

Contested Meanings: Timbuktu and the prosecution of destruction of cultural heritage as war crimes

Oumar Ba 

Abstract: Following the attacks in Timbuktu in 2012, the ICC's Al Mahdi case became the first instance where one perpetrator was solely charged with the war crime of destruction of cultural heritage. The ICC prioritized the crimes against cultural heritage at the expense of other types of atrocities in Northern Mali for two reasons: expediency, and the convergence of interests between the Court, the Malian state, and the international community. This study finds that the international community, the state, and the local community do not have the same conceptions and approaches regarding cultural heritage, its protection, or its value.

Résumé: A la suite de la destruction des mausolées de Tombouctou en 2012, la Cour pénale internationale se saisit du cas de Al Mahdi, qui devint ainsi le premier suspect à être jugé du seul crime de guerre de destruction de patrimoine culturel devant une juridiction internationale. La cour s'est focalisée sur ce crime contre le patrimoine culturel, délaissant ainsi les autres crimes commis au nord du Mali durant la crise de 2012-2013 pour deux raisons principales : la convenance, et la convergence de ses intérêts d'une part, et ceux de l'état malien et de la communauté internationale d'autre part. Cet article conclut que la communauté internationale, l'état malien, et les populations locales n'ont pas la même conception du patrimoine culturel, sa protection, et sa valeur.

Resumo: No seguimento dos ataques perpetrados em Timbuktu em 2012, o Tribunal Penal Internacional (TPI) procedeu ao julgamento de Al Mahdi, naquele que foi o

African Studies Review, Volume 0, Number 0 (2020), pp. 1–20

Oumar Ba is an Assistant Professor of political science at Morehouse College in Atlanta. His research focuses on the politics of international justice and the global governance of atrocity crimes. He is the author of *States of Justice: The Politics of the International Criminal Court* (Cambridge University Press, 2020). E-mail: oumar.ba@morehouse.edu

© The Author(s) 2020. Published by Cambridge University Press on behalf of African Studies Association

doi:[10.1017/asr.2020.16](https://doi.org/10.1017/asr.2020.16)

primeiro processo por crimes de guerra de destruição de património cultural envolvendo um único arguido. Duas razões explicam que o TPI tenha atribuído prioridade aos crimes perpetrados contra o património cultural, em detrimento de outro tipo de atrocidades cometidas no norte do Mali: por um lado, a prudência; por outro, a convergência de interesses entre o TPI, o Estado maliano e a comunidade internacional. O presente estudo conclui que a comunidade internacional, o Estado e a comunidade local não partilham as mesmas conceções e abordagens relativamente ao património cultural, à sua protecção e ao seu valor.

Introduction

An inextricable link between cultural heritage and human rights has developed at the international level over the past five decades. The 1972 World Heritage Convention has achieved a universal scope of application, leading to an era in which the “humanization” of international cultural heritage law is on full display.¹ The Convention laid the foundation for the collective protection of cultural heritage sites and artefacts considered to be of “outstanding universal value.”² World heritage has become, therefore, a privileged category, one that the international community has chosen to identify, reify, and protect, as states, international courts, and various other actors view sites listed on the UNESCO World Heritage List as warranting special protection.³ Yet, how are such interventions perceived by the local communities of people whose lives, livelihoods, and cultural heritage are under assault?

Using for example the case of International Criminal Court (ICC) intervention in the aftermath of the destruction of cultural heritage in Timbuktu, it can be argued that the Court prioritized the war crime of destruction of cultural heritage for two main reasons. The first one is expediency; the ICC prosecutor pursues cases in which she hopes the evidence in her possession will result in a conviction, especially given that the Court continues to struggle with major setbacks. The evidence against the Islamist suspect Ahmad Al Faqi Al Mahdi for directing the destruction of the sites in Timbuktu was overwhelming, and he was already in custody in Niger, making his transfer to The Hague and his speedy trial readily accomplished.⁴ The second reason is the convergence of interests between the ICC, the Malian state, and the international community, symbolized in this case by UNESCO. Framed within the context of the global War on Terror and the symbolic representations of Timbuktu in the global imagination, the willful destruction of the sacred edifices was particularly shocking. It is in such a context that the French military intervention and ICC juridical intervention were deployed. Yet, it becomes clear that the local communities of people in whose name justice is delivered find the ICC intervention not aligned with their concerns, as the focus on the crime of destruction of cultural heritage appears to sideline other more serious crimes inflicted upon their lives, bodies, and dignity. This misalignment of priorities highlights the fact that as an international institution, the ICC is concerned with its own image and

legacy, and its priorities are often different from those of local constituencies. In this regard then, the three main actors—the international community, the state, and the local community to whom the cultural heritage sites “belong”—do not have the same conceptions, approaches, or views regarding cultural heritage, its protection, or even its value.

As attacks against cultural heritage sites have gained unprecedented attention in recent conflicts, interventionist approaches from the international community, especially from international or hybrid tribunals in areas of protection of cultural heritage, are likely to increase. Moreover, the guilty plea, speedy trial, indictment, and condemnation of Al Mahdi, in addition to the order of reparation rendered against him, augur major developments in the areas of international justice and cultural heritage law. Using a micro-level analysis, this study draws upon an empirical inquiry of individual lived experiences from local communities in Mali. The research for this article, however, was not designed to be an opinion survey of Malians, aiming at measuring their views about the ICC intervention. Rather, the purpose of this article is to investigate the tensions at the heart of international judicial intervention and its dynamics and local effects, in line with the growing literature on the ICC and African domestic contexts.⁵ To that extent, the article relies on extensive research on ICC primary sources, including legal documents, briefs, and judgments. Moreover, the research builds upon background knowledge acquired from many years of research on the ICC and its various cases, which included previous fieldwork in Kenya, Uganda, and The Hague. Finally, the findings of the article are based on a total of eighteen semi-structured interviews conducted with local residents in Timbuktu and Djenné and nine interviews in Bamako with representatives of national and international human rights groups, elected officials, academics, journalists, and a retired Malian judge. The interviewees were selected through a snowballing strategy, with the help of local guides in Timbuktu and Djenné, to identify individuals who, because of their occupations or lived experiences, could bring in personal and compelling insights regarding the attacks on cultural heritage, the conflict in Northern Mali, and the ICC intervention. All the interviews were conducted face to face by the author in the French language during a month of fieldwork in Mali in December of 2016. The next section discusses the basis for interventionist approaches in the prevention of or in response to the intentional destruction of cultural heritage artefacts or sites. A brief contextual history of the 2012 conflict in Mali follows, and then the destruction of cultural heritage sites in Timbuktu is considered as a test case for the ICC. Primary sources and interviews in Mali highlight the contested meanings of Timbuktu’s cultural heritage and the complex socio-cultural questions raised by the ICC intervention.

Interventions in the name of the universal value of cultural heritage

Over the past few decades, the international community has developed a conscience which has matured with regard to the proper scope of the notion

of cultural heritage and its connection to the identity and history of peoples and their rights. From the 1990s wars in the former Yugoslavia to the current civil war in Syria, states, international institutions, and NGOs have driven a set of interventionist approaches to urge protection of and response to the destruction of cultural heritage sites. This international cooperation underlies a conception of the cultural heritage of humanity, often referencing the World Heritage Convention.⁶ This development is concomitant with the drive for states to have their sites listed on the UNESCO World Heritage List. Such listing garners for states and local communities some international prestige and allows access to the World Heritage Fund while increasing the potential for tourism and development, despite the overt politicization of that process.⁷

As states remain the primary actors and enforcers of international law, they retain the ability to hinder or promote the protection of cultural heritage sites and artefacts within and beyond their territory. Yet, when faced with interventionist approaches, communities often resist this broad application of the legal concept of common heritage of mankind, which arguably impinges on their primary agency in relation to their own cultural heritage (Vrdoljak 2015). Although there is a long history of legalist intervention in the area of cultural heritage, such interventions are heightened by not only the recent willful destruction of cultural artefacts in many conflicts around the world, but also the live broadcasting of such assaults which increased their shock value.

Following the destruction of the religious and cultural edifices in Timbuktu in 2012, the Al Mahdi case at the ICC became the first instance in which a perpetrator was charged by an international court with the sole war crime of the destruction of cultural heritage. The ICC prosecutor emphasized that the mausoleums destroyed were important both from a religious and a historical point of view. As Paige Casaly argues, these sites could be viewed as important from a universal perspective as part of a heritage of shared humanity, or their importance may be derived from the attachment to a specific community, society, or nation.⁸ These alternative—if not competing—perspectives are in full display in the events surrounding the arrest and prosecution of Al Mahdi and the focus of the international community on the destruction of the mausoleums while members of the local communities are calling attention to the other atrocities that the jihadists, the rebels, and Malian security forces committed in northern Mali.

The UNESCO designation of the religious and cultural edifices in Timbuktu as world heritage sites attests not only to their outstanding value, but also to their significance as shared heritage belonging to humanity. From the international community standpoint then, targeting those edifices for destruction was clearly an attack against those values of shared humanity and cultural heritage for humankind. As Matthew Weinert (2017:420) argues, framing local forms of cultural heritage in universalist terms of value and identity exemplifies the importance that UNESCO and other international actors have ascribed to cultural heritage.⁹ Criminal prosecution is but

one of the actionable items in the name of the protection of such heritage. Although willful destruction of cultural heritage, especially when broadcast for the world to see, feeds clearly into inhumane acts, Lynn Meskell (2002:564) warns that one must be cautious not to equate all destruction of cultural heritage with genocidal acts.¹⁰ The gravity of crimes against cultural heritage must be weighed against the “symbolic and emotional value” of the targets (Weinert 2017). The ICC judges in the Al Mahdi case acknowledged this, recognizing that “not all crimes... are necessarily of equivalent gravity,” although they also found that Al Mahdi’s criminal acts “aimed at breaking the soul of the people of Timbuktu.”¹¹ For the local communities in Mali however, Al Mahdi’s criminal acts, despite their gravity, are not the primary concern when weighed against other atrocities committed in northern Mali.

Destruction of cultural heritage in Mali: a test case for the ICC

In January of 2012, a newly formed Tuareg rebel group, the National Movement for the Liberation of Azawad (French acronym MNLA) attacked military garrisons in the northern Mali towns of Menaka, Aguelhok, and Tessalit, which set off the Malian crisis. The inept response from the Malian state and its military command led to widespread discontent among the soldiers and their families, which precipitated the coup in Bamako on March 21, 2012, while the Tuareg rebel groups continued to capture territory in the north.¹² On April 6, 2012, shortly after the MNLA declared the independent Republic of Azawad, the Islamist groups Ansar Dine, Al Qaeda in the Islamic Maghreb (AQIM), and the Movement for Oneness and Jihad in West Africa (French acronym MUJAO) overpowered them, leaving the MNLA only in control of the northern city of Kidal, where it sought to distance itself from the jihadist ideology.¹³ A French military intervention re-established the Malian state authority over the region in January of 2013.

The aftermath of the Islamist takeover of northern Mali proved to be a test case for the ICC. Mali had ratified the founding treaty of the ICC on August 16, 2000, and the 2012 crisis came under the jurisdiction of the ICC through a referral letter dated July 13, 2012.¹⁴ Notably, Mali referred to grave violations of human rights and humanitarian law committed in the northern part of the country, including “summary executions of Malian soldiers, rape of women and girls, massacres of civil populations, recruitment of child soldiers, torture, [...] forced disappearances, destruction of symbols of the state, buildings, hospitals, tribunals, mayor’s offices, schools, NGO headquarters, destruction of churches, mausoleums and mosques.”¹⁵

Subsequently, the ICC prosecutor announced that she would open an investigation, given that the legal requirements were met, having determined that there was a reasonable basis to believe that war crimes had been committed in Mali.¹⁶ The ICC issued a warrant for the arrest of Al Mahdi on September 18, 2015, and he was transferred to The Hague a week later. The ICC prosecutor alleged that Al Mahdi, as the head of the *Hesbah* brigade—the Islamist police—between May and September 2012 had committed war

crimes, individually and jointly with others, relevant to the destruction of Sufi shrines in Timbuktu, which were protected as UNESCO world heritage sites.¹⁷ Al Mahdi pleaded guilty to the charges and was sentenced to nine years in prison.

Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, a second suspect in the Mali case, was taken into ICC custody and transferred to The Hague on March 31, 2018.¹⁸ Al Hassan is accused of having participated in the policy of forced marriages that led to rape and sexual enslavement of girls and women, in addition to having participated in the destruction of the religious and cultural monuments in Timbuktu.¹⁹ With the Al Mahdi and Al Hassan cases, Timbuktu has emerged as a new frontier in international law, where destruction of cultural heritage has taken center stage.²⁰

Yet, acts of destruction of cultural heritage have been integral to the conduct of war since ancient times.²¹ During the nineteenth century, the international community sought to codify in laws the criminalization of the destruction of cultural heritage, which was later interpreted by the Nuremberg tribunal in 1945, and subsequently the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the ICC have followed suit. The early codification of the crimes of destruction of cultural heritage can be traced back to the Brussels Declaration, which adopted the International Regulations on the Laws and Customs of War in 1874.²² The Nuremberg tribunal subsequently recognized both the 1899 and 1907 Hague Conventions as customary international law, as its jurisdiction covered violations of the laws and customs of war, including “wanton destruction of cities, towns or villages, or devastation not justified by military necessity.”²³ The legacy of the Nuremberg judgement proved influential in the codification efforts of UNESCO and the adoption of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.²⁴

The emergence of the view that cultural heritage is part of the shared interest of humanity has grown stronger over the past five decades.²⁵ International law has since rallied around the idea of preserving cultural heritage in the interest of our shared humanity, and international legal texts call for adjudicating the destruction of cultural heritage as a war crime.²⁶ Moreover, the ICTY has confirmed that attacks on Muslim religious sites during the Balkan Wars may warrant prosecution as crimes against humanity.²⁷ The ICTY’s inclusion of crimes against cultural property was a major addition in strengthening international instruments for the protection of cultural property, identity, and history in times of armed conflict.²⁸ Additionally, the Rome Statute of the ICC includes in its list of war crimes “intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals...”²⁹ This means that the destruction of cultural sites in Timbuktu falls under the scope of war crimes. Therefore, the ICC intervention in Mali, although unprecedented in its focus on cultural crimes, comes on the heels of a vast number of legal precedents that sought to prosecute those types of crimes as war crimes and crimes against humanity.

Furthermore, it is apparent that in Timbuktu and elsewhere, Sufi shrines have become prime ideological battlegrounds, coming under assault in such places as Pakistan, Egypt, Tunisia, Libya, and Kashmir, to “assert sovereignty [and] terrorize the living.”³⁰ From Bamiyan to Palmyra, Islamist fundamentalism has entered the fray of wanton destruction of cultural heritage. The Taliban destruction of the Buddhas of Bamiyan in 2001 attracted condemnation from states and international institutions and led to the UNESCO adoption of the Declaration concerning the Intentional Destruction of Cultural Heritage.³¹ Unlike the incidents during the Balkan wars, the Buddha demolition was planned and displayed for the world to see.³² In Syria, the UN has reported that about three hundred historic sites have been destroyed since the beginning of the civil war in 2011.³³ The ICC intervention in Timbuktu is therefore but one more step in the attempt by the international community to safeguard the common heritage of humanity.

The ICC intervention in Timbuktu: Contested Meanings

Al Mahdi became the first suspect to be prosecuted under the Rome Statute provision of the war crime of “intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes [and] historical monuments.”³⁴ In Timbuktu, the Islamist leaders explained the destruction of the Sufi shrines on religious grounds. Abu Dardar said, “Not a single mausoleum will remain in Timbuktu, Allah doesn't like it...” Ould Hamaha, another leader of Ansar Dine, explained, “It's forbidden by Islam to pray on tombs and ask for blessings... We will not let the younger generation believe in shrines as God, regardless of what the U.N., UNESCO, International Criminal Court or ECOWAS have to say.”³⁵ The symbolic value of Timbuktu and its edifices is apparent to the jihadists also, given that this willful destruction only occurred in Timbuktu.

Beyond the ICC arrest and conviction of Al Mahdi, however, complex socio-political questions remain.³⁶ For instance, would the crimes against cultural heritage—which have a long history in Mali, ranging from looting of archaeological sites to the illicit art market—have warranted such attention from the outside world had they happened in isolation or under different circumstances?³⁷ Malian history is also fraught with movements of jihad and counter-jihad that have led to many instances of the destruction and rebuilding of mosques.³⁸ Therefore, the context of the 2012 destruction of Sufi shrines in Timbuktu and the international attention it garnered must be viewed in the context of transnational jihadism and the global War on Terror.³⁹

The city of Timbuktu also symbolizes a great architectural achievement, with its mosques built between the fourteenth and fifteenth centuries. They remain a testament to Timbuktu's rich past and occupy a central place in the daily cultural lives and identities of its residents. The Ahmed Baba Institute stands as an example of the efforts to preserve the valuable manuscripts derived from Timbuktu's past, which include 408 private collections

comprising one million manuscripts distributed between state, private, and family libraries.⁴⁰ To a large extent, the world imagination of Timbuktu is linked to the manuscripts, whose invocation hold a mythical significance and magical qualities, along with their description as “ancient,” although the oldest Timbuktu manuscripts date only from the thirteenth century.⁴¹ Given all these representations of Timbuktu, its meaning for the local populations, and the ways in which the city is thought of and captured in the global imagination, the 2012 Islamist takeover of the city was, in the words of a resident, “a catastrophe.”⁴²

What about “the more serious crimes”?

Whereas the international community seems to have adopted an ethnocentric approach to the destruction of cultural monuments in Timbuktu, most of the interviewees in Mali believe that the ICC’s focus on Al Mahdi and the destruction of mausoleums is a distraction.⁴³ Most interviewees are very skeptical—and often hold negative views—of the ICC’s focus on cultural crimes. Some Timbuktu residents referred to the destroyed monuments as “broken bricks.”⁴⁴ Moreover, interviewees stressed the fact that “those shrines were built by humans,” which is meant to convey the idea that human lives are more valuable than those buildings.⁴⁵ For them, the crimes committed against the residents of northern Mali and the soldiers deserve more attention, especially those committed in Aguelhok. A recurrent question during discussions about the ICC and Mali is “what about Aguelhok, where 100 Malian soldiers were massacred, and there is no justice?”⁴⁶

During the early days of the 2012 Tuareg rebellion, Malian soldiers at the Aguelhok military barracks ran out of ammunition after three days of siege and surrendered to the MNLA rebels.⁴⁷ Later, pictures of soldiers taken prisoner surfaced, all with their throats slit.⁴⁸ A national commission of inquiry concluded that “the disarmed Malian army combatants were arrested, hands tied behind their back, before being coldly killed.”⁴⁹ As a retired Malian judge says, “Maliens are not very attached to these cultural artefacts... They ask, what about the soldiers who were killed in Aguelhok? Instead, the ICC goes after this little breaker of shrines [Al Mahdi].”⁵⁰ That the international community is more concerned with the monuments and shrines at the expense of other crimes shows where their priorities lie. Indeed, the speedy trial of Al Mahdi in The Hague contrasts with the lack of investigation or prosecutions of other crimes such as killings, rape, forced marriages, and human rights abuses. Malian authorities arrested some perpetrators, but they were later freed in the framework of the peace negotiations.⁵¹

The interviewees also deplore the fact that the charges against Al Mahdi cover only crimes committed against cultural heritage. As the head of Amnesty International in Mali asserts, although the ICC intervention was necessary, “it did not meet our demands” because “there are more serious crimes that were committed in the north.”⁵² A librarian in Timbuktu also

contends that “trying someone at The Hague did not solve any problem.”⁵³ For residents of Timbuktu, the crimes against their lives and dignity ought to take precedent over the destruction of the religious edifices. As one local resident in Timbuktu contends, “What people need to realize is that these mausoleums do not represent that much for us. For us, it’s life, the human being that is significant... So, the mausoleums that they destroyed did not hurt us... The ICC hasn’t done anything for us... This cultural heritage seems to have more value than my life, my daughter’s life.”⁵⁴ Indeed, civilians bore the brunt of the conflict in Mali.⁵⁵

In total, the Armed Conflict Location and Event Data Project (ACLED) has reported 3,589 people killed between the onset of the conflict in Mali in January of 2012 and the end of 2018.⁵⁶ The onset of the 2012 conflict led to the displacement of some 400,000 residents of northern Mali by the end of that year. Islamists groups, Tuareg separatist militias, and Malian state forces all committed atrocities and widespread abuses against civilians—which included summary executions, forced disappearances, recruitment of child soldiers, sexual abuse, looting, pillaging, and amputations.⁵⁷ In addition to the massacre at Aguelhok, abuses by Tuareg separatists and Arab militias include “pillaging of hospitals, schools, aid agencies, warehouses, banks, and government buildings; and use of child soldiers.” As Islamists consolidated their hold on the region, amputations, floggings, and stoning to death increased, to impose new moral codes to the society. On the other hand, Malian soldiers also detained, tortured, and summarily executed men accused of collaborating with rebel groups, or members of rival military units. There has been no meaningful effort to investigate these events or to hold the perpetrators accountable.⁵⁸

Following the 2013 French military operation *Serval* that defeated the Islamists groups, the UN deployed a peacekeeping force in Mali, as the conflict in northern Mali morphed into a diffused insurgency that later expanded to include intercommunal violence in the central region of the country. Years later, various actors are still committing atrocities in the region.⁵⁹ Moreover, since the deployment of the UN peacekeeping mission in 2013, 206 UN peacekeepers have been killed in Mali, making it the deadliest ongoing UN peacekeeping operation in the world.⁶⁰ Serious abuses by state security forces continue, which include violations of human rights and international humanitarian law, such as extrajudicial killings, enforced disappearances, torture, and arbitrary arrests.⁶¹ These abuses and crimes have not been seriously investigated either by the Malian state or by the ICC.

However, in March of 2018, more than three years after the arrest of Al Mahdi and the recrimination of the population of Timbuktu, it appears that the ICC prosecutor had signaled a willingness to change course and broaden the charges against suspects in the Malian situation. Unlike the case of Al Mahdi, who was charged solely on the basis of his participation in the destruction of cultural heritage in Timbuktu, Al Hassan was indicted for “crimes against humanity (torture, rape and sexual slavery; violence to persons and outrages upon personal dignity; attacks intentionally directed

against buildings dedicated to religion and historic monuments, and the passing of sentences without judgment pronounced by a regularly constituted court...)." ⁶² These charges obviously address some of the recurring criticism from the populations of Timbuktu, especially in regard to the limited focus on crimes solely committed against cultural heritage.

Frying the "little fish"

The prosecution of Al Mahdi and the focus on the war crime of destruction of cultural heritage are also the result of a convergence of interests between the Malian state, the ICC, and the international community, in addition to the expediency of the proceedings. At his trial, Al Mahdi reached an agreement with the prosecutor's office in which he would plead guilty and not appeal the verdict if he received a prison sentence of between nine and eleven years. But many Malians believe that the ICC is prosecuting the wrong person, convinced that Al Mahdi was not the one most responsible for the many crimes that were committed in Mali in 2012–2013. ⁶³ As his former teacher in Timbuktu claimed, Al Mahdi is the wrong man for the ICC because "[he] is just a little fish. But in Mali it is the little fish who are caught." ⁶⁴ Indeed, cycles of rebellions and wars in northern Mali are often followed by peace agreements and cooptation of former rebel leaders into the government, wherein immunity is granted to perpetrators. In fact, one Malian journalist said, "The big fish are the ones who signed the peace accords." As he noted during the interview, "Al Mahdi has been convicted, that's good. But [Maliens] would have preferred that the prosecution starts with the human rights violations, the cases of rape, assassinations, massacres... [The] ICC justice is selective." ⁶⁵ As Eva Vogelvang and Sylvain Clerc write, "It is questionable whether Al Mahdi is indeed the most responsible for the crimes... The fact that he was the head of the "Hisbah" does not make him the individual who bears the greatest responsibility for the destruction of religious buildings." ⁶⁶ In any case, indicting Al Mahdi positively impacted the legitimacy of the ICC and projected the image of a court that is capable of completing a trial within a couple of weeks, rather than many years. The brief time between the arrest warrant and the transfer to ICC custody was indeed unprecedented in the court's history. For the ICC, therefore, going after "the little fish" such as Al Mahdi proved to be an effective strategy.

Around the time of the Mali conflict, pursuing lower-level perpetrators had become part of a new strategy that the ICC's Office of the Prosecutor (OTP) deployed in response to its first decade of challenges. Noting that proving criminal responsibility of those most responsible may face some evidentiary hurdles, the OTP, in its 2012–2015 Strategic Plan, explains that "[it will] sometimes... change its approach due to limitations on investigative possibilities and/or a lack of cooperation." ⁶⁷ The new strategy will gradually build upward "in which the Office first investigates and prosecutes a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable prospect of conviction for the most responsible." ⁶⁸ Ultimately, the

OTP “will also consider prosecuting lower level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety.”⁶⁹ This seems to be the case with Al Mahdi, as far as the OTP was concerned. For the Malian state too, Al Mahdi symbolized the “bad jihadist.”

Good rebels and bad jihadists

In its long history of facing cyclical Tuareg rebellions, the Malian state has often taken the position of negotiating with the rebel groups and coopting its leaders into various government positions. This posture has also been supported by various international actors, especially France, which to this day still has an ambivalent stance regarding the Tuareg rebel groups. Whereas the rebels sought independence to build the Republic of Azawad, the jihadists aimed at establishing a political entity based on sharia that does not necessarily limit itself to the northern Malian territory. The 2012 crisis and its aftermath, because it involved both Tuareg secular rebels fighting for secession and other Islamists groups aiming at establishing an Islamist-based rule over the territory, has exacerbated the need to differentiate between the groups and their aims, despite the fluidity of the identities of both the groups and their members.⁷⁰ This differentiation between the good rebels and the bad jihadists plays out in the way the responsibilities for the crimes committed during the crisis are situated. The Malian state position was that the jihadists who had committed the crimes in the North fled after the French intervention, whereas the rebels, “who are our parents, we can negotiate with.” The state has therefore prioritized peace “at the expense of the plight of the victims.”⁷¹ Yet, the distinction between jihadists (Islamists/bad) and rebels (secular/with legitimate grievances) is tenuous at best. Many youths joined the jihadists when those came into town because they brought money with them and offered new opportunities.⁷²

However, the focus on the Al Mahdi case and the later arrest of Al Hassan appear to have let off the hook many of the main perpetrators. As one Malian journalist covering human rights asserts, “Impunity is real in Mali... Women were raped in the North, there were amputations [committed by the Jihadists], public floggings... All these crimes went unpunished.”⁷³ The local residents do not see the difference between the MNLA rebels and the jihadists, in terms of the crimes that were committed.⁷⁴ Yet, the Malian government uses labels to explain some of its actions. It differentiates “good” rebels from “bad” jihadists. Whereas atrocities and crimes have been committed by all parties involved in the conflict, only the jihadist groups have engaged in systematic destruction of cultural heritage. Therefore, having the ICC focus on such crimes as destruction of cultural heritage helps the Malian state position itself on the side of the international community that takes cultural heritage seriously, aware of the civilizational value of such heritage, and able to isolate the non-state actors who wantonly destroy cultural heritage. The prosecution of Al Mahdi therefore provides an avenue for the Malian state not just to evade investigations and prosecution of its agents, but

also to side with the court and the international community on this case and benefit from the funds raised and the rebuilding and preservation of the cultural heritage of Timbuktu.

Conclusion

Timbuktu, as many other cities in northern Mali, is currently patrolled by both the Malian army and a UN contingent of peacekeeping forces as international funds have come in for the reconstruction of the sites that Al Mahdi and the Ansar Dine jihadists destroyed.⁷⁵ This rehabilitation program, which was piloted by UNESCO, covers three mosques and sixteen mausoleums, as well as the immaterial culture.⁷⁶ These swift efforts to restore and preserve the cultural heritage also demonstrate the extent to which Timbuktu captures the imagination of the international community. As Timbuktu is considered a cultural and religious site, the priorities of the international community lie in the preservation of that image, minimizing the concerns of the local communities.⁷⁷ Whereas, without any doubt, the destruction of cultural heritage merits prosecution as a war crime, many Malians believe that other crimes committed upon their lives and dignity ought to be investigated and prosecuted by both local and international courts as well.

The Malian case highlights the tensions and contradictions of such interventionist approaches to prosecution for destruction of cultural heritage, as well as the complexity of the relationship between local constituencies and the international justice system. In reality, the international criminal justice system operates on a different spectrum than that of the local communities. Whereas the ICC intervention is guided by a professed commitment to uphold accountability for atrocities and to deliver justice in the name of humanity, its allocation of resources for investigations and selective prosecution is also guided by expediency and practical and political considerations. As the ICC stands equally as a testament to hope and as a symbol of deception, many of the expectations that local populations put on the ICC may just not be deliverable.⁷⁸ As Sara Kendall argues, “The theoretical construction of international criminal law as a collective project of the international community, devoid of political interests... contrasts with the field’s work in practice.”⁷⁹ Simply put, for the ICC, the indictment, prosecution, and swift trial of Al Mahdi was a positive development and a vehicle for legitimization.

This study also shows the ways in which for the Malian state, highlighting the destruction of the cultural heritage and placing Timbuktu at the center of the global imagination presents an opportunity. Ultimately, faced with assaults against its existence and survival, the Malian state uses the ICC prosecution for crimes against cultural heritage in Timbuktu as a vehicle for its legitimization. These interventionist approaches from the Malian state, the ICC, and the international community are fraught with tensions vis-à-vis the local populations who experienced an assault not only on their cultural

heritage, but also—and more importantly—on their lives, bodies, and dignity.

Acknowledgments

I am grateful to Leonardo Villalòn and the UF Sahel Research Group for the generous funding of my fieldwork research in Mali. I would like to also thank Ena Barisic for her research assistance, through the Junior Fellows program at the University of Florida's Department of Political Science. Sebastian Elicher provided helpful feedback on earlier drafts of this article. Thanks also to the three anonymous *ASR* reviewers and the editors.

References

- ACLEED. "Mali Country File." Available at <https://www.acleeddata.com/tag/mali/>.
- Amnesty International. 2012a. "Mali: 'We Haven't Seen Our Cellmates Since': Enforced Disappearances and Torture of Soldiers and Police officers opposed to the junta." Index number: AFR 37/004/2012, July 31. Available at <https://www.amnesty.org/en/documents/afr37/004/2012/en/>.
- . 2012b. "Mali: Civilians Bear the Brunt of The Conflict." Index AFR 37/007/2012, September 20. Available at <https://www.amnesty.org/en/documents/afr37/007/2012/en/>.
- . 2012c. "Mali: Five Months of Crisis: Armed rebellion and military coup" Index number: AFR 37/001/2012, May 16. Available at <https://www.amnesty.org/en/documents/afr37/001/2012/en/>.
- Askew, Mark. 2010. "The Magic List of Global Status: UNESCO, World Heritage and The Agendas of States." In *Heritage and Globalisation*, edited by Sophia Labadi and Colin Long, 19–44. London: Routledge.
- Ba, Oumar. 2019. "Who Are the Victims of Crimes against Cultural Heritage?" *Human Rights Quarterly* 41 (3): 578–95.
- . 2020. *States of Justice: The Politics of the International Criminal Court*. Cambridge: Cambridge University Press.
- Bell, Dianna. 2013. "Understanding Currents of Islam in Mali", *Cultural Anthropology*, June 10.
- Bokova, Irina. 2012. "Speech at Opening Session of 36th Session of the World Heritage Committee." Saint Petersburg, Russian Federation, June 24.
- Borelli, Silvia, and Frederico Lenzerini, eds. 2012. *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*. Leiden: Marins Nijhoff Publishers.
- Bories, Clémentine. 2005. *Les bombardements serbes sur la vieille ville de Dubrovnik: La protection internationale des biens culturels*. Paris: Pedone.
- Casaly, Page. 2016. "Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law." *Journal of International Criminal Justice* 14 (5): 1199–1220.
- Cavendish, Julius. 2012. "Destroying Timbuktu: The Jihadist Who Inspires the Demolition of the Shrines." *Time*, July 10. Available at <http://world.time.com/2012/07/10/destroying-timbuktu-the-jihadist-who-inspires-the-demolition-of-the-shrines/>.

- Cleere, Henry. 2013. "The Concept of 'Outstanding Universal Value' in The World Heritage Convention." *Conservation and Management of Archaeological Sites* 1 (4): 227–33.
- Francioni, Francesco. 2004. "Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity." *Michigan Journal of International Law*. 25 (1209).
- Francioni, Francesco, and Frederico Lenzerini. 2003. "The Destruction of the Buddhas of Bamiyan and International Law." *European Journal of International Law* 14 (4): 619–51.
- , eds. 2008. *The 1972 World Heritage Convention: A Commentary*. Oxford: Oxford University Press.
- Frulli, Micaela. 2011. "The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency." *EJIL* 22 (1): 203–17.
- Harber, Fatouma. 2015. "Why the ICC Has the Wrong Man on Trial over Invasion of Timbuktu." *The Guardian*, September 30. Available at <http://www.theguardian.com/world/2015/sep/30/icc-mali-timbuktu-invasion-trial>.
- Haidara, Abdel Kader. 2008. "The State of Manuscripts in Mali and Efforts to Preserve Them." In *The Meanings of Timbuktu*, edited by Shamil Jeppie and Souleymane Bachir Diagne, 265–75. Cape Town: HRSC Press.
- Hirad, Abtahi. 2001. "The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia." *Harvard Human Rights Journal*, 14 (1): 1–32.
- Human Rights Watch. 2013. "World Report 2013: Mali- Events of 2012." Available at <https://www.hrw.org/world-report/2013/country-chapters/mali>.
- . 2018. "World Report 2017: Mali- Events of 2017." Available at <https://www.hrw.org/world-report/2018/country-chapters/mali>.
- ICC. 1998. "Rome Statute of the International Criminal Court." Available at https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.
- . 2012. "Mali Referral Letter." Available at <https://www.icc-pi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>.
- . 2016a. "Trial Hearing Transcript." ICC-01/12-01/15. Available at https://www.icc-cpi.int/Transcripts/CR2016_05767.PDF.
- . 2016b. "Al Mahdi, Alleged Crimes." Available at <https://www.icc-cpi.int/mali/al-mahdi/pages/alleged-crimes.aspx>.
- . 2016c. "Public Redacted Decision on the Confirmation of Charges against Ahmad Al Faqi Al Mahdi." ICC-01/12-01/15-84-Red, March 24. Available at <https://www.icc-cpi.int/iccdocs/doc/doc2228286.pdf>.
- . 2018a. "Mandat d'arret à l'encontre d'Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud." Document No ICC-01/12-01/18-2, March 31. Available at https://www.icc-cpi.int/itemsDocuments/CR2018_01863_FRA.PDF.
- . 2018b. "Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud Makes First Appearance before ICC." Press Release No ICC-CPI-20180404-PR1377, April 4. Available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1377>.
- ICC – OTP. 2013a. "Situation in Mali: Article 53(1) Report." Available at https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0112/Documents/SASMaliArticle53_1PublicReportENG16Jan2013.pdf.
- . 2013b. "ICC Prosecutor Opens Investigation into War Crimes in Mali." Press Release, No ICC-OTP-20130116-PR869. Available at https://www.icc-cpi.int/en_

menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr869.aspx.

———. 2013c. “Strategic Plan June 2012–2015.” Available at <https://www.icc-cpi.int/iccdocs/otp/OTP-Strategic-Plan-2013.pdf>.

ICRC. “Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, 8 August 1945.”

———. “Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land.” The Hague, October 18, 1907. Available at <https://ihl-databases.icrc.org/ihl/INTRO/195>.

———. “Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.” Available at <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/400>.

———. “Project of an International Declaration Concerning the Laws and Customs of War, Adopted by the Conference of Brussels, August 27, 1874” Available at <https://ihl-databases.icrc.org/ihl/INTRO/135>.

ICTY. 1995. “*Prosecutor v Duško Tadić*, Appeal Judgment.” No IT-94-I-A, Appeals Chamber, ICTY. October 2.

———. 2004a. “*Prosecutor v Miodrag Jokić*, Trial Judgment.” No IT-01-42/1-S, Trial Chamber I, ICTY. March 18.

———. 2004b. “*Prosecutor v Pavle Strugar*, Rule 98bis Motion.” No IT-01-42-T, Trial Chamber II, ICTY. June 21.

———. 2005. “*Prosecutor v Pavle Strugar*, Trial Judgment.” Chamber II, ICTY, No IT-01-42-T, January 31.

———. 2011. “*Prosecutor v. Dario Kordi & Mario Erkez*, Judgement.” February 26. Available at http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf.

Jeppie, Shamil, and Souleymane Bachir Diagne, eds. 2008. *The Meanings of Timbuktu*. Cape Town: HRSC Press.

Jeune Afrique. 2013. “Guerre au Mali : Retour sur le drame d’Aguelhok.” October 21. Available at <http://www.jeuneafrique.com/167687/politique/guerre-au-mali-retour-sur-le-drame-d-aguelhok/>.

Joy, Charlotte. 2012. *The Politics of Heritage Management in Mali From UNESCO to Djenné*. California: Left Coast Press.

———. 2016. “The Mali Cultural Destruction Trial at the ICC Posed a Moral Dilemma.” *Apollo*, September 6. Available at <https://www.apollo-magazine.com/the-mali-cultural-destruction-trial-at-the-icc-poses-a-moral-dilemma/>.

Kendall, Sara. 2014. “‘UhuRuto’ and Other Leviathans: The International Criminal Court and the Kenyan Political Order.” *African Journal of Legal Studies* 7 (3): 399–427.

Kersten, Mark. 2016. *Justice in Conflict: The Effects of the International Criminal Court’s Interventions on Ending Wars and Building Peace*. Oxford: Oxford University Press.

Lecoq, Baz, et al. 2012. “One Hippopotamus and Eight Blind Analysts: A Multivocal Analysis of the 2012 Political Crisis in The Divided Republic of Mali.” *Review of African Political Economy*, 4 (137): 343–57.

M’Baye, Kéba. 1994. “Final Report of the United Nations Commission of Experts Established Pursuant to SC Res.780(1992), UN Doc. S/1994 674 (May 27, 1994) Annex XI: Destruction of Cultural Property Report.” Available at <http://heritage.sense-agency.com/assets/Uploads/sg-1-04-un-experts-en.pdf>.

- Meskill, Lynn. 2002. "Negative Heritage and Past Mastering in Archaeology." *Anthropological Quarterly* 75 (3): 557–74.
- . 2013. "UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation." *Current Anthropology* 54 (4): 483–94.
- Morgan, Andy. 2012. "The Causes of the Uprising in Northern Mali." *Think Africa Press*.
- Mueller, Susanne D. 2014. "Kenya and the International Criminal Court (ICC): Politics, the Election and the Law." *Journal of East African Studies* 8 (1): 25–42.
- O'Dell, Emily. 2013. "Waging War on the Dead: The Necropolitics of Sufi Shrine Destruction in Mali." *Archaeologies*. 9 (3): 506–25.
- Schabas, William. 2017. "Al Mahdi Has Been Convicted of a Crime He did Not Commit." *Case Western Journal of International Law* 49 (1): 75–102.
- Sieff, Kevin. 2017. "The World's Most Dangerous UN Mission." *The Washington Post*, Available at https://www.washingtonpost.com/sf/world/2017/02/17/the-worlds-deadliest-u-n-peacekeeping-mission/?utm_term=.7c6107657776.
- Soares, Benjamin. 2005. *Islam and the Prayer Economy: History and Authority in a Malian Town*. Edinburgh: Edinburgh University Press.
- . 2007. "Saint and Sufi in Contemporary Mali." In *Sufism and the "Modern" in Islam*, edited by Martin van Bruinessen and Julia Day Howell, 76–91. London: I.B. Taurus.
- . 2013. "Islam in Mali since the 2012 Coup." *Cultural Anthropology*, June 10. <https://culanth.org/fieldsights/321-islam-in-mali-since-the-2012-coup-2>.
- Stahn, Carsten. 2015. "More than a Court, Less than a Court, Several Courts in One? The International Criminal Court in Perspective." In *The Law and Practice of the International Criminal Court*, edited by Carsten Stahn. Oxford: Oxford University Press.
- Thurston, Alex. 2012. "Sahel Blog: Tuareg Rebellion in Mali's North Sparks Protests in South." *The Christian Science Monitor*, February 3. Available at <https://www.csmonitor.com/World/Africa/Africa-Monitor/2012/0203/Sahel-Blog-Tuareg-rebellion-in-Mali-s-north-sparks-protests-in-South>.
- . 2013. "Towards an 'Islamic Republic of Mali'?" *The Fletcher Forum of World Affairs*, 37 (2): 45–66.
- Thurston, Alex, and Andrew Lebovich. 2013. "A Handbook on Mali's 2012–2013 Crisis." *Institute for the Study of Islamic Thought (ISITA)'s Working Paper series*, No 13-001.
- UNESCO. "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols." Available at <http://unesdoc.unesco.org/images/0018/001875/187580e.pdf>.
- . "Timbuktu." Available at <http://whc.unesco.org/en/list/119>.
- . 1972. "World Heritage Convention." Available at <https://whc.unesco.org/en/conventiontext/>.
- . 2013. "Declaration concerning the Intentional Destruction of Cultural Heritage, adopted by the General Conference of UNESCO." October 17.
- UNITAR. 2014. "Satellite-based Damage Assessment to Cultural Heritage Sites in Syria." Available at http://unosat.web.cern.ch/unosat/unitar/downloads/chs/FINAL_Syria_WHS.pdf.
- United Nations. "MINUSMA: United Nations Multidimensional Integrated Stabilization Mission in Mali" Available at <http://www.un.org/en/peacekeeping/mis-sions/minusma/>.

- . 1993. “Report of the Secretary-General to the President of the UN Security Council, annexing the Interim Report of the Commission of Experts Established Pursuant to SC Res.780(1992), UN Doc.S/1993/25274” February 9. Available at http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf.
- United Nations Peacekeeping. 2018. “MINUSMA Fact Sheet.” Available at <https://peacekeeping.un.org/en/mission/minusma>.
- United Nations Secretariat General. 2001. “Secretary General Expresses Alarm concerning Taliban Edict Ordering Destruction of Statues and Non-Islamic Shrines.” SG/SM/7728-AFG/130, February 27, 2001. Available at <http://www.un.org/press/en/2001/sgsm7728.doc.htm>.
- Vogelvang, Eva, and Sylvain Clerc. 2016. “The Al Mahdi Case: Stretching the Principles of the ICC to a Breaking Point?” *Justice Hub*, August 29. Available at <https://justicehub.org/article/al-mahdi-case-stretching-principles-icc-breaking-point>.
- Vrdoljak, Ana Filipa. 2015. “Challenges for International Cultural Heritage Law.” In *A Companion to Heritage Studies*, edited by William Logan, Máiread Nic Craith, and Ullrich Kockel, 551–56. New York: Wiley-Blackwell.
- . 2016. “The Criminalization of Intentional Destruction of Cultural Heritage.” In *Forging a Socio-Legal Approach to Environmental Harm: Global Perspectives*, edited by Tiffany Bergin and Emanuela Orlando. London: Routledge.
- Weinert, Matthew. 2017. “Grounding World Society: Spatiality, Cultural Heritage, and Our World as Shared Geographies.” *Review of International Studies* 43 (3): 409–29.
- Wing, Susanna. 2013. “Making Sense of Mali” *Foreign Affairs*, January 20.
- Zacharias, Diana. 2010. “The UNESCO Regime for the Protection of World Heritage as Prototype of an Autonomy-Gaining International Institution.” In *The Exercise of Public Authority by International Institutions*, edited by A. von Bogdandy, R. Wolfrum, J. von Bernstorff, P. Dann, and M. Goldmann, 301–36. Springer.

Notes

1. Borelli and Lenzerini, eds. 2012.
2. UNESCO 1972
3. Francioni and Lenzerini, eds. 2008.
4. There was video footage showing Al Mahdi leading the operations of destruction of cultural heritage in Timbuktu. That material evidence against Al Mahdi was key in the Prosecutor’s case. See ICC 2016a, p. 20.
5. See, for instance, Sarah Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge: Cambridge University Press, 2013); Kersten 2016; Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: Cambridge University Press, 2018); Ba 2020.
6. Vrdoljak 2015; Meskell 2013.
7. As UNESCO director general Irina Bokova (2012) admitted, “In recent years, some developments within the inscription process [into the World Heritage List] have weakened the principles of scientific excellence and impartiality that are at the heart of the Convention.” See also Askew 2010; Zacharias 2010; Meskell 2013; Cleere 2013.
8. Casaly 2016.
9. Weinert 2017.

10. Meskell 2002.
11. ICC Judgment, p. 35 para 72, and p.38, para 79, 80.
12. See Thurston and Lebovich 2013.
13. See Wing 2013; Thurston, Alex and Andrew Lebovich, "A Handbook on Mali's 2012-2013 Crisis," *Institute for the Study of Islamic Thought (ISITA)'s Working Paper series*, No 13-001 (2013); Morgan 2012; Lecoq et al. 2012.
14. See Mali referral letter to the ICC. Available at <https://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>. It is important to note that Mali's call for an ICC investigation referred to a broad set of potential crimes, including crimes against humanity. The ICC prosecutor, however, decided to pursue only a narrow set of charges (war crimes for the destruction of the edifices) against Al Mahdi. Later, the charges that were retained against the second suspect, Al Hassan, were much broader, including crimes against humanity (torture, sexual slavery, other inhumane acts including forced marriage, and charges of war crime (including torture, rape, sexual slavery, cruel treatment, attacks against buildings dedicated to religion and historical monuments, ...)
15. See Mali referral letter to the ICC. Available at <https://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>.
16. ICC – OTP 2013b; ICC – OTP 2013a.
17. For a list of the destroyed edifices, see ICC 2016b. The attacks targeted nine mausoleums of Sufi saints and a door at the Sidi Yahya mosque. These sites held religious and cultural value for not only the people of Timbuktu, but also throughout the region and around the world. These were places of solace that people visited to offer prayers and make pilgrimage. It is important to note, however, that the saints were only venerated, not worshipped. It is beyond the scope of this article to discuss the various Islamic schools of thought regarding tombs, mausoleums, and saints. For the case of Islamic practice and Sufism in Mali, see for instance Soares 2005, 2007, 2013; O'Dell 2013; Bell 2013.
18. ICC 2018a.
19. ICC 2018b.
20. UNESCO, "Timbuktu"; UNECSO 2012.
21. Vrdoljak 2016; Frulli 2011.
22. Project of an International Declaration Concerning the Laws and Customs of War, Adopted by the Conference of Brussels, August 27, 1874, *American Journal of International Law* vol.1 (2), April 1907, 1907, pp.96–103.
23. Under the Hague Regulations, during hostilities, "all necessary steps should be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected..." (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, October 18, 1907, Article 27).
24. UNESCO, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols."
25. Francioni 2004, p. 1210.
26. Francioni 2004, p.1211; ICRC, "Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, May 14, 1954." Available at <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/400>.

27. ICTY 2011. See also Report of the Secretary-General to the President of the UN Security Council, annexing the Interim Report of the Commission of Experts Established Pursuant to SC Res.780(1992), UN Doc. S/1993/25274 (February 9, 1993); M'Baye 1994, pp. 107–32.
28. Hirad 2001; ICTY 1995 at 66–70; Bories 2005; ICTY 2004b at 80–81; ICTY 2004a at 49 and 51; ICTY 2005 at 310.
29. See Rome Statute, Article 8, 2, (e), (iv).
30. O'Dell 2013
31. UNESCO 2013.
32. Francioni and Lenzerini 2003.
33. UNITAR 2014.
34. See Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Rome Statute of the International Criminal Court, July 17, 1998. Available at https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.
35. Cavendish 2012.
36. Joy 2016.
37. See Joy 2016; Rosa De Jorio, *Cultural Heritage in Mali in the Neoliberal Era* (Urbana: University of Illinois Press, 2016).
38. The fabled mosque of Djenné is one of many examples. See also Joy 2012.
39. On the history of Islamist and reformist movements in Mali, see Thurston 2013.
40. Jeppie and Diagne, eds., 2008, pp. 7, 266; Haidara 2008.
41. Jeppie and Diagne, eds., 2008, p. 10.
42. Interview with a local resident and high school teacher in Timbuktu, December 19, 2016 (on file with author).
43. Abtahi 2001. These interviews were conducted in December 2016, prior to the arrest and indictment of Al Hassan, the second suspect in the Malian situation at the ICC.
44. The French phrase used was “des pierres cassées.” Interview with a local resident and activist, Timbuktu, 17 December 2016 (on file with author).
45. Interview with a local resident and activist, Timbuktu, 17 December 2016 (on file with author).
46. Interview with a Malian journalist, Bamako, December 10, 2016. This view is also conveyed in my interview with a leader of an association of journalists who write on human rights. Bamako, December 14, 2016 (on file with author).
47. Interview with a Malian journalist, Bamako, December 10, 2016 (on file with author).
48. Amnesty International 2012c, page 6.
49. *Jeune Afrique*, 2013.
50. Interview with a retired Malian judge, Bamako, December 9, 2016 (on file with author).
51. Interview with a Malian journalist, Bamako, December 10, 2016 (on file with author).
52. Interview with the Executive Director of Amnesty International – Mali, Bamako, December 2016 (on file with author); Amnesty International 2012a.
53. Interview with a librarian in Timbuktu, December 2016 (on file with author).
54. Interview with a resident in Timbuktu. See note 47.
55. Amnesty International 2012b.
56. ACLED “Mali Country File.”
57. Human Rights Watch. “World Report 2013: Mali- Events of 2012.” Available at <https://www.hrw.org/world-report/2013/country-chapters/mali>.

58. Human Rights Watch. "World Report 2013: Mali- Events of 2012." Available at <https://www.hrw.org/world-report/2013/country-chapters/mali>.
59. Human Rights Watch 2018.
60. United Nations Peacekeeping 2018; Sieff 2017.
61. Note 57.
62. ICC, Note 14. For a discussion regarding war crimes versus crimes against humanity in relation to destruction of cultural heritage, see Ba 2019.
63. This view is also corroborated by some renowned legal scholars such as William Schabas (2017), who argues that a closer look at the Rome Statute shows that Al Mahdi was convicted for a crime that he did not commit.
64. Harber 2015. A Malian journalist also referred to Al Mahdi as "little fish," ("menu fretin," in French). See Note 53.
65. The interviewee said, "Les gros poissons sont signataires de l'accord de paix."
66. Vogelvang and Clerc 2016.
67. ICC- OTP 2013c.
68. ICC- OTP 2013c. This new strategy is a response to the disastrous first decade of the ICC prosecution largely because of decisions made under the leadership of Luis Moreno-Ocampo. The overall goal remains to go after the perpetrators most responsible for atrocity crimes. However, in light of the failed prosecutions of Kenyatta, Ruto, Bemba, Gbagbo, etc. the new Office of the Prosecutor's strategy aimed to refocus the investigations while remaining flexible. Instead of always targeting those most responsible, the new strategy would investigate low level perpetrators or 'field commanders' when warranted and build the case against the top leaders upwards.
69. ICC- OTP 2013c.
70. It is important to note that this differentiation concerns specifically northern Mali and the 2012-2013 crisis. For instance, the label 'rebel' is not ascribed to any of the actors or groups involved in the current intercommunal conflict in Central Mali.
71. Interview with the retired Malian judge. See Note 50.
72. Interview with Malian cultural guide, Bamako, December 2016 (on file with author); Interview with a local resident and high school teacher in Timbuktu, December 19, 2016 (on file with author).
73. See Note 49.
74. See Note 70.
75. UN, "MINUSMA: United Nations Multidimensional Integrated Stabilization Mission in Mali."
76. Interview with the Chief of the Cultural Mission in Timbuktu, December 18, 2016 (on file with author).
77. Ba 2019.
78. Stahn 2015.
79. Kendall 2014; Mueller 2014.