

Resolution 2347: Mainstreaming the protection of cultural heritage at the global level

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1. Introduction

The UN Security Council (UNSC) resolution 2347¹ has been widely lauded as ‘a historic milestone’ in the international struggle to safeguard endangered heritage,² reflecting a growing awareness of the importance of heritage protection for global security.³ Indeed, this is the first resolution ever adopted by the UNSC focusing exclusively on the protection of cultural heritage as a matter of maintenance of international peace and security. Although it mainly deals with the fight against terrorism and the practice of terrorist groups to deliberately destroy and/or plunder cultural property, it also explicitly addresses the common interest and obligation of the entire international community to protect cultural heritage in the broader context of an armed conflict. It thus constitutes the first global initiative by the UNSC integrating and consolidating various elements of international law and policy vis-à-vis cultural heritage.

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¹ ‘Maintenance of International Peace and Security’ (24 March 2017) UN Doc S/RES/2347.

² A Azoulay, ‘Historic milestone for the protection of cultural heritage’ (24 March 2017) <<https://onu.delegfrance.org/Historic-milestone-for-the-protection-of-cultural-heritage>>.

³ I Bokova, ‘United Nations Security Council Resolution 2347’ (24 March 2017) UNESCO Doc. CL/4210.



Yet the core two-pronged question is *how* and *to what extent* this legislative action by the UNSC may substantively contribute to the better protection of cultural heritage in armed conflicts. What is the paramount objective and true significance of this instrument? This article seeks to critically evaluate the scope and content of Resolution 2347 in light of current international practice, comprising the developments in global heritage policy and governance. To this end, it deals first with the main challenges and pitfalls of the international protection of cultural heritage in armed conflict. Second, it discusses how Resolution 2347 addresses international obligations in the realm of cultural heritage. Next it analyses whether and how Resolution 2347 can be seen as a platform for more effective multilevel cooperation for the protection of cultural heritage in armed conflicts, enabling more effective operational measures. Hence the key objective of this article is to explore the place of the UNSC within the present-day global cultural heritage governance, in which the collective interests in the maintenance of international peace and security and the protection of human dignity are increasingly articulated.

2. *Revisiting the protection of cultural heritage in armed conflict*

The international legal protection of cultural heritage has long mirrored the traditional nature of international law, made by States and for States. In other words, international law has perceived cultural heritage as the exclusive domain of States. Indeed, the original fundamental rationale of the international cultural heritage legislation consisted in recognition of the right of every State to identify, physically control, and protect its tangible cultural heritage against irreparable loss in the event of armed conflict, and to prevent its unlawful removal from a State's territory during both war and peacetime. This State-oriented perspective, aimed at preserving national heritage against 'external' threats to its integrity, has been gradually broadened and today encompasses a vast range of cultural manifestations and interests attached to them. Moreover, cultural heritage has increasingly been perceived as a holistic concept inherently connected with the identity of peoples as well as with the human rights of all, both in their individual and collective dimensions, thus raising the question of efficient legal mechanisms to be applied in the



cultural sphere of human existence.⁴ In fact, the regulatory basis for the protection and enjoyment of cultural heritage belongs to truly diverse and complex areas of international law.⁵

2.1. *International obligations and consequences of their breach*

Undoubtedly, the most developed international legal framework has been established in relation to the protection of cultural heritage in the event of armed conflict. The tragic experiences of the wars in the former Yugoslavia and the destruction of world-famous statues of Buddha in Bamiyan raised global awareness about the need for a more efficient legal system for the protection of cultural heritage during armed conflicts, driven by the general interest of humanity.⁶ Since then, the general humanitarian regime established by the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention)⁷ has become nearly universal. Most of the States of the world have already become parties to this treaty, including those powers which had long opposed to it.⁸ Also the First Protocol to the 1954 Hague Convention,⁹ regarding the restitution of cultural property unlawfully removed in connection with an armed conflict, and the Second Protocol to the Convention,¹⁰ establishing a new category of enhanced protection for cultural heritage that is particularly important for humankind, have also received a large number of ratifications. Accordingly, the legal regime set

⁴ See OHCHR 'Access to cultural heritage. Report of the independent expert in the field of cultural rights Farida Shaheed' (21 March 2011) UN Doc A/HRC/17/38, paras 4-17.

⁵ J Blake, *International Cultural Heritage Law* (OUP 2015) 4-6; see also C Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010) 7-13.

⁶ See F Francioni and F Lenzerini, 'The Destruction of the Buddhas of Bamiyan and International Law' (2003) 14 *Eur J Intl Law* 619.

⁷ (Adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240.

⁸ Importantly, in 2017 the United Kingdom finally became the party to the 1954 Hague Convention, see Cultural Property (Armed Conflicts) Act 2017 (23 February 2017) <<http://www.legislation.gov.uk/ukpga/2017/6/contents/enacted/data.htm>>.

⁹ Protocol to the Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (adopted on 14 May 1954, entered into force 7 August 1956) 249 UNTS 358.

¹⁰ Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted on 26 March 1999, entered into force 9 March 2004) 2252 UNTS 172.

up by the 1954 Hague Conventions and its Protocols, supported and supplemented by other humanitarian law instruments, in particular the 1977 Additional Protocols to the 1949 Geneva Conventions,¹¹ today constitutes an important segment of the global legal framework for the protection of cultural heritage in armed conflict. Significantly, most of the rules set forth in these treaties are also perceived as corresponding to customary international law.¹² Furthermore, the intentional destruction and plunder of cultural heritage during armed conflicts have also been widely recognized by various international bodies as affecting the general interest of humanity,¹³ as well as constituting serious violations of human rights,¹⁴ together with a call for the ‘combating of impunity’¹⁵ of perpetrators.

Notwithstanding the wide recognition of the international obligations to protect cultural heritage from destruction and plunder in armed conflicts, such properties are still subject to attacks and looting. The destruction of the protected monuments in Timbuktu (Mali) in 2013 and the ongoing tragedy of historical and cultural heritage in Syria and Iraq are the most shocking examples of the failure to comply with the international law rules in this regard. Indeed, apart from the actual fulfilment of the obligation to protect cultural heritage during armed conflicts, particularly in those involving terrorist groups, the other major question regards the consequences of the violation of such obligations. Various entities may bear responsibility for international offences against cultural

¹¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1987) 1125 UNTS 3 (Protocol I) art 85(4)(d); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Protocol II) art 16.

¹² See, *inter alia*, J M Henckaerts et al, *Customary International Humanitarian Law* (CUP 2005) vol 1, 127-138, 523-25 and vol 2, 723-813, 3452 *passim*; UNSG ‘Secretary-General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law’ (6 August 1999) UN Doc ST/SGB/1999/13 para 6(6).

¹³ See UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, adopted by unanimous voice at the 32nd General Conference of UNESCO (17 October 2003) UNESCO Doc 32 C/Res 33 preamble.

¹⁴ OHCHR ‘The intentional destruction of cultural heritage as a violation of human rights. Report of the Special Rapporteur in the field of cultural rights Karima Bennouna’ (9 August 2016) UN Doc A/71/317.

¹⁵ *ibid* para 54.



heritage committed during an armed conflict. However, the rules governing their responsibility are regulated under distinct, albeit interconnected, regimes of international law.

The violation by a State of its cultural heritage obligation in armed conflict may clearly give rise to international obligations of that State vis-à-vis the injured State(s). Recently, this has been the case with respect to Croatia and Serbia. The latter State has assumed responsibility for violations of the rules governing war conduct in relation to cultural heritage, under the First Protocol to the 1954 Hague Convention, committed by its predecessor, the Federal Republic of Yugoslavia, during the war with Croatia. On 23 March 2012 both States signed a protocol which provided for the restitution by Serbia of certain cultural assets seized and removed from the territory of Croatia during the war in the 1990s.¹⁶ Similarly, the Eritrea–Ethiopia Claims Commission, established in order to settle the disputes between these two States arising from events which took place during the war of 1998–2000,¹⁷ found Ethiopia responsible for the destruction of an important archaeological monument in the occupied territory of Eritrea even though both States were not parties to the 1954 Hague Convention. It held that such an act ‘was a violation of customary international humanitarian law’.¹⁸ As a result, Ethiopia was directed to pay compensation for damaging this cultural heritage site.¹⁹

However, the regime of international responsibility does not seem to be the best, most suitable legal framework to address the consequences of serious violations of cultural heritage obligations in present-day armed conflicts. There are three major reasons for this. First, the recent crimes against cultural heritage have not always been committed in international armed conflicts involving acts that can be attributed to States. Second, it is disputable whether international responsibility can be effectively invoked when such acts were committed by a State against cultural heritage

¹⁶ See ‘Protocol on Restitution of Cultural Assets from Serbia to Croatia’ (signed 23 March 2012) <<http://www.culturenet.hr/default.aspx?id=44206>>.

¹⁷ Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (signed 12 December 2000, entered into force on the date of signature) UN Doc A/55/686-S/2000/1183 Annex.

¹⁸ Partial Award—Central Front—Eritrea’s Claims 2, 4, 6, 7, 8, and 22 (28 April 2004) <<https://arbitrationlaw.com/library/eritrea-ethiopia-claims-commission-partial-awards-central-front-eritreas-claims-2-4-6-7-8-22>> para 113.

¹⁹ *ibid* para 114.

situated on its own territory, as happened in Syria when the Syrian Army attacked cultural heritage sites inscribed on the World Heritage List, such as Krak des Chevaliers.²⁰ Theoretically, the destruction of an internationally protected cultural heritage site, deemed to be of particular importance to all humankind, could amount to the violation of obligations *erga omnes*, injuring a plurality of States or the international community as whole. Thus the question arises whether a State or States other than an injured State may effectively invoke the responsibility of another State if the cultural heritage obligation breached is owed to the international community as a whole, as provided by Article 48(1)(b) of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).²¹ In this regard, the major challenge concerns the catalogue of well-established set of obligations *erga omnes*. Indeed, the existence of such obligations, even in relation to the World Heritage Sites, has not been yet widely and unanimously accepted by the international community.²² These uncertainties as to the effectiveness of international cultural heritage obligations have also impact on the procedural issue of standing before international adjudicating bodies. Although the International Court of Justice held that with respect to obligations *erga omnes*, every State has ‘a legal interest’ in their observance,²³ this does not mean that any State has *locus standi* before international courts to assert a claim to cease the alleged infringement by another State of an obligation towards internationally protected cultural heritage. Hence it has been noted that ‘the law of State responsibility is, in practice, an unlikely and ill-adapted mechanism for compelling a State to preserve cultural heritage situated

²⁰ R Fisk, ‘Syria’s ancient treasures pulverised’ *The Independent* (4 August 2012) <www.independent.co.uk/voices/commentators/fisk/robert-fisk-syrias-ancient-treasures-pulverised-8007768.html>.

²¹ UNGA Res 56/83 (28 January 2002) UN Doc A/56/83 Annex.

²² See A Jakubowski, ‘State Responsibility and the International Protection of Cultural Heritage in Armed Conflicts’ (2015) 1 *Santander Art and Culture L Rev* 147, 162-163.

²³ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Merits) [2012] ICJ Rep 422 para 68; see Th Weatherall, *Jus Cogens: International Law and Social Contract* (CUP 2015) 374, 382.



on its territory.²⁴ Questions regarding available and proportionate countermeasures are particularly thorny.²⁵

Finally, the recent attacks against cultural heritage have been committed by various non-State, extremist, and terrorist groups operating beyond the control of any State. The latter feature of the current crimes against cultural heritage in armed conflict raises the questions of efficient measures to counteract such offences and eliminate the impunity of perpetrators, thus also raising questions about international criminal liability rather than State responsibility for wrongful acts.

Since the horrifying experience of the wars in the former Yugoslavia, the regime of international criminal law has been significantly extended to cover cultural heritage crimes committed in armed conflict. The Second Protocol to the 1954 Hague Convention (1999) set up the most advanced and detailed regime of individual criminal responsibility for offences against cultural heritage (committed in both international and non-international armed conflicts). Certain acts against cultural heritage were also criminalized under the Statute of the International Criminal Tribunal for ex-Yugoslavia (ICTY).²⁶ The practice of this international *ad hoc* tribunal also offers the most comprehensive case law to date in the area of individual criminal responsibility for the breach of international cultural heritage obligations, paving the way for other international adjudicating bodies which have competence in the matter of cultural heritage crimes.²⁷ In this regard, much has been expected from the recent judgment rendered by the International Criminal Court (ICC) in the *Al Mahdi* case.²⁸ On 27 September 2016 Mr. Ahmad Al Mahdi Al Faqi (Al Mahdi) was convicted for war crimes committed in 2012 in Timbuktu by

²⁴ R O'Keefe, 'World Cultural Heritage: Obligations to the International Community as a Whole?' (2004) 53 Intl Comp LQ 189, 207.

²⁵ *ibid* 207-08.

²⁶ UNSC Res 827 'Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991' (25 May 1993) UN Doc S/RES/827, as amended.

²⁷ F Lenzerini, 'The Role of International and Mixed Criminal Courts in the Enforcement of International Norms Concerning the Protection of Cultural Heritage' in F Francioni, J Gordley (eds), *Enforcing International Cultural Heritage Law* (OUP 2013) 40, 58 ff.

²⁸ *Prosecutor v Al Faqi Al Mahdi* (Judgment and sentence) ICC-01/12-01/15-171 (27 September 2016) para 28.



intentionally directing attacks against buildings dedicated to religion and/or historical monuments (under Article 8(2)(e)(iv) of the Rome Statute).²⁹ Additionally, in August 2017 the Court issued a Reparations order which imposed individual and collective reparations for the community of Timbuktu and assessed Al Mahdi's liability for those reparations at 2.7 million euros.³⁰ This is the first case decided by the ICC concerning the destruction of cultural property. It is also the first time when an international criminal tribunal dealt exclusively with the crime of intentional (deliberate) attacks directed against protected cultural heritage sites.³¹ It has therefore been perceived as a landmark case, paving the way for a more efficient enforcement of international justice with respect to cultural heritage crimes.³² It has also served to enhance public awareness concerning the seriousness and gravity of international cultural heritage crimes for all humankind. However, it needs to be emphasized that the ICC will very unlikely serve as the global forum for executing justice in respect of cultural heritage crimes.³³ As of October 2017, only 123 States are party to the Rome Statute, excluding Syria, Iraq and three permanent members of the UNSC (China, Russia and the USA).³⁴ Moreover, decisions on admissibility refer to one, two, or three cases a year, making the participation of the ICC marginal in the context of national and international justice. It also appears that the *Al-Mahdi* case, important and instructive as it is, does not provide any easy pathway for further prosecutions. The conviction of Al Mahdi was based on his guilty plea, which resulted in a rather quick and smooth trial and no lodging of appeals, but it is unlikely that future trials would go so smoothly. Such circumstances are not likely to characterize other instances of cultural heritage crimes.

²⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

³⁰ *Prosecutor v Al Faqi Al Mahdi* (Reparations order) ICC-01/12-01/15-236 (17 August 2017) Disposition.

³¹ See T Scovazzi, 'La prima sentenza della Corte penale internazionale in tema di distruzione di beni culturali' (2017) 11 *Diritti umani e diritto internazionale* 77.

³² For instance, see 'Statement N_ 2015 – 02 of the Malian Coalition for the ICC' (2015) <http://iccnow.org/documents/CMCPI_Al_Faqi.pdf>.

³³ See K Wierczynska, A Jakubowski, 'Individual Responsibility for Deliberate Destruction of Cultural Heritage: Contextualizing the ICC Judgment in the *Al Mahdi* Case' (2017) 16 *Chinese J Intl Law* 695, 718.

³⁴ See <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en>.



Hence it remains the prime responsibility of States to prosecute international cultural heritage crimes before their respective domestic courts.

The current violations of international cultural heritage obligations have also given rise to another pressing issue – that of the international responsibility – or corporate (group) criminal responsibility – of non-State actors such as Da'esh (ISIL). To date no corporate entity (non-State group) has been prosecuted by any domestic or international court for any international cultural heritage crime. Furthermore, there is no such practice in relation to any other international crimes either. Importantly, the statutes of international criminal tribunals, including the Rome Statute, provide only for jurisdiction over natural persons – not their collectivities. Hence, even though it has been asserted that non-State armed groups exercising control over a given territory and population are bound by international law rules,³⁵ there are so far no 'accepted rules or standards' for corporate criminal responsibility under international law.³⁶

2.2. *Development of international policy for the protection of cultural heritage*

All the aforementioned shortcomings of the current international law system for the effective protection of cultural heritage in armed conflicts as well as the struggle against the violations of international obligations in this regard call for an enhanced international cooperation. This would involve the practical implementation of the principal of cooperation enshrined in the vast international law instrumentarium, both in the realm of cultural heritage protection as well as in novel methods of global governance, involving the coordination of actions of various stakeholders,

³⁵ See Z Howe, 'Can the 1954 Hague Convention Apply to Non-State Actors?: A Study of Iraq and Libya' (2012) 47 *Tex Int'l L J* 403; N Gal-Or et al (eds), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Brill-Nijhoff 2015); K Hausler, 'Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups' (2015) 1 *Santander Art and Culture L Rev* 129.

³⁶ J Crawford, *State Responsibility: The General Part* (CUP 2013) 81.

including non-State actors. Importantly, the ‘2030 Agenda for Sustainable Development’ adopted by the UN General Assembly in 2015,³⁷ which acknowledges the importance of global citizenship, cultural diversity, and intercultural dialogue, recognizes cultural heritage as one of the overarching principles of sustainable development. The protection and enjoyment of cultural heritage are thus increasingly seen as crucial for effective global governance and indivisible from the development of a global civic society. Hence cultural belonging, cultural rights, cultural voice, and cultural inclusion – for both individuals and groups – now constitute claims which can be incorporated into demands for the realization of economic, political and social rights. Yet the full realization of these claims requires a novel system of both global culture and cultural heritage governance, which would justly allocate cultural rights and responsibilities between rights’ holders and decision- and policy-makers, calling for multilevel mechanisms linking together various stakeholders and actors to help ensure a fair, participatory management of cultural issues for the benefit of communities, locally, regionally, and globally.

One of the major concerns voiced in relation to the conflicts in Syria and Iraq is the struggle against illicit traffic in cultural objects and the facilitation of their return to the countries of origin. Accordingly, there is a renewed interest in the establishment of depositories of endangered cultural heritage originating from the territories affected by armed conflicts, as provided by Article II of the First Protocol to the 1954 Hague Convention,³⁸ and the need for the establishment of ‘safe havens’ for such property is widely voiced.³⁹ The Abu Dhabi Declaration,⁴⁰ adopted during the Conference on Safeguarding Endangered Cultural Heritage, held

³⁷ ‘Transforming our world: the 2030 Agenda for Sustainable Development’ UNGA Res 70/1 (21 October 2015) UN Doc A/RES/70/1.

³⁸ ‘Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came’.

³⁹ See ‘Expert meeting on the “Responsibility to Protect” and the protection of cultural heritage: Recommendations’ (27 November 2017) para 3 <www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/R2P-Recommendations-EN.pdf>.

⁴⁰ See <www.diplomatie.gouv.fr/en/french-foreign-policy/cultural-diplomacy/events/article/conference-on-safeguarding-endangered-cultural-heritage-abu-dhabi-declaration>.



on 2-3 December 2016 and promoted by France and the United Arab Emirates, as well as subsequent efforts aimed at its implementation,⁴¹ constitute perhaps the most visible incarnation of these objectives and considerations. The conference gathered together the representatives of forty States, museum officials, heritage experts and non-governmental organizations. The final declaration also envisages the creation of an international fund for the protection of endangered cultural heritage during armed conflict, which would help finance preventive and emergency operations, the fight against the illicit trafficking of cultural artefacts, as well as contribute to the restoration of damaged cultural property. Moreover, it foresees the creation of an international network of safe havens to temporarily safeguard cultural property endangered by armed conflicts or terrorism on the territory where it is located, or if it cannot be secured at the national level, in a neighbouring country, or as a last resort in another country, in accordance with international law at the request of the governments concerned, and taking into account the national and regional characteristics and contexts of the cultural property to be protected.

Such a cooperative, participatory method for the protection of cultural heritage has also been emphasized by UNESCO as a part of its role in global governance.⁴² In fact, the #Unite4Heritage campaign,⁴³ launched by UNESCO in 2015,⁴⁴ is a global movement to protect and safeguard heritage under threat, addressed to all people, particularly to youth, individually and collectively, and aimed at promoting cultural diversity, tolerance, and cross-cultural dialogue. The campaign, triggered by the destruction of cultural heritage in Syria and Iraq, invites people to change their profile on social networks to raise awareness about heritage destruction and to promote sustainable activities to enhance the societal values of heritage. Moreover, within the #Unite4Heritage campaign, the 38th General Conference of UNESCO adopted the 'Strategy for the reinforcement of the Organization's actions for the protection of culture and the promotion of cultural pluralism in the event of armed conflict'

⁴¹ See <<https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-culturelle/les-actualites-et-evenements-de-la-diplomatie-culturelle-en-2017/article/patrimoine-conference-des-donateurs-sur-le-patrimoine-culturel-en-peril-20-03>>.

⁴² I Bokova, 'Global governance for the 21st century: the UNESCO angle' (2011) UNESCO Doc ERI.2011/WS/4, 11-12.

⁴³ See <<http://www.unite4heritage.org>>.

⁴⁴ See <<http://www.unesco.org/new/en/amman/unite-for-heritage>>.



(2015 UNESCO Strategy).⁴⁵ This strategy has two objectives: to strengthen UNESCO Member States' ability to prevent, mitigate, and recover the loss of cultural heritage and diversity as a result of armed conflict; and to incorporate the protection of culture into humanitarian actions, security strategies, and peace-building processes.

Without doubt the protection of cultural heritage today constitutes a global imperative, calling for political, legal and technical cooperation among transnational actors, aimed at negotiating solutions intended to be implemented on an international scale. However, the value of cultural heritage for global development, the maintenance of peace, and the protection of all human rights is hampered by the weaknesses of the existing legal mechanisms on the one hand, and the evolving multipolar and multilevel initiatives and programmes on the other. A more integrated approach and focused guidance are necessary.

3. *Cultural heritage and armed conflicts – The expanding mandate of the UNSC*

Unsurprisingly, the role of the UNSC can be viewed as paramount in these consolidating processes. Indeed, since the end of cold war the activity of the UNSC, as the core organ responsible for the maintenance of international peace and security, has intensified. This includes activities focused on the protection of cultural heritage. In the context of the armed conflicts in Kuwait (1990-1991)⁴⁶ and Iraq (2003)⁴⁷ the UNSC has become an important cultural heritage law-maker. Acting under Chapter VII of the UN Charter, it has set up binding obligations supplementing and reinforcing the existing set of international cultural heritage obligations. In particular, UNSC Resolution 1483 (2003) confirmed the binding obligation of the entire international community to counteract the crimes against cultural heritage committed in armed conflicts. Accordingly, all the UN Member States were bound to 'take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and

⁴⁵ (2 November 2015) UNESCO Doc 38C/Res; also see UNESCO Doc 39C/57.

⁴⁶ UNSC Res 686 (2 March 1991) UN Doc S/RES/686.

⁴⁷ UNSC Res 1483 (22 May 2003) UN Doc S/RES/1483.



religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq.⁴⁸ Thus, the resolution – as a binding international instrument – established the *erga omnes* obligation to ensure that cultural property illicitly transferred from occupied territories would be returned.

In a similar vein, the series of resolutions adopted in relation to the situations in Mali, Syria and Iraq have widely addressed the binding nature of the prohibition of attacks directed against protected cultural heritage, including the plunder of cultural property. In particular, UNSC Resolution 2199, adopted in 2015,⁴⁹ obliged all the States to take – in cooperation with Interpol, UNESCO and other international organizations – appropriate measures to counteract the trade in cultural, scientific and religious objects unlawfully removed from the territories of Iraq and Syria in order to disrupt terrorist financing through the illicit trafficking of antiquities. The UN Member States are thus obliged to prohibit the international trade in such materials and facilitate their safely return to the peoples of Iraq and Syria. The implementation of these provisions has resulted in a set of national and regional instruments designed to control the cross-border circulation of cultural material originating from these conflict-ridden territories. According to Irina Bokova, Director General of UNESCO, nearly fifty States have already strengthened their legislation and are sharing information and data in order to dismantle trafficking routes and to facilitate the return of unlawfully removed and traded cultural property.⁵⁰ At the regional level, important developments have also taken place within the European Union (EU),⁵¹ where a series of instruments concerning control over the import of cultural materials from the territories of Syria and Iraq have been enacted.⁵²

⁴⁸ *ibid* para 7.

⁴⁹ UNSC Res 2199 (12 February 2015) UN Doc S/RES/2199.

⁵⁰ See 'UN Security Council adopts historic resolution for the protection of heritage' (24 March 2017) <<https://en.unesco.org/news/security-council-adopts-historic-resolution-protection-heritage>>.

⁵¹ For more on this topic, see R Mackenzie Gray-Scott, 'The European Union's Approach to Trade Restrictions on Cultural Property: A Trendsetter for the Protection of Cultural Property in Other Regions?' (2016) 2 *Santander Art and Culture L Rev* 211, 217-220.

⁵² Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC)

On the policy level, Resolution 2199 contributed to the already-mentioned Abu Dhabi Declaration of 2016, which in turn accelerated the enactment of domestic regulatory frameworks (e.g. in France and Switzerland) enabling the establishment of safe havens for cultural heritage originating from the conflict-ridden territories. The principles of this declaration also had an important impact on the UNSC actions, which led to the adoption of Resolution 2347. Accordingly, the actions of the UNSC have thus brought together and bridged already existing international law frameworks for the protection of cultural heritage in armed conflicts, the anti-terrorist global agenda, and several newly developed policy initiatives.⁵³

4. *Resolution 2347 – A more coherent global regime for the protection of cultural heritage in armed conflicts*

Resolution 2347 has widely been acclaimed for being the first UNSC resolution dealing entirely with the protection of cultural heritage as a matter of international peace and security. It reiterates that the destruction of cultural property hinders reconciliation among people, stymies or reverses development, and destroys cultural diversity. It also reaffirmed that such acts may constitute a war crime and that perpetrators must be brought to justice, linking cultural heritage crimes with threats to global peace. However, the significance of this resolution goes far beyond the enhancement of obligations imposed on all the UN members to prosecute and punish cultural heritage crimes. In fact, it may be argued that the UNSC has opted for mainstreaming of the protection of cultural heritage in armed conflicts within a broader global agenda.

No 2465/96; Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011, as amended.

⁵³ See the proceedings of the 7907th meeting of the Security Council UN Doc S/PV.7907 (24 March 2017).



4.1. *Strengthening and enforcing international cultural heritage obligations*

Although Resolution 2347 deals with the protection of cultural heritage in armed conflict in a particular context, namely the fight against terrorism and the practice of terrorist groups to deliberately destroy and/or plunder cultural property and refers to the practice by which armed groups (ie terrorists) finance their actions, it also underlines that even though this practice has recently been largely attributed to non-State armed groups, the main responsibility for the preservation of cultural goods lies with States. It explicitly emphasizes that ‘unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts (...), 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.’⁵⁴ Moreover, it clearly states that the plunder of cultural heritage and its subsequent illicit trafficking often serve as methods and resources supporting armed conflicts, thus affecting global peace and security.⁵⁵ In this regard, Resolution 2347 reinforces a set of crucial obligations under general international law.

First, it reaffirms that all UN Member States are bound to prohibit and counteract cultural heritage crimes committed in the event of an armed conflict (paras 1-3). It recognizes the importance of the humanitarian regime under the 1954 Hague Convention and calls upon ‘all Member States that have not yet done so to consider ratifying’ this treaty and its Protocols (para 7). Second, it reminds the States that they are under an obligation to bring the perpetrators to justice, since ‘directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law a war crime’ (para 4). It also emphasizes that illicit trafficking in cultural material may constitute an element of transnational organized crime, and that all Member States are bound under the 2000 UN Convention against

⁵⁴ (n 1) preamble 5th recital.

⁵⁵ *ibid* 7th-10th recitals.

Transnational Organized Crime⁵⁶ to provide adequate measures to counter such crimes (para 9).⁵⁷ It urges States to strengthen international cooperation with respect to global criminal justice and to prevent trafficking in cultural property by disrupting organized criminal and terrorist networks. Accordingly, UN Member States are under a binding international obligation to cooperate in fighting against the impunity of perpetrators of crimes against cultural heritage. Next, Resolution 2347 emphasizes that no one should be permitted to engage in the trade of illegally-acquired cultural goods, ie that States should adopt appropriate national regulations to prevent such trafficking by private individuals and even treat such activities as one of the most serious transnational crimes. Moreover, if such objects were illegally exported they should be returned to their place of origin. These provisions constitute perhaps the most important aspect of Resolution 2347, as they reaffirm the binding nature of the obligations to prevent and counteract illicit trafficking in cultural materials originating from an area of armed conflict (para 8), and to facilitate ‘the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property’ (para 12). Thus, Resolution 2347 places a binding obligation upon the entire international community to ensure that cultural property illicitly transferred from conflict-ridden territories must be returned once the conflict is over.

4.2. *Implementation of cultural heritage obligations through multi-level cooperation*

Resolution 2347, the adoption of which was promoted by UNESCO and the governments of France and Italy (which were already engaged in the protection of cultural heritage in Mali, Syria and Iraq), calls for enhanced multilevel cooperation between various States and non-State actors operating on both the international and national forums. Alongside the enhanced collaboration among international organizations and agencies (UNESCO, World Customs Organization (WCO), INTERPOL and the UN Office on Drugs and Crime (UNODC)), the UNSC promotes the

⁵⁶ (Adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

⁵⁷ Also see 10th recital (*ibid*).



participation of civic society, including experts and practitioners, in elaborating ‘standards of provenance documentation, differentiated due diligence and all measures to prevent the trade of stolen or illegally traded cultural property’ (para 17(g)).

Importantly, Resolution 2347 encourages the UN Member States to establish a network of ‘safe havens’ in their own territories to protect cultural property, ‘while taking into account the cultural, geographic, and historic specificities of the cultural heritage in need of protection’ (para 16). In this regard, the resolution refers to the 2016 Abu Dhabi Declaration. However, while the latter promoted the creation of a network of safe havens in the country of origin, and as a last resort in another country, Resolution 2347 stresses that Member States, rather than international bodies, have the primary responsibility for protecting dispersed cultural heritage through the creation of safe havens in their own territory. Such a solution was aimed at respecting State sovereignty, as the establishment of safe havens for cultural heritage outside the country of origin was particularly troubling for some members of the UNSC, especially Egypt.⁵⁸ Thus, although the idea of extraterritorial safe havens has not been openly supported by Resolution 2347, the UNSC does not exclude such a possibility. In fact, it makes reference to the Draft Action Plan for the Implementation of the Strategy for the reinforcement of UNESCO’s action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict,⁵⁹ which it states ‘several suggestions to facilitate’ such safeguarding activities (para 16). The Draft Action Plan mentions various possible scenarios and recalls the set of operational guidelines adopted by the International Law Association in 2008.⁶⁰ According to the definition provided by this document, ‘safe havens are facilities created in order to care for cultural material that has been endangered by armed conflict, natural disasters, illegal excavation, or other insecurity and has therefore been removed for safekeeping and

⁵⁸ In fact, Egypt explicitly rejected ‘the transfer of a State’s cultural heritage out of its territory under the pretext of conserving it in safe havens’ (UN Doc S/PV.7907 (n 53) 15).

⁵⁹ See <<https://en.unesco.org/system/files/all.pdf>>.

⁶⁰ ‘Guidelines for the establishment and conduct of safe havens as adopted by the International Law Association’ ILA Res No 2/2008 (21 August 2008) <<http://www.ila-hq.org/index.php/committees>>.

preservation from the territory of the source state to the territory of another state or to a place of safety in the source state'. Such 'facilities' are bound to 'return cultural material items as soon as the established owner or other established source of the material so requests, provided that the safe haven is satisfied with the conditions for safekeeping and preserving the material by the requesting state or entity.' Interestingly, Resolution 2347, in the spirit of Protocol No. 1 to the 1954 Hague Convention, calls upon the UN Member States to take 'appropriate steps to inventory cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance which have been illegally removed, displaced or transferred from armed conflict areas, and coordinate with relevant UN entities and international actors in order to ensure the safe return of all listed items' (para 17(j)). Thus, the UNSC, by obliging Member States to create inventories of unlawfully removed cultural property, *de facto* promotes the establishment of extraterritorial safe havens for cultural material unlawfully removed in connection with armed conflict and terrorism, thus challenging some of arguments against such facilities based on exclusive sovereign rights to cultural heritage.

Next, Resolution 2347 refers to the creation of an international fund for the protection of endangered cultural heritage, as had been announced at the 2016 Abu Dhabi Declaration. Yet it only *encourages* the UN Member States 'to provide financial contributions to support preventive and emergency operations, fight against the illicit trafficking of cultural property, as well as undertake all appropriate efforts for the recovery of cultural heritage, in the spirit of the principles of the UNESCO Conventions' (para 15). The creation of a separate new fund was not specifically envisaged, as various UNSC members indicated that UNESCO had already been engaged in various initiatives and funding projects for the protection of cultural heritage and a new international fund to safeguard endangered cultural heritage in areas of armed conflict would duplicate or even compete with the other UNESCO funding instruments.⁶¹ Therefore, the UNSC chose a compromise solution, providing a certain reconciliation between the various initiatives for the funding of the protection of cultural heritage on a global scale.

Last but not least, Resolution 2347 skilfully bridges together various policy frameworks, including the already mentioned #Unite4Heritage

⁶¹ UN Doc S/PV.7907 (n 53) 16, 19-21.



campaign, the 2016 Abu Dhabi Declaration, and the outcomes of other interstate international conferences, such as the International Conference “Culture as an Instrument of Dialogue among Peoples”, held in Milan on 31 July-1 August 2015 and the International Conference on the victims of ethnic and religious violence in the Middle East, held in Paris on 8 September 2015; as well as novel technical tools designed to struggle against the illicit trafficking in cultural property, such as the UNODC SHERLOC online portal⁶² or WCO ARCHEO Platform.⁶³ In this regard, the UNSC has implicitly substantiated the idea of global cultural heritage governance built on a variety of institutions, mechanisms, relationships, and tools through which the collective interests of the international community in safeguarding cultural heritage in armed conflict are enhanced and implemented on the global plane.

5. Conclusions: Towards a multi-level global cultural heritage governance

The impact of Resolution 2347 has been further contextualized and implemented in distinct areas of international cultural law and policy.⁶⁴ Importantly, its objectives have immediately been confirmed as political commitments of the G7 countries at the group’s recent summit. The 2017 Florence Declaration, constituting the first initiative by the major advanced economies of the world in the sphere of protection of culture and cultural heritage, reaffirmed the importance of cultural heritage for human existence, global peace, and economic development.⁶⁵ To this end, having in mind Resolution 2347 it called for strengthening the activities of international organizations, in particular UNESCO, for the protection of cultural heritage for the benefit of the entire global society. Accordingly, the G7, while principally an economic forum, explicitly recognized that the growth and sustainable development of all societies, including in

⁶² See <<https://www.unodc.org/cld/v3/sherloc>>.

⁶³ See <www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/archo_brochure_en.pdf>.

⁶⁴ See ‘Report of the Secretary-General on the implementation of Security Council resolution 2347 (2017)’ (11 November 2017) UN Doc S/2017/969.

⁶⁵ See <www.beniculturali.it/mibac/multimedia/MiBAC/documents/1490881204940_DECLARATION-Dichiarazione.pdf>.



terms of economic prosperity, are dependent on the protection of cultural heritage, particularly in the event of armed conflicts. Therefore, it called upon all States ‘to take strong and effective measures to combat the looting and trafficking in cultural property from their places of origin, particularly from countries experiencing conflict and internal strife, and to identify and prohibit the trade in looted cultural property that has been trafficked across borders and, as appropriate, to reinforce the monitoring of free ports and free trade zones.’⁶⁶ In this vein, the Ministers of Culture of the G7 also supported the #Unite4Heritage and other initiatives by UNESCO aimed at protecting cultural heritage and guaranteeing its fullest enjoyment.

The action by the UNSC has also been pivotal for the development of the European, regional legislative and policy frameworks for the protection of cultural heritage in the context of armed conflicts and terrorism. Within the EU’s agenda for the European Year of Cultural Heritage (2018), the role of cultural heritage has been emphasized as being of great value to all the societies of the continent from a cultural, environmental, social and economic point of view.⁶⁷ It also explicitly recognizes that the sustainable management and governance of cultural heritage should constitute a strategic choice for the 21st century. Importantly, the European Commission has recently proposed new rules to clamp down on the illegal import and trafficking of cultural goods from outside the EU, often linked to terrorist financing and other criminal activity.⁶⁸ This envisaged regime of a new regulation (to be operative in 2019) would, for the first time, introduce to the EU legal order a complex system for controlling the importation of cultural heritage, thus contributing to a more efficient global system for the protection of cultural property. Accordingly, it will provide a new common EU definition of ‘cultural goods’ to be applied at importation points, which covers a broad range of objects of particular value for humankind and at least 250 years old. The importers will be subject to a detailed system of control over the title and time of lawful

⁶⁶ These commitments have also been confirmed by G20 Leaders, see ‘G20 Leaders’ Statement on Countering Terrorism’ (7 July 2017) para 16 <http://europa.eu/rapid/press-release_STATEMENT-17-1955_en.htm>.

⁶⁷ Decision (EU) 2017/864 of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018) para 16.

⁶⁸ Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods (13 July 2017) COM(2017) 375 final.



acquisition. Moreover, each EU Member State will be bound to introduce the rules on penalties ('effective, proportionate and dissuasive') applicable to the infringements of the new regulation, 'in particular, to the making of false statements and the submission of false information to obtain entry of cultural goods into the customs territory of the Union'.⁶⁹

Alongside the developments within EU law and policy, a new regulatory regime designed to strengthen the international law system for the protection of cultural heritage has also emerged at the level of the Council of Europe (CoE). Its Nicosia Convention, adopted on 3 May 2017 and not yet entered into force⁷⁰ – which replaced the former, unsuccessful Delphi Convention of 1985⁷¹ – is aimed at preventing and combatting the illegal trade and destruction of cultural property and is based on the concept of common responsibility and solidarity in the protection of cultural heritage. The Nicosia Convention, extensively invoking the legislative actions of the UNSC regarding the conflicts in Syria and Iraq, is intended to provide a new tool for the CoE's actions in the struggle against terrorism and organized crime. It binds State parties to co-operate in the prevention of offences against cultural property, to acknowledge the seriousness of such offences, and to provide for adequate sanctions or measures with a view towards co-operation in terms of both the prevention of offences relating to cultural property and in locating and gaining possession of cultural property unlawfully removed. Hence the Nicosia Convention contains both substantive and procedural provisions, creating for the first time a comprehensive criminal law regime for the protection of cultural heritage.⁷²

The international joint action regarding the struggle against cultural heritage crimes committed in the context of armed conflict and terrorism has also been advanced through the recently formalized cooperation between various institutions of global governance.⁷³ For instance, on 21

⁶⁹ *ibid* art 10.

⁷⁰ Convention on Offences relating to Cultural Property (opened for signature on 17 May) CETS No 221.

⁷¹ Convention on Offences relating to Cultural Property (adopted on 23 June 1985, not entered into force) ETS No 119.

⁷² See 'Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property' (Nicosia, 19 May 2017) <<https://rm.coe.int/1680710437>>.

⁷³ 'Report of the Secretary-General on the implementation of Security Council resolution 2347 (2017)' (n 64) paras 17, 48-71.

September 2017 a new policy to protect cultural heritage from terrorism and mass atrocities was launched at the EU level in cooperation with UNESCO and other international institutions and agencies.⁷⁴ Perhaps most importantly, on 6 November 2017, in the occasion of the 39th Session of UNESCO's General Conference, Irina Bokova, Director-General of UNESCO, and Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), signed a letter of intent formalizing and further enhancing their collaboration.⁷⁵ On this occasion Bensouda recognized that 'an effective strategy to address the destruction of cultural heritage requires a multi-faceted and collaborative approach.'⁷⁶ In fact, UNESCO and the ICC Office of the Prosecutor have already been engaged in extensive cooperation. In particular, UNESCO provided its expertise in the context of the *Al Mahdi* case.⁷⁷ Based on this cooperative experience, and recalling UNSC Resolution 2347, UNESCO and the ICC Office of the Prosecutor decided on the convergence of aims within their respective independent mandates.

It also results that the objectives of UNSC Resolution are being implemented through various methods of cooperation involving both States and non-State actors, in particularly through the exchange of information between the art market and law enforcement agencies, and the promotion of provenance research.⁷⁸ Private donors have also contributed to the UNESCO's Heritage Emergency Fund.⁷⁹

⁷⁴ 'Protecting cultural heritage from terrorism and mass atrocities: links and common responsibilities' (Rome, 21 September 2017) <www.esteri.it/mae/en/sala_stampa/archivionotizie/interventi/2017/10/discorso-dell-on-ministro-all-evento_8.html>.

⁷⁵ 'International Criminal Court and UNESCO Strengthen Cooperation on the Protection of Cultural Heritage' (Paris, 6 November 2017) <<https://en.unesco.org/news/international-criminal-court-and-unesco-strengthen-cooperation-protection-cultural-heritage>>.

⁷⁶ 'UNESCO and Partners stand against Cultural Cleansing and Violent Extremism' (Paris, 6 November 2017) <<https://en.unesco.org/news/unesco-and-partners-stand-against-cultural-cleansing-and-violent-extremism>>.

⁷⁷ See 'How UNESCO took Timbuktu tombs case to the ICC' Journalists for Justice (15 June 2016) <www.jfjustice.net/comprehensive-report-on-the-withdrawal-of-victims-from-the-turbo-area-by-letter-dated-5-june-2013/icc-cases/how-timbuktu-tombs-case-reached-the-icc>.

⁷⁸ 'Report of the Secretary-General on the implementation of Security Council resolution 2347 (2017)' (n 64) paras 33-38.

⁷⁹ *ibid* para 102.



Hence, referring back to the initial question posed at the beginning of this article – how and to what extent Resolution 2347 may substantially contribute to a better protection of cultural heritage in armed conflicts – it appears that the role of this instrument will be twofold. First, the resolution has brought the protection of cultural heritage to the level of a core issue of global peace and security. In this regard, it has integrated the often dispersed and fragmented regimes of international law – cultural heritage law, humanitarian law, criminal law, and State responsibility – with global, regional and national policies aimed at counteracting cultural heritage crimes committed in armed conflicts. Second, it has also enhanced the principle of international cooperation, broadening its scope beyond the relations between States, international organizations and agencies and towards a more inclusive participation of various stakeholders, including non-State actors, for a better protection of cultural heritage in the event of armed conflict. Such a conceptualization and eventual implementation of global objectives and solidarity in the realm of cultural heritage protection will arguably contribute to more effective global governance in times of crisis. In fact, global governance is often defined as ‘the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.’⁸⁰ In this regard, the UNSC Resolution 2347 recognizes and develops such a system of multilevel cultural heritage governance built on legally binding international obligations and voluntary policy commitments, thus calling for the convergence of objectives of various international actors to promote interstate cooperation and the participation of non-State actors. Such a global governance approach is intended to overcome the difficulties stemming from the legal and technical obstacles to counteract terrorism and illicit trafficking in cultural material, and to facilitate its return to the countries of origin and fight against the impunity of those responsible for grave violations of international cultural heritage obligations. Therefore, global cultural heritage governance, in the context of

⁸⁰ The Commission on Global Governance, *Our Global Neighborhood* (OUP 1995) 4.



armed conflict and terrorism, might be defined as an enhanced multilevel international cooperation based on the principle of solidarity and the common interest of all humankind.

While the input of the UNSC's legislative actions can legitimately be seen as pivotal for the consolidation of global governance mechanisms for the protection of cultural heritage in the specific context of armed conflict, its role in the enhancement of a wider global cultural governance is doubtful. In fact, in many instances the protection of cultural heritage might not be readily considered as a matter of global peace and security. Conversely, a number of cultural heritage issues lie within the core of State sovereignty and refer to the defence of statehood in the global world against real and imagined threats to cultural State identity. In particular, these relate to controls over the cross-border flow of cultural objects, the politicisation of cultural heritage policies, and the defence of majority cultural rights in the context of challenges arising from the migration and refugee crises. For these reasons the consolidation of global governance mechanisms for the protection of cultural heritage beyond the context of armed conflict and terrorism might be difficult to achieve in the nearest future.

