

1 International Criminal Court

2 Pre-Trial Chamber I - Courtroom 2

3 Situation: Republic of Mali

4 In the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15

5 Presiding Judge Joyce Aluoch, Judge Cuno Tarfusser and Judge Péter Kovács

6 Confirmation of Charges

7 Tuesday, 1 March 2016

8 (The hearing starts in open session at 9.33 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE ALUOCH: Good morning. I would like to welcome

13 everybody here this morning, everybody who is in the courtroom and in the public
14 gallery.

15 Court officer, please call out the case.

16 THE COURT OFFICER: Thank you, Madam President. The situation in the

17 Republic of Mali, in the case of The Prosecutor versus Ahmad Al Faqi Al Mahdi, case
18 reference ICC-01/12-01/15.

19 For the record we are in open session.

20 PRESIDING JUDGE ALUOCH: Thank you very much. On behalf of the Chamber I

21 welcome all the parties, the Prosecutor and her team, the Defence team, the suspect,

22 Mr Al Mahdi, and the Registry.

23 At this point I would like to invite the parties to introduce themselves, beginning with
24 the Office of the Prosecutor.

25 MS BENSOUA: Madam President, the Office of the Prosecutor is represented this

1 morning by Gilles Dutertre, senior trial lawyer; Colin Black, trial lawyer; Jagganaden
2 Muneesamy, trial lawyer; Marie-Jeanne Sardachti, trial lawyer; Nelly Corbin,
3 associate trial lawyer; Sanja Bokulic, case manager; Sarah Coquillaud, legal assistant;
4 Audrey Demeyer, intern; and Fatou Bensouda, Prosecutor.

5 PRESIDING JUDGE ALUOCH: Thank you very much, Madam Prosecutor.

6 Now I turn to the Defence. Mr Aouini, would you be so kind as to present members
7 of your team, please.

8 MR AOUINI: (Interpretation) Thank you. Good morning, Madam Judge, your
9 Honours. My name is Mohamed Aouini. I am the Defence attorney registered in
10 the Tunisian attorney bar. I have the honour to be before you today and to be in
11 charge of the Defence of Mr Ahmad Al Faqi Al Mahdi before your Court. With me,
12 Mr Jean Louis Gilissen, he is an attorney registered in the bar association of Liège in
13 Belgium, and will help us for the session; Mrs Sylviane Emma Glodjinon, she is the
14 case manager; and Mr Colin Gilissen, he is an assistant. Thank you, Madam Judge,
15 your Honours.

16 PRESIDING JUDGE ALUOCH: Thank you.

17 Mr Registrar, could you introduce yourself and the team who is here with you this
18 morning, please.

19 MR VON HEBEL: Good morning, Madam President. On behalf of the Registry this
20 morning, it is myself, Herman von Hebel; Thomas Henquet, legal counsel; and Nigel
21 Verrill, chief of the Victims and Witness Section. Thank you.

22 PRESIDING JUDGE ALUOCH: Thank you very much, Mr von Hebel.

23 I will now introduce my colleagues, the Judges of PTC I and the legal team of the
24 Judges.

25 On my right is Judge Cuno Tarfusser and Cuno has been the Single Judge in this

1 situation. And on my left is Judge Péter Kovács.
2 In front of the Bench are Mr Gilbert Bitti, who is the senior legal adviser to the
3 Pre-Trial Division; and the legal officers, Mr Mohamed el Zeidy and Ms Sarah
4 Raveling.
5 Finally I am Joyce Aluoch, the Presiding Judge of this Chamber.
6 I now wish to make some brief clarifications, starting with the nature of this hearing
7 and the role that the Pre-Trial Chamber has to play.
8 In contrast to trial, this Chamber does not have to decide on Mr Al Mahdi's guilt or
9 innocence. Rather, our duty is to decide whether the case should be transmitted to
10 trial by determining whether there is sufficient evidence to establish substantial
11 grounds to believe that Mr Al Mahdi committed the crimes charged as provided for
12 in Article 61(7) of the Rome Statute.
13 Next, the Chamber would like to affirm the general principles guiding this trial.
14 First, the presumption of innocence according to which the suspect is presumed
15 innocent until proven guilty, pursuant to Article 66 of the Rome Statute.
16 Secondly, it is the Prosecutor who bears the burden of proof and thus her office must
17 provide evidence sufficient to prove the charge or charges as alleged.
18 Third, the Defence is provided with a set of rights enshrined in Articles 61(6) and 67
19 of the Rome Statute. Importantly, the Defence always has the final word.
20 Further, while there may be the need for closed or private sessions during the
21 confirmation hearing to protect sensitive information, the general rule is that this
22 hearing is public.
23 In the decision establishing the schedule of this hearing the Chamber has arranged for
24 three sessions of one and a half hours each for today and, if needed, for tomorrow as
25 well.

1 The Prosecutor will start making her presentation followed by the Defence.
2 Thereafter, pursuant to Rule 122(8) of the Rules of Procedure and Evidence, the
3 parties will have the opportunity to make final observations, if any, in which they
4 may respond to arguments raised during the hearing.
5 No further written submissions will be allowed after the final observations presented
6 orally during the confirmation hearing.
7 I also wish to recall certain technicalities which will allow the hearing to run smoothly
8 and uninterrupted. When referring to evidence, the parties must indicate the level of
9 confidentiality of the evidence and whether a closed session is necessary.
10 The Chamber equally reminds the parties that during public sessions they should not
11 use anonymous witnesses' and victims' names. They should refer to them by their
12 respective pseudonym or witness code.
13 Finally, I would request the parties not to speak too fast, and I hope I have not been
14 speaking too fast, and to respect the 3-second rule bearing in mind that there will be
15 simultaneous interpretation, including into Arabic.
16 In accordance with Rule 122(1) of the Rules of Procedure and Evidence, I would now
17 ask the court officer to read the charges as has been presented by the Prosecutor in the
18 charging document.
19 Court officer, please.
20 THE COURT OFFICER: Thank you, Madam President.
21 Ahmad Al Faqi Al Mahdi (Al Mahdi), born in Agoune (Mali), and of between 30 and
22 40 years old, is criminally responsible for having intentionally committed in
23 Timbuktu between around 30 June 2012 and around 11 July 2012 the war crime of
24 attacking buildings dedicated to religion and historic monuments, pursuant to and
25 prohibited by Article 8(2)(e)(iv) of the Rome Statute, ("the Statute").

1 Al Mahdi is criminally responsible under the following modes of liability: As a
2 direct co-perpetrator under Article 25(3)(a) of the Statute; for soliciting and inducing
3 the commission of such a crime under Article 25(3)(b) of the Statute; for facilitating
4 the commission of such a crime by aiding, abetting or otherwise assisting in its
5 commission under Article 25(3)(c) of the Statute; and for contributing in any other
6 way to the commission of such a crime by a group of persons acting with a common
7 purpose under Article 25(3)(d) of the Statute.

8 Al Mahdi is also criminally responsible as a direct perpetrator under Article 25(3)(a)
9 of the Statute for physically taking part in the attack against at least half of the
10 targeted buildings dedicated to religion and historic monuments.

11 Facts and circumstances of the case.

12 From January 2012 a non-international armed conflict broke out in the territory of
13 Mali and led to different armed groups taking control of the north of the country.

14 Thus, in early April 2012, the groups Ansar Dine and Al-Qaeda in the Islamic
15 Maghreb (AQIM) took control of Timbuktu. They occupied the city until
16 mid-January 2013, when they fled in the face of the advance of the Malian army
17 supported by the French forces of Operation Serval.

18 During these approximately 10 months, the members of the Ansar Dine and AQIM
19 imposed their will in Timbuktu through a local government, which included an
20 Islamic tribunal, a morality brigade (Hisbah), and an Islamic police force. These
21 structures exercised control over the population and significantly restricted and
22 violated the rights and freedoms of the people of Timbuktu.

23 Al Mahdi was one of the local members who joined in and supported the action of the
24 armed groups in Timbuktu. He was appointed to head of the Hisbah in April 2012.
25 He set up this structure and oversaw it until September 2012. The Hisbah was in

1 charge of regulating the morality of the people of Timbuktu and of suppressing and
2 repressing anything perceived by the occupiers to contribute a visible vice.

3 In addition to this role as head of the Hisbah, Al Mahdi was very active in other
4 structures set up by AQIM and Ansar Dine in Timbuktu and in their operations.

5 Indeed, he was viewed as an expert in matters of religion, and as such was involved
6 in their activities, including within the Islamic tribunal.

7 Al Mahdi was also in direct contact with the leaders of Ansar Dine and AQIM
8 (continuously or intermittently present in Timbuktu), such as Iyad Ag Ghaly (the
9 leader of Ansar Dine), Abou Zeid (the "governor" of Timbuktu under the armed
10 groups), Yahia Abou Al Hamman (the future emir of AQIM for the Sahel), and
11 Abdallah Al Chinguetti (a religious scholar within AQIM).

12 Prior to overseeing the attack in question, historic monuments and buildings
13 dedicated to religion, Al Mahdi was consulted about their destruction. Subsequently,
14 in about late June 2012, Iyad Ag Ghaly took the decision to destroy the mausoleum in
15 consultation with Abou Zeid, Yahia Abou Al Hamman and Abdallah Al Chinguetti.

16 Their common plan was to attack and destroy buildings dedicated to religion, which
17 were also historic monuments.

18 Al Mahdi subscribed to this common plan, as did various other members of Ansar
19 Dine and AQIM and individuals associated with these groups, or acting under their
20 control.

21 Al Mahdi and his co-perpetrators therefore directed their attack against nine
22 mausoleums of Muslim saints and the door of a mosque. These buildings were
23 cherished by the community, were used for religious practices, constituted an
24 important part of the historical heritage of Timbuktu and embodied the identity of the
25 city known as the "Pearl of the Desert" and the "City of 333 Saints."

1 The attackers, including in particular Al Mahdi, who oversaw their actions, carried
2 out the attack between around 30 June 2012 and around 11 July 2012, going to the
3 places they attacked with vehicles, weapons and tools such as pickaxes and iron bars.
4 Al Mahdi and his co-perpetrators first attacked and destroyed:
5 The Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum;
6 The Sheikh Mohamed Mahmoud Al Arawani mausoleum;
7 The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum;
8 The Alpha Moya mausoleum;
9 The Sheikh Mouhamad El Micky mausoleum;
10 The Sheikh Abdoul Kassim Attouaty mausoleum; and
11 The Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum.
12 The implementation of the common plan then continued in accordance with the
13 original decision of late June 2012 to include the attack against:
14 The door of the Sidi Yahia mosque; and
15 The two mausoleums adjoining the Djingareyber mosque (the Ahamed Fulane
16 mausoleum and the Bahaber Babadié mausoleum), which lasted until around
17 11 July 2012.
18 Within a period of about 10 days, 10 of the most important and well-known sites in
19 Timbuktu, all located within the same perimeter, were attacked by the participants in
20 the common plan, all of whom were driven by the same objectives, acted with the
21 same intention and utilised the same pretexts and arguments.
22 These sites were buildings dedicated to religion and historic monuments and did not
23 constitute military objectives. Some had been designated as part of the national
24 cultural heritage and as such were protected under the Malian legislation. With the
25 exception of the Sheikh Mohamed Mahmoud Al Arawani mausoleum, these

1 buildings were all protected World Heritage sites.

2 The attack against these buildings/monuments took place within the geographic and
3 temporal context of the non-international armed conflict in Mali. The attack was
4 closely connected with the conflict.

5 Al Mahdi was involved in all phases of the common plan: The planning phase, the
6 preparatory phase and the execution phase. The attackers considered the historic
7 monuments and buildings dedicated to religion that were attacked to be a visible vice.
8 Their destruction therefore fell under the competence of the Hisbah. Al Mahdi, who
9 was the head of the Hisbah, freely oversaw the attack against the buildings dedicated
10 to religion and historic monuments.

11 First, Al Mahdi personally participated in the campaign against the religious use of
12 the mausoleums. He identified and monitored the cemeteries visited by the
13 residents. He met local religious leaders and others with the goal of dissuading the
14 community from conducting religious practices on site at the mausoleums; he also
15 used the radio for this purpose. Furthermore, he conducted research on their
16 destruction. Then he himself wrote the sermon on the destruction of the
17 mausoleums which was read at the Friday prayer on the eve of the launch of the
18 attack. He also personally determined the sequence in which the
19 buildings/monuments were to be attacked.

20 Al Mahdi then acted together with other individuals, who adhered to the common
21 plan, to which he contributed in the following ways:

22 (i) He oversaw the attack;

23 (ii) He used his men from the Hisbah and supervised the other attackers who came
24 to participate in the operations; he occasionally requested reinforcements to carry out
25 the attack;

1 (iii) He managed the financial and material (e.g., tools) aspects in order to
2 successfully carry out the attack and decided what means of destruction to employ
3 based on the location;

4 (iv) He was present at all of the sites that were attacked, providing moral support to
5 the attackers, to whom he gave instructions;

6 (v) He participated personally in the destruction of at least five sites: The Alpha
7 Moya mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum, the door
8 of the Sidi Yahia mosque, and two mausoleums, the Ahamed Fulane mausoleum and
9 the Bahaber Babadié mausoleum, adjoining the Djingareyber mosque;

10 (vi) He was responsible for providing a response to journalists which explained and
11 justified the attack, thus encouraging the attackers and reassuring them with the idea
12 that the attack was well-founded and justified.

13 Al Mahdi had the requisite intent. Indeed, he deliberately engaged in the conduct in
14 question, namely the attack on buildings dedicated to religion and historic
15 monuments in Timbuktu, together with the other participants in the common plan.
16 His intention was to attack and destroy the targeted buildings dedicated to religion
17 and historic monuments. He also intended to contribute to the commission of the
18 crime by the co-perpetrators.

19 Furthermore, Al Mahdi acted with the requisite degree of knowledge. He knew that
20 the buildings targeted were dedicated to religion and had a historic character and did
21 not constitute military objectives. He was aware of the key characteristics of the
22 co-perpetrators and identities that were involved in the attack and of the
23 circumstances that allowed him to exercise, together with other participants in the
24 common plan, control over the attack in question. Al Mahdi also understood the
25 factual circumstances that established the existence of an armed conflict and knew

1 that his criminal conduct took place within the context of an armed conflict and was
2 associated with it. Al Mahdi contributed to the commission of the attack in full
3 knowledge of the intention of the other persons taking part in it. He also knew that
4 his acts would bring about, or contribute to, the commission of the crime of which he
5 is accused.

6 Charges.

7 In view of the facts and circumstances set out supra, Al Mahdi is criminally
8 responsible for the war crime of directing an attack as set out in Article 8(2)(e)(iv) of
9 the Statute. In Timbuktu between approximately 30 June 2012 and 11 July 2012 he
10 intentionally directed an attack against buildings dedicated to religion and historic
11 monuments which were not military objectives as follows: The Sidi Mahmoud Ben
12 Omar Mohamed Aquit mausoleum, the Sheikh Mohamed Mahmoud Al Arawani
13 mausoleum, the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti
14 mausoleum, the Alpha Moya mausoleum, the Sheikh Mouhamad El Micky
15 mausoleum, the Sheikh Abdoul Kassim Attouaty, the Sheikh Sidi Ahmed Ben Amar
16 Arragadi mausoleum, the Sidi Yahia mosque (the door), and the Bahaber Babadié
17 mausoleum and the Ahamed Fulane mausoleum, both adjoining the Djingareyber
18 mosque. He is criminally responsible under Article 25(3)(a) (as a direct
19 co-perpetrator), Article 25(3)(b) (for soliciting and inducing the commission of the
20 crime), Article 25(3)(c) (for facilitating the commission of such a crime by aiding,
21 abetting or otherwise assisting), and Article 25(3)(d) (for contributing in any other
22 way to the commission of such a crime by a group of persons acting with a common
23 purpose).

24 Al Mahdi is also criminally responsible under Article 25(3)(a) as a direct perpetrator
25 for his physical participation in the attack intentionally directed against the Alpha

1 Moya mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum, the door
2 of the Sidi Yahia mosque and the Ahamed Fulane mausoleum and the Bahaber
3 Babadié mausoleum.

4 PRESIDING JUDGE ALUOCH: Mr Al Mahdi, I sincerely hope you understand the
5 nature of these charges brought against you by the Prosecution.

6 Now the Bench --

7 MR AL MAHDI: (Interpretation) Yes, I have understood the charges well.

8 PRESIDING JUDGE ALUOCH: Thank you very much.

9 Now the Bench notes the indication of the parties not to raise any objections or make
10 observations concerning any issues related to the proper conduct of the proceedings
11 prior to the confirmation hearing under Rule 122(3) of the Rules of Procedure and
12 Evidence. This is particularly important given that in accordance with Rule 122(4) of
13 the Rules of Procedure and Evidence at no subsequent point may the objections and
14 observations made under Rule 122(3) of the Rules of Procedure and Evidence be
15 raised or made against the confirmation of trial proceedings.

16 I would like the parties to confirm that this intention is indeed the case in order for
17 the record to accurately reflect their position.

18 The floor is yours, Madam Prosecutor.

19 MS BENSOUA: Madam President, just to confirm that this is indeed the case.

20 PRESIDING JUDGE ALUOCH: Thank you very much.

21 The Defence, Mr Aouini.

22 MR AOUINI: (Interpretation) Thank you, your Honour. We have no observation
23 or no opposition to that. Thank you.

24 PRESIDING JUDGE ALUOCH: Thank you.

25 Now we proceed with the presentation of the case by the Prosecutor.

1 Please, madam, you have the floor.

2 MS BENSOUDA: Madam President, thank you.

3 (Interpretation) Madam President, your Honours, "Timbuktu is about to lose its soul.

4 Timbuktu is under the threat of outrageous acts of vandalism. Timbuktu has on its

5 throat the sharp knife of coldblooded assassins." That was the cry of desperation of

6 an inhabitant of Timbuktu during the destruction of the mausoleums of the city. The

7 same feeling of despair and importance was expressed by another inhabitant of

8 Timbuktu who said, and I quote: "They have destroyed everything that we have and

9 we have no power to defend ourselves." End of quote.

10 Madam President, your Honours, the Rome Statute prohibits and punishes the most

11 reprehensible criminal acts: Crimes of genocide, crimes against humanity and war

12 crimes. These crimes can be perpetrated in various forms, but they all have one

13 common denominator: They inflict irreparable damage to the human persons in his

14 or her body, mind, soul and identity.

15 The instant case concerns an international crime prohibited by the Rome Statute, a

16 crime which affects the soul and spirit of a people, as you are going to see in our

17 presentations of today.

18 Subjected ever since the month of April 2012 to the will of the armed groups Ansar

19 Dine and Al-Qaeda in the Islamic Maghreb, the population of Timbuktu woke up on

20 the morning of 30 June 2012 to realise with dismay that an attack had been launched

21 by these groups. These attacks were carried out to destroy what was their historic

22 heritage and which occupied a place at the very heart of their lives.

23 Madam President, your Honours, the destructions in question in this case lasted for

24 about two weeks, right up to 11 July 2012. In only about a dozen days, ten buildings

25 were attacked and razed to the ground. These were emblematic buildings. They

1 were part of the most recognizable monuments of Timbuktu. Most of them were
2 categorized under Malian national law. They were also, except one, protected by
3 UNESCO as World Heritage sites.

4 Unfortunately, at that time, it was totally impossible to stop the destructive rage of
5 the armed groups. And also, unfortunately, it was not possible to protect these
6 buildings of such immense and immeasurable value.

7 (Speaks English) With your indulgence, your Honours, I will continue my
8 submissions in English:

9 The suspect Ahmad Al Faqi Al Mahdi, also known by his nom de guerre, Abou
10 Tourab, is appearing before you today charged for this callous attack which he led, an
11 attack that was planned and carried out with various tools and equipment.

12 The facts are out in the open. The attack received extensive media coverage around
13 the world. Mr Ahmad Al Faqi Al Mahdi and the co-perpetrators revealed to the
14 whole world their contempt for these buildings and for the rules set out by the Rome
15 Statute, which defines such a conduct as a war crime.

16 Let us be clear: What is at stake here is not just walls and stones. The destroyed
17 mausoleums were important from a religious point of view, from an historical point
18 of view and from an identity point of view. Such an attack against buildings
19 dedicated to religion and historic monuments falls into the category of crimes that
20 destroy the roots of an entire people and profoundly and irremediably affect its social
21 practices and structures. This is precisely why such acts constitute a crime under
22 Article 8(2)(e)(iv) of the Rome Statute.

23 Let there be no mistake: The charges we have brought against Ahmad Al Faqi
24 Al Mahdi involve most serious crimes; they are about the destructions of irreplaceable
25 historic monuments and they are about a callous assault on the dignity and identity of

1 entire populations and their religion and historical roots. The inhabitants of
2 northern Mali, the main victims of these attacks, deserve to see justice done.
3 No longer should such reprehensible conduct go unpunished.

4 Allow me to begin with the religious dimension of the mausoleums. The
5 mausoleums and saints of Timbuktu play an important role in the daily lives of the
6 city's inhabitants. The mausoleums are frequently visited by the city's residents,
7 usually on Fridays. They are places of worship. The act of going to the
8 mausoleums is perceived as a sign of faith and religious piety. Some even travel to
9 them on pilgrimages.

10 It is specifically these practices that the armed groups Ansar Dine and Al-Qaeda in
11 the Islamic Maghreb wanted to annihilate by destroying the mausoleums in question.
12 As Witness P-125 stated, the destruction of the mausoleums, and I quote him, "a fait
13 très mal à la population." End of quote. It became impossible for the inhabitants of
14 Timbuktu to devote themselves to their religious practices. These practices which
15 were deeply rooted in their lives. These practices which signified the deepest and
16 most intimate part of a human being: Faith. These practices which were part of
17 their shared life together.

18 At this point I wish to stress that this case is not about determining who was right or
19 wrong from a religious point of view. The bottom line is that the attacked
20 monuments had a religious use and had a historic nature, this is all that matters. To
21 intentionally direct an attack against such monument is a war crime under the Rome
22 Statute regardless of the judgment by other people on the religious practices by the
23 inhabitants of Timbuktu.

24 Madam President, your Honours, the mausoleums and mosques in Timbuktu were
25 not only intrinsic to the current religious practices, they were also very closely linked

1 to the city's past and rich history.

2 In the 15th and 16th centuries, Timbuktu became one of the intellectual and spiritual
3 capitals of Africa. It played an essential role in the expansion of Islam. It was the
4 cradle of education, a place of enlightenment for generations of students and attracted
5 many scholars, some of who are considered Muslim saints. Following their deaths,
6 mausoleums were erected in their honour and to celebrate their contributions.

7 The destruction of such monuments constitutes the annihilation of structures that had
8 survived the ravages of time and which stood as testimony to Timbuktu's glorious
9 past and important place in history and to its people over generations.

10 At the time of the events the minister of culture of Mali, shocked by such destructive
11 acts, stated, and I quote: "Our ancestors ... bequeathed us with these properties.
12 My plea is ... to preserve the country's history." End of quote.

13 The mausoleums that were attacked and destroyed were not only invaluable and
14 irreplaceable testimony to history and a site of religious practice, they also, more
15 generally, embodied Timbuktu's image and identity.

16 Timbuktu is also known as the City of 333 Saints. To destroy Timbuktu's
17 mausoleums is to destroy its identifying symbol. As a resident of the city declared
18 on Radio France Internationale, and I quote: "The people are very, very angry today
19 because the mausoleum is the symbol of Timbuktu." End of quote.

20 More so, to destroy the mausoleums is to erase this element of collective identity that
21 the people of Timbuktu built through the ages. It means the annihilation of a
22 civilisation's landmark and crucible which constitutes necessary archetypes in the
23 social memory and helps build and inspire future generations.

24 The minister of culture of Mali summed up these considerations most aptly in
25 February 2013, when he called the destruction, and I quote: "... an attack on the

1 lifeblood of our souls, on the very quintessence of our cultural values. Their purpose
2 was to destroy our past ... our identity and, indeed, our dignity ..." End of quote.

3 Madam President, your Honours, beyond Mali, the sites attacked were not only
4 important for the people of Timbuktu and Mali, they were also important for whole
5 Africa and the entire world.

6 It is rightly said that the cultural heritage is the mirror of humanity. Such attacks
7 affect humanity as a whole. We must stand up to the destruction and defacing of
8 our common heritage.

9 This point is brought home most forcefully when we consider the reactions to the
10 suspect's campaign of destruction in Timbuktu.

11 Algeria, for example, through its foreign ministry and spokesperson strongly
12 condemned the attacks, stating that the mausoleums, and I quote, "are not only part
13 of the Islamic cultural heritage belonging to the memory and collective consciousness
14 of Mali, but also as a common heritage shared by both Algeria and Mali."

15 The chairperson of the African Group at UNESCO emphasised that, and I'm quoting
16 again, "it is not only Mali which is affected by the destruction of heritage sites in that
17 country. Mali's heritage sites" and Africa's heritage sites and they are also -- "are
18 Africa's heritage sites and they are also the world's heritage sites." End of quote.

19 As a matter of fact, with one exception, all of the sites in Timbuktu had been
20 designated by UNESCO as World Heritage sites. This is because beyond the borders
21 of Mali and Africa, the mausoleums constituted a chapter in the history of humanity.
22 Humanity as a whole was affected by this loss.

23 The attack in question rightfully raised a chorus of protests and outrage nationally,
24 regionally and internationally.

25 The African Union, the UN Security Council, the Economic Community of West

1 African States (ECOWAS), UNESCO and many countries expressed their strong
2 condemnations of these events.

3 In short, humanity's collective conscience was shocked by the senseless destruction of
4 its common heritage.

5 Madam President, your Honours, words of condemnation are not enough.

6 Humanity must stand firm in rejecting these crimes through concrete punitive action.

7 History itself, whose physical embodiment is at peril through such attacks, will not be
8 generous to our failure to care and to act decisively. Such an attack must not go
9 unpunished.

10 Attacks against cultural property are a constant. Sadly, there are too many examples
11 as recent acts of destructions in the cities of Aleppo and Palmyra in Syria
12 demonstrate.

13 In the words of expert witnesses, Witness 151, "the destructions of Timbuktu sites
14 were for UNESCO among the most significant ones since the destruction of the
15 statues of Bamyan Buddhas in Afghanistan in 2001." End of quote.

16 Two resolutions from the UN Security Council issued in October and December 2012
17 stressed that "such acts may amount to crimes under the Rome Statute and that their
18 perpetrators must be held accountable ..."

19 We must protect our common heritage from the desecration, ravages and long-term
20 effects of such destructive acts. The appeals of the Malian and the international
21 community must yield results. Such an attack is a serious crime under the Rome
22 Statute.

23 It is incumbent upon us to make sure that those responsible for such attacks are held
24 responsible. This is the true significance of this hearing here today.

25 I also want to stress that Mr Al Faqi Al Mahdi is one of the few identified persons

1 from the common plan to attack Timbuktu who is still alive.

2 Madam President, your Honours, allow me to briefly focus on the suspect Mr Ahmad

3 Al Faqi Al Mahdi.

4 The suspect was appointed to head the Hisbah, the morality brigade, which was one

5 of the organs established by the groups. He then established and developed the

6 Hisbah, which as mentioned he led from its creation in April 2012 until

7 September 2012. In addition to his role as head of the Hisbah, Mr Al Mahdi was

8 active in some of the other structures established by armed groups in Timbuktu and

9 in the activities they carried out in 2012 to impose by force their ideology, control and

10 power over the population.

11 As the Prosecution will demonstrate, the evidence against Mr Ahmad Al Faqi Al

12 Mahdi is overwhelming.

13 We will prove that Mr Al Mahdi espoused a common plan to attack these sites,

14 buildings and monuments.

15 He was proactive and determined leader of this attack.

16 He oversaw it in his capacity as head of the morality brigade, the Hisbah. He also

17 physically participated in the attack and destruction.

18 (Interpretation) Your Honours, this is the first time that my office, based on

19 evidence gathered by its investigation, brings before you a charge relating to

20 buildings dedicated to religion, culture and historical monuments. This is the first

21 time that this Court is called upon to protect or defend the cultural heritage of a

22 community, recognize its importance and contribute to the plague and risks to which

23 these monuments are placed and the repercussions for the population.

24 Finally, this is the first time that a suspect has been brought before this Court in the

25 framework of the Mali situation. The first suspect, Mr Ahmad Al Faqi Al Mahdi,

1 appears before you, your Honours. It is therefore the time to send the message to
2 the victims of this attack that we have finally heard their prayers and their wishes in
3 relation to this attack.

4 We intend to do all which is within our means to ensure that those responsible for
5 crimes under the Rome Statute committed in Mali answer for their deeds.

6 Thank you, your Honours, for your attention. I would now like to hand the floor to
7 Gilles Dutertre, senior trial attorney and responsible for this case.

8 MR DUTERTRE: (Interpretation) Good morning, your Honours.

9 On 18 December 2015 the Office of the Prosecutor filed legal and factual submissions
10 in support of the charge brought. This document was very detailed. It included

11 1024 footnotes and referred to hundreds of documents. And, therefore, the

12 Prosecution does not intend today to recite the content of those submissions.

13 For instance, we will not be dealing with the following matters: The armed conflict
14 or the nexus between the crime and the armed conflict. Nor will we be talking about
15 the taking of Timbuktu by AQIM and Ansar Dine in any detail at least.

16 What we do want to do today is in particular to draw your attention to certain
17 evidence which is extremely important.

18 Secondly, we would like to spend some time on aspects which are new for the Court.

19 For instance, the concept of a religious building.

20 And then we shall also do our best to provide to the general public a presentation of
21 the nature of the case, the crime and its perpetrator.

22 Your Honours, we're going to begin with the presentation regarding the historical
23 and religious nature of the mausoleums. These buildings were cherished by the
24 community and we will be telling you about the role that they played in the life of the
25 people of Timbuktu. My colleague Marie-Jeanne Sardachtli will be speaking to this

1 topic in open court for approximately 25 minutes.

2 Your Honours, we will then go on to a presentation of the structure of the armed
3 groups operating in Timbuktu in 2012, in particular, using an organisational chart of
4 the bodies set up by AQIM and Ansar Dine during the occupation. It will be very
5 visual and I think that it will help the Chamber and the public to understand the
6 nature of those organisations. My colleague Nelly Corbin will give that presentation
7 in open court during about 20 minutes.

8 We will then have the presentation regarding the suspect, of course, Mr Al Mahdi
9 regarding his background and the proof we have in this connection. My colleague
10 Jagganaden Muneesamy will give that presentation during about 25 minutes. He
11 will ask for your leave to move into closed session for the last 10 minutes of that
12 presentation in order to protect sources of witnesses.

13 I will then go through the evidence presenting it side by side. I will show you
14 satellite images, expert reports and scientific evidence. With your leave I will do that
15 in closed session and will do so during 60 minutes in order to protect our experts and
16 witnesses.

17 Then to finish, your Honours, my colleague Sarah Coquillaud will address the
18 elements constituting the charge as provided in Article 8(2)(e)(iv) and she will in
19 particular speak to the concepts of historic monument and building dedicated to
20 religion. This is the first time that the Court will be dealing with such issues and
21 20 minutes will be spent on the topic in open court.

22 Finally, my colleague Colin Black will give a presentation regarding the various
23 modes of liability which are attributed to Mr Al Mahdi and he will do so during
24 approximately 45 minutes in open court.

25 Now, the court officer has read the charges and summary of the case; therefore, I need

1 not spend further time on it. It is clear that what we are dealing with is a common
2 plan which was carried out by members of the groups occupying Timbuktu and their
3 plan was to destroy legal sites which were also part of the history of the city.

4 I'll be speaking about a single attack. Although there were various actions at various
5 sites, it was indeed one operation.

6 The document which we filed on 18 December 2015 has a long name: Document
7 presenting the factual and legal submissions of the Office of the Prosecutor in support
8 of the charge in the case against Ahmad Al Faqi Al Mahdi. We will be referring to
9 that document as the submissions of the Prosecution in support of the charge.

10 Now, I'd just like to inform the Chamber that as various speakers will be addressing
11 you on behalf of the Prosecution, I would ask you for a few moments to allow us to
12 relocate to be able to address you best.

13 First of all, I would like to invite Marie-Jeanne Sardachti to take the floor and to speak
14 to the topic of the nature of the mausoleums and the mosques.

15 MS SARDACHTI: (Interpretation) Court officer, may I have leave to broadcast
16 images, please?

17 THE COURT OFFICER: Evidence 2 channel has been assigned to you. My
18 apologies, evidence 1 channel has been assigned to you. Thank you.

19 MS SARDACHTI: (Interpretation) Your Honours, the monuments which were
20 attacked were cherished by the population of Timbuktu. They represent the history
21 and the culture of the whole people. Given that this crime was committed against
22 the people of Timbuktu, of Mali, of Africa, but also against humanity in its entirety.
23 The Prosecutor herself referred to that aspect.

24 The purpose of my presentation is to set out before you the facts which demonstrate
25 the historical and religious nature of the sites which were attacked. This matter is

1 also dealt with in paragraphs 11 to 16 in the charges. The Office of the Prosecutor
2 has relied essentially on expert evidence and testimony by the people of Timbuktu
3 and also documentary evidence, in particular, documents from UNESCO.

4 There is no need for us to go into closed session given the public knowledge and
5 nature of this information.

6 When it comes to the detail of the evidence, I would refer you to paragraphs 6 and 7
7 and 79 to 89 and paragraph 94 of the Prosecution submissions in support of the
8 charge. I would also refer to the introductory paragraphs regarding each
9 mausoleum and mosque, so from pages 67 to 97 of that document.

10 I'm first going to speak to you about the city of Timbuktu and then I will talk about
11 the practices and rights that were carried out by the people of Timbuktu in
12 association with these mausoleums and mosques. I'll talk about the history of each
13 of the attacked sites and finally their legal protection.

14 I would first like to underline the intent of the perpetrators of this crime, the evidence
15 demonstrate that the perpetrators attacked those buildings with the specific objective
16 to eradicate the religious practices of the local population which were associated with
17 mausoleums. It is not at all contested in any way that the sites which were attacked
18 were dedicated to religion. They were also historical monuments.

19 So as I announced, I would like first to speak to you about the city of Timbuktu.

20 Your Honours, to understand the historical and religious function of the mausoleums
21 and the mosques of Timbuktu, it is useful to understand the importance of the city
22 itself and the role which it has played historically as a centre for study, studies and
23 spiritualism in Africa.

24 Now, on the screen you're looking at an image of the city. It's an aerial view which
25 was taken from the Timbuktu Conservation and Management Plan drawn up by the

1 National Department for Cultural Heritage in Mali.
2 Now, Timbuktu is an ancient city, a legendary city which has many mausoleums.
3 And according to the local population, it is -- it offers a protective bulwark to the city
4 against dangers. The name of the city comes from a legend which is linked to the
5 specific location of the city between the desert and the Niger river.
6 According to oral tradition, a Touareg woman called Bouctou had the task of
7 guarding over a well where caravans of traders would stop to water their animals,
8 having crossed in the desert from the Maghreb and moving towards Yemen.
9 So Timbuktu had a strategic, the important geographical position between the Sahara
10 and the Niger. It has been called the pearl of the desert. It is also a city which has
11 been conquered on a number of occasions, in particular by the Mali empire and the
12 Songhoï empire in the 14th and 15th centuries. It had its apogee under the reign of
13 the Askia Muslim dynasty between the 16th and the 17th century. Timbuktu city
14 had a population of around 100,000 inhabitants at that time, with 25,000 of those
15 people being students. The city also had 180 Quranic schools.
16 At the time Timbuktu was an intellectual and spiritual capital in Africa and had an
17 international aura. The city had many universities and libraries and large numbers
18 of manuscripts. It constituted a centre for the spread of knowledge and Islamic
19 culture in Africa.
20 As the city excluded foreigners for a long period of time, Timbuktu gained a rather
21 mysterious image. It is located on the edge of the desert and is quite atypical in
22 terms of its architecture, which is in alhor stone and clay, and also because of its
23 somewhat austere character. It is also atypical given its history which is extremely
24 rich and linked with the fait of various empires and kingdoms. It is a treasure for
25 humanity in its entirety.

1 The city is also called the City of 333 Saints. Timbuktu is reputed for its many
2 mausoleums and mosques. Each of these mausoleums and mosques reflect the
3 prestigious past of the city and also speak to the history of the city.
4 Your Honours, the culture, historical and religious value of these monuments cannot
5 be denied. They constitute the symbol of the city and they bear witness to centuries
6 of history for the community around it and reflect the community's identity.
7 You are going to see photographs of these mausoleums. You will see that they are
8 quite modest buildings and that they are constructed using traditional techniques.
9 Expert Witness P-0151 refers to this, and here on the screen you find his words in
10 English:
11 (Speaks English) "The mausoleums are also constructed from mud bricks and then
12 they use palm trees as beams because it is the most abundant there. This is
13 determinant for their shape because palm trees are not big. They also use stones and
14 are usually simple constructions. They have, however, a very high symbolic value
15 rather than artistic. They became places of worship and they have a religious and
16 spiritual value."
17 (Interpretation) End of quotation.
18 In this presentation I'll be showing you photographs of the sites as such. I'd ask you
19 to imagine the practices and the rights of the population carried out at those
20 mausoleums. I'd ask you to view these buildings through the eyes of the people of
21 Timbuktu.
22 Your Honours, this brings me to my next point which is the practices and the rights of
23 the people.
24 To illustrate this -- these practices, I would like to refer you to Witness P-14:
25 (Speaks English) "Mausoleums are very important for the community. There are

1 people who go to visit the mausoleums every day. Doing that is a symbol of faith in
2 Timbuktu. There are also people taking care of the mausoleum and they can go and
3 sit next to the mausoleum during the day."

4 (Interpretation) End of citation. That was, in fact, Witness P-0114.

5 Now, on these two photographs you see people who have come to visit the
6 mausoleums. This shows you that the mausoleums and mosques are not only linked
7 to the past of Timbuktu but are very much an important part of the life of the people
8 of Timbuktu today. In fact, the people of Timbuktu travel or visit these mausoleums
9 very regularly to pray, to read verses of the Quran, to make offerings or to have
10 spiritual retreats. These rituals are carried out -- or rituals are carried out there, for
11 instance, circumcision or celebration of Maouloud. That is the commemoration of
12 the birth of the prophet Muhammad.

13 Furthermore, the population is involved in the upkeep of the monuments, which is
14 demonstrated by the practice of roughcasting.

15 Here on the screen you see the people of Timbuktu climbing up the walls to manually
16 plaster them with mud. This is the roughcasting of which I spoke.

17 It's important and interesting to note that each year collective undertakings of this
18 type take place. The imam concerned and his family decide when the work should
19 take place and issue an appeal to the community of the faithful for help to assist the
20 masons in their work. So these mausoleums and mosques create a link in terms of
21 identity and social activity.

22 Now, your Honours, I'm now moving on to my third point. I'm going to speak
23 about the buildings which were attacked, notably their historical and their religious
24 significance. And I'll do so using a map of Timbuktu and I'll do so in the
25 chronological order of the attack.

1 Now, the map you see on the screen is from the Timbuktu Conservation and
2 Management Plan. The first cemetery I'll be talking about is the Sidi Mahmoud
3 cemetery, which is located to the north of the town. And in this cemetery are the
4 mausoleums of Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit and Sheikh
5 Mohamed Mahmoud Al Arawani.

6 Here we have a photograph from the Mali culture ministry and you will see on the
7 left the Sidi Mahmoud mausoleum and you see it in more detail on the following
8 photograph. So this mausoleum is dedicated to the saint after which it was named.
9 He was born in the 15th century during the Songhoï empire and the mausoleum dates
10 back to the 16th century.

11 A report drafted by expert P-0104 and documents of the World Heritage Committee
12 regarding Mali's candidature stated that Sidi Mahmoud was considered to be a sea of
13 knowledge according to oral tradition. And he wrote many books.
14 P-0125 states, and I cite, "Everybody in Timbuktu loved the Sidi Mahmoud
15 mausoleum which was located in the cemetery and where scholars and saints were
16 buried." End of quotation.

17 The Al Arawani mausoleum is located on the right on your screens, that is to say on
18 the right of the Sidi Mahmoud mausoleum.

19 This photograph is -- has been taken from the expert report produced by P-0104.
20 According to Witness P-0114, the saint who was buried in the mausoleum was a
21 cousin and a close disciple of Sidi Mahmoud.

22 You can see here the characteristics of the building, that it is in cut alhor stone and has
23 a door and a small window. As the evidence shows, this site was the object of an
24 attack just as the other mausoleums was precisely because of it was a place of
25 worship.

1 As you see on the map we have mausoleum Sheikh Sidi El Mokhtar Ben Sidi
2 Mouhammad Al Kabir Al Kounti and that is located in the El Mokhtar cemetery in
3 the northeast of the city. You can see it in greater detail on the photograph which is
4 now on your screens.

5 Now, this mausoleum dates back to the 19th century and is dedicated to the saint of
6 the same name, who was a renowned teacher, writer and law specialist. He wrote a
7 book called the Taraïfa Sochora, which is a historical work. A quotation from that
8 book is, "An ignorant person dies twice because ignorance is in and of itself a death."
9 According to oral tradition, and as stated by P-0114 and P-0125, this saint was known
10 to carry out miracles and to predict the future. For this reason the local population
11 go to this mausoleum when they face a dilemma or an important decision.

12 As you see on the map, the mausoleum of Sheikh Alpha Moya is located in the
13 scene -- or is, sorry, located in a cemetery of the same name to the east -- or in the east
14 of Timbuktu.

15 This mausoleum is also known by the name of Sidi Khiair and it appears now on your
16 screen. It dates back to the 16th century and it was dedicated to saint Alpha Moya
17 who, according to oral tradition, was a brilliant student of theology and became a
18 great professor whence his name Alpha.

19 Witness P-0066 states that he knew the mausoleum well because he had been taught
20 about the characteristics or the features of the mausoleums at school. He said that
21 after meditating, faithful people would lay their offerings there.

22 The Timbuktu Conservation and Management Plan also refers to the presence of a
23 prayer place in the mausoleum. It is in esplanade, which is surrounding by trees
24 where prayers are said, notably on Islamic feast days.

25 According to the report of expert 0104, the faithful would go there on

1 Wednesday -- sorry, Mondays and Fridays in particular and would pray for baraka,
2 or blessings, particularly in periods of drought. The inhabitants would also go to the
3 mausoleum to make offerings and to say prayers at Tabaski and Ramadan.
4 The mausoleums Sheikh Mohamed El Micky, Sheikh Abdoul Kassim Attouaty and
5 Sheikh Sidi Ahmed Ben Amar Arragadi are also -- are three mausoleums located in
6 the cemetery of the Three Saints which is at the west. You can see the location of
7 that cemetery on the map.
8 Here's the entrance to the cemetery with the main gate. And here the three
9 mausoleums: El Micky, El Attouaty and El Arragadi.
10 Here you have the El Micky mausoleum with its decorated door. Saint El Micky,
11 according to oral tradition, dedicated his life to teaching. It is said that he was able
12 to withdraw from the world for days on end to fast and meditate. It is customary for
13 the local people to go to this mausoleum for spiritual retreats. This mausoleum
14 dates back to the 19th century.
15 Here you see Attouaty mausoleum. Saint Attouaty came to Timbuktu under the
16 emperor Askia Mohamed during the Songhoï empire in the 16th century. In the
17 documents of the World Heritage Committee Attouaty is described as being,
18 according to oral tradition, a great man of letters. The saint was reputed for the
19 breadth of his knowledge and his passionate teaching of Islam. It is a local tradition
20 for spiritual teachers to bring children to this mausoleum for the first rituals of
21 circumcision. Attouaty was the first to establish the feast of Maouloud at Timbuktu
22 and his mausoleum was built in the 16th century.
23 The Arragadi mausoleum is now on the screen. Saint Sheikh Sidi Ahmed Ben Amar
24 Arragadi, according to oral tradition, was a renowned intellectual and a great kounta
25 philosopher with many disciples.

1 Arragadi was at -- was the leader of a college of spiritual and professional education,
2 zawiya, to which students from the Sahara and Sudan came in great numbers. He
3 was highly interested in medicine and he wrote a voluminous book on the topic and
4 treated many ill people. Numerous pilgrims with a kounta background in particular,
5 in particular coming from Morocco, Algeria, Niger, Libya, Mali and Tunisia would
6 make a pilgrimage to this site. It is said that he died at the end of the 17th century
7 and his mausoleum was constructed in the 19th century, according to Witness P-0114.
8 Now I'm showing you the Sidi Yahia mosque. As you can see from the map, it's
9 located right in the heart of the city. Here we're looking at its north face.
10 The Sidi Yahia mosque dates back to the 15th century and is dedicated to a saint of
11 the same name who is considered to be the patron saint of the town. According to
12 oral tradition, he would give lessons in theology, law and grammar at the foot of the
13 minaret of the mosque. This saint was respected and venerated by all and became in
14 the 15th century the "uncontested spiritual leader of Timbuktu." That is a quotation
15 from the expert report of P-0104.
16 Now, the gate or the door of this mosque was considered legendary and sacred. You
17 can see it on your screen, a general overview and then a close-up. According to
18 legend, that door had not been opened for 500 years and that opening the door would
19 lead to the last judgment.
20 P-0066 gives the following statement: "It was an ancient wooden door which was
21 steeped in meaning for the people of Timbuktu. It was said that if the door was
22 opened, crises would break out, war, droughts." End of quotation.
23 According to Witness P-0125, very many people came specifically to see that door, to
24 photograph it and even to reproduce it. That is the door that was attacked on
25 2 July 2012.

1 The Bahaber Babadié and Ahamed Fulane mausoleums are located adjoining the
2 Djingareyber mosque, which is the southwest of the city, as you see on the map.
3 Now, the Djingareyber mosque was built in the 14th century and forms the centre of
4 religious life in Timbuktu. It is the place where most prayers are held. Ahmad Al
5 Faqi Al Mahdi himself described the Djingareyber mosque as being an ancient
6 cultural and historical monument, a centre for education, for scholars and students.
7 The Bahaber Babadié and Ahamed Fulane mausoleums are visited by large numbers
8 on Mondays and Fridays as well as during high religious festivals. The date on
9 which these saints and the date on which their mausoleums were built has not been
10 documented. Saint Bahaber Babadié was, according to oral tradition, a virtuous man,
11 respected by all, who was notably famed for his talents as a conciliator. It is said that
12 he took from the rich to give to the poorest and that is why his descendants carry on
13 the tradition. They collect donations in particular during the celebration of
14 Maouloud. According to local belief, the white sand of the mausoleum heals most
15 illnesses.

16 Saint Ahamed Fulane is less known than the Bahaber Babadié but is said to have
17 dedicated his life to teaching the Quran and to the upkeep of the Djingareyber
18 mosque. According to Witness P-0114, he advocated peace between villages and
19 ethnic groups.

20 Your Honours, there is absolutely no doubt but that these mausoleums and mosques
21 are buildings dedicated to religion and historical monuments.

22 Attacking such buildings has been a war crime for a very long time, since The Hague
23 conventions of 1899, 1907, 1954, since the additional protocols of 1977, additional
24 protocols to the Geneva Convention of 1977 that is, and are prohibited under the
25 Rome Statute.

1 These buildings dedicated to religion and historic monuments are largely protected
2 by national law and have largely been included in the list of World Heritage with the
3 exception of Sheikh Mohamed Mahmoud Al Arawani mausoleum.

4 Your Honours, this brings me to the fourth and last part of my presentation, which is
5 the legal protection enjoyed by those buildings. This part will be brief.

6 This legal protection follows on from the facts which I have presented to you. This
7 protection underlines the cultural, historical and architectural importance of these
8 buildings for the local population but also for the international community. The fact
9 that these cultural edifices have been protected is important because these buildings
10 are handed down generation to generation. They are part of -- they are an integral
11 part of the memory of the country and they express part of the collective conscience of
12 the people.

13 The old town of Timbuktu, or medina, is protected under a national plan. When it
14 comes to international protection, at its 12th session in Brasilia in 1988 the World
15 Heritage Committee included the cultural heritage of Timbuktu which
16 constitute -- which was comprised by three grand mosques and 16 cemeteries and
17 mausoleums. They registered this heritage amongst the World Heritage sites. The
18 committee based itself on the selection criteria number II, IV and V, which appear on
19 the screen.

20 Now, criteria number II states that the mosques and holy places, meaning the
21 mausoleums, of Timbuktu play an -- or have played or played an essential role in the
22 propagation of Islam in Africa.

23 Fourth criterion: The three great mosques of Timbuktu restored by Cadi Al Aqib in
24 the 16th century bear testimony to the golden age of this intellectual and spiritual
25 capital and the end of the Askia dynasty.

1 And fifth criterion: Built in banco, with the exception of certain limited reworkings,
2 the Timbuktu mosques bear witness more than residential buildings which have been
3 subjected to greater changes, these mosques demonstrate traditional construction
4 techniques which have become vulnerable.

5 In order to draw attention to the international community or the -- sorry, in order to
6 draw to the attention of the international community the danger that these buildings
7 were under, the World Heritage Committee included Timbuktu in the list of heritage
8 in danger in June 2012.

9 And I would like to cite in English:

10 (Speaks English) "The impact of destructions of Timbuktu was an offence brought to
11 the culture and the community in Mali. The destruction had a national dimension
12 because of value given locally as religious places and an international dimension
13 because of the recognition given by the status of World Heritage."

14 (Interpretation) End of citation. That was a citation from expert witness P-0151.

15 Now, attacking these buildings was, in fact, attacking the culture of the Malians.

16 In conclusion, your Honours, the evidence gathered by the Prosecution demonstrates
17 the historic value and the religious functions of the monuments which were
18 destroyed by the suspect. Through their violent and destructive actions Ahmad Al
19 Faqi Al Mahdi and other members of the common plan not only destroyed the
20 buildings but at the same time attacked the values and the beliefs of very many men
21 and women and thereby impacted on their very sense of self and of life.

22 I would now like to hand over to my colleague who will give you a description of life
23 during the occupation of Timbuktu.

24 PRESIDING JUDGE ALUOCH: Thank you very much. I think our first session of
25 one and a half hours is over now. Everybody deserves a break, especially the

1 interpreters and court reporters. So we will have a 30-minute break and resume at
2 11.30. Thank you very much.

3 THE COURT USHER: All rise.

4 (Recess taken at 10.58 a.m.)

5 (Upon resuming in open session at 11.34 a.m.)

6 THE COURT USHER: All rise.

7 Please be seated.

8 PRESIDING JUDGE ALUOCH: Prosecution, I suppose you are still proceeding with
9 your presentation of evidence. Thank you.

10 MR DUTERTRE: (Interpretation) Yes, absolutely, your Honour. Your Honours,
11 let me tell you that we have a new member in the team, two more people from the
12 OTP, Paolo Proli, who is on the right behind me, and Michaela Wagner, who is
13 behind me to the left.

14 Nelly Corbin will now present the structures of the armed groups in Timbuktu and
15 explain the position and role played by Mr Al Mahdi in that context.

16 Thank you, your Honours.

17 MS CORBIN: (Interpretation) Your Honours, it is impossible to describe the attack
18 against the religious and historic buildings of Timbuktu without speaking of the
19 town's occupation by armed groups which made that attack possible.

20 Al-Qaeda in Islamic Maghreb and its ally, the Ansar Dine group, entered Timbuktu in
21 April 2012. They entered Timbuktu and proclaimed themselves the new masters.
22 They did away with the Mali administrations and they set up new structures that
23 were entirely designed to apply by force their new rules.

24 These structures of the origin of the oppression to which the people of Timbuktu were
25 subject between April 2012 and January 2013. These structures significantly

1 curtailed and violated their rights and freedoms.

2 These structures were implicated in the attack against the religious and historic
3 monuments of Timbuktu.

4 They made a significant contribution to the climate of coercion in which the attack
5 was carried out; they provided the manpower and equipment necessary for the
6 destructions; and in general terms they made it possible for the attack to go ahead and
7 to be publicized.

8 Your Honours, I will make my presentation in two parts and the presentation as a
9 whole will last around 20 minutes.

10 To begin with I will present to you the armed groups that occupied Timbuktu. I will
11 talk about the shape that the occupation took and the context in which the attack
12 should be seen.

13 Secondly, I will present to you the different structures that were established by the
14 armed groups and that were implicated in the attack.

15 I will speak to you inter alia of the Hisbah, which was the morality brigade, and it
16 was as chief of the Hisbah that Mr Al Mahdi had entrusted to him the mission to
17 destroy the religious and historic monuments of Timbuktu and he in that context
18 supervised the attack.

19 As for references, I will refer you inter alia to section 3 of the Prosecution's
20 conclusions in support of the charges concerning the occupation of the town of
21 Timbuktu.

22 So I'll move to the first part of my presentation. First of all, who are the armed
23 groups that occupied Timbuktu between April 2012 and January 2013?

24 During the armed conflict in Mali, which began in January 2012, several armed
25 groups fought against the Mali army. Here I refer you to section 2 of our

1 conclusions in support of the charges dealing with the armed conflict.
2 In Timbuktu itself there were two groups that dominated the town between
3 April 2012 and January 2013. Two groups which for the first time conquered a town
4 and set themselves up there as masters. These were the Al-Qaeda in Islamic
5 Maghreb, AQIM as it's known, and Ansar Dine.
6 In Timbuktu AQIM and Ansar Dine established an alliance and they pursued the very
7 same objectives: To control the town and through force to impose their ideology, an
8 ideology that was a total break with the traditions of Timbuktu.
9 The two groups inter alia reached an agreement for Ansar Dine, which was a
10 movement of a Malian origin that would take the forefront. The idea was to have
11 better acceptance on the part of the people of Timbuktu. During the first stage of the
12 occupation, Iyad Ag Ghaly, the chief of Ansar Dine, thus presented his group as being
13 in charge of the town. So it's this partially local image that was given to the
14 occupying forces that made it possible for them to recruit certain local individuals
15 such as Mr Al Mahdi who shared their ideals.
16 I'm going to show you three brief video extracts without the sound. They come from
17 public documentaries that were filmed during the occupation. These testify to the
18 presence of Ansar Dine and AQIM in Timbuktu.

19 (Viewing of the video extract)

20 MS CORBIN: (Interpretation) As regards the first extract you will see the black
21 and white flag that was the emblematic symbolic flag of the groups in Timbuktu.
22 You will see the type of military equipment that they had available to them together
23 with their weaponry.

24 (Viewing of the video extract)

25 MS CORBIN: (Interpretation) And then we have the second extract where you see

1 the premises of the Mali solidarity bank that had been changed into an Islamic police
2 force, one of the structures that was established by the armed groups.

3 (Viewing of the video extract)

4 MS CORBIN: (Interpretation) And lastly, the third extract shows you members of
5 the Islamic police, they're armed and they're patrolling in Timbuktu wearing their
6 uniform, in other words, the blue vest.

7 I apologise, I don't believe you had any sound there.

8 I shall continue.

9 In Timbuktu between April 2012 and January 2013 were to be found the highest ranks
10 of the hierarchy of AQIM and Ansar Dine. The AQIM emir for the region of Sahel,
11 Nabil Makhloufi, for instance, spent some time in Timbuktu where he exerted
12 considerable influence.

13 The evidence shows that the governance of the town was replaced by a
14 self-proclaimed presidency referred to at the time as émirat. This so-called
15 presidency was made up of three important members of AQIM, and you will see their
16 faces on the screen: Abdelhamid Abou Zeid, who has in the meantime died, a
17 historic member of AQIM and head of the Tarek Ibn Zeyad battalion; Yahia Abou
18 Al Hamman, chief of the Al Furqane AQIM battalion; and Abdallah Al Chinguetti,
19 who was one of the leading AQIM authorities for religious matters. He has also
20 deceased in the interim.

21 This presidency collaborated with Iyad Ag Ghaly, the chief of Ansar Dine. He was
22 based in Kidal but occasionally he would -- or from time to time he would come to
23 Timbuktu. It's Iyad Ag Ghaly who appointed Abou Zeid as governor of the town.
24 So it was they who were in charge of Timbuktu from April 2012 to January 2013. It
25 was they who were behind the decision taken to destroy the mausoleums of

1 Timbuktu, which is the very purpose of the common plan, they're part and parcel of
2 the common plan. They are the co-perpetrators of the attack.

3 What is more, as my colleague Gilles Dutertre will tell you, Abou Zeid, Yahia Abou
4 Al Hamman and Abdallah Al Chinguetti came to encourage the destructions while
5 they were being carried out. The control exerted over Timbuktu by the chiefs and in
6 general by the armed groups was total and without any concessions made. All
7 aspects of the life of the people of Timbuktu were subject to the control of Ansar Dine
8 and AQIM. The economy, social life, education, justice, the police, the media and
9 even and above all morality.

10 Witness P-66 said, and I quote: "During the occupation it was total radicalism."
11 End of quotation.

12 As P-114 said, and here I take the statement that was made in English:
13 (Speaks English) "During that period, everything was forbidden except going to the
14 mosque. The population followed the rules because they were afraid."
15 (Interpretation) End of quotation.

16 Ansar Dine and AQIM had total armed control over the entire town. They
17 established checkpoints at points of entry and exit in Timbuktu. As of late June 2012
18 they took control of the airport. Their men were in place to -- as armed men to patrol
19 the town. They could directly enter the homes of the people of Timbuktu to verify,
20 indeed even to punish their behaviour.

21 Their new law was propagated via sermons, propaganda messages broadcast on the
22 radio, posters or through the rulings handed down by the that Sharia court. That
23 was one of the structures created by the armed group.

24 For example, let me show you one of the rulings handed down by the Sharia court.
25 It's in Arabic. It is a sentence to a flogging. As you can see on the screen, these

1 rulings observed a certain formalism. They were dated, numbered, signed and bore
2 the stamp of the court.

3 Prosecution has disclosed to the Defence dozens of official documents that were
4 found at the premises of the Islamic police and the Sharia court which observe a
5 similar formalism. This was a system of repression and coercion that was organised
6 and structured.

7 This brings me now to the second part of my presentation. What were these new
8 structures set up in Timbuktu that were implicated in the attack? The structures can
9 be broken down into three component parts and you will see them on the screen. A
10 repressive and normative component and on the date of the attack there was the
11 Hisbah, the Sharia court and the Islamic police.

12 A communications component with the media commission. This commission
13 exerted control over the activities of the media in Timbuktu and limited these
14 activities. It had in its grip the Timbuktu radio stations and its objective was to
15 assure propaganda going to the groups.

16 And then there was the security component with the security battalions led by AQIM.
17 They were there in order to secure AQIM and Ansar Dine's stranglehold over
18 Timbuktu. All of these structures were placed under the authority of the
19 self-proclaimed presidency of Timbuktu.

20 We find these three component parts in the execution of the common plan. And I
21 will say more about that shortly. The Hisbah, the Islamic police, the security
22 battalions, the media commission and, of course, the presidency, they were all
23 participants in the attack that was orchestrated by the Hisbah.

24 The Sharia court apparently did not play a direct role. It did, however, contribute to
25 the climate of coercion in which the attack is to be seen, and some of its leading

1 members took part in the attack. These structures are described in paragraphs 44 to
2 63 of the Prosecution's conclusions in support of the charges.

3 I will only mention here certain salient features beginning with the Hisbah.

4 The Hisbah was in the front line as regards the execution of the attack. It was the
5 morality brigade. It was also referred to as the centre for enjoining right conduct
6 and forbidding indecency.

7 The Hisbah was set up and led until September 2012 by Mr Al Mahdi and it is as chief
8 of the Hisbah that Mr Al Mahdi supervised the attack.

9 What was Hisbah's role in Timbuktu?

10 Its mission was enjoining right conduct and forbidding indecency. Hisbah carried
11 out activities of propaganda in the streets of Timbuktu, on the radio, in the mosques
12 making announcements inter alia that were ideological in nature and laying down
13 bans imposed by the armed groups.

14 And more radically Hisbah was in charge of preventing and eradicating what they
15 referred to as visible vices.

16 The Hisbah members who were selected and trained by Mr Al Mahdi patrolled in
17 Timbuktu in order to identify and possibly punish these visible vices. These visible
18 vices concerned everyday life, for instance, freedom of dress, freedom of movement,
19 particularly for women, or the very fact of listening to music which was as of then
20 banned in Timbuktu.

21 The visible vices also concerned deeper rooted parts and aspects of the people's life in
22 Timbuktu. Their freedom of expression, for instance. Control exerted over
23 preaching and sermons or their freedom of religion.

24 It is in this context that Mr Al Mahdi as chief of the Hisbah took notes about the
25 behaviour of the people of Timbuktu at the mausoleums and such behaviour was

1 considered to be an example of a visible vice.

2 Among the members of the Hisbah, aside from Mr Al Mahdi, we found inter alia

3 Abou Baccar and Zakariya. You see them on the screen. They were identified at

4 the sites of destruction, and my colleague Gilles Dutertre will speak of this.

5 In the remainder of my presentation I will be showing you further photos of members

6 of the common plan, showing you their position in the structures in the presentation

7 order.

8 And I come now to other structures: The Islamic police, the security battalions and

9 the media commission. They were all directly implicated in the attack. The

10 members of the Islamic police, similar to the members of the Hisbah, patrolled the

11 town. They were armed. One of their purposes was to control the behaviour of the

12 people of Timbuktu and check that they were complying with the new law.

13 The members of the Islamic police could generally be recognized. You've already

14 seen this. They wore a blue vest with a badge on the front and on the back an

15 inscription in French and in Arabic saying "Islamic police."

16 Some of these members wearing uniform took part in the acts of destruction. And

17 my colleague Gilles Dutertre will speak of this.

18 The first chief of the Islamic police who at the time of the attack was not in office,

19 Adama, also took part in the attack. He has in the meantime died.

20 The members of the security battalions also took part in the attack. They established

21 security around the different sites during the destruction in order to prevent the

22 population from intervening. The members of the security battalions were placed

23 under the authority of a member of AQIM, in other words Talha, who was also a

24 member of the common plan.

25 Lastly, the media commission also played a role in the carrying out of the attack

1 because it controlled the media activities to make sure that there was a broadcast of
2 the acts of destruction. Among the members who were also members of the
3 common plan we find Radwan, who is now deceased, Youssouf, Abou Dardar,
4 deceased, and Sanda Ould Boumama, Ansar Dine's spokesperson.

5 My last point briefly will deal with the Sharia court. As I have already said, the
6 Sharia court as a structure was apparently not directly implicated in the attack, but
7 some of its members who belonged to AQIM were part of the common plan, to wit,
8 Abdallah Al Chinguetti, Quteiba and Radwan, who was also a member of the media
9 commission.

10 Mr Al Mahdi himself contributed to the work of the court, and my colleague will
11 subsequently speak of the role he played within the context of that court.

12 Your Honours, by way of conclusion I would like to quote the words of Mr Al Mahdi
13 at one of the sites of destruction claiming responsibility for the actions.

14 I quote him in English:

15 (Speaks English) "We are the governors of this land, and we are righting all the
16 wrongs we notice."

17 (Interpretation) It's because they were governors in Timbuktu, because they
18 occupied Timbuktu by force that Mr Al Mahdi, who belonged to the Ansar Dine
19 group, and other co-perpetrators were able to carry out the attack against the
20 religious and historic monuments of Timbuktu.

21 (Speaks English) "We are the governors of this land, and we are righting all the
22 wrongs we notice."

23 (Interpretation) What is more, this crime was justified by Mr Al Mahdi in the name
24 of the visible evils or vices of which he saw himself as the guardian as chief and
25 creator of the Hisbah.

1 This brings me to the end of my presentation. I would now like to give the floor to
2 my colleague Jagganaden Muneesamy.

3 MR MUNEEESAMY: Your Honours, Mr Ahmad Al Faqi Al Mahdi supervised the
4 destructions of the mausoleums of Timbuktu. Mr Al Mahdi did so in his capacity as
5 the head of the Hisbah. Your Honours, my submissions are divided into three parts:
6 The first part will look at the overall role of Mr Al Mahdi in the occupation of
7 Timbuktu;
8 The second part will focus on the role of Mr Al Mahdi within the Hisbah;
9 The third and most important part will concentrate on the specific role of
10 Mr Al Mahdi regarding the attack on the mausoleums.

11 The written submissions in support of the charge make detailed references to the
12 evidence, your Honours. For the purposes of my submissions, I will only focus on
13 the key aspects of the evidence.

14 Let us look at the first part on the overall role of Mr Al Mahdi in occupied Timbuktu.
15 Mr Al Mahdi is from Timbuktu. Although he had lived in other countries, including
16 Libya and Saudi Arabia, during parts of his life, he was again in Timbuktu towards
17 the end of March 2012.

18 AQIM and Ansar Dine started their occupation of Timbuktu at the beginning of
19 April 2012.

20 Mr Al Mahdi shared the objective of Ansar Dine. He joined the group within a few
21 days of the start of the occupation in April 2012. He remained an active member of
22 the group until his arrest by French forces in the desert in Niger in October 2014.

23 Your Honours, Mr Al Mahdi first caught the attention of the armed groups because of
24 his reputation as a religious scholar. He had studied and taught at different
25 religious schools before.

1 Let us not forget, your Honours, that both Ansar Dine and AQIM were jihadist
2 groups. They defined themselves and justified their actions in terms of their
3 religious beliefs. It is evident that Mr Al Mahdi with his knowledge was important
4 to them.

5 The founder and leader of Ansar Dine, Iyad Ag Ghaly himself had a list with the
6 names of all persons learned in religion on his arrival to Timbuktu. Mr Al Mahdi's
7 name was on that list.

8 Around a week into the occupation, Abou Zeid, the AQIM governor of occupied
9 Timbuktu, met with Mr Al Mahdi. Abou Zeid discussed the setting up of a Hisbah
10 and Islamic tribunal with Mr Al Mahdi. Eventually Abou Zeid asked Mr Al Mahdi
11 to form and lead the Hisbah. As an institution, the Hisbah was key in imposing the
12 ideology of the occupiers on the entire local population. Mr Al Mahdi was
13 appointed to that position precisely because of his religious knowledge and
14 competence.

15 Mr Al Mahdi was also important to the armed groups because of his popularity. He
16 was popular within his own community. This meant that he could get other
17 members of his community to join the cause of the armed groups.

18 Your Honours, his religious knowledge and position are the reasons why
19 Mr Al Mahdi was directly involved in the oppressive activities of the armed groups.
20 An example is that he assisted the judges of the Islamic tribunal and conducted legal
21 research for them.

22 I will show your Honours a video found on the internet.

23 Your Honours will hear an interview of Mr Al Mahdi. On the left corner of the
24 screen your Honours will see the actual interview. In the centre of the screen your
25 Honours will see the transcript in French. Your Honours, this interview gives us a

1 sense of the depth of the knowledge of Mr Al Mahdi. Your Honours will hear
2 Mr Al Mahdi talking of the different schools of Islamic law, of international
3 jurisprudence and of the legal basis for the decisions of a tribunal.

4 I will now show the video with sound.

5 (Viewing of the video excerpt)

6 THE INTERPRETER: (Interpretation) "Of course the members of the magistrature
7 council follow the malékite school of Muslim law, but in fact we follow the Islamic
8 Sunna and jurisprudence, in other words, comparative jurisprudence. Thus we
9 benefit from all references and all fatwas issued by the doctrinal committees of the
10 entire world and the Kuwaiti foundation of jurisprudence, which allows us to benefit
11 from all jurisprudence. This can be seen -- this shows when the question -- shows up
12 particularly when the question is complex and requires particular attention on the
13 part of the council and the magistrature which adopts one of the opinions issued by
14 the school of Muslim law based on the book of Allah and his messengers Sunna."

15 MR MUNEEESAMY: Your Honours, Mr Al Mahdi soon became trusted by the
16 leaders of the armed groups. The evidence shows that he had a friendly and trustful
17 relationship with Abou Zeid. Abou Zeid was the AQIM governor of Timbuktu and
18 was amongst the most powerful persons in the town.

19 During the occupation, your Honours, Mr Al Mahdi also directly interacted with
20 other powerful individuals of the armed groups. They were: Nabil Makhoulfi,
21 emir of AQIM for the Sahel; Iyad Ag Ghaly, leader of Ansar Dine; and Abdallah
22 Al Chinguetti, a member of the presidency of occupied Timbuktu.

23 Mr Al Mahdi's importance grew during the course of the occupation. By
24 September 2012 he was being sent on important missions outside Timbuktu on behalf
25 of the leaders of the armed groups. Because of those missions, he formally left the

1 position of head of the Hisbah.

2 An example of those missions is when he organised a meeting outside Timbuktu
3 lasting ten days and gathering 1,000 vehicles. That meeting dealt with the
4 preparation of an attack by the armed groups on the south of Mali. At the end of the
5 occupation in January 2013, Mr Al Mahdi exited Timbuktu together with the armed
6 groups.

7 As I mentioned earlier, your Honours, he remained an active member of Ansar Dine
8 up till the time of his arrest in October 2014.

9 During the occupation, the most important role of Mr Al Mahdi was that of leader of
10 the Hisbah. This brings me the second part of my submissions.

11 Mr Al Mahdi set up the Hisbah and was its first head. He was in charge between
12 April and September 2012. But what did the leadership of the Hisbah consist of?
13 My colleague Mrs Corbin has explained the role of the Hisbah in spreading and
14 enforcing the ideology and rules imposed by the occupying groups. Mr Al Mahdi
15 led that effort as head of the Hisbah.

16 I will now show your Honours an example where Mr Al Mahdi is talking about the
17 purpose of the Hisbah and how it was meant to reform behaviour considered to be
18 vices in the eyes of the occupiers.

19 This is from the same video interview that was previously shown. I will now show
20 the video with sound.

21 (Viewing of the video excerpt)

22 THE INTERPRETER: (Interpretation) "And, of course, the system of calculation is
23 an authority established by the governor in order to promote virtue and prevent vice.
24 As regards our authority in Timbuktu, a body has been set up to this end dealing with
25 a number of things inter alia reforming the visible vices in the streets such as not

1 wearing the veil, revealing one's physical appearance, gender mix, smoking, photos,
2 posters showing, for instance, forbidden slogans."

3 MR MUNEEESAMY: In effect, your Honours, Mr Al Mahdi informed the local
4 population and the world about the Hisbah and its activities. We can also see this
5 from other examples. For instance, Witness P-111 stated that Mr Al Mahdi advised
6 people on the local radio as to what behaviour would not be tolerated by the armed
7 groups. Mr Al Mahdi also spread similar messages at Friday sermons in Timbuktu.
8 Your Honours, Mr Al Mahdi's words were accompanied by action. Indeed the
9 Hisbah organised patrols to make sure that women complied with the dress codes
10 imposed by the armed groups. Your Honours can see this at the ERN
11 MLI-OTP-0015-0406.

12 The Hisbah also participated in the execution of the sentences of the Islamic tribunal.
13 As the head of the Hisbah, Mr Al Mahdi announced and justified to the population
14 the sentences of the Islamic tribunal. In such cases, Mr Al Mahdi publicly read the
15 sentence out using a megaphone. This was in front of the local population of
16 Timbuktu.

17 I will now show an open source video without sound that shows Mr Al Mahdi using
18 a megaphone and announcing a sentence to the population of Timbuktu.

19 (Viewing of the video excerpt)

20 MR MUNEEESAMY: Your Honours, before moving to the third part of my
21 submissions, I will ask leave to proceed in closed session.

22 PRESIDING JUDGE ALUOCH: Court officer, can we move into closed session,
23 please.

24 (Closed session at 12.10 p.m.)

25 (Redacted).

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18 (Open session at 1.06 p.m.)

19 THE COURT OFFICER: Mr Prosecutor, would you like please to remove the
20 document on your screen. Thank you.

21 PRESIDING JUDGE ALUOCH: We are now in open session? Not yet.

22 THE COURT OFFICER: We are now in open session, Madam President.

23 PRESIDING JUDGE ALUOCH: Thank you very much.

24 That brings to an end the end of the second session. We will resume our session at
25 2.30 this afternoon. Thank you.

1 THE COURT USHER: All rise.

2 (Recess taken at 1.06 p.m.)

3 (Upon resuming in open session at 2.39 p.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

6 PRESIDING JUDGE ALUOCH: Good afternoon and welcome back to the afternoon
7 session.

8 I think the Prosecution was still in the course of presentation of evidence. Yes, you
9 have the floor, Prosecutor.

10 MR DUTERTRE: (Interpretation) Thank you, your Honours. I will need to go
11 into closed session for 15 minutes, and that will be the end of the closed session, after
12 which there might be a brief one for two minutes, but that's all. Anyhow, the main
13 part of the next session, this session, will be in public session.

14 PRESIDING JUDGE ALUOCH: Court officer, can we go into closed session please.

15 (Closed session at 2.40 p.m.)

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- 25 (Open session at 3.07 p.m.)

- 1 THE COURT OFFICER: We are in open session, Madam President.
- 2 PRESIDING JUDGE ALUOCH: Thank you very much.
- 3 Prosecution, we are now in public session. Yes.
- 4 MR DUTERTRE: (Interpretation) Thank you very much, your Honour. I'd like to
5 hand the floor now to my colleague, Sarah Coquillaud.
- 6 PRESIDING JUDGE ALUOCH: Yes, you have the floor.
- 7 MS COQUILLAUD: Just a moment, please, your Honour. We're not ready with
8 the technical issues.
- 9 PRESIDING JUDGE ALUOCH: You need the assistance of the court officer, yes?
- 10 MS COQUILLAUD: Yes, please, we would require some assistance.
- 11 PRESIDING JUDGE ALUOCH: Okay.
- 12 (Pause in proceedings)
- 13 PRESIDING JUDGE ALUOCH: Are you all right now? Not yet.
- 14 THE COURT OFFICER: Sorry, evidence 2 has been assigned to you.
- 15 MS COQUILLAUD: (Interpretation) Your Honours, my presentation will address
16 the elements of the crime, the crime of attacking buildings dedicated to religion and
17 historic monuments.
- 18 Article 8(2)(e)(iv) of the Statute provides that intentionally directing attacks against
19 buildings dedicated to religion or historic monuments, provided that they are not
20 military objectives, constitutes a serious violation of the laws and customs of war
21 applicable to armed conflicts not of an international nature.
- 22 Thus, based on the elements of crime, the attack, first of all, must have been directed
23 by the perpetrator;
- 24 Secondly, that the object of the attack be a building dedicated to religion or historic
25 monument, which is not a military objective;

1 Thirdly, the perpetrator must intend such buildings to be the object of the attack;
2 Fourthly, that the attack take place in the context of an armed conflict not of an
3 international character;
4 And fifthly, that the perpetrator be aware of the factual circumstances that established
5 the existence of an armed conflict.

6 Your Honours, in relation to the last of those two points, I would refer to you section
7 1, 2 of the submissions of the Prosecutor in support of the charge.

8 First element of the crime.

9 An attack has indeed been directed by Mr Al Mahdi pursuant to Article 8(2)(e)(iv) of
10 the Statute. Now, the expression "direct an attack," which is used in Article
11 8(2)(e)(iv), is not defined by the Statute, nor by the elements of crime. Nor is there
12 any case law of this Court because that provision has not previously been applied by
13 it.

14 As a result, pursuant to Article 21 of the Statute, I would invite you to apply
15 customary international law and, in particular, Article 49 of the first additional
16 protocol of the 1977 Geneva Conventions.

17 According to that Article, the term "attack" means acts of violence such as initiating or
18 directing an attack against an object; in other words, to target it. It is immaterial
19 whether the attack succeeds or not. There is no requirement to demonstrate that
20 prejudice resulted.

21 In the case at hand, a large amount of evidence, including public video material and
22 witness statements, prove that Mr Al Mahdi initiated an attack against historic
23 monuments and/or buildings dedicated to religion, in other words the nine
24 mausoleums and the door of the Sidi Yahia mosque.

25 Furthermore, the same evidence proves that the buildings and monuments in

1 question were totally or very largely destroyed by the attack initiated by Mr Al Mahdi.
2 As indicated, there is no requirement to provide evidence thereof. Article 8(2)(e)(iv)
3 is not an offence conditional on result. Nonetheless, in the case in hand, the result is
4 undeniable. In this connection I would refer you to the presentation given by
5 Gilles Dutertre and section 4.4 of the Prosecution's submissions in support of the
6 charge at paragraph 137 through paragraph 227.

7 Second element of crime: The attack targeted historic monuments and buildings
8 dedicated to religion pursuant to Article 8(2)(e)(iv) of the Rome Statute.

9 Your Honours, the attack was initiated against buildings which were both historic in
10 nature and dedicated to religion. There is no doubt about this. But what
11 specifically do we mean by the terms -- or, what is meant by the terms "religion" and
12 "historic" used in Article 8(2)(e)(iv) of the Statute?

13 First of all, what is meant by the expression "building dedicated to religion" pursuant
14 to Article 8(2)(e)(iv) of the Statute?

15 The term "religion" is neither defined by the Statute nor by the elements of crime. In
16 this connection, once again, pursuant to Article 21 of the Statute and given that this
17 Article is to be defined for the first time by this Court, I would take the opportunity to
18 refer you to the case law of the International Criminal Tribunal for the
19 Former Yugoslavia and customary law.

20 As regards the case law of the ICTY, we have the case of The Prosecutor against
21 Radoslav Brdanin, which provides examples of buildings considered to be dedicated
22 to religion. In that case, it was a matter of destruction of mosques, minarets,
23 monasteries and graves. And these buildings and structures were considered to be
24 linked to religious buildings.

25 Now, in relation to the customary law, I will make reference to the comments of the

1 human rights committee on Article 18 of the International Covenant on Civil and
2 Political Rights in connection with freedom of religion.

3 These comments will appear on the screen in a moment in both English and French.
4 They make it possible to delimitate more specifically what the expression "building
5 dedicated to religion" means.

6 The Human Rights Committee underlines "The right to freedom of thought,
7 conscience and religion, which encompasses freedom of thought on all matters,
8 personal conviction and the commitment to religion or belief, whether manifested
9 individually or in community with others." End of quotation.

10 The Human Rights Committee, and I cite again, Article 18 is not limited in its
11 application to traditional religions or to religions and beliefs with institutional
12 characteristics or practices analogous to those of traditional religions."

13 These quotations have been taken from a document entitled General Comment
14 Number 22 of the Human Rights Committee, dated 27 September 1993.

15 So what can be deduced from these comments? Well, firstly, that religion
16 encompasses varied or various beliefs and practices whether they be practiced
17 individually or in community with others;

18 Secondly, that it is not necessary to prove a minimum number of followers or
19 believers;

20 Thirdly, that it is irrelevant whether a religion is recent or ancient;

21 And finally, that it is not necessary that a building be dedicated to a specific
22 traditional or universally recognized religion in order for it to be considered as being
23 dedicated to religion.

24 In conclusion, any building serving a religious purpose or used for any practice
25 through which a religion or a belief is manifested, irrespective of the number of

1 faithful, is a building dedicated to religion. And this is the case in the matter before
2 us.

3 This is demonstrated by the religious practices linked with all of the sites destroyed.

4 It is clearly the case for the Sidi Yahia mosque. It is also the case for the mausoleums,
5 for example, for the mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi.

6 A resident of Timbuktu has stated in this connection, and I quote, "We, we come
7 every Friday simply to give praise to Allah. We have heard for some time now that
8 that is now prohibited."

9 In this case the religious nature of the sites attacked is incontestable. The attack was
10 initiated specifically because of the religious practices conducted at the mausoleum
11 sites. The attackers led by Mr Al Mahdi purely and simply wanted to eradicate
12 those practices by destroying the religious places where they took place. They were
13 perfectly aware of the religious nature of the sites that, in fact, was the very driver
14 behind the attack, the *raison d'être* of the attack.

15 In relation to these aspects, I would refer you to paragraphs 98 to 104 and paragraph
16 127 of the Prosecution's submissions in support of the charge.

17 Now, what is a "historical monument" under 8(2)(e)(iv) of the Statute. This term is
18 not defined either. Unlike objects dedicated to religion which are defined by their
19 function or their purpose, historic monuments do not require proof of any particular
20 purpose. The term "historic" is to be understood in its common meaning. This
21 interpretation is based on the explicit terms of the Statute which confines use of the
22 term "Dedication to buildings linked to religion, education, art, science, or charitable
23 purposes."

24 As regards historic monuments, it is sufficient that there is evidence that the objects in
25 question were considered or had been declared as historic monuments.

1 In the case in hand, national Malian law protected these sites as historic monuments.
2 Furthermore, with the exception of the Sheikh Mohamed Mahmoud Al Arawani
3 mausoleum, these buildings had been recognized by UNESCO as being historic
4 monuments and had been included on the World Heritage list and that of the request
5 of Mali.

6 How does case law address this aspect? The International Criminal Tribunal for
7 Former Yugoslavia has made specific reference to the UNESCO convention of 16
8 November 1972 and has used inclusion of an object on the list of World Heritage sites
9 as being an indication of the historic character of the monument.

10 This was the case, for example, in the Strugar case and the Jokic case. Furthermore,
11 in the Prlic case the Trial Chamber ruled that even when an object had not been listed
12 as World Heritage by UNESCO it could nonetheless enjoy protected status insofar as,
13 I and I quote, "It had great importance for the cultural heritage of peoples." End of
14 quotation.

15 In other words, inclusion on the list of World Heritage sites is a strong indicator to be
16 taken into account in establishing whether or not a monument has a historical nature.

17 Although there was no express correlation between inclusion of an object on the list of
18 World Heritage sites and its Statute under Article 8(2)(e)(iv) in the Rome Statute.

19 The United Nations Security Council's position is consistent with this approach. On
20 5 July 2012, the latter strongly condemned "The desecration, damage and destruction
21 of" holy, historic and cultural significance -- sorry, "sites of holy, historic and cultural
22 significance, especially but not exclusively those designated by UNESCO as World
23 Heritage sites, including in the city of Timbuktu." End of quotation.

24 Thus, to determine whether an edifice is historic or not, it is relevant to study its
25 relationship with the history of the people to whose heritage it belongs.

1 Comments made by the international committee of the Red Cross are also
2 illuminating on this subject and confirm this jurisprudential approach.
3 According to the ICRC, it is important to establish whether the buildings have a
4 unique character, given their link to the history and culture of the people. This
5 evaluation is important because it links the protected object not with a quantitative
6 criterion, a given period of time, or a given period of time that has passed, but rather
7 to the history of the people who created the edifice.
8 The ICRC comments also specify that when there is doubt as to the value of the object
9 "One should consider, first and foremost, the value and the veneration which the
10 people have for that object, the people to whose heritage it belongs."
11 What takes precedence is the fact that the sites targeted express the conscience of a
12 people, of a community. In this context also the more recent objects in question such
13 as the Al Arawani mausoleum or renovated and restored buildings are also protected.
14 In summary, the term "historic" is not associated with any particular restrictive or
15 supplementary condition, it is sufficient to prove that the objects targeted in the attack
16 were considered as such as historic monuments. And this is the case in this matter.
17 In this connection, I would refer you in particular to section 4.1.2 and to paragraphs
18 148, 162, 170, 191, 192, 202 and 215 of the Prosecution's submissions in support of the
19 charge and indeed to the presentation given by my colleague Marie-Jeanne Sardachti
20 today.
21 Another element of the crime that these monuments and buildings not constitute a
22 military objective.
23 Your Honours, these buildings were used for religious purposes by the populace of
24 Timbuktu and elsewhere.
25 They constituted a cultural and spiritual heritage.

1 As I said a few moments ago, it is specifically because they were monuments
2 dedicated to religion and frequently used by the populace that they were attacked by
3 Mr Al Mahdi and the members of the common plan.

4 It was the religious practices and uses made by the civilians of Timbuktu that led to
5 destruction of these edifices and not any military benefit.

6 The evidence in this case prove that none of the attacked sites constitutes or
7 constituted a military objective. Nor did they serve a mixed purpose. They were
8 not used in support of military efforts, nor were hostile forces stationed at the vicinity
9 of the sites. There could be, therefore, no doubt as to the nature and the use made of
10 these sites.

11 And now with your leave, I would like to briefly move into closed session.

12 PRESIDING JUDGE ALUOCH: Court officer, please.

13 (Closed session at 3.30 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 3.32 p.m.)

8 THE COURT OFFICER: We are in open session, Madam President.

9 PRESIDING JUDGE ALUOCH: You may continue. We are now in public session.

10 MS COQUILLAUD: (Interpretation) Your Honours, in conclusion, the evidence
11 filed by the Prosecution in its factual and legal submissions and the presentations
12 given today that the essential elements of the crime referred to at Article 8(2)(e)(iv) of
13 the Statute has been satisfied.

14 I would thank you for your attention. And I would now like to pass the floor to my
15 colleague, Colin Black.

16 (Pause in proceedings)

17 MR BLACK: Madam President, I apologise, could I have technical assistance for one
18 minute, please?

19 PRESIDING JUDGE ALUOCH: Yes. Court officer, please.

20 (Pause in proceedings)

21 MR BLACK: Your Honour, PowerPoint isn't acting exactly as expected but I think if
22 you can see on your screen on evidence 2 the slides that will be more than sufficient
23 and I'll go ahead.

24 JUDGE TARFUSSER: That's a good idea.

25 PRESIDING JUDGE ALUOCH: Yes.

1 MR BLACK: Okay, thank you. I'm cognisant of the time. I'd planned to speak for
2 about 45 minutes. I'll try to squeeze that as much as I can and see if I can finish
3 around 4 o'clock.

4 PRESIDING JUDGE ALUOCH: Okay. That would be good.

5 JUDGE TARFUSSER: Another good idea.

6 MR BLACK: Madam President, your Honours, the Prosecution charges
7 Mr Al Mahdi with several modes of liability, all under Article 25(3) of the
8 Rome Statute. And you can see them on the screens before you on evidence 2.
9 They are direct perpetration and direct co-perpetration under Article 25(3)(a);
10 soliciting and inducing the charged crime under Article 25(3)(b); aiding, abetting or
11 otherwise assisting in commission of the crime under Article 25(3)(c); and
12 contributing to the commission of the crime by a group of persons acting with a
13 common purpose under Article 25(3)(d).
14 These modes of liability are alleged in the alternative. To be clear, the Prosecution's
15 view is that co-perpetration, direct co-perpetration, is the mode which most
16 accurately reflects the totality of the suspect's contribution. However, the facts
17 would also make out the other modes of liability. And so, in keeping with the
18 Chamber's Practice Manual, we ask you to confirm all of the modes of liability alleged
19 in the DCC, and for the Trial Chamber to decide eventually which, if any, may form
20 the basis of a conviction.
21 I'll structure my comments today as follows: I'll go through the modes of liability as
22 they appear on your screen. And for each, I'll first identify the elements which the
23 Prosecution must prove; second, I'll offer very few comments on the law and
24 jurisprudence for each mode; and third, I'll refer to the main facts in evidence which
25 establish each mode of liability.

1 I'll start with direct perpetration under Article 25(3)(a). Mr Al Mahdi is charged
2 with direct perpetration in relation to five sites, those five sites named in paragraph
3 24 of the DCC.

4 Now, direct perpetration is perhaps the least complicated mode of liability under the
5 Rome Statute. It requires only that the suspect personally performed the material
6 elements of the crime and that he did so with a requisite mental state.

7 Now, my colleague, Sarah Coquillaud, has addressed the elements of the crime, and I
8 won't repeat her discussion here, however, I do want to offer a few additional
9 comments on mental state because of its relevance to the other modes of liability.

10 The mental element of crimes is covered generally by Article 30 of the Rome Statute,
11 which you see on your screens now. Unless otherwise provided, subsection 1
12 requires both intent and knowledge for individual criminal responsibility to apply.

13 And both of those concepts are defined in subsections 2 and 3.

14 With regard to one's own conduct, one's own act or omission, a suspect has intent if
15 he or she means to engage in the relevant conduct.

16 With regard to consequences, intent is present where the person either means to cause
17 the consequence, or is aware that it will occur in the ordinary course of events.

18 Knowledge, meanwhile, means awareness that a circumstance exists or that a
19 consequence will occur in the ordinary course of events.

20 The next slide basically shows how those Article 30 definitions apply to the alleged
21 crime in this case in the context of direct perpetration.

22 First, Mr Al Mahdi must have acted intentionally in two ways; he must have meant to
23 physically or personally participate in the attack, and he must have intended that
24 these five structures be among the objects of the attack.

25 In addition to intent, he must have acted with the requisite knowledge. First, he

1 must have been aware as a factual matter that the buildings were dedicated to
2 religion and historic monuments and not legitimate military objectives. Now, he
3 need not have known the specific details of their protection or their status, certainly
4 he need not know that they were legally protected, or that what he was doing was
5 unlawful, but as a factual matter he must have known the underlying facts that they
6 were used for religious purposes and that they had historical significance.

7 And finally, as mentioned by Ms Coquillaud, you must also be satisfied that the
8 suspect was aware of the factual circumstances that established the existence of the
9 armed conflict.

10 Now, your Honours, before I move on to the evidence here, I'd like to make an
11 important note: Both of the crime-specific knowledge requirements that I just
12 described, those apply to all of the modes of liability that I'll discuss today, not just
13 direct perpetration. So for every mode, we must show that Mr Al Mahdi was aware
14 of the underlying facts that made the buildings dedicated to religion and historic
15 monuments, and he must be aware of the facts that establish the existence of the
16 armed conflict. I won't repeat them of course as I go through the different modes
17 but please be aware that they apply.

18 Meanwhile, the second requirement under intent that you see on your screen, that the
19 suspect intend the specified structures to be the objects of the attack, that applies
20 under Article 25(3)(a) and 25(3)(b). Under Articles 25(3)(c) and (d) because of the
21 different mental state requirements, which I'll discuss, the suspect must at least have
22 known of the perpetrator's intent to target those structures, but he need not
23 necessarily share that intent himself.

24 Turning from the law to the evidence. Still on direct perpetration.

25 You've heard, especially during Mr Dutertre's presentation, the clear and compelling

1 evidence that Mr Al Mahdi personally participated in the destruction of at least five
2 sites, those listed in paragraph 24 of the DCC. That evidence plainly establishes that
3 he personally performed the material elements of this crime; in other words, that he
4 directed an attack at these structures.

5 With regard to the mental state for direct perpetration, we would argue that
6 Mr Al Mahdi's intent can be readily inferred from his personal participation in the
7 destruction. But you've also heard portions of his public statements explaining and
8 justifying the attack. And it's clear from his involvement in the preparatory phase,
9 as well as his supervision of the implementation phase of the attack, that he acted
10 intentionally, both in the sense that he meant to personally participate in the attack
11 and that he intended these five structures to be among the objects of the attack.

12 With regard to knowledge, the same evidence demonstrates that he was aware the
13 buildings were dedicated to religion and not military objectives. And as explained
14 by Ms Coquillaud, he was aware - excuse me - of the use of the sites for religious
15 purposes and that that was in fact a prime motivation for the attack.

16 There's also no question, your Honours, that Mr Al Mahdi was well aware of the
17 armed conflict in northern Mali, including the occupation in Timbuktu by the armed
18 groups of which he, himself, was a member.

19 I'll turn now to another mode of liability under Article 25(3)(a), direct co-perpetration.
20 And Mr Al Mahdi is charged with direct co-perpetration for all ten sites named in the
21 DCC.

22 To establish his direct co-perpetration of the charged crime, the Prosecution must
23 establish all four elements which you see on your screen. I won't read them out loud
24 in an effort to save time. But I'd like to make two points regarding the law of direct
25 co-perpetration:

1 First, the common plan need not be specifically directed at the commission of a crime,
2 nor need it be intrinsically criminal. It must, however, include what the Lubanga
3 Trial Chamber characterised as a critical element of criminality. That simply means
4 that the common plan must be of such a nature that the suspect is necessarily aware
5 that its implementation will, in the ordinary course of events, result in the
6 commission of the crime.

7 Second, for co-perpetration to apply the suspect's contribution to the common plan
8 must be essential. Now, what constitutes an essential contribution requires a
9 case-by-case evaluation of the relationship between the conduct and the crime.

10 Some Chambers have described the requirement in terms of a power to frustrate the
11 commission of the crime, or to force it to be committed in a significantly different way.
12 However, this does not mean that the suspect must be irreplaceable in the sense that
13 no one else could have taken over his role had he stepped aside or withdrawn from
14 the plan. Instead, the question is whether the crime would have not been committed
15 or would have been committed in a significantly different way if no one had played
16 the suspect's role.

17 Turning to the evidence of co-perpetration. This evidence is discussed in some detail
18 in our written submissions and it's been touched upon by my colleagues.

19 Nevertheless, I would like to briefly summarise our position because, as I mentioned,
20 the Prosecution believes that co-perpetration is the mode of liability which best
21 describes the facts of this case and Mr Al Mahdi's role there in the crime.

22 First, we submit there is ample evidence of an agreement or common plan to destroy
23 buildings dedicated to religion which the members of the common plan knew to also
24 be historic monuments. The members of the common plan include Mr Al Mahdi
25 and other members of the armed groups occupying Timbuktu, including those men

1 named at paragraphs 292 and 293 of our written submissions.

2 You could infer the existence of the common plan solely from the concerted action of
3 the various perpetrators, which occurred at various locations over the course of
4 approximately two weeks and followed a clear and consistent modus operandi. But
5 in this case you needn't rely on inference alone.

6 You have also heard that Mr Al Mahdi was involved in the preparatory phase of the
7 attack and that as head of the Hisbah he was the principal implementer of the
8 decision to destroy the mausoleums at various cemeteries and later at the Sidi Yahia
9 and Djingareyber mosques.

10 The object of the common plan is also clearly laid out in a document created by
11 Abdallah Al Chinguetti at the time of the crime. The citation can be found at
12 paragraph 102 of our written submissions. This contemporaneous document
13 explains the occupier's view that Islam prohibits the construction of domes over
14 graves and, in particular, the practice of praying at mausoleums.

15 Next the evidence is clear that Mr Al Mahdi's role in the common plan was an
16 essential one. As set forth at paragraphs 299 to 326 of our written submissions,
17 Mr Al Mahdi contributed to the common plan in many different ways. I'll group
18 them into four main categories.

19 First, he was involved in the preparatory phase of the attack, he monitored the
20 cemeteries of Timbuktu in the weeks prior to the attack and identified the
21 mausoleums that were used for religious purposes by the locals. He also drafted a
22 sermon for the imams to give on the Friday previous to the attack justifying the
23 destructions.

24 Once a decision to destroy the sites was taken, he became the principal implementer
25 of that decision. He personally supervised the destruction at each site, he provided

1 the tools and some of the personnel as well as food and drink for the attackers. He
2 used Hisbah funds to purchase additional tools and supplies. And he instructed the
3 attackers on the manner in which the attack should be conducted.

4 Third, Mr Al Mahdi personally participated in the destruction of at least five sites as
5 you've already heard.

6 And fourth, Mr Al Mahdi repeatedly justified the attack before the attackers, the local
7 population and the world. He made public statements in several of the destruction
8 sites, from the first day of the attack up until the last day of the attack. And that was
9 in addition to his statements on the radio and at the cemeteries in the weeks prior.

10 Your Honours, we submit that these facts establish all of the elements of
11 co-perpetration I discussed earlier.

12 Mr Al Mahdi is also charged under Article 25(3)(b) with soliciting and inducing the
13 attack on protected objects.

14 To establish his liability under this mode, the Prosecution would have to establish all
15 three elements which you see on your screen right now.

16 I would make just two points regarding the law under 25(3)(b).

17 First, I've listed the elements for both soliciting and inducing, without distinction and,
18 indeed, the jurisprudence is clear that they have the very same elements, both
19 characterise situations in which the suspect prompts, encourages, or in some other
20 way exercises influence over the -- a third person to commit the offence.

21 Second, for liability under Article 25(3)(b) the existing ICC case law requires that the
22 suspect's conduct have a direct effect on the commission of the crime. In the
23 Prosecution's view, a direct effect requires only the existence of causal link between
24 the suspect's conduct and the commission of the crime. Unless the person's conduct
25 is so trivial or so remote that no relation with the crime can be established, any

1 contribution could be sufficient.

2 In particular, we submit that a suspect's contribution need not be characterised as
3 substantial or significant. And let me explain why we take that position.

4 To begin with, there's no textual basis in the statute for any qualification of the
5 contribution under Article 25(3)(b). The Statute simply says that criminal
6 responsibility is present when a person "orders, solicits or induces the commission" of
7 a crime. Although some degree of causation is implied in that text, what degree is
8 not addressed.

9 And, indeed, the direct effect requirement, which does not appear in the Statute has
10 been imported into our jurisprudence from the UN ad hoc tribunals.

11 However, the modes of liability at the ad hoc tribunals are different from the modes
12 of liability under the Rome Statute in significant ways.

13 At the ICTY, instigating, which is the mode of liability most analogous to soliciting
14 and inducing under Article 25(3)(b), instigating requires an accused's conduct to
15 substantially contribute to the commission of the crime. However, in terms of
16 mental state, he need only know of a substantial likelihood that the crime would be
17 committed. So a heightened contribution requirement balances a relatively low
18 mental state requirement.

19 Under the Rome Statute, the structure is different. Article 30(2)(b), as interpreted by
20 the Appeals Chamber in the Lubanga case, requires virtual certainty that a crime will
21 be committed. That is a higher standard than the substantial likelihood standard at
22 the ICTY and ICTR. And consequently, there's no need to impose a heightened
23 contribution requirement here. In fact, importing the substantial contribution
24 requirement would result in a mode of liability that is more demanding at this Court
25 than before the ad hoc tribunals because the contribution requirements would both be

1 high, but here we would also have a relatively higher mental state requirement.

2 Your Honours, there's no indication that the drafters of the Rome Statute intended
3 that result, and we submit that it would frustrate the purpose of the Statute by
4 creating an impunity gap for those who encourage the commission of war crimes and
5 crimes against humanity.

6 PRESIDING JUDGE ALUOCH: I'm sorry to interrupt you, Mr Colin, would you
7 slow down a bit and not talk too fast.

8 MR BLACK: I will, your Honour. I apologise.

9 PRESIDING JUDGE ALUOCH: Thank you.

10 MR BLACK: I apologise to the interpreters. I'm doing my best to -- to squeeze a lot
11 of material into a short time but.

12 And in that regard, Madam President, so I can plan the next few minutes, could I
13 have until 10 after 4, or should I try to wrap it up in five minutes?

14 PRESIDING JUDGE ALUOCH: No, you can have until 10 after 4 --

15 MR BLACK: Thank you very much.

16 JUDGE TARFUSSER: It depends on how much --

17 PRESIDING JUDGE ALUOCH: -- because the interpreters and -- they need to hear
18 what you are saying, but then you also -- Mr Aouini will also be coming after you and
19 I think -- I don't know how much time he needs after you so, yes, 10 after 4 is okay,
20 yes.

21 MR BLACK: Thank you, your Honours.

22 Briefly on the evidence of solicitation and inducement, I would just mention again the
23 sermon that was given by the imams of Timbuktu on the eve of the attack.

24 Mr Al Mahdi drafted that sermon and he asked the imams to give it. He also spoke
25 publicly on the radio, and at some of the cemeteries prior to the destructions. He

1 made public statements at the various destruction sites themselves, from the very first
2 day of the attack, 30 June, through the last destruction, almost two weeks later.
3 Those statements were made openly, in close proximity to the targeted sites, where
4 the attackers and others were able to see and hear him justifying the destructions.
5 And I would remind you that many of the same attackers present on the first days
6 were also present on the last days of the attacks.
7 With regard to causation, we would say there are many ways to characterise the
8 causal nexus between Mr Al Mahdi's conduct in the crime. His statements were
9 made close in time and close in space to the attack. And there was also a very close
10 fit in terms of subject matter. All of his statements were specifically aimed at
11 explaining the religious justification for the destruction of the mausoleums and later
12 or separately the door of the Sidi Yahia mosque.
13 And finally with regard to the third element of solicitation, there can be little question
14 that he knew the alleged attack would be committed. As the principle implementer
15 and director of the attack, its nature and logistics were well known to him and clearly
16 he knew that in the ordinary course of events the attack would indeed result from his
17 encouragement together with the other factors at play.
18 Your Honours, Mr Al Mahdi is also charged under Article 25(3)(c) of the Statute with
19 aiding, abetting or otherwise assisting in the commission of the crime. The elements
20 of this mode of liability appear on the screen.
21 With regard to the actus reus requirement, Article 25(3)(c) is broadly drafted and it
22 covers both material and moral support.
23 In addition, the degree of assistance is not limited or qualified. And here again we
24 respectfully submit that it's not necessary to establish that the suspect's contribution
25 was substantial or significant.

1 We are aware of the jurisprudence from the UN ad hoc tribunals which does require
2 substantial assistance, however, we don't think that that case law should be
3 mechanically imported here. And I'll mention just two of the reasons why that's so.
4 First of all there's no basis in the text of the Rome Statute for requiring substantial
5 assistance. Article 25(3) says "aids, abets, or otherwise assists." The drafters could
6 easily have said otherwise substantially assists, but they did not.
7 Second, the substantial assistance requirement at the ad hoc tribunals is again partly a
8 mechanism to limit liability in the context of a permissive mental state requirement.
9 At the ad hoc tribunals, the Prosecution need not establish that the accused intended
10 to facilitate the crime, only that he knew of the intent of the perpetrators to commit it.
11 Here, as I'll explain in a moment, it's not enough to just knowingly facilitate a crime.
12 The Statute requires that the facilitation be purposeful. And that fundamental
13 difference in mental state makes the substantial assistance requirement from the ad
14 hoc tribunals both unnecessary and a poor fit.
15 Very briefly, the evidence on the material element of aiding and abetting.
16 Your Honours, even if some heightened level of contribution were required, we
17 believe it would be satisfied in this case.
18 First, regarding material support. Mr Al Mahdi provided the tools for the
19 destruction, food and drink for the attackers, and some of the manpower in the form
20 of Hisbah members. This is classic aiding and abetting.
21 There's also clear evidence of Mr Al Mahdi's moral support of the attackers. As I
22 already mentioned, he provided moral and religious justification for the attack which
23 undoubtedly encouraged the attackers and helped to calm any doubts they may have
24 had. This is particularly true given his reputation as a religious authority and his
25 position as head of the Hisbah.

1 Coming now to the mental state requirement for aiding and abetting. As I
2 mentioned, Article 25(3)(c) provides that the assistance must be provided for the
3 purpose of facilitating the commission of the crime. It does not say for the purpose
4 of committing the crime. And it is therefore clear from the plain language of the
5 Statute that the suspect's intent is the facilitation of the crime, not commission of the
6 crime. And that's consistent, your Honours, with Article 30(2).

7 In addition to this fundamental textual reason, there are other reasons why the word
8 "purpose" should not be interpreted to require an intent to commit the crime itself.
9 First, such an interpretation would have the bizarre result of demanding a higher
10 mental state for aiding and abetting than that required for a direct perpetration under
11 Article 25(3)(a).

12 Second, requiring an intent to commit the crime would also frustrate the purpose of
13 Article 25(3)(c), which was to criminalise the intentional provision of assistance to the
14 perpetrators of crimes. The whole notion of aiding and abetting as a mode of
15 accessorial liability is based on the idea that it is reprehensible and punishable to
16 purposely assist another in committing a crime, regardless of whether one shares
17 their criminal intent.

18 With regard to the evidence of mental state under 25(3)(c), we estimate that it is
19 abundantly clear that he acted with a purpose of facilitating the charged attack and
20 even with the intent to commit the crime itself. His involvement in the preparatory
21 phase, the implementation phase of the attack and his many statements justify it are
22 more than sufficient for your Honours to find the mental state requirement for
23 Article 25(3)(c) satisfied.

24 Finally, and again in the alternative, Mr Al Mahdi is charged under Article 25(3)(d)
25 with contributing in any other way to the commission of the charged crime by a

1 group of persons acting with a common purpose.

2 And your Honours have the elements of this mode of liability on your screen now.

3 I'd make just one legal submission regarding this mode of liability, your Honours,

4 and it regards causation. Notwithstanding some jurisprudence of this Court to the

5 contrary, the Prosecution again submits that Article 25(3)(d) should not be limited to,

6 quote, "significant contributions." Instead, apart from those contributions which are

7 so trivial or so remote that they have no impact on the crime whatsoever, we say that

8 any causal link or nexus between the suspect's conduct and the crime is sufficient.

9 Let me very briefly explain why we take that position. Your Honours, the language

10 of Article 25(3)(d) is broad and clear, it refers to contributing, quote, "in any other

11 way," end quote. That expansive language itself suggests there should not be a

12 minimum threshold for contribution under this mode.

13 The Prosecution is aware of the Decision on Confirmation of Charges in the

14 Mbarushimana case, which concluded that the gravity requirement of Article 17 does

15 suggest a minimal threshold for contribution, but we respectfully disagree with that

16 position. While this Court must focus on Prosecution of the most serious cases,

17 national jurisdictions are expected to prosecute all crimes against humanity and all

18 war crimes that fall within their jurisdiction. If the elements of crimes are defined in

19 such a way that restricts liability only to the most serious crimes, only to those crimes

20 which can be prosecuted here, that could significantly hamper enforcement efforts of

21 national jurisdictions. It would confuse admissibility with liability and frustrate one

22 of the main goals of the Statute which is greater accountability through the principle

23 of complementarity.

24 I also note Rule 145 of the Rules of Procedure and Evidence require a Trial Chamber

25 to consider, quote, "the degree of participation of a convicted person," end quote, in

1 determining a sentence. That language also suggests that a low level of participation
2 can result in a conviction, and that differentiation between low, medium and high
3 contributions should be made at the sentencing phase and not in the definition of
4 crimes.

5 And finally on this point of causation, your Honours. If you were nevertheless
6 inclined to require a significant contribution for liability under Article 25(3)(d), we
7 would ask you to adopt the definition provided in the Katanga trial judgment in
8 paragraphs 1632 and 1633.

9 There the Trial Chamber emphasised that significant contributions are those that may
10 influence the commission of a crime or which have a bearing on the occurrence of the
11 crime or the manner of its commission. That is very nearly the same test and
12 practice as the one proposed by the Prosecution.

13 As regards the evidence under 25(3)(d), I don't have anything significant to add to
14 what's already been said related to the other modes of liability. A crime within the
15 jurisdiction of the Court was committed; an attack intentionally directed against
16 buildings dedicated to religion and historic monuments. The crime was committed
17 by a group of people, including the individual perpetrators, but also those who
18 organised and supervised the attack, including Mr Al Mahdi. The common purpose
19 was to destroy buildings dedicated to religion, which the attackers also knew to be
20 historic monuments.

21 We submit that the evidence of Mr Al Mahdi's contribution would satisfy even a
22 significant contribution test, although I emphasise we don't think one applies. As
23 mentioned, he contributed to the crime in numerous ways, including through
24 material and moral support, his own physical acts of destruction and his many
25 statements justifying the attack.

1 In conclusion, your Honours, in the 55 seconds that remain, the Prosecution alleges
2 that Ahmad Al Faqi Al Mahdi is criminally responsible for directing an attack against
3 protected objects in Timbuktu. He is liable as a direct perpetrator of the attack
4 against the five sites named in paragraph 24 of the DCC. And under all other modes
5 of liability he is criminally responsible for all 10 sites listed in paragraph 23.

6 Thank you for your patience, your Honour.

7 PRESIDING JUDGE ALUOCH: Thank you very much for beating the deadline that
8 you set for yourself.

9 Mr Aouini, you have the floor now. Yes.

10 MR AOUINI: (Interpretation) Thank you, your Honour, your Honours. In line
11 with the instructions given by Mr Ahmad Al Faqi Al Mahdi, and given the purpose of
12 today's hearing, and in the light also of the standard of evidence required for the
13 specific purposes of confirming the charges, we shall reserve our submissions as to
14 the merits to a later stage in the proceedings.

15 I'd like to thank you, your Honour, and I'd like you to be good enough to give the
16 floor to my colleague, Mr Gilissen, who will briefly cover a few specific points which
17 we feel are required at this stage in the proceedings. Thank you.

18 PRESIDING JUDGE ALUOCH: Thank you. Yes.

19 MR GILISSEN: (Interpretation) Thank you, your Honour, your Honours.

20 Whether we like it or not, in this case the term "war" has to be used. It has to be used.
21 And even although it has been discussed and challenged by some, we think that we
22 have to take stock of the actual facts. It's painful. And even if such acts might be
23 regretted, even if there might be a lack of understanding subsequently, will still be
24 deemed to be excesses acknowledged as such.

25 If there is one area where we would certainly agree with the Prosecutor it's certainly

1 on that one; in other words, that in the course of the year 2012 in Mali there was an
2 armed conflict, an armed conflict which was not of an international nature.
3 Was it a civil war? Was it a war of independence? Or a fight for freedom? Or
4 more exactly, was it a new form of conflict, a conflict which served to allow religion
5 or a certain understanding or conception of religion to take control over reality, the
6 organisation of the way in which society lives and the way in which our world
7 functions? Because that is precisely what we're talking about, the religious
8 organisation of the world, placing, perhaps replacing, religion into the centre of the
9 life of society. That is what fundamentalism is. It is one of the lessons perhaps of
10 these proceedings. Fundamentalism is, first and foremost, a political plan or project
11 and, let's be clear on this, a political project that is not a crime, a political project that,
12 in and of itself, does not offer up even any form of potential crime. This is important
13 and should be stressed, particularly over a period of times of confusion, fear and
14 organised terror.
15 Today many shift from one concept to another and tend to mix things up. Islam is
16 one thing. It is a religion, it is not only respectable but is brilliant. Shifting from
17 Islam to fundamentalism is shifting from a religion to a political project.
18 Islamism is a form of instrumentalisation of Islam, you can't just shift from that easily
19 to Sufism or terrorism. And my learned friend and I will strive to set out the limits
20 that have to be set in the ruling that you will hand down on the confirmation of the
21 charges application.
22 Imposing the Sharia, the Sharia law that encompasses all aspects of collective living,
23 and which is the hallmark and the tool and indeed the objective of this global,
24 political vision, which serves, as the Office of The Prosecutor was saying, and I will
25 quote you, covers economy, social life, education, justice, the police, the media and

1 morality.

2 It is essential that this be borne in mind so as to avoid making any mistakes, avoid

3 mixing things up and to make it possible to understand what it is that

4 Mr Al Faqi Al Mahdi is saying to us at the International Criminal Court.

5 Here in the Trial Chamber, together with my colleague, we are convinced that, with

6 all due respect, this differentiation must be fully understood because we're not talking

7 about attacks against mosques. Never was there, is there any question of attacking

8 mosques or minarets, never. Nor was it even a question of attacking tombs. Things

9 must be factually clear.

10 We were talking about attacking the coverings of tombs, implementing the means to

11 allow for the liberation of the tombs, freeing them from elements that were

12 constructed on those sites. And this difference strikes us as being important because

13 it is not the tombs themselves that are being attacked. Materially, the tombs, and

14 Mr Al Faqi Al Mahdi is very clear on this, are to be protected. It is out of the

15 question that anyone touches the tombs or the contents thereof.

16 So herein lies a difficulty of this case. You heard in the evidence cited by the

17 Prosecutor these speeches and statements made by Mr Al Faqi Al Mahdi.

18 We're talking about two visions of the world that are in contradiction. You have

19 indeed one conception of religion. And the difficulty that was highlighted earlier on,

20 by one of our learned friends from the OTP, concerns the definition of religion. And

21 this Chamber will have to hand down a ruling. I don't think this is going to define

22 religion as any old practice, like any other, because things are actually more

23 complicated than that.

24 Thus, your Honours, what is it that we're talking about hic et nunc, here and now?

25 We're talking about the conception of the nature of what is divine.

1 Mr Al Faqi Al Mahdi wanted to stress that point. This is something that I was
2 referring to earlier, there's a conception of a God in Islam without a coterie of saints.
3 There are learned, enlightened men and women who have been buried, they do not
4 share divine power with the single God. This is one conception.
5 Each might have their own views, but that is one view of monotheism, as compared
6 to polytheism. And I think that Mr Al Mahdi really is keen to attach himself to this
7 conception, even though the Prosecution might have tried to modify this.
8 He is one of the survivors of this Mali adventure. He cannot be held responsible by
9 proxy. This is individual and never collective responsibility that we're talking about.
10 Earlier on when I heard mention being made of the project of bringing in the common
11 plan or the joint enterprise, I know that this Chamber will be aware of the need to
12 draw this clear distinction.

13 In 2012, Mr Al Faqi Al Mahdi, at a time when, in his country, there were exceptional
14 events occurring, he committed himself to choices and decisions and he opted in
15 favour of what he felt was a new way opening up, a new possibility for Mali itself.
16 We're talking here about an intelligent man, a reasonable man, a learned intellectual
17 who was concerned about the common good and concerned about doing what is right,
18 wanted to make a contribution to introducing what he was taught and what he had
19 understood was the divine message, concerned with doing what is right, seeking the
20 means to allow his conception of good over evil to prevail, he believed and he wanted
21 to introduce and, if necessary, to impose purity. Purity, well, we know from history,
22 that purity can often turn out to be extremely dangerous.

23 He committed himself and he took action. And in taking action, your Honours, he
24 committed a number of acts, and the Prosecutor says he must answer for those acts
25 before this Court. As there have to be legal proceedings, Mr Al Mahdi will explain

1 himself, he will explain the acts of which he is accused and the acts he has carried out.
2 As my learned friend has stated, he will indeed do this effectively; in other words,
3 using the arguments and the resources available to him according to these
4 proceedings.

5 Your Honours, in the current conditions, in the light of the elements in this
6 proceedings, if there is confirmation of the charges, this will be done in order to allow
7 Mr Al Mahdi to explain himself and to defend himself as to the merits. And he will
8 do this entirely. And believe me, there will be no concessions. Thank you.

9 PRESIDING JUDGE ALUOCH: Thank you very much, Mr Gilissen.

10 As I said earlier, normally the Defence has the last word, but does the Prosecution
11 want to say anything? It is the right of the Defence to have the last word. Yes.

12 MR DUTERTRE: (Microphone not activated)

13 PRESIDING JUDGE ALUOCH: Yes? No.

14 Now this then brings us to the end of the confirmation hearing.

15 At this point, the Chamber wishes to thank the Prosecution team, the Defence team,
16 Mr Al Mahdi and the Registry. The Chamber is also very grateful for the continued
17 cooperation and support of the interpreters, court reporters, stenographers, security
18 officers and court officers.

19 The decision on the confirmation of charges against Mr Al Mahdi will be issued in
20 due course and, in any event, within 60 days starting tomorrow.

21 For now, this is all I would like to say on behalf of my colleagues and the Bench. If
22 the parties, the Prosecution and the Defence, have anything else to add to what I have
23 already said, unless they have, and I don't believe they do, this would therefore bring
24 us to the conclusion of the confirmation hearing.

25 This is the end of the hearing. Thank you very, very much.

- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 4.26 p.m.)