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Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 27 September 2016

**TRIAL CHAMBER VIII**

**Before:** Judge Raul C. Pangalangan, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Bertram Schmitt

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF *THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

**Public**

**Judgment and Sentence**

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<b>I. Introduction .....</b>	<b>4</b>
<b>A. Procedural history .....</b>	<b>4</b>
<b>B. The Accused and the charge.....</b>	<b>6</b>
<b>II. Judgment.....</b>	<b>7</b>
<b>A. Applicable law .....</b>	<b>7</b>
1. <i>Crime charged</i> .....	7
2. <i>Modes of liability</i> .....	11
3. <i>Article 65 of the Statute</i> .....	11
<b>B. Established facts of the case .....</b>	<b>15</b>
1. <i>Context</i> .....	16
2. <i>Decision to attack the mausoleums and mosques</i> .....	18
3. <i>The attack and Mr Al Mahdi's responsibility</i> .....	20
<b>C. Findings.....</b>	<b>25</b>
1. <i>Findings on Article 8(2)(e)(iv) of the Statute</i> .....	26
2. <i>Findings on Article 25(3)(a) of the Statute (co-perpetration) and other modes of liability</i> .....	28
<b>D. Conclusion .....</b>	<b>31</b>
<b>III. Sentence .....</b>	<b>32</b>
<b>A. Applicable law .....</b>	<b>32</b>
1. <i>Gravity of the crime</i> .....	35
2. <i>Aggravating and mitigating circumstances</i> .....	35
<b>B. Analysis.....</b>	<b>36</b>
1. <i>Gravity of the crime</i> .....	36
2. <i>Mr Al Mahdi's culpable conduct</i> .....	39
3. <i>Mr Al Mahdi's individual circumstances</i> .....	42
<b>C. Determination of the sentence .....</b>	<b>46</b>

**TRIAL CHAMBER VIII** ('Chamber') of the International Criminal Court ('Court' or 'ICC') issues the following Judgment and Sentence, in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 8(2)(e)(iv), 23, 25(3)(a), 65 and 76 to 78 of the Rome Statute ('Statute') and Rules 139 and 145 of the Rules of Procedure and Evidence ('Rules').

## **I. Introduction**

### **A. Procedural history**

1. On 18 September 2015, the Single Judge of Pre-Trial Chamber I issued a warrant for Mr Ahmad Al Faqi Al Mahdi's arrest.<sup>1</sup> Mr Al Mahdi was transferred to The Hague on 26 September 2015 and his first appearance took place on 30 September 2015.<sup>2</sup>
2. On 17 December 2015, the Office of the Prosecutor ('Prosecution') filed its document containing the charge. It contained a single charge alleging that Mr Al Mahdi is responsible for the war crime of attacking protected objects under Article 8(2)(e)(iv) of the Statute.<sup>3</sup>
3. On 18 February 2016, the parties reached a plea agreement in relation to the charge ('Agreement').<sup>4</sup>
4. On 24 March 2016, the Pre-Trial Chamber confirmed the charge alleged by the Prosecution.<sup>5</sup> Trial Chamber VIII was constituted accordingly on 2 May 2016.<sup>6</sup>

<sup>1</sup> *Mandat d'arrêt à l'encontre d'Ahmad AL FAQI AL MAHDI*, [ICC-01/12-01/15-1-Red](#) (public redacted version notified on 28 September 2015).

<sup>2</sup> Transcript of Hearing, [ICC-01/12-01/15-T-1-ENG](#).

<sup>3</sup> *Chef d'accusation retenu par l'Accusation contre Ahmad AL FAQI AL MAHDI*, 17 December 2015, [ICC-01/12-01/15-62](#).

<sup>4</sup> Annex 1 to the *Version publique expurgée du «Dépôt de l'Accord sur l'aveu de culpabilité de M. Ahmad Al Faqi Al Mahdi»*, 25 février 2016, *ICC-01/12-01/15-78-Conf-Exp*, 25 February 2016, [ICC-01/12-01/15-78-Anx1-tENG-Red](#) (confidential English translation notified on 21 June 2016, public redacted version notified on 19 August 2016 and public redacted English translation notified on 9 September 2016).

5. On 24 May 2016, this Chamber held its first status conference.<sup>7</sup> At this status conference, it was decided, with the agreement of the parties, that: (i) in the event of a conviction, the judgment and sentence in this case would be rendered simultaneously; and (ii) the materials on the confirmation phase lists of evidence were considered as presented by the Prosecution and accepted by the Accused for the purposes of an Article 65 determination. After receiving supplementary lists of further materials presented by the Prosecution and accepted by the Accused, the Chamber has before it 714 items to consider in its determinations<sup>8</sup> and two written witness statements of Defence witnesses to be considered exclusively for sentencing.<sup>9</sup>
6. On 8 June 2016, the Chamber appointed a Legal Representative of Victims ('LRV') in the case.<sup>10</sup> In total, eight victims participated in the trial proceedings.<sup>11</sup>

<sup>5</sup> Public redacted version of the 'Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi', [ICC-01/12-01/15-84-Red](#) (with [separate opinion](#)).

<sup>6</sup> Presidency, Decision constituting Trial Chambers VIII and IX and referring to them the cases of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* and *The Prosecutor v. Dominic Ongwen*, [ICC-01/12-01/15-86](#).

<sup>7</sup> Transcript of Hearing, ICC-01/12-01/15-T-3-CONF-ENG.

<sup>8</sup> Consolidated and Updated Joint List of Evidence, 7 September 2016, ICC-01/12-01/15-167 (with annex). See also Annex A to the *Dépôt de l'inventaire des preuves que l'Accusation entend produire à l'audience de confirmation des charges*, 18 December 2015, ICC-01/12-01/15-67-Conf-Exp-AnxA; Annex A to the *Addendum au « Dépôt de l'inventaire des preuves que l'Accusation entend produire à l'audience de confirmation des charges », 18 décembre 2015* (ICC-01/12-01/15-67), 29 January 2016, ICC-01/12-01/15-74-Conf-Exp-AnxA; Annex A to the *Communication de la liste conjointe d'éléments de preuve additionnels soumise en application de l'article 65(1)(c)(ii) du Statut et demande d'extension de temps pour déposer 5 notes d'enquêteurs*, 1 July 2016, ICC-01/12-01/15-119-Conf-AnxA; Annex A to the *Addendum à la « Communication de la liste conjointe d'éléments de preuve additionnels soumise en application de l'article 65(1)(c)(ii) du Statut et demande d'extension de temps pour déposer 5 notes d'enquêteurs », 1 juillet 2016*, ICC-01/12-01/15-119-Conf, 15 July 2016, ICC-01/12-01/15-130-Conf-AnxA.

<sup>9</sup> Transcripts of hearing, 22 August 2016, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 3, line 20, to p. 4, line 15, [ICC-01/12-01/15-T-6-ENG](#), p. 44, lines 13-18; *Requête urgente de la Défense aux fins de dépôt de déclarations écrites de deux témoins au dossier du procès, avec deux annexes confidentielles 1 et 2*, 23 August 2016, ICC-01/12-01/15-162-Conf (with two annexes containing the witness statements MLI-DEF-0001-0001 and MLI-DEF-0002-0001).

<sup>10</sup> Public redacted version of 'Decision on Victim Participation at Trial and on Common Legal Representation of Victims', [ICC-01/12-01/15-97-Red](#) (ex parte version notified on the same day).

<sup>11</sup> [ICC-01/12-01/15-97-Red](#), p. 15; Public redacted version of 'Second Decision on Victim Participation at Trial', 12 August 2016, 12 August 2016, [ICC-01/12-01/15-156-Red](#) (confidential version notified on the same day). Following decision ICC-01/12-01/15-156-Red, victim a/35008/16 withdrew. Transcript of Hearing, 22 August 2016, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 3, lines 8-19.

7. The trial was held between 22 and 24 August 2016.<sup>12</sup> Mr Al Mahdi made an admission of guilt. All oral submissions relating to the judgment and sentencing were received,<sup>13</sup> and the Prosecution presented the testimony of three witnesses.
8. Excluding the present decision, this Chamber rendered 18 written decisions, 12 oral decisions and 37 e-mail decisions in the course of the trial proceedings.

### **B. The Accused and the charge**

9. Mr Ahmad Al Faqi Al Mahdi, also known as Abu Turab, was born in Agoune in the region of Timbuktu, Mali. He is between 30 and 40 years old<sup>14</sup> and belongs to a family recognised in his community for having a particularly high knowledge of Islam.<sup>15</sup> Having received Koranic education since his childhood,<sup>16</sup> Mr Al Mahdi has a thorough knowledge of the Koran<sup>17</sup> and gave lectures as an expert on religious matters.<sup>18</sup> He joined the armed group known as Ansar Dine in April 2012.<sup>19</sup>
10. Mr Al Mahdi is charged with intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, Mali, between

<sup>12</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), [ICC-01/12-01/15-T-5-Red-ENG](#), [ICC-01/12-01/15-T-6-ENG](#). For more on the conduct of the present proceedings, see the Directions on the Conduct of the Proceedings, 22 July 2016, [ICC-01/12-01/15-136](#) (with [annex](#)).

<sup>13</sup> The participants also made written sentencing submissions. *Observations de la Défense sur les principes devant gouverner la peine et les circonstances aggravantes et/ou atténuantes en la cause, en conformité avec l'ordonnance ICC-01/12-01/15-99 de la Chambre (ICC-01/12-01/15-141-Conf)*, 22 July 2016, [ICC-01/12-01/15-141-Corr-Red](#) (corrigendum and public redacted version notified 20 September 2016) ('Defence Sentencing Observations'); the Prosecution's submissions on sentencing, 22 July 2016, [ICC-01/12-01/15-139-Red](#) (with annex; public redacted version notified on 22 August 2016) ('Prosecution Sentencing Observations'); *Observations des victimes tendant à la fixation d'une peine exemplaire pour crimes de guerre*, 22 July 2016, ICC-01/12-01/15-135-Conf ('LRV Sentencing Observations'). See also The Registry's Observations on Mr Ahmad Al Faqi Al Mahdi's Solvency and Conduct while in Detention, 21 July 2016, ICC-01/12-01/15-134-Conf ('Registry Observations').

<sup>14</sup> First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 3 (fact 10).

<sup>15</sup> Defence witness statement, MLI-DEF-0001-0001, 0002.

<sup>16</sup> Statement by Al Mahdi, MLI-OTP-0033-4511, 4516-18.

<sup>17</sup> First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 3 (fact 11).

<sup>18</sup> Statement by Al Mahdi, MLI-OTP-0033-4511, 4523-25; Defence witness statement, MLI-DEF-0002-0001, 0001-02.

<sup>19</sup> First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, pp. 2 and 3 (facts 3-13).

around 30 June 2012 and 11 July 2012: (i) the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum; (ii) the Sheikh Mohamed Mahmoud Al Arawani Mausoleum; (iii) the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum; (iv) the Alpha Moya Mausoleum; (v) the Sheikh Mouhamad El Mikki Mausoleum; (vi) the Sheikh Abdoul Kassim Attouaty Mausoleum; (vii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum; (viii) the Sidi Yahia Mosque door and the two mausoleums adjoining the Djingareyber Mosque, namely (ix) the Ahmed Fulane Mausoleum and (x) the Bahaber Babadié Mausoleum.

## II. Judgment

### A. Applicable law

#### 1. *Crime charged*

11. The only confirmed charge in this case is the war crime of attacking protected objects under Article 8(2)(e)(iv) of the Statute, which punishes the following act: 'Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.' The parties jointly submit that this is the proper characterisation of the crime committed in this case. Accordingly, this is the crime with which the Prosecution has charged the defendant and to which the defendant has admitted guilt.
12. The Chamber notes that the Prosecution did not charge the defendant with the more general crime of destruction of civilian property under Article 8(2)(e)(xii), which punishes the following acts: 'Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.' No arguments have been raised that Article

8(2)(e)(xii) would have been a more appropriate charge and the Chamber sees no reason to consider any legal recharacterisation,<sup>20</sup> noting in particular that the specific intent of the defendant to attack protected objects meets squarely the *mens rea* requirement of Article 8(2)(e)(iv).

13. In order to prove the crime charged, it must be proven that:

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>21</sup>

Considering that this is the first case in which the Court is applying Article 8(2)(e)(iv), the Chamber will proceed to interpret this crime and its elements.

14. The special protection of cultural property in international law can be traced back to Articles 27 and 56 of the 1907 Hague Regulations<sup>22</sup> and to the 1919 Commission on Responsibility, which identified ‘wanton destruction of

<sup>20</sup> See, generally, Regulation 55 of the Regulations (‘Authority of the Chamber to modify the legal characterisation of facts’).

<sup>21</sup> Elements of Crimes, Article 8(2)(e)(iv).

<sup>22</sup> [Convention \(IV\) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague](#), 18 October 1907, Articles 27 and 56 (Article 27 provides: ‘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 at the time for military purposes’). For an even earlier national codification of this prohibition, see also [Instructions for the Government of Armies of the United States in the Field \(Lieber Code\)](#), 1863, Articles 35 and 36.



religious, charitable, educational, and historic buildings and monuments’ as a war crime.<sup>23</sup> The Geneva Conventions also recognised the need for special protection of objects – like hospitals – which are already protected as civilian objects.<sup>24</sup> Subsequent international instruments reflect the enhanced protection of cultural property, including Additional Protocols I and II to the Geneva Conventions<sup>25</sup> and the Second Protocol to the Hague Convention of 1954.<sup>26</sup>

15. The Chamber considers that the element of ‘direct[ing] an attack’ encompasses any acts of violence against protected objects and will not make a distinction as to whether it was carried out in the conduct of hostilities or after the object had fallen under the control of an armed group. The Statute makes no such distinction. This reflects the special status of religious, cultural, historical and similar objects, and the Chamber should not change this status by making distinctions not found in the language of the Statute. Indeed, international humanitarian law protects cultural objects as such from crimes committed both in battle and out of it.<sup>27</sup>
16. Moreover, existing case-law from other cases pertaining to attacks against civilian populations<sup>28</sup> does not offer guidance. The Statute protects persons and

<sup>23</sup> Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, [14 The American Journal of International Law 95](#) (No. 1-2, 1920), p.115.

<sup>24</sup> [Convention \(I\) for the amelioration of the condition of the wounded and sick in armed forces in the field](#), 12 August 1949, Articles 19-23; [Convention \(II\) for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea](#), 12 August 1949, Articles 22, 23, 34-35; [Convention \(IV\) Relative to the Protection of Civilian Persons in Time of War](#), 12 August 1949, Articles 14, 18 and 19.

<sup>25</sup> [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol I\)](#), 8 June 1977, Article 53; [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#), 8 June 1977, Article 16. Both these protocols make reference to an earlier 1954 Hague Convention. See [Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention](#), The Hague, 14 May 1954, Article 4.

<sup>26</sup> [Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague](#), 26 March 1999, Article 15.

<sup>27</sup> See para. 14 of the present Judgment.

<sup>28</sup> See, generally, Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, [ICC-01/04-02/06-309](#), para. 45; Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, [ICC-01/04-01/07-717](#) (notified on 1 October 2008), para. 267.

cultural objects differently. Persons are protected by many distinct clauses that apply during hostilities, after an armed group has taken control, and against various and specific kinds of harm. However, cultural objects in non-international armed conflicts are protected as such, not generically as civilian objects, only in Article 8(2)(e)(iv), which makes no distinction between attacks made in the conduct of hostilities or afterwards. Lastly, the jurisprudence of the ICTY is of limited guidance given that, in contrast to the Statute, its applicable law does not govern ‘attacks’ against cultural objects but rather punishes their ‘destruction or wilful damage’.<sup>29</sup> The legal contexts thus differ.

17. Article 8(2)(e)(iv) is the non-international armed conflict analogue of Article 8(2)(b)(ix), applicable in international armed conflict and with nearly identical elements.<sup>30</sup> Both provisions govern the directing of attacks against special kinds of civilian objects, reflecting the particular importance of international cultural heritage. Article 8(2)(e) sets forth a contextual component, namely that it applies to armed conflicts not of an international character that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups.
18. The parties submit jointly, and the Chamber has received evidence, that there was an armed conflict not of an international character in Mali during the relevant period. The Chamber notes that one element of the crime is that the ‘conduct took place in the context of and was associated with an armed conflict not of an international character.’ The Chamber understands that the ‘conduct’ is the attack on cultural objects, and what this element requires is not a link to

<sup>29</sup> Compare also Article 8(2)(e)(iv) of the Rome Statute with Article 3(d) of the [ICTY Statute](#) (criminalising ‘seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science’); ICTY, Trial Chamber II, *Prosecutor v. Pavle Strugar*, Judgement, 31 January 2005, [IT-01-42-T](#) (‘*Strugar* TJ’), para. 308 (interpreting the ICTY Statute as requiring actual damage or destruction to the cultural property).

<sup>30</sup> The only difference is the nature of the armed conflict in the contextual elements.

any particular hostilities but only an association with the non-international armed conflict more generally.

## 2. *Modes of liability*

19. In order to prove that someone co-perpetrated a crime by committing it jointly with others under Article 25(3)(a) of the Statute, it must be proven that:
  1. The person makes an essential contribution<sup>31</sup> with the resulting power to frustrate the commission of the crime.<sup>32</sup>
  2. The person's contribution is made within the framework of an agreement with others which led to the commission of the crime.<sup>33</sup>
  3. The person satisfies the subjective elements of the crime.<sup>34</sup>
20. For the reasons set out later in this Judgment,<sup>35</sup> it is unnecessary to set out the requirements for the alternative modes of liability charged by the Prosecution and confirmed by the Pre-Trial Chamber.

## 3. *Article 65 of the Statute*

21. As this is the first time Article 65 has been applied at this Court, the Chamber will briefly address the origins and purpose of this provision.
22. The 1994 International Law Commission Draft Statute required the Trial Chamber to allow the accused to 'enter a plea of guilty or not guilty'.<sup>36</sup> This provision soon met with controversy. It was noted in the 1995 Ad Hoc

<sup>31</sup> There is a split in this Court's case-law as to whether this contribution must be to the 'crime' itself or the 'common plan'. However, on the facts of the present case this distinction makes no difference.

<sup>32</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, [ICC-01/04-01/06-3121-Red](#), A5, paras. 469 and 473 ('Lubanga AJ').

<sup>33</sup> Lubanga AJ, [ICC-01/04-01/06-3121-Red](#), paras. 445 and 446.

<sup>34</sup> See Lubanga AJ, [ICC-01/04-01/06-3121-Red](#), paras. 447-451; Lubanga TJ, [ICC-01/04-01/06-2842](#), paras. 1014-18.

<sup>35</sup> See paras. 57 and 58 of the present Judgment.

<sup>36</sup> Report of the International Law Commission on the work of its forty-sixth session, 2 May to 22 July 1994, Official Records of the General Assembly, Forty-ninth session, Supplement No. 10, [A/49/10, part II](#), pp. 54 and 55.

Committee report that a view had been expressed by some delegations that ‘the effect of a guilty plea would need to be spelled out in view of the differences between civil-law and common-law systems’ and the remark was made that, ‘in view of the gravity of the crimes within the jurisdiction of the court, it would be inappropriate to permit plea bargaining’.<sup>37</sup> It was also noted on this issue in the 1996 Preparatory Committee report that ‘[a]ttention was drawn to the need to bridge the gap between different legal systems [...] with emphasis being placed on finding the common denominators in different legal systems’.<sup>38</sup>

23. Civil and common law systems diverge, traditionally speaking, on the role played by admissions of guilt. This reflects deeper traditional differences in understanding on the nature of criminal procedure:

If proceedings are patterned upon the model of an official determination of the facts of the case, both formal pleadings and stipulations are objectionable [...] On the other hand, if proceedings are essentially a contest, and the judgment a decision between the contestants, the logic of this procedural design naturally tends toward accepting formal pleadings and stipulations.<sup>39</sup>

24. The first language of what ultimately became Article 65(1)-(4) of the Statute comes from an Argentine working paper distributed in 1996.<sup>40</sup> This proposal intended to serve as an intermediate solution that blended traditional common and civil law concepts.<sup>41</sup> A joint Argentine-Canadian follow-up proposal first

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<sup>37</sup> Report of the Ad Hoc Committee on the Establishment of an International Criminal Court, 6 September 1995, [A/50/22 Supp. 22](#), para. 170.

<sup>38</sup> Report of the Preparatory Committee on the Establishment of an International Criminal Court, Proceedings of the Preparatory Committee during March-April and August 1996, [A/51/22 Supp. 22](#) (‘1996 PrepCom Report’), [vol. I](#), para. 263.

<sup>39</sup> Mirjan Damaška, Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study, *121 University of Pennsylvania Law Review* 506, p. 582 (1972-73). Commentators have noted that this traditional distinction has substantially eroded in recent times. Fabricio Guariglia and Gudrun Hochmayr, Proceedings on an admission of guilt, in *Rome Statute of the International Criminal Court – A Commentary*, 2016 (C.H. Beck – Hart – Nomos, 3<sup>rd</sup> edition, Triffterer and Ambos, eds) (‘Triffterer Commentary’), p. 1623.

<sup>40</sup> Preparatory Committee on the Establishment of an International Criminal Court, Working paper submitted by Argentina, 13 August 1996, [A/AC.249/L.6](#), pp. 8, 14 and 15.

<sup>41</sup> [A/AC.249/L.6](#), p. 8.

introduced the language of an ‘admission of guilt’, avoiding the familiar terminology used in either the civil or common law traditions.<sup>42</sup>

25. The biggest change in the provision following these 1996 proposals is the introduction of what was to become Article 65(5) of the Statute.<sup>43</sup> This was adopted to ease the concerns of those delegations which wanted to ensure that the admission of guilt procedures did not open the way to the introduction of plea bargaining.<sup>44</sup> This is a different issue to that of ‘guilty pleas’ generally, as it is possible to have an admission of guilt in the absence of any agreement between the parties.<sup>45</sup> Article 65(5) explicitly makes such *inter-partes* discussions non-binding on the Trial Chamber, a notion acceptable to plea bargaining advocates and sceptics alike.<sup>46</sup>
26. Few substantive changes were made to this draft from the 1997 Preparatory Committee onwards, and Article 65 was adopted together with the remainder of the Statute on 17 July 1998.

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<sup>42</sup> Preparatory Committee on the Establishment of an International Criminal Court, proposal submitted by Argentina and Canada for Articles 38, 38 *bis*, 41 and 43, 20 August 1996, [A/AC.249/WP.16](#), reproduced in [1996 PrepCom Report, vol. II](#), pp. 173 and 174. See also Hans-Jörg Behrens, The Trial Proceedings, in *The International Criminal Court – The Making of the Rome Statute: Issues, Negotiations, Results*, 1998 (Kluwer Law International, Roy S. Lee ed.) (‘Lee Statute Commentary’), p. 242. This said, while the English version of Article 64(8)(a) of the final Statute uses the term ‘admission of guilt’, the French version speaks of ‘*la possibilité de plaider coupable* [...]’. Article 65 in the French version of the final Statute uses the term ‘*aveu de culpabilité*’ throughout.

<sup>43</sup> This provision appears as early as 14 August 1997, in a Preparatory Committee Report. Preparatory Committee on the Establishment of an International Criminal Court, Decisions Taken by the Preparatory Committee at its Session Held from 4 to 15 August 1997, 14 August 1997, [A/AC.249/1997/L.8/Rev.1](#), p. 33. A comment on the draft paragraph appears in footnote 41, which reads: ‘Concerns were expressed about this paragraph and it was suggested that its formulation should continue to be examined’.

<sup>44</sup> Triffterer Commentary, page 1633; Lee Commentary, p. 242; William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2010 (Oxford University Press) (‘Schabas Commentary’), p. 780.

<sup>45</sup> *Black’s Law Dictionary* confirms that a plea is not necessarily always linked with a plea bargain: ‘[...] [a] guilty plea is usu[ally] part of a plea bargain’. ‘Plea’, in *Black’s Law Dictionary* (10<sup>th</sup> ed., 2014).

<sup>46</sup> See Schabas Commentary, pp. 776-77; Procedure before the Trial Chamber, in *The Rome Statute of the International Criminal Court – A Commentary*, 2002 (Oxford University Press, Cassese, Gaeta and Jones, eds.), vol. II, p. 1290 (‘[i]t is, moreover, a fairly generally accepted principle that bargaining between the prosecution and defence must, in those States that use it, be approved by a judge’).

27. The solution reflected in the final Article 65 of the Statute follows a 'third avenue' between the traditional common law and civil law approaches.<sup>47</sup> Pursuant to Articles 64(8)(a) and 65 of the Statute, an accused is afforded an opportunity to make an admission of guilt at the commencement of the trial, a procedure which looks not dissimilar to the traditional common law 'guilty plea'. Article 65(5) of the Statute also implicitly authorises discussions corresponding to plea agreements in common law legal systems. However, Article 65 also requires the Chamber to conclude that the admission is 'supported by the facts of the case', specifically requiring it to consider both the admission of guilt 'together with any additional evidence presented'.<sup>48</sup> This is more analogous to a summary or abbreviated procedure traditionally associated with civil law systems.
28. Such admissions, when accepted by the Chamber, can have a multitude of benefits to the Court and the interests of justice more generally. An admission of guilt can lead to a swifter resolution of a case, giving much needed finality in an otherwise unmatchable timeframe. While there may be victims who prefer to testify, others may wish to be spared the stress of having to testify to their personal tragedies and being exposed to cross-examination. Accused admitting guilt pursuant to an agreement to testify in subsequent trials can contribute to the search for the truth as insider witnesses in cases against others. Perhaps most importantly, the speed at which cases can be resolved following admissions of guilt saves the Court both time and resources, which can be otherwise spent advancing the course of international justice on other fronts.

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<sup>47</sup> Triffterer Commentary, p. 1625.

<sup>48</sup> Article 65(1)(c) and (2) of the Statute.

## B. Established facts of the case

29. The Chamber will now proceed to set out what it considers to be the established facts of the case. The Chamber must make such a determination pursuant to Article 65(1)(c) of the Statute. In order to assess whether ‘the admission of guilt is supported by the facts of the case’, the Chamber heard three witnesses and considered the hundreds of documentary evidence items presented by the Prosecution and accepted by the Accused. For each of the established facts, the Chamber has relied upon: (i) the admissions of the Accused;<sup>49</sup> (ii) the supplementary material presented by the Prosecution and accepted by the Accused;<sup>50</sup> and (iii) the testimony of the witnesses who appeared before this Chamber. Although there is no corroboration requirement when assessing evidence,<sup>51</sup> the Chamber paid particular attention to whether evidence could establish the facts independently of the Accused’s admissions.
30. The Chamber notes at the outset that Mr Al Mahdi has confirmed, both orally and in writing, that he:
- (i) Understands the nature of the charge against him, and the consequences of an admission of guilt;<sup>52</sup>
  - (ii) Makes an admission of guilt voluntarily, after sufficient consultation with Defence counsel;<sup>53</sup>

<sup>49</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#). See also First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA.

<sup>50</sup> ICC-01/12-01/15-67-Conf-AnxA; ICC-01/12-01/15-74-Conf-AnxA. See also Transcript of Hearing, 24 May 2016, ICC-01/12-01/15-T-3-Conf-ENG, p. 21, line 13, to p. 22, line 14 (confirming that the materials listed in ICC-01/12-01/15-67-Conf-AnxA and ICC-01/12-01/15-74-Conf-AnxA are accepted by the accused).

<sup>51</sup> Rule 63(4) of the Rules.

<sup>52</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 28; Transcript of Hearing, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 11, lines 10-20.

<sup>53</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 6, 23, 28; Transcript of Hearing, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 10, lines 7-11 and 18-21.



- (iii) Waives his rights to: (a) plead not guilty and require the Prosecution to prove the charges beyond reasonable doubt at a full trial; (b) not confess guilt and to remain silent; (c) raise defences and grounds for excluding criminal responsibility, and to present admissible evidence at a full trial; (d) examine the witnesses against him and to obtain the examination of witnesses on his behalf at a full trial; and (e) appeal a conviction or sentence, provided the sentence is not in excess of the recommended sentencing range;<sup>54</sup> and
- (iv) Accepts his individual criminal responsibility for the charge, including all modes of liability alleged;<sup>55</sup> it is noted that the Agreement does not envisage the modification of the charge.

### 1. Context

31. In January 2012, armed violence took place in the territory of Mali and led to different armed groups taking control of the north of the country.<sup>56</sup> Around early April 2012, following the retreat of Malian armed forces, the groups Ansar Dine and Al-Qaeda in the Islamic Maghreb ('AQIM') took control of Timbuktu.<sup>57</sup> From then until January 2013 Ansar Dine and AQIM imposed their

<sup>54</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 21; Transcript of Hearing, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 11, lines 3-7.

<sup>55</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 4; Transcript of Hearing, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 6, line 18, to p. 7, line 19.

<sup>56</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 1; Statement by P-66, MLI-OTP-0019-0296-R01, 0304, 0310; Malian Intelligence bulletin, MLI-OTP-0012-0098; Malian Government's Memorandum on the security situation in the regions of northern Mali, MLI-OTP-0001-0167; Malian Intelligence bulletin on the situation of armed groups in the north of Mali, MLI-OTP-0012-0119, 0119, 0122-23; Report of the Secretary-General on the situation in Mali, MLI-OTP-0013-3480; Report of the Secretary-General on children and armed conflict in Mali, MLI-OTP-0014-5183, 5184-88; OCHA's Situation Report on Mali, MLI-OTP-0001-1459; Report of the United Nations High Commissioner for Human Rights, MLI-OTP-0013-3500; AQIM's Press release on the events in Gao, MLI-OTP-0010-0521; Key dates of the jihadist occupation in northern Mali, MLI-OTP-0033-3862.

<sup>57</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 3-5; Video of Ouman Ould Hamaha speaking about Ansar Dine's control of Timbuktu, MLI-OTP-0018-0352, from 00:00:00 to 00:00:41, MLI-OTP-0033-5448 (full French transcript); Video of Ansar Dine at Timbuktu airport, MLI-OTP-0018-0345; Video of Ansar Dine's flag at Timbuktu airport, MLI-OTP-0018-0195; Video of interview with Ansar Dine's member from the airport of Timbuktu, MLI-OTP-0018-0197 (Transcript, MLI-OTP-0033-5436); Statement by P-65, MLI-OTP-0020-0019-R01, 0059-0063; Statement by P-66, MLI-OTP-0019-0296-R01, 0299, 0304-06.



religious and political edicts on the territory of Timbuktu and its people.<sup>58</sup> They did so through a local government, which included an Islamic tribunal, an Islamic police force, a media commission and a morality brigade.<sup>59</sup> This morality brigade was called the *Hesbah*.<sup>60</sup>

32. After living briefly in Algeria, Mr Al Mahdi returned to Mali around the beginning of April to provide support to these armed movements.<sup>61</sup> Mr Al Mahdi was in direct contact with the leaders of Ansar Dine and AQIM, including Iyad Ag Ghaly (the leader of Ansar Dine), Abou Zeid (the ‘Governor’ of Timbuktu under the armed groups), Yahia Abou Al Hammam (an AQIM chief) and Abdallah Al Chinguetti (a religious scholar within AQIM).<sup>62</sup> Mr Al Mahdi was viewed as an expert on matters of religion, and was consulted in this capacity, including by the Islamic tribunal.<sup>63</sup> Mr Al Mahdi was very active in aspects of the Ansar Dine and AQIM administration.<sup>64</sup>
33. Abou Zeid asked Mr Al Mahdi to lead the *Hesbah*, and he did so from its creation in April 2012 until September 2012.<sup>65</sup> He wrote a document on the role of the *Hesbah* and its objectives, which was then distributed to the other

<sup>58</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 10; Statement by P-65, MLI-OTP-0020-0019-R01, 0052, 0082; Al Jazeera Report, MLI-OTP-0011-0415; Statement by P-66, MLI-OTP-0019-0296-R01, 0314, 0332; Journalism Mission Authorisation, MLI-OTP-0002-0016 (English translation, MLI-OTP-0034-0202); Interview of Amputee, MLI-OTP-0001-7037, from 00:46:20 to 00:47:24, MLI-OTP-0024-2910, 2939-40 (French translation); Statement by P-111, MLI-OTP-0024-2467-R01, 2505, France 2 Report, MLI-OTP-0001-6954; Sahara Media press article, MLI-OTP-0015-0406.

<sup>59</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 9; Statement by P-65, MLI-OTP-0020-0019-R01, 0053; Statement by P-66, MLI-OTP-0019-0296-R01, 0316; List of the judges of the Islamic Court, MLI-OTP-0001-7369 (English translation, MLI-OTP-0034-0071).

<sup>60</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 7; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, pp. 4 and 5 (facts 14-20); Statement by P-65, MLI-OTP-0020-0019-R01, 0050; Sahara Media press article, MLI-OTP-0015-0406.

<sup>61</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 2 and 6.

<sup>62</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 7-9, 15 and 16; Statement by P-65, MLI-OTP-0020-0019-R01, 0039-61, para. 154; Statement by P-65, MLI-OTP-0024-3096-R01, 3112-13; Statement by P-125, MLI-OTP-0023-0004-R01, 0014-16; *Jeune Afrique* press article, MLI-OTP-0001-4044.

<sup>63</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 6-7, 18-19; Statement by P-65, MLI-OTP-0020-0019-R01, 0050-53, para. 163; Statement by P-65, MLI-OTP-0024-3096-R01, 3109-12; Video, MLI-OTP-0009-1749, from 00:09:40:00 to 00:10:19:00.

<sup>64</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 14; Statement by P-65, MLI-OTP-0020-0019-R01, 0051, para. 154.

<sup>65</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 8, 11; Statement by P-65, MLI-OTP-0020-0019-R01, 0050, para. 151;

government structures put in place.<sup>66</sup> The *Hesbah* was entrusted with regulating the morality of the people of Timbuktu, and of preventing, suppressing and repressing anything perceived by the occupiers to constitute a visible vice.<sup>67</sup>

## 2. *Decision to attack the mausoleums and mosques*

34. The mausoleums of saints and mosques of Timbuktu are an integral part of the religious life of its inhabitants. Timbuktu's mausoleums and mosques constitute a common heritage for the community. These mausoleums are frequently visited by the residents – they are places of prayer and, for some, places of pilgrimage.<sup>68</sup>
35. When Abou Zeid and his collaborators were informed of the practices of the Timbuktu population related to these mausoleums, Mr Al Mahdi was asked to monitor the cemeteries visited by the residents.<sup>69</sup> The objective was to raise awareness among the population to stop such practices and, as the case may be, to prohibit them from pursuing them.<sup>70</sup> Mr Al Mahdi did this monitoring for around one month, taking notes on the inhabitants' behaviour at the

<sup>66</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 11; Statement by Mr Al Mahdi, MLI-OTP-0033-4833, 4852; MLI-OTP-0033-4598, 4606.

<sup>67</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 12; Statement by P-65, MLI-OTP-0020-0019-R01, 0050, Statement by P-66, MLI-OTP-0019-0296-R01, 0318.

<sup>68</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 26; P-151 testimony, ICC-01/12-01/15-T-5-CONF-ENG, p. 38, line 24, to p. 40, line 5, p. 44, line 11, to p. 45, line 2; Statement by P-151, MLI-OTP-0029-0843-R01, 0856; P-431 testimony, ICC-01/12-01/15-T-5-CONF-ENG, p. 77, line 25, to p. 81, line 13, p. 83, line 22, to p. 84, line 19, p. 92, lines 19-25; Report of Expert Witness P-104, MLI-OTP-0024-0537, 0547-49; Statement by P-66, MLI-OTP-0019-0296-R01, 0340; UNESCO's Study on the mausoleums of Timbuktu, MLI-OTP-0015-0081, 0092; UNESCO's World Heritage List nomination file for Timbuktu, MLI-OTP-0013-3541, 3548-49, 3592-93; World Heritage List. Nomination file submitted by the Republic of Mali, MLI-OTP-0004-0361, 0374-76; UNESCO's World Heritage sites in Mali, MLI-OTP-0013-3630; Cultural heritage of Timbuktu: issues and prospects, MLI-OTP-0014-5751, 5823-30; UNESCO's International expert's meeting for the safeguarding of Mali's cultural heritage, MLI-OTP-0006-3459, 3470-73; Timbuktu wounded: a look at the scars left by the occupation of northern Mali, MLI-OTP-0014-5896, 5915; Video, MLI-OTP-0001-6939 (Transcript, MLI-OTP-0030-0108, 0109); UNESCO, Reconstruction of Timbuktu mausoleums near completion, MLI-OTP-0028-0833; Video, MLI-OTP-0018-0366 (Translated transcript, MLI-OTP-0022-0567); Statement by P-125, MLI-OTP-0023-0004-R01, 0018, 0024; Timbuktu-Mali conservation and management plan, MLI-OTP-0007-0002, 0038.

<sup>69</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 34; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 2 (fact 53).

<sup>70</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 34; Video, MLI-OTP-0018-0366 (Translated transcript, MLI-OTP-0022-0567); Statement by P-114, MLI-OTP-0023-0344-R01, 0373-74.

mausoleums, meeting with local religious leaders and explaining on the radio what could and could not be done at the mausoleums.<sup>71</sup>

36. In late June 2012, Ag Ghaly made the decision to destroy the mausoleums, in consultation with Al Chinguetti and Al Hammam.<sup>72</sup> Mr Al Mahdi was also consulted by Abou Zeid before this decision was made. Mr Al Mahdi expressed his opinion that all Islamic jurists agree on the prohibition of any construction over a tomb, but recommended not destroying the mausoleums so as to maintain relations between the population and the occupying groups.<sup>73</sup> Nevertheless, Ag Ghaly gave the instruction to proceed to Abou Zeid, who in turn transmitted it to Mr Al Mahdi in his capacity as the chief of the *Hesbah*.<sup>74</sup>
37. Despite his initial reservations, Mr Al Mahdi agreed to conduct the attack without hesitation on receipt of the instruction. He was conscious of the object of the common plan to attack these sites.<sup>75</sup> Mr Al Mahdi wrote a sermon dedicated to the destruction of the mausoleums, which was read at the Friday prayer at the launch of the attack.<sup>76</sup> He personally determined the sequence in which the buildings/monuments were to be attacked.<sup>77</sup>

<sup>71</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 35; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 6 (fact 37); Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (fact 53); Video, MLI-OTP-0018-0148 from 00:14:33:19 to end (Translated transcript, MLI-OTP-0025-0337, 0341).

<sup>72</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 38.

<sup>73</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 37; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 2 (fact 51).

<sup>74</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 24, 38-40.

<sup>75</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 40.

<sup>76</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 44; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (fact 54); Video, MLI-OTP-0018-0358 (Translated transcript, MLI-OTP-0025-0330, 0332).

<sup>77</sup> Agreement [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 45, 54. Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (fact 57); Statement by Mr Al Mahdi, MLI-OTP-0033-4645, 4659-60, 4666, 4726.

### 3. *The attack and Mr Al Mahdi's responsibility*

38. The attack itself was carried out between around 30 June 2012 and 11 July 2012.<sup>78</sup> Ten of the most important and well-known sites in Timbuktu were attacked and destroyed by Mr Al Mahdi and other individuals adhering to the same common plan:

- (i) The Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum, on 30 June 2012: around 60 individuals, in the presence of Mr Al Mahdi and Al Chinguetti, razed the mausoleum to the ground. Armed men ensured the security of those who were actively engaged in destroying the mausoleum.<sup>79</sup>
- (ii) The Sheikh Mohamed Mahmoud Al Arawani Mausoleum, on 30 June 2012; it was also destroyed.<sup>80</sup>
- (iii) The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum, located in the Sidi El Mokhtar Cemetery and visited by pilgrims from and outside Mali, on 30 June 2012. Mr Al Mahdi supervised the destruction and gave instructions, along with tools, to the attackers. At the site, Mr Al Mahdi told journalists present that 'if a

<sup>78</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 30; Report by Expert Witness P-75, MLI-OTP-0033-0140; UNESCO Director-General calls for a halt to destruction of cultural heritage sites in Timbuktu, MLI-OTP-0001-1944.

<sup>79</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 61-63; Statement by P-65, MLI-OTP-0020-0019-R01, 0066-68 (Videos MLI-OTP-0018-0354, MLI-OTP-0018-0360, MLI-OTP-0018-0363, MLI-OTP-0018-0375); Statement by P-66, MLI-OTP-0019-0296-R01, 0333-34 (Videos MLI-OTP-0012-1782, MLI-OTP-0012-1784), 0344-45 (Videos MLI-OTP-0001-6926, MLI-OTP-0001-7037 at 00:45:17 to 00:45:26); Report of Expert Witness P-75, MLI-OTP-0033-0140, 143-46, 0166-68, 0183-84; Statement by P-125, MLI-OTP-0023-0004-R01, 0018.

<sup>80</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 64-65; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0761-67; Statement by P-65, MLI-OTP-0020-0019-R01, 0068; Video, MLI-OTP-0018-0353; Report of Expert Witness P-75, MLI-OTP-0033-0140, 0165-66; Video, MLI-OTP-0018-0353; UNESCO's Study on the mausoleums of Timbuktu, MLI-OTP-0015-0081, 0086.

tomb is higher than the others, it must be levelled [...] we are going to rid the landscape of anything that is out of place'.<sup>81</sup>

- (iv) The Alpha Moya Mausoleum, located in the Alpha Moya Cemetery and visited in order to pray and make offerings, on 30 June 2012. Mr Al Mahdi directly participated and Abou Zeid also visited the site around the time of the attack. As previously, there was a security cordon of 30 combatants protecting those who engaged in the destruction.<sup>82</sup>
- (v) The Sheikh Mouhamad El Mikki Mausoleum, a place of spiritual retreat and reflection, located in the Three Saints Cemetery, on the following day, 1 July 2012. The mausoleum was completely destroyed.<sup>83</sup>
- (vi) The Sheikh Abdoul Kassim Attouaty Mausoleum, located in the Three Saints Cemetery and built in the sixteenth century, on 1 July 2012.<sup>84</sup>

<sup>81</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 66-72; Photograph, Malian Government, MLI-OTP-0009-1526; Malian Government's illustrated list of mausoleums and cemeteries, MLI-OTP-0001-7116, 7118; Statement by P-114, MLI-OTP-0023-0344-R01, 0364; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1196-99; Malian Government's Intelligence Bulletin on security situation in northern Mali, MLI-OTP-0012-0462, 0463-64; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0676-82; Statement by P-125, MLI-OTP-0023-0004-R01, 0018-19, 0041; Video, MLI-OTP-0011-0459, from 00:00:00 to 00:00:08; UNESCO Director-General calls for a halt to destruction of cultural heritage sites in Timbuktu, MLI-OTP-0001-1944.

<sup>82</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 73-78; Malian Government's illustrated list of mausoleums and cemeteries, MLI-OTP-0001-7116; Photographs, Malian Government, MLI-OTP-0009-1508, MLI-OTP-0009-1509, MLI-OTP-0009-1513; Statement by P-125, MLI-OTP-0023-0004-R01, 0043; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0685-95; Statement by P-66, MLI-OTP-0019-0296-R01, 0334-36; Videos, MLI-OTP-0012-1792, MLI-OTP-0012-1793, MLI-OTP-0012-1787, MLI-OTP-0012-1789; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, page 4 (fact 69); Video, MLI-OTP-0001-7037 from 00:45:01:19 to 00:45:07:16; Report of Expert Witness P-75, MLI-OTP-0033-0140, 0146, 0184-85; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1187-95.

<sup>83</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 85-86; Photographs, Malian Government, MLI-OTP-0009-1495, MLI-OTP-0009-1562; Malian government's illustrated list of mausoleums and cemeteries, MLI-OTP-0001-7116; Statement by P-114, MLI-OTP-0023-0344-R01, 0365-66, paras. 78-80; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0657-67; Video, MLI-OTP-0012-1811; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1165-68; Photographs, MLI-OTP-0006-2243 to MLI-OTP-0006-2258.

<sup>84</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 87-88; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0647-56; Photograph, Malian Government, MLI-OTP-0009-1498; Statement by P-114, MLI-OTP-

(vii) The Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, located in the Three Saints Cemetery, on 1 July 2012. Mr Al Mahdi physically participated in the attack, which completely destroyed the mausoleum.<sup>85</sup>

(viii) The door of the Sidi Yahia Mosque, on 2 July 2012. Legend had it that this door had not been opened for 500 years and that opening it would lead to the Last Judgment. Al Chinguetti told Al Mahdi that the door had to be opened, and both went to the site with pickaxes that Mr Al Mahdi bought with *Hesbah* funds. Mr Al Mahdi explained the destruction to journalists while it was taking place:

What you see here is one of the ways of eradicating superstition, heresy and all things or subterfuge which can lead to idolatry. We heard about a door in the ancient mosque of Sidi Yahya. If it is opened, the Day of Resurrection will begin. Following an investigation, we discovered that it was a condemned door in the courtyard of an old mosque. The door was condemned and bricked up. Over time, a myth took hold, claiming that the Day of Resurrection would begin if the door were opened. We fear that these myths will invade the beliefs of people and the ignorant who, because of their ignorance and their distance from religion, will think that this is the truth. So we decided to open it.<sup>86</sup>

(ix) and (x) The two mausoleums adjoining the Djingareyber Mosque (especially visited on Mondays and Fridays and for important religious celebrations), on or around 10-11 July 2012. Al Chinguetti asked

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0023-0344-R01, 0366; Statement by P-66, MLI-OTP-0019-0296-R01, 0337-39; Video, MLI-OTP-0012-1801; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1169-72.

<sup>85</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 82-84; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0637-46; Malian Government's illustrated list of mausoleums and cemeteries, MLI-OTP-0001-7116; Statement by P-125, MLI-OTP-0023-0004-R01, 0021, 0029-40; Videos, MLI-OTP-0018-0366, MLI-OTP-0018-0374; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1173-77.

<sup>86</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 89-95; Malian government's communication, MLI-OTP-0012-0259; Malian government's Intelligence Bulletin on the situation in Timbuktu, MLI-OTP-0012-0260; Report of Expert Witness P-104, MLI-OTP-0024-0537, 0557-65; Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1151-57; Statement by P-125, MLI-OTP-0023-0004-R01, 0022-23, 0031-35; Statement by P-65, MLI-OTP-0020-0019-R01, 0070-71; Statement by P-66, MLI-OTP-0019-0296-R01, 0340-41; Videos, MLI-OTP-0012-1918, MLI-OTP-0012-1919; Report of Expert Witness P-75, MLI-OTP-0033-0140, 0160-61, 0190-93; Video, MLI-OTP-0018-0212; Statement by P-65, MLI-OTP-0020-0019-R01, 0071-72; Video, MLI-OTP-0018-0149 (Translated transcript, MLI-OTP-0024-2954, 2958-59), Video, MLI-OTP-0018-0209 (Translated transcript, MLI-OTP-0033-5439, 5441).



Mr Al Mahdi to destroy the mausoleums, who agreed and oversaw the attack. Mr Al Mahdi physically took part in the destruction, and decided at one point that a bulldozer should be used. When the attackers were clearing the rubble towards the end of the acts of destruction, Abou Zeid and Al Chinguetti, among others, came to provide and demonstrate their support at the site. The mausoleums destroyed were the Ahmed Fulane Mausoleum and the Bahaber Babadié Mausoleum.<sup>87</sup>

39. All these sites were dedicated to religion and historic monuments, and were not military objectives.<sup>88</sup> With the exception of the Sheikh Mohamed Mahmoud Al Arawani Mausoleum, all these buildings had the status of protected UNESCO World Heritage sites.<sup>89</sup>
40. Mr Al Mahdi knew that he exercised joint control over the attack and was fully implicated in its execution.<sup>90</sup> He contributed to the attack in the following ways:

<sup>87</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 96-103; Malian Government's illustrated list of mausoleums and cemeteries, MLI-OTP-0001-7116, 7118; Photographs, MLI-OTP-0009-1478, MLI-OTP-0009-1483; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0729-39; Statement by P-125, MLI-OTP-0023-0004-R01, 0036; Video, MLI-OTP-0018-0148, especially 00:04:11:00–00:04:55:00, 00:07:35:00–00:08:28:00; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, page 6 (fact 36); Statement by P-65, MLI-OTP-0020-0019-R01, 0073-74; Videos, MLI-OTP-0018-0334, MLI-OTP-0018-0336, MLI-OTP-0018-0341; Report of Expert Witness P-75, MLI-OTP-0033-0140, 0163-65; Video, MLI-OTP-0012-1815; Statement by P-66, MLI-OTP-0019-0296-R01, 0343; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 73); Report of Expert Witnesses P-55 and P-57, MLI-OTP-0029-1138, 1158-64; Photograph, MLI-OTP-0018-2281.

<sup>88</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 105; P-151 testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 39, line 4, to p. 40, line 5, p. 42, lines 15-22, p. 44, line 11, to p. 45, line 2, p. 59, line 13, to p. 61, line 9; P-431 testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 79, line 12, to p. 81, line 4; Statement by P-125, MLI-OTP-0023-0004-R01, 0017; Report of Expert Witness P-104, MLI-OTP-0028-0586, 0596-98; UNESCO's Study on the mausoleums of Timbuktu, MLI-OTP-0015-0081, 0092; UNESCO's Report on the Government's priorities for the world heritage sites threatened by the armed conflict in northern Mali, MLI-OTP-0017-0706; Cultural heritage of Timbuktu: issues and prospects, MLI-OTP-0014-5751, 5823-58; Timbuktu-Mali conservation and management plan, MLI-OTP-0007-0002, 0027-29, 0038.

<sup>89</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 33; UNESCO's World Heritage Convention Nomination Documentation, MLI-OTP-0004-0321; UNESCO's World heritage sites in Mali, MLI-OTP-0013-3630, 3715-26; Report of the World Heritage Committee, MLI-OTP-0006-3298, 3314; UNESCO's international experts meeting for the safeguarding of Mali's cultural heritage, MLI-OTP-0006-3459; P-151 testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 53, line 17, to p. 55, line 23; Statement by P-151, MLI-OTP-0029-0843-R01, 0861.

<sup>90</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 52 and 106.

- (i) he supervised the execution of the operations, using his men from the *Hesbah* and overseeing the other attackers who came to participate in the operations;<sup>91</sup>
- (ii) he collected, bought and distributed the necessary tools/means in order to successfully carry out the attack;<sup>92</sup>
- (iii) he was present at all of the attack sites, giving instructions and moral support;<sup>93</sup>
- (iv) he personally participated in the attack that led to the destruction of at least five sites: (a) the Alpha Moya Mausoleum;<sup>94</sup> (b) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum;<sup>95</sup> (c) the door of the Sidi Yahia

<sup>91</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 48 and 49; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (facts 56 and 59).

<sup>92</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 47 and 48; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 4 (fact 20); Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, pp. 3 and 4 (facts 61 and 62).

<sup>93</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 49; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (fact 63); Sidi Mahamoud: Statement by Ahmad Al Faqi Al Mahdi, MLI-OTP-0033-4667, 4670-72; Video, MLI-OTP-0018-0357; Statement by P-65, MLI-OTP-0020-0019-R01, 0067; Sidi El Mokhtar: Video, MLI-OTP-0001-7037 from 00:45:08 to 00:45:15; Alpha Moya Cemetery: Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, page 4 (fact 69); Video, MLI-OTP-0001-7037 from 00:45:01 to 00:45:07; Three Saints Cemetery: Video, MLI-OTP-0018-0365; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 6 (facts 29-30); Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 68), Statement by P-125, MLI-OTP-0023-0004-R01, 0030-31, 0035, Statement by P-65, MLI-OTP-0020-0019-R01, 0069; Video, MLI-OTP-0012-1800; Sidi Yahia Mosque: First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 6 (facts 31-32); Video, MLI-OTP-0012-1928; Video, MLI-OTP-0018-0149, from 00:03:21 to 00:04:27; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 70); Djingareyber Mosque: First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 6 (fact 36); Video, MLI-OTP-0018-0148, from 00:07:35 to 00:13:19; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 71); Statement by P-65, MLI-OTP-0020-0019-R01, 0073.

<sup>94</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 77; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 69); Video, MLI-OTP-0001-7037 from 00:45:01 to 00:45:07.

<sup>95</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 83; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 5 (fact 29); Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 68); Video, MLI-OTP-0018-0365.



Mosque;<sup>96</sup> (d) the Ahmed Fulane Mausoleum; and (e) the Bahaber Babadié Mausoleum;<sup>97</sup> and

- (v) he was responsible – having been designated by Al Chinguetti – for communicating with journalists to explain and justify the attack.<sup>98</sup>

41. During one such press interview in the course of the attack, Mr Al Mahdi said the following:

I don't know the truth about those saints. We just know that fools [...] come and take sand from those places to get blessed [...]. That's why we consider this campaign as an effort that's exerted in collaboration with the imams [...] We only paid attention to the buildings constructed above the graves in the cemetery, and the tombs that are annexed to the mosques from the outside. [...] As for demolishing these buildings, [...] we think that we've already introduced this matter gradually, as we've spent four months explaining to the people what's right and what's wrong, and now's the time for implementation.<sup>99</sup>

### C. Findings

42. On the basis of the Accused's statements in open court and the Agreement, the Chamber is satisfied that the Accused understands the nature and consequences of the admission of guilt and that the admission was voluntarily made after sufficient consultation with Defence counsel. With reference to the

<sup>96</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), paras. 92-93; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 5 (fact 32); Video, MLI-OTP-0018-0149, from 00:03:21 to 00:04:27; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 70).

<sup>97</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 100; First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, p. 6 (fact 36); Video, MLI-OTP-0018-0148, from 00:07:35 to 00:13:19; Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 4 (fact 71); Statement by P-65, MLI-OTP-0020-0019-R01, 0073.

<sup>98</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 51; Statement by P-65, MLI-OTP-0020-0019-R01, 0073, para. 245, 0067, paras. 225 and 226; Video MLI-OTP-0001-7037, from 00:45:08:12 to 00:45:17; Video, MLI-OTP-0009-1749, from 00:13:50 to 00:15:27 (Transcript, MLI-OTP-0028-0839, 0848-49); First Agreed Facts, ICC-01/12-01/15-54-Conf-AnxA, pp. 5 and 6 (facts 28, 33-45); Video, MLI-OTP-0018-0149, from 00:09:13 to 00:10:11 (Transcript, MLI-OTP-0024-2954, 2958-59) Video, MLI-OTP-0018-0148, from 00:13:24 to 00:17:36 (Transcripts, MLI-OTP-0028-0839, 0848-49); Video, MLI-OTP-0011-0177, from 00:00:30 to 00:00:40 (Transcript, MLI-OTP-0025-0333, 0335); Video MLI-OTP-0025-0174, from 00:02:09 to 00:02:27, from 00:01:13 to 00:01:33 (Transcript, MLI-OTP-0033-5504, 5506-07); Video, MLI-OTP-0018-0209 (Transcript, MLI-OTP-0033-5439, 5441) Video, MLI-OTP-0018-0358 (Transcript, MLI-OTP-0025-0330, 0332); Video, MLI-OTP-0018-0357 (Transcript, MLI-OTP-0025-0327); Video, MLI-OTP-0001-7037, at 00:45:08 (Transcript, MLI-OTP-0024-2962, 2989); Second Agreed Facts, ICC-01/12-01/15-83-Conf-AnxA, p. 3 (facts 65 and 66).

<sup>99</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), para. 101; Video, MLI-OTP-0018-0148 (Transcript, MLI-OTP-0025-0337, 0341).

‘Established facts of the case’ section above, the Chamber is also satisfied that the admission of guilt is supported by the facts of the case.

43. The Chamber finds beyond reasonable doubt that the admission of guilt, together with the additional evidence presented, satisfies the essential facts to prove the crime charged and that there are no viable affirmative defences.
44. In particular, the Chamber emphasises that it considers the Agreement and Mr Al Mahdi’s admissions to be both credible and reliable in full. Mr Al Mahdi went into extensive detail as to the events in question, often volunteering specific information not strictly necessary in order to prove the charge. The Chamber has been able to independently corroborate almost all of Mr Al Mahdi’s account with the evidence before the Chamber, strongly indicating that the entire account is true.

*1. Findings on Article 8(2)(e)(iv) of the Statute*

45. The facts of the case demonstrate that Mr Al Mahdi, in his capacity as head of the *Hesbah*, was put in charge of the execution phase of destroying the 10 mausoleums and mosques specified in the previous sub-section. Mr Al Mahdi and the attackers accompanying him directed an attack on these buildings, resulting in destruction or significant damage to all of them.
46. These mausoleums and mosques all qualify as both religious buildings and historic monuments, as evidenced by their role in the cultural life in Timbuktu and the status of nine of these buildings as UNESCO World Heritage sites. UNESCO’s designation of these buildings reflects their special importance to international cultural heritage, noting that ‘the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must

fulfil in a spirit of mutual assistance and concern'.<sup>100</sup> Attacking these mausoleums and mosques was clearly an affront to these values; as Mr Al Mahdi said himself during the Djingareyber Mosque attack:

It's probably the oldest mosque here in town, and is considered a heritage site [...] a World Heritage Site. There are so many rumours relating to these shrines [...]. Those UNESCO jackasses – this [...] they think that this is heritage. Does 'heritage' include worshipping cows and trees?<sup>101</sup>

47. These mausoleums and mosques were also clearly the object of the attack, as the evidence establishes the deliberate manner in which the attackers went from one building to the next in a relatively short time period.
48. The Chamber also notes the common *modus operandi* according to which each of the buildings was attacked, from common tools to armed guards protecting the attackers. The circumstances of the attack, as well as Mr Al Mahdi's statements that the purpose of the operation was to destroy these buildings, demonstrate that the perpetrators intended these buildings to be the object of the attack.
49. The Chamber is satisfied that these acts took place in the context of and were associated with a non-international armed conflict between Malian Government forces and groups including Ansar Dine and AQIM. The evidence demonstrates that Ansar Dine and AQIM qualified as organised armed groups at the relevant time, with the Chamber noting in particular their military capacity to displace the Malian army, capture Timbuktu and exercise some form of government over it for approximately nine months. With respect to the requirement that the armed violence must meet a certain minimum level of intensity to be distinguished from mere internal disturbances and tensions, the Chamber notes that the fact that these groups exercised control over such a large part of Mali for such a protracted period – with the resulting effect on the

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<sup>100</sup> [Constitution of the United Nations Educational, Scientific and Cultural Organization](#), 16 November 1945, preamble.

<sup>101</sup> Video, MLI-OTP-0018-0148 (Translated transcript, MLI-OTP-0025-0337, 0340).

civilian population concerned – clearly demonstrates a sufficient degree of intensity of the conflict. It would not have been possible for these armed groups to carry out the attack without their conquest of Timbuktu, and the justifications stated during the attack were the same as those advanced by the armed groups for taking over Timbuktu and Northern Mali more generally.<sup>102</sup>

50. The Chamber also notes that there is no evidence in the record of any foreign intervention in opposition to the Malian forces in the relevant time period, nor have the parties claimed that there was any involvement by another State that could potentially affect the classification of the conflict. This means that there is no evidence that the armed conflict became internationalised or should have been classified as international from the outset.
51. Given that Mr Al Mahdi and the attackers were based in Timbuktu and worked pursuant to Ansar Dine's administration of the city, the Chamber is also satisfied that the perpetrators were aware of the factual circumstances which established the existence of the armed conflict.
52. In view of these findings, the Chamber considers that all the elements for the war crime of attacking protected objects are established.

*2. Findings on Article 25(3)(a) of the Statute (co-perpetration) and other modes of liability*

*i. Article 25(3)(a) co-perpetration*

53. The Chamber notes its findings on Mr Al Mahdi's contributions to the crimes, including his involvement in planning and preparing the attack. Mr Al Mahdi was the head of the *Hesbah*, one of four primary institutions established by

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<sup>102</sup> Video of 12 March 2012, MLI-OTP-0001-6924 (indicating that the group wants to introduce sharia for its members and other Muslims for peace and security in Mali); *Jeune Afrique* articles of 15 March and 8 April 2012, MLI-OTP-0001-3418, MLI-OTP-0001-3551; Video, MLI-OTP-0001-7037, from 00:19:30 to 00:20:12 (Transcript MLI-OTP-0024-2962, 2978); *Sahara Media* article of 16 April 2012, MLI-OTP-0001-3271.

Ansar Dine and AQIM upon occupying Timbuktu.<sup>103</sup> He had overall responsibility for the execution phase of the attack, determining the sequence in which the buildings would be destroyed, making the necessary logistical arrangements and justifying the attack to the broader world through media interviews. Mr Al Mahdi personally oversaw the attack itself – he was present at all of the attack sites and directly participated in the destruction of five of the protected buildings. The Chamber considers that Mr Al Mahdi's contributions collectively qualify as an essential contribution with the resulting power to frustrate the commission of the crime.

54. The Chamber is also satisfied that Mr Al Mahdi's contributions were made pursuant to an agreement with others which led to the commission of the crimes. This is evidenced by: (i) Mr Al Mahdi's role in the Ansar Dine leadership; (ii) the effective decision taken by Mr Ag Ghaly and other leadership to attack the mausoleums/mosques; (iii) Mr Al Mahdi's sermon on destroying the buildings immediately before the attack; (iv) Mr Al Mahdi's choice of the sequence in which the buildings would be destroyed; and (v) the coordinated and deliberate manner in which the attack was carried out.
55. Noting Mr Al Mahdi's direct participation in many incidents and his role as media spokesperson in justifying the attack, the Chamber is also satisfied that Mr Al Mahdi personally meets the subjective elements of the crimes.
56. For these reasons, the Chamber considers all the elements of Article 25(3)(a) co-perpetration to be established.

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<sup>103</sup> See para. 31 of the present Judgment.

ii. *Other modes of liability*

57. The Chamber notes that the Pre-Trial Chamber confirmed co-perpetration along with other modes of liability in the alternative, namely: (i) Article 25(3)(b) (soliciting and inducing); (ii) Article 25(3)(c) (aiding and abetting) and (iii) Article 25(3)(d) (contributing in any other way). Mr Al Mahdi accepts that all charged modes of liability, including co-perpetration, are established.
58. The Appeals Chamber has noted that the Statute differentiates between principal (Article 25(3)(a)) and accessory (Article 25(3)(b) to (d)) liability, with principals bearing more blameworthiness ‘generally speaking and all other things being equal’.<sup>104</sup> In accordance with this general rule, given that the Chamber has decided that all the elements of co-perpetration are met, there is no need to make any further findings on the accessory liability alternatives.
59. The Chamber further notes that the Pre-Trial Chamber confirmed Article 25(3)(a) direct perpetration for the five buildings where Mr Al Mahdi personally participated in the destruction. On the basis of the analysis above, and noting that Article 8(2)(e)(iv) of the Statute criminalises the act of directing a specific kind of attack irrespective of whether the buildings in question are destroyed, the Chamber considers that Mr Al Mahdi satisfies all the elements for both direct perpetration and co-perpetration. The Prosecution submits that conviction as a co-perpetrator, rather than direct perpetrator, would ‘fully and accurately reflect the Accused’s individual criminal responsibility’.<sup>105</sup> Neither the Defence nor the LRV take a position on this point.
60. There is no indication in either the Statute or Appeals Chamber jurisprudence of any hierarchy within the variations set out under Article 25(3)(a) of the

<sup>104</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, [ICC-01/04-01/06-3121-Red](#), para. 462.

<sup>105</sup> The Prosecution’s submissions in support of conviction under Article 65(2) of the Statute, ICC-01/12-01/15-120-Conf, para. 31.

Statute, nor does the Chamber believe that establishing one is necessary or appropriate. The Chamber considers that, when all the elements of different variations under Article 25(3)(a) of the Statute are proven, the Chamber must elect which mode of responsibility best reflects the full scope of the Accused's individual criminal responsibility. The Accused can be convicted of only one form of Article 25(3)(a) commission for each incident or discrete type of criminal conduct, as to conclude otherwise not only contributes little to the fair labelling of the responsibility of the accused but it also punishes them twice for the commission of the same crime.

61. As also submitted by the Prosecution, the Chamber notes that Mr Al Mahdi oversaw the entire attack against all 10 buildings, and that co-perpetration encapsulates not only his physical participation but also his position of authority in relation to the crimes committed. The Chamber finds that attacking all 10 mausoleums/mosques as a co-perpetrator best reflects Mr Al Mahdi's criminal responsibility. On this finding, Mr Al Mahdi's direct participation in relation to five of the attacks supports the Chamber's conclusions that he made an essential contribution to the crimes charged pursuant to a joint criminal plan.

#### **D. Conclusion**

62. In the light of the admission of guilt, the hearings held and the evidence brought forward, the Chamber is satisfied beyond reasonable doubt that all the essential facts of the crime charged are proven.
63. Pursuant to Articles 8(2)(e)(iv), 25(3)(a) and 65(2) of the Statute, the Chamber convicts Mr Al Mahdi as a co-perpetrator for attacking the following protected objects in Timbuktu, Mali between around 30 June 2012 and 11 July 2012: (i) the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum; (ii) the Sheikh Mohamed Mahmoud Al Arawani Mausoleum; (iii) the Sheikh Sidi El Mokhtar

Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum; (iv) the Alpha Moya Mausoleum; (v) the Sheikh Mouhamad El Mikki Mausoleum; (vi) the Sheikh Abdoul Kassim Attouaty Mausoleum; (vii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum; (viii) the Sidi Yahia Mosque door and the two mausoleums adjoining the Djingareyber Mosque, namely the (ix) Ahmed Fulane Mausoleum and (x) Bahaber Babadié Mausoleum.

### III. Sentence

64. Having concluded that Mr Al Mahdi is responsible for intentionally attacking the above-mentioned protected objects as a co-perpetrator, the Chamber will now turn to the determination of the appropriate sentence. The submissions made by the parties and participants are addressed in the course of the analysis.

#### A. Applicable law

65. For the purposes of determining the appropriate sentence, the Chamber has taken into account, *inter alia*, Articles 23, 76, 77, and 78 of the Statute and Rule 145 of the Rules.

66. The Chamber notes that Articles 77 and 78 of the Statute do not specify the purpose of criminal punishment. However, in the Preamble of the Statute it is declared that ‘the most serious crimes of concern to the international community as a whole must not go unpunished’.<sup>106</sup> Furthermore, in establishing the ICC, the States Parties were ‘[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes’.<sup>107</sup> Accordingly, the Chamber considers that the

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<sup>106</sup> Preamble of the Statute, para. 4.

<sup>107</sup> Preamble of the Statute, para. 5.



Preamble establishes retribution and deterrence as the primary objectives of punishment at the ICC.<sup>108</sup>

67. With regard to retribution, the Chamber clarifies that it is not to be understood as fulfilling a desire for revenge, but as an expression of the international community's condemnation of the crimes, which, by way of imposition of a proportionate sentence, also acknowledges the harm to the victims and promotes the restoration of peace and reconciliation. In respect of deterrence, the Chamber considers that a sentence should be adequate to discourage a convicted person from recidivism (specific deterrence), as well as to ensure that those who would consider committing similar crimes will be dissuaded from doing so (general deterrence). Lastly, the extent to which the sentence reflects the culpability of the convicted person addresses the desire to ease that person's reintegration into society, although, in particular in the case of international criminal law, this goal cannot be considered to be primordial and should therefore not be given any undue weight.<sup>109</sup> As reflected in Article 81(2)(a) of the Statute and Rule 145(1) of the Rules, and as emphasised by the Appeals Chamber, the sentence must be proportionate to the crime and the culpability of the convicted person.<sup>110</sup>
68. The Appeals Chamber has found that the relevant provisions of the Statute and Rules, when read together with the underlying objectives set out in the Preamble, establish a comprehensive scheme for the determination of a sentence. The Chamber must first identify and assess the relevant factors in

<sup>108</sup> See also, Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on Sentence pursuant to article 76 of the Statute, 23 May 2014, [ICC-01/04-01/07-3484-tENG-Corr](#), paras. 37-38 ('Katanga Sentencing Decision'); Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, [ICC-01/05-01/08-3399](#), para. 10 ('Bemba Sentencing Decision').

<sup>109</sup> Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 38.

<sup>110</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", 1 December 2014, [ICC-01/04-01/06-3122](#), para. 40 ('Lubanga AJ Sentencing Decision'); See also Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 11.

Article 78(1) and Rule 145(1)(c) and (2).<sup>111</sup> It must then balance all these factors in accordance with Rule 145(1)(b) and pronounce a sentence for each crime.<sup>112</sup> The Chamber has considerable discretion in imposing a proportionate sentence.<sup>113</sup> Lastly, once the sentence has been imposed, Article 78(2) requires deduction of the time the convicted person has spent in detention upon an order of the Court.<sup>114</sup>

69. With regard to the interplay between the factors identified in Article 78(1) and Rule 145(1)(c), the Appeals Chamber has not found it necessary to decide which of the possible approaches is the correct one.<sup>115</sup> The Chamber notes that Trial Chambers I and II considered the Rule 145(1)(c) factors in their assessment of the Article 78(1) factors.<sup>116</sup> In addition, Trial Chamber III considered some of them to be relevant to the assessment of the existence of aggravating and mitigating circumstances.<sup>117</sup> In its assessment of all relevant factors, the Chamber has considered certain Rule 145(1)(c) factors to be relevant for the evaluation of the mitigating and aggravating circumstances identified in Rule 145(2).<sup>118</sup>
70. In considering all relevant factors, the Chamber cannot ‘double-count’ any factors assessed in relation to the gravity of the crime as aggravating

<sup>111</sup> Lubanga AJ Sentencing Decision, [ICC-01/04-01/06-3122](#), para. 32.

<sup>112</sup> Lubanga AJ Sentencing Decision, [ICC-01/04-01/06-3122](#), para. 33.

<sup>113</sup> Lubanga AJ Sentencing Decision, [ICC-01/04-01/06-3122](#), para. 34.

<sup>114</sup> Lubanga AJ Sentencing Decision, [ICC-01/04-01/06-3122](#), para. 35.

<sup>115</sup> Lubanga AJ Sentencing Decision, [ICC-01/04-01/06-3122](#), paras. 61-66.

<sup>116</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on Sentence Pursuant to Article 76 of the Statute, 10 July 2012, [ICC-01/04-01/06-2901](#), para. 44 (‘Lubanga Sentencing Decision’); Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#), paras. 44-69.

<sup>117</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 13.

<sup>118</sup> For example, the Chamber has considered the discriminatory nature of the attack as relevant for the assessment of the gravity of the crime rather than as an aggravating circumstance.

circumstances and vice versa. Further, a legal element of the crimes or mode of liability cannot be considered as an aggravating circumstance.<sup>119</sup>

### 1. *Gravity of the crime*

71. In order to determine a proportionate sentence, the gravity of the acts committed by the convicted person has to be assessed *in concreto*, in the light of the particular circumstances of the case. The sentences to be imposed must, therefore, reflect the gravity of the crime charged.
72. In this respect, the Chamber emphasises that the present decision must be read while bearing in mind that the Court has jurisdiction for the most serious crimes of concern to the international community as a whole and that, as a consequence, the sentences should reflect that seriousness. That being said, not all crimes forming the grounds for a criminal conviction are necessarily of equivalent gravity and the Chamber has the duty to weigh each by distinguishing, for example, between those against persons and those targeting property.<sup>120</sup>

### 2. *Aggravating and mitigating circumstances*

73. The Chamber must be convinced of the existence of aggravating circumstances beyond reasonable doubt. Aggravating circumstances must relate to the crimes of which a person was convicted or to the convicted person himself. The absence of a mitigating circumstance does not serve as an aggravating circumstance.<sup>121</sup>

<sup>119</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 14 and footnotes, in particular: Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#); Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 35.

<sup>120</sup> Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#), paras. 42 and 43.

<sup>121</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 18 and footnotes, in particular: Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#), para. 34; Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 33.

74. The Chamber must be convinced of the existence of mitigating circumstances on a balance of probabilities. Mitigating circumstances need not be directly related to the crimes and are not limited by the scope of the charges or the Judgment. They must, however, relate directly to the convicted person. The Chamber has a considerable degree of discretion, in the light of the particular circumstances of the case, in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded to it. While the Chamber must consider any mitigating circumstances, it need not do so under any particular heading or according to any particular rubric. For example, the Chamber may consider certain factors as being relevant to its assessment of the gravity of the crime, instead of considering them in mitigation or aggravation of the overall sentence.<sup>122</sup>

## **B. Analysis**

75. In order to determine the appropriate sentence, the Chamber will consider: (i) the gravity of the crime; (ii) Mr Al Mahdi's culpable conduct; and (iii) his individual circumstances. Rule 145(1)(c) factors and aggravating and mitigating circumstances are discussed in the course of the analysis, when relevant.

### *1. Gravity of the crime*

76. In addressing the gravity of the crime committed, the Chamber considered, in particular, the extent of damage caused, the nature of the unlawful behaviour and, to a certain extent, the circumstances of the time, place and manner.
77. The Chamber first notes that, unlike other accused convicted by this Court, Mr Al Mahdi is not charged with crimes against persons but with a crime

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<sup>122</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 19 and footnotes, in particular: Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#), paras. 32 and 34; Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 34.

against property. In the view of the Chamber, even if inherently grave, crimes against property are generally of lesser gravity than crimes against persons.<sup>123</sup>

78. With regard to the extent of the damage caused, the Chamber recalls that most of the 10 sites were completely destroyed.<sup>124</sup> Moreover, the attack was carefully planned<sup>125</sup> and lasted approximately 10 days.<sup>126</sup> Additionally, the impact of the attack on the population was heightened by the fact that it was relayed in the media.<sup>127</sup> The Chamber also notes the testimony of P-431 (a Malian expert in cultural matters) and P-151 (a UNESCO witness), who explained that Timbuktu was an emblematic city with a mythical dimension and that it played a crucial role in the expansion of Islam in the region. Timbuktu is at the heart of Mali's cultural heritage, in particular thanks to its manuscripts and to the mausoleums of the saints.<sup>128</sup> The mausoleums reflected part of Timbuktu's history and its role in the expansion of Islam. They were of great importance to the people of Timbuktu, who admired them and were attached to them. They reflected their commitment to Islam and played a psychological role to the extent of being perceived as protecting the people of Timbuktu.<sup>129</sup> P-151 also described how the people of Timbuktu were collectively ensuring that the mausoleums remained in good condition in the course of symbolic maintenance events involving the entire community – women and elderly and young people.<sup>130</sup> The mausoleums were among the most cherished buildings of the city and they were visited by

<sup>123</sup> Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG](#), paras. 42 and 43; see also Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 121-123, 127-128.

<sup>124</sup> See para. 38 of the present Judgment.

<sup>125</sup> See paras. 35-37 of the present Judgment; see also Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 37.

<sup>126</sup> See para. 38 of the present Judgment; see also Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 37.

<sup>127</sup> See para. 40(v) of the present Judgment; see also Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 35, 37.

<sup>128</sup> P-431's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 77, line 23, to p. 80, line 7; P-151's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 41, line 12, to p. 44, line 11.

<sup>129</sup> P-431's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 80, line 8, to p. 81, line 4; P-151's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 44, line 11, to p. 45, line 9.

<sup>130</sup> P-151's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 38, line 23, to p. 40, line 5.

the inhabitants of the city, who used them as a place for prayer while some used them as pilgrimage locations.<sup>131</sup>

79. Thus, the Chamber considers that the fact that the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu is relevant in assessing the gravity of the crime committed.
80. Furthermore, all the sites but one (the Sheikh Mohamed Mahmoud Al Arawani Mausoleum) were UNESCO World Heritage sites and, as such, their attack appears to be of particular gravity as their destruction does not only affect the direct victims of the crimes, namely the faithful and inhabitants of Timbuktu, but also people throughout Mali and the international community.<sup>132</sup> The Chamber notes the testimony of P-431, who indicated that the people of Timbuktu protested against the destruction and refused to see the mausoleums razed to the ground. The witness testified that destroying the mausoleums, to which the people of Timbuktu had an emotional attachment, was a war activity aimed at breaking the soul of the people of Timbuktu. In general, the population of Mali, who considered Timbuktu as a source of pride, were indignant to see these acts take place.<sup>133</sup> Moreover, P-151 described how the entire international community, in the belief that heritage is part of cultural life, is suffering as a result of the destruction of the protected sites.<sup>134</sup>
81. Lastly, the Chamber notes that the crime was committed for religious motives.<sup>135</sup> Indeed, during the period they ruled over the territory of Timbuktu, Ansar Dine and AQIM took measures to impose their religious edicts on the

<sup>131</sup> See para. 34 of the present Judgment. See also, LRV Sentencing Observations, ICC-01/12-01/15-135-Conf, paras. 26-31.

<sup>132</sup> See paras. 39 and 46 of the present Judgment. See also, Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 17-29, 61.

<sup>133</sup> P-431's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 89, line 6, to p. 90, line 13.

<sup>134</sup> P-151's testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 59, line 11, to p. 61, line 9.

<sup>135</sup> See Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 30, 62-63.

population.<sup>136</sup> The creation of the *Hesbah*, which was headed by Mr Al Mahdi, was meant precisely to eradicate any visible vice it identified in Timbuktu.<sup>137</sup> As established in the present Judgment, when the leaders of Ansar Dine discovered the practices of the inhabitants of Timbuktu, they led a campaign explaining what should and should not be done with the mausoleums. In the end they decided to destroy the sites in order to stop these prohibited practices.<sup>138</sup> The Chamber considers that the discriminatory religious motive invoked for the destruction of the sites is undoubtedly relevant to its assessment of the gravity of the crime.

82. The Chamber concludes that the crime for which Mr Al Mahdi is convicted is of significant gravity.

## 2. *Mr Al Mahdi's culpable conduct*

83. In addressing Mr Al Mahdi's culpable conduct the Chamber has considered the following Rule 145(1)(c) criteria: his degree of participation, his degree of intent and, to a certain extent, the means employed to execute the crime.
84. The Chamber recalls that it has found that Mr Al Mahdi committed, jointly with others, the crime of intentionally attacking the protected objects mentioned earlier. The Chamber notes that Mr Al Mahdi played an essential role in the execution of the attack. As the head of the *Hesbah*,<sup>139</sup> he was entrusted with executing the common plan. He organised all the logistics of the attack, oversaw the entire operation, supervised its execution, decided in which order the sites should be destroyed, collected and distributed the necessary

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<sup>136</sup> See para. 31 of the present Judgment.

<sup>137</sup> See para. 33 of the present Judgment.

<sup>138</sup> See paras. 35 and 36 of the present Judgment.

<sup>139</sup> See para. 33 of the present Judgment.

tools, provided logistical and moral support to the direct perpetrators and supervised them, and was present at every site.<sup>140</sup>

85. In relation to Mr Al Mahdi's intent, the Chamber further notes that, in addition to attending the destruction of each site, Mr Al Mahdi personally participated in the destruction of at least five of the sites.<sup>141</sup> Moreover, he justified the necessity of the attack by writing a sermon that was read before the attack and by giving public speeches as the destruction was occurring.<sup>142</sup>

*i. Absence of aggravating circumstances*

86. The Chamber is not convinced by the Prosecution's submission that Mr Al Mahdi abused his power and official capacity as head of the *Hesbah* and that this is an aggravating circumstance.<sup>143</sup> Indeed, in line with the Appeals Chamber's jurisprudence,<sup>144</sup> the Chamber considers that the mere fact that Mr Al Mahdi committed the crime in this position does not as such constitute an aggravating circumstance. Furthermore, as discussed below,<sup>145</sup> in his capacity as head of the *Hesbah*, Mr Al Mahdi initially advised against the destruction of the buildings.
87. In relation to the Prosecution's argument<sup>146</sup> that the fact that the crime affected multiple victims is an aggravating circumstance, the Chamber has already taken into account the far-reaching impact of the crime committed by

<sup>140</sup> See para. 40 of the present Judgment.

<sup>141</sup> See para. 40(iv) of the present Judgment; see also Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 34.

<sup>142</sup> See paras. 37, 40(v) and 41 of the present Judgment; see also Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 35, 42.

<sup>143</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 58-60.

<sup>144</sup> Lubanga AJ Sentencing Judgment, [ICC-01/04-01/06-3122](#), para. 82.

<sup>145</sup> See para. 89 of the present Judgment.

<sup>146</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 61.



Mr Al Mahdi in its assessment of the gravity of the crime and cannot therefore consider it as an aggravating circumstance.<sup>147</sup>

88. Similarly, the Chamber has already considered the religious nature of the attack as part of its assessment of the gravity of the crime.<sup>148</sup> Accordingly it cannot be considered as an aggravating circumstance.

*ii. Mitigating circumstances: reluctance to commit the crime and means of execution*

89. The Chamber notes that, despite accepting the decision to destroy the sites and his full implication in its commission, Mr Al Mahdi was initially reluctant to destroy them. The Chamber recalls that it has found that, having observed the practice of the population of Timbuktu, Mr Al Mahdi indicated that, even if it was widely accepted among the Islamic legal community that such practices were prohibited, it would be preferable not to destroy the mausoleums so as to preserve good relations with the population of Timbuktu.<sup>149</sup> The Chamber finds that this reluctance is of some relevance for the determination of the sentence and attaches weight to it.
90. The Chamber clarifies that, contrary to the Defence's submissions,<sup>150</sup> the fact that Mr Al Mahdi committed the crime as part as an organised group does not constitute a mitigating circumstance. As established in the present Judgment,<sup>151</sup> once the decision to destroy the sites had been taken by other members of the group, Mr Al Mahdi fully endorsed it and he was fully implicated in the execution of the attack.

<sup>147</sup> See paras. 78-80 of the present Judgment.

<sup>148</sup> See para. 81 of the present Judgment.

<sup>149</sup> See para. 36 of the present Judgment.

<sup>150</sup> Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 158-163.

<sup>151</sup> See paras. 37 and 40 of the present Judgment.

91. Furthermore, the Chamber notes that, except for the destruction at the Djingareyber mosque, for which he recommended that a bulldozer be used,<sup>152</sup> Mr Al Mahdi advised against using a bulldozer at all the other sites so as not to damage the graves next to the mausoleums<sup>153</sup> and made sure that the attackers showed respect for the constructions next to the mausoleums while carrying out the attack.<sup>154</sup>
92. With regard to Mr Al Mahdi's alleged lack of preparation for assuming responsibilities as head of the *Hesbah*,<sup>155</sup> the Chamber notes that the Defence does not make any effort to support this argument and therefore rejects it.
93. In sum, the Chamber considers that Mr Al Mahdi's initial reluctance to destroy the sites, as well as his recommendation not to use a bulldozer, do constitute mitigating circumstances.

### 3. *Mr Al Mahdi's individual circumstances*

94. In this section, the Chamber addresses all relevant circumstances that are not directly related to the crime committed or to Mr Al Mahdi's culpable conduct.

#### *i. Age, education and background, social and economic condition and conduct in detention of Mr Al Mahdi*

95. The Chamber has noted the statements of the two defence witnesses – both of whom have known Mr Al Mahdi for much of his life – who indicated that Mr Al Mahdi is an intelligent and very knowledgeable man<sup>156</sup> and that he

<sup>152</sup> See para. 38(ix) of the present Judgment.

<sup>153</sup> Statement by Mr Al Mahdi, MLI-OTP-0033-4645, 4656-4657.

<sup>154</sup> Statement by Mr Al Mahdi, MLI-OTP-0033-4645, 4660. See also, Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), para. 164.

<sup>155</sup> Defence Sentencing Observations, ICC-01/12-01/15-141-Corr-Red, paras. 150-155.

<sup>156</sup> MLI-DEF-0001-0001, 0001; MLI-DEF-0002-0001, 0001. See also para. 9 of the present Judgment.

assisted many of the poor communities of Timbuktu, including the community of the black Tuaregs, to which he did not belong.<sup>157</sup>

96. The Chamber does not consider that Mr Al Mahdi's age and economic background are of relevance. Furthermore, an absence of prior convictions is a fairly common feature among individuals convicted by international tribunals and shall not, contrary to Defence's submission,<sup>158</sup> be counted as a relevant mitigating circumstance. Additionally, the Chamber does not intend to give any weight, be it aggravating or mitigating, to the fact that Mr Al Mahdi was a scholar and expert in religious matters, irrespective of the evidence of his positive role in his community before the take-over of the city by Ansar Dine.<sup>159</sup>
97. Despite serious security concerns for his family, whom he has not seen since his transfer to the Court,<sup>160</sup> Mr Al Mahdi has been behaving in an irreproachable manner in detention and made a statement stating his appreciation of the manner in which he had been treated by the Court as a whole.<sup>161</sup> The Chamber considers that this factor is relevant, despite it being a legitimate expectation of any detainee, and attributes limited weight to it. Similarly, the Chamber accepts the Defence's arguments<sup>162</sup> that Mr Al Mahdi's admission of guilt and cooperation with the Prosecution, as discussed further below, show that he is likely to successfully reintegrate into society and accords a limited weight to them.

<sup>157</sup> MLI-DEF-0001-0001, 0003; MLI-DEF-0002-0001, 0003.

<sup>158</sup> Defence Sentencing Observations, ICC-01/12-01/15-141-Corr-Red, paras. 132 and 133.

<sup>159</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 48; Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 134 and 136; LRV Sentencing Observations, ICC-01/12-01/15-135-Conf, para. 38.

<sup>160</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), para. 49; Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 192-195.

<sup>161</sup> Annex II to Registry Observations, ICC-01/12-01/15-134-Conf-AnxII; [ICC-01/12-01/15-T-4-Red-ENG](#), p. 9, lines 19-23.

<sup>162</sup> Defence Sentencing Observations, ICC-01/12-01/15-141-Corr-Red, paras. 196-201.

ii. *Admission of guilt*

98. The Chamber notes that Mr Al Mahdi admitted his guilt. The Chamber further observes that Mr Al Mahdi took responsibility for his actions as early as the first day of his interviews with the Prosecution.<sup>163</sup> Subsequently, the parties reached an agreement sufficiently early in the proceedings, namely before the confirmation of charges,<sup>164</sup> to help substantially speed up the proceedings.
99. Additionally, not only did Mr Al Mahdi accept his responsibility but he also provided a detailed account of his actions,<sup>165</sup> facilitating the Chamber's establishment of the facts of the case.
100. The Chamber considers that an admission of guilt is undoubtedly a mitigating circumstance<sup>166</sup> and gives it substantial weight. In this regard, the Chamber notes that the admission was made early, fully and appears to be genuine, led by the real desire to take responsibility for the acts he committed and showing honest repentance. This admission of guilt undoubtedly contributed to the rapid resolution of this case, thus saving the Court's time and resources and relieving witnesses and victims of what can be a stressful burden of giving evidence in Court.<sup>167</sup> Moreover, this admission may also further peace and reconciliation in Northern Mali by alleviating the victims' moral suffering through acknowledgement of the significance of the destruction. Lastly, such an admission may have a deterrent effect on others tempted to commit similar acts in Mali and elsewhere. This said, the Chamber notes that this admission is

<sup>163</sup> P-182's testimony, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 118, line 19, to p. 119, line 4.

<sup>164</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), filed on 18 February 2016.

<sup>165</sup> Agreement, [ICC-01/12-01/15-78-Anx1-tENG-Red](#), pp. 10-34.

<sup>166</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 51-52; Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 180-184. The fact that an admission of guilt constitutes a mitigating circumstance is well-established in the case law of other international tribunals: see, for example, ICTY, Trial Chamber I, *The Prosecutor v. Miodrag Jokić*, Sentencing Judgement, 18 March 2004, [IT-01/42/1-S](#), para. 96 ('Jokić SJ'); ICTY, Trial Chamber I, *The Prosecutor v. Milan Babić*, Sentencing Judgement, 29 June 2004, [IT-03-72-S](#), paras. 73-75, 88-89.

<sup>167</sup> See also para. 28 of the present Judgment.

made against a backdrop of overwhelming evidence pointing to Mr Al Mahdi's guilt.

*iii. Cooperation*

101. In addition to admitting his guilt in full, Mr Al Mahdi has been cooperating with the Prosecution substantially, as detailed at length by witness P-182. The Chamber notes that this cooperation has been spontaneous and started as early as the first day of his interviews.<sup>168</sup> Mr Al Mahdi responded in an honest manner and his cooperation enabled the Prosecution to corroborate, clarify and specify information it already had in its possession.<sup>169</sup> During his interviews with the Prosecution, Mr Al Mahdi did not show any reluctance in touching upon his own acts.

102. The Chamber is also mindful of the fact that Mr Al Mahdi has cooperated despite being fully aware that his cooperation with the Prosecution increased the security profile of his family. Accordingly, the Chamber considers that Mr Al Mahdi's substantial cooperation with the Prosecution is an important factor going to the mitigation of the sentence to be imposed.<sup>170</sup>

*iv. Expression of remorse and empathy for victims*

103. The Chamber notes that, as early as the first day of trial, Mr Al Mahdi has expressed genuine remorse for his acts.<sup>171</sup> The Chamber notes that Mr Al Mahdi has expressed his 'deep regret and great pain'.<sup>172</sup> He insisted that the remorse he was feeling was for the damage caused to his family, his community in Timbuktu, his country and the international community. Not only did

<sup>168</sup> P-182's testimony, [ICC-01/12-01/15-T-4-Red-ENG](#), p. 118, line 16, to p. 119, line 4.

<sup>169</sup> P-182's testimony, ICC-01/12-01/15-T-4-CONF-ENG, p. 96, line 23, to p. 98, line 3; [ICC-01/12-01/15-T-5-Red-ENG](#), p. 16, line 15, to p. 17, line 16; See also ICC-01/12-01/15-119-Conf, para. 3.

<sup>170</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 53-55, 67; Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#), paras. 185-191.

<sup>171</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), p. 8, line 3, to p. 9, line 23, p. 43, line 19, to p. 44, line 2.

<sup>172</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), p. 8, line 11.

Mr Al Mahdi categorically express his remorse, he made the solemn promise that ‘this was the first and the last wrongful act [he] will ever commit’.<sup>173</sup> Mr Al Mahdi also indicated that he was willing to ‘accept the judgment of the Chamber’.<sup>174</sup> Lastly, Mr Al Mahdi called on people not to become involved in the same acts that he was involved in ‘because they are not going to lead to any good’ for humanity.<sup>175</sup>

104. In addition to expressing remorse, and contrary to the submission of the LRV,<sup>176</sup> the Chamber does note that Mr Al Mahdi has expressed sentiments of empathy towards the victims of the crime he committed. The Chamber refers to the example of actions showing this empathy cited by the Defence, such as Mr Al Mahdi’s offer to the imam of the Sidi Yahia Mosque to reimburse the cost of the door.<sup>177</sup>

105. The Chamber considers that such expression of remorse and empathy to the victims is a substantial factor going to the mitigation of the sentence.

### **C. Determination of the sentence**

106. The Prosecution submits that Mr Al Mahdi’s sentence should be between nine and eleven years.<sup>178</sup> The Defence made extensive submissions on the adequate assessment of the gravity of the crime charged, the absence of aggravating circumstances and the importance of the mitigating circumstances in this

<sup>173</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), p. 8, lines 20-21.

<sup>174</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), p. 9, lines 7 and 8.

<sup>175</sup> [ICC-01/12-01/15-T-4-Red-ENG](#), p. 9, lines 16-18.

<sup>176</sup> LRV Sentencing Observations, ICC-01/12-01/15-135-Conf, para. 39; [ICC-01/12-01/15-T-6-ENG](#), p. 29, line 20, to p. 31, line 22.

<sup>177</sup> Statement by Mr Al Mahdi, MLI-OTP-0033-4734, 4740-4734. See also, Defence Sentencing Observations, ICC-01/12-01/15-141-Corr-Red, paras. 171-179.

<sup>178</sup> Prosecution Sentencing Observations, [ICC-01/12-01/15-139-Red](#), paras. 64-70.

case.<sup>179</sup> The LRV requests that the sentence handed down to Mr Al Mahdi be severe and exemplary.<sup>180</sup>

107. The Chamber stresses that sentencing an individual for crimes he committed is a unique exercise for which comparison with different cases can be of very limited relevance only, if any.<sup>181</sup> The Chamber considers the Defence's arguments about the sentences in other cases<sup>182</sup> to be irrelevant. These sentences were based on vastly different circumstances, including the applicable modes of liability and sources of law.<sup>183</sup>
108. As set out above, the Chamber must balance all the relevant factors, including any mitigating and aggravating circumstances, and consider the circumstances of both the convicted person and the crime. In order to sufficiently and adequately reflect the moral and economic harm<sup>184</sup> suffered by the victims of the present case and fulfil the objectives of sentencing, the Chamber must impose a sentence that is proportionate to the gravity of the crime and the individual circumstances and culpability of Mr Al Mahdi.<sup>185</sup>
109. The Chamber finds that the crime for which Mr Al Mahdi is being convicted is of significant gravity. This said, the Chamber has found no aggravating circumstances and five mitigating circumstances, namely: (i) Mr Al Mahdi's admission of guilt;<sup>186</sup> (ii) his cooperation with the Prosecution;<sup>187</sup>

<sup>179</sup> Defence Sentencing Observations, [ICC-01/12-01/15-141-Corr-Red](#); [ICC-01/12-01/15-T-6-ENG](#), p. 35, line 4, to p. 70, line 10.

<sup>180</sup> LRV Sentencing Observations, ICC-01/12-01/15-135-Conf, paras. 45-50; [ICC-01/12-01/15-T-6-ENG](#), p. 18, line 20, to p. 33, line 22.

<sup>181</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 92 and footnotes.

<sup>182</sup> [ICC-01/12-01/15-T-6-ENG](#), p. 52, line 22, to p. 60, line 3, referencing *Jokić* SJ, [IT-01/42/1-S](#); *Strugar* TJ, [IT-01-42-T](#).

<sup>183</sup> Article 24(1) of the ICTY Statute ('[...] In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia').

<sup>184</sup> Report of Expert Witness P-104, MLI-OTP-0024-0537; Statement by P-114, MLI-OTP-0023-0344-R01, 0354, para. 54; P-431 testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 89, line 14, to p. 90, line 4; P-151 testimony, [ICC-01/12-01/15-T-5-Red-ENG](#), p. 59, line 13, to p. 61, line 9.

<sup>185</sup> Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 91.

<sup>186</sup> See paras. 98-100 of the present Judgment.

<sup>187</sup> See paras. 101-102 of the present Judgment.

(iii) the remorse and the empathy he expressed for the victims;<sup>188</sup> (iv) his initial reluctance to commit the crime and the steps he took to limit the damage caused;<sup>189</sup> and (v), even if of limited importance, his good behaviour in detention despite his family situation.<sup>190</sup> Taking into account all these factors, the Chamber sentences Mr Al Mahdi to 9 years of imprisonment.

110. Lastly, noting that none of the parties or participants requests the imposition of a fine or order of forfeiture under Article 77(2) of the Statute and Rules 146 and 147 of the Rules, the Chamber finds that imprisonment is a sufficient penalty.

111. Pursuant to Article 78(2) of the Statute, Mr Al Mahdi is entitled to have deducted from his sentence the time he has spent in detention in accordance with an order of this Court, namely since his arrest pursuant to the warrant of arrest issued on 18 September 2015.<sup>191</sup>

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<sup>188</sup> See paras. 103 and 104 of the present Judgment.

<sup>189</sup> See paras. 89, 91 and 93 of the present Judgment.

<sup>190</sup> See paras. 97 of the present Judgment.

<sup>191</sup> *Mandat d'arrêt à l'encontre d'Ahmad AL FAQI AL MAHDI*, 18 September 2015, [ICC-01/12-01/15-1-Red](#) (redacted version notified on 28 September 2015).



**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**CONVICTS** Mr Al Mahdi of the war crime of attacking protected objects as a co-perpetrator under Articles 8(2)(e)(iv) and 25(3)(a) of the Statute;

**SENTENCES** Mr Al Mahdi to 9 years of imprisonment;

**ORDERS** the deduction of the time Mr Al Mahdi has spent in detention, pursuant to an order of this Court, from his sentence; and

**INFORMS** the parties and participants that reparations to victims pursuant to Article 75 of the Statute shall be addressed in due course.

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



Judge Raul C. Pangalangan, Presiding Judge



Judge Antoine Kesia-Mbe Mindua



Judge Bertram Schmitt

Dated 27 September 2016

At The Hague, The Netherlands