Erasing Identity: How Prosecutor v. Ahmad Al Faqi Al Mahdi Failed to Acknowledge the Destruction of Timbuktu's Cultural Heritage as a Case of Iconoclasm

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Abstract
This thesis investigates and highlights the disjunction that is present between the art community and the international legal community when it comes to the protection of cultural heritage from destruction during armed conflict. Due to ongoing conflicts in Syria, Yemen, and Iraq, discussions on preservation are once again getting media attention, and it is paramount to review existing methods and procedures that could be used to prosecute those responsible for the destruction of cultural heritage during armed conflict. This thesis will first outline the prevalence of iconoclasm throughout centuries as a war strategy and the implications that iconoclastic acts carry on victims of such crimes. This thesis will then review the existing legal remedies in international law that strive to safeguard cultural heritage from destruction and the laws that establish criminal liability for such acts. Finally, this thesis analyzes the case of Prosecutor v. Ahmad Al Faqi Al Mahdi and argues that while legal mechanisms exist to prosecute individuals for the destruction of cultural heritage, these mechanisms reveal a 1) fundamental misunderstanding of art historical discourse and aesthetics and 2) the impact that iconoclasm has on the collective memory and identity of communities. The discussion finds that without legal recognition of iconoclasm, cultural genocide and ethnocide, the trauma that they inflict, and the symbolic meaning manifested within regionalist architecture, we cannot begin to safeguard cultural heritage and seek justice for victims of such acts.
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Introduction

Destruction of cultural heritage is commonly used as a war tactic during armed conflict, yet intentional targeting of religious sites and objects carries symbolic meaning, with the primary purpose of eradicating group identities. This practice is commonly known in art historical discourse as iconoclasm. This paper addresses the many challenges that appear when holding those responsible for such heinous acts accountable in international criminal tribunals, and how even when justice is served, punishments do not reflect the magnitude of crimes committed. Though the judicial process and international humanitarian law strive to safeguard religious objects and buildings from destruction, they often fail to understand the broader implications that such acts carry and the meaning that is often lost in the courtroom.

The first chapter defines iconoclasm in the context of art historical discourse and outlines its implications on regionalist communities affected by war. The chapter outlines the symbolic, transformative meaning that iconoclasm carries behind it. Iconoclasm strives to redefine the value behind religious sites and artifacts in order to achieve political, economic, or military advances. The evolving meaning behind a place is central to the analysis and investigation of iconoclasm because, through its reconceptualization, the site serves as an embodiment of the trauma witnessed by the landscape and its inhabitants. Furthermore, the site not only manifests itself as a victim and witness of the atrocity, but it is also a necessary mechanism through which these objectives are achieved.

The second chapter outlines some key provisions and guidelines that exist today to lead the international community through the legal remedies for the destruction of cultural heritage and defines necessary conditions that have to be met in order to prosecute those responsible in international courts of law. The chapter also connects these notable treaties and provisions to iconoclasm, evaluating how iconoclastic practices might be addressed from a judicial standpoint.
In the final chapter of this paper, a key case study that is central to the development of this narrative – *Prosecutor v. Ahmad Al Faqi Al Mahdi* – is reviewed. This paper defines the case as an act of iconoclasm. Unlike other studies that investigated the case *Prosecutor v. Ahmad Al Faqi Al Mahdi* or the conflict in Mali, this paper does not merely review the situation from art-historical or legal standpoint. Instead, it synthesizes these approaches to provide a unique interpretation of the case that reveals its limitations and the disconnection between the international legal and art historical communities. While the aesthetic and symbolic values of the mausoleums targeted during the 2012 Mali conflict is evaluated, they are also used to define the acts committed by a Malian jihadist group, Ansar Dine, as iconoclastic. Finally, specific recommendations are made, in respect to safeguarding cultural heritage from destruction in the event of armed conflict. In the last portion of this paper, special attention is devoted to the importance of defining iconoclasm and cultural genocide within legal discourse, as it creates further opportunities to bring iconoclasts to justice. The paper does not attempt to offer any recommendations on potential practices that would deter individuals from committing acts of iconoclasm, as this is beyond the scope of this research. Instead, what this paper argues is that true justice can only be served if political actors recognize the arguments and theories presented by art historians. Without a general recognition of the prevalence and the devastation that cultural genocide carries, international humanitarian law cannot begin to bring justice or truly protect cultural property.
Chapter 1: Historical Context

From places of worship to museums and historic monuments, iconic buildings, and sites, groups target cultural heritage both during armed conflict and while at peace. These acts occur during both international and local armed conflicts. The destruction of cultural heritage, art, and artifacts remains a prominent war strategy, used in recent and ongoing conflicts in Kosovo, Bosnia, Jerusalem, Iraq, and Syria.¹ In antiquity, no legal remedies against pillage, plunder, or destruction existed in international law.² Nevertheless, in the 19th and 20th centuries, international public opinion shifted, and it was articulated that cultural heritage should be safeguarded. This paper, in particular, argues that iconoclasts should be subjected to prosecution.

Iconoclasm is commonly defined as the destruction or damage of objects or images that hold symbolic, religious value.³ Etymologically, the term “iconoclasm” stands for ‘image-breaking’ and is comprised of the Greek eikon or “image,” and klastes or “breaker.”⁴ In its earliest iterations, theology considered iconoclasm to only include icons, yet the category soon required semantic enlargement, allowing the term to expand to all religious imagery, sites, and institutions.⁵ Now, prominent art historians like Dario Gamboni largely apply the term ‘iconoclasm’ to not only religious art but to all art in general.⁶ The sacredness of imagery has thus been redefined. Much art carries symbolic value, whether it is cultural, historical, or religious, and as a result, it can become part of a nation’s identity, with its destruction potentially perceivable as a direct attack on living memory. Nevertheless, such a broad definition of

⁵ Clay and Boldrick, introduction to Iconoclasm,16.
⁶ Clay and Boldrick, 16.
iconoclasm is beyond the scope of this paper. While the semiotic argument for the expansion of the term has validity and merit and is relevant to contemporary art historical discourse, this research focuses on the more traditional definition of ‘iconoclasm,’ which pertains directly to religious sites, artifacts, or imagery.

What differentiates iconoclasm from other forms of destruction is its symbolic intent. It has often been misconstrued that iconoclastic actions are executed by ignorant vandals, yet iconoclasm carries a purposeful weight that vandalism does not.\(^7\) As Gamboni pinpoints in his monumental work *The Destruction of Art: Iconoclasm and Vandalism since the French Revolution*, the intrinsic goal of iconoclasm is not without meaning; it is not a mere, barbaric regression or an “expression of ignorance and incomprehension.”\(^8\) Instead, iconoclasm often serves as a purposeful, direct response to social vulnerabilities and seeks to redefine the symbolic value of cultural artifacts by delegitimizing the authority that they were originally designed to bolster.

From a purely aesthetic point of view, destruction of religious iconography might be perceived as irrational, meaningless, and overall detrimental, but such a narrow mentality may often overlook the complex plurality of functions that these symbolic actions carry.\(^9\) It is necessary to adopt a more grounded and multifaceted approach in order to explain and understand the intentions of iconoclasts. The purpose behind an object is often manifold and sometimes even contradictory;\(^10\) thus its destruction should be analyzed with this in mind.

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\(^8\) Gamboni, *The Destruction of Art*, 10.
\(^9\) Gamboni, 11.
\(^10\) Gamboni, 11.
Religious wars have a long-lasting, sometimes permanent effect, on built environments.\textsuperscript{11} The topography of a landscape is interconnected with memory, closely intertwined with the inhabitants of the space.\textsuperscript{12} A people’s rootedness to the land is facilitated through living memory; a space unfolds for humans through symbolic associations with the place. Without the contextual framework behind the topography of the site, a space loses its unique regional identity. Thus, urban planning and architecture are instrumental in constructing meaning. It comes as no surprise that historical and especially religious structures carry value that is also encompassed in dwelling, a process that defines the site through human interactions with it.\textsuperscript{13}

The symbiotic relationship that blossoms between the landscape and its inhabitants is what becomes contested during armed conflict. To reiterate, iconoclasm carries a particular purpose and is never without intent. Iconoclasm is not “devoid of meaning.”\textsuperscript{14} On the contrary, iconoclasts strategically target existing environments to redefine their cultural significance. The destruction of religious imagery strives to attack and overthrow existing institutions and religious dogmas in order to shift the source of power and authority within a given environment.\textsuperscript{15}

Iconoclasm feeds off the importance and power of the object; if a site no longer holds cultural, historical, or religious value, it will be an unlikely target for iconoclasts.\textsuperscript{16}

Though iconoclasts target religious imagery, iconoclasm in itself is not motivated simply by religious belief. It would be quite short-sighted to suggest that iconoclasm merely stems from religious fanaticism. Rather, religion serves as a pretext, the contextual framework in the battle

\begin{itemize}
\item \textsuperscript{13} Schwenkel, "Architecture and Dwelling,” 17.
\item \textsuperscript{14} Kolrud and Prusac, "Introduction – Whose Iconoclasm?”, 1.
\item \textsuperscript{15} Kolrud and Prusac, 2.
\item \textsuperscript{16} Kolrud and Prusac, 6.
\end{itemize}
for military, political, and economic superiority. Religious iconography often becomes a means to redefine the power dynamic within the region. Though iconoclasts themselves may not hold specific religious beliefs, the conqueror acknowledges the value that religious symbols hold to those whose territory is the object of contention. The main goal that political iconoclasm pursues is to overthrow an established regime within an area. In order to do so, conquerors target religious sites or objects in order to eradicate the faith that the aggressor views as instrumental to the community’s identity. Similarly, military iconoclasm erupts from the desire to receive a military advantage by gaining control over a key strategic location or resource. On the one hand, in order to ensure that locals concede to the will of the aggressor, the aggressor may choose to subject them to psychological attacks such as the destruction of culturally and historically significant objects or buildings. On the other hand, economic iconoclasm attempts to cut off monetary gains or redirect them in a way that benefits the aggressor but harms the local population. Thus, the art of destruction can be imbued with a variety of meanings, representing a “dialogue” in which the conqueror attacks group identity and redefines it. Ultimately, an object or site of pride is transformed into a vulnerability and a means of exploitation.

It is impossible to disregard the socio-psychological motives and implications of iconoclasm. Iconoclasm is a psychological war tactic employed in power struggles, and thus precious objects, sites, and artifacts become not only the victory token but also the weapon of war. Due to the sheer magnitude of the spiritual damage that iconoclasm causes, the act of targeting cultural property should be equated to that of ethnic cleansing. Iconoclasm not only attacks life, but it also targets identity – that which makes one human. The nature of iconoclasm

19 Braarvig, 154.
allows conquerors to spread their message among a large audience, installing fear in the minds of the oppressed. Humans are social creatures whose experiences rely heavily on collective knowledge. Community identity forms the bylaws of society, and while this operates through morality, common law, and shared culture and history, these notions are visually communicated through art and architecture. Thus, the rhetoric of iconoclasm and the rationale behind it can no longer be ignored. The consequences of religious attacks on cultural property should not be overlooked, and the intentions behind such attacks should be analyzed in-depth by not only scholars but also legislators.

Arguably, the boom of mass media has played a key role in the further spread of fear that stems from iconoclasm. With the development of print media, television, and the Internet, the message behind destruction is now able to not only affect those who directly witness such attacks, but also the international community as a whole. Gruesome visual depictions of warzones and the destruction caused by military conflict often become ingrained in memory and have a serious effect on observers. Pictures of destruction also carry more significance simply because people tend to believe more in the accuracy and authenticity of camera-based documentation, rather than that of a written text. Mass media has also facilitated the spread of iconoclastic ideologies, which is highly dangerous. Responses to iconoclasm can inspire others to employ similar strategies and help them gain momentum in fueling further ideological violence. Thus, contagion becomes a major concern for twenty-first-century historical preservationists. Not only does media increase the efficacy of iconoclasm, but it also legitimizes it. By acknowledging the illegitimate power that iconoclasts hold, the media provides them with the necessary credibility to further launch attacks on existing State actors. One might argue

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21 Kolrud and Prusac, 7-8.
22 Kolrud and Prusac, 8.
that in order to prevent the spread of violence, attention should not be paid to iconoclasts. This logic stigmatizes against iconoclasm and perceives it as irrational, thus denying it of attention. Nevertheless, this is both impossible in modern reality as well as fundamentally detrimental to the practice of safeguarding cultural heritage and artistic-historical production. While deterrence is evidently the ultimate goal, it is beyond the scope of this research. Before developing strategies for potential deterrence of iconoclasm, it is important to recognize that iconoclasm remains prevalent today, in large part due to the widespread accessibility of “viral” technologies in global telecommunications, spreading fear amongst people all over the world and gaining notoriety for the perpetrators.

Historically, scholars have focused primarily on only two cases of iconoclasm: the Byzantine Iconoclasm and the Protestant Reformation. With the former, for instance, the Byzantines were not the first to destroy religious icons, yet their case constitutes the first account of a group of individuals to strategically target a distinct type of imagery. The Byzantine Iconoclasm ideology - to destroy images with the intention of erasing memory - can be traced in later accounts of iconoclasm. This concept is known as damnatio memoriae or the damnation of memory. The purpose behind damnatio memoriae is to disintegrate the impact of an individual on society through the complete removal of his or her image. What is particularly interesting and crucial to the understanding of this practice is that even though images were destroyed, oftentimes inscriptions on the damaged images would remain visible.

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23 Gamboni, The Destruction of Art, 10.
27 Brubaker, 14.
28 Brubaker, 14.
29 Brubaker, 14.
words, the images were still identifiable, and people were able to trace them back historically.\textsuperscript{30}

This practice ensures that even though certain images are condemned, evidently not to be tolerated, individuals are still reminded of them. The same logic surfaces when analyzing the destruction of religious sites during armed conflict. While the buildings are torn down, the ruins remain, serving as a threat and painful reminder to the local inhabitants of the realities of war and past, inflicted violence.

The ideology of iconoclasm is not exclusively a Western one, and the practice of iconoclasm is not restricted to the past.\textsuperscript{31} Art historians identify the French Revolution and the Cultural Revolution in China as additional, prominent examples of iconoclasm.\textsuperscript{32} Similarly, the destruction of art in Nazi Germany, the destruction of several of Moscow’s Russian Orthodox churches during Stalin’s regime, and the 1378 defacing of the Sphinx of Giza in Egypt are now all considered to be classic instances of iconoclasm.\textsuperscript{33} However, efforts to outlaw deliberate attacks on religious, historic, and cultural sites during armed conflict, are relatively modern. The precedent was first set in 1863, during the American Civil War, when Abraham Lincoln commissioned a legal theorist, Francis Lieber, to outline basic guidelines according to which the Union Army was expected to carry out its operations.\textsuperscript{34} This document, which came to be known as the Lieber Code, was the first text to define cultural property.\textsuperscript{35} The Lieber Code was also the first document to suggest that cultural heritage should be protected in the event of armed conflict,

\textsuperscript{30} Brubaker, 14.
\textsuperscript{31} Clay and Boldrick, introduction to Iconoclasm, 15.
\textsuperscript{33} Rambelli and Reinders, "What Does Iconoclasm Create?", 17; Schildgen, Heritage or Heresy, 6; Schildgen, 7.
\textsuperscript{35} Daniels “Is the Destruction of Cultural Property a War Crime?”
and its principles were later integrated in the Brussels Declaration of 1874 and the Hague Conventions of 1899 and 1907.\textsuperscript{36}

The 1899 and 1907 Hague Conventions paved new ground, but the violation of their guidelines during World War I signified that further specifications should be made and new regulations adopted. These conversations were ultimately put on hold following the eruption of the Second World War,\textsuperscript{37} which served as a turning point in the history of international humanitarian law. Following the extensive damage and plundering of cultural property committed by Nazi Germany, it became evident to states that the existing, legal provisions lacked substance and enforcement.\textsuperscript{38} Further conditions and legal remedies were then articulated in the Geneva Conventions and the 1954 Hague Convention, which came to serve as cornerstones for setting new precedents in the prosecution of individuals for cultural destruction during war.\textsuperscript{39}

The United Nations and the International Criminal Court classify the destruction of cultural property both as a war crime and a crime against humanity. However, it could arguably be categorized as genocide if the acts are deemed to be iconoclastic in nature and the intention behind the destruction is to attack a particular group because of their beliefs and group identity. Time and time again in the event of armed conflict, attacks against cultural property seem almost natural, as if expected and normal, but this logic is fundamentally flawed. The harm inflicted on populations through iconoclastic acts affects communities, eradicating their social and religious practices, thus erasing their collective memory. Nevertheless, many challenges arise when prosecuting individuals for the destruction of cultural heritage under international law.

\textsuperscript{36} Daniels “Is the Destruction of Cultural Property a War Crime?”
\textsuperscript{37} Daniels.
\textsuperscript{38} Daniels.
\textsuperscript{39} Daniels.
Some might argue that iconoclasm should not be equated to crimes against people, and thus individuals committing such acts should not be held accountable for war crimes, crimes against humanity, or genocide. However, this is, fundamentally, the definition of iconoclasm. Individuals target cultural heritage in order to inflict collective, socio-psychological violence and to erase the values and ethnic identities of distinct peoples. Thus cultural destruction is just yet another method employed by those committing ethnic cleansing and genocide.
Chapter 2: The Legal Framework

Though no explicit protections against iconoclasm exist, the international community recognizes the need to protect cultural heritage from destruction during armed conflict. In order to evaluate the limitations of laws currently in place from an art-historical point of view, it is paramount to outline existing protections and relevant treaties as they contribute to worldwide efforts to preserve religious sites, objects, and artifacts.

The International Criminal Court (ICC) was established within the Rome Statute. The Rome Statute was adopted at a diplomatic conference in 1998 and entered into force in 2002.\textsuperscript{40} As of October 2017, 123 States are party to the Rome Statute, which identifies four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.\textsuperscript{41} It also articulates that such crimes “shall not be subject to any statute of limitations.”\textsuperscript{42} In order for crimes to fall under the Rome Statute, they must have been committed after July 1, 2002, when the Rome Statute entered into effect.\textsuperscript{43} The ICC has jurisdiction over such crimes under the following conditions: “first, if they took place on the territory of a State Party; second, if they were committed by a national of a State Party; or third, if the crimes were referred to the Prosecutor by the UN Security Council.”\textsuperscript{44} The following paragraphs provide an outline of the relevant treaties that ensure the protection of cultural heritage and how they contribute to the realm of international law.


\textsuperscript{42} Dutli, et. al. “Protection of Cultural Property,” 150.

\textsuperscript{43} Dutli, et. al., 150.

\textsuperscript{44} Dutli, et. al., 150.
The 1899 and 1907 Hague Conventions were among the first major formal global accounts espoused internationally to regulate State conduct in the event of armed conflict and military hostilities.\textsuperscript{45} The first Hague Conference was held in July of 1899 with the ultimate goal of crafting codifications that would set limits on the usage of certain armaments.\textsuperscript{46} On most accounts, the first Hague Conference failed, but it did manage to establish and define “the conditions of a state of belligerency and other customs relating to war on land and sea.”\textsuperscript{47} In terms of the protection of cultural heritage, the Hague Conference of 1899 adopted Convention II, otherwise known as the Convention on Laws and Customs of War on Land.\textsuperscript{48} Most notably Convention II contained Article 56, which declares one of the first set of regulations for the protection of cultural heritage:

\begin{quote}
The property of the communes, that of religious, charitable, and educational institutions and those of art and science, even when State property, shall be treated as private property. All seizure of, and destruction of, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.\textsuperscript{49}
\end{quote}

From an art-historical perspective, Article 56 of Convention II notably displays an early understanding of the significance of cultural heritage to the identity of communes. Article 56 outlines a proprietorial view of cultural heritage. Though it is not explicitly articulated, one might argue that Article 56 suggests that a connection between groups and cultural heritage exists, whether it is religious, historic, or artistic. This showcases a deeply rooted, almost subconscious understanding of the various factors that compose group identity. Article 56

\textsuperscript{45} Kifle Jote, \textit{International Legal Protection of Cultural Heritage} (Stockholm: Juristförlaget, 1994), 49.
\textsuperscript{47} The Editors of Encyclopedia Britannica, “Hague Convention.”
\textsuperscript{48} Jote, \textit{International Legal Protection of Cultural Heritage}, 49.
\textsuperscript{49} Jote, 49
exemplifies that religious, charitable, and educational institutions are some of the factors that make up human existence and define it.

The second Hague Conference, held in 1907, adopted ten additional Conventions.\textsuperscript{50} Convention IV, on the Laws and Customs of Land Warfare, formulated further terms and clauses regarding the protection of cultural property in the event of international, armed conflict. The Hague Convention of 1907 was one of the first multilateral treaties to systematize the protocol of military operations in international law, taking the first step to classify destruction of cultural property as a war crime.\textsuperscript{51} Convention IV, on the Laws and Customs of Land Warfare, included vital provisions that provided further guidelines to member States on preventing the destruction of cultural heritage during conflict. Article 27 of Convention IV of 1907 states that:

> In sieges and bombardments all necessary steps must 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, provided they are not being used as the time for military purposes.\textsuperscript{52}

Further, in accordance with Article 27, the States were responsible for distinguishing such buildings by displaying “distinctive and visible signs, which shall be notified to the enemy beforehand.”\textsuperscript{53} The specifics regarding the parameters of such signs were later revealed in Article 5 of Convention IX concerning Bombardment by Naval Forces in Time of War:

\textsuperscript{50} Jote, 49.
\textsuperscript{51} Daniels, "Is the Destruction of Cultural Property a War Crime?"
It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large, stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.  

Additionally, Article 56 of Convention IV conveyed that “all seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

While the 1899 and 1907 Hague Conventions contributed to the protection of cultural property from destruction during armed conflict, it was very much a secondary objective; the main focus was still on the protection of human life (civilian populations and their individual property) in the event of war. The Hague Conventions’ efforts to prevent damage to cultural heritage during World War I largely failed, yet it did raise concerns over the lack of universally recognized legal remedies that could be effectively enforced during wartime. This made it abundantly clear that protections of cultural property should be implemented on an international level. Thus, though not entirely successful, the Hague Conventions were nevertheless paramount to the articulation and adaptation of some of the first internationally agreed upon laws of war and war crimes and paved the road for States to adopt protections for world heritage.

Supplementary to the Hague Conventions, the 1977 Additional Protocol I and Protocol II to the Geneva Conventions of 1949 are considered to be some of the defining legal provisions that prohibit the destruction of cultural heritage. The Geneva Conventions are considered to be the foundation for contemporary international humanitarian law. The Conventions establish the

57 Jote, 51.
international principles and guidelines that specifically protect individuals not involved in hostilities (ex. civilians, the sick and the wounded, etc.) during times of war, yet the 1977 Additional Protocol I and Protocol II also provide protections to cultural heritage.\textsuperscript{58}

Protocol I reinforces some of the ideas expressed in the Hague Convention, yet its most notable feature is Article 85. It is Paragraph 4 and 5 of Article 85 that define the destruction of cultural property as a war crime. Specifically, Paragraph 4 qualifies the following act as “a grave breach,” “when committed wilfully and in violation of the Conventions or the Protocol”:

d) making clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives.\textsuperscript{59}

Paragraph 5 then goes on to pronounce such breaches to be war crimes. Nevertheless, all of the above criteria have to be met in order for the act to be considered a war crime under international criminal law. Additionally, in the 1977 Additional Protocol II, Article 16 states that “without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.”\textsuperscript{60} The 1977 Additional Protocol I and Protocol II strive to protect religious and spiritual objects and sites, alluding to iconoclastic acts. The additional protocols articulate an inherent understanding


that iconoclasm should be outlawed, yet do not use the appropriate art historical terminology. These provisions fail to demonstrate an understanding of iconoclasm and the impacts that it has on populations.

Following the extensive destruction and looting of cultural heritage during World War II, the 1954 Hague Convention was brought up as States recognized that the 1899 and 1907 Hague Conventions were insufficient and unsuccessful in their attempts to safeguard cultural property. It was the first universal legal instrument to establish comprehensive legal remedies designed to protect cultural property from warfare. The convention combined ideas that were expressed earlier in multifarious provisions, into one “coherent and easily accessible legal act.” The 1954 Hague Convention was the first treaty to clearly declare that there should not exist any discrimination when it comes to cultural heritage and that the cultural legacy of all populations, whether indigenous or not, should be respected and safeguarded in accordance with fair and equal common-law principles. As of June 2017, the Convention has been ratified by 128 States.

Under Article 1 of the Convention, cultural property is defined as:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as: monuments of architecture, art or history, whether religious or secular; archaeological sites, groups of buildings which are, as a whole, of historical or artistic interest; works of art; manuscripts, books, and other objects of artistic, historical or archaeological interest; scientific collections and important collections of books or archives; reproductions of the above property;

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62 Jote, 61.
(b) buildings whose main and effective purpose is to preserve or exhibit movable cultural property, such as: museums; large libraries; depositories of archives; refuges intended to shelter other cultural property in the event of armed conflict;

(c) centers containing a large amount of cultural property as defined in subparagraph (a) and (b), to be known as centers containing monuments.\(^6^6\)

The definition from Article one officially incorporated \textit{cultural property} as a recognized term in international legal discourse.\(^6^7\)

Furthermore, Article 2 of the Convention observes that States are responsible for safeguarding and respecting cultural property,\(^6^8\) and Article 3 obliges States to take all necessary preparatory measures to ensure the protection of cultural heritage in the event of armed conflict.\(^6^9\) Most notably, the second protocol of the 1954 Hague Convention expresses that cultural property can be targeted only on the grounds of “imperative military necessity,” thus waiving the States’ obligation to respect the protocol.\(^7^0\) It defines imperative military necessity as:

\begin{itemize}
  \item[i.] that cultural property has, by its function, been made into a military objective; and
  \item[ii.] there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective.\(^7^1\)
\end{itemize}

From a preservationist perspective, this clause seems to validate the destruction of cultural heritage when such destruction provides a strategic advantage, which some might find upsetting due to the overall broadness of the term “imperative military necessity.” The language of the law primarily draws on political discourse, while it seems to pay no attention to art historical discourse. The 1954 Hague Convention further requires each State party to implement its

\(^{6^6}\) Jote, \textit{International Legal Protection of Cultural Heritage}, 64.
\(^{6^7}\) Jote, 64.
\(^{6^8}\) Dutli, et. al. “Protection of Cultural Property,” 152.
\(^{6^9}\) Dutli, et. al., 152.
\(^{7^0}\) Dutli, et. al., 152.
provisions and to adopt necessary domestic laws needed for the protection of cultural property in their national legislation.\textsuperscript{72} Parties are also obliged to enforce the domestic regulations following implementation in case of violation.\textsuperscript{73}

Though monumental in its precedent, the Hague Convention had its limitations. Following conflicts that occurred between the 1980s and 1990s, it became evident that further legislation should be drafted to account for the deficiencies of the Hague Convention. In response to this, the 1999 Second Hague Protocol defined further protections to cultural property. Under the Protocol, cultural property must meet three conditions:

i) It is cultural heritage of the greatest importance for humanity;
ii) It is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection;
iii) It is not used for military purposes or to shield military sites, and a declaration has been made by the party which has control over the cultural property confirming that it will not be so used.\textsuperscript{74}

Furthermore, the Protocol communicates that the States are responsible for the adaptation of necessary measures that would allow for determining “criminal responsibility, jurisdiction, extradition and mutual legal assistance.”\textsuperscript{75} The protocol thus articulates States’ obligations to implement mechanisms that would allow States to prosecute individuals on a national level, as well as further defines cultural heritage as a legal concept.

Currently, under the Rome Statute, the destruction of cultural heritage can be prosecuted under war crimes or crimes against humanity. In order for destruction of cultural property to be considered a war crime, several general requirements have to be met: 1) “at the time the underlying offence was committed, there was an armed conflict or a state of belligerent occupation”; 2) “there existed a nexus between the underlying offence and the armed conflict or

\textsuperscript{72} Dutli, et. al. “Protection of Cultural Property,” 152.
\textsuperscript{73} Dutli, et. al. 152.
\textsuperscript{74} Dutli, et. al., 163.
\textsuperscript{75} Dutli, et. al., 166.
the state of belligerent occupation”; 3) “the perpetrator knew that an armed conflict or a state of belligerent occupation existed at the time the underlying offence was committed.”76 In respect to the underlying offence: 1) “the object of the offense was an institution dedicated to religion, charity or education, the arts or science, or a historic monument or a work of art or science”; 2) “the object of the offense was destroyed, damaged or an attack was directed at the object”; 3) “the destruction, damage or directing of an attack against the object of the offence was not justified by military necessity”; 4) “the perpetrator intentionally destroyed, damaged or aimed an attack against the object of the offence and he had knowledge about the protected status of the object of the offence.”77 The following provisions provide valuable insight into what types of objects are protected under the Rome Statute. From the following clauses, we can derive that in order for the ICC to prosecute an individual for the destruction of cultural heritage, the attack had to be intentional and had to occur during an armed conflict or under occupation. It also provides that the attack had to be directed towards a protected site or object of a religious, historic, charitable, educational, artistic, or scientific significance. Furthermore, this provision outlines that the attack could not have been necessary in terms of war conduct. This categorization provides a very broad legal definition of what types of objects are protected and is thus highly subjective and open to interpretation.

On the other hand, in order for the destruction of cultural property to be considered a crime against humanity, the following general requirements have to be met: 1) “at the time the underlying offence was committed, there was a widespread and systematic attack, which was part of a State or organizational policy and directed against a civilian population”; 2) “the underlying offence was part of the attack”; 3) “the perpetrator knew that the underlying offence

76 Ehlert, Prosecuting the Destruction of Cultural, 171.
77 Ehlert, Prosecuting the Destruction of Cultural, 171.
formed part of this attack. In respect to the underlying offence”; 1) “the object of the offence was an institution dedicated to religion, charity or education, the arts or science, or a historic monument or a work of art or science”; 2) “the object of the offence was destroyed or damaged”; 3) “the destruction of or damage done to the object of the offence was of equal gravity and severity to other underlying offences of war crimes”; 4) “the object of the offence was not a military objective”; 5) “the owner of the object of the offence was, or was perceived to be, a member of the group the overall attack was aimed at”; 6) “the perpetrator has to intentionally destroy or damage the object of the offence on political, racial or religious grounds.”

Though similar in many aspects to war crimes, the definition of crimes against humanity has several key distinctions. Under the definition of crimes against humanity, the attack needs to be committed on political, racial, and religious grounds. Unlike the broader definition of war crimes, the definition of crimes against humanity clearly addresses what can be classified as iconoclastic acts. Nevertheless, the term "iconoclasm" is itself omitted. Though from a legal standpoint these provisions may seem to be fairly comprehensive, they neglect art historical discourse, which is counterintuitive, as both disciplines strive to protect cultural heritage from destruction.

Evidently, great progress has been made in terms of drafting legislation and implementing policies that allow us to protect cultural heritage on an international and judicial level. Arguably, over the course of the past two centuries, the international legal community has implemented a wide variety of laws that expand protections for cultural heritage while simultaneously defining what actually constitutes cultural heritage. Nevertheless, it is evident that current laws are mostly political and militaristic in their approach and seldom rely on art historical discourse, though art historical discourse is used to define what constitutes a protected object or site. As outlined in these provisions, the concept of cultural heritage is broad and quite

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78 Ehlert, 173.
subjective. Furthermore, these provisions semantically identify iconoclasm as an illegal practice, yet they avoid the term itself. All of these findings signify that a fundamental disjunction exists between art and law communities, which is detrimental to the preservationist efforts undertaken by both sides.
Chapter 3: Prosecutor v. Ahmad Al Faqi Al Mahdi

When evaluating the importance of iconoclasm to art historical and legal discourse, it is paramount to consider the case Prosecutor v. Ahmad Al Faqi Al Mahdi, which has been crowned a major stepping stone in the realm of international law. Crucially, it pertains to destruction of cultural heritage and offers a generative line of inquiry to rethink the legal and cultural consequences of contemporary acts of iconoclasm. Before outlining the facts of this case, it is essential to provide the historical framework for it, as it relates to the site and architecture of Timbuktu.

While Timbuktu has been misconstrued by the West as a city on the “edge of the world,” this notion is entirely mistaken. Located in West Africa, Timbuktu was established as a major trading stop, facilitating the trade of ivory and gold in exchange for salt and silk at the head of the River Niger. The city was founded by the Tuaregs at the beginning of the twelfth century and soon became a cultural hub of the Islamic world, promoting trade and education. Within West Africa, Timbuktu gained prominence as the center of intellectual Muslim life, which was concentrated within its university.

Since Timbuktu was on the route of trans-Saharan trade, Islam had a clear path set for its spread through Mali, and the religion was largely accepted by the country during the Middle Ages. The majority of West African empires during this time were centered in Mali. This

80 David Hughes, Afrocentric Architecture: A Design Primer (Columbus, OH: Greyden Press, 1994), 51.
82 Prussin, Hatumere, 141.
84 Elleh, 247.
factor accounts for some of the earliest examples of Malian structural and architectural forms that can be found in Timbuktu - mausoleums, cemeteries, and burial sites – which display Islamic visual idioms. The adoption of Islamic practices was a major event in Timbuktu’s history, as it came to define the visual landscape of Timbuktu and Mali with mosques as a new building type. These structures transformed the cityscape, giving it a unique, West African regionalist aesthetic.

Additionally, Timbuktu became known as the "City of 333 Saints," indicating its role as a burial site for several prominent Sufi imams, sheiks, and scholars. With this, Timbuktu also became a major center for Sufi learning and spirituality. What distinguishes religious architecture of Timbuktu is its distinctive synthesis of multiple religious traditions to create a regional, symbolic capital. The city’s most distinctive structures are also the three most important institutions and architectural monuments in the area: the Sankore, the Djinguere Ber, and the Sidi Yahya mosques. These three buildings epitomize Timbuktu’s long history of melding various cultural and religious traditions. Famous for their fortress-like appearance and unique doors, these mosques carry a sense of permanence, stability, and immovability, suggesting that they are eternal, resistant to natural or intentional destruction. In the case of Timbuktu, its rich and diverse architectural tradition reflects the values of Timbuktu’s people, an interwoven tapestry of faiths, cultures, and identities.

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85 Elleh, 247.  
86 Elleh, 85.  
89 Apotsos, "Timbuktu in Terror," 99.  
90 Apotsos, 99.  
91 Apotsos, 99.
Aesthetically, Timbuktu’s mosque architecture is captivating due to its structural fluidity.\textsuperscript{92} As an art historian and one of the leading scholars in African architecture, Michelle Apotsos states in her work, Timbuktu’s religious buildings all possess a hand-crafted quality, alluding to traditional clay sculptural forms.\textsuperscript{93} The buildings themselves are almost castle-like, yet they also have a sensual quality to them. The buildings are dynamic and transformative; they represent a constant movement.\textsuperscript{94} Though these qualities display unique West African traditions, Timbuktu’s mosques also incorporate Islamic visual idioms such as geometric ornamentation and decoration as seen in the doors of the mosques.\textsuperscript{95} Evidently, mosques and mausoleums showcase the historical essence of Timbuktu, the city of peaceful cultural exchange.

What is particularly distinctive about Timbuktu’s mosque architecture is its allegorical humanism which has been evaluated by Labelle Prussin. Each of the mosques follows a unique, 

\textsuperscript{93} Apotsos, \textit{Architecture, Islam, and Identity in West Africa}, 9.
\textsuperscript{94} Apotsos, \textit{Architecture, Islam, and Identity in West Africa}, 9.
\textsuperscript{95} Apotsos, \textit{Architecture, Islam, and Identity in West Africa}, 52.
metaphorical artistic tradition. In other words, within the mosques, each of the structural
elements represents a different part of the human body.\textsuperscript{96} Within a Timbuktu mosque, for
instance, a minaret represents a person’s head, while the mosque’s courtyard stands for the
person’s stomach.\textsuperscript{97} The west galleries symbolize feet, while the northern aisles are a
metaphorical representation of the left arm.\textsuperscript{98} Furthermore, the various aisles and galleries within
the mosque represent a possible prayer position.\textsuperscript{99} This metaphorical, structural composition
emphasizes the importance of a place and its function, as well as its form. The mosques thus
celebrate faith and spiritual practice in its relation with everyday living. The structural form of
Timbuktu’s mosques signifies the prevalence of anthropomorphic architectural practices that are
distinctive in terms of their vernacular regionalist tradition. The mosques also featured Sufi
shrines, meant for the veneration of ancestors, thus adding further function and connotation to
the structures.\textsuperscript{100} Finally, the usage of clay as a primary building material exemplifies an inherent
need to connect with Timbuktu’s ancestors on a deeply spiritual level. Clay and earth represent
origin, the beginning of life as one knows it; utilizing clay as a primary building material
showcases an effort to give back to our ancestors and acknowledge those that came before us.
The symbolic metaphorical connotation that earthly materials carry, stresses the importance of
acknowledging ancestral presence.\textsuperscript{101} Thus, Timbuktu’s earthen mosques and mausoleums
incorporate both Sufi and pre-Islamic traditions in their own unique way.

Furthermore, the use of earthly materials allows Malians to connect with their
architecture on a physical, sensory level. Timbuktu’s mosques are not static structures. They are

\textsuperscript{96} Apotsos, “Timbuktu in Terror,” 101.
\textsuperscript{97} Apotsos, 101.
\textsuperscript{98} Prussin, Hatumere, 153-154.
\textsuperscript{99} Prussin, 154.
\textsuperscript{100} Apotsos, "Timbuktu in Terror," 99.
\textsuperscript{101} Apotsos, "Timbuktu in Terror," 99.
constantly evolving, which can be attributed to the fact that due to their material fragility, they require constant maintenance.\textsuperscript{102} Preservation efforts are thus part of daily life for the inhabitants of Timbuktu; caring for places of worship and ancestral shrines is central to the people of Timbuktu.\textsuperscript{103} In this sense, religious sites further strive to connect generations not only spiritually and emotionally, but physically; the symbolic bond between generations literally manifests itself within the walls of these buildings.

The allegorical representation of the human form, as displayed within Timbuktu’s mosques, is also translated into the construction of urban dwellings.\textsuperscript{104} Traditional Timbuktu houses also evoke human features such as the allegorical facades that represent a face of a man topped with a parapet or turban.\textsuperscript{105} Thus, Timbuktu’s architecture, transfigured via the human form, becomes “alive” in some sense. The architectural landscape of Timbuktu transforms into a road map of the different influences and cultures, the different religions that all connect here, forming a one-of-a-kind urban landscape. The dwellings of the city are representative of those who live on and those who have passed, and those who are yet come. To the inhabitants of Timbuktu, a building takes an anthropomorphic form. Thus the entire city transforms into a literal and metaphorical community, rooted deeply in its traditions, paying homage to its ancestors. The physical reality of Timbuktu finds its roots in a belief system that connects architecture, the people, and the cosmos into one, creating a distinct spiritual system.\textsuperscript{106}

What has come to be known as the Sudanese architectural style, the architecture of Timbuktu demonstrates the uniqueness of West African vernacularism as demonstrated through

\textsuperscript{103} Morris and Blier, 5.
\textsuperscript{104} Aportsos, “Timbuktu in Terror,” 100.
\textsuperscript{105} Aportsos, “Timbuktu in Terror,” 100.
\textsuperscript{106} Aportsos, \textit{Architecture, Islam, and Identity in West}, 57.
the use of buttressing systems, projecting pickets, parapet pinnacles, and conical mihrabs and minarets.\textsuperscript{107} Materials such as wood, concrete, stone, and clay were used pervasively by Timbuktu’s masons, due to their low cost, high abundance, and thermodynamic qualities.\textsuperscript{108} The architecture of Timbuktu responds to the harsh desert climate, accommodating both for the hot daily temperatures and the cold temperatures throughout the night.\textsuperscript{109} A city of two-story earthen and stone structures, Timbuktu may not capture the eye of each passerby, but its distinctive history and the architectural characteristics make Timbuktu unique and paramount to African architectural discourse.

The architecture of Timbuktu serves as a material embodiment of its various political, cultural, religious, and economic legacies. It represents the eclecticism of the city’s histories, its fragmentation, and the cultural exchange that to this day, continues to occur within city limits. The unique structural forms of Timbuktu and the city’s symbolic capital earned Timbuktu its 1988 designation as a UNESCO World Heritage site.\textsuperscript{110} Today, Timbuktu is a destination for pilgrims and heritage lovers from all over the world. Thus, when Timbuktu was targeted by religious extremists during the 2012 Mali conflict, it became a matter for a larger international community and legal apparatus.

The case \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi} is considered a landmark case for several reasons: it was the first international trial that focused solely on the destruction of cultural heritage;\textsuperscript{111} Al Mahdi was the first Islamic extremist militant to be prosecuted in an

\textsuperscript{107} Elleh, \textit{African Architecture: Evolution and Transformation}, 249; Elleh, 86.
\textsuperscript{108} Hughes, \textit{Afrocentric Architecture}, 67.
\textsuperscript{109} Elleh, \textit{African Architecture: Evolution and Transformation}, 346.
\textsuperscript{110} Apotsos, "Timbuktu in Terror," 103.
international court;\textsuperscript{112} and Al Mahdi was also the first person to ever plead guilty in the International Criminal Court (ICC).\textsuperscript{113} Additionally, it is the only ICC case thus far that addresses crimes committed during the 2012 conflict in Mali.\textsuperscript{114}

In 2012, the Northern Mali Conflict between the northern and southern parts of Mali erupted, with multiple insurgent groups attempting to gain independence for northern Mali.\textsuperscript{115} With Tuareg rebel groups gaining control of the territory in the northern part of Mali and the Malian army withdrawing from Timbuktu, the area eventually fell under the control of Ansar Dine (Defenders of Faith), a Malian jihadist group associated with Al Qaeda.\textsuperscript{116} Shortly after gaining control of the area, Ansar Dine enforced strict Sharia law throughout Mali and established a local government body, the Hesbah.\textsuperscript{117} While Ansar Dine follows a fundamentalist form of Sunni Islam, Timbuktu is a center for Sufi Islam.\textsuperscript{118} Sufism, which is a mystical form of Islam highly centered around spiritual practices, has long been viewed by fundamentalist Sunnis as heretical and idolatrous, due to the Sufi’s reverence for saints.\textsuperscript{119} Fundamentalist Sunnis perceive shrines and the memory of the saints embodied within them as the act of worshipping idols and believe that in accordance with Sharia law, these practices should be eliminated since

\textsuperscript{112} Cole, 398.
\textsuperscript{113} Cole, 398.
\textsuperscript{119} Elias, “The Taliban, Bamiyan, and Revisionist Iconoclasm,” 157-158.
Sunni Islam only validates the devotion to a singular God: Prophet Muhammad. Ahmad Al Faqi Al Mahdi, who was recognized in Timbuktu for his substantial knowledge of Islam and the Koran, was adopted as the leader of the Hesbah. The leader of Ansar Dine then instructed Al Mahdi to destroy several mausoleums and a mosque in Timbuktu. Al Mahdi and his followers attacked and destroyed the sites, and Al Mahdi was instrumental in designing and personally implementing this destruction. It is estimated that Al Mahdi “physically took part in the destruction of at least five sites.”

With such devastation, the government of Mali referred the matter to the ICC in 2012. Investigations of multiple individuals ensued, into war crimes such as rape, murder, mutilation, the enlistment of child soldiers, torture, pillaging, and the destruction of cultural heritage, and eventually, the Chief Prosecutor Fatou Bensouda also brought charges against Ahmad Al Faqi Al Mahdi. Al Mahdi was charged with intentionally carrying out attacks on nine mausoleums, including those of Sufi saints: 1) Sidi Mahmoud Ben Omar Mohamed Aquit, 2) Sheikh Mohamed Mahmoud Al Arawani, 3) Sheikh Sidi Mokhtar Ben Sidi Muhammad Ben Sheikh Alkabir, 4) Alpha Moya, 5) Sheikh Sidi Ahmed Ben Amar Arragadi, 6) Sheikh Muhammad El Micky, 7) Cheick Abdoul Kassim Attouaty, 8) Ahamed Fulane, 9) Bahaber Babadié; as well as the door of the Sidi Yahia mosque, between June 30 and July 11, 2012. These all constitute

120 Elias, 157-158.
125 Cole, “From the Hague to Timbuktu,” 413-414.
126 Cole, 413-414.
war crimes under the Rome Statute. Al Mahdi confessed to having carried out the attack and was sentenced to nine years in prison.\footnote{International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 25; International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 49.}

Ultimately, the mausoleums of the Sufi saints were rebuilt by local masons, using traditional practices, and the door of the Sidi Yahia mosque was also restored.\footnote{Apotsos, "Timbuktu in Terror," 115.} Financed with the help of UNESCO (The United Nations Educational, Scientific and Cultural Organization) and various donors, the landscape of Timbuktu was revived, in turn, redefining the meaning behind each site.\footnote{Apotsos, 115-116.} Though the city’s architectural scars might be concealed and masked, the destruction of Sufi shrines and the Sidi Yahia mosque door are now part of the collective memory of Timbuktu, and the psychological trauma left upon Mali through the ruthless iconoclastic acts of Ansar Dine is immeasurable, calling into question the efficacy of restoration practices in cases where the typology of the cite has been violently transfigured.

Returning to a question of iconoclasm, it is important to evaluate the specific facts of the case in order to articulate why the attacks carried out by Ansar Dine and Al Mahdi fall within this definition and category, as outlined in Chapter 1. First of all, Al Mahdi’s testified that Ansar Dine appointed him as the leader of Hesbah due to his knowledge of Islamic tradition. Ansar Dine consulted Al Mahdi on which sites had the most significance to the locals and which should thus be targeted.\footnote{International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 18-19.} Though Al Mahdi alleges that he was initially reluctant to participate in this project, acknowledging the material and psychological consequences that such acts would have
on the local population, he eventually agreed to monitor the cites and formulate a list of targets.\textsuperscript{132}

Al Mahdi began by observing the mausoleums and recording the interactions of local communities with the shrines.\textsuperscript{133} He then made recommendations to Ansar Dine about which shrines were most visited, and not surprisingly, these shrines were subsequently destroyed.\textsuperscript{134} Secondly, despite his apparent reluctance, it is important to note that Al Mahdi specified to the leaders of Ansar Dine the deeper cultural ramifications of targeting the mosques within Timbuktu. Al Mahdi states that he advised Ansar Dine not to destroy the mosques because of the harm and distress that such acts would cause the population.\textsuperscript{135} This detail is also crucial to the significance of the case because it displays Al Mahdi’s knowledge of the sites and the consequences that their destruction would carry. This fact shows that Al Mahdi and Ansar Dine were strategic in their iconoclastic efforts; the leaders of Ansar Dine wanted to legitimize their authority over the region, ensuring that the local population abided by their rules. Al Mahdi recognized that if Ansar Dine targeted the mosques themselves, their actions would cause a public outcry, which would be detrimental to the political objectives of Ansar Dine. Thus, Al Mahdi advised Ansar Dine to target Sufi shrines.

In the end, the evidence presented demonstrates that Al Mahdi and Ansar Dine were strategic and intentional in their destruction, willfully engaging in an act of iconoclasm. They attempted to cause suffering that would be grave enough to encourage regional inhabitants to abandon particular religious practices, but not drastic enough to delegitimize themselves as

\textsuperscript{132} International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 19.
\textsuperscript{133} International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 18-19.
\textsuperscript{134} International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 18-19.
\textsuperscript{135} International Criminal Court, “Judgment and Sentence in the case of the \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi},” 18-19.
authoritative figures in the eyes of the local population. The fact that Ansar Dine attempted to eradicate only certain religious practices also indicates a unique case of interreligious iconoclasm. When Al Mahdi detailed the practices of Timbuktu’s inhabitants, recording their visits to shrines and prayers outside of them, Ansar Dine ordered the immediate destruction of these shrines and engaged in what can only be considered interreligious iconoclasm. Such actions committed by Ansar Dine under the instruction of Al Mahdi signify that the attacks carried out in Timbuktu were intentional and religious in their nature.

Fig. 2: AP Photo/Baba Ahmed, In this Friday, April 4, 2014 file photo, Mohamed Maouloud Ould Mohamed, a mausoleum caretaker, prays at a damaged tomb in Timbuktu, Mali, April 2014, https://www.timesofisrael.com/mali-ex-jihadist-liable-for-timbuktu-destruction-icc-says/.

It is crucial to expand on the sites that Al Mahdi and Ansar Dine targeted. To Sufism, ancestral veneration is a key practice. As was described earlier, the people of Timbuktu engaged with their ancestors by paying respects to their shrines on a daily basis. The architectural forms of not only mosques and mausoleums but also of ordinary houses were created in keeping with these traditions, striving to connect generations together, further emphasizing the importance of community. Ansar Dine targeted the anthropomorphic architectural traditions of Timbuktu,
striving to eradicate not only Sufi religious practices but also the collective memory of Timbuktu’s ancestry. The destruction of the human form as a metaphorical figure thus allows us to connect the destruction committed by Ansar Dine not only to iconoclasm but also to cultural genocide. By deliberately targeting the anthropomorphic architecture of Timbuktu, Ansar Dine symbolically attempted to wipe out Timbuktu’s identity, inflicting harm on the cultural body of Timbuktu, which has implications not just on the living, but also on the dead. By targeting Sufi ancestors, Ansar Dine targeted not just the present-day population of Timbuktu, but its entire history, its regionalist identity. The attacks carried out by Ansar Dine had both short-term and long-term consequences: what distinguishes them is the symbolic targeting of collectives, Timbuktu’s community, its long history, its faith, and its tradition.

A similar framework applies to the destruction of the Sidi Yahia mosque door. The Sidi Yahia mosque door is central to the discussion of iconoclasm because the inhabitants of Timbuktu believed that the Sidi Yahia door carried symbolic meaning. It was only to be opened at the end of the world.\textsuperscript{136} Ansar Dine’s militants attacked the door of the Sidi Yahia mosque using pickaxes and bulldozers.\textsuperscript{137} Not only did Ansar Dine militants disregard the fundamental belief system of the local population, but also through their actions, they drew a parallel between the end of time and their own reign. Targeting Timbuktu on a deeply emotional level, Ansar Dine yet again employed symbolic acts of terror to install fear and obedience amongst the local population by attempting to erase just enough of their collective memory for their entire world to


crumble. The decorated door, a symbol of protection and security, was run down along with the memory of a more peaceful time in Timbuktu.

Fig. 3: Agence France-Presse/Getty Images, A still photograph from a video showed the destruction on Sunday of a shrine in Timbuktu by Islamists who have taken control of northern Mali, 2012, https://www.nytimes.com/2012/07/03/world/africa/mali-islamists-exert-control-with-attacks-on-mosques.html.

Al Mahdi and Ansar Dine attempted to eradicate an entire belief system through their iconoclastic actions. Not only were their attacks brutal, but they were also accompanied by a theatric sermon. Al Mahdi composed a sermon dedicated to the upcoming destruction of the Sufi shrines. The sermon was read during the Friday prayer right before the ruthless attack. Not only was Al Mahdi aware of the consequences that these attacks would have on the local population, but he also further exacerbated their effects by publicly proclaiming his acts to be acts of God, delegitimizing and targeting the religious beliefs of the local population.

Furthermore, the emotional consequences of the attacks carried out by Al Mahdi were aggravated by Al Mahdi’s relationship with the media. As the situation escalated, journalists

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from around the world wrote articles on the destruction, and what is particularly fascinating in this case was Al Mahdi’s continued communication with these journalists throughout the violent process. As Al Mahdi spurred on the attacks, he gave numerous interviews in which he offered criticism of UNESCO and the West in general.\textsuperscript{140} Al Mahdi used the media to clearly communicate his intent to the rest of the world. These interviews ultimately gave Ansar Dine the power and legitimacy that they sought. The fact that Western media outlets not only documented the destruction, terrifying and outraging the rest of the world, but also interviewed those who stood directly behind it highlights the fact that unlike other iconoclasts, Al Mahdi and Ansar Dine were strategic tacticians. Through their media accounts, they accrued such authority and legitimacy that it seemed nothing could be done by Malians or the rest of the world to stop their violence and “vision.” Thus, the role of media, in this case, was paramount in establishing the notoriety of the iconoclasts. Not only did the media allow for Ansar Dine to spread its ideology, but it also legitimized it.

\textit{Prosecutor v. Ahmad Al Faqi Al Mahdi} should not be regarded as an important case simply due to its apparent uniqueness, as outlined above, but also since it was ultimately an opportunity lost. Not only was the punishment too lenient, but the trial itself represented an ill-rehearsed political show put on simply to display the authority of a court that has been widely discredited as biased, racist, inefficient, slow, and ineffective.\textsuperscript{141} At the opening of the trial, the Prosecutor of the International Criminal Court, Fatou Bensouda, stated that "history itself, whose physical embodiment is at peril through such attacks, will not be generous to our failure to care,


or to act decisively."Ironically, during the trial, the system did fail Timbuktu, Mali, and the entire international community. The ICC missed an opportunity to set a strong precedent, by minimizing the severity of Ahmad Al Faqi Al Mahdi’s crimes and by rushing through the process, simply due to Al Mahdi’s confession, cooperation, and apparent remorsefulness. Having suffered from years of scrutiny over the lack of progress made in prosecuting individuals for grave crimes, the International Criminal Court saw a chance to raise its popularity and legitimacy in the eyes of state actors by obtaining a conviction. Nevertheless, the facts of the case display not only a basic lack of understanding concerning the architectural merit of Timbuktu as a whole and the destroyed sites within it, as outlined earlier, but also a reluctance to classify such crimes as iconoclastic, thus limiting the scope and application of the Rome Statute when protecting cultural and religious heritage.

The case exposes a fundamental disconnect between the art historical community and the law community. Though the court records reveal that the deliberate attacks were acknowledged by the prosecutor, the judges, and the multiple witnesses in this case, the word “iconoclasm” was never explicitly used in court. Arguably, the attacks carried out by Al Mahdi and Ansar Dine fit the definition of iconoclasm that was established in Chapter 1. Al Mahdi deliberately targeted religious practices of Timbuktu citizens in order to harm people whom they perceived as idolatrous. Furthermore, the iconoclastic acts committed by Ansar Dine had political and economic implications: by diminishing the identity of the people of Timbuktu, Al Mahdi attempted to establish authority over the region while simultaneously cutting off a major source of revenue for Timbuktu — tourism. The perpetrated attacks were also highly publicized,

143 Maclean, "Islamic Extremist's Trial over Timbuktu” to Open at The Hague."
attempting to bolster Ansar Dine as a legitimate governing body in Northern Mali. In multiple interviews, the spokesperson for Ansar Dine articulated the group’s lack of concern for international, public outcries from the West. According to them, UNESCO was not an authorial entity for the group. Thus international pleas to halt the attacks on cultural heritage were not only disregarded, but also served as a catalyst for further destruction.

Some scholars argue that these attacks display a fundamental, ingrained perception of the West as a colonial power, infringing upon the autonomy of Mali. UNESCO’s interest in Timbuktu was categorized as yet another manifestation of an imperial mentality and a reinterpretation of the landscape to fit a fetishistic, Western colonial framework. It is easy to see how these views may have been adopted by Ansar Dine and the Tuareg, who have been systematically disenfranchised by the Malian government and French colonial powers. The turbulent relationship between the Tuaregs and the Malian government goes back to French colonialism when an arbitrary geopolitical division was imposed on Malians, separating the Tuaregs, denying them political and cultural legitimacy. Even after Mali gained independence, the interests of the Tuaregs were neglected, with the government of Mali allocating funding to heritage initiatives at the expense of educational and social programs in northern areas of the country, where the Tuaregs reside. These facts shed further insight into the motivations behind the destruction of cultural heritage in Timbuktu.

The case has received scrutiny on the grounds that prosecuting individuals for attacking property should not overshadow or take precedence over prosecution of those who carry out

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144 Apotsos, “Timbuktu in Terror,” 105-106.
145 Apotsos, 105-106.
146 Apotsos, 105-106.
147 Apotsos, 105-106.
148 Apotsos, 105-106.
149 Apotsos, 105-106.
attacks against people. Even Judge Pangalangan, who found Al Mahdi responsible for committing what constitutes iconoclastic acts in their purest form, noted that “crimes against property are generally of lesser gravity than crimes against persons.”151 Such an argument is fundamentally flawed on the basis of the detrimental effect that destruction of cultural property can have on individuals. Though the harm may not be immediately directed on physical bodies, the psychological implications of such attacks are far-reaching. Ansar Dine and Al Mahdi deliberately carried out attacks on the population of Timbuktu, methodologically targeting cultural property that had symbolic and religious value to the inhabitants of Timbuktu. While Ansar Dine militants led by Al Mahdi took to the cites with pickaxes and hoes, the citizens of Timbuktu watched helplessly, not able to protect what had been central to their day-to-day and intergenerational existence. For this reason, the case of Prosecutor v. Ahmad Al Faqi Al Mahdi is an opportunity lost. Though the Chief Prosecutor and the judges acknowledge time and time again the religious and historic sacredness of the cites, they ultimately contradict themselves by diminishing the gravity of the crime. Their judgement reflects a fundamental lack of understanding of the multiple, longer-term consequences of iconoclastic acts.

What is thus striking about Prosecutor v. Ahmad Al Faqi Al Mahdi is the reluctance to use appropriate art historical terminology or understand its significance when evaluating the gravity of a case that deals with issues fundamental to art historical discourse. From a semantic point of view, the act of avoiding the word “iconoclasm” whilst using combinations of words to convey a similar message diminished the severity of the crime. The ICC acknowledged that destruction occurred but it failed to recognize the long-term impacts that the destruction carried. Language carries a symbolic meaning to Malians. A Malian proverb says: “What puts a thing

into condition [that is, arranges it, disposes it]? Speech. What damages a thing? Speech. What keeps a thing as it is? Speech.”

Evidently, language is not static to Malians; it carries transformative and redefining powers. It can materialize emotion and force. By avoiding the word “iconoclasm” and the long-lasting effects that iconoclasm has on group identity, the court not only diminished the severity of the crime, but also displayed a fundamental misunderstanding of the victims, invalidating their experience. Furthermore, though art historians such as Michelle Apotsos classify the destructive acts carried out by Al Mahdi in Mali as acts of iconoclasm, the international community, as represented by the ICC, was reluctant to do so. The evaluation of iconoclasm in Chapter 1 and the evidence provided in Chapter 3, all display that Ansar Dine inflicted long-lasting harm on Timbuktu, yet this was not understood by the international legal community. In short, the court not only failed to define iconoclasm as an illegal practice, but it also failed to showcase an understanding of the act itself and its implications on communities. The ICC’s decision narrowed the scope and application of international law and diminished the impacts that the destruction of cultural heritage had on the people of Mali. In other words, the court failed to set precedent to punish iconoclasts.

Arguably, iconoclasm constitutes the destruction of cultural heritage, but the destruction of cultural heritage does not necessarily constitute iconoclasm. It is vital to make this distinction on a political and legal level. While the destruction of cultural heritage carries great weight, iconoclasm is fundamentally much more harmful to populations and to the global community. Iconoclastic acts target the identities of multiple individuals, their religion, their psychological security, and their way of life. If the court were to define Al Mahdi’s act as iconoclastic, it would allow for harsher sentencing due to the semantic weight that the term itself carries. It would also

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potentially allow the ICC to prosecute iconoclasm not only under war crimes and crimes against humanity, but also under genocide. According to the Rome Statute, in order for an act to be considered genocide, it must meet one of the following criteria:

The act was committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.154

If the international community were to acknowledge iconoclasm as an illegal practice, one might argue that it would fulfill the criteria for genocide under provision (b). As was established in this paper, iconoclastic practices affect individuals and communities on a deep level. Thus, one might argue that iconoclastic practices cause mental harm to members of national, ethnical, racial or religious groups, with the purpose of eradicating their beliefs.

Similar ideas have been expressed before, with the introduction of the term “cultural genocide.” The concept of genocide itself was first introduced and articulate by Raphael Lemkin, a lawyer, in the 1940s.155 Lemkin’s definition of genocide was notably progressive and manifold.156 Lemkin was also the one to propose defining “cultural genocide” on an international legal level.157 The term was considered for adaptation and recognition, but such efforts were not particularly fruitful. Despite his efforts to include cultural genocide in the Genocide Convention of 1948 and the Declaration on the Rights of Indigenous Peoples, the term was omitted from the final drafts of these documents.158 The case Prosecutor v. Ahmad Al Faqi Al Mahdi could have opened the door on the discussion of iconoclasm, ethnocide, and cultural genocide, but it fell

157 Luck, 23-27.
158 Luck, 23-27.
short of such ambitions. Nevertheless, acknowledging this failure may enable a renewed discussion of this issue.

The case also sheds light on further limitations of the Rome Statute. While Al Mahdi destroyed priceless architectural sites within Timbuktu, he was also indicted for his active participation in burning Timbuktu manuscripts and scrolls dating from the 12th to the 16th centuries. These scrolls, which are universally acknowledged as some of Timbuktu’s greatest treasures, established Timbuktu as the center for Islamic learning. Historical information and knowledge on a variety of topics, ranging from Islamic religion, philosophy, and literature to women’s rights and business practices, were contained in hundreds of thousands of manuscripts situated in Timbuktu. The threat to the manuscripts was immediately recognized, and though 95% of the manuscripts were smuggled out of Timbuktu in an effort to preserve them from destruction, about 4,000 manuscripts were lost, stolen, or destroyed during Ansar Dine’s reign of terror. Many of these manuscripts are irreplaceable: some of them have not been translated, or the knowledge within them has not been recorded in other sources. Nevertheless, the ICC was not able to prosecute Al Mahdi in connection with these crimes because the protections under the Rome Statute do not criminalize the destruction of precious objects found within the targeted heritage structures. Yet again, if iconoclastic acts were to be explicitly criminalized under the Rome Statute, its scope would be broadened. Revisiting and reworking the Rome Statute to account for iconoclasm is thus paramount because the language of the Rome Statute is outdated and evidently does not account for the gravity of iconoclasm

160 Dyer, “The Iconoclast of Timbuktu.”
161 Dyer, “The Iconoclast of Timbuktu.”
162 Dyer.
163 Daniel M Cole, "From the Hague to Timbuktu,” 453.
Conclusion

While at first glance the case *Prosecutor v. Ahmad Al Faqi Al Mahdi* stands out as a monumental example of progress in international humanitarian law, as it strives to hold those responsible for the destruction of cultural heritage accountable, it also displays the need for cooperation and communication between the legal and art historical communities. There is an evident, fundamental disjunction between the actors involved in protection and preservation efforts.

Though deterrence is the ultimate goal, the judicial process seldom prevents individuals from committing crimes. This paper recognizes the limitations of the ICC in the deterrence of iconoclasm. It neither argues that further prosecution will stop iconoclastic acts, nor attempts to outline approaches that would have such an effect. Instead, this paper explores the implications of the existing lack of communication between the parties striving to bring justice to victims of cultural genocide. Thus, addressing the trauma endured by the victims of iconoclasm is the driving force behind the presented arguments.

A courtroom constitutes a physical embodiment of conflict and opposing agendas. Though common judicial standards exist, the way that these standards are applied in order to fit the various agendas of its participants widely varies. Prosecutors, lawyers, judges, witnesses, and especially physical evidence can all be utilized in carefully constructed narratives that cater to the individual objectives of said players. It would be naive to deny or ignore the individual motivations and goals that surface within a judicial process, and such manifestations are never linear. They are, in fact, far more complex. Nevertheless, it would be just as naive to suggest that such dynamics will ever cease to exist or that we should strive to eradicate them altogether; such notions are at best utopian, and at worst downright delusional. In the case of destruction of
cultural heritage and iconoclasm, such motivations are actually beneficial to the preservationist cause.

This paper neither argues for the dismantling of the ICC, nor argues for its restructuring and the abandonment of the universal practices that guide its operation. That is beyond the scope of this paper. Though critical of the existing norms, this paper does not embrace an anti-universalist point of view. On the contrary, this paper argues that a commonly agreed upon approach should exist and unified practices should be implemented by all state actors. However, what this paper establishes is that in some instances the motivations of individual, judicial actors align with the motivations of art historians, preservationists, and activists, but that the outdated argumentative framework that they use harms the interests of all parties involved. The case *Prosecutor v. Ahmad Al Faqi Al Mahdi* showcases that while the people of Mali sought justice and some peace after suffering at the hands of iconoclasts Ansar Dine, the ICC pursued other agendas, such as establishing its legitimacy in the eyes of the international community and its critics. The ICC viewed the case as an opportunity to showcase their ability to quickly and efficiently prosecute individuals for war crimes. Though the motivations behind the ICC’s actions may be different from those of the members of the art community, that does not mean that the two cannot join forces in their efforts. What this paper argues is that the goals of all parties involved could have been met if there was communication between them. This paper argues that there is a fundamental lack of understanding of art historical discourse amongst the proponents of international humanitarian law and that without it, all future efforts to protect and pursue justice for victims of iconoclastic acts will fail.

This paper offers insight into the current limitations of the judicial process and the trajectory of international humanitarian law as it pertains to the destruction of cultural heritage
during armed conflict. A synthesis of aesthetic, political, and legalistic frameworks is key to the ongoing battles that humanity faces in its pursuit to safeguard cultural heritage from iconoclasts. As Eyal Weizman, the founder of the group Forensic Architecture which uses architecture to investigative human rights violations, armed conflicts, and environmental destruction, states in his work *Forensis: The Architecture of Public Truth*: “to detect is to transform, and to be transformed is to feel pain.” This idea is central to the key argument of this paper. Only by recognizing the existing limitations of a current order can we begin to address its issues by changing the laws and guidelines through which we govern ourselves and others. Only through a thorough acknowledgment of human flaws and mistakes can we begin to change existing political and legal dynamics that compose the skeleton for human existence. Only then, through change, can we begin to recognize and validate the suffering and pain inflicted upon others. No one can fully understand an individual’s experience or an experience of a particular community. Yet through collective memory, we can place that experience within the context of a greater psychological framework - the human condition. This notion is key to the arguments made in this paper. Though we may never be able to comprehend the magnitude of the damage inflicted upon the people of Timbuktu, we can attempt to bring both symbolic and real justice to those who were directly affected by the actions of Al Mahdi and Ansar Dine. Though the case may be closed, by explicitly defining the destruction of mausoleums, the Sidi Yahia mosque door, and the precious manuscripts from Timbuktu as acts of iconoclasm and cultural genocide, we can start a dialogue that would pave the way for further legal protections of cultural heritage, which is especially important since militants are actively utilizing iconoclastic tactics in ongoing armed conflicts throughout the world. Without the adoption of a semantic approach to cultural property

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and terminology that has circulated in the field for decades, international humanitarian law
cannot begin to fulfill its responsibilities to humanity or achieve the elemental goals that it sets
out for itself.
Bibliography


Figures

