"THE BEST WAY TO TEAR SOMEONE DOWN IS TO TEAR DOWN THEIR CULTURE, TEAR DOWN EVERYTHING THAT IS IMPORTANT TO THEM."

In August 2016, Ahmad al-Faqi al-Mahdi pled guilty before the International Criminal Court (ICC) to the intentional damage of nine mausoleums and a mosque in Timbuktu, Mali. The Rome Statute of 1998 establishing the ICC classifies the international destruction of cultural heritage as a war crime in Article 8(2), and Prosecutor v. Al-Mahdi is the first time the court has taken action stemming from this provision. While the case may not immediately deter future terrorists from targeting cultural sites, it establishes precedent against the practice and helps raise awareness about the necessity of protecting a population’s identity and history.

The government of Mali brought the case to the ICC on July 13, 2012, just days after the crimes occurred. Al-Mahdi admitted guilt at the opening proceedings of his August 2016 trial and he was sentenced to nine years in prison. As a member of Ansar Dine, an al-Qaida-linked paramilitary group seeking to impose sharia law in Mali, he organized, supervised, and actively participated in the destruction of Malian heritage. Sidi Yahia is one of Timbuktu’s main mosques and reflects the city’s place as an Islamic center during the fifteenth and sixteenth centuries. The mosque and eight of the nine mausoleums destroyed are designated UNESCO world heritage sites. Similarly, the ICC deemed the structures pieces of significant cultural heritage and not military objects. The ICC’s chief prosecutor described the damaged objects as the “embodiment of Malian history captured in tangible form from an era long gone.”

With very limited resources and a focus on crimes against persons, the ICC accepting this case demonstrates its conviction that international law and international bodies need to address the deliberate destruction of cultural heritage as acts of war. The court’s decision could have a number of implications, including advancing the codification of the norm against cultural destruction, helping with the Malian reconciliation process, and supporting further efforts to protect cultural sites before they can be targeted.

The ICC, a court of last resort, is unlikely to hear another similar case in the foreseeable future. Thus, al-Mahdi’s case is essential in defining the international precedent of contextualizing cultural heritage destruction as a war crime. This is particularly true given that countries like Iraq, Afghanistan, and Syria cannot be tried because they are not party to the Rome Statue. It seems highly unlikely that this trial will showcase the seriousness of law enforcement without a credible threat of punishment. Nevertheless, the ICC has staked its claim on this case.

Mali’s government described the outcome of the case as a source of “hope for all the
victims of the barbaric ideology . . . in northern Mali,” adding that it “should serve as a . . . warning to criminals who attack cultural property.” In the opening address to the court, al-Mahdi stated, “I regret what I have caused to my family, my community in Timbuktu, what I have caused to my home nation Mali.”

The case could also indicate an important shift in the international consciousness surrounding the importance of cultural heritage and the imperative to protect it. The 2016 People on War report from the International Committee of the Red Cross polled over 17,000 people in 16 countries and found that 72 percent of the sample said it was wrong to attack religious and historical monuments, and not just an inherent part of war. In countries currently engaged in an armed conflict, 84 percent of individuals deemed it wrong. This stands in contrast to a similar question that found only 59 percent of respondents found it wrong to harm humanitarian workers.

The increase in reporting on cultural heritage issues is echoed by increased scholarship and action. For example, the UN’s Unite for Heritage campaign works to engage the global public in celebrating and safeguarding diverse cultural heritage. Elsewhere, technological innovation is changing the field. Groups have begun to utilize sandbagging to protect heritage, satellite imagery to track looting, and 3D printing to recreate objects. The push is largely a product of significant events, including the al-Mahdi case, that have helped create renewed interest. These events include the destruction of archeological structures in Palmyra, Syria, the towering Buddhas of Bamiyan Valley in Afghanistan, and artifacts of the Mosul Museum in Iraq.

In this case, the ICC functions as an assertive voice at a time when the safety of global cultural heritage is particularly endangered. Increasing the awareness of states, organizations, and individuals of the severity of the issue can improve the likelihood that there will be domestic and global organizing effort to more effectively protect heritage. Although some may argue this case is merely symbolic, it is a needed affirmative decision in a complicated field to guide progress forward.

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CAN THE INTERNATIONAL CRIMINAL COURT HELP PROTECT CULTURAL HERITAGE?

1 Second Prosecution Witness, The Prosecutor v. Ahmad al-Faqi al-Mahdi, witness: MLI-OTP-P-0431
4 While there are many bodies that could enforce the laws and expectations of international cultural heritage law, there is little enforcement in practice; see Alessandro Chechi, *The Settlement of International Cultural Heritage Disputes* (New York: Oxford University Press, 2014).
8 In understanding the implications of this case, it is important to acknowledge the uncertain state of the ICC. As the world's first tribunal with permanent jurisdiction to prosecute war crimes, genocide, and crimes against humanity, the court faces continuing challenge to its legitimacy, which could affect its broader influence in the future. See Ivan Nechepurenko and Nick Cumming-Bruce, “Russia Cuts Ties With International Criminal Court, Calling It ‘One-Sided.’” The New York Times, November 16, 2016. http://www.nytimes.com/2016/11/17/world/europe/russia-withdraws-from-international-criminal-court-calling-it-one-sided.html.