

Defence Travel and DSA Policy

1 January 2007¹

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¹ As amended on 1 August 2011.

INTRODUCTION

In accordance with Articles 23, 26 and 27 of the Directive on the Assignment of Defence Counsel, this policy governs the authorization of travel and daily subsistence allowance (DSA) during the Pre-trial, Trial and Appellate stages of the proceedings before the International Criminal Tribunal for the Former Yugoslavia (“Tribunal”).

This policy is based upon the following principles: (1) travel and DSA will be authorized where it is deemed reasonable and necessary in the particular circumstances of a case and, (2) the need to make the most efficient use of public funds at the lowest possible cost to the Tribunal, while ensuring full respect for the rights of the accused and their legal representatives. In practice, this means that whenever it is possible to combine different objectives in one trip, this should be done.

This policy comprises two parts. Part I details the practice to be followed when assessing travel and DSA requests. Part II outlines the procedure to be followed when submitting travel and DSA requests and claims.

In this policy, where a traveler is entitled to a certain number of days of DSA, DSA shall only be allocated to cover the time needed to travel to a destination where it is reasonable and necessary under the circumstances.

In this policy, where a traveller is entitled to a specific amount of DSA for a particular category of travel, and it is provided that travel under that category should, where possible, be combined with travel for other purposes, the DSA which is granted shall not necessarily be equal to the total DSA for each category of travel, but the Registrar shall consider the DSA for each category of travel when considering the traveller’s total DSA entitlement.

This policy enters into force on 1 January 2007 and applies *ex nunc*. Travel and DSA authorized prior to the entry into force of the present policy shall be regulated in accordance with the Registry policy in effect at the time the authorization was given.

PART I APPLICABLE NORMS

(A) PRE-TRIAL STAGE OF THE PROCEEDINGS

1) Travel for Communication between the Accused and Counsel

Allowance: One trip per month for up to three days for either the lead counsel or co-counsel.

2) Travel to attend Rule 65ter Meetings and Status Conferences

Allowance: One trip per 65ter meeting and/or status conference for up to three days for lead counsel and co-counsel. If the Accused is in detention at the United Nations Detention Unit, monthly visits to the Accused should be combined with travel under this category.

3) Travel for meetings between Lead Counsel and Co-Counsel

Purpose: Where it is necessary for the preparation of the Accused's defence, in order to work together, lead and co-counsel who work in different jurisdictions may be authorized to periodically travel at the Tribunal's expense to: i) one counsel's place of work or, if it is more economical, ii) The Hague.

Allowance: For meetings between counsel and co-counsel, one trip for one counsel every two months to one counsel's place of residence or, if it is more economical, The Hague. Such travel must be combined with Rule 65ter meetings, status conferences and/or with working visits to the accused. Where this is impossible, travel and up to three days of DSA may be authorized upon a reasoned request.

4) Travel for meetings with Counsel for a co-accused

Purpose: Where the preparation of the defence of each accused requires coordination between the counsel, in order to work together, counsel of co-accused in a multiple accused case may be authorized to periodically travel at the Tribunal's expense to either: i) the counsel of a co-accused's place of work or, if it is more economical, ii) The Hague.

Allowance: For meetings with the counsel or co-counsel of a co-accused, one trip for one counsel every two months. Such travel must be combined with Rule 65ter meetings, status conferences and/or with working visits to the accused. Travel and up to three days of DSA may be authorized upon a reasoned request.

5) Travel to Familiarize Lead Counsel, Co-Counsel and Defence Investigator(s) with the Crimes Scenes in the Indictment

Allowance: One joint trip for the lead counsel, co-counsel and defence investigator(s) during the pre-trial stage for up to three days. If the nature of local travel and the geographical remoteness of the municipalities in the Indictment are such that this period is insufficient to visit the crime scenes in

the indictment, the Registrar shall consider granting additional DSA. For this purpose, counsel shall submit a detailed mission plan.

6) Travel for Investigative Purposes

Purpose: Travel for the purpose of meeting witnesses, searching archives and engaging in other investigative tasks. This travel will primarily be undertaken by investigators, occasionally by counsel (e.g. to interview key witnesses and witnesses that are scheduled to testify in the case) and exceptionally by legal consultants/assistants acting in counsel or the investigator's stead (i.e. where the counsel and the investigator(s) are unavailable to travel for objective reasons).

Allowance: Travel and DSA for the traveller will be considered on a case-by-case basis depending upon the reasonableness and necessity of the travel which in turn is to be assessed in light of the nature and amount of work to be undertaken, and the efficient use of public funds. In accordance with UN Rules, DSA will not be paid for trips where the distance between the points of departure and destination is less than 100 km.

7) Case Preparation before the Commencement of the Trial

Purpose: Setting up the defence office in The Hague and engaging in final pre-trial preparation, including training on the IT software and equipment to be used at trial.

Allowance: Lead counsel and co-counsel are authorized to be in The Hague during the two weeks prior to the commencement of trial. DSA shall be paid to Counsel for the entire period. The Tribunal shall also cover the cost of travel to the seat of the Tribunal of the Defence Case Manager (or another Defence support staff member designated by Counsel), where such travel is undertaken to receive training in E-court, other IT software and equipment to be used at trial and relevant court management procedures. No DSA shall be paid to the traveller for this trip.

(B) TRIAL STAGE OF THE PROCEEDINGS

1) Travel for Investigative Purposes

Purpose: Travel for the purpose of meeting witnesses, searching archives and engaging in other investigative tasks. This travel will primarily be undertaken by investigators, occasionally by counsel (e.g. to interview key witnesses and witnesses that are scheduled to testify in the case) and exceptionally by legal consultants/assistants acting in counsel or the investigator's stead (i.e. where the counsel and the investigator(s) are unavailable to travel for objective reasons).

Allowance: Travel and DSA for the traveller will be considered on a case-by-case basis depending upon the reasonableness and necessity of the travel which in turn is to be assessed in light of the nature and amount of work to be undertaken, and the efficient use of public funds. In accordance with UN

Rules, DSA will not be paid for trips where the distance between the points of departure and destination is less than 100 km.

2) Travel of Lead Counsel and Co-Counsel to their Country of Residence

Allowance: One trip every three months and prior to the summer and winter recesses, to the country of counsel's place of residence. If counsel's place of residence is so remote from the seat of the Tribunal that it is impossible or impractical for counsel to travel to his/her place of residence every three months during trial, for the purpose of this policy, counsel may elect another state with which counsel has ties as his/her place of residence. If counsel chooses to travel by private motor vehicle to and from the seat of the Tribunal, the cost of such travel shall be borne by the Tribunal to the extent that it does not exceed the cost of an economy class airplane ticket. Counsel shall not receive DSA for such trips.

3) Travel of Defence Experts to The Hague

Purpose: Normally, the Tribunal does not cover the cost of an expert's travel. Exceptionally, where the travel is strictly necessary to fulfil the scope of the expert's assignment (e.g. psychological/psychiatric examination) the Tribunal will cover the cost of the travel.

Allowance: Requests will be considered on a case-by-case basis depending upon the nature of the expertise to be rendered in the interest of justice.

4) Travel of Defence Experts to The Hague

The cost associated with the travel and accommodation of Defence expert witnesses is borne by the Tribunal's Victims and Witnesses Section ("VWS"). Defence teams must contact VWS directly.

5) Travel for Communication with the Accused between the end of the Trial and the Trial Judgment.

Allowance: One trip every two months for up to two days for either the lead counsel or co-counsel. If the specific and exceptional circumstances of an accused (e.g. a documented deterioration in the mental health or psychological condition of the accused) necessitate more frequent visits by counsel, counsel shall make a reasoned request which will be considered by the Registrar.

(C) APPELLATE STAGE OF THE PROCEEDINGS

1) Travel for Communication between the Accused and Counsel

Allowance: Up to the submission of the Defence Response or Reply Brief, whichever is later (Rules 108-113 of the Rules), one trip per month for up to three days for either the lead counsel or co-counsel. After that period, one trip every two months for up to two days for either the lead counsel or co-counsel.

2) Travel for Appeals Status Conferences

Allowance: One trip for each status conference for up to two days for the lead counsel or co-counsel. If the Accused is in detention at the United Nations Detention Unit, monthly visits to the Accused should be combined with travel under this category. In such cases, an additional day of DSA may be granted.

3) Travel for Communication between Lead Counsel and Co-Counsel

Purpose: Where it is necessary for the preparation of the Accused's defence, in order to work together, lead and co-counsel who work in different jurisdictions may be authorized to periodically travel at the Tribunal's expense to either: i) one counsel's place of work or, if it is more economical, ii) The Hague.

Allowance: Requests will be considered on a case-by-case basis depending upon the reasonableness and necessity of the travel. Such travel must be combined with status conferences, working visits to the client and/or other hearings before the Appeals Chamber. Where this is impossible, travel and up to three days of DSA may be authorized upon a reasoned request.

4) Travel for further Investigation-Related Purposes

Purpose: Travel for the purpose of meeting witnesses, searching archives and engaging in other investigative tasks. This travel will primarily be undertaken by investigators, occasionally by counsel (e.g. to interview key witnesses) and exceptionally by legal consultants/assistants acting in counsel or the investigator's stead (i.e. where the counsel and the investigator(s) are unavailable to travel for objective reasons).

Allowance: As investigation activities are limited in time and scope at the Appeals stage, requests will be considered on a case-by-case basis depending upon the reasonableness and necessity of the travel.

**PART II - PROCEDURE FOR THE SUBMISSION AND APPROVAL OF TRAVEL
AUTHORIZATION REQUESTS AND CLAIMS**

(A) PRE-TRIAL AND APPELLATE STAGES

- 1) Counsel must seek and obtain prior authorization for all travel paid for by the Registry. Travel Authorization Requests (“TAR”)² must be submitted in writing to the Office for Legal Aid and Detention Matters (“OLAD”) at least 7 days prior to the date of travel on the standard form found on the International Tribunal’s website. The TAR must be typed (as opposed to handwritten), and contain the following information: a **detailed** explanation of the purpose of the travel, (i.e. the work to be undertaken during the travel), the name of the person travelling, the starting and ending dates of the travel, the means of transportation (if different than airplane), whether counsel requests the Tribunal to book the ticket, and whether counsel requests the Tribunal to make a hotel reservation, indicating the name of a hotel.³ The Registry reserves the right not to process a TAR submitted less than 7 days prior to the date of travel, unless good cause exists for the late submission. Only travel authorized by the Registry shall be paid for by the Tribunal.
- 2) The traveller shall be informed of the travel authorization and the number of DSA days, if any, granted for each trip within 7 days of the submission of the corresponding TAR but no later than 3 days prior to the date of travel.
- 3) Travel for investigative purposes must be outlined in the Defence work plan and progress reports in accordance with paragraphs 17 and 34 of the 1 May 2006 Defence Counsel Pre-Trial Legal Aid Policy or, in a separate mission plan based upon paragraphs 17 and 34 of the Pre-Trial Legal Aid Policy. The same principle applies to travel for investigative purposes undertaken during the appeals stage. A separate TAR has to be submitted for each such trip in accordance with paragraph 1.
- 4) Should the traveller need to change his/her travel request, an amended TAR must be filed on the standard form at least 4 days prior to the date of travel. The amended TAR must clearly indicate the change and the reason for it. Unless good cause is shown, the defence team member requesting the travel is responsible for the cost of any changes to, or a cancellation of, travel bookings made by the Tribunal’s Travel Unit.
- 5) A claim for payment of travel expenses shall be submitted on the form provided by the Registry (F10 form)⁴ and shall be accompanied by the original counterfoil of the airplane/train ticket and the ticket stubs. If travelling by car, the traveller shall provide fuel receipts, highway tolls, hotels and/or restaurant bills to confirm the route and his/her presence at a certain location on a said date. The claim (F10 form) with the applicable attachments shall be submitted to OLAD no later than 30 days from the end date of the travel. Exceptionally,

² Annex 1.

³ The Tribunal can make hotel reservations only in The Netherlands.

⁴ Annex 2.

the Registrar may accept a claim submitted after this deadline if within the 30-day period, the traveller has shown good cause for why he/she is unable to submit the claim on time, including due to errors in the delivery of mail. The claim shall be settled in accordance with UN settlement policies and procedures.

- 6) If in accordance with the above provisions OLAD is not satisfied that a travel request is justified, or considers it unjustified to grant the requested number of DSA days, the travel request may be denied in whole or in part. In accordance with Article 31 of the Directive on the Assignment of Defence Counsel (IT/73/REV. 11), the traveller may petition the Head of OLAD to review the decision. The Head of OLAD will endeavour to rule on the matter prior to the date of travel if the petition is submitted within a reasonable time before that date. All petitions and requests for review must be made within a maximum of 30 days from the end date of the travel. Complaints submitted after this date will not be considered by the Registry.

(B) TRIAL STAGE

a) DSA in The Hague

- 1) During trial, DSA is paid for days spent on trial-related work in The Netherlands. Counsel is not entitled to receive DSA for days spent outside the Netherlands on private trips or days spent in the Netherlands on which counsel did not work at least four hours on case-related matters.
- 2) At the end of each month during the Trial Stage, lead and co-counsel whose place of residence is not The Netherlands, are entitled to receive a General DSA allotment of 22 days, subject to paragraphs 5 to 8 of this sub-section.
- 3) The **first** General Allotment shall be paid automatically at the start of trial.
- 4) The **second and subsequent** General Allotments shall be paid upon submission by counsel of a duly filled 'Trial DSA Form' (see Annex 3). Lead counsel shall countersign the Trial DSA forms of co-counsel. On the Trial DSA Form, lead and co-counsel shall claim a number of days of DSA for the preceding month and account for those days by declaring, for each day, that they either:
 - a. attended or otherwise followed court proceedings; or
 - b. worked on case-related matters in The Netherlands for a minimum of four hours, including, but not limited to preparing written submissions, preparing for the examination of witnesses, meetings with the Prosecution, meetings with counsel of co-accused in the case, etc. Counsel shall provide sufficient detail on the work performed.
- 5) Any subsequent General Allotment shall consist of 22 days of DSA, plus or minus the necessary adjustment of the General Allotment for the previous month. This adjustment is the 'Additional Allotment'.

- a. If the number of days spent in The Netherlands for case-related purposes in the previous month exceeds the 22 days of the General Allotment, counsel shall be entitled to an Additional Allotment (i.e. counsel is entitled to receive days of DSA in addition to the General Allotment of 22 days).
 - b. If the number of days spent in The Netherlands for case-related purposes in the previous month is less than the 22 days of the General Allotment, counsel is not entitled to receive the full General Allotment (i.e. counsel is entitled to receive only those days that have been set forth in accordance with paragraph 4).
- 6) Counsel is not entitled to receive DSA for days covered by the summer and winter recesses, unless counsel shows that he/she was required to work on the case in The Netherlands. For this purpose, counsel has to submit details on the work performed and why it was necessary to perform this work in the Netherlands. Payments covering summer and winter recesses will be automatically reduced by the number of days of court recess, unless counsel provides the said information. In addition, counsel may claim DSA for one day prior to the continuation of trial proceedings.
- 7) The number of days spent on private and case-related trips outside the Netherlands shall be excluded from the General Allotment. DSA for case-related trips outside the Netherlands must be claimed in accordance with sub-section b).
- 8) DSA for the last month of trial shall only be paid after acceptance by OLAD of Counsel's Trial DSA Forms for the last two months of trial, and after the necessary adjustments have been made.
- 9) Review and appeal of decisions pursuant to paragraphs 4-8 of this section shall be made in accordance with Article 31 of the Directive on the Assignment of Defence Counsel (IT/73/REV. 11)
- 10) DSA Forms must be submitted within 120 days from the last day of the month during which DSA was claimed.

b) Travel and DSA outside The Netherlands

- 1) The procedure set out in Part II, Section A of this policy applies *mutatis mutandis* when requesting authorisation to travel, and claiming travel and DSA expenses for case-related travel during trial, or travel under Part I, Section B, paragraphs 2 and 4 of the policy.
- 2) DSA for case-related trips outside The Netherlands shall be requested and paid separately from the General Allotment referred to in sub-section a).