Polish-Ukrainian Dialogue on the Restitution of Cultural Property Displaced during World War II[1]

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Translated from Ukrainian

Abstract: Negotiations between Ukraine and Poland concerning the return of lost treasures have been ongoing since the beginning of the 1990s. In total, during 1997–2020 six sessions were held of the Intergovernmental Ukrainian-Polish Commission for the Protection and Return of Cultural Property Lost and Illegally Displaced during World War II. However, no cultural objects have been returned to Ukraine or Poland. This article analyzes current Ukrainian-Polish intergovernmental relations on the return and restitution of cultural property lost in consequence of World War II, describes the accomplishments, and examines the problematic issues concerning mutual co-operation.

Keywords: Ukraine, Poland, World War II, cultural property, restitution, intergovernmental negotiations.

Among the many areas of current Ukrainian-Polish co-operation a special place is held by the issue of restitution of cultural property, due to centuries-long historical circumstances affecting relations between the two neighbouring nations and at the domestic level. These included long periods as common subjects of a state entity, close co-operation, armed conflict, and numerous border changes. All these historical factors are layered in the historical memory of both nations. Unquestionably, this historical background should be considered with understanding and maximum impartiality. Past events had an especially significant impact on the fate of

[1] This is an abridged version of chapter "8.3 Ukraina i Respublika Pol'shcha" of the author's monograph *Povernennia i restytutsiia kul'turnykh tsinnostei u politychnomu ta kul'turnomu zhytti Ukrainy u XX–na poch. XXI st.* (*The Return and Restitution of Cultural Property in the Political and Cultural Life of Ukraine During the Twentieth and Early Twenty-First Centuries*), Instytut istorii Ukraïny NAN Ukraïny, 2020, pp. 857–85. English translation has been emendated by Ksenia Maryniak.

[2] The obituary following this article is an abridged version, commissioned and translated by Ksenia Maryniak, of a full eulogy that was published in *Ukraïns'kyi istorychnyi zhurnal*, no. 2, March–April 2022.

Volume IX, No. 2 (2022) DOI: https://doi.org/10.21226/ewjus756

cultural property, nearly always held hostage to historical circumstance. Today, decades and centuries on, this problem has attracted the attention of society and public institutions in both countries, influencing their bilateral relationship in many ways.

Describing the importance and complexity of the range of issues related to lost cultural property, the deputy director of the State Archives of Poland, Władisław Stepniak, stated:

> For many countries, their international activity includes proper priority given to matters associated with these treasures. Our hopes that over time the tensions arising around these issues would be defused and that improved technical capabilities . . . would help find a way for mutually acceptable solutions. Concerning disputed archival materials, library fonds, and museum collections, a specific atmosphere is emerging in which their role and significance are becoming increasingly controversial. In this situation, finding viable solutions is not easy! (15–16).

It is hard to disagree with these words.

Poland was among the first countries to recognize the independence of Ukraine. The Ukrainian-Polish treaty on good-neighbourliness, friendship, and co-operation (signed in Warsaw on 18 May 1992 by Presidents Leonid Kravchuk and Lech Wałęsa) included article 13, important to both sides, which identified areas of bilateral co-operation in the field of cultural heritage preservation (item 4). In particular, it referred to the search and return of cultural property that had been lost or illegally exported (*Ukraina* 556–57). As a gesture of goodwill, President Wałęsa made a donation to Ukraine, handing them personally to President Kravchuk, of six folders from the archive of the Shevchenko Scientific Society in Lviv that were found in Poland after World War II and stored in the Biblioteka Narodowa in Warsaw (Fedoruk).

A further important step in creating an organizational infrastructure for bilateral dialogue was the interstate "Agreement between the Government of Ukraine and the Government of the Republic of Poland on Co-operation concerning the Protection and Return of Cultural Property Lost and Illegally Displaced during World War II" dated 25 June 1996, which defined and specified the subject and scope of mutual co-operation between the parties. In particular, article 2 of the Agreement declares: "In order to protect, preserve, search for, and return cultural property associated with the culture and history of the Parties, recognized as lost or illegally moved to the territory of the other Party, the Parties shall establish an Intergovernmental Ukrainian-Polish Commission" (*Ukraina* 556, 559; Stepniak 24).

The Commission parties are granted the authority to search, register, and identify cultural artifacts which are on the search lists of both Ukraine and Poland, to mutually inform one another on the results thereof, and to

prepare official condition reports (*ekspertyza*; art. 3). Under the commission permanent or ad hoc committees may be formed to address issues concerning archaeological and historical monuments, pieces of art, archival documents, libraries, and other subjects identified by the ongoing search and research activities, to identify cultural property, and to prepare proposals for its return (art. 4, 5). The Agreement also provides for joint accounting, inventory, and study of cultural property related to the history and culture of each party, establishing their number and state of integrity (art. 1), search and identification of cultural property sought by both countries (art. 3), creation of a common database of lost cultural property, and the possibility of joint publications (art. 6) (Stepniak 23–25).

These events were happening against the complicated backdrop of passions raging in public opinion in Poland and Ukraine alike in the first half of the 1990s concerning lost cultural treasures. The Polish media widely publicized the subject of returning Polish cultural property from Ukraine, particularly from Lviv. On the other side, the Ukrainian press published commentaries that denied such claims ("Chysti").

The first meeting of the Intergovernmental Ukrainian-Polish Commission took place in May 1997 in Lviv. The Ukrainian party demonstrated an unprecedented openness—Polish experts were shown all the collections of a number of prominent museums, archives, and libraries of Lviv that included artifacts of Polish origin. It was possibly this Ukrainian openness that largely determined the subsequent significant reduction of social tension around restitution matters, which then took the form of fundamental but partnership-like discussions. This author was a member of the Ukrainian delegation at those historical negotiations and represented Ukraine in the mutual protocol group that drafted the first bilateral minutes of the commission's meeting. The tensions seethed during the negotiations, and once the first compromise wordings were achieved and recorded in the minutes, the mutual relief was palpable. This enabled the formulation of important specifications and an algorithm of Polish-Ukrainian co-operation, and a number of bilateral panels were approved. Arguably, the statement recorded as item 4 in the minutes of the commission was instrumental in achieving rapport between the parties and building mutual trust: "The Polish side was pleased to express appreciation for the protection, conservation measures, and overall condition of the collections of cultural property that are associated with the history and culture of Polish and Ukrainian peoples and noted the need for continued conservation and restoration work" (Stepniak 30).

In September 1997 Poland sent to Ukraine an official request to return the collections of the former Ossolineum Institute in Lviv. By the end of the same year specific applications were also delivered for a number of other historical collections and individual artifacts which, according to the Polish

party, could be in Lviv museums. Among them were items in the collections of the former King Jan III Museum (up to 50,000 artifacts), including 650 items that had been donated by A. Smoliński to the museum in 1925; two sixteenth-century Lviv cannons from the Wawel Castle Museum in Krakow that had been transferred to the Lviv Historical Museum in early 1931; and about 5,000 items formerly belonging to Bolesław Orzechowicz, including ancient weapons and collections of works of art, that the collector had donated to Lviv in 1919 (also part of the collections of the King Jan III Museum), as well as about 1,500 items formerly donated from Loziński collections that had been transferred "in perpetuity" to the King Jan III Museum in 1914.

These queries from the Polish party launched a series of Polish-Ukrainian discussions about specific collections and artifacts. The Polish list was supplemented by other cultural property, including: *Sumariusz metryki koronnej* vol. 139 (1666–1706) and vol. 262 (1699–1700) at the Lviv Stefanyk Scientific Library; parchment documents, dated from the fourteenth to eighteenth centuries, from the Polish town of Bochnia at the Central State Historical Archive in Kyiv; a collection of incunabula at the library of Lviv National University, and others.

During the bilateral negotiations the Ukrainian party also submitted claims for the return of cultural property that, according to Ukrainian data, had been taken by the Nazis from occupied territories and ended up in Poland after World War II. These included, inter alia, 18 silver and bronze jewelry items from the sixth to twelfth centuries (mostly ancient Slavic fibulas) from the archaeological collections of the National History Museum in Kyiv that are currently in the Archaeological Museum of Krakow; and the 1687 register of the Lviv Municipal Court that is currently in the State Archives in Krakow but is actually part of a full set of court documents that is in the fonds of the Central State Historical Archive in Lviv. Four other registers from the seventeenth and eighteenth centuries, removed from the collections of the Central State Historical Archive in Kyiv in 1943, were identified in the fonds of the General Archives of Ancient Acts in Warsaw. In addition, according to the Kharkiv Art Museum, the National Museum in Warsaw holds a canvas by Hryhorii M''iasoiedov titled *Posukha* (*Drought*) that belonged to the Kharkiv Art Gallery before the war and was confiscated by the Nazis in 1943. The Ukrainian party also requested to verify the [location of a] painting by Johann Baptist von Lampi, *Portrait of Stanislaw Malachowski*, which was lost from the National Museum of Western and Oriental Art in Kyiv and could be at the same place. Finally, the requests submitted by the Ukrainian party included materials of the Shevchenko Scientific Society at the National Library in Warsaw and documents from the archival collection of the Ukrainian Allied Army of 1918–21 (Central Military Museum in Warsaw).

In addition, a heated Polish-Ukrainian debate in the 1990s and early 2000s, which seeped out beyond the official negotiations, concerned the disputed right to the return to Ukraine of drawings by Durer that had been exported by the Nazis from German-occupied Lviv and had been dispersed in various museums and collections worldwide after the war (Vol'ha; Kot, "Ukraïna-Pol'shcha" 46–47; Dziuban 81, 84).

Generally, during 1997–2015 six sessions of the Intergovernmental Ukrainian-Polish Commission for the Protection and Return of Cultural Property Lost and Illegally Displaced during World War II were held: 14–15 May 1997 in Lviv; 17–19 February 1999 in Warsaw; 5–6 March 2001 in Kyiv; 17–18 June 2008 in Warsaw; 4–5 December 2010 in Lviv; and 15–17 June 2015 Olsztyn (Stepniak 31–53). Bilateral meetings were also held regularly of panels on museum treasures, library fonds, and archival heritage.

The bilateral co-operation during this period resulted in many positive achievements. Among them, most remarkable was the high level of trust and openness that formed between the Polish and Ukrainian experts and official institutions, as well as the prolific working contacts between the museums, archives, and libraries of both countries. Co-operation programs were implemented between the Lviv Stefanyk Scientific Library and the National Ossoliński Institute in Wrocław to identify and digitize the materials pertaining to the historical "Ossolineum" collection. Archivists of both countries worked intensively on large-scale projects to identify and copy "Polonica" in Ukrainian archives for Polish researchers and "Ukrainica" items in Polish archives for Ukrainian researchers. Polish and Ukrainian experts were given the opportunity to carry out detailed investigations of selected museum exhibits to verify their identity (including M"iasoiedov's painting *Drought* and Lampi's *Portrait of Stanislaw Malachowski*). One such investigation by the Ukrainian side resulted in the withdrawal of their request for the Lampi painting.

It is equally interesting to study a White Paper–type document titled the "Concept Protocol Concerning Joint Polish-Ukrainian Archival Heritage" dated 19–20 May 2006. Pursuant to this document, the "joint archival heritage" comprises archival collections belonging to the integral part of the national archival inventory of each country that are essential for the partner state but for objective reasons are not subject to restitution or return claims. Thus, the parties were able to openly declare the scope of their interests in each other's archives. For Poland, they included whole or partial archives established by state and local governments in what are now Ukrainian territories that were under the Kingdom of Poland, the Polish-Lithuanian Commonwealth, the Russian Empire and Austria-Hungary, and the Second Polish Republic, as well as archives and documents of Polish public institutions and organizations, military units, individuals, and families that were established during these periods. Concomitantly, Ukraine is interested

in archives and individual documents created in the today's territory of the Republic of Poland, belonging to Ukrainian public institutions and organizations, military units, individuals, and families, that were formed throughout the periods of and in territories at different times occupied by the Kingdom of Poland, the Polish-Lithuanian Commonwealth, the Russian and Austro-Hungarian Empires, and the Second Polish Republic. In practical terms, the co-operation of the parties on fulfilling the concept of joint Ukrainian-Polish archival heritage consists of opening and granting access to archives, compiling lists and directories of archival collections that can be referred to as common archival heritage, exchanging information on preservation conditions, processing and microfilming sources, and drawing up plans for assessments and publications (Stepniak 89–90).

Nevertheless, the fact is that throughout the entire period of bilateral negotiations under the framework of the Intergovernmental Commission (1996–2015) not a single physical act of restitution of cultural property from one party to the other took place. What is the reason for this situation? The experience of Ukrainian-Polish co-operation in the search for cultural property lost and illegally displaced in the wake of World War II allows this author to point out certain trends that became evident during the overall negotiation process and to determine the causes of diverging stances on this issue that still exist at the bilateral level. For example, in the course of practical implementation of bilateral agreements and the work of the Intergovernmental Commission it became apparent that both sides interpreted the agreement in different ways—particularly the term "cultural property lost and illegally displaced during World War II."

At the very beginning of the negotiation process, the Polish experts defined the subject of the agreement quite broadly and raised concerns about the fate of all cultural properties that were generally found in the territories that belonged to Poland up to 1 September 1939 and became part of the Ukrainian SSR following the war. In their opinion, the annexation of these areas by the USSR took place because of the Molotov-Ribbentrop Pact. Accordingly, the Soviet legal enactments and practical actions that resulted in changes of title to cultural property (including nationalization), as well as reorganization of museum, archive, and library collections in the territories subjugated to the USSR starting 17 September 1939, cannot be considered grounds for Ukraine to assert ownership rights today (Akulenko 16; Prushyns'kyi 51).

However, it was the Polish side's vision concerning the key problem of understanding the restitution process associated with the period of World War II that largely determined its initiatives for the return of specific archives, museum collections, and individual historical objects or works of art that were recorded in the documents of Intergovernmental Ukrainian-Polish Commission for the Protection and Return of Cultural Property Lost

and Illegally Displaced during World War II. This stance was confirmed by the Polish delegation during the fourth session of the Intergovernmental Commission in June 2008: "10. The Polish Party considers that the items claimed from the Ukrainian Party in 1997 were illegally lost by Poland as a result of the Second World War" (Stepniak 51).

However, such an interpretation of the issue is not in line with the position of the Ukrainian party. According to Ukrainian experts, cultural properties belonging to collections historically formed in the territory of modern Ukraine—including territories occupied by Poland before 1 September 1939—cannot be the subject of restitution. Specifically, the items and collections mentioned by the Polish party in its claim of 1997 have never been moved from Lviv: they stayed in the city before World War II, during the war events, and after the war. Border changes between Poland and the USSR, which included Ukraine at the time, resulted in a change of the national and territorial status of Lviv together with the cultural institutions within it. So, from the Ukrainian perspective the above-mentioned collections are not subject to return and therefore cannot be considered in the framework of the Commission or the corresponding agreement under which it was created. Similarly, for example, in the course of further in-depth research that involved analysis of published documents, Ukrainian expert archivists did not affirm that archival materials additionally claimed by the Polish party—found in the collections of the Volyn Church Archaeological Society at the Central State Historical Archive of Ukraine in Kyiv and in the fonds of the Central State Historical Archive of Ukraine in Lviv—could be considered as cultural properties illegally displaced as a result of World War II.

In terms of understanding the international debates on restitution, it is helpful to realize that the current process of restitution of cultural property is in its international legal sense essentially a natural continuation of the postwar restitution process that started immediately afterward and resulted from the London Declaration of 5 January 1943 as well as other international instruments that defined the key principles and procedures for the return of cultural property. These basic principles of postwar restitution included:

- the issues of return of property displaced from territories of the Allied states shall in all cases be considered in light of the Declaration dated 5 January 1943 (i.e., regarding cultural objects confiscated or otherwise seized by the Nazi regime and its confederates);
- return of cultural objects cannot be an act of reparation, which is a separate process;
- restitution is limited to items that can be identified;
- applications for return of cultural property shall be submitted by governments of countries within their territories and on behalf of individuals and organizations found in them;

– if restitution of lost items is impossible, the right to equivalent substitution is envisioned (i.e., compensation; later, this option became restricted by some countries that pledged not to use cultural objects that were in state and public collections of Germany for such exchanges). (Kot et al. 95–106)

At the same time, along with the Polish nation strongly condemning the inherently shameful Molotov-Ribbentrop Pact of 1939, we would like to note that in terms of international law and legal settlement of border issues between Poland and the Soviet Union and, later, Ukraine, this pact is formally unrelated to the present-day borders between the two countries. Furthermore, it is known that in July 1941 the USSR officially renounced the provisions of the Pact concerning territorial issues (*Vneshniaia* 137–38). Subsequently, upon breaking relations with the émigré Polish government, since 1944 the Soviet Union signed a number of international treaties with the new Polish government concerning the border between the two countries, based on the resolutions of international conferences that had defined the borders between countries in postwar Europe as a whole (Kot, "Do pytannia" 240–41). This fact should also be taken into account when assessing past events and seeking understanding in matters of cultural property restitution.

Hence, the matter of debate for Ukraine based on the bilateral agreement is solely the cultural property lost or illegally moved to the territories of the parties directly during the period that chronologically covers World War II—that is, from 1 September 1939 to 2 September 1945, and in the context of the European theatre of war this period falls between the dates 1 September 1939 and 8 May 1945 (*Entsyklopediia* 469–70). The term "territory of the parties" refers to their current political and administrative boundaries that were fixed in the postwar system of international treaties and bilateral agreements. Therefore, the question of lost and displaced cultural property should be considered in relation to these specific state boundaries. In addition, pursuant to international practice in this context, objects of historical and cultural significance that in the postwar restitution process were not returned to those areas where they had been lost, or from which they had been displaced for various reasons, could also be under consideration.

Accordingly, all applications made by the Ukrainian party for the return of cultural property displaced as a result of World War II are in full compliance with these definitions of the subject of bilateral negotiations. They are also entirely consistent with international law, which provides for their unconditional return to the country of origin.

It is clear enough that Ukrainians must also, in turn, be sensitive to the significance with which Polish cultural artifacts now in Ukraine are treated by the Polish people and respect the efforts that Poland is making to ensure

that they are returned to present-day Poland. However, both the Polish and Ukrainian parties should consider the fact that applications made by the Polish side cannot be the subject of restitution of cultural property in the context of existing international law principles and valid bilateral agreements. Rather, they can be considered as a topic of individual negotiations at a different legal level—in the context of their probable "repatriation" or "revindication."

Another observation that stems from this author's experience gained as a participant in bilateral negotiations is that in the official documents of the Intergovernmental Commission there are plenty of issues that go far beyond its scope and pertain to a much broader range of interests of Ukrainian-Polish cultural co-operation than the search and return of cultural property lost or displaced as a result of World War II. In particular, such issues include requests by the parties that are recorded in the Commission's minutes concerning the collections of the former Stravigor Museum, Przemyśl Chapter Library and former Ohiienko Library in Poland; commemoration of the prominent Ukrainian historical figures of Bohdan Lepkyi in Kraków and Ivan Ohiienko in Chełm (initiated by the Ukrainian side); restoration of the "Albertrandi Directory"; exchange of two bells found in 1999 in the village of Lutowiska in Poland—previously hidden by the Ukrainian community during Operation Wisła—on a reciprocal basis for duplicates of the Kremenets prints in the fonds of the Vernads'kyi National Academic Library of the National Academy of Sciences of Ukraine and proposals for the further exchange of archival documents whose destiny was unrelated to World War II (initiated by the Polish side).

By our reckoning, this may account for the fact that the present Intergovernmental Commission has actually become the first permanent mechanism to really examine the means of bilateral cultural co-operation between Ukraine and Poland. Consequently, the natural desire of the parties has been prompted to address as many challenging issues in their purview as possible, in hopes of resolving them effectively. In particular, there is an evident urgent need for bilateral relations in culture that could create additional official platforms for the development and deepening of mutual Ukrainian-Polish co-operation in this field, with each party contributing in good faith.

In sum, the way matters have developed thus far in search of a mutual understanding once again underlines the complexity and diversity of the issue in question. Nevertheless, the experience of the Ukrainian-Polish bilateral negotiations has been an extremely important step in furthering bilateral co-operation on the search, return, and restitution of cultural property lost or displaced as a result of World War II. And this experience, especially in terms of positive results, serves to encourage both parties to find an effective model that would enhance the co-operation between

Ukraine and Poland both in this area and in other realms of culture, which is doubtless urgently needed for both countries.

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Serhii (Sergii) Kot (22 Oct. 1958–28 Mar. 2022) held a PhD in history and was a leading researcher and director of the Research Centre for the Historical-Cultural Heritage of Ukraine at the Institute of the History of Ukraine of the National Academy of Sciences of Ukraine. His academic awards included graduate studies cum laude (1988), Merited Cultural Worker of Ukraine (2008), and the Dmytro Iavornyts'kyi Prize from the National Society of Scholars of Regional Studies of Ukraine (2015). As with most true historians, Kot's scholarly interests were varied, but the main focus of his research and community-based work centred on investigating the fate of Ukraine's cultural treasures—including the recovery of national artifacts removed to Germany during World War II and the restitution of Ukrainian cultural property appropriated by Russia.

Working beyond the strictly academic field, Kot devoted a significant proportion of his energies to public and community service. He was a member of intergovernmental Ukrainian-Russian (1998–2013) and Ukrainian-Polish (1997–2017) commissions under the Ministry of Culture and Information Policy of Ukraine, an expert consultant to Verkhovna Rada groups addressing the return of lost cultural treasures of Ukraine, and a negotiator in official inter-state talks in this field. In addition, from 2017 he was a member of the Interdisciplinary Working Group for Identifying and Returning Stolen and Lost Cultural Property. His activity led directly to the return from Russia of eleven historical frescoes from the St. Michael's Golden-Domed Cathedral, part of the archive and art collection of Oleksandr Dovzhenko, and the library and part of the archive of the distinguished émigré Ukrainian architect and art historian Olexa Povstenko in the USA. Since 2012 Kot headed the board of the Olzhych Foundation, a well-known community institution originally established in the diaspora. He did much to revive the historical memory of Ukrainian victims of the World War II Babyn Yar massacre and developed a design for the Babyn Yar Memorial in Kyiv.

As a respected proponent of the cultural property restitution, Kot delivered an address to parliamentary hearings titled "Status, Problems, and Prospects for Protecting Cultural Heritage in Ukraine" on 18 April 2018. His persistence and determination resulted in the publication of the third book of an encyclopedic compendium of twenty-eight volumes describing Ukraine's historical and cultural monuments, focusing on Kyiv. The planned book launch was cancelled due to the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022. His overall scholarly oeuvre numbers over 300 publications, including multi-author and individual monographs, document collections, and artwork catalogues.

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