

Partially dissenting opinion of Judge Marc Perrin de Brichambaut

I. Procedural history and preliminary remarks

1. On 23 March 2016,¹ Pre-Trial Chamber II confirmed the charges against Dominic Ongwen (the “Decision on the confirmation of charges”).
2. On 29 March 2016,² the Defence sought leave to appeal that decision (the “Defence Request”).
3. In a decision delivered on 29 April 2016³ (the “Decision on the Defence Request”), the majority of Pre-Trial Chamber II dismissed the Defence Request, which contained five issues within the meaning of article 82(1)(d) of the Rome Statute (the “Statute”) of the International Criminal Court (the “Court”).
4. While I can follow my colleagues’ reasoning in respect of the first and last two issues contained in the Defence Request, I cannot agree with them on the third issue raised by the Defence,⁴ namely insufficient reasoning of the Decision on the confirmation of charges. I am appending to the Decision on the confirmation of charges a separate opinion that addresses this issue. The ground of appeal raised by the Defence for Dominic Ongwen is, in my view, well-founded and warrants the granting of leave to appeal in respect of the third issue raised by the Defence, pursuant to article 82(1)(d) of the Statute. The Defence contends, *inter alia*, that the Decision on the confirmation of charges does no more than make very general reference to witness testimony without indicating the specific elements of that testimony which allowed the charges to be confirmed.⁵ The Defence emphasises that such a vague decision lacking precise evidentiary citations will cause confusion

¹ ICC-02/04-01/15-422-Red.

² ICC-02/04-01/15-423.

³ ICC-02/04-01/15-428.

⁴ ICC-02/04-01/15-423, paras. 25-35.

⁵ ICC-02/04-01/15-423, paras. 30 and 31.

throughout the rest of the proceedings, especially as it grants the Prosecution too much leeway.⁶

5. Under article 82(1)(d) of the Statute, either party may appeal any “decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”.

6. I would recall that article 82(1)(d) is made up of two cumulative conditions, with two alternative sub-conditions under the first of the two. In the terms of the first condition, the decision must involve an issue that would “significantly” – in other words, materially – affect (a) “the fair and expeditious conduct of the proceedings” or (b) “the outcome of the trial”.⁷ According to the second condition, it must involve an issue whose immediate resolution by the Appeals Chamber – in the opinion of the Pre-Trial or Trial Chamber – may materially advance the proceedings; that is to say an issue whose “immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial”.⁸ It is well-established practice at the Court, however, that the party seeking leave to appeal must in the first place identify a specific issue in the impugned decision before the chamber can grant its request.⁹

⁶ ICC-02/04-01/15-423, paras. 33 and 35.

⁷ Appeals Chamber, Situation in the Democratic Republic of the Congo, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, paras. 9-20, in particular para. 10; see also the “Decision on the ‘Defence Request for Leave to Appeal the Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute’”, ICC-01/05-01/08-2399, 30 October 2012.

⁸ ICC-01/04-168, para. 14.

⁹ See also “Reasons for Decision on ‘Defence Request for Leave to Appeal the “Decision on Defence request for stay of proceedings and further disclosure”” in *The Prosecutor v. Jean-Pierre Bemba*, ICC-01/05-01/08-3382, 3 May 2016, paras. 8-9.

7. The ground of appeal raised by the Defence for Dominic Ongwen should therefore be examined in the light of these criteria.

II. Does Dominic Ongwen's third ground constitute an appealable issue?

8. An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.¹⁰ The issue may be legal, factual or a mixed one.¹¹

9. I note that the Chamber invited the Prosecution to submit two discrete documents: a pre-confirmation brief¹² – a document for which no provision is made in the Statute or the Rules of Procedure and Evidence and which has never previously been produced in confirmation of charges proceedings¹³ – and a document containing the charges – the only document for which provision is made in article 61(3) of the Statute. The pre-confirmation brief¹⁴ is a 257-page document setting out methodically, on a charge-by-charge basis, the evidence on which the Prosecution has relied to establish the crimes attributed to Dominic Ongwen.

10. The Decision on the confirmation of charges is structured in such a way as to make plain that only the operative part containing the charges, *viz.* the second part of that decision, is thereby confirmed.¹⁵ The first part of the Decision on the confirmation of charges – a 73-page document which lists the evidence and points of law relied on by the Chamber – is uneven in its discussion of the various charges brought by the Prosecution. Only a few charges are analysed in full. Most are given a brief mention

¹⁰ Appeals Chamber, Situation in the Democratic Republic of the Congo, "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal", 13 July 2006, ICC-01/04-168, para. 9.

¹¹ *Idem.*

¹² ICC-02/04-01/15-375-AnxC-Red.

¹³ ICC-02/04-01/15-375-AnxA-Red.

¹⁴ ICC-02/04-01/15-375-Conf-AnxC.

¹⁵ ICC-02/04-01/15-422-Red, para. 157.

without indicating the specific evidence on which they rest. In my view, it is incomplete and inadequate in view of the 70 charges against Dominic Ongwen, citing five or six modes of criminal liability, that the document containing the charges calls upon the Chamber to confirm. I am submitting a separate opinion, appended to the Decision on the confirmation of charges, in which I analyse why the content of this first part is, in my view, lacking. In the opinion, I describe how the crimes with which the Chamber decided to charge Dominic Ongwen should have been laid out so as to show that there was sufficient evidence to establish substantial grounds to believe that he committed each of the crimes alleged.

11. My separate opinion appended to the Decision on the confirmation of charges also provides a review of the Court's case-law that, in my view, renders a full statement of reasoning vital to any decision on the confirmation of charges. This is, moreover, true of all judicial decisions, to quote the eminent legal scholar Serge Guinchard:

[TRANSLATION] A statement of reasoning is vital to the quality of justice. It is a bulwark against arbitrary decision-making, forcing judges to be aware of their opinions and their implications. It provides litigators with a justification for the decision and allows them to undertake a scientific analysis of case-law. [...]

For this reason, no matter how well-intentioned, any attempt to alleviate the burden on judges for the sake of expediting justice must be opposed. For example, accepting that a mere reference to the parties' submissions suffices to explain certain points risks a return to arbitrary decision-making since this shortcut is the beginning of laziness.¹⁶

12. The majority contend that the Defence has plainly failed to appreciate the distinction between the (limited) reasoning contained in the Decision on the confirmation of charges and the operative part of that Decision.¹⁷ My colleagues even add that it is only the charges as reproduced in the operative part of the Decision on the confirmation of charges that delineate the facts and circumstances for the

¹⁶ Guinchard, Serge (*et al.*). *Droit processuel, Droit commun et comparé du procès*. 3rd edition. Paris: Dalloz, 2005, p. 773.

¹⁷ ICC-02/04-01/15-428, para. 24.

purposes of the trial.¹⁸ They seem to suggest that the reasoning is to be found mainly in the operative part of the Decision.

13. The notion of an alleged separation between the reasoning and operative part of a judicial decision is odd as the grounds for a decision are supposed to lead logically to its operative part, of which they form the foundation. This is the first time that the *Chambers Practice Manual* has been applied in a decision on the confirmation of charges, and I observe that it merely provides that “[...] the Pre-Trial Chamber should keep the reasoning strictly limited to what is necessary and sufficient for the Chamber’s findings on the charges”.¹⁹ It will further be recalled that the Appeals Chamber clearly indicated on 18 December 2015²⁰ that – unlike the Statute, the Rules of Procedure and Evidence and the Regulations of the Court – the Manual is not binding on chambers or participants. The Appeals Chamber stated explicitly that the Manual, which contains no more than recommendations, could not constrain the Trial Chamber.²¹

14. I would add that the operative part of a decision on the confirmation of charges cannot, whatever the case, replace the ordinary requirements for providing an indication of reasons.

15. Any decision on the confirmation of charges in which a Bench drastically curtails discussion of the reasons for their decision represents a departure from the previous practice of pre-trial chambers at the Court. It calls into question whether there is any use in having a statement of reasons in a decision on the confirmation of charges; and it amounts to upholding that, in decisions on the confirmation of charges, it is no longer necessary to explain why there is sufficient evidence to commit

¹⁸ *Ibid.*, para. 26.

¹⁹ *Chambers Practice Manual*, February 2016, p. 18, para. 3.

²⁰ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled ‘Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court’”, 18 December 2015, ICC-02/11-01/15-369, para. 54.

²¹ *Idem.*

a person for trial on the basis of confirmed charges as required under article 61(7) of the Statute.

16. For the foregoing reasons, the issue of the reasoning in the Decision on the confirmation of charges raised by the Defence for Dominic Ongwen is a significant matter that merits examination by the Appeals Chamber.

III. Does the Decision raise an issue that could significantly affect the fair conduct of the proceedings or the outcome of the trial?

17. The term “fair” in the context of article 82(1)(d) of the Statute is associated with the standards of a fair trial, the attributes of which are an inseverable part of the corresponding human right, enshrined in more than one provision of the Statute (articles 64(2), 67(1) and 21(3)). This term must be construed and applied in accordance with internationally recognised human rights.²² The principles of a fair trial are not confined to the trial phase but extend to pre-trial proceedings as any breach of or departure from the rules of a fair trial at the pre-trial stage may have implications for the proceedings and affect the outcome of the trial. When considering a request for leave to appeal, the Chamber must determine whether the issue raised by the party concerned is likely to significantly affect the fair and expeditious conduct of the proceedings as a whole.²³

18. As has been mentioned above, an explicit indication of the reasons for a judicial decision is an essential component of the fair conduct of proceedings during the preliminary and trial phases alike. The need to state reasons is consonant with article 21(3) of the Statute, which obliges the Court to interpret and apply, *inter alia*,

²² Appeals Chamber, Situation in the Democratic Republic of the Congo, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 11.

²³ Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the Prosecution and Defence applications for leave to appeal the ‘Decision on the confirmation of charges’”, 24 May 2007, ICC-01/04-01/06-915, para. 24.

the Statute and the Rules of Procedure and Evidence in compliance with internationally recognised human rights.

19. As the Appeals Chamber has stated, pre-trial proceedings may have serious ramifications for the trial phase:

Breach of or deviation from the rules of a fair trial at the pre-trial stage of the proceedings may have implications on the proceedings and may affect the outcome of the trial. Purging the pre-trial process of errors consequential in the above sense is designed as a safeguard for the integrity of the proceedings. This is at the core of article 82(1)(d) of the Statute.²⁴

20. Of note in this regard is the case-law of the European Court of Human Rights (ECtHR) concerning the obligation to provide reasons for judicial decisions, an obligation that applies to judicial decisions generally and not just convictions and which, moreover, is not restricted to decisions in criminal cases. It is even more important when serious crimes are involved, as in the instant case.

21. Since the case of *Hadjianastassiou v. Greece*,²⁵ established ECtHR case-law has enshrined the obligation for judicial decisions to indicate with sufficient clarity the grounds on which they rely as an essential safeguard of the right to a fair trial within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.²⁶ The Appeals Chamber has reiterated that obligation, in particular in respect of decisions of pre-trial chambers.²⁷

²⁴ Appeals Chamber, Situation in the Democratic Republic of the Congo, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 11.

²⁵ ECtHR, *Hadjianastassiou v. Greece*, Judgment of 16 December 1992, Application no. 12945/87, para. 33.

²⁶ ECtHR, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, para. 61, Series A no. 288; ECtHR, *Ruiz Torija v. Spain*, Judgment of 9 December 1994, para. 29, Series A no. 303-A; ECtHR, *Higgins and others v. France*, Judgment of 19 February 1998, para. 42, *Reports of Judgments and Decisions* 1998-1; ECtHR, *Hiro Balani v. Spain*, Judgment of 9 December 1994, para. 27, Series A 303-B; ECtHR, *N. T. Giannousis and Kliafas Brothers S.A. v. Greece*, case of 14 December 2006, para 26, Application no. 2898/03; ECtHR, *Paraskeva Todorova v. Bulgaria*, Judgment of 25 March 2010, para. 43, Application no. 37193/07; ECtHR, *Gheorghe v. Romania*, Judgment of 15 March 2007, para. 43, Application no. 19215/04; ECtHR, *Kalkanov v. Bulgaria* Judgment of 9 October 2008, para. 24, Application no. 19612/02; ECtHR, *Taxquet v. Belgium* [GC], 16 November 2010, paras. 90-91, Application no. 926/05; ECtHR, *Tatishvili v. Russia*, Judgment of 22 February 2007, para. 58, Application no. 1509/02; ECtHR, *Salov v. Ukraine*, Judgment of 6 September 2005, para. 89, Application no. 65518/01; ECtHR, *Boldea v. Romania*, Judgment

22. As noted unanimously by the Grand Chamber – the ECtHR’s most authoritative panel – reasoned judicial decisions safeguard the primacy of law and defend against arbitrary decision-making:

In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society.

[...] Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence.²⁸

23. The ECtHR also recalls that the requirement to provide the reasons for a judicial decision goes hand-in-hand with the principle of the proper administration of justice and that only a reasoned decision enables public scrutiny to take place.²⁹

24. Public scrutiny of the administration of justice is as important for an international court as it is for a national court – all the more so in view of the gravity of the crimes that come before this Court and the impact of its judgments in numerous States.

of 15 February 2007, para. 28, Application no. 19997/02; ECtHR, *Juez Albizu v. Spain*, Judgment of 10 November 2009, para. 21, Application no. 25242/06; ECtHR, *Dima v. Romania*, Judgment of 16 November 2006, para. 34, Application no. 58472/00; ECtHR, *Vlasia Grigore Vasilescu v. Romania*, 8 June 2006, para. 38, Application no. 60868/00; ECtHR, *Alija v. Greece*, Judgment of 7 April 2005, para. 21, Application no. 73717/01; ECtHR, *Helle v. Finland*, Judgment of 19 December 1997, paras. 55-60, 157/1996/776/977; ECtHR, *Rache and Ozon v. Romania*, Judgment of 31 March 2009, para. 29, Application no. 21468/03; ECtHR, *Donadze v. Georgia*, Judgment of 7 March 2006, para. 31, Application no. 76644/01; ECtHR, *Bochan v. Ukraine*, Judgment of 3 May 2007, para. 78, Application no. 7577/02; ECtHR, *Ivanov and Petrova v. Bulgaria*, Judgment of 14 June 2011, para. 45, Application no. 15001/04; ECtHR; *Francesco Quattrone v. Italy*, Judgment of 26 November 2013, paras. 42-45, Application no. 13431/07; ECtHR, *Kuznetsov and others v. Russia*, Judgment of 11 January 2007, para. 83, Application no. 184/02; ECtHR, *Mitrofan v. Republic of Moldova*, Judgment of 15 January 2013, para. 53, Application no. 50054/07; ECtHR, *Papa v. Greece*, 6 July 2006, paras. 13-14, Application no. 21091/04.

²⁷ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’”, 14 December 2006, ICC-01/04-01/06-774, para. 30.

²⁸ ECtHR, *Taxquet v. Belgium* [GC], Judgment of 16 November 2010, paras. 90-91, Application no. 926/05.

²⁹ ECtHR, *Tatishvili v. Russia*, 22 February 2007, para. 58, Application no. 1509/02; ECtHR, *Salov v. Ukraine*, 6 September 2005, para. 89, Application no. 65518/01.

25. As far as the rights of the defence are concerned, recognised standards require all courts to inform the accused of the evidence and factual circumstances that allowed the Bench to confirm the charges and commit him or her for trial.

26. Precedents set at the Court and recognised international practice make plain that a fair trial requires the arguments set forth in the decision on the confirmation of charges to be sufficiently specific in respect of the evidence brought by the Prosecution, and where necessary to highlight any weaknesses in that evidence. It is neither desirable nor possible for judges to confine themselves to a cursory analysis of the evidence and to general assertions to the effect that the evidence is sufficient: they need to state which evidence and why. A stock statement of reasons – one that could be slotted into any decision on the confirmation of charges, affirming that the evidence is sufficient – falls short of the mark; what is needed is a decision on the confirmation of charges that contains a statement of reasons that is sufficiently specific to the case at hand and offers a precise citation of the evidence that persuaded the Bench with regard to each charge confirmed in the decision in respect of each crime and each mode of criminal liability.

27. In the Decision on the Defence Request the majority states that the operative part of the Decision on the confirmation of charges is at least as precise as the Prosecution's document containing the charges, and that this view has not been disputed by the Defence.³⁰ This assertion amounts to confusing a judicial decision with a Prosecution filing.

28. One of the vital characteristics of the Court's Statute and Rules of Procedure and Evidence – which radically distinguishes the Court from the *ad hoc* tribunals for the former Yugoslavia and Rwanda – is that it is for a pre-trial chamber to delineate the trial's parameters in a judicial decision and not the Prosecution. This emerged from the discussions among the Statute negotiators at the Rome Conference;³¹ they

³⁰ ICC-02/04-01/15-428, para. 25.

³¹ Report of the Preparatory Committee on the establishment of an international criminal court,

specified that there would be a document containing the charges; the right of the defence to dispute the evidence disclosed by the Prosecution; a confirmation of charges hearing; and a standard of proof that would refer to *sufficient* evidence to establish substantial grounds to believe that the accused perpetrated each of the crimes charged and consequently to commit the accused for trial.

29. The fair conduct of the trial is seriously affected in the instant case because the weakness of the reasoning set out in the Bench's own decision restricts the rights of the defence. The way in which the Decision on the confirmation of charges was drafted does not provide the Defence with details of what evidence was relied on or how the Chamber defined the crimes. The principle of equality of arms is violated since the Defence is not in a situation to examine the legal and factual bases for the Bench's Decision on the confirmation of charges. The outcome of the trial may well be affected.

30. The speed of proceedings may likewise be affected since the Defence could well raise the shortcomings of the Decision on the confirmation of charges – with its 70 charges referring to five or six modes of criminal liability – before the Trial Chamber. The Prosecution might also take advantage of the Decision's vagueness – on account of the lack of reasoning – to submit facts in a different manner or even to add factual allegations. The exact scope of the charges is a question that will affect the conduct of the trial as a whole and could lead to a complex dispute on a large scale.³²

31. The issue raised by the Defence is therefore likely to significantly affect the fair and expeditious conduct of proceedings as well as the outcome of the trial.

document A/CONF.183/2/Add.1, 14 April 1998, pp. 85-100; this document served as a basis for discussions during the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

³² By way of example, in *Ntaganda*, Trial Chamber VI issued a 41-page decision in which it had to rule on no fewer than 33 points of disagreement between the Prosecution and the Defence regarding the scope of the charges at trial stage: Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, "Decision on the updated document containing the charges", ICC-01/04-02/06-450, 6 February 2015. See in particular para. 23 and the operative part.

IV. Could the immediate resolution by the Appeals Chamber of the issue raised by the Defence have materially advanced the proceedings?

32. It is my view that the immediate resolution by the Appeals Chamber of the issue raised by the Defence could have “materially advanced the proceedings”. Such an examination could have resulted in an upholding or rejection of the practice proposed for the first time by the majority, and provided guidance to pre-trial chambers in the future. An issue within the meaning of article 82(1)(d) of the Statute is indeed involved. As I have previously stated, being granted leave to appeal would have allowed the Defence to bring the problem before the Appeals Chamber and as a result avoid uncertainty before the Trial Chamber as to the relationship between the reasoning in the Decision on the confirmation of charges and its operative part. It would have resolved the issue of insufficient reasoning, which may well prolong proceedings before the Trial Chamber.

33. For these reasons, it is my opinion that all of the requirements under article 82(1)(d) of the Statute were met.

V. Final remarks and conclusion

34. My colleagues emphasise at the outset – in paragraph 4 of the Decision on the Defence Request – that leave to appeal decisions on the confirmation of charges should be granted only in exceptional circumstances. I agree with that point of view – which was supported during the *travaux préparatoires* for the Statute, as has been recalled in this Court’s rulings to date.³³

³³ Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the Prosecution and Defence applications for leave to appeal the ‘Decision on the confirmation of charges’”, 24 May 2007, ICC-01/04-01/06-915, para. 19: see in particular footnote 18 and the references to the Statute’s *travaux préparatoires*; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Prosecutor’s Application for Leave to Appeal the ‘Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo’” 18 September 2009, ICC-01/05-01/08-532, para. 12: see in particular footnote 17 and the references to the Statute’s *travaux préparatoires*.

35. I further observe that my colleagues emphasise at the end of paragraph 4 of the Decision on the Defence Request that no pre-trial chamber has ever granted leave to appeal a decision on the confirmation of charges: this assertion is correct inasmuch as leave to appeal a decision on the confirmation of charges has only ever been granted once: to the Prosecution, on 1 March 2012, in *Mbarushimana*,³⁴ when the Pre-Trial Chamber had *dismissed* the Prosecution's charges in their entirety. However, "equality of arms" between the defence and the Prosecution supposes that a non-confirmation of charges has the same significance for the Prosecution as a confirmation of charges for the defence. However, the Prosecution may at any stage invoke article 61(8) of the Statute to file another request for charges rejected by the pre-trial chamber to be confirmed, whereas if the charges are confirmed the accused will be subjected to a particularly lengthy trial and possibly prolonged detention while it is ongoing. The only way for the defence to avoid such consequences is to seek leave to appeal the decision on the confirmation of charges. The possibility for the defence to challenge the decision on the confirmation of charges must therefore be maintained in full. The instant case does present an exceptional circumstance that would warrant granting the Defence leave to appeal.

36. For all these reasons, it is my view that the third issue raised by the Defence met the requirements of article 82(1)(d) of the Statute and that the Pre-Trial Chamber should have granted the Defence leave to appeal the Decision on the confirmation of charges on the ground of insufficient reasoning.

³⁴ Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, "Decision on the 'Prosecution's Application for Leave to Appeal the "Decision on the confirmation of charges"', 1 March 2012, ICC-01/04-01/10-487. Pre-Trial Chamber I has likewise only granted the Prosecution permission to appeal a decision adjourning the hearing on the confirmation of charges in *Gbagbo*: see Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, "Decision on the Prosecutor's and Defence Requests for Leave to Appeal the Decision Adjourning the Hearing on the Confirmation of Charges", ICC-02/11-01/11-464, 31 July 2013.

Done in English and in French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut

Dated this 10 May 2016
At The Hague, the Netherlands