shall be submitted to the Registrar at least seven days before the proposed travel unless it can be demonstrated that circumstances beyond the control of the defence team prevented the traveler from complying with this requirement. The Registrar may refuse to cover additional costs associated with a failure to comply with this requirement. Where such a failure causes the Tribunal to incur additional costs, the Registrar may deduct those costs from payments otherwise due to the traveller.

Article 27

Daily subsistence allowances

- (A) Subject to prior authorisation by the Registrar, daily subsistence allowance for assigned counsel and where applicable, assigned members of the defence team, shall be paid by the Registrar in accordance with the Registry Defence Travel and Daily Subsistence Allowance Policy.
- (B) Daily subsistence allowance paid to assigned counsel and where applicable, assigned members of the defence team shall be calculated on the basis of fixed rates as established by the United Nations Schedule of Daily Subsistence Allowance Rates applied to the number of days of work. Neither assigned counsel, nor assigned members of the defence team shall be entitled to daily subsistence allowance while staying at their place of residence.
- (C) Daily subsistence allowance shall be paid in accordance with the United Nations rules and regulations on the basis of the current rates applicable in the country where assigned counsel, or where applicable, assigned members of the defence team, are acting.
- (D) In accordance with United Nations regulations, the applicable rate shall be lowered by twenty-five percent when assigned counsel or where applicable, assigned members of the defence team have spent more than 60 days in total from the date of their assignment, in a country in which they are acting.

- (E) Where appropriate in the circumstances, the Registrar may provisionally pay daily subsistence allowances in advance.

Article 28

Translation and interpretation costs

- (A) The Tribunal shall provide translation and interpretation services or meet the cost of such services as reasonably necessary to protect the rights of a suspect or accused enshrined in Article 21 of the Statute.
- (B) The Registry Translation Services Policy sets out the type of documents translated and the interpretation services provided by the Tribunal to the suspect or accused and his defence team.
- (C) Translation and interpretation services other than those provided by the Tribunal in accordance with the Registry Translation Services Policy shall be organised by the defence team. The cost of these services shall be met by the resources allocated to the defence team in accordance with Article 24.

Article 29

Adoption and amendment of policies governing remuneration and expenses

The policies referred to in Articles 24, 26, 27, and 28 shall not be adopted or amended by the Registrar without prior consultation with the associations of counsel.

Article 30

Responsibility for payments

All sums payable to assigned counsel and assigned members of a defence team under the provisions of this Directive shall be paid by the Financial Officer of the Registry.

Article 31

Settlement of disputes over payment

- (A) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is less than €1,000, an aggrieved party may request the Head of the Registry's Office of Legal Aid and Detention Matters to review and decide upon the matter.

- (B) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is between €1,000 and €4,999, an aggrieved party may request the Registrar to review the matter. The Registrar shall decide on the matter personally or assign the Deputy Registrar to do so on his behalf. Before reaching his decision, the Registrar or Deputy Registrar shall invite submissions from the aggrieved party and the respondent and may consult with the President if necessary. The decision of the Registrar or Deputy Registrar shall be final and binding upon the parties. The review procedure envisaged in this article applies also where an aggrieved party demonstrates that individual claims involving amounts less than €1,000 are part of the same dispute as they relate to the same or similar subject matter.
- (C) Where the dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President for his determination. Before making a determination the President shall request submissions from the aggrieved party and the respondent. The President's determination shall be final and binding upon the parties.
- (D) Requests for review of decisions of the Registrar on the extent to which an accused is able to remunerate counsel shall be brought before the Chamber seized of the case in accordance with Article 13(B).

VIII – ADVISORY PANEL

Article 32

Advisory Panel

- (A) An Advisory Panel shall be set up consisting of two persons chosen by the President in consultation with the Registrar and the association(s) of counsel of which they are members from the list referred to in Rule 45(B) of the Rules who have appeared before the Tribunal, two persons proposed by the International Bar Association, two persons proposed by the Union Internationale des Avocats, and the President of the Nederlandse Orde van Advokaten or his representative. Each member of the Advisory Panel must have a minimum of ten years legal experience.
- (B) The President of the Advisory Panel will be the President of the Nederlandse Orde van Advokaten or his representative. The membership of the Advisory Panel shall come up for appointment every two years on the anniversary date of the entry into force of this Directive.

Article 33
Role and function of the Advisory Panel

- (A) The role of the Advisory Panel is to provide advice to the President of the Tribunal, the Registrar and the associations of counsel, including but not limited to:
- (i) Those Rules of Procedure and Evidence which affect the rights of suspects and accused and the work of defence counsel before the Tribunal;
 - (ii) The Directive on the Assignment of Defence Counsel;
 - (iii) The Code of Conduct; and
 - (iv) The policies and practice directions of the Tribunal.
- (B) The Advisory Panel may be consulted as and when necessary by the President of the Tribunal, the Registrar of the Tribunal, and the Presidents of the associations of counsel on matters referred to in Article 33(A).
- (C) The Advisory Panel may also on its own initiative address the President of the Tribunal, the Registrar or the Presidents of the associations of counsel on the matters referred to in Article 33(A).
- (D) The Advisory Panel shall meet at least once per year, and as often as the Chair of the Advisory Panel deems necessary. Upon the invitation of the Advisory Panel, the President of the Tribunal, the Registrar, or the Presidents of the associations of counsel, or their representatives, may attend the meetings of the Advisory Panel.

ANNEX I:

Fixed gross hourly rate for Counsel and Experts in Euros (€)¹ (general office costs are included in this sum)

Lead Counsel / Counsel / Expert

20 years' professional experience or more	€7
15-19 years' professional experience	€9
10-14 years' professional experience	€0
0-9 years' professional experience	€1

Co-counsel

Fixed rate of	€1
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Fixed gross hourly rate for allotments to Legal Assistants and Investigators in Euros (€)² (general office costs are included in this sum)

10 years' professional experience or more	€5
5-9 years' professional experience	€0
0-4 years' professional experience	€15

¹ These rates shall be adjusted by reference to the movement of the Consumer Price Index ("CPI") used by the International Civil Service Commission ("ICSC") to adjust the Post Adjustment Index of United Nations Professional staff based in The Hague. This adjustment will be effective as of 1 January of each year and will be based upon the movement of the CPI index during the twelve month period from November of the preceding year. The adjustment due in 2007 will come into effect on 1 January 2007, and shall be based on the movement of the CPI in the period which shall commence two months prior to the date on which Revision 11 of the Directive enters into force, and ends in November 2006. The Registrar shall republish this Annex within thirty days after the adjusted rates come into effect. An adjusted rate shall apply to the reasonable and necessary work performed by a Tribunal assigned defence team member on or after the date of the adjustment.

² Id.