



Internal memorandum  
Memorandum interne

To   À	The plenary of judges	From   De	Judge Tomoko Akane 赤根智子
Date	8 November 2024	Through   Via	
Ref.	2024/PRES/00175	Copies	
Subject   Objet	Written Observations pursuant to article 41(2)(c) of the Rome Statute and rule 34(2) of the Rules of Procedure and Evidence		

1. On 31 October 2024, a disqualification request was made by the government of Mongolia seeking my disqualification from the Presidency due to my involvement in issuing the warrant of arrest against President Vladimir Vladimirovich Putin, with this being part of a broader request for disqualification involving also Judges Aitala and Ugalde (the 'Disqualification Request').<sup>1</sup> Noting the request of the plenary of judges to present any written observations on the Disqualification Request by 16:00 on 8 November 2024,<sup>2</sup> I present the following brief observations, in accordance with my entitlement under article 41(2)(c) of the Rome Statute and rule 34(2) of the Rules of Procedure and Evidence (the 'Rules').
2. Insofar as it pertains to me, the Disqualification Request seeks my disqualification from the Presidency on the basis of the appearance of a lack of impartiality or perception of a conflict of interests potentially affecting my ability to adjudicate matters related to the disqualification request against Judges Aitala and Ugalde, referring in particular to my role in convening plenary sessions and my potential casting vote in such sessions.<sup>3</sup> In addition, the Disqualification Request asks that an *ad hoc* Presidency be formed to conduct any replacement of judges.<sup>4</sup>
3. I emphasise my commitment to ensuring both my impartiality and the appearance of impartiality in the discharge of my judicial functions, as well as the need to avoid any actual or perceived conflicts of interest, consistently with my obligations under article 4 of the ICC Code of Judicial Ethics.
4. The Disqualification Request purports to seek my disqualification from the Presidency, but refers, in actuality, to my role in convening plenary sessions and holding a casting vote at such sessions under rule 4 of the Rules. I note that the functions granted to me to convene plenary sessions (rule 4(2) of the Rules) and to exercise the casting vote in the event of equality of votes at such sessions (rule 4(4) of the Rules) vest in me in my capacity as President, having no connection to the Presidency. I also note that article 41(2)(c) of the

<sup>1</sup> [Application for the disqualification of Judges](#), dated 29 October 2024 and notified on 31 October 2024, ICC-01/22-92-Anx, annexed to Registry, *Situation in Ukraine*, Registry transmission of communication received from Mongolia in relation to Pre-Trial Chamber II's "Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties" of 24 October 2024, 31 October 2024, ICC-01/22-92, paras 2, 4, 10-11, 19-25.

<sup>2</sup> Plenary of Judges of the ICC, 'Order concerning the "Application for the Disqualification of Judges" filed on 31 October 2024 (ICC-01/22-92-Anx)', 5 November 2024, ICC-01/22-95.

<sup>3</sup> Application for the disqualification of Judges, ICC-01/22-92, paras 11, 19-23.

<sup>4</sup> Application for the disqualification of Judges, ICC-01/22-92, para. 25.

Rome Statute makes clear that the judge who is the subject of a disqualification request shall not take part in the decision thereon. Accordingly, in my view, article 41(2)(c) already prevents me from convening, being present at or participating in the plenary considering these disqualification matters. I further note that the Presidency plays no role in respect of disqualification requests, which, pursuant to article 41(2)(c) of the Rome Statute fall to be decided by an absolute majority of the judges, thus there is no need to consider my disqualification from the Presidency which has no role to perform. In sum, the legal provisions governing the conduct of disqualification proceedings render the Disqualification Request practically moot insofar as it relates to me.

5. I note that paragraph 25 of the Disqualification Request does not expressly request my disqualification from any future Presidency which may need to replace judges in Pre-Trial Chamber II, pending the outcome of the Disqualification Request concerning Judges Aitala and Ugalde. Accordingly, I consider that there is no need to address this matter in detail but note briefly that it has been established practice that the judicial activities of a judge would not prevent her or him from participating in purely administrative decisions concerning the composition of Chambers. In the past, members of the Presidency who have issued arrest warrants, decisions on the confirmation of charges, trial judgments and appeals judgments have commonly participated in decisions recomposing chambers to which situations or cases in which they are or have been involved are assigned. This reflects the purely administrative nature of such composition and assignment decisions and is not of a nature as to give rise to the appearance of reasonable grounds to doubt the impartiality of a judge.