

# Memory, Cultural Heritage and Community Rights *Church Bells in Eastern Europe and the Balkans*

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## Abstract

For centuries church bells have constituted an inherent element of religious and social life. Due to their artistic and pecuniary value, the bells have also been subjected to forced removal and/or pillage. This article discusses the role of church bells as vehicles of the collective memory and cultural identity of selected ethnic and religious communities in Europe which were deeply affected by the post-World War II territorial arrangements: namely, the Italian, Slovenian and Croatian communities of Istria and Ukrainians re-settled from Poland. Against the background of these cases

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it explores the clashes within various layers of international law dealing with culture and cultural heritage: humanitarian law, state succession, protection of the integrity of cultural heritage sites, and human rights. Viewed through such a lens, some suggestions are offered on how to overcome these conflicts in order to enforce the cultural rights of communities and protect their right to enjoy their material and spiritual heritage.

## Keywords

Cultural rights – religious heritage – territoriality – state succession – restitution

### 1 Introduction

In the aftermath of the Second World War the experts of the Inter-Allied Commission for the Restoration of Bells took the decision to return bell fragments found in the Hamburg refinery, where thousands of them, plundered by the Nazis from all over Europe, were stored in order to be melted down to obtain tin, copper and other metals.<sup>1</sup> The attention devoted to such ‘shards’ and their precise identification perfectly illustrates the unique status and value of bells as objects of cultural heritage. The pieces were regarded not only as shrines of destroyed artworks but first and foremost as irreplaceable material for recasting the bells and restoring their unique sound. According to Frank Percival Price, a world-renown carillonist and campanologist and the main consultant of the Commission, bells were man’s most universal musical instrument and an artefact of great social, religious and iconographic significance.<sup>2</sup> Throughout the whole of Europe, from London to Moscow, and within the Catholic, Protestant and Orthodox traditions, bells belonged to the earliest, most powerful and bonding elements of a shared identity.<sup>3</sup> From the time of the Middle Ages they determined the life, space, and time of the basic communities: villages, small towns, and city districts. Endowed with a sacral authority, they marked both the annual and daily cycles, commemorated important events, or announced emergencies, such as fires or sieges. The power and authority of these heavy bronze objects, suspended high in church towers and hardly

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1 L Rombouts, *Singing Bronze: A History of Carillon Music* (Leuven University Press, 2014) 269.

2 See generally FP Price, *Bells and Man* (Oxford University Press, 1983).

3 See A Corbin, *Village Bells. Sound and Meaning in 19<sup>th</sup> Century French Countryside* (Columbia University Press, 1998).

visible from the ground, was not based only on their material qualities, but rather derived therefrom.

Bells, through the medium of sound, not only permeated a community and bound it together, but they also delimited its territorial boundaries and brought order to its life. They were a widely shared patrimony, which shaped the identity of everyone who heard them and knew how to decipher their message. Even the simplest village bells, not usually of the greatest artistic and musical quality, were endowed with such a power. Often cast by itinerant artisans from discarded metal brought by local inhabitants, these bells were treated with the highest respect and played the same role in celebrating the same festivities as those made for the major cathedrals. Their consecration rites, celebrated by the community as a whole, were embedded with sacral authority. Bells not only defined the local order but also inscribed the community into a larger religious, state, or national framework. They were rung to mark national feasts and to make important public announcements: each city, country and state had its own paramount, most valued, and symbolic bells. In predominantly rural societies they often constituted the only determinant of a collective identity even as late as the first decades of the 20<sup>th</sup> century.

This article discusses the role of church bells as vehicles of collective memory and the cultural identity of selected ethnic and religious communities which were forcefully expelled and resettled during the tumultuous and tragic events which took place during the Second World War. In particular, it recalls two similar but distinct cases involving the rights of such groups: the Italian *esuli* from Istria and the Ukrainians who were re-settled from present-day eastern Poland to Ukraine. The former case considers the current controversy over the control and use of church bells evacuated by the Italian State during the Second World War from the territories which were transferred to Yugoslavia, in particular to Slovenia and Croatia. The second case involves the recent request by a local Ukrainian religious community for the return of bells left behind in the territory of Poland after the forced resettlement of this community in 1951. Arguably, in neither case does the title, *per se*, to such objects lie at the centre of the dispute. It is rather the question of a community's right to memory and/or religious rights which play the crucial role. This article explores, on normative grounds, the clashes within various layers of international law dealing with culture and cultural heritage, which include the spheres of armed conflicts, humanitarian law, state succession, the protection of the integrity of cultural heritage sites, and minority protection and human rights. Viewed through such a broad lens, an attempt is made to offer some suggestions how these clashes can be overcome and reconciled in order to enforce the cultural rights (including religious ones) of communities which have an interest in the enjoyment of their spiritual heritage.

## 2 Church Bells and the Second World War

Bells, as authoritative determinants of identity and order, were put under threat during various times of social and revolutionary upheavals. Bell ringing was restricted and strictly regulated and bells were publicly destroyed. At the time of the French Revolution, the silence that reigned in the city of Paris after the 1795 municipality decree which ordered the taking down of all bells and their melting into cannons can be considered not only as the most significant and far reaching act of iconoclasm, but also as the most effective way of imposing the new de-Christianised social order.<sup>4</sup> Similarly, during the time of Stalinist terror, the dismantling of bells became one of the strongest and most visible actions in the successful imposition of the new social order.<sup>5</sup> They were taken down even from the oldest Russian monasteries and churches and melted down in conjunction with the destruction of the monasteries and churches themselves, the persecution of monks, and the ban on religious practices. Alain Corbin defines the French efforts at silencing the bells as ‘an impossible revolution in the culture of the senses.’<sup>6</sup> Thus, in the aftermath of the revolution the cultural and social act of bell ringing was re-christened in Paris and everywhere on the French territory. The 2008 repatriation from the Harvard University’s campus of eighteen bells from the 13<sup>th</sup> century Danilov Monastery in Moscow demonstrates the still vivid symbolic power of bells in present-day Russia. One of the few complete sets to survive the revolution, they were purchased in 1930 by Charles R. Crane, an American philanthropist and avid collector of Russian Orthodox art, and donated to Harvard. With the restoration of the Danilov Monastery in 1983, made possible by the re-introduction of religious freedom in Russia by Mikhail Gorbachev, the return of its bells became a matter of utmost national importance, which involved the highest hierarchies of the Russian Orthodox Church.<sup>7</sup>

The removal and destruction of bells is a phenomenon as old as the instruments themselves. It took place not only during social and political upheavals, but especially often during times of war, when bells were taken down and

4 R Clay, ‘Smells, Bells and Touch: Iconoclasm in Paris during the French Revolution’ (2012) 35(4) *Journal for Eighteenth-Century Studies* 521–533, at 526–529.

5 RL Hernandez, ‘Sacred Sound and Sacred Substance: Church Bells and the Auditory Culture of Russian Villages during the Bolshevik Velikii Perelom’ (2004) 109(5) *American Historical Review* 1475–1504.

6 Corbin, *supra* n. 3 at 3.

7 E Batuman, ‘The Bells. How Harvard Helped to Preserve Russian Legacy’ *The New Yorker* 27 April 2009, available at <<http://www.newyorker.com/magazine/2009/04/27/the-bells-6>> (accessed 10 October 2016).

melted as a source of weaponry material.<sup>8</sup> Despite the fact that the Regulations respecting the Laws and Customs of War on Land, annexed to the 1907 Hague Convention,<sup>9</sup> prohibited the use of bells (as elements of ‘buildings dedicated to religion’) for war purposes, the two world wars brought about genuine and irreparable losses to European bell heritage. In particular the Nazi confiscations, both at home and within the territories of the Axis Powers and the occupied lands, affected some 175,000 bells, of which more than 150,000 were melted down, lost or destroyed.<sup>10</sup> While many of the most precious historical bells were saved, thousands of simple village bells never returned to their bell towers. Numerous parish communities, often incurring large risks, buried the bells underground to try to save them from both confiscations and bombings. Local authorities attempted to grant rights to research the bells and thus postpone and even scuttle their requisition. Others provided the bells with inscriptions testifying to the looting and to the damage done to the community.

Ironically, the war requisitions constituted a unique opportunity to document and study these bells, which were usually barely accessible. Already during the time of the First World War the measurement, visual and written documentation, redrawing of inscriptions and ornaments, and even music documentation of the bells had become a standard practice on all fronts. Such documentation, as well as the original inscriptions painted on the bells, played a fundamental role in their identification and in the formulation of claims in the aftermath of the two world conflicts. Equally important, however, was the bell’s status in the history and identity of individual communities, which led, for example, to the diplomatic exchange between Harvard and

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8 Perhaps the most famous example, and a symbol of colonial crimes, regarded the plunder and destruction of the Great Bell of Dhammazedi, believed to be the largest bell ever cast. It was made in 1484 in Burma as a royal gift for the Shwedagon Pagoda of Dagon (present-day Yangon), the most sacred Buddhist pagoda in the country. In 1608, Filipe de Brito e Nicote, a Portuguese warlord and mercenary, sacked the city and stole the bell, which was to be melted down. As the bell was too heavy, it sank with the raft carrying it into the muddy waters of the Yangon River. Its salvage and reconstruction constantly arouse public opinion. See DF Lach, EJ Van Kley, *Asia in the Making of Europe, Vol III: A Century of Advance* (University of Chicago Press, 1998) 1126–1130.

9 Signed on 18 October 1907, entered into force 26 January 1910, 208 Parry’s CTS 77, Articles 27 and 56.

10 See FP Price, *Campanology Europe 1945 – 47: A Report on the Condition of Carillons on the Continent of Europe as a Result of the Recent War; on the Sequestration and Melting Down of Bells by the Central Powers; and on Research into the Tonal Qualities of Bells Made Accessible by War-Time Dislodgment* (University of Michigan Press, 1948); K Freeman, “‘The Bells, Too, Are Fighting’: the Fate of European Church Bells During the Second World War’ (2008) 43(3) *Canadian Journal of History* 417–450.

the Danilov Monastery. Similar considerations lie at the heart of the complex cases analysed in this article.

### 2.1 *The Istrian Bells*

In Museo Miramare in Trieste there is a collection of fifteen church-bells dating back to the 16<sup>th</sup>–18<sup>th</sup> centuries, as well as one which is never displayed and belonged to the original religious communities of the region of Trieste and Istria. The history of these Istrian church bells is an ongoing story in the history of pieces of the collective memory of various communities and territories, sought-after by different political entities and scattered throughout different territories, starting from the time of the First World War.

Following the French Napoleonic occupation of 1805–1813, in 1814 Istria, together with the territory of the former Republic of Venice, was again placed under the Austro Hungarian Empire. During the 1915–1918 conflict, the imperial authorities ordered the requisition of bells from each and every church in its territory, intending them to be fused into a metal reservoir for the war effort. Although the State Department of Austrian Monuments drew up a list of the most precious bells from the viewpoint of art-history in order to preserve them from destruction, the military command was relentless in carrying out its requisition, which also involved many antique bells. The state officers of Monuments Preservation, under the supervision of Dr. Anton Gnirs, then the Keeper of the Adriatic Littoral Monuments, were aware that their detailed lists – and especially the catalogue prepared by Dr. Gnirs – were the only means of transmitting the memory of these pieces to future generations.<sup>11</sup>

During the Second World War the Italian Fascist government also needed to obtain metal from sacred bronzes and ordered the requisition of the Istrian bells (royal decree n. 505 of 23 April 1942),<sup>12</sup> but this decree also established that the bells of the most valuable and historical importance to art were to be preserved. This bell selection effort began with the collaboration of the ecclesiastical orders to which the bells belonged, but it became soon clear that these religious authorities were unable to select bells based the criterion of their value and importance to art history. For this reason, the Minister of National Education (Department of Arts) ordered that bell fusion could take place only following a review by, and approval of, officers of the Direction of

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11 A Gnirs, *Alte und neue Kirchenglocken. Als ein Katalog der Kirchenglocken im österreichischen Küstenlande und in angrenzenden Gebieten mit Beiträgen zur Geschichte der Gußmeister* (Anton Schroll, 1917). This catalogue contains the first documentation of bells cast about pilgrimage.

12 Published in G.U. of 26 May 1942-XX, No 124.

Monuments Preservation. In this way, beginning already in 1942 a detailed selection of the bells deemed to be suitable for melting down and those deserving of preservation began.<sup>13</sup> During the German occupation of Friuli, from 1943 to 1945, these bells were hidden by any means the situation allowed: some of them directly by the master founders of Udine that had previously collected them (masters Francesco Broili and G.B. De Poli), while some others were hidden by local priests from the region. According to some accounts, the priest of S. Pietro d'Isonzo (Sempeter, today in Slovenia), for years after the war searched through the villages in Friuli for his lost bell, and finally recognized it by its sound and, with the assistance of the local population, succeeded in having it returned to its original church.<sup>14</sup> Only after the end of the war, the Sovrintendenza<sup>15</sup> of Udine (under the direction of Carlo Someda De Marco) transported the saved bells to the municipal Museum of Udine, where they were studied. Someda De Marco published his catalogue, aimed at completing the earlier one, in order to provide a full documentation of the art-historically relevant church bells of the above-mentioned dioceses.<sup>16</sup> Gnirs' and Someda de Marco's works stress the importance of these Istrian bells for the historic assessment of the influence of Italian and Venetian art on the whole Adriatic region.

In 1962 the Yugoslav government requested their restitution.<sup>17</sup> It obtained the restitution of 44 bells, which were stored in the Museum of Pola,

13 The process was carried out under the supervision of Carlo Someda De Marco, an Art Professor from Udine, who was Director of the Evacuation of Arts and Protection of Artistic Patrimony for Friuli from 1940 to 1945. In collaboration with the architect Fausto Franco, Someda De Marco prohibited the fusion of a certain number of bells – coming from the dioceses of Trieste, Koper, Rijeka, Parenzo, Pola, Gorizia – that had already been collected by the master founders of Udine. In all 1095 bells were examined and 67 pieces were saved from fusion. These saved bells, of high historical value in art history, are not included in the catalogue of Dr. Gnirs because they were not removed from their original churches during the First World War. See C Someda De Marco, *Campane antiche della Venezia Giulia* (Edizioni Doretti, Udine 1961) 5–6.

14 A Cernaz, 'E si salvarono 44 campane', *Il Piccolo di Trieste*, 31 August 1995.

15 A peripheral organ of the Italian cultural heritage state administration.

16 Someda De Marco, *supra* n 13. For more on the life and figure of Carlo Someda De Marco, who in his function of Director of the Evacuation of Arts and Protection of Artistic Patrimony for Friuli from 1940 to 1945 succeeded in saving all the works entrusted to him as part of the German requisition, and also assisted in the protection of artistic pieces belonging to the Jewish community, such as the Library Morpurgo in Trieste; see G Bucco, C Alfarè, and R Fabiani, *Carlo Someda De Marco. Dall'arte alla tutela delle opere* (Associazione Udinese Amici dei Musei e dell'Arte, 2006).

17 Cernaz, *supra* n. 14.

and liquidated damages in the amount needed to reconstruct those that had been destroyed (120 million Lire). This sum, however, ended up in Belgrade coffers, and the bells belonging to actual Slovenian territories were placed in the Museum of Ljubljana from where, in 1964, twelve of them were appropriated. Only four were restored to their places of origins, and the others simply disappeared. Other returned bronzes were delivered to the Museum of Pisino (present day Croatia) and registered there as cultural objects, where they still remain on display.<sup>18</sup> Only the bell of Saint Lorenzo (Sv. Lovrec), the hamlet of Pinguento (Buzet), was restored to its original church in 1995, accompanied by lively local celebrations.<sup>19</sup>

In the period of 1990–1991, under the direction of Sprintendente Valentino, fifteen of the church-bells described in Someda De Marco's book, dating back to between the sixteenth and eighteenth centuries and mostly coming from actual Croatian and Slovenian territories, were moved from the Museum of Udine and taken to the Miramare Castle in Trieste. This happened because it was determined that the state had jurisdiction over their preservation (Miramare Castle being under the supervision of the Soprintendenza, which is a branch of the state and not a regional authority), whereas the museum of Udine is a civic museum, under the control of the local municipality. These bells are stored in the stables of the Castle and have never been on display.<sup>20</sup>

After 1991, when Croatia and Slovenia succeeded Yugoslavia, they had the formal right to reclaim the respective bells from Italy.<sup>21</sup> However, to date there

18 Rjesenje Konzervatorskog odjela Rijeka (Conservation Department of Rijeka), broj 01–144/1–62 od 28.V.1962 godine.

19 Cernaz, *supra* n. 14; F Di Gregorio, *Antiche campane istriane*, 2010, available at <[http://istrianaet.org/istria/people/albums/di\\_gregorio/documents/antiche\\_campane\\_istriane.pdf](http://istrianaet.org/istria/people/albums/di_gregorio/documents/antiche_campane_istriane.pdf)> (accessed 10 October 2016).

20 Information collected from Dr. Luca Caburlotto, Director of Polo Museale del Friuli Venezia Giulia – Ministero dei beni e delle attività culturali e del turismo (Italy) and Ms Rossella Fabiani, Director of Museo Storico of Miramare castle, Trieste.

21 The problem of state succession with regard to Yugoslavia, Croatia and Slovenia and their obligations deriving from the Treaty of Peace with Italy (signed on 10 February 1947, entered into force on 15 September 1947, 49 UNTS 3) and the Osimo Treaty (Treaty between Italy and Yugoslavia on the Delimitation of the Frontier for the Part Not Indicated as Such in the Peace Treaty of 10 February 1947, with Annexes, Exchange of Letters and Final Act (signed on 10 November 1975, entered in force on 11 October 1977, 1466 UNTS 25)) has been the subject of intense debate and opposing opinions, especially with reference to the restitution to Italian citizens of the properties confiscated by Yugoslavia. In Italy, several Study Commissions dealt with the problem of whether the principle *pacta sunt servanda* or the clause *rebus sic stantibus* should prevail. The former approach would allow one to consider the international obligations of Italy, perpetuated *vis-à-vis* Yugoslavia, as against Slovenia and Croatia. For more on this, see G Conetti, 'La successione della

have been no negotiations or formal requests for restitution by these states against Italy. At the same time however, since most of the former owners were ecclesiastical orders, their possible legitimacy comes into question, as will be explained below. Indeed, up until now there have been only sporadic informal inquiries about some of the Miramare bells, coming mostly from the parish priests of local communities in Slovenia and Croatia. In 2014, the Soprintendenza of Trieste received a formal request for restitution from Don Lapajne, the parish priest of Hrenovice, Slovenia. He asked for the bell which once belonged to the church of Santa Geltrude (Santa Jedrt) in the village of Slavinje.<sup>22</sup>

It is worth noting that the highest ecclesiastical authorities have never taken any initiatives or responded to the solicitations of the parish priests. The same can be said about the governments of Croatia and Slovenia. It seems that when it comes to the issue of restitution of bells, whenever the local priests of the interested communities ask for support from their bishops, they face some more or less hidden resistance.

## 2.2 Carpathian Bells

The second case examined in this article concerns two bells from the small village of Lutowiska in south-eastern Poland, in the Bieszczady – a mountain range forming part of the Outer Eastern Carpathians. In the 19<sup>th</sup> century the village was part of the Habsburg Empire and from 1867 was situated in the autonomous region of Galicia – one of the most depressed and poorest provinces of Austria. The village was ethnically diverse, comprised of: Jews; Ukrainians being of the Greek Catholic confession; Poles (Roman Catholics); and Roma.<sup>23</sup> Both Christian communities had used a wooden Eastern-rite (Byzantine) church until 1896, when the building was destroyed by fire. From that moment on they started collecting funds for their new temples. In fact, in 1898–1903 a new wooden church, whose style was referred to as ‘national Ukrainian,’ was

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Slovenia nei trattati tra Italia e Jugoslavia' (1992) *Rivista di diritto internazionale* 1027–1032; G De Vergottini, 'La rinegoziazione del Trattato di Osimo' (1993) 60(1) *Rivista di storia della politica internazionale* 77–87; A del Vecchio (ed), *La successione degli Stati nel diritto internazionale* (Giuffrè, Milano 1999). With regard to state succession in matters relating to cultural heritage, it seems accepted that Slovenia and Croatia succeeded Yugoslavia in its rights; see A Jakubowski, *State Succession in Cultural Property* (Oxford University Press, 2015) 326.

22 This church bell is dated and signed: Opus Ioanis Lucanensi, 1572. It is described in Smeda's book in pages 36–38, and registered in the catalogue of Miramare with the number 6. Information collected from Dr. Luca Caburlotto, Director of Polo Museale del Friuli Venezia Giulia – Ministero dei beni e delle attività culturali e del turismo (Italy).

23 Historical description based on P Luboński, *Bieszczady. Przewodnik [The Bieszczady: A Guidebook]* (11<sup>th</sup> ed., Rewasz, 2006) 314 ff.

built from the resources collected from the local Ukrainian community (simultaneously, the Roman Catholic parish built its own church). The new wooden, Eastern-rite temple, survived both devastating world wars and was demolished in 1980, due to the lack of funds for its restoration.<sup>24</sup>

In 1898 and 1928 two bells, the Ivan and Mykhailo, were cast, at immense expense, for the small Ukrainian community of Lutowiska. During the series of military conflicts affecting the region in the first half of the 20<sup>th</sup> century, the bells were repeatedly hidden (buried in the ground) to save them from the envisaged requisitions by Austrian, Russian, Polish and German military forces. After the First World War, Lutowiska belonged to Poland, and in 1939, under the Ribbentrop-Molotov Pact<sup>25</sup> the village was annexed by the Soviet Union (USSR). In 1941–43 it was occupied by Germany, and in 1944–1951 was again annexed to the USSR. Then, pursuant to an Agreement concerning the exchange of sectors of Poland and Soviet territories (the 1951 Agreement),<sup>26</sup> Lutowiska and adjacent villages were transferred back to Poland. The region was also dramatically affected by genocide, ethnic cleansing, and population transfers during the period 1939–1951. The Nazi extermination of the village's Jewish and Roma inhabitants in 1942, the subsequent fights between the Polish and Ukrainian communities, and the final territorial and population exchanges completely changed the demography of the village and the entire region. As a result of these events, in 1944 Lutowiska became almost homogenously Ukrainian, while after 1951 its population was almost entirely Polish. The Ukrainian community (more than one thousand people) was then resettled to the South of Ukraine (near to Odessa), very far from their homeland.

Just before their departure in 1951, the bells Ivan and Mykhailo were once again buried.<sup>27</sup> It wasn't until 1999, a few years after the collapse of the USSR, that the bells were discovered and excavated by some Ukrainian community

24 After S Kryciński, *Cerkwie w Bieszczadach* [*Tzerkvas in the Bieszczady*] (3<sup>rd</sup> ed., Rewasz, 2005) 139–141.

25 Treaty of Nonaggression between Germany and the Union of Soviet Socialist Republics (signed on 23 August 1939); the text of the Molotov–Ribbentrop Pact as well as the texts of supplementary protocols of 23 August 1939 and of 28 September 1939, are available at <[http://avalon.law.yale.edu/subject\\_menus/nazsov.asp](http://avalon.law.yale.edu/subject_menus/nazsov.asp)> (accessed 10 October 2016).

26 Agreement (with Protocol and Annexes) between Poland and the Union of Soviet Socialist Republics Concerning the Exchange of Sectors of Their State Territories (signed on 15 February 1951, entered into force on 5 June 1951), 432 UNTS 199.

27 See 'Spór o dzwony z Lutowisk: Zagrają w Bieszczadach czy na Krymie [Dispute over the Bells from Lutowiska: Will They Ring in the Bieszczady or in Crimea]', TVN24, 6 September 2014; available at <[http://www.tvn24.pl/wideo/z-anteny/06-09-2014-spor-o-dzwony-z-lutowisk-zagraja-w-bieszczadach-czy-na-krymie,1337418.html?playlist\\_id=19527](http://www.tvn24.pl/wideo/z-anteny/06-09-2014-spor-o-dzwony-z-lutowisk-zagraja-w-bieszczadach-czy-na-krymie,1337418.html?playlist_id=19527)> (accessed 10 October 2016).

members who, even in exile, had remembered the location. However the bells were subsequently seized by the Polish authorities and classified as a 'treasure' and later on as archaeological objects, the title to which is *ex lege* vested in the state. Since then, the representatives of the resettled Ukrainian community have been asking for the return of the bells and applied for permission to export them to Ukraine, where the expelled community has managed to build itself a new church. They claim that their practices of worship are incomplete without the original sounds of the bells. In fact, the use of bells is particularly important in the Eastern Christian tradition, and is considered to have not only a practical but also a spiritual dimension. Accordingly, bells are often described as 'singing icons' – providing the acoustic space of a temple in the same way as painted ('written') icons define the visual and noetic space. Moreover, the sound of Ivan and Mykhailo can be considered crucial to preserve the community's memory of their homeland.<sup>28</sup> Importantly, since 2000, the community's request has been supported by the local church (Catholic priests) in Lutowska and the local state authorities (the mayor, local council, and regional inspector for monuments). Moreover, the plea for their return has gained widespread support in the mainstream Polish media (the press and TV channels).<sup>29</sup>

The request for the return of the bells has also been presented via diplomatic channels. Nevertheless the Polish State authorities have been reluctant to respond to these voices. Instead, the issue of the bells has been included in a larger package of inter-state long-lasting negotiations concerning the fate of various cultural objects and materials stemming from the post-1945 territorial changes affecting Poland and present-day Ukraine,<sup>30</sup> and covered

28 J Hugo-Bader, 'Dzwony z Lutowisk [Bells from Lutowska]', 29 August 2001; available at <<https://www.otryt.bieszczady.pl/pl/40-lecie-warszawa/details/210-jaskoa-20-os?pop=1&tmpl=component>> (accessed 10 October 2016); T Ginalska, 'Tylko serca im rdzewiały [Only the Bells' Hearts Did Not Rust]' *Przeгляд* 27 July 2003; available at <<http://www.tygodnikprzeгляд.pl/tylko-serca-im-zardzewialy>> (accessed 10 October 2016).

29 'Spór o dzwony z Lutowisk', supra n. 27; also see the Session of the Municipal Council Lutowska on 28 March 2008; available at <[http://bip.lutowiska.pl/upload/XII\\_2008.pdf](http://bip.lutowiska.pl/upload/XII_2008.pdf)> (accessed 10 October 2016).

30 'Dzwony z Lutowisk muszą jeszcze poczekać [Bells of Lutowska still have to wait]' *Wyborcza.pl*, 9 May 2008; available at <<http://rzeszow.wyborcza.pl/rzeszow/1,34962,5196694.html>> (accessed 10 October 2016); also see L Petrenko, 'Ostatni jeńcy II wojny światowej [The Last Prisoners of the Second World War]' (2015) 13 (233) *Kurier Galicyjski*; available at <<http://kuriergalicyjski.com/spolechenstwo/rozmowy-kg/4363-ostatni-jency-ii-wojny-swiatowej>> (accessed 10 October 2016).

by the regime of a 1996 agreement on cooperation with respect to the protection and return of cultural items which had been lost or illegally removed during the Second World War.<sup>31</sup> Inevitably, as often happens, this local issue has become linked to an international one, with highly complex political connotations.

### 3 International Law: Rules of War Occupation and State Succession in Cultural Property

Both the cases described above appear to fall outside the general constructions of international law with respect to the return of displaced cultural property, such as the restitution of cultural materials unlawfully removed during an armed conflict or the repatriation of cultural assets in cases of state succession. Indeed, the present location of the bells from Istria and the Lutowska case cannot be easily labelled as being contrary to the rules of international law.

#### 3.1 *War Plunder and the Obligation to Return Unlawfully Displaced Cultural Property*

The destruction and pillage of property and buildings dedicated to religion, education, art, and science were prohibited under the binding international instruments on war conduct from the Peace Conferences of 1899<sup>32</sup> and 1907. The post-First World War treaty practice fully confirmed the obligation of belligerent parties to abstain from attacks against such properties. Moreover, it also consolidated a 'secondary' obligation flowing from such 'primary' international obligations, that is, the duty to restore property unlawfully removed from its original location during a military conflict. Acts of destruction to important works of art were committed by all sides and on all First World War

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31 Agreement between the Government of the Republic of Poland and the Government of Ukraine on Co-operation in Protection and Restitution of Objects of Cultural Interest Lost and Illegally Removed during World War II (signed on 25 June 1996); available at <<http://www.traktaty.msz.gov.pl/fd.aspx?f=P0000007979.pdf>> (accessed 10 October 2016).

32 Regulations Annexed to the II Hague Convention (1899) with Respect to the Laws and Customs of War on Land (signed on 29 July 1899, entered into force 4 September 1900), 187 Parry's CTS 429, Article 56.

fronts. Indeed, the Paris Peace Conference was heavily marked by the tense atmosphere that dominated the meetings of the Reparation Committee, in which all the claims were addressed.<sup>33</sup> Accordingly, several post-First World War treaties provided for the restitution of cultural treasures and reparations for cultural loss in response to war damages in Europe.<sup>34</sup>

In this light, one may ask whether the removal of the Istrian church bells by the Italian authorities from the Istrian territory during the Second World War constituted a violation of the rules on war conduct. There seems to be no doubt that it was legitimate according to the laws of war enacted in Italy immediately after the beginning of the war and valid within the Italian territory. There had been no looting on the part of a foreign state's occupying military force. From a purely legal point of view, their removal took place within a procedure regarding Italian bells located within Italian territories during war time. The principal legal basis for the removal and protection of works of art from their places in order to shelter them from war destruction was Act No 1041 on the Protection of artistic, historical, bibliographical and cultural objects from destruction in case of war, promulgated on 6 July 1940.<sup>35</sup> This law was the legal basis for the order issued to Carlo Someda De Marco regarding the selection of bells having a unique value for art history, and for their protection from fusion. Moreover, on the basis of the same law many works of art throughout Italy were displaced and placed in refuge storage spaces, where they were to lie for decades.<sup>36</sup> With regard to the Istrian works of art, a special and quite recent law, No 72 on the Protection of historical and cultural heritage of the community of Italian exiles from Istria, Fiume and Dalmatia, adopted on 16 March

33 See PH Burnett, *Reparations at the Paris Peace Conference from Standpoint of the American Delegation*, Vol. 1 (Columbia University Press, 1940) 876.

34 See Jakubowski, *supra* n. 21 at 63–65; AF Vrdoljak, 'Enforcement of Restitution of Cultural Heritage through Peace Agreements' in F Francioni and J Gordley (eds), *Enforcing International Cultural Heritage Law* (Oxford University Press, 2013) 24–27.

35 *Legge sulla protezione delle cose d'interesse artistico, storico, bibliografico e culturale dalla distruzione in caso di guerra*, published in G.U. of 8 August 1940, No 185.

36 This was thanks to the work of officers of the Sprointendenze of Italy, like Emilio Lavagnino, Carlo Alberto Dell'Acqua, Pietro Zampetti, and Pasquale Rotondi, who hid many art pieces in secret storage places during the war. Rotondi's list is the famous list of 10,000 works of art saved by Rotondi from German looting during the Second World War. He put them in storage places in the cities of Montefeltro and Carpegna, where they remained for over 40 years, since 1984. See C Lombardo, *Pasquale Rotondi: quando il lavoro è un'arte – Storia di un Soprintendente solo e senza soldi custode dei tesori italiani durante la seconda guerra mondiale* (Voza, 2008).

2001,<sup>37</sup> ordered the renovation of some of them, mainly paintings and other cultural movables, which subsequently were put on display in a famous exhibition in Trieste in 2005,<sup>38</sup> though the Istrian church bells, having something of a special character, were not included in this process of renovation and public display.<sup>39</sup> Viewed in this light, the legitimacy of the removal order of the Italian (at that time) bells from Italian territories could support an argument claiming that these objects, being Italian property at the time, could still be legitimately retained by Italy.

The same reasoning also applies to other relevant rules of international law that could be taken into account when dealing with the issue of whether there is a legal obligation on the part of Italy to return the bells in question. Here one might instinctively refer to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,<sup>40</sup> and in particular to the rules contained in its First Protocol.<sup>41</sup> Both Italy and Yugoslavia were among its

37 *Interventi a tutela del patrimonio storico e culturale delle comunità degli esuli italiani dall'Istria, da Fiume e dalla Dalmazia*, published in G.U. of 28 March 2001, No 73.

38 For the exhibition's catalogue, see Soprintendenza per i beni architettonici e per il paesaggio e per il patrimonio storico, artistico ed etnoantropologico del Friuli Venezia Giulia, F Castellani, P Casadio (eds), *Histria: Opere d'arte restaurate: da Paolo Veneziano a Tiepolo* (Mondadori Electa, Milan 2005); see also A Jakubowski, 'National Museums in the Context of State Succession: The Negotiation of Difficult Pasts in the Post-Cold War Reality' in D Poulot, J M. Lanzarote Guiral & F Bodenstein (eds), *National Museums and the Negotiation of Difficult Pasts* (Linköping University Press, 2012) 30–31.

39 There was an attempt to include the Istrian church bells in this exhibition, but it failed because of the delicacy of the question, requiring direct negotiation on the part of the Ministry of Foreign Affairs. Information collected from Dr. Luca Caburlotto, Director of Polo Museale del Friuli Venezia Giulia – Ministero dei beni e delle attività culturali e del turismo (Italy).

40 Signed on 14 May 1955, entered into force on 7 August 1956, 249 UNTS 240. The 1954 Hague Convention establishes, under Art 4(1), the obligation to respect cultural property in armed conflicts. Such protection may be waived only in cases where military necessity imperatively requires such a waiver (Art 4(2)). The state parties to this convention also 'undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property'.

According to Art 8, special protection may be granted to cultural movables in stored in refuge places in order to shelter them in the event of armed conflicts. These rules, considered altogether, support the hiding of the Istrian church bells in Udine during the conflict.

41 Signed on 14 May 1955, entered into force on 7 August 1956, 249 UNTS 358. This Protocol sets out rules on the general obligation to return cultural property removed from the territory of another state(s) during an armed conflict and prohibits the retention of cultural

original ratifying parties. Yet this Convention is not directly applicable to the case of the Istrian church bells collection, for at least two reasons: (i) the Convention is not retroactive (Article 33), therefore it cannot be applied to the restitution of cultural objects looted, confiscated or removed during the Second World War;<sup>42</sup> and (ii) in any case the Convention requires, for its application, the removal of cultural property by an occupying state, a circumstance that – once again – was absent in the cases of both the Istrian church bells and in that of the Carpathian bells. However, despite the lack of its direct applicability, the First Protocol to the 1954 Hague Convention may still be invoked since its provisions on the return of cultural material unlawfully displaced in armed conflicts is considered to be regulated under the rules of international customary law.<sup>43</sup> Viewed in this perspective and with reference to the issue at hand, the rules of international humanitarian law, including the 1954 Hague Convention, could be used as a legal argument in a twofold, somewhat contradictory way, that is: (i) to re-affirm (if needed) the legitimacy of the Italian collection of artistic bells and their preservation in special storage places during the Second World War; but also (ii) to support the legal obligation of Italy to restore

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property as war reparations (Article 1(3)), thus supplementing already existing treaty obligations under the Conventions of 1899 and 1907.

42 L Prott, 'UNESCO and UNIDROIT: A Partnership against Trafficking in Cultural Objects' (1996) 1 *Revue de Droit Uniforme* 59–71, at 68.

43 For international case law, see the Claims Commission for Eritrea and Ethiopia, Partial Award, Central Front, Eritrea's Claims 2, 4, 6, 7, 8 & 22, 28 (2004), 43 ILM (2004) 1249, para 113; *Prosecutor v Kordić and Čerkez*, ICTY Case No IT-95-14/2-T, Judgment of the Trial Chamber, 26 February 2001, para 206; *Prosecutor v Tadić*, ICTY Case No IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para 98. Such views are also supported by the legal doctrine; see J-M Henckaerts, L Doswald-Beck (eds), *Customary International. Humanitarian Law* (Cambridge University Press, 2005), Vol 1 (*Rules*), 127–138, 523–525, and Vol 2 (*Practice*) 723–813, 3452 *passim*; F Francioni and F Lenzerini, 'The Obligation to Prevent and Avoid Destruction of Cultural Heritage: From Bamiyam to Iraq' in BT Hoffman (ed), *Art and Cultural Heritage: Law Policy and Practice* (Cambridge University Press, 2006) 28–40; F Francioni, 'Au-delà des traités: l'émergence d'un nouveau droit coutumier pour la protection du patrimoine culturel' (2007) 111 *Revue générale de droit international public* 19–42; SE Nahlik, 'La protection internationale des biens culturels en cas de conflit armé' (1967) 120(1) *Collected Courses of the Hague Academy of International Law* 61–163 at 149. Yet, not all the obligations in this regard are treated as stemming from international custom. For arguments against the customary nature of the obligation to return cultural objects after the end of armed conflict, see AF Panzera, *La tutela internazionale dei beni culturali in tempo di guerra* (Giappichelli, 1993) 43 ff.

the church bells to the places in which their original owners (private, public, or ecclesiastical) and communities used to enjoy them.

Clearly, the case of the Ivan and Mykhailo bells goes beyond the sphere regulated under international humanitarian law, since the bells in question were never plundered or removed from their original location. Thus, the argument of an unlawful attack or displacement during the course of an armed conflict cannot be raised.

### 3.2 *State Succession in Cultural Property*

The second regime that might be taken into account when analysing both cases is that of the allocation of cultural material in event of state succession. Clearly the cases of the bells discussed in this article involve the post-World War II territorial transfers, including the repatriation of cultural material from the ceded territories. Accordingly, the applicable regime was essentially based on the earlier, post-World War I treaty practice, which provided that territorial transfers not only entailed the transfer of cultural property located in the lands in question, but also the repatriation of property removed prior to the date of succession. In other words, this principle safeguarded the economic and cultural integrity of territory. Moreover, the previous settlements in these matters addressed the question of the legality of sovereign acts of predecessor states with reference to such property. It appears that removals made by the use of force or under administrative discriminatory duress were widely considered as illegitimate and constituted a prerequisite for the repatriation of a given object to its place of origin.<sup>44</sup>

With regard to the Istrian bells, it is true that despite the legitimacy of the removal of the church bells from their original locations during wartime, in time of peace things changed in such a way that makes it impossible to consider the question only under the perspective of ownership, sovereignty, and the criterion of *tempus regit actus*. Indeed, according to the rules set out in the 1947 Peace Treaty with Italy, formally closing the Second World War and establishing new territorial borders for the countries involved in the conflict, it needs to be assessed whether Italy was – and possibly still is – under an obligation to return (*restitutio in integrum*) cultural objects to their original location and original owners, if these owners/territories – according to the rules of the treaty – were under the sovereignty of another state after 15 September 1947 (that is, the date of the entry into force of this peace treaty).<sup>45</sup>

44 See Jakubowski, *supra* n. 21, at 65–88.

45 Linking the rudimentary principle of territoriality with that of the cultural significance of the objects for the cultural heritage of the successor state, an international practice

As is well known, the final allocation of the borders between Italy and Yugoslavia was only finalised by the Osimo Treaty of 1975, under which the so-called Zone B of the Free Territory of Trieste was ceded to Yugoslavia. This zone comprised some cities and villages now under the sovereignty of Croatia and Slovenia, from which some of the Istrian bells were taken (e.g. Koper). It is worth noting that the Treaty of Osimo did not contain any provisions on the allocation of cultural material originally displaced from Zone B, though certain attempts to address the question were made during the treaty negotiations.<sup>46</sup>

To begin with, Article 12(1) of the 1947 Peace Treaty, establishing that Italy shall restore to Yugoslavia a specific series of cultural objects, under both private and public ownership, which were removed by Italy as a result of its occupation in various situations that took place before the Second World War, while not directly applicable to the Istrian bells may be used to argue for the existence of a principle of restitution to the new territories of Yugoslavia of any cultural objects present in Italy as a result of acts of war. It has been observed that the gradual formation of the principle of the restoration of individual national cultural patrimonies since the 19<sup>th</sup> century has evolved not only on the basis of rigid criteria of sovereignty and ownership, but also taking into consideration particular connections with territories and communities.<sup>47</sup> Under Article 12(2) of the 1947 Peace Treaty, Italy is bound to return cultural objects, provided that they could be legally qualified as public property and were extracted by Italy from the territories that Yugoslavia acquired under the 1947 Peace Treaty. Arguably these provisions would be directly applicable to the

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leading to post-war restitutions of cultural materials from the territories of origin was developed in various peace treaties, at least since the end of the Second World War – though it has not been of a binding nature. Moreover, after 1945 peace treaties provided for an unconditional restoration of those properties originating from the ceded territories. In other cases, certain *de facto* solutions were applied to the problem at hand: the priority of the collective cultural rights of a group over the general principle of territoriality was tacitly recognized. In fact, in a few cases cultural property was dislocated and followed the destiny of displaced, expatriated communities: Jakubowski, *supra* n. 21, at 135.

46 A Jakubowski, 'The Legacy of Serenissima. State Succession to Istria's Jewels' in K Oden-dahl and P Weber (eds), *Kulturgüterschutz- Kunstrecht – Kulturrecht. Festschrift für Kurt Siehr zum 75. Geburtstag, aus dem Kreise des Doktoranden- Und Habilitandenseminars „Kunst Und Recht“* (Nomos, Baden-Baden 2010) 227–250, at 233.

47 This process took place through the use of restitution clauses in several peace treaties, which often related even to transfers preceding the conflict under settlement; see M Frigo, *La circolazione internazionale dei beni culturali* (Giuffrè, Milano 2007) 81.

Istrian church bells if the special ownership regime to which they are subject could be classified as a regime of public ownership.<sup>48</sup>

Besides Article 12, there are other provisions in the 1947 Peace Treaty that reinforce the principle of restitution of property to Yugoslavia and its successor states, even though they are not specifically directed toward the issue of cultural property but to property in general, and even though they require, for their application, a removal 'by force or duress', which did not occur in the case of the Istrian bells. Nevertheless these rules deserve consideration in the context here analysed, because they express the force, scope, and potential of the obligation to return established under this treaty.<sup>49</sup>

Article 75 of the 1947 Peace Treaty regulates the recognition of the 1943 Allied Declaration<sup>50</sup> and Italy's obligation to return any property – and one may include cultural objects in this broad expression– removed by force or duress by any of the Axis powers from the territory of any member state of the United Nations, which included Yugoslavia among its original members. Thus any subsequent transaction by which the actual holder of such property secured its possession, including good faith acquisitions, was invalid. According to Paragraph 6 of the same article however, the limitation period for any such request for return was to be six months after the entry into force of the

48 Under Italian law, ecclesiastical goods are goods belonging to Ecclesiastical orders and destined for ecclesiastical use/purposes. They are the subject of private law acts, unless there are contrary provisions by the ecclesiastical authorities (Art 831 Italian Civil Code). However, sacred ecclesiastical goods have a somewhat special character; they are inalienable and cannot be seized (Art 514 n. 1 Italian Code Civil Procedure). They are subject to the rules of protection of cultural heritage – mostly of an administrative law nature – and any act of disposition or management of them must be agreed upon between the state and ecclesiastical authority (usually Soprintendenti and bishops); for more on this aspect, see A Bettetini, *Gli enti ecclesiastici e i beni ecclesiastici*, Article 831, *Commentario al codice civile* fondato da P. Schlesinger (Giuffrè, Milano 2005) 209 ff. This could be used to make an argument for the assimilation of ecclesiastical cultural property to cultural property in public ownership, especially if we consider the previous practice in dealing with the restitution issues of Istrian cultural objects. The exhibition of the Istrian paintings in 2005 in Trieste took place following a request for restitution from Slovenia to Italy, based on Article 12 of the 1947 Treaty of Peace with Italy. See Jakubowski, *supra* n. 38, at 31.

49 These rules are considered, for instance, in M Frigo, 'Questioni in tema di rivendicazione e restituzione di beni culturali di proprietà privata al termine dei conflitti armati' (1999) 46(1) *Jus: Rivista di Scienze Giuridiche* 327–356, at 341 ff.

50 The Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation or Control, 5 January 1943; available at <<http://www.lootedart.com/inter-allied-declaration>> (accessed 10 October 2016).

1947 Peace Treaty. In addition, Article 78 provides for a more general rule for the restitution to the United Nations and their nationals of any property, including cultural property, that could not be restored within the time limits of Article 75, to its state as it existed on 10 June 1940. According to Paragraph 2 of this article, the Italian government should nullify any measure, including seizures, sequestration or control, taken by it against United Nations property between 10 June 1940 and the entry into force of the 1947 Peace Treaty. A time limit of twelve months from the entry into force of the said treaty was established, but the text also allows for making claims after the passage of this time limit, if the claimant can show it could not file its application within this time period. According to Article 75(4)(a), if restitution is not possible due to the destruction of the relevant property, the Italian government is obliged to pay a compensation in Lire for two thirds of the amount necessary to make good the loss suffered.

From the point of view of the passive legitimization of a claim, that is, establishing *against whom* an action could be brought, the text of the 1947 Peace Treaty leaves no doubt that restitution of the properties can be claimed only against a state. From the opposite side, with respect to active legitimization, i.e., *who* can sue a state for the return of property, Article 78 enlarges the catalogue of parties to include not only states, but also their nationals. According to legal doctrine this allows a private citizen to sue a state, and maybe even also an ecclesiastical order.<sup>51</sup> To date, only Slovenia has attempted to invoke Article 12, which it tried to use to assert its claims to recover the Istrian paintings.<sup>52</sup> This effort was unsuccessful because, has already been explained, the ensuing negotiations led to the 2005 exhibition at Palazzo Revoltella and these works are now on display in Trieste (Palazzo Sartorio).<sup>53</sup> Neither Slovenia nor Croatia have ever invoked this article with reference to the Istrian bells.

It must be noted that Article 12 of the 1947 Peace Treaty establishes no time limit on Italy's obligation to return cultural objects to Yugoslavia, whereas both Articles 75 and 78 do. However, with reference to this time limitation, it is

51 For more, see Frigo, *supra* n. 49, at 349 ff.

52 See K Siehr, 'Chronicles 2005 (January 1, 2005–December 31, 2005)' (2006) 13(4) *International Journal of Cultural Property* 467–524, at 507; Legal Affairs and Properties Committee, Approach from ICOM Slovenia About the Dispute between Slovenia and Italy on Collections Removed from the Territory of What Is Now Slovenia To 'Mainland' Italy in World War II, Minutes of the Meeting of 22 October 2005, Paris, ICOM 2005/ LEG.05, at 4–5.

53 R Toè, 'Histoire: ces tableaux de maîtres que l'Italie ne veut pas rendre à la Slovénie' *Le Courrier des Balkans*, 27 November 2015; available at <<http://www.balcanicaucaso.org/aree/Slovenia/Arte-i-quadri-rivendicati-dalla-Slovenia-166171>> (accessed 10 October 2016).

affirmed in legal scholarship that such a prescription does not operate with reference to claims for the restitution of cultural property established in peace treaties.<sup>54</sup> Therefore, the rules of the 1947 treaty – if considered applicable – could still be invoked. Furthermore, it must be stressed that the rules of restitution regarding property taken from the true owner in armed conflict take precedence over the domestic rules of any legal system regulating alienations and transfers of property of both a public and private character, including the rules on the good faith acquisition of movables and adverse possession (*usucapio*).<sup>55</sup>

On the other hand, when assessing the existence of an obligation on the part of Italy to return the bells to their original owners, it would be necessary to first assess the role played by the compensation, i.e. the 120 million Lire, that Italy paid in 1962 to Yugoslavia with the aim of compensating for the recasting of the destroyed bells. The question which arises is whether this compensation forecloses any further right on the part of those countries succeeding Yugoslavia to claim back the bells.<sup>56</sup>

It needs to be also recalled that even though some of the post-World War II peace treaties contained general provisions for the unconditional restoration of such properties originating from ceded territories, the actual international practice permitted some deviations. In fact, the profound changes in the territorial boundaries in Europe, followed by the displacements of entire national and/or ethnic groups, led to certain *de facto* solutions. These were greatly influenced by Cold War political considerations, and they tacitly recognised the priority of the collective cultural rights of a group over the general principle of territoriality. Indeed, cultural property often followed the destiny of displaced communities, although such a principle for allocation was not explicitly formulated by the inter-state arrangements.<sup>57</sup>

The latter considerations might be relevant in the case of the Carpathian bells. As already described, the 1951 Agreement between Poland and the USSR regulated the exchange of territories between these two states and the transfer of human communities. In addition, the protocol annexed to this agreement addressed specific property issues.<sup>58</sup> Thus, Article 1(2) provided that the states

54 Frigo, *supra* n. 49, at 330.

55 *Ibid*, at 330–331; J Blake, *International Cultural Heritage Law* (Oxford University Press, 2015) 50–69.

56 It was not possible for the authors to find the original documents regarding these transactions. Therefore a more detailed legal analysis of this issue is not possible at this point.

57 Jakubowski, *supra* n. 21, at 107–115, 135.

58 432 UNTS 214.

concerned had 'the right to remove from the territories to be exchanged movable state co-operative-collective farms, co-operative and other public property, including spare or unassembled equipment of undertakings, railways and communications services, as well as means of transportation (rolling stock, motor vehicles, carts, draught animals), tractors, combines, other agricultural machinery and cattle.' Yet, owing mostly to the socio-political situation under the Stalinism regime, there were no provisions regarding other categories of property (private, ecclesiastic etc.). Thus the re-settled persons from both sides of the border were allowed to take only personal belongings and they had to move out within a short six-month time span.

However, the above-described solutions differ from those adopted, or at least envisaged, immediately after the end of the Second World War. In fact, Poland insisted on the mutual exchange of cultural property with the USSR in order to secure the integrity of national cultural heritage, primarily with regard to art and library collections located in the cities of Lviv and Vilnius.<sup>59</sup> In 1945, the Bureau for Revindication and Reparations of the Polish Ministry of Culture and Arts formulated its official position on the repatriation of certain cultural property from the territories ceded to the USSR. This referred to objects and collections, of both public and private property, in the public domain. The Bureau's reasoning was based on the fact that these collections were not of a local nature but constituted an important element of the Polish national identity. The idea that reciprocal exchanges/repatriations of cultural treasures should follow population transfers, was expressed in a series of draft agreements prepared by the Bureau. An emblematic example of the application of this 'national link' principle, challenging the traditional territorial one, can be found under Article 1 of the 1945 Draft Agreement between Poland and the Ukrainian SSR on the mutual repatriation of cultural property:

Ensuring the definitive regulation of the State border and mutual exchange of population between the two States, and understanding that creations of national spirit, that is, cultural values, belong to a given nation notwithstanding their place of origin, and taking into account the large losses in the cultural heritage of Poland and the Ukrainian SSR inflicted by the German aggressor, and also wishing to stress the fraternal relationship between the two nations, both parties to this agreement

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59 W Kowalski, *Art Treasures & War. A Study on the Restitution of Looted Cultural Property, Pursuant to Public International Law* (Institute of Art & Law, Leicester 1998) 68–69.

allow for the repatriation from their territories of those cultural goods that, owing to their national character, are part of the cultural property of the other party.<sup>60</sup>

Such a proposed solution, while initially debated, did not however become part of an international treaty. Only in the series of analogously drafted 'repatriation agreements,' concluded in 1944 by Poland, the USSR, and the three Soviet republics concerned (the Ukrainian, Byelorussian and Lithuanian), were evacuated persons permitted to take works of art and antiquities to their country of destination, provided that they were private property and that their weight, together with their luggage, did not exceed the allowable limit of two tons per family. In addition, priests were allowed to evacuate items from their parishes, including church furnishings as well as objects of religious worship.<sup>61</sup> Thus, state property, some important private collections as well as property of different civic organizations remained within the ceded territories. In 1946, the Ukrainian SSR handed over to Poland some of the disputed collections, such as part of the great library and artistic collections of the National Institution 'Ossolineum' from Lviv, as a gift *ex gratia* of the Ukrainian nation to Poland. Somewhat ironically, the collections recovered in 1946 from Lviv were placed in Wrocław, the former German city of Breslau.

The situation changed after the collapse of the USSR. The newly-independent Ukraine and Poland signed a treaty on good neighbourliness, friendly relations, and cooperation.<sup>62</sup> In doing so, they reciprocally confirmed the existing state boundaries and undertook to cooperate in the spirit of reconciliation and understanding in order to 'overcome prejudices and negative stereotypes in relations between both nations' (Article 12), referring to the international standards expressed in the UNESCO conventions, the 1953 European Cultural Convention,<sup>63</sup> and documents of the Commission on Security and Cooperation in Europe (CSCE), especially the Document of the Cracow Symposium on

60 A Draft Agreement between the Provisional Government of National Unity of the Polish Republic and the Government of the Ukrainian Soviet Socialist Republic on the repatriation of Polish cultural goods from the territory of the Ukrainian SSR and of the Ukrainian goods from the territory of Poland (1945). Citation and translation from Polish. See Kowalski, *supra* n. 59, at 70.

61 See Jakubowski, *supra* n. 21, at 113–114.

62 Treaty between Ukraine and the Republic of Poland on Good Neighbourliness, Friendly Relations, and Cooperation, signed on 18 May 1992, entered into force on 30 December 1992, (1993) 125 *Polish Journal of Laws* item 573.

63 Signed on 19 December 1954, entered into force on 5 May 1955, 218 UNTS 139.

the Cultural Heritage of the CSCE Participating States<sup>64</sup> (Article 13(1)). Ukraine and Poland committed themselves to provide adequate protection of and accessibility to tangible and intangible cultural heritage ('values, monuments and objects') in their respective territories (Article 13(4)). Both States would also act to ensure the discovery, preservation, reunification, and accessibility of cultural heritage. Moreover, they would seek, in accordance with the norms of international law, bilateral agreements, and other international standards, to unearth and return cultural and historic objects which were lost, illegally removed, or in any other way displaced from the territory of the other party (Article 13(4)). In fact, the idea of reunification of the dispersed collections was also expressed in an additional preliminary agreement for cultural cooperation (Article 5(1)):<sup>65</sup>

The party on whose territories are found objects and historical treasures of culture, history and learning, as well as archival material and library collections, of the other country . . . will act to disclose, inventory, bring together, preserve, restore (those objects) and grant access to them. The parties will cooperate in this area, especially in bringing together collections of art, libraries, and archives that had been scattered due to historical events.

In 1996, the final intergovernmental agreement on cooperation regarding the protection and return of cultural items was signed. Pursuant to the provisions of this instrument, a Joint Commission was established and met in May 1997. Poland presented a large list of requested cultural items which had been owned, prior to 1939 by the Polish State and private institutions as well as by private individuals.<sup>66</sup> In the same month, both states signed a general agreement on cultural cooperation,<sup>67</sup> which confirmed in its Article 17 that illegally

64 Adopted on 6 June 1991; available at <<http://www.osce.org/library/24396?download=true>> (accessed 10 October 2016).

65 Preliminary Agreement between Ukraine and the Republic of Poland for Cultural and Scientific Cooperation (1992), English text available in W Kowalski, *Liquidation of the Effects of World War II in the Area of Culture* (Institute of Culture, Warsaw 1994) 100.

66 J Pruszyński, *Wnioski rewindykacyjne księgozbioru Ossolineum oraz dzieł sztuki i zabytków ze zbiorów lwowskich* [*Claims for the Restitution of the Ossolineum Library and Works of Art and Monuments from Lviv's collections*] (MKiS Biuro Pełnomocnika Rządu do spraw Polskiego Dziedzictwa Kulturowego za Granicą, Warszawa 1998).

67 Agreement between the Government of the Republic of Poland and the Government of Ukraine on Cooperation in the Realm of Culture, Science and Education, signed on 20 May 1997, (2000) 3 *Polish Journal of Laws* issue 29.

removed objects would be returned. In the following months, Ukraine contested the Polish claims. Since that time, several meetings have taken place. In 1999, the question of the Lutowska bells was added to the Ukrainian list of counter claims. But due to the volume and complexity of these negotiations, no real progress seems to have been reached.<sup>68</sup>

### 3.3 *The 'Imperfection' of International Law and Politicisation of Cultural Heritage Disputes*

Both cases have demonstrated the profound difficulties in settling the problems related to the fate of cultural heritage stemming from post-World War II territorial and population transfers. With reference to the case of the Istrian bells, the above considerations have underlined the weaknesses of possible formal restitution claims by Slovenia or Croatia. However, it is clear that the matter is far more complicated than the mere question of establishing legal titles and a legal basis for actions, and cannot be approached only from this perspective. In addition to the legal considerations, the different attitudes of the cultural policy of the states involved have to be added as complicating elements, as well as the circumstances that, alongside national interests, the cases involve the strong interests of local communities and their associations, which may not coincide with the approaches of their states.<sup>69</sup>

With regard to states' interests there are, on the one hand, the interests of Slovenia and Croatia, which are both going through their first phase in the building of a national identity following the dissolution of Yugoslavia, i.e. one different and separate from the identity of the other neighbouring countries, including Italy. Their interest in obtaining the bells is to use them as symbols of a reconstructed national identity, either Croatian or Slovenian. In this vein, they aim to exhibit the bells in central museums, like the one in Ljubljana, and not at reinstalling them in their original churches along the Adriatic coast. The approach of the state authorities seems to be supported by the respective highest ecclesiastical authorities.<sup>70</sup>

68 See the minutes of the session of the Parliamentary Commission of National and Ethnic Minorities, 22 January 2008, available at <<http://orka.sejm.gov.pl/Biuletyn.nsf/wgskmr6/MNE-4>> (accessed 20 October 2016); Petrenko *supra* n. 30.

69 R Škrlič, 'Trst bo storil samomor, če bo živel v izolaciji' *Primorske novice*, 2 September 2011, 16–17: interview with L Caburlotto, Director of the Polo Museale del Friuli Venezia Giulia – Ministero dei beni e delle attività culturali e del turismo (Italy), concerning the need for a new approach involving all stakeholders from all the interested states and communities.

70 Similar arguments emerged in the cultural debate surrounding the exhibition *Histria* in 2005, concerning Venetian paintings from Istria. See Toè, *supra* n. 53.

On the other hand, the Italian governmental interests are directed at reaffirming the Italian component of these pieces of art, that is, the Venetian provenance of the inscriptions on most of the Istrian bells,<sup>71</sup> and in so doing to also confirm the Italian ownership of these pieces, although no formal position on this issue has ever been expressed by the Italian government.<sup>72</sup> Moreover, the Italian government does not seem very eager to deal with the issue of the bells, so as not to stir up a topic which is very sensitive for the Region of Friuli Venezia Giulia, where many inhabitants have Istrian origins and belong to all the ethnicities (Italian, Slovenian and Croatian) formerly inhabiting Istria.<sup>73</sup> Thus, the linkage between the bells and exiled communities is implicitly strengthened *vis-à-vis* the original location of the bells. Hence, due to the sensitive political nature of the issue the bells are not being used, enjoyed or displayed in public, but kept in storage.

The interests of the local communities in the villages from where the bells were taken present yet another level of analysis. They perceive the bells as symbols of religion and determinants of the local social life, hence the local communities are very sensitive to the issue of restitution and, where possible, returning the bells to their places of origin, or at least conserving and exhibiting them in local museums. The interests of the local ecclesiastical authorities

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71 The fact that most master founders of the Istrian church bells were Venetian or Italian is clearly shown in Someda De Marco's book, *supra* n 13, at 17 (Pietro Campanato), 40 (Giovann Battista Antonio del Ton), 49 (Giacomo Calderari), 51 (Domenico Macarini), 38 (Giovanni di Lucca, for the bells of Slavinje (Slovenia)).

72 It should be noted however that Vittorio Sgarbi, an art historian very active in Italian cultural and political life, in 2002 was the Secretary of State for Cultural Heritage in the Berlusconi government and was the promoter of the recovery and exhibition of the Istrian paintings in 2005. His well-known opinion – expressed when he was in the above-mentioned official post – was in favour of the Italian ownership of the Istrian works of art and position that these objects are part of Italian cultural heritage. For instance. see Toè, *supra* n. 53.

73 With regard to the similar issue of the restitution of the Istrian paintings to Slovenia and Croatia, the Association Istrian Union (*Unione Istriana*) expressed its interest in having their role acknowledged in the management of the works of art. It suggested acknowledging a formal Italian ownership, but preserving them in a museum under its management in Koper (Slovenia). See Toè, *supra* n. 53. The intermingling of different opposing interests on the matter and the high political sensitivity to that topic in Trieste and the surrounding area, together with the scarce attention that the Italian government has so far devoted to the question, was confirmed by Dr. Luca Caburlotto, Director of Polo Museale del Friuli Venezia Giulia – Ministero dei beni e delle attività culturali e del turismo (Italy), in an interview with one of the authors of this article, Francesca Fiorentini, on 23 February 2016.

are similar, and reflected in the request for their return by the priest of Hrenovice in Slovenia. In addition to these interests, the interests of the involved ethnic communities living in Italy should also be factored in. These bells are of interest to the Istrian communities living in Italy (Trieste or other Italian surroundings), as part of a common heritage that they feel they somehow own, and which they wish to continue feeling as their own.<sup>74</sup> This interest is largely in conflict with the national 'exclusive' interests of Slovenia and Croatia, and even of Italy.

Conversely, the case of the bells of Ivan and Mykhailo appears less complex. In fact, both religious communities agree that the bells should be handed over to the re-settled Ukrainian parish to be used in its religious practices. Sadly, the issue is complicated by the fact that the church of their original location no longer exists. The transfer of ownership from the Polish State to the Ukrainian Greek Catholic Church would not require any new legislation by Poland. The core problem in this case is that the question of the bells' future has become intertwined with a larger inter-state negotiation package. Put bluntly, the local community's religious interests have become hostage to the states' interests in their internal and external policies.<sup>75</sup> In other words, they will be returned only if Ukraine agrees to hand over some other objects claimed by Poland.

The Carpathian bells case also demonstrates another shortcoming in the existing international mechanisms for resolving cultural heritage disputes, which is their inherently state-centred nature. In fact, non-state communities, such as minorities, ethnic groups, and indigenous peoples not being the subjects of international law, face serious difficulties in bringing actions and enforcing their rights at the international level. Although it has been observed that national legal systems are progressively tending to recognise that various non-state actors can indeed have *locus standi* before domestic tribunals and administrative authorities, this is still not the case when it comes to international law. Alexandra Xanthaki rightly notes that the 'recognition of collectiveness and collective rights' is sometimes described as 'one of the most contested

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74 For example, an Italian intellectual and musicologist of Istrian origin is very well-known in the Istrian communities across the borders of Italy, Croatia, and Slovenia. He was very active in the process of the restitution of the church bell of S. Lorenzo in Pingente (Slovenia) in 1995. See Di Gregorio, *supra* n. 19.

75 J Lamparska, 'Więzień specjalny: dzwon [Special Prisoner: the Bell]' *Focus.pl*, 2 March 2012; available at <<http://historia.focus.pl/wojny/wiezien-specjalny-dzwon-1026?strona=2>> (accessed 10 October 2016).

issues of international law and politics.<sup>76</sup> Philip Alston went even further, stating that group rights ‘will continue to diminish in importance’<sup>77</sup> in the future. This pessimistic view, although legitimate ten years ago, should be seen in the light of the gradual progressive development of international practice. In particular, the practice of the Inter-American Court of Human Rights,<sup>78</sup> and more recently that of the African Commission on Human and Peoples’ Rights,<sup>79</sup> seem to provide evidence of a more profound trend toward recognizing the collective rights of non-state groups. In addition, certain universal standards are offered by the operational guidelines to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage<sup>80</sup> and that of the 1972 World Heritage Convention<sup>81</sup> with respect to collective cultural rights affecting states’ cultural policies and interests. Indeed, these documents stipulate that the participation of communities and groups is required for the implementation of both conventions.<sup>82</sup>

Having said that, a grant of the community standing in relation to internationally-based claims for the restitution of cultural heritage or reparation for

76 A Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge University Press, 2007) 13.

77 P Alston, ‘Peoples’ Rights: Their Rise and Fall’, in P Alston (ed), *Peoples’ Rights* (Oxford University Press, 2001) 292.

78 In particular, see *Mayagna (Sumo) Awas Tigni Community v Nicaragua*, Judgment of 31 August 2001, 79 LACTHR (Ser. C), No. 79 (2001); *Yakye Axa Indigenous Community v Paraguay*, Judgment of 17 June 2005, LACTHR (Ser. C), No. 125 (2005); *Saramaka People v Suriname*, Judgment of 28 November 2007, LACTHR (Ser. C), No. 172 (2007); *Kichwa Indigenous People of Sarayaku v Ecuador*, Judgment of 27 June 2012, LACTHR (Ser. C), No. 245 (2012).

79 *Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, AfCHPR, Comm. No. 276/03, 4 February 2010; M Ssenyonjo ‘The Protection of Economic, Social and Cultural Rights under the African Charter on Human and Peoples’ Rights’ in DM Chirwa and L Chenwi, *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (Cambridge University Press, 2016).

80 Adopted on 7 October 2003, entered into force on 20 April 2006, 2368 UNTS 3.

81 Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted on 16 November 1972, entered into force 17 December 1975), 1037 UNTS 151.

82 See Chapter III of the Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2014); available at <<http://www.unesco.org/culture/ich/en/directives>> (accessed 10 October 2016); and the Operational Guidelines for the Implementation of the World Heritage Convention (2015); see for instance, paras 12, 26, 40, 64, 119; available at <<http://whc.unesco.org/en/guidelines>> (accessed 10 October 2016).

cultural loss is still very rare. Perhaps, the most instructive example is that of Māori *Mokomokai*. The process of the repatriation of the preserved tattooed heads of warriors from France back to New Zealand<sup>83</sup> showed that the general interest of humanity to have access to cultural heritage should not be considered as ‘interfering with the right of the persons and/or communities specifically concerned to have the relevant human remains returned’.<sup>84</sup> In other words, the rights of a community having an intrinsic interest in a given cultural object should prevail.

Sadly, the issue of community rights and collective interests in cases of dispute settlements stemming from territorial reconfigurations and marked by the acts of grave human rights violations are often politically exploited. On the other hand their appeasement, or ignoring them in favour of inter-state political, economic and cultural interests, may lead to a rise in tensions among the communities concerned. For instance, the political and cultural reconciliation between Croatia and Serbia, implemented under the auspices of the European Union and Council of Europe, continues to meet with opposition in both countries. This was particularly visible in 2014 when, in response to the claims voiced at the forum of the European Parliament by a Croatian deputy who argued that a full restitution of cultural assets from Serbia should constitute a condition for EU accession negotiations with Serbia, the Association of Refugee and Other Associations of Serbs from Croatia raised the issue of the rights of the Serbian communities forced out of Croatia (Serbian war refugees), including their right to enjoy cultural heritage.<sup>85</sup> Its representatives also reminded the audience of a number of works of arts, churches, and houses destroyed by Croats. They argued that the cultural objects should not be returned to Croatia before conditions have been created for a normal life, the reconstruction of demolished houses and churches, and the return of expelled Serbs. They also claimed that Croatia disregarded its own legislation, under

83 See Loi n° 2010–501 du 18 mai 2010 visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections; available at <<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022227321&categorieLien=id>> (accessed 10 October 2016).

84 F Lenzerini, ‘The Tension between Communities’ Cultural Rights and Global Interests: The Case of the Māori *Mokomokai*’ in S Borelli and F Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Nijhoff, 2012) 177.

85 ‘Return of Cultural Treasures to Croatia must not precede that of Serbs’, *Inserbia*, 18 April 2014, available at <<http://inserbia.info/today/2014/04/return-of-cultural-treasures-to-croatia-must-not-precede-that-of-serbs>> (accessed 10 October 2016).

which the rights of Serbian minority must be protected, comprising their right to use the Cyrillic alphabet.<sup>86</sup> Thus it was argued that no cultural arrangements with Croatia should be taken at the expense of Serbian culture and Serbia's legitimate fundamental rights to property, memory, and religion.

#### 4 Human Rights and Contested Cultural Heritage

In the context of human rights, the question arises whether certain novel 'holistic' responses might be possible given the evolving status of cultural heritage in international law. Based on the traditional (original) perspective of international cultural heritage legislation, the integrity of cultural heritage should play the fundamental role. In fact, most of the international treaties in the area of movable cultural heritage favour the protection of the original historic context of cultural materials.<sup>87</sup> It is presumed that the value of a monument can be best studied, appreciated and enjoyed when it is intact with its original integrity, taking as a point of reference the totality of artistic and symbolic programmes embodied in a given cultural object and its context. Such an approach would create a good argument for the restoration of the Istrian bells to their original locations. On the other hand, the bells are not mere material, artistic objects, and their value and significance mostly consist of their sound and associated intangible aspects. Thus, from the human rights perspective, the core consideration should be the right to access and enjoy such intangible

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86 *Ibid.*

87 In particular, see the regime of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted on 14 November 1970, entered in force 24 April 1972, 823 UNTS 231), that of the Unidroit Convention on Stolen and Illegally Exported Cultural Objects (adopted on 24 June 1995, entered into force on 1 July 1998, (1995) 34 ILM 1322, available at <<http://www.unidroit.org/instruments/cultural-property/1995-convention>> (accessed 10 October 2016), and the Convention on the Protection of the Underwater Cultural Heritage (adopted on 2 November 2001, entered into force 2 January 2009, 2562 UNTS 1), as well as some regional multilateral or bilateral instruments, such as Central American Convention for the Restitution and Return of Archaeological, Historical and Art Objects (adopted on 29 August 1995), available at <[http://www.internationaldemocracywatch.org/attachments/248\\_Central%20American%20Convention%20for%20the%20Restitution%20and%20Return%20of%20Archaeological,%20Historical%20and%20Art%20Objects.pdf](http://www.internationaldemocracywatch.org/attachments/248_Central%20American%20Convention%20for%20the%20Restitution%20and%20Return%20of%20Archaeological,%20Historical%20and%20Art%20Objects.pdf)> (accessed 10 October 2016)). For more, see C Forrest, *International Law and the Protection of Cultural Heritage* (Routledge, 2010) 14 ff.; W Kowalski, 'Protecting the Integrity of a Complex Heritage Object' (1998) 3(3) *Art Antiquity and Law* 243–252.

values by those communities which have an intrinsic interest in maintaining and recovering such a cultural, spiritual link. The problem is that international law has long perceived the protection and preservation of cultural heritage as an exclusive domain of states and their vital interests, beyond the realm of human rights. This fact is reflected in the texts of universal human rights instruments adopted after the Second World War. Although the 1948 Universal Declaration of Human Rights<sup>88</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>89</sup> recognized the importance of cultural rights, they did not explicitly refer to any human rights guarantees in relation to cultural heritage.

Fortunately, the international approach to the protection of cultural heritage has profoundly evolved in recent decades. This has resulted in the emergence of a new international conscience, stemming from an awareness that the preservation and enjoyment cultural heritage are crucial for the full realisation of all human rights, in their individual and collective dimensions.<sup>90</sup> This process has infiltrated various layers of international law, and thus the protection of cultural heritage today is seen as part of the safeguarding of human dignity.<sup>91</sup> Accordingly, the UN Special Rapporteur in the Field of Cultural Rights, has defined cultural heritage as a notion linking ‘the past, the present and the future, as it encompasses things inherited from the past that are considered to be of much value or significance today, and that individuals and communities want to transmit to future generations’.<sup>92</sup> For these reasons, ‘it is impossible to separate a people’s cultural heritage from the people itself and their rights.’<sup>93</sup>

88 UNGA Res 217 A(III), adopted on 10 December 1948, UN Doc A/810, 71.

89 UNGA Res. 2200A(XXI), adopted on 16 December 1966, entered into force on 3 January 1976, 993 UNTS 3; M Ssenyonjo, *Economic, Social and Cultural Rights in International Law*, (2nd ed, Hart/Bloombury, 2016).

90 In particular, see the Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) (adopted on 27 October 2005, entered into force 1 June 2011), CETS No. 199.

91 UN HRC, ‘Resolution, Protection of Cultural Heritage as an Important Component of the Promotion and Protection of Cultural Rights, UN HRC Res.6/11 (28 September 2007), para 8.

92 Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, 21 March 2011, UN Doc. A/HRC/17/38, para 5.

93 ‘The Destruction of Cultural Heritage is a Violation of Human Rights’, Statement by the UN Special Rapporteur in the Field of Cultural Rights, Karima Bennouna, 4 March 2016; available at <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17151&LangID=E>> (accessed 10 October 2016).

Hence the question of who should enjoy the Istrian bells remains open. Should they serve the communities who created and enjoyed them for centuries, as a tangible symbol or keystone of their collective identity? Or should they be returned to their original location? They definitely should not be kept hidden in museum storage. Conversely, the fate of the Ivan and Mykhailo bells shouldn't entail any doubts. The only question with respect to them is: When will they be handed over to the religious community concerned?

Clearly, contemporary international cultural heritage law is aimed at promoting and supporting international cultural cooperation.<sup>94</sup> In fact, one can observe a proliferation of various cultural cooperation agreements and other multilevel arrangements, which gradually replace inter-state restitution and repatriation negotiation frameworks.<sup>95</sup> There is also an expanding international practice concerning the settlement of cultural heritage disputes through distinct forms of joint management, co-ownership, and stewardship.<sup>96</sup> These more often tend to recognise and accommodate rights and interests other than simply state-centred ones, including community rights and interests.

## 5 Enhancing Collective Cultural Rights through International Cooperation

As already indicated, if the cases analysed herein were to be dealt with from the perspective of the ownership by and restitution to one single legitimate owner, it seems that there would be little cooperation among the interested countries and communities. Yet, it is clear that the art – in this case the historical value of the church bells – cannot merely be approached as a question of legal title, but rather as an issue of belonging, or, even better, a matter of *shared belonging* between various communities and even specific places. It is exactly the connection between objects and places that can best capture the history of the bells as artistic products and their role in the religious and social life of the local populations over the course of the time.

94 In particular, see UNESCO Declaration of Principles of International Cultural Co-operation (adopted on 4 November 1966), UNESCO Doc. 14C/Resolutions, at 86–89; UNESCO Recommendation Concerning the International Exchange of Cultural Property (adopted on 26 November 1976), UNESCO Doc. 19C/Resolutions, Annex I.

95 See Jakubowski, *supra* n. 21, at 290–302, 332.

96 For instance, see MA. Renold, 'Cultural Co-Ownership: Preventing and Solving Cultural Property Claims' (2015) 22(2–3) *International Journal of Cultural Property* 163–176.

If appreciated as such – and even exploited in terms of their cultural potential – the bells, when exhibited in their original places of origin, could be not only a symbol of the past, aiming at transmitting memory to future generations, but also (and above all) a symbol for current and future cultural integration among the states, nations and people concerned, aimed at overcoming nationalistic trends that perpetuate past conflicts between different ethnic and religious groups. The cultural integration represented by the church bells in question would be an integration based on reciprocal respect, recognition, and above all cultural cooperation between central governments and local communities, which is perfectly in line with the European project to which all four states concerned are active parties.

In order to by-pass the regime whereby the Istrian church bells are dealt with from the point of view of state competences in an action for restitution, alternative venues and methods of cooperation can be envisaged as a framework with which to conduct negotiations aimed at exhibiting the bells as part of a shared heritage. For instance, on 21 October 2015 the Ministers of Culture of Italy (Franceschini) and Croatia (Šipuš) signed a new Executive Programme in the sectors of culture and education between Italy and Croatia for the years 2015–2018. This Programme foresees cooperation activities between the two countries in, *inter alia*, the museum sector and in the protection of cultural heritage. In addition, a variety of interregional programmes financed by the EU have been launched since the beginning of the 2000s in order to strengthen the partnership between Italy and the other countries to which the Istrian territories belong. Within the framework of these programmes, developing a sustainable tourism based on a revitalized cultural heritage is among the priorities of the EU investments in the county of Istria.<sup>97</sup>

As regards the cultural relations between Poland and Ukraine, these, notwithstanding the difficulties in settling restitution claims, have been fruitful. Perhaps the best example of joint cultural heritage projects concerns the nomination and 2013 entry on the World Heritage List of a group of wooden *Tserkvas* (Eastern-rite churches) in the Carpathian Region, situated in the territories of both Poland and Ukraine.<sup>98</sup> According to the nomination documents

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97 Details in Cespi & IRMO, *Sectors of Culture and Environment in Istria: State of the Art and Future Perspective*, Fifth Report October 2013, at 10; available at <<http://www.cespi.it/SEENET/5%20report/4%20Istria-5th%20Seenet%20Rep.pdf>> (accessed 10 October 2016).

98 Wooden *Tserkvas* of the Carpathian Region in Poland and Ukraine, UNESCO Doc. WHC-13/37.COM/20, Paris, 5 July 2013, available at <<http://whc.unesco.org/en/list/1424>> (accessed 10 October 2016).

submitted by both governments, the churches 'are immensely important spiritual centres for the local communities, who continue to participate in religious activities, contributing significantly to the survival of this unique diversity of religious rites and adding an intangible, emotional context to the significance of these sites.'<sup>99</sup> Indeed, the inscription of this trans-boundary series of cultural sites has been important for the borderland communities, since the territories concerned were heavily scarred by war crimes, ethnic cleansing, and the forced populations transfers committed during and just after the Second World War. The memory of these events still casts shadow on the relations between Poland and Ukraine and between local communities of this area. Clearly, the internationalisation of the site has been seen as a vehicle facilitating the reconciliation and trans-boundary cooperation between the populations concerned. With respect to European integration instruments, Ukraine and Poland also cooperate within the EU-Eastern Partnership Culture and Creativity Programme, designed *inter alia* to protect and valorise regional cultural resources and heritage.<sup>100</sup>

Finally, the analysis offered in this article also leads to the conclusion that difficult international cultural heritage disputes should not be decided without the involvement, participation and consent of the concerned communities. Thus, community participation is postulated as an essential part of inter-state arrangements in order to ensure the 'true' recognition of cultural rights. In other words, cultural heritage cannot become hostage to states' political, economic or even cultural interests at the expense of those human communities which have a special inherent link with such heritage.

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99 *Ibid.*

100 See EU-Eastern Partnership Culture and Creativity Programme at <<http://culturepartnership.eu/en>> (accessed 10 October 2016).