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# Cultural heritage during armed conflict. The UN Security Council resolution 2347 (2017), its scope and its consequences

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## Résumé

Le patrimoine culturel est notoirement menacé pendant les conflits armés, en raison de sa valeur symbolique pour les personnes impliquées dans le conflit et de sa valeur économique dans le commerce illicite. Ainsi, au fil du temps, plusieurs dispositions internationales ont abordé la question. Avec la résolution 2347 (2017), le Conseil de sécurité de l'ONU a également discuté du sujet. Cette résolution souffre de revendications de souveraineté nationale, évidentes dans son texte. Néanmoins, il introduit et renforce des mesures de coopération internationale entre les agences, les organisations et les acteurs privés pour protéger le patrimoine culturel. Compte tenu des mesures effectivement adoptées, par ex. l'institution et le renforcement de bases de données internationales, on peut en déduire que la résolution 2347 (2017) a produit des effets, malgré la résistance de plusieurs États. Ceci est particulièrement pertinent lorsque l'on considère la relation entre le patrimoine culturel et la jouissance effective des droits culturels et autres droits humains.

**Mots-clés :** Conseil de sécurité des Nations Unies, résolution 2347 (2017) du CSNU, droits culturels, patrimoine culturel, conflits armés

## Abstract

Cultural heritage is notoriously endangered during armed conflicts, because of its symbolic value for the people involved in the conflict and its economic value in illicit trade. Thus, over time several international provisions have tackled the issue. With Resolution 2347 (2017), the UN Security Council discussed the topic as well. This resolution suffers from national sovereignty claims, evident in its text. Nonetheless, it introduces and reinforces measures of international cooperation among agencies, organizations and private actors to protect cultural heritage. Given the measures actually adopted, e.g. the institution and reinforcement of international databases, it can be inferred that Resolution 2347 (2017) did produce effects, despite the resistance of several states. This is particularly relevant when considering the relation between cultural heritage and the effective enjoyment of cultural and other human rights.

**Keywords:** UN Security Council, UNSC resolution 2347 (2017), cultural rights, cultural heritage, armed conflicts

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## I. Introduction

The return to power of the Taliban in Afghanistan has taken us all back in time. It sadly reminds us, among other events, the destruction of the Buddhas of Bamiyan. In 2001, in fact, the military and para-military forces of the Taliban regime destroyed the Buddhas, after the sanctions adopted against the regime because of its sheltering terrorists<sup>2</sup> and as part of the Taliban iconoclast agenda which did not admit the presence of the pre-Islamic colossal statues.<sup>3</sup> Since then, the protection of cultural heritage has been object of various measures and actions, adopted at the international level. In this sense, the protection of cultural heritage has been debated by the UN Security Council (hereafter, UNSC) as well.

Tabled by Italy and France and unanimously adopted, Resolution 2347 (2017) of the UNSC has been perceived by many as a milestone in the protection of cultural heritage in armed conflicts.<sup>4</sup> Indeed, the international community has focused its attention on cultural heritage for a long time; a general resolution on this topic is thus consistent with the internationally diffused perception that cultural heritage requires particular protection, because of its relevance for mankind and its endangered position in armed conflicts. In fact, during wartime cultural heritage is often destroyed or loomed. However, Resolution 2347 (2017) has not been only positively received; indeed, it presents both strengths and weaknesses.

The first paragraph of the present paper provides a general assessment of the protection of cultural heritage in case of armed conflict. Indeed, cultural heritage is particularly at risk for several reasons: because its destruction can psychologically undermine a people and compromise its willingness to fight, because it is particularly dear to the enemy population, or, more pragmatically, because it can be looted and sold. The protection of cultural heritage has been enshrined in several international instruments and has been affirmed by case law. Hence, Resolution 2347 (2017) is part of a diffused recognition of the necessity to protect cultural heritage in armed conflicts, a necessity that has become more compelling in recent years, with the spread of terrorist groups.

The second paragraph of this essay assesses the content of Resolution 2347 (2017). In particular, its qualities and shortcomings are highlighted. The involvement of States and non-State actors, even private stakeholders, aims at effectively protecting and rescuing cultural heritage against the illicit, international trade. The deployment of peacekeeping operations would enhance the protection of cultural heritage in conflictual scenarios. However, while stating that cultural heritage destruction may amount to a threat to international peace and security, thus enhancing the possibility for UNSC to adopt measures under Chapter VII of the UN Charter, Resolution 2347 (2017) on this point is not clear enough. This unclarity, together with the repeated reference to specific terrorist groups, led many to criticise the relevance of this resolution.

The third paragraph underlines an aspect not considered in Resolution 2347 (2017), namely the functional relation between cultural heritage and human rights, as the former is necessary to effectively enjoy the latter. While it may seem obvious with reference to

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<sup>2</sup> UN Security Council, *Resolution 1267 (1999)*, S/RES/1267 (1999), (15/10/1999) [[https://www.undocs.org/S/RES/1267%20\(1999\)](https://www.undocs.org/S/RES/1267%20(1999))]; UN Security Council, *Resolution 1333 (2000)*, S/RES/1333 (2000), (19/12/2000).

<sup>3</sup> F. Francioni and F. Lenzerini, "The Destruction of the Buddhas of Bamiyan and International Law", *European Journal of International Law*, 14/4 (1/9/2003), pp. 619–651.

<sup>4</sup> See, *ex multis*, C. Fiankan-Bokonga, *A historic resolution to protect cultural heritage*, (17/10/2017) [<https://en.unesco.org/courier/2017nian-di-3qi/historic-resolution-protect-cultural-heritage>], accessed 29/1/2021; A. Azoulay, *Historic milestone for the protection of cultural heritage*, (24/3/2017) [<https://onu.delegfrance.org/Historic-milestone-for-the-protection-of-cultural-heritage>].

cultural rights, it has been affirmed that the access to cultural heritage allows the enjoyment of other human rights, ultimately contributing to the development of the personality of the individual. Last, it has to be noticed that several armed non-state actors (hereafter, ANSAs) voluntarily bind themselves to the respect of human rights (also for practical ends, e.g. to present themselves and their agenda as legitimate in front of the international community), hence the functional connection between cultural heritage and human rights may prevent these ANSAs from attacking cultural heritage.

## 2. Historical background. Cultural heritage in armed conflicts

Resolution 2347 (2017) deals with the protection of cultural heritage in case of armed conflict. In particular, it aims at protecting cultural heritage from the unlawful acts of terrorist groups. This Resolution was not adopted after a particular event, to specifically regulate the latter; rather, it is consistent with the growing awareness, within the UNSC itself and within the international community in general, of the significance of cultural heritage and of the relevance of its unlawful trafficking for the financing of illicit activities of ANSAs, in particular terrorist groups. It must be noted that it is not the first time that the UNSC action is concerned with the protection of cultural heritage. In this regard, with Resolution 2199 (2015) the UNSC prohibited the trade of cultural items removed from Iraq and Syria since 1990 and 2011 respectively because “ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, [were] generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks”.<sup>5</sup> Other resolutions in which the UNSC discusses, among other issues, cultural heritage are, *ex multis*, resolutions 1483 (2003), 2056 (2012), 2100 (2013), 2199 (2015).

Even besides the UNSC action, the topic is not new; on the contrary, different instruments and case law prove the interest at the international level to the protection of cultural heritage in armed conflicts. Among the many instruments,<sup>6</sup> the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (hereafter, 1954 Convention) has to be mentioned. This Convention aims at avoiding the “grave damage” and “danger of destruction” that cultural heritage suffers during armed conflicts;<sup>7</sup> in fact, it is believed that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind” and that “the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection”.<sup>8</sup> The 1954 Convention proved to be forward-looking. In fact, despite being adopted in a period in which the paradigm of war

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<sup>5</sup> UN Security Council, *Resolution 2199 (2015)*, S/RES/2199 (2015), (12/2/2015) [[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2199%20\(2015\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20(2015))], para. 16.

<sup>6</sup> See, *ex multis*, *UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property*, (1970) [<https://treaties.un.org/doc/Publication/UNTS/Volume%20823/volume-823-I-11806-English.pdf>]; *UNIDROIT Convention on stolen or illegally exported cultural objects*, (1995) [<https://treaties.un.org/doc/Publication/UNTS/Volume%202421/v2421.pdf>].

<sup>7</sup> See UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, (14/5/1954), Preamble.

<sup>8</sup> *Ibid.*

was still the inter-State conflict,<sup>9</sup> its art. 19 establishes that “[i]n the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property”.<sup>10</sup> As the majority of current armed conflicts are non-international (hereafter, NIACs),<sup>11</sup> this provision cannot but be considered ahead of its times. Moreover, the 1954 Convention was supplemented by its Second Additional Protocol of 1999 (hereafter, 1999 Protocol), which “shall apply in situations referred to in Article 18” of the 1954 Convention.<sup>12</sup> Hence, the 1999 Protocol expands the protection provided by the 1954 Convention in case of NIACs, in theory guaranteeing stronger protection. However, its effectiveness is impaired for several reasons. First, the number of States parties is relatively low, and key States (namely States characterised today by NIACs and internal tensions) are not parties to it.<sup>13</sup> While art. 19 of the 1954 Convention does not clarify the meaning of the term “armed conflict not of an international character”,<sup>14</sup> art. 22 of the 1999 Protocol clarifies that it “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.<sup>15</sup> These texts coincide with Common Article 3 to the Four Geneva Conventions (hereafter, CA3) and art. 1 of the Additional Protocol II to the Geneva Conventions (hereafter, APII): while CA3 applies “[i]n the case of armed conflict not of an international character”,<sup>16</sup> APII “develops and supplements”<sup>17</sup> CA3 and “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”.<sup>18</sup> It can be thus inferred that the considerations regarding the threshold set by CA3 and art. 1.2 APII are valid for art. 19 of the 1954 Convention and art. 22 of the 1999 Protocol, hence the latter can apply only in situations reaching a higher threshold than the one required by the minimum provision set in art. 19 of the 1954 Convention. Consequently, not all the situations of tensions involving ANSAs can lead to the application of the 1999 Protocol. Last, while these conventional instruments establish obligations for States parties, it cannot be inferred that such provisions are binding for ANSAs as well. Several theories have been presented to

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<sup>9</sup> In fact, art. 18 establishes that “the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties”. *Ibid.*, art. 18.1.

<sup>10</sup> *Ibid.*, art. 19.1.

<sup>11</sup> See, *ex multis*, A. Bellal, A. M. Amoroso, G. Jasutis, T. Kebebew, G. Marcucci, L. Baron-Mendoza, L. Muscarella and M. Sulce, *The War Report: armed conflicts in 2018*, 2019.

<sup>12</sup> *UNESCO Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, (26/3/1999) [<https://treaties.un.org/doc/Publication/UNTS/Volume%202253/v2253.pdf>], art. 3.

<sup>13</sup> The 1999 Protocol now has 82 State Parties (list available at [unesco.org](https://unesco.org), last accessed 29/1/2021). Moreover, considering recent events, it is important to underline that neither Syria nor Iraq are Parties to the 1999 Protocol, and Afghanistan’s accession occurred in 2018.

<sup>14</sup> UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, cit., art. 19.1.

<sup>15</sup> UNESCO *Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, cit., art. 22.2.

<sup>16</sup> International Committee of the Red Cross, *Geneva Conventions on the Law of War*, (12/8/1949), common art. 3.

<sup>17</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, (1977), art. 1.1.

<sup>18</sup> *Ibid.*, art. 1.2.

justify the imposition of obligations on ANSAs;<sup>19</sup> however, none of them is able to explain how *all* ANSAs are obliged by *all* international obligations, without their consent. The discussion of these justifications is beyond the scope of this paper, but it can be affirmed that, ultimately, it appears that cultural heritage cannot be effectively protected in present conflicts by resorting only to conventional provisions.

In recent times, international criminal law has dealt with attacks on cultural heritage as well. In this sense, the *Al Faqi Al Mahdi* case is particularly significant. Ahmad Al Faqi Al Mahdi, who pleaded guilty to the destruction of the Old City of Timbuktu in 2012, was convicted for war crimes by the International Criminal Court (hereafter, ICC).<sup>20</sup> The case confirms that, at the international level, a widespread awareness of the gravity of attacks on cultural heritage has emerged. In fact, even though crimes against property (as the crimes committed by Al Mahdi) are usually considered less grave than the ones against persons, the symbolic nature and importance for Malian culture of the sites destroyed make the attacks committed by Al Mahdi particularly significant: “the fact that the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu is relevant in assessing the gravity of the crime committed”.<sup>21</sup>

All this considered, it can be affirmed that the relevance of cultural heritage for populations and mankind is now widely recognised. Coherently, Resolution 2347 (2017) underlines the relevance that cultural heritage has during and after armed conflicts – and thus its endangered position in these situations.

### 3. Resolution 2347 (2017): UN Security Council intervention in the field of protection of cultural heritage

As mentioned, Resolution 2347 (2017) constitutes an important step in the international recognition of the importance and vulnerability of cultural heritage, which has to be protected in case of armed conflicts. In this regard, Resolution 2347 (2017) identifies two main reasons at the base of attacks against cultural heritage, one more ideological and the other more practical. On one hand, the destruction of cultural heritage items is due to ideological motives. The destruction of the Buddhas of Bamiyan in Afghanistan is a clear example of this type of attacks. Moreover, cultural heritage is ideologically linked to the sentiment of identity of a certain population, consequently it can positively affect peoples during armed conflict and ease the post-conflict recovery.<sup>22</sup> On the other hand, during armed conflicts cultural heritage is in danger because of more practical reasons: its looting and smuggling, made easier during times of instability and tension as the ones caused by armed conflicts, can provide illicit financing. Resolution 2347 (2017) addresses both these reasons: in fact, it recognises how acts against cultural heritage can constitute an “attempt to deny historical roots and cultural diversity” and thus “exacerbate conflict and hamper

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<sup>19</sup> See, *ex multis*, S. Sivakumaran, “Binding Armed Opposition Groups”, *International and Comparative Law Quarterly*, 55/2 (4/2006), pp. 369–394; J. K. Kleffner, “The applicability of international humanitarian law to organized armed groups”, *International Review of the Red Cross*, 93/882 (6/2011), pp. 443–461; K. Fortin, *The accountability of armed groups under human rights law*, Oxford University Press, Oxford 2017.

<sup>20</sup> International Criminal Court Trial Chamber, *Summary of the Judgment and Sentence in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi (No. ICC-01/12-01/15)*, (2016).

<sup>21</sup> *Ibid.*

<sup>22</sup> See, *ex multis*, H. Walasek, “Cultural heritage and memory after ethnic cleansing in post-conflict Bosnia-Herzegovina”, *International Review of the Red Cross*, 101/1 (2019), pp. 273–294.

post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States”.<sup>23</sup> At the same time, it affirms that “the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, which is being used to support their recruitment efforts and to strengthen their operational capability to organize and carry out terrorist attacks”.<sup>24</sup> Indeed, in 2017 it was estimated that the value of cultural goods and antiquities trafficking amounted to 50-150 US\$ million per year.<sup>25</sup> Moreover, Resolution 2347 (2017) explicitly mentions as its target ANSAs, especially terrorist groups. Taking this into consideration, it can be affirmed that Resolution 2347 (2017) pursues both the protection of cultural heritage and the fight against terrorism. Indeed, there is a “growing alarm for this unprecedented close connection between terrorism and cultural heritage, both as a deliberate symbolic target to be destroyed and as a source of a financial revenue to fuel terrorist activities”.<sup>26</sup>

As already noted, Resolution 2347 (2017) has been positively welcomed by many. Indeed, it presents several positive aspects. It is the first resolution exclusively and generally dedicated to cultural heritage, at risk in armed conflicts especially because of the conducts of terrorist groups, without any reference to a specific situation. In fact, previous resolutions discussing this topic focused on several issues connected to specific situations, cultural heritage thus being only one of the different matters considered. For instance, the Resolution 2100 (2013) regards the Malian situation and establishes the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) to stabilize the region, including in its mandate, among other activities and objectives, the support for cultural preservation.<sup>27</sup> Resolution 2347 (2017), instead, regards attacks on cultural heritage during armed conflicts without any limit to a geographical region or a particular context. Such an approach entails the adoption of general measures, destined at providing a general, harmonious international framework for the protection of cultural heritage from destruction and trafficking in case of conflicts.

Second, Resolution 2347 (2017) strongly condemns attacks on cultural heritage, as it is affirmed that they can amount to a war crime<sup>28</sup> and constitute a threat to international peace and security.<sup>29</sup> Of course, this is consistent with the ICC *Al Faqi Al Mahdi* case. This statement was even more explicitly expressed during the meeting that led to the adoption of Resolution 2347 (2017): “what we are witnessing is, in many cases, war crimes. This is not just wanton pillaging and vandalism; this is a matter of international peace and security”.<sup>30</sup> The recognition that, in certain circumstances, attacks on cultural heritage may amount to a threat to international peace and security is not irrelevant, as it implies that the UNSC may

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<sup>23</sup> UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), (24/3/2017) [[https://www.undocs.org/S/RES/2347%20\(2017\)](https://www.undocs.org/S/RES/2347%20(2017))], Preamble.

<sup>24</sup> *Ibid.*

<sup>25</sup> European Parliament, *Illicit trade in cultural goods (Regulation EU 116/2009 and Directive 2014/60/EU). Briefing Implementation Appraisal*, (7/2017) [[https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603259/EPRS\\_BRI\(2017\)603259\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603259/EPRS_BRI(2017)603259_EN.pdf)].

<sup>26</sup> M. Frigo, “Approaches Taken by the Security Council to the Global Protection of Cultural Heritage: An Evolving Role in Preventing Unlawful Traffic of Cultural Property”, *Rivista di diritto internazionale*, 101/4 (2018), pp. 1164–1181, p. 1166.

<sup>27</sup> UN Security Council, *Resolution 2100 (2013)*, S/RES/2100 (2013), (25/4/2013) [<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/314/17/PDF/N1331417.pdf?OpenElement>], para. 16, lett. d.ii.

<sup>28</sup> See UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), cit., para. 4.

<sup>29</sup> *Ibid.*, Preamble.

<sup>30</sup> UN Security Council, *Provisional 7907th meeting*, S/PV.7907, (24/3/2017) [[https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_pv\\_7907.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7907.pdf)].

adopt appropriate measures under Chapter VII of the UN Charter. In fact, pursuant to the adoption of “effective collective measures for the prevention and removal of threats to the peace”, art. 39 of the UN Charter states that “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.<sup>31</sup> Also, Resolution 2347 (2017) envisages the possibility of employing UN peacekeeping operations to provide assistance, in collaboration with UNESCO, in the protection of cultural heritage in conflictual scenarios.<sup>32</sup>

Last, Resolution 2347 (2017) calls for a coordinated approach among different actors, both public and private. Regarding the integrated action of states and international agencies, it “requests Member States to take appropriate steps to prevent and counter the illicit trade and trafficking in cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance originating from a context of armed conflict [...], including by prohibiting cross-border trade in such illicit items”<sup>33</sup> and “urges Member States to introduce effective national measures at the legislative and operational levels”<sup>34</sup> and “to develop, including, upon request, with the assistance of UNODC, in cooperation with UNESCO and INTERPOL as appropriate, broad law enforcement and judicial cooperation in preventing and countering all forms and aspects of trafficking in cultural property and related offences”.<sup>35</sup> Regarding the role of other, possibly private, stakeholders, the Security Council “calls upon Member States (...) to consider (...) engaging museums, relevant business associations and antiquities market participants”<sup>36</sup> in the adoption of measures necessary to prevent and counter the trafficking of cultural properties. The involvement of various actors is necessary to effectively protect cultural heritage; indeed, the “universalization of the international framework to protect cultural heritage is crucial”.<sup>37</sup> All this considered, Resolution 2347 (2017) has been considered as a milestone in the protection of cultural heritage in armed conflicts.

However, several shortcomings have been pinpointed. In particular, its limited substantive content, the absence of reference to Chapter VII of the UN Charter and the explicit reference to some terrorist groups have been considered as defects. Indeed, in Resolution 2347 (2017), vague terms are often used. States are generally asked to “take appropriate steps”, “take preventive measures” and “introduce effective national measures” to safeguard their cultural heritage.<sup>38</sup> Only the already mentioned paragraph 17 presents a list of specific and concrete actions to be adopted, such as the establishment of national archives of cultural heritage and databases and the cooperation with the INTERPOL Database of Stolen Works of Art. However, this is only one paragraph out of 23.

Also, most of the provisions do not appear to have binding force. The Security Council “invites”, “encourages” and “urges” in most of the paragraphs of Resolution 2347 (2017). Its paragraph 19 indeed envisages the possibility to entrust to peacekeeping operations the

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<sup>31</sup> United Nations, *Charter of the United Nations*, (24/10/1945), art. 2, 39. See also M. Frigo, *Approaches Taken by the Security Council to the Global Protection of Cultural Heritage: An Evolving Role in Preventing Unlawful Traffic of Cultural Property*, cit.

<sup>32</sup> UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), cit., para. 19.

<sup>33</sup> *Ibid.*, para. 8.

<sup>34</sup> *Ibid.*, para. 9.

<sup>35</sup> *Ibid.*, para. 11.

<sup>36</sup> *Ibid.*, para. 17 (g).

<sup>37</sup> UN Security Council, *Provisional 7907th meeting*, S/PV.7907, cit.

<sup>38</sup> UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), cit., para. 8, 9.



protection of cultural heritage, however it is quite limited, as it “affirms that the mandate of United Nations peacekeeping operations, *when specifically mandated by the Security Council and in accordance with their rules of engagement*, may encompass, *as appropriate*, assisting relevant authorities, *upon their request*, in the protection of cultural heritage from destruction”<sup>39</sup> (emphasis added). Also, even though Resolution 2347 (2017) indirectly connects attacks on cultural heritage to threats to international peace and security,<sup>40</sup> there is not any specific reference to Chapter VII of the UN Charter. Ultimately, doubts persist regarding the legal basis of the resolution, and the measures do not appear sufficiently precise. In fact, this absence and the terminology used in the resolution cast doubt on the reach of its provisions. Ultimately, their binding force is, at least, debated.

Last, from the text, it appears that the main object of Resolution 2347 (2017) is not the protection of cultural heritage *per se*, but rather the fight against terrorism. In fact, the Security Council notes “with grave concern the involvement of non-state actors, notably terrorist groups, in the destruction of cultural heritage”;<sup>41</sup> in particular, Resolution 2347 (2017) refers to Al-Qaida and Da’esh, mentioned several times. Moreover, it “encourages Member States to propose listings of ISIL, Al-Qaida and associated individuals, groups, undertakings and entities involved in the illicit trade in cultural property to be considered by the 1267/1989/2253 ISIL (Da’esh) and Al-Qaida Sanctions Committee”.<sup>42</sup> These resolutions establish a sanctions regime based on lists of individuals and entities associated with these two terrorist groups; consequently, the simple unlawful trafficking in cultural heritage is not enough to be enlisted, as the subjects involved in illicit trade in cultural heritage items must also be associated with ISIL or Al-Qaida. Thus, the reference to the two resolutions underlines that the protection of cultural heritage established by Resolution 2347 (2017) is, actually, functional to the wider fight against terrorism, in particular against a few specific terrorist groups.

All this considered, it can be affirmed that Resolution 2347 (2017) is not particularly effective in protecting cultural heritage in armed conflicts. This limited effectiveness may be connected to a sentiment of protection of national sovereignty, which emerges in the statements of several representatives who took part in the meeting that adopted the resolution and can ultimately result in the primacy of the respect of the principle of non-interference in the internal affairs of States over the establishment of an internationally concerted protection of cultural heritage. For instance, Mr. Aboulatta, the representative for Egypt, affirmed that “the key role is to be played by each individual State in the protection of its own cultural heritage. Efforts to protect cultural heritage during armed conflict must respect the provisions of the Charter of the United Nations and be pursued strictly in line with international law”, thus respecting principle of State’s sovereignty and without interfering with the internal affairs of other States. Indeed, Mr. Aboulatta affirmed that without the respect of such principles and restrictions, the Egyptian delegation “would not have been able to vote in its favour [of Resolution 2347 (2017)]”.<sup>43</sup> The priority of State sovereignty was reaffirmed by the Chinese representative as well. In addition, the statements of the representative of Ukraine and Russia highlight a disagreement between these two States regarding the protection of cultural heritage in a particular and critical situation. In fact, the former accused the latter to be involved –because of the Russian military intervention in Crimea– in the looting and destruction of Ukrainian cultural

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<sup>39</sup> *Ibid.*, para. 19.

<sup>40</sup> *Ibid.*, Preamble.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, para. 10.

<sup>43</sup> UN Security Council, *Provisional 7907th meeting, S/PV.7907*, cit., p. 15.

heritage.<sup>44</sup> Other representatives showed support; for instance, Mr. Minami representative of Japan affirmed that “Japan shares the widespread concern about the situation and strongly condemns those acts. The international community should promptly and collectively respond to that challenge”,<sup>45</sup> and Ms. Sison, representative of the United States of America, stated that “[t]his destruction tears at the very fabric of our societies [...]. The United States looks forward to strengthened international cooperation and to finding new channels of cooperation for the protection and preservation of cultural heritage in armed conflicts in order to preserve this priceless inheritance for future generations”.<sup>46</sup> Nonetheless, the mentioned claims and frictions impeded the adoption of more effective measures, perhaps under Chapter VII of the UN Charter.

#### 4. A missing element in Resolution 2347 (2017): the connection between the protection of cultural heritage and cultural rights

Even though the protection of cultural heritage in armed conflicts is established by customary and conventional rules of international humanitarian law, cultural heritage is still being looted and destroyed. This protection thus has to be reinforced in order to gain effectiveness. In this sense, the coordinated approach presented in Resolution 2347 (2017) could provide a useful tool to improve the international response to attacks against cultural heritage. However, Resolution 2347 (2017) does not mention the functional connection between the protection of cultural heritage and cultural rights.

An effective international system of monitoring and rescuing looted cultural heritage items and of protection of cultural heritage from destruction during armed conflicts is even more appropriate, taking into consideration how cultural heritage is functionally linked to the effective enjoyment of human rights. In particular, cultural heritage can be considered as a necessary means for the realisation of cultural rights, as those include the right to enjoy and participate in cultural life.

Analysing the link between cultural heritage and human rights, it is appropriate to start defining cultural heritage. Tangible cultural heritage<sup>47</sup> can be considered as the *corpus* of material signs, proofs of the history and culture of a certain community, handed on by the past, whose value is fundamental not only for the particular community, but for the whole mankind as well. Indeed, the deterioration of cultural heritage “impoverishes the heritage of all nations of the world”.<sup>48</sup> Art. 15 of the International Covenant of Economic, Social and Cultural Rights (hereafter, ICESCR) establishes the “right to take part in cultural life”, which

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<sup>44</sup> UN Security Council, *Provisional 7907th meeting, S/PV.7907*, cit.

<sup>45</sup> *Ibid.*, p. 19.

<sup>46</sup> *Ibid.*, p. 18.

<sup>47</sup> Intangible cultural heritage, instead, “means the practices, representations, expressions, knowledge, skills –as well as the instruments, objects, artefacts and cultural spaces associated therewith– that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity”. *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage*, (2003) [<https://treaties.un.org/doc/Publication/UNTS/Volume%202368/v2368.pdf>], art. 2.1.

<sup>48</sup> *UNESCO Convention for the protection of the world cultural and natural heritage*, (1972) [<https://treaties.un.org/doc/Publication/UNTS/Volume%201037/volume-1037-I-15511-English.pdf>], Preamble.

is ensured guaranteeing the access to cultural goods and the preservation of the latter<sup>49</sup> and is composed by three different aspects, namely the participation in, access to and contribution to cultural life.<sup>50</sup> In relation to the topic in discussion, the most significant component is the access to cultural heritage, which is defined as “the particular right of everyone [...] to know and understand his or her own culture and that of others through education and information [...] and to benefit from the cultural heritage and the creation of other individuals and communities”.<sup>51</sup> All this considered, as the access to cultural heritage is part of cultural rights, the protection of the former in case of armed conflicts is functionally necessary to guarantee the enjoyment of the latter.

The protection of cultural rights also serves the purpose of guaranteeing other types of human rights. In fact, the ideologically motivated destruction of cultural heritage items can represent an attempt “at redesigning culture based on monolithic world views, focused on ‘purity’ and enmity toward ‘the other’”.<sup>52</sup> Cultural heritage, instead, can allow the effective enjoyment of cultural rights which, far from being a luxury, “are key to the overall implementation of universal human rights and a crucial part of the responses to many current challenges, from conflict and post-conflict situations to discrimination and poverty. Cultural rights are transformative and empowering, providing important opportunities for the realization of other human rights. The lack of equal cultural rights, combined with economic and social inequalities, makes it difficult for people to enjoy personal autonomy, to exercise their civil and political rights and to enjoy their right to development”.<sup>53</sup> Indeed, considering that human rights are recognised as interdependent and indivisible parts of a *unicum*,<sup>54</sup> cultural heritage has to be considered functionally relevant for the enjoyment of human rights in general.

The reference to human rights underlines the importance of the protection of cultural heritage and can also produce practical positive effects during armed conflicts. In this regard, while it is true that the existence of human rights obligations binding ANSAs is still debated,<sup>55</sup> the fact that at least ANSAs exercising *de facto* authority and territorial control are bound to respect human rights has been confirmed by doctrine, especially applying the principle of effectiveness,<sup>56</sup> and by several resolutions of the UN Security Council.<sup>57</sup> At the

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<sup>49</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 21 Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/21)*, (21/12/2009) [<https://undocs.org/en/E/C.12/GC/21>].

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> UN Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna (A/HRC/34/56)*, (16/1/2017) [<https://undocs.org/en/A/HRC/34/56>], para. 3.

<sup>53</sup> Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (A/HRC/31/59)*, (3/2/2016) [<https://undocs.org/en/A/HRC/31/59>], para. 5.

<sup>54</sup> See Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No. 33, Frequently Asked Questions on Economic, Social and Cultural Rights*, (12/2008) [<https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>]; World Conference on Human Rights, *Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993*, (25/6/1993) [<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>].

<sup>55</sup> See, *ex multis*, J.-M. Kamatali, “The Application of International Human Rights Law in Non-International Armed Conflicts: From Rhetoric to Action”, *Journal of International Humanitarian Legal Studies*, 4/2 (2013), pp. 220–261; K. Fortin, *The accountability of armed groups under human rights law*, cit.; A. Clapham, “Human rights obligations of non-state actors in conflict situations”, *International Review of the Red Cross*, 88/863 (9/2006), pp. 491–523.

<sup>56</sup> K. Fortin, *The accountability of armed groups under human rights law*, cit.

same time, several ANSAs have publicly declared their willingness to respect international humanitarian law and human rights.<sup>58</sup> Indeed, “the international community has set up a general framework of rights and duties which every actor seeking to legitimize him as a suitable player at the inter-State level must respect.”<sup>59</sup> To be sure, not all ANSAs agree to respect human rights law; some groups, terrorist groups in particular, present themselves in open contrast with the established international legal order. However, resorting to international human rights law not only reinforces the need to protect cultural heritage in front of the States, but possibly even in front of ANSAs.

## 5. Conclusion. The legacy of resolution 2347 (2017)

Resolution 2347 (2017) is consistent with a general recognition of the relevance of cultural heritage, both for the preservation of the sense of identity of a particular community and for its significance for the entire humankind. This belief is not new, as it is enshrined in the 1954 Convention adopted more than 50 years ago. At the same time, the danger encountered by cultural heritage in armed conflicts is clearly perceived as well, as cultural heritage can –and actually is– destroyed for ideological reasons, or to psychologically weaken the enemy, and also illicitly traded. This is even more true today, as current armed conflicts, normally of non-international nature, tend to be conducted with methods of warfare that do not allow a clear division between civilians and military objectives and are often financed in illicit manners,<sup>60</sup> e.g. smuggling cultural heritage items. As cultural heritage is relevant for the entire mankind and is often unlawfully traded cross-border, the adoption of concerted, collective measures is appropriate, if not necessary. In this sense, the measures established in Resolution 2347 (2017), directed at States and private actors and aimed at establishing an international network for the prevention and rescue of cultural heritage items, even resorting to peacekeeping operations, can be positively considered. It is true that the unclear and non-binding terms and the absence of a clear reference to Chapter VII of the UN Charter undermine the effectiveness of Resolution 2347 (2017). Nonetheless, this resolution cannot be considered a missed opportunity. First, it establishes a connection between attacks to cultural heritage and threats to peace and security, thus paving the way for future developments in the UNSC action under Chapter VII of the UN Charter in the field

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<sup>57</sup> See, ex multis, UN Security Council, *Resolution 1214 (1998)*, S/RES/1214 (1998), (8/12/1998); UN Security Council, *Resolution 1427 (2002)*, S/RES/1427 (2002), (29/7/2002) [[https://undocs.org/en/S/RES/1427\(2002\)](https://undocs.org/en/S/RES/1427(2002))]; UN Security Council, *Resolution 1721 (2006)*, S/RES/1721 (2006), (1/11/2006) [[https://undocs.org/S/RES/1721\(2006\)](https://undocs.org/S/RES/1721(2006))].

<sup>58</sup> See N. van Amstel, “A collection of codes of conduct issued by armed groups”, *International Review of the Red Cross*, 93/882 (6/2011), pp. 483–501. Regarding the reasons at the base of such choice, see, ex multis, O. Bangerter, “Reasons why armed groups choose to respect international humanitarian law or not Today’s Armed Groups: Structure, Actions and Strategic Options”, *International Review of the Red Cross*, 93/882 (2011), pp. 353–384.

<sup>59</sup> C. Tomuschat, “The Applicability of Human Rights Law to Insurgent Movements”, in *Krisensicherung und Humanitärer Schutz – Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, Berliner Wissenschafts-Verlag, Berlin 2004, pp. 573–591, p. 587.

<sup>60</sup> E. Crawford, “From Inter-state and Symmetric to Intra-state and Asymmetric: Changing Methods of Warfare and the Law of Armed Conflict in the 100 Years Since World War One”, *Yearbook of International Humanitarian Law*, 17 (2014), pp. 95–118; B. Perrin, *Modern warfare: armed groups, private militaries, humanitarian organizations, and the law*, UBC Press, 2012; P. Policzer, *Human rights violations and non-state armed groups: A new framework*, University of British Columbia, Centre of International Relations, 2005.

of cultural heritage protection; indeed, it proves the international recognition of the negative impact of destruction and looting of cultural heritage.<sup>61</sup> In this sense, the resolution has been recalled by the Director-General of UNESCO, Audrey Azoulay, in 2020, condemning the actions threatening cultural heritage in the Middle East while discussing with the Ambassador of the Islamic Republic of Iran.<sup>62</sup> Second, it recognizes that the effective protection of cultural rights requires the concerted involvement of States, international and national agencies, international organisations, and private stakeholders. The necessity of coordinated international approaches to protect cultural heritage has been internationally endorsed. Significantly, the UNESCO Report on the United Nations Security Council Resolution 2347 on the Protection of Cultural Heritage, released on November 30<sup>th</sup>, 2017, discusses the “good practices” already adopted by 29 States.<sup>63</sup> Only a few days after the adoption of Resolution 2347 (2017), the G7 Culture Ministers met in Florence, Italy, and adopted the so-called Florence Declaration. The latter commends the approval of Resolution 2347 (2017) and reaffirms the importance of the preservation and protection of cultural heritage; in addition, it calls upon all States to strengthen the protection of such heritage, resorting to international cooperation, and calls upon the United Nations (especially UNESCO) and other relevant international organisations to strengthen their activities in a coordinated manner.<sup>64</sup> In 2018, the World Customs Organization (WCO), called upon in Resolution 2347 (2017) with other relevant international organisation “as appropriate and within their mandates, to assist Member States in their efforts to prevent and counter destruction and looting of and trafficking in cultural property in all forms”,<sup>65</sup> released its Training Handbook on the Prevention of Illicit Trafficking of Cultural Heritage, and started training activities for customs officers on the topic. The results of these activities and the cooperation with other international organisations are listed in the Illicit Trade Reports released by the WCO. At the European level, both the Council of Europe and the European Union (EU) should be mentioned. On May 3<sup>rd</sup>, 2017, the Council of Europe adopted the Convention on Offences relating to Cultural Property. It is open for signature by non-member States; this can be interpreted as an implicit confirmation of the importance of internationally harmonized actions to effectively protect cultural heritage. However, it has not entered into force yet.<sup>66</sup> The EU Regulation on the introduction and the import of cultural goods establishes the conditions for the import of cultural goods “for the purpose of safeguarding humanity’s cultural heritage and preventing the illicit trade in cultural goods, in particular where such illicit trade could contribute to terrorist financing”. The scope of this regulation appears coherent with the scope of Resolution 2347 (2017).<sup>67</sup> On a practical level, the reinforced international cooperation in contributing to the INTERPOL’s Stolen Work Database<sup>68</sup> facilitated the organization in successful operations, such as the Pandora V operation in 2020. In conclusion, it appears that, even though the UNSC has not discussed

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<sup>61</sup> P. Gerstenblith, “Introductory Note to United Nations Security Council Resolution 2347”, *International Legal Materials*, 57/1 (2/2018), pp. 155–162.

<sup>62</sup> UNESCO, *Meeting of Director-General and Iran’s Ambassador to UNESCO*, (6/1/2020) [<https://en.unesco.org/news/meeting-director-general-and-irans-ambassador-unesco-0>].

<sup>63</sup> *UN Security Council Highlights the Role of Cultural Heritage for Peace and Security*, (30/11/2017).

<sup>64</sup> Ministers of Culture of G7, *Florence Declaration*, (30/3/2017).

<sup>65</sup> UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), cit. para. 20.

<sup>66</sup> See Council of Europe, *Details of Treaty No.221 - Council of Europe Convention on Offences relating to Cultural Property*, (29/6/2021)

<sup>67</sup> *Regulation (EU) 201/880 of the European Parliament and of the Council on the introduction and the import of cultural goods*, (17/4/2019) art. 1

<sup>68</sup> See UN Security Council, *Resolution 2347 (2017)*, S/RES/2347 (2017), cit. para. 17(f).

the issue of cultural heritage since 2017, resolution 2347 (2017) has produced positive effects in the international coordination among various organizations in order to better protect cultural heritage at the international level.

This joint collaboration in the protection of cultural heritage, necessary to the enjoyment of human rights, is particularly relevant today. In fact, current armed conflicts often involve ANSAs, that often attack cultural heritage for strategic, ideological, and financial reasons and usually do not feel bound by provisions of international law but can voluntarily decide to respect certain rules of international law, human rights in particular, in order to legitimate themselves and their actions in front of the international community.

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