

Mali, Destruction of World Cultural Heritage

Case prepared in 2013 by Ms. Anaïs Maroonian, Master student at the Faculty of Law of the University of Geneva, under the supervision of Professor Marco Sassòli and Ms. Gaetane Cornet, research assistant.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. ICC, Situation in Mali, Article 53(1) Report

[Source: "Situation in Mali, Article 53(1) Report", International Criminal Court, 16 January 2013; available on <http://www.icc-cpi.int>]

I. EXECUTIVE SUMMARY

Article 53 criteria

1. [...] This report is based on information gathered by the Office [of the Prosecutor] from January until December 2012.

Procedural History

1. On 18 July 2012, the Malian Government referred "the Situation in Mali since January 2012" to the ICC.

Contextual background

1. As of around 17 January 2012, an ongoing non-international armed conflict continued in the territory of Mali between the government forces and different organized armed groups, particularly the Mouvement national de libération de l'Azawad (National Movement for the Liberation of Azawad, MNLA), al-Qaeda in the Islamic Maghreb (AQIM), Ansar Dine and the Mouvement pour l'unicité et le jihad en Afrique de l'Ouest (Movement for Oneness and Jihad in West Africa, MUJAO) and 'Arab militias', as well as between these armed groups themselves absent the involvement of government forces.

2. The armed conflict in Mali can be separated into two phases. The first phase began on 17 January 2012 with the attack by MNLA on the Malian Forces military base in Menaka (Gao region). This phase ended on 1 April 2012 when the Malian Armed Forces withdrew from the north. The second phase commenced immediately when non-State armed groups seized control of the North. This phase of the conflict is characterized primarily by armed clashes between the different armed groups, trying to gain exclusive control over the territory in the North, as well as by sporadic attempts by governmental forces to combat such armed groups and retake territorial control. (...)

II. PROCEDURAL HISTORY

1. The Office has been analyzing the situation in Mali since violence erupted in northern Mali on or about 17 January 2012.
2. On 24 April 2012, the Office issued a public statement recalling that Mali is a State Party to the Rome Statute, and that the Court has jurisdiction over possible war crimes, crimes against humanity or genocide that may be committed on the territory of Mali or by Malian nationals as of 1 July 2002.
3. On 30 May 2012, the Malian Cabinet made a public decision to refer crimes committed since January 2012 by MNLA, AQIM, Ansar Dine, and other armed groups in the regions of Kidal, Gao and Timbuktu to the ICC. The Cabinet further stated that this situation has led to the withdrawal of the services of the administration of justice, making it impossible to deal with these cases before the competent national tribunals.
4. On 01 July 2012, the Office issued a public statement indicating that directing attacks against and the deliberate damaging of shrines of Muslim saints in the city of Timbuktu may constitute war crimes under the Rome Statute.
5. On 5 July 2012, the Security Council adopted resolution 2056 based on Chapter 7 of the UN Charter, in which it stressed that attacks against buildings dedicated to religion or historic monuments can constitute violations of international law which may fall under Additional Protocol II to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court.
6. On 7 July 2012, during a summit held in Ouagadougou, Burkina Faso, the Contact Group on Mali of the Economic Community of West African States (ECOWAS) called for an ICC investigation into war crimes committed by rebels in the North of Mali, referring specifically to the destruction of historical monuments in Timbuktu and the arbitrary detention of persons. The Contact Group called upon the ICC “to initiate the necessary enquiries in order to identify the perpetrators of these war crimes and to initiate the necessary legal proceedings against them.”
7. Armed groups allegedly perpetrated crimes in the context of an ongoing non-international armed conflict which started on or around 17 January 2012. *(iv) Intentionally directing attacks against protected objects pursuant to Article 8(2)(e)(iv)*
 1. The actus reus of the war crime of attacking protected objects pursuant to Article 8(2)(e)(iv) includes, an attack on buildings dedicated to religion, education, art, science or charitable purposes or historic monuments.
 2. The city of Timbuktu, including its three large mosques and sixteen cemeteries and mausoleums, was listed as a World Heritage by the UNESCO Heritage Committee on 23 December 1988. As of 28 June 2012, the World Heritage Committee placed Timbuktu and the Tomb of Askia on UNESCO’s List of World Heritage in Danger “to raise cooperation and support for the sites threatened by the armed

conflict in the region.”

3. From 4 May 2012 to 10 July 2012, a series of attacks against at least 9 mausoleums, 2 mosques and 2 historical monuments in the city of Timbuktu were intentionally perpetrated by members of Ansar Dine and AQIM and possibly also MUJAO. Information confirms that the attacks were intentional.
4. The destruction of religious and historic monuments (not UNESCO World Heritage sites) outside Timbuktu has also been reported.
5. There is a reasonable basis to believe that war crimes of attacking protected objects pursuant to Article 8(2)(c)(iv) were committed at least in Timbuktu since 4 May 2012. [...]

B. Mali Islamists destroying more Timbuktu mausoleums

[Source: “Mali Islamists destroying more Timbuktu mausoleums”, in AFP, 23 December 2012, available on <http://www.france24.com/en/20121223-mali-islamists-destroy-mausoleums-t...>]

BAMAKO — Armed groups occupying Timbuktu in northern Mali used pickaxes to smash up any remaining mausoleums in the ancient city, an Islamist leader said.

The rebels' ruthless implementation of their version of Islamic law comes just days after the United Nations approved a military force to wrest back control of the conflict-ridden area.

"Not a single mausoleum will remain in Timbuktu, Allah doesn't like it," Ansar Dine leader Abou Dardar told AFP. "We are in the process of smashing all the hidden mausoleums in the area."

Witnesses confirmed the claims and one resident, who said he belongs to Al-Qaeda in the Islamic Maghreb (AQIM), another militant group occupying the city since a March coup plunged the west African state into chaos.

Anything that doesn't fall under Islam "is not good. Man should only worship Allah," Mohamed Alfoul said of the mausoleums, which the armed Islamists consider blasphemous.

The vandalism of the Muslim saints' tombs in the UNESCO World Heritage site came a day after other Islamists in the northern city of Gao announced they had amputated two people's hands.

The continued strict application of sharia law is seen as a sign that the armed Islamist groups are unfazed by the UN's green light for the African-led military operation.

[...]

In July, Islamists destroyed the entrance to a 15th-century mosque in Timbuktu, the so-called "City of 333 Saints."

"The Islamists are currently in the process of destroying all the mausoleums in the area with pickaxes," one witness said.

"I saw Islamists get out of a car near the historic mosque of Timbuktu. They smashed a mausoleum behind a house shouting 'Allah is great, Allah is great'," another resident told AFP.

As well as in cemeteries and mosques, the revered mausoleums are found in alleyways and private residences of the city, an ancient centre of learning and a desert crossroads.

Catherine Ashton, the European Union's foreign policy chief, condemned the Islamists.

A statement from her office said she was "deeply shocked by the brutal destruction of mausoleums and holy shrines in Timbuktu".

"Their destruction is a tragedy not only for the people of Mali, but for the whole world."

Ansar Dine began destroying the cultural treasures in July.

The International Criminal Court warned their vandalism was a war crime, but the Islamists followed up with more damage in October, when they smashed several Muslim saints' tombs, prompting another international outcry.

The latest vandalism comes a day after another Islamist group in northern Mali – the Movement for Oneness and Jihad in West Africa (MUJAO) – said it had carried out amputations on two accused robbers in the northern city of Gao, and warned of more to come.

Gao lawmaker Abdou Sidibe blamed the amputations on the "international community's laxness".

He said Saturday: "The international community needs to know that it is its hesitation over intervening, or no, in northern Mali that is encouraging the Islamists to show they are at home and are not afraid of anything."

On Thursday, the United Nations decided to back the 3,300-troop operation to take back the Islamist-held region, though the Security Council vowed to keep working towards a peaceful solution.

Once considered one of Africa's most stable democracies, Mali has for months been mired in the northern conflict that has so far displaced more than 400,000 people, according to the United Nations.

[...]

Discussion

1.
 - a. What protection does IHL provide for cultural property? What constitutes cultural property? Are the mausoleums cultural property? What is the impact for its protection in armed conflicts that a monument is included in the UNESCO World Heritage Sites list? Would the mausoleums be protected by IHL even if they were incompatible with Islam, taking into account that nearly all local inhabitants are Muslims? (HR, Art. 27; P I, Arts 52, 53 and 85(4)(d); P II, Art. 16; 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Art. 4(2); Second Protocol to the Hague Convention for the Protection of Cultural Property, Art. 6)
 - b. Does the classification of the mausoleums of Northern Mali as cultural property mean that they may never be legitimate military objectives? How may cultural property become a military objective? Are the answers of the 1954 Hague Convention on Cultural Property and of the Protocols I and II similar in that respect?
 - c. Is there any difference between the targeting of a protected object for “imperative military necessity” and the targeting of a “military objective”? Which standard is higher? Who determines whether the military necessity is “imperative”?
1.
 - a. Apart from being registered as a World Heritage Site by the UNESCO, which other factors may determine whether a civilian object amounts to “cultural property”?
 - b. Are the mausoleums protected even if they were not marked with the UNESCO emblem? Does the UNESCO emblem have the same protective function as the emblem of the red cross or red crescent? (1954 Hague Convention on Cultural Property, Arts 4 and 17)
1. Does the destruction of cultural property constitute a war crime? (ICC Statute, Arts 8(2)(b)(ix) and (xiii) and 8(2)(e)(iv) and (xii))