

**Cour
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The Presidency

**International
Criminal
Court**

**Internal memorandum
Memorandum interne**

To À	Judge Hans-Peter Kaul, President of the Pre-Trial Division	From De	Philippe Kirsch, President 
Date	7 November 2006	Through Via	
Ref.	485/PK/HA	Copies	Judges of Pre-Trial Chamber I Judges of Pre-Trial Chamber II
Subject Objet	Decision of the President on the Request of the President of the Pre-Trial Division of 20 October 2006		

On 23 October 2006, I received from you in your capacity as the President of the Pre-Trial Division, a memorandum requesting, on behalf of the judges of Pre-Trial Chambers I and II, that I convene a special plenary session in accordance with rule 4(2) of the Rules of Procedure and Evidence ("the Request").

The Request specified that the plenary be convened on an urgent basis due to the forthcoming confirmation of charges hearing before Pre-Trial Chamber I in the case against Thomas Lubanga Dyilo, scheduled for 9 November 2006. According to the Request, a plenary was requested in order to:

- Determine whether the Prosecutor's applications of 31 August 2006, to separate the Senior Legal Adviser from rendering legal advice in the cases before Pre-Trial Chambers I and II ("the Application(s)"), and the Response of the Defence of 4 October 2006 before Pre-Trial Chamber I, joining the Prosecutor's application, amounted:
 - to a request for the disqualification of the judges of those Chambers; or
 - to a "question as to the disqualification of a judge" within the meaning of article 41(2) of the Statute.
- And, if so, decide on the matter.

Whilst the matter was being considered, Pre-Trial Chambers I and II, on 27 and 31 October 2006 respectively, held that: (i) the Applications (and the Response, in the case of Pre-Trial Chamber I) might be construed as a disqualification request or a question regarding the disqualification of the judges within the scope of article 41(2) of the Statute, and (ii) the

plenary was the appropriate forum to deal with such matters. Pre-Trial Chamber I held it lacked jurisdiction to entertain the Application and the Response, whilst Pre-Trial Chamber II dismissed the Application. On 2 November 2006, the Prosecution requested that Pre-Trial Chamber II clarify its decision, on the grounds that the latter had not provided reasons for dismissing the Application or referring the matter to the plenary.

Since the Request was not made by one-half of the judges, it was for me, as the President of the Court, to consider whether to convene the plenary *proprio motu*, in accordance with rule 4(2).

In so doing, and in the light of the importance of the matter, I decided to consult the judges of the Court with respect to the Request. Consequently, I called a meeting of the judges on 4 November 2006. Prior to the meeting, the judges of Pre-Trial Chambers I and II, as well as yourself in your capacity as the President of the Pre-Trial Division, informed me individually that none of you would attend the meeting, generally on the ground of inappropriateness.

The remaining eleven judges, including myself, attended the meeting. We did not enter into the merits of the Request or touch upon the principles relevant to disqualification. The unanimous view of the judges attending the meeting was that the Applications and the Response did not amount to a request for the disqualification of any judge; rather, they were a request to separate the Senior Legal Adviser of the Pre-Trial Division from rendering legal advice regarding the cases before Pre-Trial Chambers I and II. The judges further opined that, absent any request for disqualification, there were no grounds to call a meeting of judges in accordance with the Statute, to address the issue of disqualification.

For the reasons set out above, I would like to inform you that I have decided not to convene a plenary as per the Request.

Noting that the matter raised in the Request has already been made public and considering the need to inform the participants in the above-mentioned proceedings of my decision, it is my expectation that you will ensure that this memorandum is publicised as soon as possible.