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INTRODUCTORY NOTE TO UNITED NATIONS SECURITY COUNCIL RESOLUTION 2347

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Introduction

In March 2017, the United Nations Security Council adopted Resolution 2347[1] on the subject of intentional destruction of cultural heritage and the link between thefts and looting of cultural objects and financing of terrorism. It was not the first Security Council resolution to address destruction and theft of cultural heritage, but it was the first to address the subject exclusively.

Background and Context

The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols[2] aim to protect cultural property during armed conflict, while the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[3] and the 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects[4] regulate the movement of cultural objects through the international market. However, the United Nations Security Council has only turned its attention to cultural heritage since 2003.

UN Security Council Resolution 1483 (2003) addressed the status of Iraq in the wake of the United States–led invasion. During the conflict, the National Museum of Iraq, the National Library, and the Archives in Baghdad were looted, as were cultural institutions in other parts of Iraq. Large-scale looting of archaeological sites, particularly in the south, ensued. Adopted on May 22, 2003, Resolution 1483 called for all UN member states to prevent trade in cultural materials illegally removed from Iraq and to facilitate the return of such objects.[5] During the conflict in Mali, which was precipitated by the Tuareg revolt but then perpetuated by various Islamist groups, several historically significant sites, particularly mosques and shrines in the World Heritage Site of Timbuktu, were destroyed. The UN Security Council adopted several resolutions concerning the situation in Mali. In Resolutions 2085[6] and 2100,[7] the Security Council condemned destruction of and thefts from cultural and religious sites.

Most, if not all, parties to the conflict in Syria have destroyed cultural heritage, either intentionally or as collateral damage. The Islamic State in Iraq and the Levant (ISIL) engaged in both intentional destruction, as with the destruction of structures at the World Heritage Site of Palmyra (Syria) and the Mosque of Nebi Yunus in Mosul (Iraq), and looting of archaeological sites. Satellite imagery has indicated the large-scale site looting,[8] while anecdotal reports[9] and information obtained from a U.S. Special Forces raid on the compound of an ISIL leader[10] indicated that objects looted from archaeological sites and objects stolen from repositories were being sold onto the international market to provide funding for ISIL's terrorist activities. In response to this information and upon recommendation of the ISIL (Da'esh) and Al-Qaida Sanctions Committee and the Monitoring Team, the Security Council included in Resolution 2199, which addressed several aspects of ISIL and al-Nusra Front funding, a provision that reaffirmed UNSCR 1483 in prohibiting trade in cultural objects illegally removed from Iraq and adopted a similar provision with respect to cultural objects illegally removed from Syria after March 2011.[11] Further recommendations from the ISIL (Da'esh) and Al-Qaida Sanctions Committee and the Monitoring Team with the goal of reducing antiquities trafficking as a source of revenue generation for ISIL and other terrorist groups culminated in UN Security Council Resolution 2347 and, in particular, paragraph 17.

UN Security Council Resolution 2347

The provisions of the resolution carry three main elements: a recognition of the general international law principles embodied in the different treaties mentioned earlier that have the goal of protecting cultural heritage and preventing its destruction; general concern with terrorism and its financing through international networks; and the role of the

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looting of archaeological sites and thefts from cultural institutions, whether directly or indirectly orchestrated by ISIL, al-Nusra Front, or other terrorist groups, in terrorism finance.

The resolution focuses principally on the role of looted and stolen cultural objects in terrorism financing and associated criminal activities, money laundering, bribery, and corruption. It also presents an admixture of other elements of international law that aim to protect cultural heritage. The resolution acknowledges that "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."[12] The resolution also recognizes the prosecution at the International Criminal Court of Ahmad Al Faqi Al-Mahdi for directing the destruction of mosques and mausolea at Timbuktu in Mali[13] and affirms that directing unlawful attacks against cultural sites and buildings may constitute a war crime.[14]

Despite the extensive sentiments expressed in the resolution, it is limited in substantive provisions and even more limited in requirements established for member states. The resolution "*requests*" that member states take appropriate steps to fulfill the provisions of Resolutions 1483 and 2199 on trafficking in cultural materials from Iraq and Syria, while referencing requirements under earlier resolutions that states ensure that no funds or economic resources be provided to ISIL, Al-Qaida, or their affiliates.[15] Several provisions call for, urge, or encourage cooperation among states and various intergovernmental organizations, such as UNESCO, the United Nations Office on Drugs and Crime (UNODC), and INTERPOL,[16] and taking preventive measures within states.[17]

Paragraph 17 comes the closest to substantive content, stating that the Security Council "[*c*]*alls upon* Member States . . . to *consider* adopting" the outlined measures (emphasis added). These measures include improving inventories; adopting regulations on export and import; contributing to and updating the World Customs Organization Harmonized System Nomenclature and Classification of Goods; establishing specialized units among law enforcement, establishing national databases, and contributing to databases maintained by intergovernmental organizations, such as UNESCO, INTERPOL, and the World Customs Organization (WCO), that track criminal activity and law enforcement efforts; engaging museums and the trade in improving provenance documentation and due diligence standards; inventorying cultural objects removed from areas of armed conflict; and engaging in efforts to educate and raise awareness concerning illegal trafficking in cultural objects. While encouraging cooperation, information sharing, and better documentation among the various national agencies and intergovernmental organizations is positive, the resolution is short on substantive provisions. In particular, the focus on documentation is likely to be frustrated because antiquities looted from the ground and sold directly onto the international market cannot, by definition, be documented—a feature that makes them particularly well-suited as a vehicle for money laundering, terrorism finance, and other criminal activity.

Significance

Resolution 2347 brings significant recognition from the world community of the detrimental effects of looting of cultural sites and repositories. This attention was generated primarily through the link between thefts and looting of cultural objects and the funding of terrorism and armed conflict. This focus on income generation for terrorism, however, brings some disadvantages. First, it is a tacit recognition that the existing treaty regime is insufficient to prevent such looting and destruction. Second, given how targeted the resolution is at the specific situation in Syria and Iraq, it means that the cultural heritage of other areas of the world that may be victims of thefts and looting will not receive the same level of protection. Third, as a corollary, the resolution indicates that the world community is, for the most part, concerned with links to terrorism and is less focused on the damage caused to the world's cultural heritage through such activities.

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ENDNOTES

1 S.C. Res. 2347 (March 24, 2017).

2 May 14, 1954, 249 UNTS 240; Mar. 26, 1999, 38 ILM 769.

3 Nov. 17, 1970, 823 UNTS 231, 10 ILM 289 (1971).

4 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 ILM 1322.

5 S.C. Res. 1483, ¶ 7 (May 22, 2003).

6 S.C. Res. 2085 (December 20, 2012).

7 S.C. Res. 2100 (April 25, 2013).

8 *See, e.g.*, Jesse Casana, *Satellite Imagery-Based Analysis of Archaeological Looting in Syria*, 78 NEAR E. ARCHAEOLOGY 142 (2015); Susan Wolfinbarger et al., *Ancient History, Modern Destruction: Assessing the Status of Syria's World Heritage Sites Using High-Resolution Satellite Imagery* (2014), *available at* http://www.aaas.org/page/ancient-history-modern-destruction-assessing-current-status-syria-s-world-heritage-sites-using; Susan Wolfinbarger et al., *Ancient History, Modern Destruction: Assessing the Status of Syria's Tentative World Heritage Sites Using High-Resolution Satellite Imagery* (2014), *available at* http://www.aaas.org/page/ancient-history-modern-destruction-assessing-status-syria-s-tentative-world-heritage-sites-7.

9 *See, e.g.*, Amr al-Azm, Salam al-Kuntar & Brian I. Daniels, Opinion, *ISIS' Antiquities Sideline*, N.Y. Times (Sept. 2, 2014), *at* http://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html?_r=0.

10 U.S. Department of State, Bureau of Educational and Cultural Affairs, *ISIL Leader's Loot*, *at* https://eca.state.gov/gallery/isil-leaders-loot-photo-gallery; *Remarks of Andrew Keller, Deputy Assistant Secretary Bureau of Economic Affairs, U.S. Department of State* (Sept. 29, 2015), *available at* http://eca.state.gov/video/conflict-antiquities-panel-1-video/transcript.

11 S.C. Res. 2199 (Feb. 12, 2015).

12 S.C. Res. 2347, *supra* note 1, Preamble, ¶ 5.

13 Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, *available at* https://www.icc-cpi.int/mali/al-mahdi.

14 S.C. Res. 2347, *supra* note 1, ¶ 4.

15 *Id.* ¶ 8.

16 *Id.* ¶¶ 11, 12.

17 *Id.* ¶¶ 9, 12, 16.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2347*
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United Nations S/RES/2347 (2017)

Security Council

Distr.: General
24 March 2017

Resolution 2347 (2017)

Adopted by the Security Council at its 7907th meeting, on 24 March 2017

The Security Council,

Recalling its resolutions 1267 (1999), 1373 (2001), 1483 (2003), 1546 (2004), 2056 (2012), 2071 (2012), 2085 (2012), 2100 (2013), 2139 (2014), 2170 (2014), 2195 (2014), 2199 (2015), 2249 (2015), 2253 (2015) and 2322 (2016), as well as its Presidential Statement S/PRST/2012/26,

Taking note of United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference's resolution 38 C/48, by which Member States have adopted the Strategy for the Reinforcement of UNESCO's Actions for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict, and have invited the Director General to elaborate an action plan in order to implement the strategy,

Reaffirming its primary responsibility for maintenance of international peace and security, in accordance with the Charter of the United Nations, and *reaffirming further* the purposes and principles of the Charter of the United Nations,

Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

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

Noting with grave concern the involvement of non-state actors, notably terrorist groups, in the destruction of cultural heritage and the trafficking in cultural property and related offences, in particular at the continued threat posed to international peace and security by the Islamic state in Iraq and the Levant (ISIL, also known as Da'esh), Al-

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Qaida and associated individuals, groups, undertakings and entities, and *reaffirming* its resolve to address all aspects of that threat,

Also noting with concern that the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities are generating income from engaging directly or indirectly in the illegal excavation and in 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,

Noting with grave concern the serious threat posed to cultural heritage by landmines and unexploded ordnance,

Strongly concerned about the links between the activities of terrorists and organized criminal groups that, in some cases, facilitate criminal activities, including trafficking in cultural property, illegal revenues and financial flows as well as money-laundering, bribery and corruption,

Recalling Security Council resolution 1373 (2001) which requires that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to individuals, groups, undertakings or entities involved in such acts, and other resolutions that emphasize the need for Member States to continue exercising vigilance over relevant financial transactions and improve information-sharing capabilities and practices, in line with applicable international law, within and between governments through relevant authorities,

Recognizing the indispensable role of international cooperation in crime prevention and criminal justice responses to counter trafficking in cultural property and related offences in a comprehensive and effective manner, *stressing* that the development and maintenance of fair and effective criminal justice systems should be a part of any strategy to counter terrorism and transnational organized crime and *recalling* in this respect the provisions of the United Nations Convention against Transnational Organized Crime and the Protocols thereto,

Recalling the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and its Protocols of 14 May 1954 and 26 March 1999, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the Convention concerning the protection of the World Cultural and Natural Heritage of 16 November 1972, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions,

Noting the ongoing efforts of the Council of Europe Committee on Offences relating to Cultural Property concerning a legal framework to address illicit trafficking in cultural property,

Commending the efforts undertaken by Member States in order to protect and safeguard cultural heritage in the context of armed conflicts and *taking note* of the Declaration issued by Ministers of Culture participating in the International Conference "Culture as an Instrument of Dialogue among Peoples", held in Milan on 31 July-1 August 2015 as well as the International Conference on the victims of ethnic and religious violence in the Middle East, held in Paris on 8 September 2015, and the Conference on Safeguarding Endangered Cultural Heritage held in Abu Dhabi on 3 December 2016 and its declaration,

Welcoming the central role played by UNESCO in protecting cultural heritage and promoting culture as an instrument to bring people closer together and foster dialogue, including through the #Unite4Heritage campaign, and the central role of the United Nations Office on Drugs and Crime (UNODC) and INTERPOL in preventing and countering all forms and aspects of trafficking in cultural property and related offences, including through fostering broad law enforcement and judicial cooperation, and in raising awareness on such trafficking,

Also recognizing the role of the Analytical Support and Sanctions Monitoring Team of 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee, in identifying and raising awareness on the challenges related to

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the illicit trade of cultural property as it relates to the financing of terrorism pursuant to resolutions 2199 (2015) and 2253 (2015), and *welcoming* the Financial Action Task Force (FATF) guidance on recommendation 5 on the criminalization of terrorist financing for any purpose, in line with these resolutions,

Expressing in this regard concern at the continuing use in a globalized society, by terrorists and their supporters, of new information and communications technologies, in particular the Internet, to facilitate terrorist acts, and condemning their use to fund terrorist acts through the illicit trade in cultural property,

Underlining the importance that all relevant United Nations entities coordinate their efforts while implementing their respective mandates,

Noting the recent decision by the International Criminal Court, which for the first time convicted a defendant for the war crimes of intentionally directing attacks against religious buildings and historic monuments and buildings,

1. *Deplores and condemns* the unlawful destruction of cultural heritage, inter alia destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, notably by terrorist groups;

2. *Recalls* its condemnation of any engagement in direct or indirect trade involving ISIL, Al-Nusra Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida, and *reiterates* that such engagement could constitute financial support for entities designated by the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee and may lead to further listings by the Committee;

3. *Also condemns* systematic campaigns of illegal excavation, and looting and pillage of cultural heritage, in particular those committed by ISIL, Al-Qaida and associated individuals, groups, undertakings and entities;

4. *Affirms* that 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 and that perpetrators of such attacks must be brought to justice;

5. *Stresses* that Member States have the primary responsibility in protecting their cultural heritage and that efforts to protect cultural heritage in the context of armed conflicts should be in conformity with the Charter, including its purposes and principles, and international law, and should respect the sovereignty of all States;

6. *Invites*, in this regard, the United Nations and all other relevant organizations to continue providing Member States, upon their request and based on their identified needs, with all necessary assistance;

7. *Encourages* all Member States that have not yet done so to consider ratifying the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and its Protocols, as well as other relevant international conventions;

8. *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, notably from terrorist groups, including by prohibiting cross-border trade in such illicit items where States have a reasonable suspicion that the items originate from a context of armed conflict, notably from terrorist groups, and which lack clearly documented and certified provenance, thereby allowing for their eventual safe return, in particular items illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, and *recalls* in this regard that States shall ensure that no funds, other financial assets or other economic resources are made available, directly or indirectly, by their nationals or persons within their territory for the benefit of ISIL and individuals, groups, entities or undertakings associated with ISIL or Al-Qaida in accordance with relevant resolutions;

9. *Urges* Member States to introduce effective national measures at the legislative and operational levels where appropriate, and in accordance with obligations and commitments under international law and national instruments,

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to prevent and counter trafficking in cultural property and related offences, including by considering to designate such activities that may benefit organized criminal groups, terrorists or terrorist groups, as a serious crime in accordance with article 2(b) of the UN Convention against Transnational Organized Crime;

10. *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, that meet the designation criteria set forth in resolutions 1267 (1999), 1989 (2011) and 2253 (2015);

11. *Urges* Member States 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 that benefit or may benefit organized criminal groups, terrorists or terrorist groups;

12. *Calls upon* Member States to request and provide cooperation in investigations, prosecutions, seizure and confiscation as well as the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property, and judicial proceedings, through appropriate channels and in accordance with domestic legal frameworks as well as with the United Nations Convention against Transnational Organized Crime and the Protocols thereto and relevant regional, subregional and bilateral agreements;

13. *Welcomes* the actions undertaken by UNESCO within its mandate to safeguard and preserve cultural heritage in peril and actions for the protection of culture and the promotion of cultural pluralism in the event of armed conflict, and *encourages* Member States to support such actions;

14. *Encourages* Member States to enhance, as appropriate, bilateral, subregional and regional cooperation through joint initiatives within the scope of relevant UNESCO programmes;

15. *Takes note of* the UNESCO Heritage emergency fund as well as of the international fund for the protection of endangered cultural heritage in armed conflict as announced in Abu Dhabi on 3 December 2016, and of other initiatives in this regard, and *encourages* 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;

16. *Also encourages* Member States to take preventive measures to safeguard their nationally owned cultural property and their other cultural property of national importance in the context of armed conflicts, including as appropriate through documentation and consolidation of their cultural property in a network of "safe havens" in their own territories to protect their property, while taking into account the cultural, geographic, and historic specificities of the cultural heritage in need of protection, and notes the draft UNESCO Action Plan, which contains several suggestions to facilitate these activities;

17. *Calls upon* Member States, in order to prevent and counter trafficking of cultural property illegally appropriated and exported in the context of armed conflicts, notably by terrorist groups, to consider adopting the following measures, in relation to such cultural property:

(a) Introducing or improving cultural heritage's and properties' local and national inventory lists, including through digitalized information when possible, and making them easily accessible to relevant authorities and agencies, as appropriate;

(b) Adopting adequate and effective regulations on export and import, including certification of provenance where appropriate, of cultural property, consistent with international standards;

(c) Supporting and contributing to update the World Customs Organization (WCO) Harmonized System Nomenclature and Classification of Goods;

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(d) Establishing, where appropriate, in accordance with national legislation and procedures, specialized units in central and local administrations as well as appointing customs and law enforcement dedicated personnel, and providing them, as well as public prosecutors, with effective tools and adequate training;

(e) Establishing procedures and where appropriate databases devoted to collect information on criminal activities related to cultural property and on illicitly excavated, exported, imported or traded, stolen, trafficked or missing cultural property;

(f) Using and contributing to the INTERPOL Database of Stolen Works of Art, UNESCO Database of National Cultural Heritage Laws, and WCO ARCHEO Platform, and relevant current national databases, as well as providing relevant data and information, as appropriate, on investigations and prosecutions of relevant crimes and related outcome to UNODC portal SHERLOC and on seizures of cultural property to the Analytical Support and Sanctions Monitoring Team;

(g) Engaging museums, relevant business associations and antiquities market participants on standards of provenance documentation, differentiated due diligence and all measures to prevent the trade of stolen or illegally traded cultural property;

(h) Providing, where available, to relevant industry stakeholders and associations operating within their jurisdiction lists of archaeological sites, museums and excavation storage houses that are located in territory under the control of ISIL or any other group listed by the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee;

(i) Creating educational programmes at all levels on the protection of cultural heritage as well as raising public awareness about illicit trafficking of cultural property and its prevention;

(j) Taking 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;

18. *Encourages* Members States, relevant United Nations entities, in accordance with their existing mandate, and international actors in a position to do so to provide assistance in demining of cultural sites and objects upon request of affected States;

19. *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, illicit excavation, looting and smuggling in the context of armed conflicts, in collaboration with UNESCO, and that such operations should operate carefully when in the vicinity of cultural and historical sites;

20. *Calls upon* UNESCO, UNODC, INTERPOL, WCO and other relevant international organizations, as appropriate and within their existing mandates, to assist Member States in their efforts to prevent and counter destruction and looting of and trafficking in cultural property in all forms;

21. *Requests* the Analytical Support and Sanctions Monitoring Team of the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee to continue, within its existing mandate, to provide the Committee with relevant information regarding the illicit trade of cultural property;

22. *Also requests* the Secretary-General, with the support of UNODC, UNESCO and the Analytical Support and Sanctions Monitoring Team of the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee, as well as other relevant United Nations bodies, to submit to the Council a report on the implementation of the present resolution before the end of the year;

23. *Decides* to remain actively seized of the matter.

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