
INTERNATIONAL CRIMINAL LAW — ROME STATUTE — INTERNATIONAL CRIMINAL COURT IMPOSES FIRST SENTENCE FOR WAR CRIME OF ATTACKING CULTURAL HERITAGE. — *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Judgment & Sentence (Sept. 27, 2016).

The wartime pillage and destruction of structures and objects with cultural significance — collectively referred to as “cultural property” or “cultural heritage” — date back to ancient times.¹ The 1998 Rome Statute,² which established the International Criminal Court (ICC) at The Hague, confronts “the most serious crimes of concern to the international community as a whole”³ and prohibits intentional attacks “against buildings dedicated to religion . . . [and] historic monuments” during armed conflict.⁴ Nonetheless, such attacks have become endemic in parts of the world during the twenty-first century, as evidenced most vividly by the Islamic State’s protracted assaults against the ancient city of Palmyra in Syria.⁵ Recently, in *Prosecutor v. Ahmad Al Faqi Al Mahdi*,⁶ the ICC convicted a member of a Malian jihadist organization for the war crime of “intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, Mali” during conflict there in 2012.⁷ But even though this conviction for the sole crime of intentionally targeting cultural heritage — the first of its kind by the ICC — has rightly been lauded as a victory for the court and for cultural heritage law, it is likely to ring rather hollow as a precedent, in that the opinion provides only minimal guidance for future cases. The ICC’s reluctance to define the scope of the Rome Statute’s protection for cultural heritage more broadly, or alternatively to sound the alarm regarding certain inade-

¹ Patty Gerstenblith, *Protecting Cultural Heritage in Armed Conflict: Looking Back, Looking Forward*, 7 CARDOZO PUB. L. POL’Y & ETHICS J. 677, 677–79 (2009). Legal protection for cultural heritage has gained traction as an international norm over the past century in the jurisprudence of supranational courts, such as the Nuremberg Tribunal and the International Criminal Tribunal for the former Yugoslavia (ICTY). See Ana Filipa Vrdoljak, *The Criminalisation of the Intentional Destruction of Cultural Heritage* 8 (Oct. 19, 2015) (manuscript), <http://ssrn.com/abstract=2676470> [<https://perma.cc/VY5J-55J4>]; see also S.C. Res. 2347 (Mar. 24, 2017) (condemning destruction of cultural heritage and religious sites and artifacts by terrorist groups, in the first Security Council resolution dedicated to cultural heritage protection).

² Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

³ *Id.* pmbl.

⁴ *Id.* art. 8(2)(b)(ix) (prohibiting such attacks during international armed conflict); *id.* art. 8(2)(e)(iv) (prohibiting such attacks during noninternational armed conflict).

⁵ See Russell Goldman & Marlise Simons, *Why the Terrorist Who Destroyed Palmyra Won’t Face Justice*, N.Y. TIMES (Sept. 29, 2016), <https://www.nytimes.com/2016/09/30/world/africa/icc-hague-court-antiquities.html> [<https://perma.cc/NXK7-K4HQ>].

⁶ Case No. ICC-01/12-01/15, Judgment & Sentence (Sept. 27, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF [<https://perma.cc/58RV-P2VH>].

⁷ *Id.* ¶¶ 9–10.

quacies in its coverage, renders the symbolic and precedential value of the case less potent than it might have been.

Violence broke out in Mali in January 2012, with rebel groups gaining control of territory in the northern part of the country.⁸ In early April 2012, the Malian army withdrew from the regional capital of Timbuktu, which was subsequently taken over by Ansar Dine, a Malian jihadist group, and its ally, Al Qaeda in the Islamic Maghreb.⁹ Ansar Dine, whose name translates to “defenders of faith,” aspired to enforce its extreme interpretation of Islamic law, or Sharia, throughout Mali.¹⁰ It pursued this objective in Timbuktu by establishing a local government comprising “an Islamic tribunal, an Islamic police force, a media commission and a morality brigade . . . called the *Hesbah*.”¹¹ Ahmad Al Faqi Al Mahdi, a native of the Timbuktu region,¹² assumed command of the *Hesbah* in April 2012 because of his perceived religious expertise.¹³ In June 2012, the leader of Ansar Dine instructed Al Mahdi to destroy nine mausoleums of saints and one mosque in Timbuktu, which local residents and pilgrims frequented for prayer and other rites and celebrations.¹⁴ Between approximately June 30 and July 11, 2012, “[t]en of the most important and well-known sites in Timbuktu were attacked and destroyed” by Al Mahdi and others acting under his supervision.¹⁵ Al Mahdi was present at all ten attacks, often providing instructions and tools to assailants and making statements to journalists, and he physically took part in the destruction of at least five sites.¹⁶

On July 13, 2012, Mali’s Ministry of Justice asked ICC Prosecutor Fatou Bensouda to initiate an investigation into alleged crimes against humanity and war crimes perpetrated since the start of the conflict.¹⁷ In September 2015, the ICC issued a warrant for Al Mahdi’s arrest, and Nigerien authorities surrendered Al Mahdi to the court.¹⁸ In

⁸ *Id.* ¶ 31; see also Sebastián A. Green Martínez, *Destruction of Cultural Heritage in Northern Mali: A Crime Against Humanity?*, 13 J. INT’L CRIM. JUST. 1073, 1075 (2015).

⁹ *Al Mahdi*, Judgment & Sentence, ¶ 31; Martínez, *supra* note 8, at 1075.

¹⁰ Martínez, *supra* note 8, at 1075.

¹¹ *Al Mahdi*, Judgment & Sentence, ¶ 31.

¹² *Id.* ¶ 9.

¹³ See *id.* ¶¶ 32–33.

¹⁴ *Id.* ¶¶ 34–36. The mausoleums were shrines to Sufi saints. See Kulsoom Khan, *Man Who Destroyed Artifacts in Mali Gets Nine Years in Prison*, PBS NEWSHOUR: RUNDOWN (Sept. 27, 2016, 12:25 PM), <http://www.pbs.org/newshour/rundown/man-destroyed-artifacts-mali-gets-nine-years-prison/> [<https://perma.cc/TVG5-HVRL>].

¹⁵ *Al Mahdi*, Judgment & Sentence, ¶ 38. For a list of the ten sites, see *id.* ¶ 10.

¹⁶ *Id.* ¶ 40.

¹⁷ Martínez, *supra* note 8, at 1074. Mali acceded to the Rome Statute in 2000. *Id.* at 1082.

¹⁸ *Case Information Sheet, Situation in the Republic of Mali: The Prosecutor v. Ahmad Al Faqi Al Mahdi*, INT’L CRIM. CT. (Aug. 24, 2016), <https://www.icc-cpi.int/iccdocs/pids/publications/almahdieng.pdf> [<https://perma.cc/J86C-8NHA>].

December 2015, the Office of the Prosecutor (OTP) charged Al Mahdi with one count of the war crime of attacking protected objects under Article 8(2)(e)(iv) of the Rome Statute.¹⁹ The OTP and Al Mahdi reached a plea agreement in February 2016,²⁰ and the defendant's subsequent admission of guilt at trial in August 2016 marked the first guilty plea at the ICC.²¹

On September 27, 2016, a unanimous three-judge panel of the Trial Chamber accepted Al Mahdi's admission of guilt, convicting him of a war crime for coperpetrating attacks against protected sites and sentencing him to nine years' imprisonment.²² Writing jointly for the court, Presiding Judge Raul C. Pangalangan, Judge Antoine Kesia-Mbe Mindua, and Judge Bertram Schmitt found that the facts of the case supported Al Mahdi's admission,²³ as affirmatively required by the Rome Statute notwithstanding a defendant's plea.²⁴ The court began by assessing the applicable law. Noting that this case occasioned the first application of Article 8(2)(e)(iv), the court interpreted the crime's elements and briefly outlined the development of cultural property protection over the last century.²⁵ The opinion expressly noted that Article 8(2)(e)(iv) singles out cultural property as a "special kind[] of civilian object[]" warranting specific protection, thereby "reflecting the particular importance of international cultural heritage."²⁶ The court also addressed the contours of Article 65, which governs admissions of guilt, in light of its inaugural usage in this case.²⁷ Although it inspired considerable controversy during the drafting of the Rome Statute,²⁸ the provision, according to the court, constitutes a valuable compromise between common law and civil law systems, with safeguards like a required finding of facts balanced against considerations of efficiency and finality.²⁹

Moving next to the established facts of the case, the court focused on Al Mahdi's active participation in the destruction of the sites targeted by the *Hesbah*. The court noted as evidence of intentionality that Al Mahdi "personally determined the sequence in which the build-

¹⁹ *Al Mahdi*, Judgment & Sentence, ¶ 2.

²⁰ *Id.* ¶ 3.

²¹ *See id.* ¶¶ 7, 21.

²² *Id.* ¶¶ 42–44, 109.

²³ *Id.* ¶ 42.

²⁴ *Id.* ¶ 27.

²⁵ *Id.* ¶¶ 13–14. In full, Article 8(2)(e)(iv) prohibits "[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives," in noninternational armed conflicts. Rome Statute, *supra* note 2, art. 8(2)(e)(iv).

²⁶ *Al Mahdi*, Judgment & Sentence, ¶ 17.

²⁷ *Id.* ¶ 21 (citing Rome Statute, *supra* note 2, art. 65).

²⁸ *Id.* ¶ 22.

²⁹ *Id.* ¶¶ 27–28.

ings/monuments were to be attacked,” and wrote a sermon dedicated to the sites’ demolition, which was delivered at the launch of the onslaught.³⁰ It also repeatedly underscored the status of nine of the ten buildings as UNESCO World Heritage sites, relying on this designation as evidence of the sites’ qualification “as both religious buildings and historic monuments” under Article 8(2)(e)(iv).³¹

Lastly, the court considered both the gravity of Al Mahdi’s crime and the presence of aggravating or mitigating factors for the purpose of sentencing. On the former, the court noted that “even if inherently grave, crimes against property are generally of lesser gravity than crimes against persons.”³² Yet the court “recall[ed] that most of the 10 sites were completely destroyed,”³³ declared that attacks on UNESCO World Heritage sites are of “particular gravity” because they affect both local residents and the international community,³⁴ and “consider[ed] . . . the discriminatory religious motive invoked for the destruction”³⁵ — all of which contributed to the “significant gravity” of Al Mahdi’s crime.³⁶ While the court found no aggravating circumstances,³⁷ it outlined five mitigating factors, including Al Mahdi’s admission of guilt and its attendant benefits for the ICC and victims of the crime.³⁸ The court ultimately sentenced Al Mahdi to nine years in prison.³⁹

While some scholars of cultural heritage law and observers of the ICC have rightly celebrated the *Al Mahdi* prosecution for enhancing the visibility of cultural heritage and broadcasting the seriousness of crimes against it,⁴⁰ the ICC’s published decision in this case will likely

³⁰ *Id.* ¶ 37.

³¹ *Id.* ¶ 46; *see also id.* ¶ 39. The court also concluded that the sites did not fall under the provision’s exemption for military objectives. *Id.* ¶ 39.

³² *Id.* ¶ 77.

³³ *Id.* ¶ 78.

³⁴ *Id.* ¶ 80.

³⁵ *Id.* ¶ 81.

³⁶ *Id.* ¶ 82.

³⁷ At the sentencing stage, the Trial Chamber “cannot ‘double-count’ any factors assessed in relation to the gravity of the crime as aggravating circumstances and vice versa.” *Id.* ¶ 70.

³⁸ *Id.* ¶ 109; *see also id.* ¶¶ 89–105 (detailing all five mitigating factors).

³⁹ *Id.* ¶ 109.

⁴⁰ *See, e.g., International Criminal Court Brings a Cultural Vandal to Justice*, PBS NEWS-HOUR (Aug. 22, 2016, 6:10 PM), <http://www.pbs.org/newshour/bb/international-criminal-court-brings-cultural-vandal-justice/> [<https://perma.cc/39EU-E2GS>] (interview with Professor Patty Gerstenblith) (calling the prosecution “very significant” and “a very good precedent” — prior to issuance of the ICC’s written judgment and sentence — “because it sends a message that the international community will take these kinds of crimes . . . seriously”); Lucia Allais, *Amplified Humanity and the Architectural Criminal*, E-FLUX ARCHITECTURE (Dec. 5, 2016), <http://www.e-flux.com/architecture/superhumanity/66870/amplified-humanity-and-the-architectural-criminal/> [<https://perma.cc/4S78-DRS4>] (describing *Al Mahdi* as “the broadest-ever judicial ruling that architectural destruction is punishable as a war crime”).

be of limited value as a precedent. Because voluminous evidence made this case a “slam-dunk” for the Prosecutor⁴¹ — on top of Al Mahdi’s admission of guilt — the ICC was able to avoid the thorniest questions ensnaring Article 8(2)(e)(iv), dampening the persuasive force of the court’s analysis. In lieu of this conservative tack, the court could and should have taken a bolder approach in its first dealings with cultural heritage crime, by opting for a broader interpretation of Article 8(2)(e)(iv) or calling attention to inadequacies on the face of the Rome Statute. Although necessarily sobered by the criminal nature of the prosecution, the court was — to a certain degree — freed by Al Mahdi’s guilty plea to ponder the limits and lacunae of the Rome Statute’s cultural heritage protection, and should have done so out of an obligation to further not only its own jurisprudence, but also that of the international community writ large.⁴² Rather than the trailblazer that some envisaged, *Al Mahdi* is more appropriately characterized as an example of arrested jurisprudential development.

Several qualities rendered *Al Mahdi* a relatively easy win for the OTP.⁴³ Perhaps most important was Al Mahdi’s cultivation of media coverage of the destruction, which not only provided compelling proof of his guilt, but also heightened the gravity of his conduct.⁴⁴ During the attacks, Al Mahdi repeatedly made statements, recorded by video and in the presence of journalists, justifying the vandalism and, by extension, memorializing both the destruction and his involvement. Al Mahdi’s statement at the Djingareyber Mosque, in which two adjoining mausoleums were destroyed, was typical: “It’s probably the oldest mosque here in town, and is considered . . . a World Heritage Site. . . . Those UNESCO jackasses — . . . they think that this is heritage. Does ‘heritage’ include worshipping cows and trees?”⁴⁵ This statement alone offered unambiguous evidence against Al Mahdi and

⁴¹ Marie Forestier, *ICC to War Criminals: Destroying Shrines Is Worse than Rape*, FOREIGN POL’Y (Aug. 22, 2016), <http://foreignpolicy.com/2016/08/22/icc-to-war-criminals-destroying-shrines-is-worse-than-rape-timbuktu-mali-al-mahdi/> [https://perma.cc/LEP8-7W7T]. Forestier decried the ICC for failing to prosecute Al Mahdi for sexual violence, despite allegations that “he oversaw . . . rape[] and sexual enslavement of women.” *Id.*

⁴² For discussion of the norm-setting and symbolic value of international and regional tribunals, see, for example, Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 371–74 (1997) (expounding the virtues of “a global sphere of law,” where “judges who look to the decisions of their fellow judges in other countries or regions are acknowledging engagement in a common enterprise in which the power of reason and the advantage of prior experience with a particular problem create a presumption of persuasion,” *id.* at 371, as well as “thoughtful convergence” in jurisprudence, *id.* at 374).

⁴³ For example, the OTP filed some 700 pieces of evidence, many of them photographs and video footage. Transcript of Trial Hearing at 41, *Al Mahdi*, Case No. ICC-01/12–01/15 (Aug. 22, 2016), https://www.icc-cpi.int/Transcripts/CR2016_05767.PDF [https://perma.cc/Z4PU-MY54].

⁴⁴ *Al Mahdi*, Judgment & Sentence, ¶ 78.

⁴⁵ *Id.* ¶ 46.

demonstrated the gravity of his crime: it communicated not only the intentionality of the attacks, but also an awareness of the sites' special status, both elements required by Article 8(2)(e)(iv).

However, the ease of this win seems to have stifled more thorough analysis of cultural heritage crime and belies the pressing complexities that the court should have recognized, rendering the case a missed opportunity. According to Professor Alex Whiting, the ICC's small caseload⁴⁶ and prosecutorial discretion make it doubtful that the ICC will try another cultural heritage crime in the next few years.⁴⁷ This probability is lowered further still by the fact that the ICC does not currently have jurisdiction over Syria or Iraq — and is unlikely to obtain it in the foreseeable future — and thus cannot prosecute the highest-profile examples of cultural heritage destruction in the world today.⁴⁸ By failing to endorse a broader interpretation of cultural heritage now — or at least to acknowledge gaps in the Rome Statute's protection — the ICC left swaths of at-risk cultural property underprotected at a time when its destruction is becoming an entrenched feature of modern warfare.

In *Al Mahdi*, the court forewent the chance to emphasize the *cultural* value of the sites — as intimately related to, but notably broader than, their *religious* (or even *historic*) value — to expand its protection of cultural heritage. On the relationship between these concepts, Professor Frances Raday asserts that “[c]ulture is a macroconcept, which subsumes religion as an aspect of culture.”⁴⁹ Similarly, a 2013 U.N. Security Council resolution on Mali “included destruction of cultural and historical sites, while omitting specific reference to religious sites, which are presumably subsumed within the [first two] categories.”⁵⁰ However, in assessing the gravity of Al Mahdi's crime, the court declared “that the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu,”⁵¹ without specifically naming cultural value.⁵² With an eye toward the differences in scope highlighted by scholars,

⁴⁶ Since 2002 “[t]here have thus far been 23 cases before the [ICC] The judges have issued 6 verdicts: 9 individuals have been found guilty and 1 has been acquitted.” *About*, INT'L CRIM. CT., <https://www.icc-cpi.int/about> [<https://perma.cc/HZ8H-L3QD>].

⁴⁷ Goldman & Simons, *supra* note 5 (quoting Whiting).

⁴⁸ Neither Syria nor Iraq is party to the Rome Statute, and a 2014 effort by the U.N. Security Council to invoke the court's jurisdiction by referring the situation in Syria to the ICC was vetoed by Russia and China. Patty Gerstenblith, *The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?*, 15 J. MARSHALL REV. INTELL. PROP. L. 336, 379 & n.169 (2016); *see also* Goldman & Simons, *supra* note 5.

⁴⁹ Frances Raday, *Culture, Religion, and Gender*, 1 INT'L J. CONST. L. 663, 665 (2003).

⁵⁰ Gerstenblith, *supra* note 48, at 385. The relevant resolution is S.C. Res. 2100 (Apr. 25, 2013).

⁵¹ *Al Mahdi*, Judgment & Sentence, ¶ 79.

⁵² *See id.* ¶ 78.

the court should have underlined cultural significance as the lowest common denominator among these terms — “cultural,” “religious,” and “historic” — and these sites. Emphasis on the sites’ underlying cultural import is compatible with, and indeed absorbs, their undeniable religious significance,⁵³ and also highlights how those who are not residents of Timbuktu or adherents of Islam share in the loss of this heritage. Additionally, this reorientation in focus would have guarded against the risk that certain species of cultural heritage — such as geological formations, like fossil beds or the towering basalt columns of Giant’s Causeway in Northern Ireland — will tumble into the gap between the narrower descriptions of “religious” and “historic” character used in Article 8(2)(e)(iv).

Similarly, the court declined to outline qualities beyond prior designation as a World Heritage site that militate in favor of protected status under Article 8(2)(e)(iv), despite the OTP’s inclusion of one non-UNESCO site, the Al Arawani Mausoleum,⁵⁴ in the prosecution. The court did not explain what distinguished this mausoleum from the other nine UNESCO sites, such that it could simultaneously lack special status from UNESCO and yet be afforded protection by the Rome Statute. As a result, future attempts to prosecute attacks against cultural heritage in which all or a majority of the sites at issue are not UNESCO-protected may suffer from uncertainty regarding the extent to which such sites are, as a matter of course, covered by the Rome Statute.

In addition to overlooking the pitfalls of using UNESCO designation as a proxy for protected status under Article 8(2)(e)(iv), the court failed to note more gaping inadequacies on the face of the Rome Statute’s protection for cultural heritage — a tack that it might have pursued as an alternative to broader interpretation of Article 8(2)(e)(iv). For example, an archaeological site lacking a building dedicated to one of the enumerated purposes, like religion or art, or without any structure that might qualify as a historic monument, currently seems to be excluded from Article 8(2)(e)(iv). Vandalism of such sites “has far more detrimental consequences for our knowledge and understanding of the past” than even the looting or destruction of a museum might, because generally “[archaeological] sites, the objects, and their associated contexts have never been recorded.”⁵⁵ Yet as Yaron Gottlieb notes, Article 8(2)(e)(iv) ostensibly omits such sites from its protection, since it refer-

⁵³ An emphasis on cultural value need not amount to a denial of religious significance, which would feel artificial in the context of discussing mausoleums and a mosque. Cf. Lori G. Beaman, *Battles over Symbols: The “Religion” of the Minority Versus the “Culture” of the Majority*, 28 J.L. & RELIGION 67, 83 (2013).

⁵⁴ *Al Mahdi*, Judgment & Sentence, ¶ 80.

⁵⁵ Gerstenblith, *supra* note 1, at 706.

ences only built structures and does not explicitly cover the *contents* of sites.⁵⁶ In dealing with nine mausoleums — valued not only for their form, but also for the remains and objects housed within them — the court might have acknowledged this lacuna in the Rome Statute in the hopes of spurring reform, like that advocated by Gottlieb.⁵⁷

Because the ICC “is very much a court of opportunity” due to its limited jurisdictional power and investigatory resources,⁵⁸ *Al Mahdi* represents a missed opportunity for the court. While the symbolic import of the prosecution is significant, the long-term impact of the ICC’s ruling — both as a message to the international community and as a precedent for future cases in the ICC and beyond — would have been amplified by a broader interpretation of Article 8(2)(e)(iv), or by a focus on the present inadequacies of the cultural heritage protection regime under the Rome Statute. Notwithstanding the low probability of another near-term prosecution of this offense at the ICC, such a stance would have both encouraged and established a stronger model for future prosecutions of cultural heritage crime in other contexts, such as domestic courts⁵⁹ or a potential Syrian Extraordinary Tribunal.⁶⁰ With the awareness that its next cultural heritage-related case is likely a distant speck on the horizon — and cognizant of the swelling tide of crime against cultural heritage in Syria, Iraq, and elsewhere — the ICC should have used *Al Mahdi* to bolster protection for vulnerable sites and their contents.

⁵⁶ See Yaron Gottlieb, *Criminalizing Destruction of Cultural Property: A Proposal for Defining New Crimes Under the Rome Statute of the ICC*, 23 PENN ST. INT’L L. REV. 857, 866 (2005). Gottlieb notes that the Rome Statute’s protection of cultural heritage:

. . . focuses on immovable objects. The contents of protected buildings, although sometimes containing more significant heritage than the buildings themselves, is [sic] not protected by [A]rticle 8(2)(b)(ix), the international armed conflict analogue to Article 8(2)(e)(iv). Movable cultural property is thus protected only through other provisions in the Rome Statute, which generally address the destruction of enemy property regardless of its unique cultural . . . contribution to humanity.

Id.

⁵⁷ See *id.* at 881 (calling for amendment of the Rome Statute to broaden cultural heritage protection). Although the *Al Mahdi* court intimated the possibility of using Article 8(2)(e)(xii), which offers general protection for civilian property, to prosecute crimes against cultural property, it failed to acknowledge that this generalized provision currently constitutes the only protection for movable cultural heritage in the Rome Statute. See *Al Mahdi*, Judgment & Sentence, ¶ 12 (quoting Rome Statute, *supra* note 2, art. 8(2)(e)(xii)).

⁵⁸ Goldman & Simons, *supra* note 5 (quoting Whiting).

⁵⁹ Such objectives would be consistent with the ICC’s status as a court of last resort, as well as the Rome Statute’s principle of complementarity to national criminal jurisdictions. See Rome Statute, *supra* note 2, art. 1.

⁶⁰ See M. CHERIF BASSIOUNI ET AL., THE CHAUTAUQUA BLUEPRINT FOR A STATUTE FOR A SYRIAN EXTRAORDINARY TRIBUNAL TO PROSECUTE ATROCITY CRIMES (2013), <http://insct.syr.edu/wp-content/uploads/2013/09/Chautauqua-Blueprint1.pdf> [<https://perma.cc/LQ88-YKF9>] (proposing an ad hoc tribunal to prosecute “serious violations of international humanitarian law and custom,” *id.* at 3).