As the Presidency's Decision on the "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute, etc." on 14 May (the 'Reconsideration Decision') has pointed out, there is a distinction between Article 40(4) procedure on the independence of the judges and Article 41(2)(c) procedure of the disqualification of judges. The former relates to the compatibility of an activity of a judge with his or her function as a judge of this court and the latter relates to a judge's capacity to sit on a particular case[1]. In the latter proceedings, the "party must show a link between the activity allegedly incompatible with the judicial function and the particular case at issue" and "it would not be sufficient for that party to claim merely that the Judge in question is exercising a political, administrative of professional activity incompatible with his or her judicial functions." [2] It is especially so when the former procedure has already found that a judge's activity is not incompatible with his or her function as a judge of this court,

Such requirement is also clear from the text of Article 41(2)(a) and Rule 34(1) which list, although not exclusively, possible grounds for disqualification, such as: previous involvement in the case in question or in a related criminal case, personal interest in the case, performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case, and expression of opinion that could adversely affect the required impartiality. All of them are concrete grounds which specifically relate to the case in question. Indeed, the Plenary in the past took a fact-specific approach in considering disqualification requests[3].

In the current disqualification request by the Ntaganda Defence (the 'Request'), I see no concrete grounds for disqualification specifically related to the Ntaganda case. Rather, the alleged grounds for disqualification are limited to my activities or behaviors which are allegedly incompatible with my judicial function as a judge of this court in general. As stated above, the issue has been deliberated and decided through the Article 40(4) procedure. The only new argument in the current Request

[1] Paras. 16-19 of the Reconsideration Decision
[2] The Prosecutor v. Mucić et. al, IT-96-21, "Decision of the Bureau to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves", 25 October 1999, cited in para. 16 of the Reconsideration Decision
[3] See the precedents referred to in paras. 29 and 30 in the 27 May Prosecution response to the Request.

which is specifically related to the Ntaganda case is the allegation that the current Defence action(s) had a negative impact on my personal interests. I will address this issue below.

Therefore, I believe that the Request does not contain substantive grounds to satisfy the required standard for disqualification. I will try to respond, however, to each point raised in the Request to the extent possible and appropriate under the current circumstances. In doing so, I will follow as much as possible the sequence of the Defence submissions and in accordance with the sub-headings used in the Request.

I. "Concurrent Service in the Diplomatic Service of a State Is Incompatible With Judicial Independence"

The Request maintains that my diplomatic service was incompatible with my judicial independence in general. The same issue was the subject matter of the Article 40(4) decision by the Plenary of the Judges, which was taken on 4 March and subsequently notified to the parties of the Ntaganda case on 22 March. On 30 April, the Ntaganda Defence requested reconsideration of the Plenary decision, which was rejected by the Presidency in consultation with judges on 14 May. This section contains no arguments which are specific to the Ntaganda case. Nor it raises any new arguments in comparison with the above-mentioned Defence request for reconsideration. Therefore, I do not see any need for me to respond[4].

II. "Judicial Independence is an Essential Condition of Impartiality, Properly considered Under Article 41(2)(b)"

With regard to the Defence argument on the relationship between Article 40 and Article 41, I have nothing to add to the points made by the Reconsideration Decision.

With regard to the substance of the Defence allegations on the impartiality, since it is entirely based on the arguments in the previous section on independence, I rely on the majority reasoning of the 4 May Plenary decision and do not believe it necessary for me to add anything separately.

III. "The Appearance of Impartiality Has Not Been Restored By Judge Ozaki's Resignation as Ambassador"

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[4] With regard to the factual allegation in para 35, see my response in sections III and IV below.

The Defence made several points in this section.

1. With regard to my resignation, I have nothing to add to the e-mail I sent on 12 April, which was reproduced in the Decision on Reconsideration. My utmost concern was and is the efficient and expeditious completion of the Ntaganda case.
2. With regard to the alleged "lack of candour with my colleagues" and "threat to resign", I believe that the Plenary had all necessary information when it made the Article 40(4) decision. I also feel uncomfortable to assume that the judges of this court are easily threatened when they are making decisions in accordance with law. In any case, it is for the judges to decide on the existence of the factual basis of such allegations and their relevance to the current Request. It should be noted in this regard that the Defence request for reconsideration based on the same allegations has already been rejected.
3. Alleged "negative professional, financial and personal consequences[5]" and the suggestion that such consequences will have negative impact on my judicial integrity sitting on the Ntaganda case or that they "give further grounds to doubt whether she can be impartial to the party that has sought her disqualification" (paras. 46-51 of the Request)" are speculative.

IV. "Relevant Facts Remain Undisclosed to the Parties, Which Further Undermines the Appearance of Independence and Impartiality"

The Request complains that the lack of disclosure of alleged relevant information contributes to the apprehension of bias.

With regard to the decision issued by the Presidency on disclosure of information and the decision denying the Defence request for reconsideration of that decision, I am not in a position to make any response.

With regard to the information related to my appointment as Japanese Ambassador to the republic of Estonia, I am not in a position to disclose anything other than what has been disclosed or communicated by the Japanese Government.

The Request also asserts that I myself should disclose certain information to the parties (para.53). This assertion is new, and I do not think such a new request in itself constitutes any ground for disqualification. In any case, as stated above,

[5] With regard to the seemingly self-contradictory arguments in para. 48, I confirm that I have not been employed by anyone after my resignation was accepted on 19 April.

I am not in a position to disclose separately, anything that has been the subject of the above-mentioned Presidency decisions.

V. "Neither the Stage of Proceedings Nor the Disruptive Consequences Are Relevant Circumstances, Although the Special Role of the Court Is"

I find the arguments in this section either solely relating to the subject matter of Article 40(4) decision mentioned above or a repetition of the points made in the sections above. Therefore, I do not think it necessary for me to make any comments on arguments in this section.