

## **ZOOM IN**

### ***The question:***

#### **The Evolving Role of the United Nations Security Council and the Protection of Cultural Heritage in the Event of Armed Conflict**

*Introduced by Sabrina Urbinati*

On 24 March 2017, the United Nations Security Council (SC) adopted Resolution 2347 (2017)<sup>1</sup> (Resolution 2347). This Resolution concerns the protection of cultural heritage in the event of armed conflict and is intended to react to the hateful damage, destruction, smuggling, looting and illicit trafficking of cultural property to which the International Community has been faced with for several years now. These situations have materialized not only in Iraq and Syria – which are the most known cases – but also in Yemen, Libya, Afghanistan, Mali and other States. Such hateful conducts are carried out not only by foreign armies, but also by terrorist groups (such as Da'esh and Al-Qaida) which are also involved in the related armed conflicts. This conduct is rarely the result of the research deriving from a military advantage. In fact, terrorist groups may directly or indirectly damage, destroy, smuggle, loot and illegally sell cultural property in a bid to, on one hand, delete every trace of other civilisations and, on the other, obtain income to finance their activities.

Resolution 2347 has been defined as a historic one on the basis of two elements. First, even though in the last fifteen years the number of SC Resolutions incidentally dealing with the protection of cultural heritages in the event of armed conflict has increased exponentially, Resolution 2347 is the first one entirely dedicated to this matter. For instance, Resolution 1483 (2003) and Resolution 2199 (2015) dedicated only one or a few paragraphs to the protection of cultural heritages in the event of armed conflict and especially to the return of cultural

<sup>1</sup> UNSC Res 2347 (24 March 2017) UN Doc S/RES/2347.

property illicitly removed from Iraq and Syria.<sup>2</sup> Second, in Resolution 2347 the SC established a clear link between the protection of cultural heritage in time of armed conflict and the maintenance of international peace and security, emphasising that:

‘the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts, notably by terrorist groups, and the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States.’<sup>3</sup>

Resolution 2347 integrates the existing international legal framework composed by instruments and measures adopted by United Nations Educational Scientific and Cultural Organisation (UNESCO)<sup>4</sup> and other international organisations or institutions such as the International Institute for the Unification of Private Law (UNIDROIT),<sup>5</sup> the

<sup>2</sup> See UNSC Res 1483 (22 May 2003) UN Doc S/RES/1483, para 7 and UNSC Res 2199 (12 February 2015) UN Doc S/RES/2199 paras 15-17.

<sup>3</sup> See UNSC Res 2347 (2017) (n 1) para 5 of the Preamble.

<sup>4</sup> See among others: Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) 249 UNTS 216 and its two Protocols (The Hague, 14 May 1954) 249 UNTS 216 and (The Hague, 26 March 1999) 2253 UNTS 172; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970) 823 UNTS 231; Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972) 1037 UNTS 151; Convention on the Protection of the Underwater Cultural Heritage (Paris, 2 November 2001) 2562 UNTS 3; Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 10 October 2003) 2368 UNTS 3; Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005) 2440 UNTS 311. Amongst the measures adopted by UNESCO see the work done by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), as well as the ‘Rules of Procedure for Mediation and Conciliation in Accordance with Article 4, paragraph 1, of the States of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation’ (Paris, October 2010) UNESCO Doc CLT-2010/CONF.203/COM.16/7.

<sup>5</sup> UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995) 2421 UNTS 457.



Council of Europe (CoE),<sup>6</sup> the United Nations Office on Drugs and Crime (UNODC)<sup>7</sup> and the European Union (EU).<sup>8</sup> Even though this legal framework has been developed and improved over the last forty years, it continues to demonstrate its limits. It is composed of several ‘layers’ of binding and non-binding instruments, which have been subsequently adopted in order to address gaps and inconsistencies of the previous ones. Nevertheless, some of these gaps and inconsistencies still remain and they are prominently due to the temporal scope of the treaty format, which usually do not cover cases where the events occurred before its entry into force. Thus, when in 2012 the conflict broke out in Mali, this country was party only to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 UNESCO Convention) and its First Protocol, whereas it became party to the Second Protocol only after the destructions of important cultural property had taken place. Instead, Iraq and Syria are parties to the 1954 UNESCO Convention and to its First Protocol, but not to its Second Protocol. Furthermore, often the fields of application *ratione materiae* and *ratione personae* of the relevant treaties do not entirely correspond. For instance, in 1995 the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995 UNIDROIT Convention) was adopted to fill some important gaps of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention), such as the ineffective protection of archaeological finds deriving from illicit excavations. Finally, another shortcoming which diminishes the effec-

<sup>6</sup> Council of Europe Convention on Offences Relating to Cultural Property (Nicosia, 3 May 2017) CEST No.221.

<sup>7</sup> International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences (26 January 2015) UN Doc A/RES/69/196.

<sup>8</sup> See Council Regulation (EC) No 116/2009 of 18 December 2008 on the Export of Cultural Good [2009] OJ L39/1, Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State [2014] OJ L159/1, Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning Certain Specific Restriction on Economic and Financial Relations with Iraq [2003] OJ L169/6 and Council Regulation (EU) No 36/2012 of 18 January 2012 concerning Restrictive Measures in View of the Situation in Syria [2012] OJ L16/1.



tiveness of this legal framework lies in the different personal scope of application of the relevant treaties. For instance, the 1970 UNESCO Convention has 134 States Parties, whereas the 1995 UNIDROIT Convention has 41 States Parties.

It is clear from the above sketched overview that improvements are needed in the international legal framework concerning the international protection of cultural heritage in the event of armed conflict. The initiative undertaken by the Security Council with Resolution 2347 may represent a decisive leap forward in this respect. *QIL* asked two scholars renowned in the field of international cultural heritage law to assess this initiative. Kristin Hausler has addressed the question of how the UNSC established cultural heritage protection as a key element in the maintenance of international peace and security, through its focus on combatting terrorism financing. Andrzej Jakubowski has devoted his paper to the question of how and to what extent Resolution 2347 may substantially contribute to a better protection of cultural heritage in armed conflict and consequently of which place the UNSC may occupy in the global cultural heritage governance regime.

