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**Title:** One confession, multiple chronotopes : The interdiscursive authentication of an apology in an international criminal trial

**Year:** 2021

**Version:** Accepted version (Final draft)

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**Please cite the original version:**

D'hondt, S. (2021). One confession, multiple chronotopes : The interdiscursive authentication of an apology in an international criminal trial. *Journal of Sociolinguistics*, 25(1), 62-80.  
<https://doi.org/10.1111/josl.12447>

# ONE CONFESSION, MULTIPLE CHRONOTOPES: THE INTERDISCURSIVE AUTHENTICATION OF AN APOLOGY IN AN INTERNATIONAL CRIMINAL TRIAL

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**Abstract:** This paper presents an interdiscursive analysis of a public apology made before the International Criminal Court (ICC) by a Malian Islamist accused of the destruction of cultural heritage in Timbuktu. It analyzes (a) how the defendant's apology metapragmatically inserts itself into a multiplicity of chronotopes and (b) how the two defense counsels subsequently reformulate that apology as part of a "confessional chronotope," thereby decoupling it from its immediate trial surroundings. The entextualization of this confessional chronotope, and the modifications of the trial's participation framework it proposes, reveal how ICC trial actors navigate the multiple tensions facing this emergent form of globalized criminal justice.

Cet article présente une analyse interdiscursive d'une excuse publique présentée devant la Cour pénale internationale par un islamiste malien accusé de la destruction du patrimoine culturel à Tombouctou. L'analyse porte (a) sur la façon dont les excuses de l'accusé s'inscrivent, à un niveau métapragmatique, dans une multiplicité de chronotopes, et (b) sur les reformulations faites par les deux avocats de la défense de ces excuses dans le cadre d'un «chronotope confessionnel», impliquant une dissociation de l'environnement immédiat du procès. L'entextualisation de ce chronotope confessionnel, ainsi que les modifications du cadre de participation qu'il propose, révèlent les axes suivis par les acteurs juridiques de la CPI pour gérer les multiples tensions auxquelles est confrontée cette forme émergente de justice pénale mondialisée.

**Keywords:** Interdiscursivity, Chronotope, Confession, Public apology, Courtroom discourse, International Criminal Court

## INTRODUCTION

On September 27, 2016, the International Criminal Court (ICC) in The Hague sentenced the Malian Islamist Ahmad al-Faqi al-Mahdi to nine years in prison. Al-Mahdi had been found guilty of the war crime of willfully directing attacks against historical monuments and buildings dedicated to religion in Timbuktu during the city's occupation by Salafi-Jihadist forces. Four years earlier, in April 2012, the armed groups Ansar Dine and Al Qaeda in the Islamic Maghreb had taken control of this ancient center of scholarship and learning (initially as part of a coalition with Tuareg nationalist MNLA insurgents, a partnership that quickly fell apart).<sup>1</sup> An Islamic police and a morality brigade were created to oversee the implementation of Sharia, and between June 30 and July 10 the latter demolished nine mausoleums of religious scholars (venerated as saints in local Sufi Islam, a practice rejected as heretic by Salafi purists), together with the entrance door to the 15th-century Sidi Yahya mosque. Al-Mahdi, a locally reputed Islamic scholar, had been recruited as the head of the morality brigade to marshal support for Jihadist rule. He was in charge of planning the operation, assembled the required men and resources, supervised the demolitions, and personally

participated in them. He also wrote the Friday sermon announcing the campaign and justified the destructions before the international press.<sup>2</sup> Seven months later, in the final week of January 2013, French and Malian government troops recaptured Timbuktu from the rebels. By July 2014, the French-directed Opération Serval had regained control over almost the entire Northern Malian territory, either repelling Islamic militants to remote desert areas or driving them across the borders. Al-Mahdi, too, fled the country, but in October 2014 he was apprehended by French troops in neighboring Niger. In early September 2015, an investigative team from the ICC's Office of the Prosecutor (OTP) interrogated him for five days in the Nigerien capital Niamey. A formal arrest warrant was issued on September 18, and 12 days later he appeared for the first time before an ICC judge in The Hague. The confirmation of charges hearing followed on March 1, 2016 (for an analysis, see Bens, 2018 and D'hondt, 2019). The trial itself started on August 22; the hearings were concluded in three days, and on September 27 al-Mahdi was sentenced to nine years in prison.

The trial constituted "a 'first' of many kinds. This case marks the first time that the destruction of cultural sites has been prosecuted as a war crime at the ICC. It is also the first time that an Islamic radical has been prosecuted at the ICC. Finally, it is the first time that an ICC defendant has pleaded guilty" (Sterio, 2017, p. 69). The impact of al-Mahdi's guilty plea can hardly be underestimated. That trial hearings were completed in three days was by ICC standards incredibly fast.<sup>3</sup> The OTP and defense had also submitted a list of mutually agreed facts prior to the start of the trial, and hence there was little disagreement over the theory of the case.<sup>4</sup> Their submissions were therefore less responsive to the narrative of the opposing party than in other cases, and occasionally gave the impression of addressing a different audience. The OTP's presentation of the evidence appeared to be concerned primarily with demonstrating that the gravity threshold had been met for referral to the ICC (particularly salient, as al-Mahdi's trial was the first of its kind and the charges only pertained to the demolition of physical structures; cf. Lostal, 2017). The defense team only entered written testimony, and concentrated its efforts in court on presenting a favorable image of their client.

It is against this background that the acclaimed "apology" al-Mahdi made on the first day of the trial (August 22, 2016) acquires special significance. In accordance with Article 64(8)(a) of the Rome Statute (the treaty by which the ICC was founded), the trial started with the court officer reading out the charges and asking the defendant which plea he wished to enter. Here, al-Mahdi entered his guilty plea. Then, unexpectedly, before confirming that he was aware of the legal implications of such a move, he asked the Presiding Judge for permission to address the court. The latter quietly consulted his two colleagues before inviting him to proceed. Al-Mahdi produced a sheet of paper and started reading out a carefully crafted, elaborate formal statement, speaking for approximately ten minutes.

Not unsurprisingly, Al-Mahdi's statement elicited extensive commentary in the international press, in various blogs dedicated to international law and transitional justice, and also in Mali itself and beyond (e.g. in civil war-torn Northern Uganda, in an ongoing debate on the adequacy of the ICC as a post-conflict reconciliation mechanism).<sup>5</sup> Because al-Mahdi made the statement immediately after the trial opened (and not at the pre-sentencing stage, as in Gruber, 2014), it also became an object of debate in the hearing itself, opening up a discursive space for the subsequent renegotiation of its meaning and sincerity. Both the defense and the Legal Representative of the Victims (LRV) eagerly seized this opportunity, as will become clear below. The OTP and the Trial Chamber, however, accepted the statement as an extenuating circumstance without giving it much further consideration (in the

OTP's submission on sentencing and in the verdict). Both entextualized al-Mahdi's statement not as an "apology" but as an "expression of remorse" (which they further distinguished from the "admission of guilt" he made prior to the trial), in accordance with the court's legal framework for sentencing and determining punishability. The defense and the LRV, in contrast, referred to the statement both as an "expression of remorse" (*remords* in French) and as "(asking) forgiveness" (*pardon*), thus explicitly also taking the dynamics between the defendant and the victims into consideration. The Chamber's position appeared to change with the 2017 Reparations Order,<sup>6</sup> which ordered that a video of the statement should be published on the ICC website, where it appeared as "Mr. Al Mahdi's apology"/"Les excuses de M. Al Mahdi."

In addition to the fact that the various parties involved entextualized his words in multiple ways, al-Mahdi's statement derived its unique character from the way in which it blended features of courtroom apologies (Gruber, 2014) and "political" (Harris et al, 2006) or "public" (Kampf, 2009, 2013) apologies, each with a distinct potential for destabilization. To a large extent, this blended character reflects the unique nature of the ICC, which assesses *criminal* responsibility for offenses committed in the context of *political* conflict. The arena into which al-Mahdi inserted his apology, and the "game board" in which his attorneys anchored their subsequent recontextualizations, was further complicated by the fact that the ICC is very much a fragile institution (Wilson, 2016). The court still bears the marks of the political act of its institution (Clarke and Koulen, 2014), and navigates a geopolitical landscape characterized by "the continued salience and power of nation-states" (Wilson, 2016, p. 742). It lacks a coercive apparatus of its own, and at times the OTP has no alternative but to go after "weak targets" (hence the ICC's "African bias") and enter into opportunistic alliances with powerful actors, which further undermines the court's legitimacy (Branch, 2017).

Opening up the black box of what goes on inside the courtroom makes tangible how trial actors in situ attend to the multiple challenges facing this emergent, amalgamated form of globalized criminal adjudication. Earlier work along these lines (D'hondt, 2019) focused on ICC Prosecutor Fatou Bensouda's attempt to demonstrate that the case met the gravity requirement, and the role that abstract notions of Humanity played in this process. Drawing on the "cultural heritage" status of the demolished tombs,<sup>7</sup> Bensouda was able to expand the range of victim constituencies beyond the directly affected local community (which suffered because their lived relationship with the demolished monuments was severed), and managed to also speak on behalf of abstract constituencies like the Malian nation and the international community (who were bereaved of their "heritage"). The analysis shows that this goes hand in hand with discursive evocations of Humanity that modify the hearing's participation framework and insert the trial into a wider dialogical field, an aggregation of imaginary dialogues and "shadow conversations" (Irvine, 1996) that also involves constituencies outside the courtroom. In this process, Bensouda frames the Chamber and the OTP not as autonomous entities but as co-embodying a framework for *policing the boundaries of Humanity* (see also Nouwen and Werner, 2010), excluding the perpetrators of atrocity crimes from the community of "morally qualified life" (Clarke, 2009, p. 119, drawing on Agamben, 1998) while reintegrating their victims, reduced by these atrocities to a state of "mere biological existence" (ibid.).<sup>8</sup> One of the most striking features of this framework is that it bereaves *victims* of their political agency, illustrated by the Prosecutor's systematic

recontextualization of victim statements as uttered by anonymous, faceless speakers, dependent on an outside actor to seek retribution on their behalf (D'hondt, 2019, p. 441–444).

The interdiscursive analysis of al-Mahdi's apology pursued here continues this project of opening up the black box of what happens inside the ICC courtroom. After briefly situating the interdiscursive approach (section two), we take a closer look at the apology itself (section three). Here, we unravel the intertextual and interdiscursive practices by which al-Mahdi's statement was progressively inserted into a multiplicity of *chronotopes* (Bakhtin, 1981), "lived" spatiotemporal frameworks that imbue local trajectories of action with sense and meaning. Next, we review how members of the defense team authenticated and recontextualized their client's apology. Hence, in section four we examine how al-Mahdi's lead defense counsel cross-examined the OTP investigator who conducted the initial interrogation after his arrest in Niamey (trial day two), while in section five we pay attention to the second defense counsel's closing submission (trial day 3). Here, the analysis draws on Carr's (2013) notion of a *confessional chronotope* to elucidate how the two counsels collaboratively transformed their client's apology into the expression of a pre-existent "inner truth" (2013, p. 39) that possessed a temporality of its own, independent from the trial procedure.

In the discussion we revisit this confessional chronotope, together with the alterations to the hearing's participation framework it proposes, not with an eye on the solicited reassessment of al-Mahdi's moral character but by reconstructing how they reflect the unique character of the ICC as an emerging legal order, "inventing itself" in day-to-day courtroom practice. First, we re-analyze the defense teams' unfolding projection of "identity, sameness, and difference" (D'hondt, 2010, p. 67) as an empirical snapshot of how ICC trial actors evoke the image of a legal order purposely respectful of a plurality of cultural traditions. Next, we situate the findings in a broader socio-legal conversation about the in/exclusionary practices comprising the "politics" of the ICC (Nouwen and Werner, 2010), the constituencies in whose name justice is done (Mégret, 2015), and the forms of agency and personhood the court attributes to victims and perpetrators (Clarke, 2009; Kendall and Nouwen, 2013).

This analysis is based on official court transcripts published on the ICC website ([www.icc-cpi.int](http://www.icc-cpi.int) and [www.legal-tools.org](http://www.legal-tools.org)). The latter are examples of "public transcripts" (Park and Bucholtz, 2009) and represent an "endogenous product" of ICC trial proceedings (e.g. they form part of the evidential record of a trial and are frequently referenced in the verdict). The discursive transformations this entails, such as the erasure of embodied courtroom conduct, fall outside the scope of this paper (but see D'hondt, forthcoming for how these transcripts "recruit" an audience and contribute to establishing an image of transparency). The transcripts are available in French and English, the two official working languages of the court. In this case, however, two actors (al-Mahdi and his lead counsel) expressed themselves in Arabic, which was facilitated by the ICC's elaborate provisions for conference interpreting. The analysis is based on the transcript reflecting the language used by the trial actors, except for these two Arabic speakers, where I used the French transcript. In the excerpts cited below, French is italicized and Arabic translated into French italicized and underlined.

## PUBLIC APOLOGIES AND INTERDISCURSIVITY

As already indicated, al-Mahdi's apology has a "blended" character. It shares with courtroom apologies the characteristic that it can easily be destabilized by pointing out that it was made in the context of a criminal procedure. Expressing remorse in a format that anticipates a verbal response by the recipient accentuates the local speaking context (the trial), draws attention to the speaker's "institutional" identity (that of defendant), and thus raises the suspicion that the apology might be strategically motivated (Gruber, 2014, p. 148). Hence, our interest is in the question of how al-Mahdi and the defense team authenticated the apology.

The literature on "political" (Harris et al., 2006) and "public" apologies (Kampf, 2009, 2013) provides a valuable starting point for situating al-Mahdi's discursive efforts into a broader framework. As might be expected, the latter differ markedly from apologies made in informal situations that are the subject of interpersonal pragmatics. Harris et al. (2006) point out that political apologies are made in a public forum (and hence have a mediated character), in contexts characterized by conflict. Furthermore, they are "more than a politeness strategy" (ibid., p. 733) that restores interpersonal harmony by choosing from a fixed set of culturally arranged options. Only rarely do they elicit an explicit expression of absolution by those against whom the injustice was committed. They do, however, typically solicit a wide range of often-diverging evaluations of the apologizer's performance (was it genuine?) on the part of its audiences and mediating agents. In this sense, political apologies confirm the centrality of evaluation that authors like Mills (2003) and Eelen (2001) assign to politeness phenomena.

Even though al-Mahdi's apology eschewed the deliberate ambivalences and minimization strategies characteristic of political apologies (Kampf, 2009), it was equally subject to evaluation by multiple actors and audiences, and it was also not entirely "finished" at the time it was completed. To capture how trial actors dealt with this indeterminacy, this paper highlights the *interdiscursively structured* nature of the apology, proposing an analysis that looks beyond the pragmatics of the trial hearing as a self-contained speech event and that focalizes "potential relationship[s] to discourse on some other occasion or occasions in a phenomenally different spatiotemporal envelope" (Silverstein, 2005, p. 6).

To make this interdiscursivity visible, we trace how al-Mahdi anchored his statement into a multiplicity of *chronotopes* that situate the apology into a broader dialogical field. For Bakhtin (1981), the notion of chronotope refers to a discursively constructed, "lived" time-space that is closely connected to voice, in the sense that such projected spatiotemporal frameworks come with strong expectations about the kinds of characters that populate them and the discourses they produce (cf. Agha, 2007; Lempert and Perrino, 2007). Hence, they serve as "'invokable histories' ... in which time, space, and patterns of agency coincide, create meaning and value, and [which] can be set off against other chronotopes" (Blommaert, 2015, p. 110). In the case at hand, these chronotopic projections have a strong metapragmatic quality, as they reinsert the statement into a complex of imaginary conversations that transcends the spatiotemporal framework of the legal proceedings and that also enlists actors and constituencies outside the courtroom. By inserting the statement in such a dialogical field that extends beyond co-presence, these chronotopic projections in turn subtly alter the participation framework of the ongoing hearing (cf. Irvine, 1996).

Next, we investigate the authentication of the apology as a distributed phenomenon, extended across multiple trial stages and requiring the collaboration of multiple trial actors. The reception to it by external audiences lies beyond the scope of the paper, but the analysis is able to show how the defense team tried to “fix” the inherent instability of the apology’s cross-chronotopic alignment (Agha, 2007) (and prepare it for external evaluation) by formulating an “interactional text” (Silverstein, 1993) for their client’s statement. The resulting confessional chronotope (Carr, 2013) reconciles the need to present the client in a favorable light with the specific character of the ICC “game board” on which they make their move.

Overall, the analysis contributes to ongoing debates about intertextuality and interdiscursivity, and the latter’s role as a possible umbrella notion (Silverstein, 2005, cf. the discussion in Prentice and Barker, 2017). Language and law scholars have extensively demonstrated the structuring force of intertextuality proper, drawing attention to the role that text trajectories and “traveling texts” (Heffer et al., 2013; Komter, 2019) play in “shifting” evidence (Ehrlich, 2012) and in importing hegemonic masculinity (Matoesian, 2001; Ehrlich, 2012) or colonial hierarchy (Eades, 2008) into the courtroom (which in turn trades on the “textualist ideology” [Mertz, 2007] that permeates the legal procedure). Intertextual relations of this kind also played an important role in the case at hand (for example, in al-Mahdi’s invocation of the Quran, or in the lead defense counsel’s cross-examination of the OTP investigator who interrogated him in Niamey). However, in addition to this “narrow” intertextual structuring, the statements by al-Mahdi and his counsels also entextualize connections to remote, situation-transcendent discursive events (which I earlier referred to as “chronotopic projections”) that are not mediated by such presumably stable, written texts. In this sense, the analysis extends earlier work that investigated intertextuality in conjunction with metapragmatic devices like footing (Goffman, 1981) to elucidate how trial actors “enact” cultural boundaries (D’hondt, 2010) or negotiate the transparency of the charges by disavowing interpretive agency over the case file (D’hondt, 2009, 2014).

## AL-MAHDI’S STATEMENT

Before turning to the chronotopic projections in al-Mahdi’s statement and the way they insert the apology in a broader dialogical field, let us briefly recall what is at stake in this opening gambit of the trial. As indicated earlier, Al-Mahdi decided to collaborate with the Court almost immediately after his arrest in Niamey (which eventually resulted in an informal sentencing agreement between the OTP and the defense).<sup>9</sup> It should not come as a surprise, therefore, that both the prosecution (in its closing submission) and the Chamber (in the verdict) mention this “admission of guilt” in passing alongside al-Mahdi’s record of collaboration with the court, almost as if “going public” was only a remaining box to be ticked. From a judicial perspective, the stake of the apology thus seems relatively low, and the apology’s “public” character and the evaluations it elicits from external audiences are therefore probably equally salient. The interdiscursive analysis focuses on precisely this aspect. It examines how al-Mahdi’s chronotopic projections “appropriate” the spatiotemporal framework of the trial for reaching out to such external audiences, how the resulting chronotopic edifice is in turn destabilized by the LRV (who is speaking on behalf of one of them), and how the apology is again authenticated (and “translated”) by the defense team’s projection of an alternative chronotopic embedding.

First, let us take a look at how the apology starts:<sup>10</sup>

Extract 1:

- 01 M. AL MAHDI (interprétation): [09:20:44] Merci beaucoup.  
Thank you very much.
- 02 Monsieur le Président, Membres de cette Auguste Cour, Mesdames et Messieurs,  
Mister President, Members of this Most Honorable Court, Ladies and Gentlemen,
- 03 bonjour à tous.  
welcome to everybody.
- 04 D'emblée, je voudrais me rappeler la parole d'Allah, le Tout-Puissant: "Ô vous qui  
From the outset, I would like to recall the word of Allah, the Almighty: "You who
- 05 êtes croyants, observez strictement la justice et soyez des témoins véridiques comme  
are faithful, observe justice rigorously and be truthful witnesses as
- 06 Allah l'ordonne, fut-ce contre vous-même, contre vos père et mère ou vos proches  
Allah commands, be it against yourself, against your father and mother or your close
- 07 parents."  
relatives."
- 08 Mon cœur retient également l'adage d'un des sages: "Dites la vérité, fut-ce contre  
My heart recalls also the maxim of one of the elderly: "Speak the truth, even if it is  
against
- 09 vous-même" ou encore "Attachez-vous à la vérité, quitte à subir les foudres de  
yourself" or "Attach yourself to the truth, even if you suffer the wrath of
- 10 l'enfer."  
hell."
- 11 Mesdames, Messieurs, je me tiens devant vous, dans cette enceinte, plein de remords  
Ladies, Gentlemen, I am standing before you, in the dock, full of remorse
- 12 et de regrets pour confirmer à nouveau que les accusations portées contre moi par  
and regret to confirm once more that the charges made against me by
- 13 l'équipe de l'Accusation sont véridiques et qu'elles sont conformes à la vérité.  
the Prosecution are veracious and that they correspond to the truth.

In these first few lines, one can already observe the co-alignment of two distinct spatiotemporal realms. The first chronotope is the participation framework of the ICC trial



hearing, which provides the matrix into which subsequent chronotopic representations are inserted (Agha, 2007, p. 321). Al-Mahdi salutes the Presiding Judge, the Chamber, and everybody present (line 2), and reiterates the correctness of the charges (line 13). He highlights his own role as defendant (“in the dock,” line 11) and demonstrates comprehension of ICC trial procedure by addressing his response to the judges (and not to the OTP that authored the indictment or the court officer who read it out; cf. Komter, 1994). Although he formulates his own state of mind (“full of remorse and regret,” lines 11–12), this segment closely resembles a confession in the judicial sense – owning up to the criminal act mentioned in the accusation – which is to be distinguished from its psychological/theological understanding as “the cathartic revelation of [supposedly private] inner truths” (Carr, 2013, p. 34).

This inscription of the statement in the trial chronotope comes interwoven with a Quranic quote in lines 4–7 (An-Nisa 4:135), plus two similar quotes attributed to an unidentified source. As instructions to speak the truth, they confirm al-Mahdi’s orientation to the trial chronotope, but they also reinsert the statement in a broader chronotopic envelope that traces its origins to the time of revelation. According to Wild (2006), the Quran is a dialogical text that metapragmatically encodes the circumstances of its initial recitation. In quoting from this dialogical text, in which the divine entity revealed itself to the faithful, al-Mahdi frames himself (speaking from the dock and pleading guilty to the charges) as a recipient of that initial recitation. Inserting his statement into this revelatory chronotope thus constitutes an instance of what Silverstein (1993) refers to as *nomie* calibration:

[A] relationship [is] established between a present sign event [the speaker’s performance in the dock] and a separate event [the recitation of the Quran], understood to have occurred in an ontically distinct realm, like the world of myth or abstract generalization. This relationship makes a replica of an otherworld, which allows that world to be phenomenologically available, inhabitable in the present moment. (Dick, 2010, p. 281)

Next, al-Mahdi moves on to the actual apology, directing it to the same three victim constituencies that the Prosecutor identified six months earlier at the confirmation of charges hearing (D’hondt, 2019): the Timbuktu community, the Malian nation, and Humanity at large (lines 14–17 below). He singles out the descendants of the saints whose tombs were destroyed (the only victim constituency actually participating in the trial) as privileged recipients (lines 18–19), and then formulates the apology as part of a *reconciliatory dialogue* by specifying the response he expects from these descendants and from the Timbuktu community (line 23 onwards). This reconciliatory dialogue, and the translocal participation framework it projects, represents a third chronotope evoked by al-Mahdi’s statement. It is premised upon a strong sense of co-membership in the Timbuktu community, illustrated by the various descriptions (“a pious son,” etc.) al-Mahdi gives of himself in lines 24–26:

Extract 2:

- 14 Je suis fort contrit de mes actes et de tous les préjudices que cela a causé, les  
I am very sorry for my actions and for all the harm they caused, the
- 15 préjudices que cela a causé à mes êtres chers et mes frères à Tombouctou, et à ma  
harm it caused to my beloved ones and my brothers in Timbuktu, and to my
- 16 mère patrie, la République du Mali toute entière, ainsi qu'à l'ensemble de l'humanité  
mother country, the entire Republic of Mali, as well as to all of humanity
- 17 aux quatre coins du monde.  
in the four corners of the world.
- 18 Je voudrais exprimer mon profond regret et ma profonde tristesse en particulier aux  
I would like to express my deep regret and my deep sadness, in particular towards the
- 19 descendants des Saints dont j'ai détruit les mausolées. J'en appelle à eux ainsi qu'aux  
descendants of the Saints whose mausoleums I destroyed. I call upon them as well as  
on the
- 20 habitants de Tombouctou, musulmans, indulgents et cléments, et je leur fais une  
inhabitants of Timbuktu, Muslims, indulgent and clement, and I make them a
- 21 promesse, la promesse d'homme libre, que la faute que j'ai commise envers eux sera  
promise, the promise of a free man, that the fault I committed towards them will be
- 22 la première et la dernière.  
the first and the last one.
- 23 J'espère qu'ils continueront de me considérer, comme ils le faisaient avant ces  
I hope they will continue to consider me, as they did before the
- 24 événements, comme un fils pieux, un frère et un ami qui aime toutes les  
events, a pious son, a brother, and a friend who loves all the
- 25 composantes du tissu social de Tombouctou et qui participe avec eux à ses  
components of Timbuktu's social tissue and who participates with them in
- 26 nombreuses activités constructives et positives.  
numerous constructive and positive activities.
- 27 J'ai espoir qu'ils seront animés par l'éthique islamique suprême qui préconise le  
I hope they will be driven by the highest Islamic ethic, which recommends

- 28 *pardon et l'indulgence à l'égard de quiconque commet un péché puis se repentit, [...]*  
forgiveness and clemency towards he who commits a sin but later repents [...]

In line 27, al-Mahdi hopes that his recipients' response, too, will be inspired by Islamic principles (again inserting a Quranic quote in line 31, not reproduced here), thus extending the envelope of Quranic revelation from the admission of guilt to the ongoing reconciliatory dialogue. Later, he expresses the belief that the sentence pronounced at the trial "will open the gate to reconciliation" (line 41, not reproduced here), suggesting a distinctly hierarchic cross-alignment of the three available chronotopes. The ongoing event (the trial chronotope) represents a first, necessary step in the reconciliation with his erstwhile community (the translocal chronotope initiated by the apology), enclosed by the time-space of Quranic revelation, the ubiquitous "nomic" chronotope that al-Mahdi co-inhabits with other Timbuktu residents.

The sense of continuity and temporal depth suggested by the latter attributes temporal depth to al-Mahdi's claim of community membership, and it also provides the background for characterizing the tomb destructions (which victimized that community) as a momentary takeover by an external force:

Extract 3:

- 32 *À l'époque des événements, j'étais sous l'emprise d'une bande de leaders et de*  
At the time of the events, I was under the hold of a bunch of leaders and
- 33 *figures emblématiques d'Al-Qaïda et d'Ansar Dine. J'avais céder à leurs pressions et*  
iconic figures from Al Qaeda and Ansar Dine. I had given in to their pressures and
- 34 *à leurs tentations. J'avais été comme emporté par une forte tempête de sable qui*  
temptations. It was as if I was carried away by a strong sandstorm that
- 35 *avait entraîné dans son sillage de nombreux Ouléma du pays. [...]*  
had swept up numerous Ulama across the country in its slipstream. [...]

The desert storm imagery underscores both the *external* and the *transient* character of this takeover, suggesting a loss of agency on al-Mahdi's part (and indirectly confirming his community membership).<sup>11</sup>

Al-Mahdi concludes his statement with a warning to other Islamic militants not to make the same mistake, and thanks the various divisions of the ICC for their respect for human rights. We cannot review these segments in detail, but they do not fundamentally alter our account of the statement as involving three enveloping time-spaces.

Importantly, this cross-alignment (Agha, 2007) of chronotopic projections is fundamentally unstable. For instance, the temporal continuity of the time-space associated with Quranic revelation, which moors both the admission of guilt and the asking for/granting of forgiveness, is hard to reconcile with the fact that the tomb destructions were legitimized on religious grounds and formed part of a campaign to rectify/transform religious practices grounded in the same Quranic revelation. Hence, immediately after the apology, Judge Mindua asks al-Mahdi whether his expression of remorse implied that he has changed his

religious beliefs, as it would otherwise be meaningless. In his response, al-Mahdi states that different Islamic doctrinal traditions are divided on the issue, and reiterates the advice he gave to the Ansar Dine leadership prior to the destructions: there is jurisprudence indicating that erecting tombs (and praying before them) constitutes a violation of Islamic law, but their destruction is not obligatory (and would probably do more harm than good).<sup>12</sup> Al-Mahdi's insistence on the continuity of his doctrinal position is interesting, because it hints at a distinction between Salafism as a *religious* doctrine and Jihadism as a *political* interpretation of that doctrine (on how the two are related, see e.g. Rabil, 2014; specifically concerning the Malian context: Schulz, 2016). The preceding statement entailed a strong renunciation of Jihadism, expressing deference for universal human rights and recognizing the legitimacy of the Malian nation-state political framework ("my mother country, the Republic of Mali," line 16). Al-Mahdi's confirmation of his commitment to Salafi religious doctrine, in his answer to Judge Mindua, further qualifies the change he went through as a "political" one. He is thus consistent in his religious beliefs, but he now articulates a vision of Timbuktu as heterogeneous and comprising a multiplicity of Islamic religious visions and practices ("all the components of Timbuktu's social tissue," lines 24–25), ranging from the conservative Sunni Islam practiced by the Ulama educated elite to the popular mysticism that finds its expression in the veneration of saints and tombs.

The second source of destabilization, as mentioned earlier, is the tension between the reconciliatory dialogue and the trial chronotope, which makes the apology look insincere and strategically motivated. The LRV, for example, is quick to state that the victims reject al-Mahdi's apology because he waited until trial before asking for forgiveness:

Extract 4:

- 326    [...] Toutes les victimes sont remontées. Le<sup>13</sup>  
       [...] All the victims have risen again. The
- 327    pardon... Le pardon est prononcé au mauvais endroit, selon leurs dires. Pourquoi  
       apology... The apology is pronounced at the wrong place, according to them. Why
- 328    devant la Cour? Il fallait avant. Le pardon est prononcé tardivement au stade du  
       before the court? It should have (been done) earlier. The apology is pronounced too  
       late,
- 329    procès.  
       at the trial stage.

The next section reviews how al-Mahdi's defense tries to save the reconciliatory dialogue from such destabilization by dissociating it from the trial setting and reframing it as part of a confessional chronotope. In this process, all traces of nomic calibration are erased. From now on, the spatiotemporality of al-Mahdi's "inner life" is the primary chronotopic framework for authenticating the apology.

## RECONTEXTUALIZING THE NIAMEY INTERROGATION

The ICC trial procedure represents “an unstable amalgam of Anglo-American common law and Continental civil-law traditions” (Wilson, 2016, p. 743). From (inquisitorial) civil law, it inherited the central role of the judge as truth-finder. Hence, ICC judges not only supervise the admissibility of the evidence submitted by the parties but also render the verdict. The presentation of the evidence, however, follows the (accusatorial) common-law format. Hence, each party presents its own case and calls its own witnesses, who are cross-examined by the opposing party. In the al-Mahdi trial, the prosecution called three witnesses (the defense only submitted written testimony): (1) a member of the OTP fact-finding team who interrogated al-Mahdi in Niamey in September 2015, (2) a UNESCO representative, and (3) an anthropologist testifying on what the tombs mean to the people of Timbuktu. The OTP interrogator and the anthropologist both testified anonymously. Here, we analyze how al-Mahdi’s lead counsel, Mohamed Aouini, cross-examines the OTP investigator and recontextualizes the Niamey interrogation in this process.

The OTP investigator’s testimony starts on trial day one (August 22) and continues the next morning (August 23). The examination-in-chief first reviews the different types of evidence before specifically addressing the Niamey interview. After ensuring that the legal requirements for a lawful interrogation were met, the prosecution counsel directs the witness to specific episodes in the transcripts binder in front of him, which are simultaneously shown on a screen for the audience. The textual artefact mediating the charges is thus materially present in a very prominent way, and questioning focuses on the content and evidential value of the highlighted segments with no attempt to make the reported interrogation “come alive” through quoting or reenactment. The OTP investigator responds with a brief summary of the highlighted episode.

In the ensuing cross-examination, lead defense counsel Aouini almost entirely ignores the content or evidential value of the interrogation (apart from clarifying one minor detail). Instead, he engages in an extensive metapragmatic regimentation (Silverstein, 1993) of the Niamey encounter, seeking to restore the speech event’s “interactional text” (as an addition to its “denotational” residue, the transcript-artifact shown on the screen). The fact that he personally attended the interrogation (appointed by the ICC Registry to protect the arrested suspect’s rights), plus his presumed ability to process his client’s performance in the original Arabic (while the interrogator relied on an interpreter), gives him considerable leverage in this respect. The excerpt below shows Aouini and the investigator negotiating al-Mahdi’s “inner state” at the time of the interrogation:

Extract 5:

- 105 *Je... Je représente la Défense. Donc, j’ai eu l’impression que M. Al Mahdi répondait*<sup>14</sup>  
I... I represent the Defense. Therefore, I had the impression that Mr. al-Mahdi indeed
- 106 *effectivement à vos questions ou souhaitait assumer la responsabilité, souhaitait*  
answered to your questions or wished to assume responsibility, wished

- 107 reconnaître tous les actes qui lui étaient reprochés et que ses réponses montraient  
to recognize all the acts of which he was accused, and (wished) that his answers  
would show
- 108 qu'il essayait de vous transmettre à vous et puis, ensuite, à la Cour le fait que, en  
that he tried to convey to you, and then, in the next instance, to the Court, the fact  
that, in
- 109 disant la vérité, il souhaitait effectivement contribuer à la réconciliation, parce qu'à  
speaking the truth, he effectively wanted to contribute to reconciliation, because at
- 110 un certain moment, il a parlé de Tombouctou, de ses parents, de ses... de sa famille à  
a certain moment, he talked about Timbuktu, about his parents, about his... his family  
in
- 111 Tombouctou, des habitants de... de Tombouctou. Il souhaitait contribuer à la... à la  
Timbuktu, inhabitants of... of Timbuktu. He wished to contribute to the... to the
- 112 vérité et à la réconciliation nationale au Mali. Est-ce que vous avez eu l'impression  
truth and to national reconciliation in Mali. Did you have the impression
- 113 qu'il... il était plein de remords et qu'il disait la vérité par le biais des mots qu'il  
that he... that he was full of remorse and that he spoke the truth through the bias of  
the words that he
- 114 choisissait. Il a choisi de parler arabe. Je pense qu'il l'a fait délibérément en disant  
la  
chose? He chose to speak Arabic. I think he did so deliberately in speaking the
- 115 vérité, il souhaitait contribuer à la justice, au fait que justice soit faite. Il voulait  
truth, he wished to contribute to justice, to the fact that justice would be done. He  
wanted
- 116 assumer la responsabilité de ce qu'il avait fait et contribuer à la réconciliation  
to assume responsibility for what he had done and contribute to
- 117 nationale au Mali.  
national reconciliation in Mali.

((the president briefly interrupts, omitted))

- 118 THE WITNESS: [10:01:21] [...] I believe I should not try to<sup>15</sup>  
119 guess or estimate what went on inside Mr. Al Mahdi's head and how this has  
developed.  
120 I would make a difference between or a distinction between the truth telling, taking  
121 responsibility on one hand and being remorseful on the other hand.

122 Perhaps in understanding his language you may have a different understanding of  
 what  
 123 his feeling was. At the end of the interview, Mr. Al Mahdi said that he did what he did  
 124 with good -- with good intent and that's what -- what it was about at the time when  
 125 he -- when he -- when these destructions took place. Now I appreciate that and it's for  
 126 you and Mr. Al Mahdi to say whether he feels remorse, but I don't want to take a  
 stand on  
 127 that.

In the excerpt, Aouini and the OTP interrogator advance divergent interpretations of al-Mahdi's interview conduct, invoking contrasting epistemological frameworks. The investigator assumes a task-oriented empiricist pose, evaluating the defendant's interview conduct through the lens of the *denotational content* of the responses he gave and how they facilitated legal case-making. His assessment of al-Mahdi's interview conduct is positive overall, but framed exclusively in terms of the legal figures "telling the truth" and "taking responsibility" (lines 120–121). Aouini's attempt to have the interviewer corroborate that al-Mahdi was expressing remorse adopts his client's inner life as the relevant framework, and is grounded in the *indexical* values evoked by al-Mahdi's talk, in particular his choice of words (lines 113–114), code (114), and topics (110-1). (In an earlier fragment, not reproduced here, Aouini also mentions voice quality and intonation.)

These divergent epistemological frameworks coincide with contrasting chronotopical orientations. For the investigator, the relevant chronotope for interpreting/evaluating al-Mahdi's statements is restricted to the interrogation and its institutional context (hence his focus on their contribution to legal case-making). Aouini, in contrast, makes a double chronotopic move. His insistence on the indexical qualities of his client's interview performance in Niamey suggests that al-Mahdi tried to reconcile *before* the apology he made at trial. This "backward expansion" of the reconciliatory chronotope in turn adds temporal depth to the apology itself, decoupling it from the trial context by suggesting a "prior diagnosis," a phase of critical self-scrutiny that preceded the decision to go public. The mechanism at work behind this double chronotopic move strongly resembles the metasemiotic processes that Carr (2013) distinguished behind felicitous confessions: "by establishing the conscience as a ritual site in its own right, a spatio-temporality of thought is construed so that the spatio-temporality of speech can be collapsed" (p. 44). The result is a confessional chronotope that erases the confession's social scenery; it is no longer the indexical product of a particular speech event, but becomes a "timeless [icon] of [an] inner [state]" (p. 43).

## 5. CEMENTING THE CONFESSIONAL CHRONOTOPE

On the third trial day, August 24, Jean-Louis Gilissen, the second defense counsel, is the last speaker to take the floor before the Chamber takes the case under submission. His plea elaborates the spatiotemporality of his client's inner life and adds further temporal depth to the apology, starting with an account of the preparatory meetings (D'hondt, 2010, p. 85) he and Aouini had with their client (framed as a "defense prerogative"). This allows him to "reenact" before the court how al-Mahdi unremittingly subjected himself to self-interrogation (lines 25–26):

Extract 6:

- 16 Mais nous avons, Monsieur le Président, Messieurs les juges, un privilège dans cette<sup>16</sup>  
But we have, Honorable President, Honorable judges, one privilege in this
- 17 difficulté, nous avons un privilège vis-à-vis de tout le monde dans cette pièce, et je  
quandary, we have a privilege vis-à-vis everybody else in this case, and I
- 18 l'article respectueusement, même à l'égard de vous trois, les magistrats. C'est que  
say so respectfully, even with regard to you three, the magistrates. It is
- 19 nous avons rencontré à de nombreuses reprises M. Al Mahdi. Nous l'avons  
that we, on multiple occasions, met Mr. al-Mahdi. We
- 20 rencontré, nous avons pu discuter avec lui, nous avons pu non seulement prendre  
met him, we had the opportunity to discuss with him, we could acquaint ourselves not  
only
- 21 connaissance de ses certitudes, de ses croyances... de ses croyances ancrées dans  
with his certainties, with his beliefs... beliefs anchored in
- 22 l'airain, mais aussi de ses doutes, mais aussi des questions que cet homme-là... des  
iron, but also with his doubts, but also with the questions which this man... the
- 23 questions que cet homme-là se pose, du questionnement qui l'habite. Qu'il me soit  
questions which this man poses himself, of the questioning that has taken over him.  
Let it be
- 24 permis de dire "on n'est pas témoin sous la toge," mais nous avons vu cet homme  
permitted to say "one is not a witness beneath the robe," but we have seen this man
- 25 tenaillé par ce questionnement d'avoir mal fait. "Ai-je mal fait ? Me suis-je  
tormented by this questioning of having done wrong. "Did I do wrong? Did I go
- 26 dévoiyé?"  
astray?"
- [...]
- 33 [... un homme] qui se contraint à se  
[...a man] who forces himself to
- 34 regarder dans la glace, et nous savons qu'il n'aime pas ce qu'il voit dans cette glace.  
watch in the mirror, and we know that he does not like what he sees in that mirror.



35     Il n'aime plus ce qu'il voit dans cette glace.  
He no longer likes what he sees in that mirror.

36     C'est un homme avec sa culture. [...]   
He is a man with his culture. [...]

In line 36, Gilissen continues by presenting an elaborate sketch of al-Mahdi's inner life (not reproduced here), painting him as a brilliant Islamic scholar fully immersed in the religious foundations of his culture. However, because of this erudition, al-Mahdi is also able to transcend cultural boundaries and critically reconsider prior decisions. The agony and desperation the two counsels witnessed during the preparatory meetings (lines 25–26) illustrate this self-questioning. According to Gilissen, this process had started before the Niamey interrogation (evidenced by al-Mahdi's voluntary confession at the onset of the interrogation), but it intensified during the five days of intense interaction with the OTP investigators. At one point, Gilissen expressly thanks the prosecution for having assisted his client along *ce chemin de croix qui est le sien* ("this calvary of his").<sup>17</sup> Here too, "a spatio-temporality of thought is construed so that the spatio-temporality of speech can be collapsed" (Carr, 2013, p. 44). Like Aouini, Gilissen refrains from explicitly topicalizing the defendant's cathartic disclosure at trial. Instead, he reframes the Niamey interrogation as a decisive stage in al-Mahdi's antecedent and ongoing trajectory of self-scrutiny. His presentation of his client as a searching soul "still in limbo" and his dramatic reenactment of the latter's agony sketch the contours of the confessional chronotope, but do not complete it. The listener receives the "raw materials" for making sense of al-Mahdi's internal-psychological state, but must independently draw the conclusion that his trial apology constitutes an "indexical icon" of his agony and self-scrutiny.

Despite these parallels, the cross-examination (Aouini) and submission (Gilissen) are characterized by different participation frameworks. Aouini and the OTP interrogator are engaged in a one-to-one dialogue, pitching them as opponents on the trial's accusatorial axis. Gilissen's submission responds to points made by the OTP and LRV, but it is addressed at the judges and thus situated at the crossroads of the trial's accusatorial and inquisitorial axis (defending the client vs. providing information about him, cf. line 24: "a witness beneath the gown"). These divergent positionings in turn affect how they frame their relation to the client. Aouini, in his recontextualization of the Niamey interrogation, assumes the role of "enhanced translator" (Wilson, 2016, p. 734), elucidating before the court the "intended meaning" of his client's words projected on the screen in front of them. He capitalizes on his status as linguistically-culturally competent observer (while the OTP interrogator relied on a translator and only registered the interrogation's denotational content), but he positions al-Mahdi as the "principal" (Goffman, 1981) behind these alleged "intended meanings." Gilissen, combining the role of guardian of his client's interests with that of assistant truth-finder, unambiguously provides information "about" al-Mahdi (e.g. about how he behaved during their preparatory meetings) and unequivocally claims the role of principal for himself.<sup>18</sup>

## DISCUSSION

This paper has focused on how the defense's projection of a confessional chronotope invited the court to take a fresh look at al-Mahdi's apology. In what follows, their authentication

efforts are tackled from a slightly different perspective, with an eye on how the defense team, and ICC trial actors in general, navigate the emergent character of this globalized form of criminal adjudication, and the various fissures and frictions this entails (D'hondt, 2019).

Aouini's recontextualization of the Niamey interrogation (cf. *supra*) is saturated with multilayered identity formulations. Both parties emphasize their antagonistic roles of defense attorney and prosecution witness (Aouini in line 105, the OTP interrogator in 125–126). In assuming the role of “enhanced translator,” Aouini additionally posits a linguistic-cultural boundary, one that allegedly prevented the interrogator from picking up signals that al-Mahdi was expressing remorse and trying to initiate reconciliation. Thus, in 114–115, Aouini highlights the significance of al-Mahdi's code selection and lexical choices, while the OTP interrogator in 122–123 concedes that his failure to register such remorse may have been caused by a lack of Arabic proficiency. This, in turn, resonates with the fact that Aouini is conducting the cross-examination in Arabic, thereby blurring the distinction between representing and represented event and turning the here-and-now of the hearing into an “indexical icon” of the cultural boundary that muddled the interrogation twelve months earlier.<sup>19</sup>

What is exceptional here is not the formulation of cultural otherness as such, rather that it is not exclusively projected onto “judicial outsiders” but *distributed across trial actors and court divisions*. In domestic criminal trials involving defendants with a minority background (D'hondt, 2010) or mental illness (Maryns, 2014), defense counsels typically assume an expert voice, mediating between the court (with whom they share a cultural and/or social background) and their “deviant” client. Here, this customary pattern of affiliation/disaffiliation is reversed. The counsel actively aligns with the client, speaks on his behalf, and abstains from transforming him into an object of (expert) knowledge. This time, the representative of the prosecution is subject to cultural othering.

The contribution by Gilissen, in contrast, is definitely more consistent with the pattern found in domestic cases. In the previous section, we saw how the counsel unabashedly claimed the role of principal for himself, supplying information to the court “about” his client and presenting him as the product of his culture (*un homme avec sa culture*, line 36). His portrait of al-Mahdi as a scholar capable of self-reflection (who went through a painful trajectory of self-scrutiny) creates a chronotopic framework that also appeals to those members of the audience who do not share al-Mahdi's cultural background (and/or who do not consider themselves “included” in the revelatory chronotope's envelope).<sup>20</sup> Yet, the plea simultaneously also confirms that the ICC's game board for acting out cultural (dis)identifications allows more (and more complicated) options than those routinely available in domestic criminal hearings. The cultural boundaries Gilissen projects indeed contribute to the “othering” of his client, but here as well *notions of “we” and “they” do not fully coincide with the court and the legal framework it embodies*. This is vividly illustrated by the fact that at one point in the plea, Gilissen first actively disaffiliates from co-counsel Aouini (who presumably shares al-Mahdi's “Arabic-Islamic” cultural background), and subsequently declares himself agnostic about the religious beliefs of the Presiding Judge to whom the plea is addressed.<sup>21</sup>

The complex topography of identity and difference mapped out by Gilissen's plea does not end here. More so than Aouini, who merely “translated” aspects of al-Mahdi's meaning-making that the OTP interrogator might have missed, Gilissen provides a processual account of his client's intellectual and emotional journey, making its interiority visible

through, for example, dramatic reenactments of preparatory meetings. The fact that all traces of nomic calibration and references to the revelatory chronotope are erased in this process can also be read as reflecting the tension between selfhood produced through *adherence* to societal conventions versus notions of the self as a private interiority that develops in *opposition* to convention (Mahmood, 2001, 2005). The latter is by no means universal, but is consistent with the legal-liberal paradigm of international criminal law (Clarke, 2009). In this case, however, the plea construes the temporality of al-Mahdi's inner life *not* entirely as a private phenomenon but as developing *in concert* with the OTP's investigative activities. The trajectory of self-scrutiny had already been initiated before al-Mahdi's arrest (hence his immediate confession during the first encounter with OTP interrogators), but the Niamey interrogations greatly accelerated this process (for which Gilissen expressly thanked the prosecution), up to the point that al-Mahdi, a reputed Islamic scholar and one-time Jihadist, publicly paid respect to the ICC's human rights ethos. At this point, let us recall our earlier remarks about how the OTP envisioned the ICC as a framework for policing the boundaries of Humanity. While the Prosecutor *excluded* the perpetrators, the defense is here doing exactly the reverse. It appropriates the notion of the ICC as a boundary-policing framework for facilitating *perpetrators' reentry into "morally qualified life,"* helping al-Mahdi to transcend the limitations of his own belief system, embrace diversity, and reach out to the rest of Humanity.

## CONCLUSION

Considering al-Mahdi's apology from an interdiscursive angle has been a valuable exercise for many reasons. The apology's insertion in a multiplicity of translocal dialogical fields, and its interdiscursive authentication afterwards, shows how trial actors anticipate the controversies that apologies made in a public forum typically elicit. In addition to highlighting the value of an interdiscursive approach to public apologies, the analysis also demonstrated the relevance of Bakhtinian chronotopes to understanding courtroom discourse, and showed how intertextuality proper goes hand in hand with indexing interdiscursive relationships not mediated by written text. Finally, interdiscursivity can also help us appreciate how the "legal laboratory" of the ICC functions, and how trial actors in situ manage the emergent character of this globalizing judicial paradigm. The defense counsels' entextualization of the confessional chronotope, for example, navigates not only the particularities of the case but also the institutional setting in which the chronotopic projection takes place. The cultural boundaries it suggests portray a vision of the ICC as a complex game board, embodying a legal order not coincident with one cultural entity in particular, while its coarticulation with the spatiotemporality of the pre-trial investigation creatively appropriates the ICC's framework for policing the boundaries of Humanity to secure their client's reentry into morally qualified life.

## NOTES

<sup>1</sup> For an overview of the 2012 conflict, see Thurston and Lebovich (2013). See also Lecocq et al. (2013) for the local dynamics behind the nationalist-Islamist alliance, and Lecocq (2010) for an account of Tuareg uprisings in post-independence Mali.

<sup>2</sup> For an overview, see the OTP’s charging document (ICC-01/12-01/15-66-Red, <https://www.legal-tools.org/doc/2ac52a/pdf/>)

<sup>3</sup> The first ICC trial, Lubanga, lasted from January 2009 to March 2012 and involved 204 trial days and 67 witnesses (ICC-01/04-01/06-2842, <https://www.legal-tools.org/doc/677866/pdf/>).

<sup>4</sup> See <https://www.legal-tools.org/doc/a45687/pdf>. In addition, the OTP and defense had agreed upon a sentencing range (nine to eleven years) within which they would not appeal the verdict. (Because the ICC legal instruments do not allow plea-bargaining, this agreement was non-binding to the judges. Al-Mahdi was indeed sentenced to nine years imprisonment, but the Chamber could also have pronounced the maximum sentence of thirty years.)

<sup>5</sup> Jonas Bens, personal communication.

<sup>6</sup> <https://www.legal-tools.org/doc/02d1bb/pdf/>

<sup>7</sup> According to the Rome Statute, cultural heritage status is not required to meet the war crime qualification, as Article 8(2)(e)(iv) only mentions “intentionally directing attacks against buildings dedicated to religion, [...] historic monuments, [...] provided they are not military objectives.” Hence, it is here introduced primarily for demonstrating gravity and other legitimacy work.

<sup>8</sup> The role of the court, then, is to *restore* the victims’ humanity. See also the statement by the female victim that concludes the guided audio tour in the ICC Visitors Center: “By coming before the ICC judges, I am human again” (D’hondt, forthcoming).

<sup>9</sup> On the latter, see note 4 *supra*.

<sup>10</sup> ICC-01/12-01/15-T-4-Red-FRA (<https://www.legal-tools.org/doc/f2185a/pdf/>), p. 7.

<sup>11</sup> Al-Mahdi’s insistence on his community membership, later reiterated by his counsels, rebuts the OTP’s framing of the demolitions as an “attack” by armed rebel forces against the population of an occupied city (D’hondt, 2019), while the image of an (externally originating) sandstorm corroborates it. The OTP’s war crime charge invariably pits victims/insiders against outsiders/perpetrators, which fails to capture how transnational Jihadist networks interact with local aspirations and concerns (for the latter, see Lecocq et al., 2013, Schulz 2016). Many have argued that crimes against humanity might have provided a sounder basis for prosecuting the case (e.g., Badar and Higgins 2017), and the fact that the demolitions were part of an *internal* political conflict lies at the core of Schabas’ (2017) argument that al-Mahdi was “convicted of a crime he did not commit.”

<sup>12</sup> As legal adviser al-Mahdi opposed demolishing the tombs, but as the head of the morality brigade he loyally executed the destruction order.

<sup>13</sup> ICC-01/12-01/15-T-6-FRA (<https://www.legal-tools.org/doc/60cc3b/pdf/>), p. 19.

<sup>14</sup> ICC-01/12-01/15-T-5-Red-FRA (<https://www.legal-tools.org/doc/a075aa/pdf/>), p. 15.

<sup>15</sup> ICC-01/12-01/15-T-5-Red-ENG (<https://www.legal-tools.org/doc/c1dd49/pdf/>). The quoted fragment starts at p. 19, line 18. To enhance clarity, the line numbering of the French excerpt has been continued.

<sup>16</sup> ICC-01/12-01/15-T-6-FRA (<https://www.legal-tools.org/doc/60cc3b/pdf/>), p. 46.

<sup>17</sup> ICC-01/12-01/15-T-6-FRA (<https://www.legal-tools.org/doc/60cc3b/pdf/>), p. 48, lines 25–26.

<sup>18</sup> The direct quote in 25–26 momentarily places al Mahdi in the role of principal, but forms part of a preparatory meeting reenactment that substantiates the information “about him” which Gilissen provides.

<sup>19</sup> It is unclear which variety of Arabic al Mahdi and the interpreter(s) assisting the OTP used during the Niamey interrogations, but it would either have been a variety that Aouini would

find difficult to understand (al Mahdi's native Hassaniya is distinct from other Maghrebi varieties, including Aouini's native Tunisian) or one that was non-native to both speakers (classical Arabic or modern standard Arabic). The cultural othering of the prosecution witness is thus based on a monolithic understanding of Arabic.

<sup>20</sup> A number of commentators remarked afterwards that al-Mahdi's counsels indeed veered towards a "cultural defense" (Badar and Higgins, 2017). Note that this culturalist framework ignores the anti-traditionalist character of the Salafi doctrine espoused by al-Mahdi (and the political character of its Jihadist interpretation, cf. *supra*).

<sup>21</sup> Not reproduced here, ICC-01/12-01/15-T-6-FRA (<https://www.legal-tools.org/doc/60cc3b/pdf/>), p. 48, lines 5–11.

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