

RESEARCH ARTICLE

From Timbuktu to the International Community: Intertextuality, Expressivism and Legitimacy in the ICC's Al Mahdi Trial

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Abstract

This paper examines the 2016 trial of Ahmad Al Faqi Al Mahdi by the International Criminal Court (ICC) through the lenses of discourse analysis and linguistic anthropology, with a focus on how trial actors navigated legitimacy challenges. Al Mahdi, a member of Ansar Dine, was charged with the war crime of intentionally directing attacks against religious and historic buildings in Timbuktu, which were UNESCO World Heritage sites. This paper argues that the trial actors used a rhetorical “local-to-global parallelism” which sought to consolidate a global range of constituencies and legitimate the ICC’s actions both normatively and sociologically. The local-to-global parallelism served to “talk into existence” a broad-based victimhood, which reinforced the court’s symbolic authority and its claims to jurisdiction. It also relied heavily on intertextual connections between the ICC and UNESCO, thereby legitimating the prosecution of cultural heritage destruction as a grave international crime.

Keywords: intertextuality; discourse analysis; legal legitimacy; International Criminal Court; UNESCO

Introduction

For much of its nearly 25-year history, the International Criminal Court (ICC) has been the subject of frequent legal and sociopolitical criticism challenging its legitimacy. Perhaps the most visible of these challenges is the oft-cited “Africa problem”, or the tension between the ICC and the African continent, stemming from the court’s almost exclusive prosecution of African defendants.¹ Another line of criticism concerns the extent to which the ICC succeeds in fulfilling its victim-centred mission. These criticisms include the court’s one-dimensional, abstract representation of victims² alongside barriers and constraints around victim participation.³ It is clear that all of these criticisms, in one way or another, contribute to the “legitimacy crisis” that the ICC is experiencing and exacerbate

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1 LG Iommi “Whose justice? The ICC ‘Africa problem’” (2020) 34/1 *International Relations* 105.

2 S Kendall and SMH Nouwen “Representational practices at the International Criminal Court: The gap between juridified and abstract victimhood” (2013) 76/3 *Law and Contemporary Problems* 235.

3 C Garbett “The international criminal court and restorative justice: Victims, participation and the processes of justice” (2017) 17 *International Criminal Law Review* 1.

the challenges that this still relatively new institution faces in its struggle to gain and maintain legitimacy.⁴ Of particular relevance, in this case, are Mégret's observations on the multiplicity of constituencies that the ICC rhetorically invokes to project its symbolic authority and enhance its legitimacy, ranging from abstract humanity to its patron states to the figure of the victims.⁵

In this article, we explore how ICC trial actors navigate these legitimacy issues by examining the 2016 trial of Ahmad Al Faqi Al Mahdi. Al Mahdi, head of Ansar Dine's morality brigade in 2012, who led the destruction of nine Sufi mausoleums and the door to a mosque in Timbuktu during the jihadist occupation of the city, all of which but one were included on UNESCO's World Heritage List. Al Mahdi, who was apprehended on September 2015,⁶ was charged with the war crime of "intentionally directing attacks against religious and historic buildings" under article 8(2)(e)(iv) of the Rome Statute.⁷ The trial and its resulting conviction had the potential to strengthen at least the court's claim to efficiency and efficacy; it promised and ultimately delivered an "easy", brief and politically opportune win for the court,⁸ while also establishing novel jurisprudence regarding the protection of cultural heritage.⁹ Punctuating a period marked by high-profile destructions of cultural heritage by jihadist groups in Libya, Iraq and Syria,¹⁰ Al Mahdi was the first defendant in international criminal law history to be charged solely with the destruction of cultural heritage, and the first at the ICC to enter a guilty plea.¹¹ These factors ensured the trial's political and legal significance, and all but guaranteed a speedy trial and a decisive conviction.

Despite its prospects, bringing the case against Al Mahdi also presented major challenges, including that of demonstrating that the demolition was, per article 17(d) of the Rome Statute, "of sufficient gravity to justify further action" and therefore admissible to the court. The statute does not outline what this gravity standard entails, resulting in much debate on the specifics of what ought to be considered "grave".¹² Lostal succinctly captured some challenges in pursuing this novel charge:

"Given that the Al Mahdi case represents a historical first, in that it was solely centred on the damage and destruction of cultural heritage, and considering the ICC's current crisis of legitimacy, the gravity threshold must have been a particular concern for the Office of the Prosecutor – even more so in light of the ongoing criticisms it received for devoting attention to a crime against property."¹³

4 S Vasiliev "The crises and critiques of international criminal justice" in KJ Heller et al (eds) *The Oxford Handbook of International Criminal Law* (2020, Oxford University Press) 626.

5 Ibid.

6 "Prosecutor v Ahmad Al Faqi Al Mahdi: International Criminal Court imposes first sentence for war crime of attacking cultural heritage" (2017) 130/7 *Harvard Law Review* 1979.

7 *Prosecutor v Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15-84-Red confirmation of charges decision (24 March 2016), para 9.

8 W Schabas "Al Mahdi has been convicted of a crime he did not commit" (2017) 49/1 *Case Western Reserve Journal of International Law* 75. While *Al Mahdi* indeed held a lot of promise, the literature reflects disappointment in the verdict, as it failed to flesh out the protection of cultural heritage. See eg SA Green Martínez "Destruction of cultural heritage in northern Mali: A crime against humanity?" (2015) 13/5 *Journal of International Criminal Justice* 1073; N Higgins and M Badar "The destruction of cultural property in Timbuktu: Challenging the ICC war crime paradigm" (2017) 74/3-4 *Europa Ethnica* 99.

9 K Wierczyńska and A Jakubowski "Individual responsibility and deliberate destruction of cultural heritage: Contextualizing the ICC decision in the Al-Mahdi case" (2017) 16/4 *Chinese Journal of International Law* 695.

10 ME Badar and N Higgins "Discussion interrupted: The destruction and protection of cultural property under international law and Islamic law – The case of Prosecutor v Al Mahdi" (2017) 17 *International Criminal Law Review* 486 at 495.

11 US Bishop-Burney "Prosecutor v Ahmad Al Faqi Al Mahdi" (2017) 111/1 *American Journal of International Law* 126 at 126.

12 MM deGuzman *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law* (2020, Oxford University Press).

13 M Lostal "The misplaced emphasis on the intangible dimension of cultural heritage in the Al Mahdi case at the ICC" (2017) 1/2 *InterGentes* 45 at 52.

As Lostal noted, the unprecedented stand-alone charge, singular in its focus on cultural heritage, seemed out of step with the complexity and broader violence of Mali's political crisis.¹⁴ As a result, the court received criticism from human rights organizations for its decision to prosecute heritage destruction rather than the other violent crimes which were also taking place in Timbuktu.¹⁵

In other words, it might be speculated what the Office of the Prosecutor (OTP) had on its mind as it considered how to prosecute Al Mahdi, the key to which was establishing that his actions met this less-than-determinate gravity threshold. Doing so required asserting the importance of the demolished structures on an international scale. According to Lostal, the prosecution accomplished this by adopting an anthropocentric focus, arguing the destruction of the UNESCO-listed mausoleums simultaneously caused harm to the local, the national and the global community. In their judgment, Chamber VIII confirmed the OTP's argument, attributing the crime's gravity to the global impact the buildings' UNESCO status implied.

In this paper, we examine the *Al Mahdi* trial through the lens of discourse analysis and linguistic anthropology. In particular, we analyse extracts from court transcripts through the lens of poetics – an approach which looks at formal linguistic features such as parallelism, repetition and metre that draw attention to the delivery and “performance” of the discourse. This focus on poetics in turn allows us to identify instances of intertextuality, which refers to the fact that texts and discourse can never be understood in isolation but always refer to, and derive meaning from, other texts and discourse (and, in turn, set conditions for future texts).¹⁶ It also draws attention to the way in which discourse is “recycled”, a continuous process in which segments of texts are removed from their original context and recontextualized in another.¹⁷ This includes, for example, a police report that that is quoted in an indictment, or lines of testimony that are quoted in a judgment or brief.

Our analysis focuses on what we call the local-to-global parallelism: a three-part list of affected groups that expands in scale from the local to the national to the international, and that is repeated at various points across the proceedings, first in submissions of the OTP, but later reiterated by other trial actors. This parallelism, understood as the stylistic repetition of words, phrases and syntax, establishes fundamental intertextual connections with UNESCO discourse (in particular UNESCO's Strategic Action Plan from the 2012 World Heritage committee meeting),¹⁸ while its poetic and performative effect give the trial discourse an outspoken “expressivist” quality. More specifically, we argue that this central parallelism should be seen as a prime example of how *Al Mahdi* trial actors attend to issues of normative and sociological legitimacy. We understand this parallelism as serving two primary purposes for the ICC: first, it legitimized the normative claim that the destruction met the gravity threshold, which was fundamental to the OTP's argument for charging and convicting Al Mahdi under article 8(2)(e)(iv). Second, it allowed trial actors to perform sociological legitimacy by constructing and reproducing a narrative according to which the court's actions were done for the benefit of the victims, both local and global, and thus uncontroversial. The intertextual connections established through the parallelism positioned UNESCO as a source of authority and evidence, which enabled the court to “talk into existence” the various constituencies in whose name it was

14 For more on the crisis, see eg B Lecocq et al “One hippopotamus and eight blind analysts: A multivocal analysis of the 2012 political crisis in the divided Republic” (2013) 40/137 *Review of African Political Economy* 343; O Ba “Contested meanings: Timbuktu and the prosecution of destruction of cultural heritage as war crimes” (2020) 63/4 *African Studies Review* 743 at 750.

15 Ba, *ibid*.

16 M Prentice and M Barker “Intertextuality and interdiscursivity” in *Oxford Bibliographies in Anthropology* (2017, Oxford University Press) DOI: [10.1093/obo/9780199766567-0171](https://doi.org/10.1093/obo/9780199766567-0171).

17 G Matoesian “Intertextual authority in reported speech: Production media in the Kennedy Smith rape trial” (2000) 32/7 *Journal of Pragmatics* 879 at 879; R Bauman and CL Briggs “Poetics and performance as critical perspectives on language and social life” (1990) 19 *Annual Review of Anthropology* 59.

18 UNESCO “Strategic action plan for the implementation of the World Heritage Convention 2012–2022” (18th session of the General Assembly of States Parties to the World Heritage Convention, Resolution 18 GA 11) UNESCO Doc WHC-11 (2011).

doing justice, again from the local to the national to the global. This shaped the “message” the court was sending, and lent an overtly expressivist quality to the trial discourse.

Performing legitimacy and legal expressivism

As indicated, our analysis stems from the premise that language is performative. Performance can be understood in two ways: first, producing language serves not only to convey information, but also to perform certain activities;¹⁹ and second, “enacting” or “staging” something for an audience, such as a play, a poem or, in this case, a courtroom hearing.²⁰ Both of these understandings are central to the work conducted in criminal trials. Trial actors use language to perform core legal activities, eg, accusing, blaming, justifying, denying, etc,²¹ all of which contribute to a larger performance for a range of deciders and observers. At the same time, however, the actors in the trial also perform “legitimacy work” for audiences outside the courtroom.

Legitimacy is a matter of particular concern for international courts, because they lack the governing structures and (independent) coercive means that exists behind most domestic courts.²² As a concept, “legal legitimacy” involves the right and capacity of a legal institution to exercise authority and is broadly considered to have normative and sociological dimensions. Normative legitimacy involves justifying a legal institution’s use of power by ensuring it adheres to a specific legal or moral framework, while sociological legitimacy is about whether people believe in that justification.²³ While these ideas are distinct, Langvatn and Squatrito argue for appreciating the interconnectedness of normative and sociological facets that shape legal legitimacy.²⁴ Mégret largely eschews these formal considerations and instead to focus on the ICC’s discursive practices around constituency building.²⁵ Our article follows Mégret’s lead in this sense: rather than attempt to assess the presence or absence of legitimacy at the ICC, we look at how actors in the *Al Mahdi* trial seek to produce and perform such legitimacy in and through situated trial discourse.

ICC trial actors perform legitimacy work for audiences both inside and outside the court, a feature typical of the “expressivist” character of international trials.²⁶ Legal expressivism is concerned with “projecting” or “declaring” legal and social norms through adjudication.²⁷ Our focus in particular is on the way in which legal actors produce, perform and convey symbolic messages to audiences beyond the courtroom,²⁸ and draws on performance in both senses of the term (ie, “performing actions” and “performing for an audience”). The act of performing legitimacy thus strongly aligns

19 JL Austin *How to Do Things with Words* (1962, Oxford University Press); RJ Searle *Speech Acts: An Essay in the Philosophy of Language* (1969, Cambridge University Press).

20 FJ Korom “Introduction” in FJ Korom (ed) *The Anthropology of Performance, A Reader* (2013, Wiley-Blackwell) 18 at 19.

21 P Drew and F Ferraz de Almeida “Order in court: Talk-in-interaction in judicial settings” in M Coulthard, A May and R Sousa-Silva (eds) *The Routledge Handbook of Forensic Linguistics* (2020, Routledge) 177.

22 L May and S Syfe “The legitimacy of international criminal tribunals” in N Hayashi and C Bailliet (ed) *The Legitimacy of International Criminal Tribunals: Studies on International Courts and Tribunals* (2017, Cambridge University Press) 25.

23 C Thomas “The uses and abuses of legitimacy in international law” (2014) 34/4 *Oxford Journal of Legal Studies* 729 at 734–41.

24 SA Langvatn and TJ Squatrito “Conceptualising and measuring the legitimacy of international criminal tribunals” in N Hayashi and C Bailliet (eds) *The Legitimacy of International Criminal Tribunals: Studies on International Courts and Tribunals* (2017, Cambridge University Press) 41 at 43–44.

25 F Mégret “In whose name? The ICC and the search for constituency” in C De Vos, S Kendall and C Stahn (eds) *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (2015, Cambridge University Press) 23.

26 S Stolk *The Opening Statement of the Prosecution in International Criminal Trials* (2021, Taylor & Francis).

27 AB Houge “Narrative expressivism: A criminological approach to the expressive function of international criminal justice” (2019) 19/3 *Criminology & Criminal Justice* 277 at 281.

28 C Stahn *Justice as Message: Expressivist Foundations of International Criminal Justice* (2020, Oxford University Press) at 11.

with current work on the expressivist function of international trials, which has recently received increasing attention from scholars in international criminal justice.²⁹

Poetics and self-evidence

Courtroom performance and, by extension, the expressivist quality of trial discourse draw their efficacy to a large extent from what we have called *poetics*.³⁰ Despite its name, the study of poetics is not limited to the domain of poetry or literature. Poetics refers to how the stylistic form, structure and patterning of language construct meaning, regardless of the context in which performance takes place.³¹ The basic assumption is that poetic structures draw attention to “language itself”,³² in addition to the referential meaning of a given utterance or text. In this way, poetic form converges with referential content in the construction and expression of meaning.³³

Our analysis of the *Al Mahdi* trial concentrates on parallelism, or repetition of similar lexical, syntactic and thematic patterns (along with variation in those patterns) in trial discourse,³⁴ both at the sentence level and beyond it. Parallelism shows itself to be the trial’s most visible and pervasive formal linguistic feature across *Al Mahdi* trial discourse. As an illustration, take this time-honoured rhetorical example from Shakespeare’s *Julius Caesar*: “Friends, Romans, countrymen, lend me your ears”. Here, parallelism can be found in the three successive nouns, which serve to address an audience with the imperative “lend me your ears”. Another facet of this line’s rhetorical power is that the initial three nouns constitute a three-part list; lists containing three like elements, whether in discourse meant for an audience or in everyday talk, generate a sense of “completeness”.³⁵ Crucial in view of our foregoing discussion of expressivism is that parallelism can serve to make a message “self-evident”. In law, self-evidence refers to what is obvious, widely accepted or fundamental, but we think of it as a particular type of linguistic technology, or one of the “speech tools” of legal expressivism. Linguistic anthropologists analysing ritual speech have observed how parallelism and other formal features can render speech “self-evident”, solidifying a message into an “artefact” by making its content and form inseparable.³⁶ The meaning expressed in such “message artefacts” appears to be self-evident due to the impression of stability its combination of form and content produce. Significantly, this also serves to embed authority into the message itself, which functions as support or evidence for the truth of the message.

Below, we examine how “the local-to-global parallelism” that can be observed in *Al Mahdi* eventually becomes such a self-evident artefact: a recurring three- (occasionally four-) part list of communities which have been affected by the Timbuktu destruction, and in which elements expand to evoke a geographic scale, progressing from the local (“Timbuktu”) to the national (“Mali”) and finally to the global (“the international community”/“humanity”/“the world”). These elements vary, as does the exact number of elements that comprise the list, but these variations serve to reproduce the core parallelism rather than to substantially alter its essential message.

29 For a review of the recent literature on expressivism in international criminal justice, see B Sander “The expressive turn of international criminal justice: A field in search of meaning” (2019) 32/4 *Leiden Journal of International Law* 851.

30 See eg G Matoesian *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial* (2001, Oxford University Press).

31 R Jakobson “Closing statement: Linguistics and poetics” in T Sebeok (ed) *Style in Language* (1966, The MIT Press) 350 at 357.

32 A Berlin *The Dynamics of Biblical Parallelism* (2nd ed, 2008, Wm B Eerdmans Publishing Co) at 141.

33 Ibid.

34 M Toolan “Literary stylistics” (2019) *Oxford Research Encyclopedia of Literature* DOI: [10.1093/acrefore/9780190201098.013.1008](https://doi.org/10.1093/acrefore/9780190201098.013.1008).

35 G Jefferson “List construction as a task and resource” in G Psathas (ed) *Interaction Competence* (1990, University Press of America) 63; J Heritage and D Greatbatch “Generating applause: A study of rhetoric and response at party political conferences” (1983) 92/1 *American Journal of Sociology* 110.

36 J Du Bois “Self-evidence and ritual speech” in W Chafe and J Nichols (eds) *Evidentiality: The Linguistic Coding of Epistemology* (1986, Ablex Publishing Corporation) 313.

The self-evident nature of the local-to-global parallelism is also due to the fact that it recurs at various points in the proceedings, and thus has an intertextual character. As noted above, intertextuality refers to the fact that the meaning of a text does not exist in isolation; rather, texts and other instances of discourse are shaped by their relationships to previous texts and discourses. Such intertextual connections are fundamental to legal practice: opening and closing statements, for example, may anticipate or recall trial testimony; legal briefs presented in court may contain references to excerpts from earlier cases and decisions, and so on. In this case, the parallelism observed in *Al Mahdi* establishes both implicit links between different parts of the trial (by virtue of its repetition) and explicit links with UNESCO discourse.

Analysis

Al Mahdi's apology

One of the most notable features of *Al Mahdi* is that the defendant pleaded guilty and that he issued a public apology for his crimes at the beginning of the trial. Al Mahdi signed an agreement to this effect on 18 February 2016, 13 days prior to the confirmation of charges hearing on 1 March.³⁷ Although the ICC does not recognize binding “plea agreements” as such, the Rome Statute allows for the prosecution and defence to negotiate terms under which a defendant will admit guilt with respect to the charges. Fulfilling these terms, however, ultimately remains up to the Chamber’s discretion.³⁸ In this instance (the first of its kind), the Chamber accepted the agreement and permitted Al Mahdi to read a statement expressing his contrition. We chose this apology as the starting point for the analysis because a) it is the first time the local-to-global parallelism can be heard at trial stage and b) it illustrates the pervasive nature of the parallelism in that it is used not only by the Office of Prosecution to build their case, but is also taken up by the defendant.

Extract 1

1. Mesdames, Messieurs, je me tiens devant vous, dans cette enceinte, plein de remords
2. et de regrets pour confirmer à nouveau que les accusations portées contre moi par
3. l'équipe de l'Accusation sont véridiques et qu'elles sont conformes à la vérité.
4. Je suis fort contrit de mes actes et de tous les préjudices que cela a causé, les
5. préjudices que cela a causé à mes êtres chers et mes frères à Tombouctou, et à ma
6. mère patrie, la République du Mali toute entière, ainsi qu'à l'ensemble de l'humanité
7. aux quatre coins du monde.³⁹

Translation

1. Ladies and Gentlemen, I stand here before you *full of remorse*
2. and *regret to confirm* once again that the charges brought against me by the
3. by the Prosecution are true and in accordance with the truth.
4. I am *deeply contrite* about my actions and about all the harm that they have caused, the
5. harm that it has caused to my loved ones and my brothers in Timbuktu, and to my
6. mother country, the Republic of Mali as a whole, and to the whole of humanity
7. in all four corners of the world.

37 *Al Mahdi* ICC-01/12-01/15-78-Anx1-tENG-Red agreement regarding admission of guilt (18 February 2016).

38 J Turner “Plea bargaining and international criminal justice” (2016) 48 *The University of Pacific Law Review* 219 at 228.

39 *Al Mahdi* ICC-01/12-01/15-T-4-Red-FRA transcripts (22 August 2016) at 8 l.1–l. 7 (emphasis added). Our approach is to analyse transcripts in either the language originally spoken (English or French) or else the trial’s “floor language” (French). This and other French-to-English translations are ours; Arabic spoken at trial was “relay translated”, first to French and from French to English. Thus, the French transcripts lack an additional “translation” barrier. For more on this issue, see S D’hondt “Humanity and its beneficiaries: Footing and stance-taking in an international criminal trial” (2019) 7/3 *Signs and Society* 427 at 431.

Unsurprisingly, Al Mahdi's apology contains numerous expressions of contrition. In lines 1–3, he makes an explicit admission of guilt, first by describing his current state of mind as “full of remorse”, and then by linking this state of mind to the truth of the OTP's charges. In line 4, he follows with another statement of contrition; this time identifying three distinct groups which he lists from local to global: the city of Timbuktu, the nation of Mali and, finally, all of humanity “in all four corners of the world”. By using the language of kinship, Al Mahdi emphasizes his personal, even intimate connection to the population of Timbuktu (“my loved ones and my brothers”, line 5) and the nation of Mali (“my mother country”, lines 5–6). Al Mahdi then moves to the global in lines 6–7: “the whole of humanity in all four corners of the world”. Rather than using a countable noun (eg “persons” or “people”), he instead uses the word “humanity”, which suggests a higher, more abstract universalism (although he concludes with the “concrete” imagery of the world as a four-cornered shape).

Although Al Mahdi's apology marks the first appearance of the local-to-global parallelism during the trial stage, variations of it had already emerged during pre-trial hearings. The following fragment is from Prosecutor Fatou Bensouda's opening statement at the confirmation of charges hearing on 1 March 2016.⁴⁰

After outlining the local and national significance of the tombs to religious practices and senses of identity, Prosecutor Bensouda argues for their universal importance as cultural heritage sites:

Extract 2

1. Madam President, your Honours, beyond Mali, the sites attacked were not only
2. important for the people of Timbuktu and Mali, they were also important for the whole
3. of Africa and the entire world.
4. It is rightly said that cultural heritage is the mirror of humanity. Such attacks
5. affect humanity as a whole. We must stand up to the destruction and defacing of
6. our common heritage.
7. This point is brought home most forcefully when we consider the reactions to the
8. suspect's campaign of destruction in Timbuktu.
9. Algeria, for example, through its foreign ministry and spokesperson, strongly
10. condemned the attacks, stating that the mausoleums, and I quote, “are not only part
11. of the Islamic cultural heritage belonging to the memory and collective consciousness
12. of Mali, but also a common heritage shared by both Algeria and Mali.”
13. The chairperson of the African Group at UNESCO emphasised that, and I'm quoting
14. again, “it is not only Mali which is affected by the destruction of heritage sites in that
15. country. Mali's heritage sites” and Africa's heritage sites and they are also – “are
16. Africa's heritage sites and they are also the world's heritage sites.” End of quote.
17. As a matter of fact, with one exception, all of the sites in Timbuktu had been
18. designated by UNESCO as World Heritage sites. This is because, beyond the borders
19. of Mali and Africa, the mausoleums constituted a chapter in the history of humanity.
20. Humanity as a whole was affected by this loss.⁴¹

In lines 1 to 3, the prosecutor expands the mausoleum's sphere of significance with her own variation on the local-to-global parallelism. This version adds a fourth scale level and instead of the

40 In order for the Pre-Trial Chamber to confirm charges brought by the prosecution, they must demonstrate in the confirmation of charges hearing: 1. the strength of the evidence against the defendant(s) and 2. that the charge(s) are appropriate and fall within the jurisdiction of the court. For the prosecution in *Al Mahdi*, the first of these tasks was far more straightforward than the second, particularly due to the wealth of evidence and the defendant's guilty plea, contrasted with the complexity of bringing a wholly novel charge against him. Because of this and the absence of any rebuttal from the defence, the prosecution focused their arguments on advancing the legitimacy of the charge. For more on this view of the confirmation of charges as a procedure, see V Nerlich “The confirmation of charges procedure at the International Criminal Court: Advance or failure?” (2012) 10/5 *Journal of International Criminal Justice* 1339.

41 *Al Mahdi* ICC-01/12-01/15-T-2-Red2-ENG transcripts (1 March 2016) at 61.3–1. 22.

typical three-part list it adopts a “not only A and B, but also C and D” format; this creates a “pairing effect” wherein “Timbuktu and Mali” and “whole Africa and the entire world” each constitute a single level on the local-to-global scale. Stylistically, these “scales within a scale” create a sense of semantic equivalence that emphasizes the sites’ universal significance. Here, she begins to lay a foundation for international involvement, which reflects the goal of legitimating the court’s jurisdiction over the destruction. This is followed in lines 4 to 6 by a moral injunction, a call-to-action (“We must stand up”) that aligns the OTP and the Chamber with “humanity as a whole”⁴² (this phrase also appears in line 20). Here, Prosecutor Bensouda constructs her focus on the global through the abstract universalism that “humanity” implies. Additionally, she establishes an expressivist orientation by framing ICC intervention as a moral imperative.

To buttress the moral urgency of this petition, Prosecutor Bensouda then offers a series of “reactions to the suspect’s campaign of destruction” as additional support (lines 7–8). The “reactions” she reports include two quotes, the second of which is attributed to the representative of UNESCO’s Africa Group (lines 14–16). This quote will appear again in the opening and closing statements at trial, which we explore further in the next section. This particular use of the quote, however, obscures its syntax due to the prosecutor’s self-repair⁴³ at line 15; she begins the quote and reverses course to correct herself, having said “*and* Africa’s heritage sites” in place of “*are* Africa’s heritage sites”. This correction, it turns out, is an essential one, since the quote derives much of its rhetorical power from the way it equates the levels that comprise its local-to-global scale. The quote also functions as a pivot point, after which Prosecutor Bensouda explicitly references the mausoleum’s connection to UNESCO by pointing to their presence on the World Heritage list (lines 17–19).

Each of these instances – in Al Mahdi’s apology, Prosecutor Bensouda’s own formulation and the Africa Group representative’s quote – present an expanding scale, starting from a localized starting point and broadening in scope to a global endpoint. However, a comparison of these examples reveals structural and lexical differences that reflect differences in meaning and focus, depending on which of the four possible items comprise the list. Examining these variations also highlights the parallelism’s pervasive intertextuality, both within ICC discourse and beyond it.

Prosecutor Bensouda and Al Mahdi use the same starting and endpoints in constructing their respective local-to-global scales, and both do so in discursive contexts that deal with the harm incurred by the destruction. In this way, both represent the trial’s central notion of a global victimhood, but from their respective legal vantage points (prosecutor and defendant). Prosecutor Bensouda’s early formulation at the confirmation of charges hearing anticipates the one later seen in Al Mahdi’s trial apology, and they seemingly constitute a sort of “intertextual call and response” from prosecutor to defendant and back. Al Mahdi’s variation is unique to the trial in that it emphasizes his own relationships to the local and the national, positioning him at the parallelism’s centre. This aligns with the task of making a public apology⁴⁴ or expressing remorse at a widely publicized trial. Nevertheless, this “local” apology is still embedded in a scale that moves from the local (Timbuktu), to the national (Mali), and finally to the global (all four corners of the world). The parallelism’s scale thus directs his apology to a global range of victims, highlighting his personal connection to Timbuktu and Mali while also orientating to the trial’s global discourse. On the other hand, Prosecutor Bensouda’s formulation asserts the tombs’ universal significance, a foundational point in arguing for the ICC’s jurisdiction over the crime. Her variation also begins with Timbuktu and ends with “the world”, but the semantic equivalence conveyed through its structure serves to emphasize the global. It also seeks to globalize the harm precipitated by the defendant’s actions

42 D’hondt “Humanity and its beneficiaries”, above at note 39.

43 P Drew “Turn design” in J Sidnell and T Stivers (eds) *The Handbook of Conversation Analysis* (2013, Malden: Wiley-Blackwell) 131.

44 S D’hondt “One confession, multiple chronotopes: The interdiscursive authentication of an apology in an international criminal trial” (2021) 25/1 *Journal of Sociolinguistics* 62.

in Timbuktu, and Al Mahdi's variation centres himself as actor but ultimately expresses a "global remorse".

The variation in the Africa Group representative's quote – "Mali's heritage sites are Africa's heritage sites, and they are also the world's heritage sites" – introduces the element of "ownership" to this notion of a global victimhood, which further universalizes the mausoleums' value. It does this through an additional layer of lexical and syntactic parallelism,⁴⁵ which makes Prosecutor Bensouda's initial self-repair in the previous extract essential. Unlike the other examples we have examined so far, the quote's scale begins with "Mali" and progresses to "Africa" as its midpoint, which repeats the same structure (*X's heritage sites*) and connects them with the verb *are* (ie *Mali's heritage sites are Africa's...*). This intensifies the parallelism's universalism by equating each scale level through their shared ownership, eventually extending to the global level and *[they] are also the world's heritage sites*. A similar way of adding emphasis grammatically to the parallelism's global element will appear in a subsequent extract from Prosecutor Bensouda.

We explore other uses of the quote at trial, as well as their intertextual dimensions, in the next section.

Mali's, Africa's, the world's: the repetition of the Africa Group representative's quote

The quote of the African Group spokesperson by Prosecutor Bensouda at the confirmation of charges hearing, in lines 16–18 above, is the first of a series of consecutive citations, issued by different representatives of the prosecution at different points in the trial: in addition to Prosecutor Bensouda's opening statements at the confirmation of charges hearing, it also occurs in her opening statement at the trial, as well as in the OTP's closing statement presented by lead prosecution counsel Dutertre. In this sense, the quote establishes three different levels of intertextuality. These levels include both the verbatim repetition of the quote as well as echoes of its form and content. The first level establishes intertextual links between the confirmation of charges hearing and the subsequent trial proceedings. The second one connects the trial opening and closing statements, through the verbatim repetition of the quote. Finally, the third one establishes an intertextual link between the trial and UNESCO.

The quote appears for the second time in Prosecutor Bensouda's opening statement at the trial, but the change in procedural stage also changes the different discursive context. Sofia Stolk argues that, because all international criminal law contexts share a "struggle for legitimacy", the prosecution's opening statement at a trial or tribunal is especially important for establishing a narrative structure: a legitimating framework through which the entire trial should be understood.⁴⁶ This extract from Prosecutor Bensouda's opening at the trial displays a more explicit expressivist orientation, demonstrating a shift from the concern with projecting legitimacy primarily (although certainly not *only*) to a legal audience of judges and other trial actors at the pre-trial stage and an increased concern with "social" legitimacy at the trial stage.

Extract 3

1. In addition, this admission of guilt and your Honour's ultimate judgment will set a clear
2. precedent, *sending an important and positive message to the entire world*.
3. One must not forget that this attack rightfully raised a chorus of protests, not only from
4. the affected community and Mali more generally, but also from the international
5. community.
6. The African Union, the United Nations Security Council, the Economic Community of
7. West African States, UNESCO and numerous States expressed their strong condemnation

45 The presence of syntactic parallelism within a segment of text indicates a connection between the parallel structures, suggesting an intentional alignment in their form and function. see eg A Gibbons and S Whiteley *Contemporary Stylistics* (2018, Edinburgh University Press) at 19.

46 Stolk *The Opening Statement of the Prosecution in International Criminal Trials*, above at note 26.

8. of the war crime committed. The United Nations Security Council itself stated that “the
9. perpetrators must be held accountable,” while the chairperson of the African group at
10. UNESCO emphasised that “it is not only Mali which is affected by these destructions,
11. Mali’s heritage sites are Africa’s heritage sites and they are also the world’s heritage sites.”
12. Indeed, it is our world heritage that was harmed by the destruction of nine
13. UNESCO-listed sites, which are among the 10 destroyed sites in Timbuktu.
14. Your Honours, the appeals of the Malian and the international community to take action
15. against such serious crimes must yield results.⁴⁷

In many ways, this extract is strikingly similar to its counterpart in the confirmation of charges; both assert the global significance of the tombs with a variation on the local-to-global scale, both support this point by invoking verbatim quotations and both note the sites’ World Heritage status before ending with a succinct summary statement. Here, however, Prosecutor Bensouda helps build the trial’s central narrative by explicitly marking the expressivist value of the “message” the court will send. Here, the message is embedded within the specific legal task of the trial stage (to achieve a conviction) and has progressed from the goal of simply establishing ICC jurisdiction. Prosecutor Bensouda frames the conviction as “set[ting] a clear precedent”. Interestingly, precedent at the ICC does not apply binding force,⁴⁸ and so is itself not dissimilar to “sending a message”. In lines 1–2, the prosecutor cites Al Mahdi’s “admission of guilt” and the court’s “ultimate judgment” as the sources of this message and “the entire world” as recipient. Already, this establishes a trial-level intertextual link to the defendant’s apology. and anticipates a link to the Chamber’s final judgment. This line, alongside the intertextual links it establishes, recontextualise the gravity claim laid out in the confirmation of charges hearing and identifies “the entire world” as the audience. Acknowledging this global audience explicitly underlines the trial’s public reach and the expressivist message’s universal importance.

Prosecutor Bensouda then reminds the court of the “chorus of protests” (lines 3–5). This presents an image in which many voices have publicly demonstrated their disapproval. At this point, the prosecutor uses the local-to-global scale to identify the sources of these protests: “not only from the affected community and Mali more generally, but also from the international community”. In this variation of the parallelism, Prosecutor Bensouda replaces the term “humanity” with “the international community”, displaying a move away from the abstract universalism of the confirmation of charges extract to a more concrete “globalism”.⁴⁹ Stylistically speaking, she emphasizes what is now “the international community” in two ways: first, by setting it apart grammatically from the other list elements (“not only ... but also”) and second, by once again pairing the local and national elements (like she did in the four-part list discussed in the previous section); here, Timbuktu becomes “the affected community”, to which “[the nation of] Mali more generally” is added.

The Africa Group representative’s quote appears in lines 10–11, wherein Prosecutor Bensouda seems to identify members of the “chorus” and to report some of their specific reactions. In contrast to the image of “protests” presented previously (line 3), Prosecutor Bensouda goes on to list regional and state-aligned institutions⁵⁰ (rather than eg reactions from locals) to whom she attributes a unified response (lines 2–3). The prosecutor then recites two direct quotations by two institutional members of the chorus; in lines 8–9 she quotes from a statement by the UN Security Council and in lines 10–11

47 *Al Mahdi* ICC-01/12-01/15-T-4-Red-ENG transcripts (22 August 2016) at 22 l.21–23 l.10 (emphasis added).

48 A Borda “Precedent in international criminal courts and tribunals” (2013) 2/2 *Cambridge Journal of International and Comparative Law* 287 at 293–94.

49 Here, we mean a move to a “Grotian” universalism, which conceptualises “the international community” as a collection of states. For more on this, see eg B Simma and AL Paulus “The ‘international community’: Facing the challenge of globalization” (1998) 9 *European Journal of International Law* 266.

50 Notably, the list begins with the African Union, an institution well known for the challenges it has presented to ICC legitimacy. See also A Ogunfolu and M Assim “Africa and the International Criminal Court” (2012) 18/1 *East African Journal of Peace & Human Rights* 100.

she repeats the UNESCO Africa Group representative's quote. Like in the confirmation of charges, Prosecutor Bensouda then moves from reciting the representative's quote to calling attention to the buildings' presence on UNESCO's World Heritage list (lines 12–13).

Despite the similarities this use of the representative's quote shares with the confirmation of charges, the surrounding context is in many ways different. Specifically, these lines contextualize the parallelism's "Grotian shift" from abstract humanity to the global interstate framework, reflecting a sharper focus on institutional responses to the mausoleums' demolition. Although couched in language that suggests a "local" focus, the responses Prosecutor Bensouda reports go from general and unified ("expressed strong condemnation of the war crime committed", lines 7–8) to specific (although still unified) in quoting international actors (lines 3–7).

Next, Prosecutor Bensouda proposes another imperative (lines 14–15) but, unlike the call-to-action in the confirmation of charges, this one is addressed explicitly to the Chamber and lacks the universalising "we / our" pronouns that previously served to include the court's trial actors. The source of "the appeals to take action" have likewise narrowed in scope, attributed to the nation of Mali and to "the international community" without any mention of Timbuktu.

In this opening statement, the Africa Group representative's quote figures prominently in the reactions the prosecutor reports, not only in that it provides an expressivist conclusion to that particular stretch of talk, but also in two other important ways. First, it helps to introduce and organize the narrative that will characterize the OTP's trial argument, which draws heavily on the value UNESCO assigns to the destroyed sites. Despite a universalist framing, the fragment indicates that institutional forces are at the narrative's centre – and the quote places UNESCO as chief among these forces. Second, the quote establishes a new intertextual link between the prosecutor's trial opening statement and the one at the confirmation of charges, in addition to anticipating yet another: to trial lawyer Dutertre's closing statement, which we discuss below.

We now turn to the quote's final trial appearance, where it is brought into yet another discursive context. Trial attorney Dutertre's closing statement depends heavily on the Africa Group quote in addition to several other intertextual connections to UNESCO. The primary focus here is summarizing the OTP's prior argument concerning the mausoleums' global importance. Dutertre constructs this summary by first recalling prior UNESCO trial testimony regarding efforts to conserve the Timbuktu sites. He then (re-)establishes connections to statements by UNESCO officials, initially made outside of trial.

Extract 4

1. Et c'est ce qui explique, Monsieur le Président, Messieurs les juges, qu'au fil des
2. années, des efforts importants et continus ont été faits par les Tombouctiens et la
3. communauté internationale pour la conservation des mausolées en question. Là
4. encore, souvenez-vous du témoignage de M Bandarin qui a déclaré qu'il y avait eu
5. de nombreuses missions, souvenez-vous de la déclaration de ... du témoin P-0431 qui
6. vous a parlé du plan de conservation et de gestion de Tombouctou de 2006 à 2010.
7. Tout cela confirme l'importance qu'ont les mausolées des saints musulmans et les
8. mosquées de Tombouctou pour les Maliens et la communauté internationale. Tout
9. cela traduit le soin continu qu'ils ont mis à les conserver. C'est ce qui ressort aussi
10. des nombreuses déclarations de M me Bokova, directrice générale de l'UNESCO. C'est
11. ce qui ressort également des très nombreuses réactions de la communauté
12. internationale, y compris au sein du Conseil de sécurité de l'ONU lorsque les
13. destructions sont arrivées.
14. Et je rappelle, pour mémoire, cette citation que nous avons déjà utilisée à l'ouverture
15. du procès et qui vient du représentant du groupe africain de l'UNESCO. Ce dernier
16. déclarait en 2013 – je cite, et c'est en anglais: (interprétation) « Ce n'est pas seulement
17. le Mali qui est affecté par la destruction des sites du patrimoine dans ce pays. Le

18. patrimoine du Mali, ces sites sont des sites appartenant à l'Afrique et faisant
19. également partie du patrimoine mondial. »⁵¹

Translation

1. And that is what explains, Mr President, esteemed judges, how over the
2. years, significant and ongoing efforts have been undertaken by the people of Timbuktu and the
3. international community to preserve the mausoleums in question.
4. *Once again, recall Mr Bandarin's testimony* that there had been
5. many missions, *remember* the statement of ... Witness P-0431 *who spoke to you* about the
6. conservation and
7. management plan for Timbuktu for 2006 to 2010.
8. *All of this confirms* the importance of *the mausoleums of the Muslim saints and the*
9. *mosques of Timbuktu for the people of Mali and the international community. It shows*
10. *the constant care they have taken to preserve them.*
11. *This is also made clear in* the many statements made by M Bokova, Director-General of
12. UNESCO. *This is also made clear in* the very many reactions from the
13. international community, including those made at the UN Security Council, at the time the
14. destruction occurred.
15. *And I remind you, for the record, this quotation that we already used* at the opening of the trial
16. from the representative of the African Group at UNESCO. The latter
17. said in 2013 – and I quote, in English: “It is not only Mali which
18. is affected by the destruction of heritage sites in that country. Mali's heritage sites are
19. Africa's heritage sites and they are also the world's heritage sites.”

This extract and the intertextual links it establishes illustrate the aims that typically characterize a trial's closing statement. These include reviewing important pieces of evidence, recapitulating crucial argumentative points and, most importantly here, reinforcing the OTP's trial narrative.⁵² Dutertre addresses these aims here by recapitulating trial discourse and referencing statements from the UN Security Council and UNESCO officials. While most of these are presented in the form of indirect quotations, he concludes by once again repeating the Africa Group representative's quote verbatim.

The extract begins with a direct address to the Chamber, in which Dutertre punctuates the preceding discussion on the historical importance of the mausoleums and moves to underline the “significant and ongoing” efforts made to preserve them (lines 1–3). Dutertre only credits the two outermost components of the local-to-global-scale with these efforts: “the people of Timbuktu and the international community” (lines 2–3). The absence of “Mali” here is likely due to its limited presence in the relevant testimony. Lines 4–7 establish intertextual links to that testimony; specifically, Dutertre recapitulates brief portions of the statements given by two of the three trial witnesses, both of whom appear to be associated with UNESCO.⁵³ He then offers further support for these efforts

51 *Al Mahdi* ICC-01/12-01/15-T-6-FRA transcripts at 9 l.16–10 l. 4 (emphasis added).

52 G Stygal “Discourse in the US courtroom” in LM Solan and PM Tiersma (eds) *The Oxford Handbook of Language and Law* (2012, Oxford University Press) 369 at 280; SC Spiecker and DL Worthington “The influence of opening statement / closing argument organizational strategy on juror verdict and damage awards” (2003) 27(4) *Law and Human Behavior* 437.

53 The first, “Mr Bandarin”, refers to UNESCO's then-Assistant Director-General for Culture. The precise background of the second (P-0431, lines 18–19) is unknown due to protective measures placed on his testimony. However, it stands to reason that he worked on the sites' conservation efforts as a consultant for ICOMOS (International Council on Monuments and Sites).

by referencing statements from then-director-general of UNESCO and the UN Security Council, neither of which he quotes verbatim (lines 9–14).

Within this densely intertextual statement, Dutretre emphasizes the Africa Group quote not only by again repeating it verbatim but by explicitly marking its intertextuality in several ways. First (and most extensive), he goes to some discursive lengths to mark this as a repetition of a quote that has already been used at trial (line 15). He does this by framing his repetition of the quote a) as a reminder “for the record” and b) explicitly pointing out the quote’s previous use (“this quotation that we already used at the opening of the trial”). Second, he identifies his repetition of the quote as an act of quotation (“and I quote”, line 10). Third, he codeswitches from French to English (rather than maintaining a consistent code and repeating the quote in French), which he marks explicitly (“and I quote *in English*” (line 17)).

As aligns with the purpose of a closing trial statement, all of the intertextual connections (re-)established here succinctly reproduce the narrative thread woven throughout the trial: the importance of the destroyed sites is evidenced first and foremost by UNESCO’s evaluation of and investment in them. The Africa Group representative’s quote occupies a crucial place in Dutretre’s reproduction of the narrative, which he positions as a significant piece of this narrative by extensively marking it and its prior use.

In this section, we have shown that the use of the Africa Group representative’s quote, the parallelism in the form of a three-part list, establishes intertextual connections between different trial moments and the confirmation of charges hearing. At the same time, each usage attends to its immediate legal and discursive context. In her trial opening statement, Prosecutor Bensouda establishes a trial narrative centred around institutional forces, in which she gives the quote a prominent and structuring position. While sharing similarities with its prior use in the confirmation of charges – particularly in emphasizing UNESCO’s role – this use of the quote has moved from constructing the importance of cultural heritage for an abstract “humanity” to a focus on the institutions behind cultural heritage as a category. In his closing statement, trial attorney Dutretre intertextually reinforces this narrative and the quote’s important place in it by again repeating it and extensively marking its (re)use.

We have also shown that the quote appears alongside other variations of the local-to-global parallelism produced by trial actors themselves. To further demonstrate parallelism’s pervasiveness and structuring force, we look to other trial moments and then move outside of them altogether in the following section.

The pervasiveness of the parallelism and its template

In this section, we broaden our intertextual perspective on *Al Mahdi*. We now look beyond opening and closing statements to an instance of testimony, as well to an intertextual link outside of the trial.⁵⁴ Specifically, we show the structuring force of the local-to-global parallelism in this example of testimony, after which we present what we view as one of the parallelism’s possible origin points. Together, both extracts demonstrate the parallelism’s unique capacity to organize discourse and establish connections between different speakers and institutional contexts.

We begin with the testimony of prosecution witness P-0431, or one piece of the intertextual network produced in Dutretre’s closing statement. While the other extracts we have analysed constituted

54 Studies have examined the constant “dialogue” that exists between a criminal trial and the institutions and culture that surround it. Two of these examine this phenomenon in the *Al Mahdi* trial. See D’hondt “One confession, multiple chronotopes”, above at note 44; S D’hondt, B Dupret and J Bens “Weaving the threads of international criminal justice: The double dialogicity of law and politics in the ICC al-Mahdi case” (2021) 44 *Discourse, Context and Media* 10054. For an example which looks at a domestic setting, see C Goodwin and M Harness Goodwin “Contested vision: The discursive constitution of Rodney King” in BL Gunnarsson, P Linell and B Nordberg (eds) *The Construction of Professional Discourse* (1997, Taylor & Francis).

a monological piece of text, this use of the parallelism appears in the explicitly dialogical process of testimony-taking. Trial lawyer Muneesamy's line of questioning in this series of extracts adopts the parallelism's local-to-global scale, serving to structure the discourse that then shapes and produces this witness's testimony.

In order to focus on the parallelism as a structuring force, we present the testimony below not as a single extract but as several. These will appear in order, beginning with a question posed by the attorney, followed by a portion of the witness's answer.

Extract 5.0: personal reaction

1. **Q. [16:06:11] Mr Witness, can you tell us how you personally reacted when you heard**
2. **of the destruction of the mausoleums of Timbuktu?**⁵⁵
3. R. [16:06:30] Ma réaction personnelle, lorsque j'ai appris la destruction de mausolées
4. à Tombouctou, c'était d'abord une préoccupation, une préoccupation par rapport à
5. l'intégrité du bien Tombouctou qui venait d'être atteinte, parce que le classement
6. dans le patrimoine national et l'inscription sur la liste du patrimoine mondial de
7. l'UNESCO impliquent et supposent que le bien garde son intégrité.⁵⁶

Translation

3. A. [16:06:30] My personal reaction, when I learned of the destruction of the mausoleums
4. in Timbuktu, it was first and foremost a concern, a concern about
5. the integrity of the Timbuktu property that had just been affected, because its
6. national heritage classification and its inscription on UNESCO's World Heritage List
7. imply and presuppose that it retains its integrity.

Muneesamy begins the local-to-global scale with a focus on the personal, echoing the variation found in Al Mahdi's apology. Here, Muneesamy initiates his line of questioning by asking the witness to recall his "personal reaction" upon hearing about the destruction (lines 1–2). Also like Al Mahdi, the witness's answer (lines 3–7) grounds his personal reaction in something outside himself. However, he eschews an anthropocentric focus and centres on the mausoleums themselves: specifically, how their "integrity" might affect their status as World Heritage.

Extract 5.1: Timbuktu's reaction

8. **Q. [16:08:59] And how did the local population react to the destruction of the**
9. **mausoleums?**⁵⁷
10. R. [16:09:14] Pour les informations qui nous sont parvenues, la population locale a
11. protesté, a protesté contre la destruction des ... des mausolées. Elle a protesté en ce
12. sens qu'il s'agit de leurs biens, il s'agit de biens, comme nous avons évoqué tantôt
13. toute leur signification culturelle. Donc, elles ont protesté. Et sur certaines images
14. qu'on pouvait voir à l'époque, on a senti cette protestation et, vraiment, ce refus de
15. voir les mausolées détruits.⁵⁸

Translation

10. A. [16:09:14] According to the information that reached us, the local population has
11. protested, protested against the destruction of the ... the mausoleums. They protested

55 *Al Mahdi* ICC-01/12-01/15-T-5-Red-ENG transcripts (23 August 2016) at 88 l.16–90 l.17.

56 *Al Mahdi* ICC-01/12-01/15-T-5-Red-FRA transcripts (23 August 2016) at 86 l.17–88 l.15.

57 *Al Mahdi*, above at note 55 at 88 l.16–90 l.17.

58 *Al Mahdi*, above at note 56 at 86 l.17–88 l.15.

12. in the sense that these are their cultural property, these are cultural property, as we
13. mentioned earlier, with all their cultural significance.

The focus of this question is again the “reaction” to the destruction, this time that of the local community (lines 8–9). The witness answers that the local population “protested” in reaction to the destruction of the mausoleums (lines 10–11). This recalls how Prosecutor Bensouda characterized the reactions from each of the communities on the local-to-global scale. The witness then adds to this characterization by noting that the mausoleums constitute Timbuktu’s “assets” or “cultural property” (line 12; the French is “*de biens*” or “goods”). This echoes the parallelism’s construction in the Africa Group representative’s quotes, wherein the effects of the destruction are tied to ownership of the sites.

Extract 5.2: Mali’s reaction

16. **Q. [16:13:47] Now, you told us about your personal reaction, you told us about the**
17. **reaction of the communities living in Timbuktu. Are you aware of the reaction of the**
18. **Malian population in general?**⁵⁹
19. R. [16:14:13] Pour la population du Mali en général, je vous ai dit que Tombouctou,
20. c’est une fierté pour tout le Mali; Tombouctou, c’est une référence pour tout le Mali.
21. Donc, la population face à la destruction des ... des mausolées est ... était ... pour
22. parler simplement, était plutôt indignée de voir cet acte de destruction d’éléments
23. du patrimoine national et d’éléments du patrimoine mondial.

Translation

19. A. [16:14:13] For the population of Mali in general, I told you Timbuktu,
20. is a source of pride for the whole of Mali; Timbuktu is a reference point for the whole of Mali.
21. So, the population in the face of the destruction of the ... the mausoleums was ... was...
22. to put it simply, was rather outraged to see this act of destruction of elements
23. of national and elements of world heritage.

Here, Muneesamy begins by reiterating his previous two questions, effectively retracing prior steps in the local-to-global scale (lines 16–17). Following this, he poses a question centred on the next step along the scale, or “the reaction of Mali’s population in general” (lines 17–18). This is reminiscent of Prosecutor Bensouda’s opening statement at trial, in which she pairs the local and the national levels together in a comment on the “protests”.

Extract 5.3: the international community’s reaction

24. **Q. [16:15:13] Let’s move to the international reaction. Are you aware of a conference**
25. **taking place in Saint Petersburg, the World Heritage Committee meeting?**
26. A. [16:15:37] Yes, I do know that there was a meeting of the World Heritage
27. Committee in Saint Petersburg.⁶⁰

Although this question-and-answer sequence has been heavily redacted, the question itself demonstrates two key points. First, Muneesamy prefaces his question with a line of metacommentary that explicitly notes his move to “the international reaction” (line 24). This acknowledges a move to the “next step” in the scale established by the parallelism, illustrating its structuring force. Second,

⁵⁹ Ibid.

⁶⁰ *Al Mahdi* ICC-01/12-01/15-T-5-Red-ENG) transcripts (23 August 2016) at 88 l.16–90 l.17.

Muneesamy's question and the witness's answer (lines 24–27) suggest that the relevant “international reaction” here is at least strongly tied to UNESCO.

Notable in these extracts is that transforming the three-part list in this way serves to solidify it as an “artefact” of the trial; by structuring the parallelism as a successive sequence of questions, the OTP trial lawyer is eliciting testimony, and therefore evidence, that addresses each element of the parallelism (evidence that went on to shape the form and content of the Chamber's final judgment⁶¹). The archetypical “template” for the local-to-global parallelism that structured so much of the discourse within ICC proceedings appears in documents that were distributed by UNESCO. To demonstrate this, we now present a brief extract from a resolution drafted at the 18th World Heritage Convention in 2011,⁶² which outlines UNESCO's vision and goals for World Heritage Convention implementation between the years 2012 and 2022. These few lines, taken from a section entitled “Our Pledge to Cooperation”, feature this template in its most basic form:

Extract 5.4

3. Our pledge to cooperation

Through cooperation, we seek:

- A sustainable environment in which States Parties are encouraged, supported and assisted by the international community to fully meet their obligations and enjoy their rights under the World Heritage Convention
- *Local, national and international communities*, both now and in the future, which feel a connection to, engage with and benefit from the world's natural and cultural heritage (emphasis added)

In line with the document's broad scope, this instance of the list is general and does not name specific locales. Instead, it represents the three elements as categorial placeholders, outlining the three-part list of communities that expand from local to global. This provides a “template” for the parallelism we have observed in the *Al Mahdi* hearing transcripts, and this similarity identifies it as a central link in the intertextual chain⁶³ established between the ICC and UNESCO.

Conclusion

The local-to-global parallelism played a fundamental role in the process of naming a constituency for whom the court was doing justice. Given the prosecution's ample fact evidence, the defendant's guilty plea and a lack of challenges from the defence on either one,⁶⁴ the primary question at issue in *Al Mahdi* centred on cultural heritage, and the communities for whom the mausoleums held value. Addressing this question required first establishing that the defendant's actions met the Rome Statue's gravity threshold, which thereby legitimated cultural heritage destruction as a prosecutable offence under ICC jurisdiction. To achieve this, the OTP put forward an expressivist argument that hinged on presenting a global range of constituencies for whom the mausoleums were significant – and who were rendered victims by the destruction.

61 *Prosecutor v Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15 judgment and sentence (27 September 2016) (*Prosecutor v Al Mahdi*), para 80.

62 18th General Assembly of the World Heritage Convention resolution 3, above at note 18.

63 See C Heffer, F Rock and J Conley (eds) *Legal-Lay Communication: Textual Travels in the Law* (2013, Oxford University Press).

64 D'hondt “One confession, multiple chronotopes”, above at note 44.

In our analysis, we have turned to poetics in order to discern the local-to-global parallelism's precise function in *Al Mahdi* discourse. We examined multiple uses of the parallelism in case hearings, and we have exhibited the intertextual connections the parallelism forged across trial stages and institutions, from the statements of prosecuting attorneys, a segment of witness examination, to the defendant's apology. In doing so, we have analysed each use in its context and identified its role in legitimating the respective aims of the OTP, precipitated by the destruction. The parallelism thus cohered the ICC's case with a message, while at the same time offering a rhetorical pattern malleable enough to accommodate the objectives of its immediate circumstances. It also served to merge ICC and UNESCO discourse, while likewise uniting them in the task of structuring the trial's message. Trial actors consistently support claims of the destructions' gravity by referring to the mausoleums' UNESCO status, while also relying on and reproducing UNESCO discourse in constructing an expressivist narrative.

The local-to-global parallelism homogenized a disparate set of communities to establish one overarching constituency in whose name the court was doing justice. This helped solidified the case's expressivist message by not only bolstering the argument for prosecuting the destruction, but also crafting the trial's central narrative surrounding the universal harm it caused. As a linguistic device, parallelism combines form and content to create the impression that an idea is "self-evident", particularly with consistent repetition.⁶⁵ We think of the ICC's repeated invocation of this specific parallelism as employing a "speech tool" that enabled the court to "talk into existence" a broad constituency, from local to global, and to thereby legitimate its actions on both a legal and social level.

The message retained its stability in the Chamber's final judgment and sentencing: in paragraph 80, they conclude the destruction was "of particular gravity" due to the sites' UNESCO status, noting that "their destruction does not only affect the direct victims of the crimes, namely the faithful and inhabitants of Timbuktu, but also people throughout Mali and the international community".⁶⁶ This conclusion not only aligns with the OTP's gravity claims and the narrative it constructed at trial, it reproduces them by rendering its own variation on the parallelism. The reparations order further reinforced the message by employing this scale in assigning the reparations owed to each community, nominating UNESCO as representative of the international community.⁶⁷ To the parallelism's global "constituent", it awarded one "symbolic" euro.

This demonstrates that, from confirming the charges to awarding reparations, *Al Mahdi* in its entirety exhibited a clear discursive reliance on UNESCO. In examining how the case identified the victims of cultural heritage destruction, Oumar Ba notes UNESCO's function as the international community's representative in the reparations order and comments on the decisive role of the sites' UNESCO status in generating this "higher degree of international attention and concern".⁶⁸ Our analysis illustrates that UNESCO's role goes beyond that of representative and functions as the source of both the authority that calls for the destruction's international significance and that UNESCO status constitutes much of the evidence that it was a crime at all.

Competing interests. None

65 Du Bois "Self-evidence and ritual speech", above at note 36.

66 *Prosecutor v Al Mahdi*, para 80.

67 *Al Mahdi* ICC-01/12-01/15 reparations order 107 (17 August 2017).

68 O Ba "Who are the victims of crimes against cultural heritage?" (2019) 41 *Human Rights Quarterly* 578 at 595.