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The Right to Cultural Heritage

Its Protection and Enforcement through Cooperation in the European Union

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## Legal Aspects of Polish-German Relationships in the Area of Cultural Heritage in 1990-2017

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**Summary:** 1. *Introduction* – 2. *Factual and Historical Background* – 3. *Heritage Lost/Not Returned* – 4. *International Law Background, with Special Focus on Polish-German Agreements in the Area of Cultural Heritage* – 5. *Identified Problems: Current Polish Legal Approach/German Legal Approach* – 6. *Cultural Cooperation in Other Areas* – 7. *Conclusions*

## **1. Introduction**

The subject matter of this study is cultural heritage (cultural property, *Kulturgüter*) and it must be underlined that this aspect of mutual Polish-German relations is deeply marked by the experience of the Second World War (WWII). We not only witnessed great destruction of European cultural heritage during WWII, but great national heritage was terribly damaged and looted as well. Almost the entire European population of Jews was victimized by the Holocaust and removed from the cultural and ethnic landscape of the continent, and subsequently Jewish cultural heritage was destroyed and dispersed.

The WWII wartime trauma is still a major context of the current Polish-German relationship, which for a long time has been perceived through the lens of mutually exclusive narratives of victimhood and shapes current interactions. The competing narratives are based on one hand on the extermination of Polish citizens, Nazification, the Holocaust, and the fight against Polish culture and science; and on the other hand framed by the issue of German inhabitants expelled from what are now Polish territories and the partial destruction of the centuries-old culture of German inhabitants on the territories annexed to Poland during the period of the Polish People's Republic.

The key questions underlying this study concern Polish-German relations in the area of cultural heritage between 1990-2017, to wit: What should the cooperation look like today? What are the main dividing lines preventing solution of the problems connected with cultural heritage? And what elements play a positive and healing role in shaping these relations?

However, it would be very superficial to limit the scope of the study only to this period, since the common history – specifically the trauma of war and the post-war decades – are the main factors which gave shape to the current relations. This is why the subject of this research also concerns the past.

The methodology employed in this research is focused on the analysis of the historical and legal sources, the existing theoretical knowledge, and empirical data. Specifically, it combines the analysis of legal instruments and mechanisms with the policies of both States, their narratives, and their practices with respect to cultural heritage. The major methods that are used in the research are descriptive and analytical methods, which are aimed at presenting the state of affairs as it currently exists. Additionally, by employing the comparative legal method the research enquires into the extent to which Polish legal obligations can be consistent with German obligations; whether both systems can be perceived as parallel; and whether there is a point of reference in the mutual relations. Finally, by analysing the empirical data the research will reveal and explain the current state practice and the controversies surrounding the current mutual relations.

In the study the issue of the restitution of cultural goods is thus revived in order to underline the claims left unsettled between Poland and Germany, while cultural cooperation on other grounds is also assessed. Thus the study analyses the historical and factual background of current Polish-German relations in order to determine and analyse the questions left unsettled. Next it refers to Polish and German claims in the context of the cultural heritage lost and/or not returned during and after WWII. This analysis is strengthened by the conceptualization of the legal framework, specifically those international obligations referring to cultural heritage which are binding on both States. This part of the study demonstrates that there were a number of acts which could be recognized as binding on both States after WWII and thus makes it possible to refer to a common legal background before the opening of the borders between the two States in 1990. Following this section, the study refers to the current legal background and the agreements concluded after

1990, which were aimed at regulating mutual relations. This leads to identification of the present legal problems. Subsequently the study is followed by analysis of the alternative solutions to the mentioned problems. Next the extent of mutual cultural cooperation in other areas is presented and some conclusions are offered. Finally, by recalling the main controversies and major findings outlined in the study, the transformative role of non-governmental organizations, societies, and foundations (including ordinary people) is examined, as they have a leading role in the reconciliation processes of States.

## 2. Factual and Historical Background

When WWII commenced, the protection of cultural heritage was already a recognized principle of international law<sup>1</sup> and the restitution of cultural property looted during armed conflict was also a recognized international custom.<sup>2</sup> Just after the war some efforts were made to resolve the restitution issues in a comprehensive fashion, e.g. programmes for the restitution of looted cultural objects were discussed, but only partly finalized, during the first years after the war. But owing to the lack of a peace treaty between Poland and Germany the question of reparations for the loss of cultural heritage was not definitively regulated.<sup>3</sup> And even if the recognition and identification of

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<sup>1</sup> This is visible in, for example, the Convention (IV) respecting the Laws and Customs of War on Land, 18 October 1907, <https://ihl-databases.icrc.org/ihl/INTRO/195> and Articles 27 and 56 of its annex. This convention bound both Poland and Germany before the WWII.

<sup>2</sup> W. Kowalski, *Repatriacja dóbr kultury* [Repatriation of cultural goods], in: G. Czubek, P. Kosiewski (eds.), *Dobra kultury i problemy własności. Doświadczenia Europy Środkowej po 1989 roku* [Cultural goods and the problem of ownership. The experience of Central Europe after 1989], Fundacja im. Stefana Batorego, Warszawa 2005, pp. 189-190; A. Jakubowski, *Dziedzictwo kulturowe w stosunkach polsko-niemieckich w świetle norm i doktryny prawa międzynarodowego* [Cultural heritage in Polish-German relations in light of the norms and doctrine of international law], in: W. Czapliński, B. Łukańko (eds.), *Problemy prawne w stosunkach polsko-niemieckich u progu XXI wieku* [Legal problems in Polish-German relations at the beginning of 21st century], Scholar, Warszawa 2009, p. 255.

<sup>3</sup> For a broad overview of the question of post-war regulations: S.E. Nahlik, *Grabież dzieł sztuki: rodowód zbrodni międzynarodowej* [Plunder of works of art: genesis of international crime], Ossolineum, Wrocław 1958; J. Pruszyński, *Dziedzictwo kultury Polski: jego straty i ochrona prawna* [Polish culture heritage: its losses and legal protection], Vol. II, Zakamycze, Kraków 2001; W. Kowalski, *Likwidacja skutków II wojny światowej w dziedzinie kultury*

looted objects were possible, including information about their storage, another set of problems would appear connected with time limitations and good faith purchases, which in some States gives the new owners the possibility to defend their right to ownership on purely legal grounds.

Thus, after WWII there were many unresolved issues between Poland and Germany, starting from, *inter alia*, the recognition of borders, a peace settlement, and the issue of restoration of property (including cultural goods). This unsettled past has had an extreme impact on the evolution of the present Polish approach towards Germans, including the present Polish-German relationship, especially because so many issues were never definitively closed and have a tendency to be backed by political narratives, such as the question of Polish expectations concerning reparations from Germany, or the ownership and place of storage of the "Prussian State Library in Berlin" (in Polish: Berlinka, in German: Preussische Staatsbibliothek zu Berlin<sup>4</sup>), which wound up in Poland as a result of the war.

It seems that for Poland the most decisive factors in its approach towards Germany are/were the German occupation of Polish territory, the extermination of six million Polish citizens, the question of territorial revisionism (present for example in Adenauer's policy) directed toward Poland, as well as the looting of Polish cultural heritage during WWII. As regards the latter, it should be recalled that in line with Hitler's policy to establish a museum in Linz,<sup>5</sup> the Germans looted monuments, the content of museums, libraries, and private collections.<sup>6</sup>

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[Liquidation of the effects of World War II in the field of culture], Instytut Kultury, Warszawa 1994.

<sup>4</sup> M. Żółtowski, *Zbiory Biblioteki Pruskiej w Polsce. Studium przypadku* [Collection of the Prussian Library in Poland. Case study], Wydawnictwo Uniwersytetu Warszawskiego, Warszawa 2012.

<sup>5</sup> K.D. Alford, *Hermann Göring and the Nazi Art Collection: The Looting of Europe's Art Treasures and Their Dispersal After World War II*, McFarland & Company, Jefferson, NC 2012; A. Chechi, *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, New York 2014, p. 262.

<sup>6</sup> N. Cieślińska-Lobkowitz, *Węzeł Poczdamski. O powojennych rewindykacjach dóbr kultury związanych ze zmianą polskich granic* [Potsdam's knot. About post-war vindications of cultural goods connected with the change of borders], in: G. Czubek, P. Kosiewski (eds.), *Dobra kultury i problemy własności. Doświadczenia Europy Środkowej po 1989 roku* [Cultural goods

For Germany, the end of war was connected with the loss of part of its territory (including the loss of both property and cultural heritage) and the complicated status of the German minority in Poland, as well as forced resettlements/expulsions of German nationals from the territory of the Poland after the war (*Zwangassiedlung*), the latter of which cannot be treated in the isolation from other acts such as murders, rapes, and physical exploitation.<sup>7</sup>

At the same time, Polish citizens never received the individual reparations from Germany to which they were entitled on account of, for instance, their imprisonment by the Third Reich in German concentration or forced labour camps or other Nazi persecutions. Similarly, German citizens did not receive from Poland any financial compensation for the loss of their property due to their expulsion from Poland.

The situation was further complicated afterwards by the political situation. The post-war division of Germany between two different political blocs (Poland did not maintain diplomatic relations with Western Germany (then called the Federal Republic of Germany, FRG), but only with the Eastern part (the German Democratic Republic, GDR), and Poland's inclusion in the communist bloc. In consequence, the issue of the allocation of cultural property remained – aside from some sporadic, incidental, individual

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and the problem of ownership. The experience of Central Europe after 1989], Fundacja im. Stefana Batorego, Warszawa 2005, p. 209-210.

<sup>7</sup> It is estimated by historians that by 1950 a total of approximately 12 million Germans had fled or been expelled from East-Central Europe, and the between 500,000 and two million died as a result of the expulsions, although this latter number might be exaggerated as a result of political propaganda, the lack of empirical data, and vague definitions. See: R. Overmans, *Personelle Verluste der deutschen Bevölkerung durch Flucht und Vertreibung*, "Dzieje Najnowsze" 1994, Vol. 26(2); T. Kamusella, *The Expulsion of the Population Categorized as "Germans" from the Post-1945 Poland*, in: S. Prauser, A. Rees (eds.), *The Expulsion of the German Communities from Eastern Europe at the end of the Second World War*, European University Institute, San Domenico 2004, pp. 21-33. It should however be noted that the Polish Minister of Foreign Affairs Władysław Bartoszewski addressed the question of expulsions during his speech in Bundestag on 28 April 1995, stating that: "We bemoan the individual fate and the suffering of innocent Germans who were affected by the consequences of the war and lost their homes." Although it was not an apology in a strict sense, it showed the empathy for the innocent victims of this tragic armed conflict; see the text of the speech in Polish at: <http://www.berlin.msz.gov.pl/resource/9df0ac0e-b38f-4b6c-b084-591fc2302a97:JCR> [accessed: 23.07.2018].

restitutions and symbolic gestures<sup>8</sup> – a tacit issue until the end of the Cold War and the fall of communism in Eastern Europe. The late 1980s and early 1990s marked both a symbolic and real change, and not only in the relations referring to cultural heritage. After the diplomatic breakthrough with Poland in 1989 and the unification of Germany in 1990, and the Polish-German Border Treaty and the Treaty on the Final Settlement with Respect to Germany (see section 4.2 of this study) – which marked the ultimate determination of united Germany's area and borders (including the Polish-German border) – the agreements and settlements established on the basis of the Potsdam Treaty were *de facto* deconstructed, which allowed for a new beginning.<sup>9</sup>

The end of the Cold War opened a new chapter in Polish-German relations and finally the question of cultural heritage began to be taken into considerations and attention has been paid to the protection of the remaining cultural goods. It must be noted that several aspects of cultural cooperation in context of cultural heritage must be definitively assessed positively in Polish-German relations, especially in the areas of regional, intergovernmental, or European cooperation. It seems however that the restitution of cultural heritage referring to WWII remains the major weak point of this cooperation,

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<sup>8</sup> See for example: A. Jakubowski, *Dziedzictwo kulturowe...*, p. 258; B. Jurkowicz, *Kwestia zwrotu dóbr kultury w stosunkach polsko-niemieckich* [Question of the return of cultural goods in Polish-German relations], "Biuletyn Opinii FAE" 2013, Vol. 17, p. 6.

<sup>9</sup> It must be noted however that the history of Polish-German relations still pervades the political life in both countries, especially in that some remaining animosities are used as part of the current political disputes, as for example the claims of Preußischen Treuhand, or the CDU-CSU 2009 initiative to condemn the post war expulsions of Germans from Poland. (see M. Day, *Angela Merkel's Party Backs "Homeland" for Germans Expelled by Poland*, "The Telegraph", 29 June 2009, <http://www.telegraph.co.uk/news/worldnews/europe/poland/5687591/Angela-Merkels-party-backs-homeland-for-Germans-expelled-by-Poland.html> [accessed: 23.07.2018]), or the initiatives of politicians of the currently governing Polish party Prawo i Sprawiedliwość (Law and Justice, PiS) aimed at obtaining reparations from Germany, even though it seems that Poland effectively renounced reparations in 1953 (see N. Durman, *Reparacje wojenne od Niemiec to dopiero początek. Poseł PiS idzie o krok dalej* [War reparations from Germany are only the beginning. The Law and Justice MP goes a step further], 13 September 2017, <https://wiadomosci.wp.pl/reparacje-wojenne-od-niemiec-to-dopiero-poczatek-posel-pis-idzie-o-krok-dalej-6165654854215297a> [accessed: 23.07.2018]), or this party's distrust towards Germany on the political level, being at the moment the continuance of its policy commenced in 2005, S. Raabe, *Polska – sąsiad, partner, przyjaciel na wschodzie. Zmienne losy stosunków polsko-niemieckich po 1989 roku* [Poland – a neighbour, partner, friend in the east. The varied fate of Polish-German relations after 1989], "Raporty Fundacji Konrada Adenauera" 2010, Vol. 17, p. 10.

both in the context of the objects looted by Nazis and not returned to Poland and the objects not returned to Germany which were located – in order to avoid bombing and devastation – in the territory of Third Reich which now belongs to Poland.

### **3. Heritage Lost/Not Returned**

#### **3.1. Polish claims**

Today it is almost impossible to reconstruct the complete catalogue of Polish war losses. The reasons for such a situation differ. In many instances it is a consequence of the lack of adequate records, such as the missing registers maintained during the war. A number of registers, museum records, inventory lists, and documentary archives were intentionally destroyed or removed by either the Nazis or the Soviet Army. During the war a group of historians and librarians undertook the first attempts to register the war losses and compiled the first collective lists of missing works of art, from both public and private collections. The data was submitted to the Office of Restitution of Cultural Losses of the Government of the Republic of Poland in exile and was used by its director, Karol Estreicher. He subsequently authored a publication entitled *Cultural Losses of Poland: Index of Polish Cultural Losses During the German Occupation, 1939-1944* (London 1944),<sup>10</sup> which was the first such detailed list of losses. After the war, the Bureau for Restitution and Compensation at the Ministry of Culture and Art used the information contained in this publication and enriched the register with additional data, but it was closed in 1951.

Post-war statistics reported more than 500,000 missing cultural objects (removed and/or destroyed), and it must be noted that this list does not represent the full extent of the losses. After 1992, a detailed inventory of losses made it possible for the then Ministry of Culture and Art Information to put into its internet database over 60,000 missing objects, out of which the photographic documentation was included for only 10,000 registered items

(including 13,000 pictures, about 8,700 engravings and drawings, over 4,000 golden objects, 3,500 sculptures, and 4,500 pieces of furniture and other wooden products).<sup>11</sup>

The discussions over the question of restitution and compensation are still continuing, presently under the auspices of the Unit for Restitution of Cultural Goods acting within the Polish Ministry of Foreign Affairs.<sup>12</sup> The Unit (in the persons of Wojciech Kowalski and Monika Kuhnke) closely cooperates with the Ministry of Culture and National Heritage and its departments in the National Heritage Department supervising the Division for Looted Art. The Division for Looted Art is the operator of the electronic database of Wartime Losses, the only national register of cultural property lost as a result of WWII, which gathers information on the objects which were looted as a result of warfare. The data presented in the database constitutes a useful basis for searches of wartime losses, as well as the document restitution activities undertaken by the Division for Looted Art.

### **3.2. German claims**

German claims for the return of cultural goods are focused mainly on two collections of objects which were sent East to avoid the bombardment of

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<sup>10</sup> Available online: <http://mbc.malopolska.pl/dlibra/doccontent?id=13505>.

<sup>11</sup> See the data from the Polish Ministry of Foreign Affairs: [http://www.msz.gov.pl/en/foreign\\_policy/restitution\\_of\\_works\\_of\\_art/war\\_losses](http://www.msz.gov.pl/en/foreign_policy/restitution_of_works_of_art/war_losses) [accessed: 23.07.2018]. The lists of war losses and publications including war losses are available here: <http://lootedart.gov.pl/en/The-Division-for-Looted-Art> [accessed: 23.07.2018]. For more on the appraisal, estimation, and registration of Polish losses, see W. Kowalski, *An Appraisal of the Losses to Polish Cultural Heritage Resulting from German Aggression During the Second World War*, [in]: W. Góralski (ed.), *Polish-German Relations and the Effects of the Second World War*, Polish Institute of International Affairs, Warsaw 2006, pp. 45-67 and idem, *Restytucja dóbr kultury utraconych przez Polskę w okresie II wojny światowej jako element polskiej polityki zagranicznej realizowanej przez Ministerstwo Spraw Zagranicznych RP w latach 1999-2009* [Restitution of cultural goods lost by Poland during World War II as an element of Polish foreign policy implemented by the Ministry of Foreign Affairs of the Republic of Poland in 1999-2009], [in]: W. Kowalski, M. Kuhnke (eds.), *Looted and Recovered. Restitution by the Ministry of Foreign Affairs of Poland's Cultural Property Lost During World War II*, Ministerstwo Spraw Zagranicznych, Warsaw 2011, p. 9.

Berlin; i.e. the Prussian State Library in Berlin<sup>13</sup> (in Polish known as 'Berlinka') and Hermann Goering's collections of aircraft (called officially German Collections of Aircraft (in German: Deutsche Luftfahrtsammlung). Both objects are now part of Polish collections. Berlinka exists as the part of the collection of the Library of Jagiellonian University and offers partly free access, while Goering's collection is part of the permanent exposition of the Polish Aviation Museum in Cracow.

Apart from these collections, certain other claims could be formulated, on one hand towards the cultural assets left behind by expelled Germans during the post-war resettlements which were the result of re-drawing the borders, and on the other hand as referring to lost cultural assets looted from Germany at the end of war.<sup>14</sup> As regards the latter, any cultural object which is recognized as looted from Germany should be returned by way of restitution, including restitutions from Poland. The main institution responsible for this is the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste), founded in 2015 in Germany, which focuses on cultural assets confiscated by the National Socialists through persecution, particularly from former Jewish owners (so-called "Nazi confiscated art"). The Foundation acts according to the Washington Principles<sup>15</sup> and is responsible for investigating the war-related removal or relocation of cultural property (so-called "looted art"), as well as the loss of cultural assets under Soviet occupation and in the GDR. The Foundation supports provenance research via research grants and provides information on reports of lost and found cultural assets via its open-access "Lost Art" database (lostart.de). The database has documented almost

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<sup>12</sup> See the website of the Ministry: [http://www.msz.gov.pl/pl/polityka\\_zagraniczna/restytucja\\_dobr\\_kultury/zespol\\_ds\\_restytucji/](http://www.msz.gov.pl/pl/polityka_zagraniczna/restytucja_dobr_kultury/zespol_ds_restytucji/) [accessed: 23.07.2018].

<sup>13</sup> See here: <https://www.preussischer-kulturbesitz.de/en/priorities/provenance-research-and-issues-of-ownership/wartime-losses/holdings-evacuated-to-poland.html> [accessed: 23.07.2018].

<sup>14</sup> See, for example: <http://www.lostart.de/Webs/EN/LostArt/Index.html> [accessed: 23.07.2018].

<sup>15</sup> US Department of State, *Washington Conference Principles on Nazi-Confiscated Art*, <http://www.ngv.vic.gov.au/wp-content/uploads/2014/05/Washington-Conference-Principles-on-Nazi-confiscated-Art-and-the-Terezin-Declaration.pdf> [accessed: 23.07.2018].

200,000 lost cultural objects.<sup>16</sup> The Foundation is managed and represented by its executive board, but its highest decision-making body is the Foundation Board, which is chaired by the Minister of State for Culture and Media, Prof. Monika Grütters.<sup>17</sup>

As to the claims formulated by the former owners of properties which after the Potsdam and Yalta agreements became a part of Polish territory, the problem is more complex. The European Court for Human Rights (ECtHR) assessed the complaints of Germans as inadmissible<sup>18</sup> and rejected them. It held that the purported individual acts of violence, expulsion, dispossession, and seizure or confiscation were instantaneous acts which occurred before the ratification of Protocol No. 1 by Poland, and which thus did not produce any continuing effects that could have consequences which would give the Court jurisdiction *ratione temporis*. The Court added that the European Convention for the Human Rights and Fundamental Freedoms (ECHR)<sup>19</sup> imposes no specific obligation on States to provide redress for wrongs or damage caused prior to their ratification of the ECHR. In this context any such claims formulated before the ECtHR will be rejected as inadmissible, and this is the current situation with regard to eventual claims in the context of international law. The only available solution for German owners and their heirs is to settle their claims against the Polish State directly in judicial civil proceedings before Polish courts.

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<sup>16</sup> See here: [https://www.kulturgutverluste.de/Content/08\\_Downloads/EN/Factsheet.pdf;jsessionid=AA43943B729E6F85CC172A5A17F3ECFD.m?\\_\\_blob=publicationFile&v=17](https://www.kulturgutverluste.de/Content/08_Downloads/EN/Factsheet.pdf;jsessionid=AA43943B729E6F85CC172A5A17F3ECFD.m?__blob=publicationFile&v=17) [accessed: 23.07.2018].

<sup>17</sup> Apart from the documentation of lost art, the Foundation is also responsible for overseeing the "Gurlitt Provenance Research" project, what is further discussed below. The Foundation also provides editorial support in the maintenance of the online portal [http://www.kulturgutschutz-deutschland.de/DE/Home/home\\_node.html](http://www.kulturgutschutz-deutschland.de/DE/Home/home_node.html), a website concerning the protection of cultural property in Europe.

<sup>18</sup> See *Preussische Treuhand GmbH & Co. Kg A.A. v. Poland*, Application No. 47550/06, Decision of inadmissibility of 7 October 2008, paras. 55-62, and *Gerhard Stumpe v. Poland*, Application No. 7913/07, Decision of inadmissibility of 9 December 2008.

<sup>19</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221.

## **4. International Law Background, with Special Focus on Polish-German Agreements in the Area of Cultural Heritage**

### **4.1. Applicable law during the Cold War**

Besides the unresolved post-war problems of the restitution of cultural property, both German States – the Federal Republic of Germany and the German Democratic Republic – and Poland, having in mind the experience of previous wars and the unimaginable destruction of cultural objects in those countries, tended to undertake initiatives to protect and preserve the remaining goods on the international level.<sup>20</sup> Before the fall of Soviet bloc they undertook several initiatives aiming at the protection of cultural heritage. Among other actions, they joined international agreements focused on the protection of cultural property, namely:

1. The Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention<sup>21</sup> (“the 1954 Convention for the Protection of Cultural Property”; Poland joined in 1956,<sup>22</sup> GDR in 1974, and FRG in 1967);
2. The Protocol for the Protection of Cultural Property in the Event of Armed Conflict<sup>23</sup> (“the 1954 Protocol”; GDR joined in 1974,<sup>24</sup> Poland joined in 1956, and FRG in 1967);
3. The European Cultural Convention<sup>25</sup> (although the Convention was open for non-State Parties of the Council of Europe, Poland ratified it only in 1989, and the FRG in 1955);

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<sup>20</sup> It should be noted once again that both Poland and Germany were State Parties of different international instruments already before the WWII, including the above-mentioned Convention (IV) respecting the Laws and Customs of War on Land of 1907 with its Regulations (see note 1).

<sup>21</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954, 249 UNTS 240.

<sup>22</sup> In the study the dates of signature are omitted as being irrelevant to the described question, and only the dates of ratification and/or accession are included.

<sup>23</sup> Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 358.

4. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>26</sup> ("the 1970 UNESCO Convention"; joined by Poland in 1974 and Germany in 2007);
5. The Convention Concerning the Protection of the World Cultural and Natural Heritage<sup>27</sup> ("WHC" – joined by the FRG and Poland in 1976, and the GDR in 1988).

These treaties already demanded the protection of cultural heritage, both in times of peace and during an armed conflict. However, it must be noted that although States undertook obligations sanctioning acts which were a common practice only a decade before, they were not all State Parties to the given conventions, nor did they ratify the conventions at the same time, so it cannot be assumed that there existed any unitary model of protection of cultural heritage between the German States and Poland. They decided to join an international system for the protection of cultural property because of the fact that their cultural property suffered such great damage during WWII and that the techniques of warfare were developing, constantly increasing the danger to cultural heritage. But during the Cold War their national policies were different.

The minimum standards of protection were defined in the 1954 Convention for the Protection of Cultural Property, which was ratified by both the German States and Poland. Paragraphs 1 and 3 of Article 4 of the 1954 Convention for the Protection of Cultural Property, entitled "Respect for cultural property", provide that "state parties undertake to respect cultural property situated within their own territory as well as within the territory of other state Parties by refraining from any use of the property and its

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<sup>24</sup> D. Schindler, J. Toman (eds.), *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents*, Henry Dunant Institute, Geneva 1988, p. 59.

<sup>25</sup> European Cultural Convention, 19 December 1954, 218 UNTS 139.

<sup>26</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.

<sup>27</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, 1037 UNTS 151.

immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property” and additionally that “state Parties further 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. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.”

The First Protocol to the said Convention placed several obligations concerning the protection of cultural property on a State Party which is occupying a certain territory. Among other obligations, the State is obliged to prevent the exportation of the cultural property from occupied territory and the State shall return the seized property. These obligations formulated in Protocol I are focused on the restitution of cultural property, and provide that a State Party “undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property”; as well as that a State Party “undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory”; and finally that a State Party shall “return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.”

What is however noteworthy is the fact that neither of the German States was a State Party to the 1970 UNESCO Convention, which aimed at prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, and reunited Germany ratified the said Convention only in 2007.

## 4.2. Bilateral agreements

The tendency to regulate the protection of cultural heritage was not however visible in the bilateral relations between Poland and the German States, and only in the 1990s did the situation begin to stabilize. The situation changed after the Treaty on the Final Settlement with Respect to Germany (*Vertrag über die abschließende Regelung in Bezug auf Deutschland*, or the Two Plus Four Agreement (German: *Zwei-plus-Vier-Vertrag*). The treaty was negotiated in 1990 between the Federal Republic of Germany, the German Democratic Republic, and the Four Powers. The treaty States which occupied Germany at the end of WWII in Europe – France, the Soviet Union, the United Kingdom, and the United States – renounced all rights they held in Germany and agreed that “[t]he united Germany shall comprise the territory of the Federal Republic of Germany, the German Democratic Republic and the whole of Berlin. Its external borders shall be the borders of the Federal Republic of Germany and the German Democratic Republic and shall be definitive from the date on which the present Treaty comes into force.”<sup>28</sup> As a result the two German States reunified and became one fully sovereign State the following year.

This also influenced the relationship between Germany and Poland, and both States finally signed the German-Polish Border Treaty,<sup>29</sup> which settled the question of the Polish-German border, an issue which, in terms of international law, had been pending since the end of WWII. This was followed by Treaty between the Federal Republic of Germany and Poland on good neighbourly relations and friendly cooperation, signed in June 1991 (in German: *Vertrag*

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<sup>28</sup> The text of the Treaty is available here: [https://en.wikisource.org/wiki/Treaty\\_on\\_the\\_Final\\_Settlement\\_with\\_Respect\\_to\\_Germany](https://en.wikisource.org/wiki/Treaty_on_the_Final_Settlement_with_Respect_to_Germany) [accessed: 23.07.2018].

<sup>29</sup> Treaty between the Federal Republic of Germany and the Republic of Poland on the confirmation of the frontier between them, 14 November 1990 (in German: *Vertrag zwischen der Bundesrepublik Deutschland und der Republik Polen über die Bestätigung der zwischen ihnen bestehenden Grenze*, and in Polish: *Traktat między Rzeczpospolitą Polską a Republiką Federalną Niemiec o potwierdzeniu istniejącej między nimi granicy*), see: <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-POL1990CF.PDF>;

*vom 17. Juni 1991 zwischen der Bundesrepublik Deutschland und der Republik Polen über gute Nachbarschaft und freundschaftliche Zusammenarbeit*, and in Polish: *Traktat między Rzeczpospolitą Polską a Republiką Federalną Niemiec o dobrym sąsiedztwie i przyjaznej współpracy*; hereinafter "the Treaty").<sup>30</sup>

Signing the Treaty was a milestone in the mutual relations between the States, which until then were rather strained. In the preamble of the Treaty the States decided to close the painful chapters of their past. Such a conciliatory approach was employed with regard to the issue of cultural cooperation as broadly perceived, including cultural heritage. The fundamental principle expressed in the Treaty was international cooperation. Among other provisions the most important ones from the point of view of this study are the provisions concerning cultural cooperation. In the Treaty they refer to:

- the situation of the German minority in Poland, and the freedoms and laws of persons having German citizenship but Polish origin (Articles 20, 21??);
- cultural cooperation (Article 23);
- cultural institutes (Article 24);
- access to language and culture (Article 25);
- preservation and nurture of the European cultural heritage (Article 28).

The provisions of the Treaty relating to the protection of the German minority in Poland or people of Polish origin in Germany were based on the right to freely express, preserve, and develop their ethnic, cultural, linguistic, and religious identity without any attempt to assimilate them against their will. They are entitled to the full and effective enjoyment of human rights and fundamental freedoms without any discrimination and in conditions of full equality under the law. Additionally, they can freely use their mother tongue in

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[https://en.wikisource.org/wiki/Treaty\\_on\\_the\\_Final\\_Settlement\\_with\\_Respect\\_to\\_Germany](https://en.wikisource.org/wiki/Treaty_on_the_Final_Settlement_with_Respect_to_Germany) [accessed: 23.07.2018].

<sup>30</sup> 17 June 1991, 1708 UNTS 463. Original text of the Treaty in German and Polish: <http://25de.pl/dokumenty/traktat-o-dobrym-sasiedztwie-i-przyjaznej-wspo,25.html> [accessed: 23.07.2018].

private and public life and have the right to access information given in this language, as well as to practice religion or use their surnames in their original wording.

As to cultural cooperation, the contracting States decided to intensify cooperation in all areas, based on existing agreements and programmes. In particular this refers to support for the cooperation between both societies' authors and artists and between cultural institutions, as well as direct contacts between Polish and German authors and artists. An existing mixed commission was supposed to evaluate this cooperation at least once a year and make arrangements with respect to further enterprises.

Both States also pledged to implement and make full use of the arrangements referring to the establishment of cultural institutes. Furthermore, they confirmed their readiness to enable all citizens to have full access to the culture and language of the other State and to support the proper national and private initiatives and institutions.

One of the most important provisions referring to the question of culture was Article 28 concerning the European cultural heritage, in which both States were obliged to "take special care of the places and cultural assets in their respective territories that bear witness to historical events and cultural and scientific achievements of the other side, and shall provide free and unhindered access to them, or endeavour to see that such access is provided, where the state does not have authority to guarantee it. Such places and cultural assets shall be placed under the protection of the laws of the respective Contracting Parties. The Contracting Parties shall take joint initiatives in this area, in a spirit of understanding and reconciliation."<sup>31</sup> Furthermore, this article states that both States would, in "the same spirit", seek "to solve problems relating to cultural property and archives, beginning with individual cases." As noticed by Andrzej Jakubowski: "The last provision was particularly important for the pending controversies over the lists of

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<sup>31</sup> A. Jakubowski, *State Succession in Cultural Property*, Oxford University Press, Oxford 2015, p. 278.

cultural items requested by both sides. Since the solution of such disputes was greatly conditioned by the contradictory interpretations of the international effects of the 1945 Potsdam Agreement, Poland and Germany decided that their settlement would be negotiated on a case-by-case basis, in the spirit of reconciliation."<sup>32</sup> Thus the regulation required an individual approach to the question of restitutions and the employment of bilateral negotiations. It did not propose any concrete solutions referring to the restitution of Polish cultural objects looted by Nazis nor the return of German objects which remained in Poland after the shifting in borders resulting from the Potsdam and Yalta agreements.

For the first few years it seemed that such a solution would fulfil the expectations of both States, as in accordance with the Treaty a bilateral commission was established to enable bilateral negotiations. However, the ensuing years demonstrated that the idea of restitution based on case-by-case solutions – if treated as the primary way to fulfil the Treaty – would not succeed in fulfilling the expectations and would never replace a general and comprehensive solution. Instead it provided only an *ad hoc* and rather chaotic, or even woefully slow, approach toward settling the problem of the restitution of thousands of cultural objects.

One of the most challenging topics during the German-Polish negotiations concerning the Treaty on good neighbourly relations and friendly cooperation was the question of compensation for the Nazi crimes. In the end, both sides agreed on a payment of 500 million Marks to the Polish victims of the Nazi regime. However, the amount was paid as humanitarian, voluntary assistance and distributed by the Foundation for Polish-German Reconciliation. Thus the payments were not reparations in the formal legal sense; they were "humanitarian aid" or "voluntary financial payments" rather than reparations in the moral, symbolic, and/or legal dimension.

The Treaty was supplemented by another Treaty concluded in 1997 on cultural cooperation (in Polish: *Umowa między Rządem Rzeczypospolitej*

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<sup>32</sup> Ibidem.

*Polskiej a Rządem Republiki Federalnej Niemiec o współpracy kulturalnej*; in German: *Abkommen zwischen der Bundesrepublik Deutschland und der Republik Polen über kulturelle Zusammenarbeit vom 14 Juli 1997*, hereinafter "Treaty on cultural cooperation").<sup>33</sup> The Treaty on cultural cooperation aimed to develop the cooperation of both States in all cultural areas, while "being aware of the great impact of both states in the context of the common European cultural heritage and mutual permeation and enrichment of both cultures."<sup>34</sup> The question of lost/not returned cultural heritage was not included in the treaty, with Article 15 thereof stating only in a rudimentary fashion that problems of cultural heritage, including the problems connected with cultural property and archives, are regulated by Article 28 of the Treaty on good neighbourly relations and friendly cooperation. Nonetheless the Treaty on cultural cooperation was very important as a basis to commence cooperation in all areas, perceived for years as a "kind of phenomenon in Polish-German relations because of its richness, scope, variety and intensity".<sup>35</sup>

#### **4.3. The Treaty on good neighbourly relations and friendly cooperation in practice and other challenges concerning the restitution of cultural heritage and cultural initiatives**

The Treaty constituted the grounds for several implemented solutions and political gestures concerning the return of cultural objects. Among others, the following should be mentioned:

- The return of the numismatic collection and gold ornaments stolen from museums in Warsaw and Posen (1992);<sup>36</sup>

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<sup>33</sup> Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland Concerning Cultural Cooperation, 14 July 1997, 2060 UNTS 221.

<sup>34</sup> From the preamble of the Treaty on cultural cooperation.

<sup>35</sup> M. Wagińska-Marzec, *Cultural Cooperation in the Light of the Provisions of the Treaties and Agreements (1990-2010)*, "Przegląd Zachodni" 2011, Vol. 2, p. 173.

<sup>36</sup> A. Jakubowski, *Dziedzictwo kulturowe...*, p. 269.

- Exchange of archaeological objects by the National Museum in Stettin and the Pomeranian State Museum in Greiswald (2004);<sup>37</sup>
- Negotiations concerning the return of Berlinka to Germany, although these have been pending since 1990, with no solution so far because of the difference in the legal positions of both States (which is further developed below);<sup>38</sup>
- Submission of 114 restitution applications (claims) to Germany by Poland with full documentation together with the indication of the places of storage (1995).<sup>39</sup>

The initiatives taken were not always satisfactory for the States. Additionally, no international agreement concerning them was adopted nor have any arrangements been made with respect to either the return of Berlinka to Germany or its status, and as a result Germany stopped the negotiations. Talks undertaken in 1997 were again broken off for the same reason. A few gestures were made in subsequent years. For example, in 1999 Jerzy Buzek, the premier of the Polish government, donated to the German chancellor Gerhard Schroeder a set of documents from Polish archives concerning the territory of Germany, which led to resumption of the talks concerning "Berlinka". At the same time a few other symbolic gestures were offered, such as:

- donation to the German chancellor Gerhard Schroeder of Luther's Bible from 1522, taken from the resources of the Prussian library by the premier of the Polish government Jerzy Buzek (2000);
- restitution of an Etruscan mirror from Hamburg to the Palace in Gołuchów (2002).

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<sup>37</sup> W. Kowalski, *Restytucja dóbr kultury...*, p. 13.

<sup>38</sup> Broadly: B. Jurkowicz, *The Collection of the Prussian State Library. Polish, German, or European Cultural Heritage?*, in: K. Ziemer (ed.), *Memory and Politics of Cultural Heritage in Poland and Germany*, Uniwersytet Kardynała Stefana Wyszyńskiego, Warszawa 2015, p. 123-125.

<sup>39</sup> D. Matelski, *Zabiegi Trzeciej Rzeczypospolitej o restytucję z Niemiec dziedzictwa kultury polskiej utraconego do 1945 roku* [Efforts of the Third Polish Republic for the restitution of German heritage of Polish culture lost until 1945], "Rocznik Bibliologiczno-Prasoznawczy"

Overall however, the practice in this matter must be assessed as unsatisfactory and has encouraged States to undertake other efforts to achieve the restitution of cultural property looted during WWII under the discriminatory Nazi policies. In the intervening years, many States and cultural institutions have moved to settle these issues in another fashion. Besides the bilateral relations of Poland and Germany, the question of the restitution of cultural heritage looted and displaced between 1939-1945 has been raised in various international fora and led to the adoption and implementation of a set of different non-binding principles and declarations. In the Washington Principles, adopted during a conference in 1998,<sup>40</sup> States and different fora developed a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, i.e. cultural objects confiscated by the Nazis and not subsequently restituted. The principles formulated in the Washington Principles relate to alternative dispute resolution mechanisms for resolving ownership issues and achieving a just and fair solution if the owners of confiscated art or their heirs cannot be identified. According to the principles, cultural objects should be identified and such information should be publicized, with the aim of creating a central registry containing such information. The main problem is to check the provenance of objects exhibited in many collections in museums all around the world, as only some of them have agreed to do so, with the implied promise that suspect works would be returned to their rightful owners if the evidence so dictates. This process is however time-consuming and slow, although in accordance with the Washington Principles some museums have made lists of objects suspected as being victims of war thefts. The compilation of these data allows for the

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2012, Vol. 4/15(1), p. 121; Matelski points out that Polish representative Tadeusz Polak who presented restitutional claims left with no answer.

<sup>40</sup> The text of the declaration is accessible here: <https://www.state.gov/p/eur/rt/hlcst/270431.htm>. This was followed with many similar initiatives aiming at the restitution of cultural assets looted during the Holocaust era to the original owners or their heirs, as for example: the Resolution 1205 (1999) of Parliamentary Assembly of COE on Looted Jewish cultural property; Vilnius Forum Declaration 5 October 2000 (see the website: <http://www.lootedart.com/MFV7EE39608>), Terezin Declaration 30 June

verification of the origin of works and the restitution of war losses. On this basis several objects were returned from the Museum in Berlin to the National Museum in Gdańsk, including *inter alia* paintings of Anton Möller (*Alegoria pięciu zmysłów*), Daniel Schultz (*Lis i winogrona*), and the wooden figure of a standing boy by Ernesto de Fiori.<sup>41</sup>

In recent years some other objects were restituted from Germany, such as:

- the painting of Francesco Guardi *Palace stairs* to the National Museum in Warsaw (2014);<sup>42</sup>
- Parchments stolen from Plock (2015);
- The Plock pontifical (2015).

These examples of negotiations and successful restitutions are nevertheless only a small piece of a very broad problem, as there are thousands of lost objects which belong to the Polish cultural heritage abroad, and thousands of restitution applications have not yet been settled. The scale of this problem is captured in the words of the Deputy Minister of Culture and National Heritage, Jarosław Sellin, who noted that: "Poland is recovering a work of art lost during World War II every five days on average",<sup>43</sup> which in fact means that the restitution of missing objects one by one, on an individual basis,<sup>44</sup> will probably never be finally completed and it will require massive personal and financial resources to keep it continuing.

The discussions are still continuing, and from time to time they become quite intense due to some new discoveries, like for example that of the Gurlitt collection in 2010, an immense collection of art works gathered by Hildebrand

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2009 ([http://www.lostart.de/Content/02\\_Aktuelles/2009/09-07-01-Terezin-EN-DL.pdf?\\_\\_blob=publicationFile&v=6](http://www.lostart.de/Content/02_Aktuelles/2009/09-07-01-Terezin-EN-DL.pdf?__blob=publicationFile&v=6)).

<sup>41</sup> More broadly, see: H. Kowalska, L. Łopuski, M. Mielnik, *Z Berlina do Gdańska* [From Berlin to Gdańsk], "Cenne, Bezcenne, Utracone" 2013, Vol. 1(74)-4(77), p. 28.

<sup>42</sup> See, for example: *Guardi Painting Looted in Second World War Returns to Poland*, 28 February 2014, <http://dzielautracone.gov.pl/en/news/74-guardi-painting-looted-in-second-world-war-returns-to-poland> [accessed: 11.01.2018].

<sup>43</sup> *Poland Recovering Art Lost in WWII Every Five Days: Official*, 1 December 2017, <http://www.lootedart.com/news.php?r=SRT3TS401471> [accessed: 23.07.2018].

<sup>44</sup> This is broadly described in D. Matelski, op. cit., p. 137.

Gurlitt, a Nazi art dealer.<sup>45</sup> Such incidents place the topic of Nazi art plunder in view of international public opinion once again. It has allowed Polish historians to start the discussion anew on the restitution of Polish cultural heritage objects, because of the possibility that the Gurlitt collection includes looted Polish paintings, as it was already clear that not the entire collection was legally obtained, but proven to be partly looted.<sup>46</sup>

Although the Polish Foreign Ministry filed an application to the prosecutor's office in Augsburg for a complete list of the artworks discovered in the apartment of collector Cornelius Gurlitt (son of Hildebrandt) in Munich, and a team of experts from several countries, including Poland, was established, the work on identification of the objects from the collection is going very slow, as the provenance and the condition of many objects are questionable. It must, however, be noted that thanks to such an affair Polish claims have been met with a more positive response in Germany. So far only one painting definitively coming from Polish collections has been identified in Gurlitt's collection – Horace Vernet's painting titled *Mort du prince Józef Poniatowski à la bataille de Leipzig* (*The Death of Prince Józef Poniatowski in the Battle of Leipzig*).<sup>47</sup>

#### **4.4. The international perspective again – recent decades**

Today the situation is much different than it was 20 years ago. Both Poland and Germany are State Parties of the 1970 UNESCO Convention.<sup>48</sup> Both States are also members of the Council of Europe, and State Parties of its

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<sup>45</sup> J. Mansky, *Why It's So Hard to Find the Original Owners of Nazi-Looted Art*, 31 May 2017, <https://www.smithsonianmag.com/arts-culture/why-its-so-hard-find-real-owners-nazi-looted-art-180963513/> [accessed: 11.01.2018].

<sup>46</sup> See the press information: *Five of Gurlitt's Art Works Proved to be "Looted"*, "The Local", 14 January 2016, <https://www.thelocal.ch/20160114/only-five-of-gurlitts-art-works-proved-to-be-looted> [accessed: 23.07.2018].

<sup>47</sup> See here: <http://www.lostart.de/EN/Fund/478440> [accessed: 23.07.2018].

<sup>48</sup> The legal situation of both States in the context of ratified or accepted international agreements concerning questions of culture can be compared using the website of UNESCO. For Germany see: <https://en.unesco.org/countries/germany/conventions>; and for Poland: <https://en.unesco.org/countries/poland/conventions> [accessed: 23.07.2018].

conventions. Moreover, both States have their national committees in the International Council of Museums (ICOM), which is fighting against the illicit trafficking in cultural goods.<sup>49</sup>

In the meantime Poland also joined the European Union, which means that it is equally obliged to implement European Union law, including Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State (hereinafter the "Directive").<sup>50</sup> In transposing the Directive Germany implemented the Act on the Protection of Cultural Property<sup>51</sup> (*Gesetz zum Schutz von Kulturgut*<sup>52</sup>) and Poland passed the Law on the restitution of national cultural property.<sup>53</sup> Implementing the provisions of the Directive means in practice that both the international legal order concerning restitution and the national order of restitution could be replaced by the European law Directive(s). This makes the process of restitution less complicated, because EU States have to harmonize their legal provisions and fulfil certain obligations, like establishing a state organ which will have the requisite competences to deal with the issues surrounding the restitution of the cultural property, and moreover determine the relations of such organ with other organs. In Poland the Law on the restitution of national cultural goods established that the responsible organ will be the Minister of Culture and National Heritage, and in Germany the counterpart organ is the federal authority responsible for culture and the media. The novelty provided for in the Directive is placing the return of cultural heritage within the competence of

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<sup>49</sup> International Council of Museums, *Fighting Illicit Traffic*, <http://icom.museum/programmes/fighting-illicit-traffic/> [accessed: 23.07.2018].

<sup>50</sup> OJ L 159, 28.05.2014, p. 1.

<sup>51</sup> [https://www.gesetze-im-internet.de/englisch\\_kgsg/englisch\\_kgsg.html#p0073](https://www.gesetze-im-internet.de/englisch_kgsg/englisch_kgsg.html#p0073) [accessed: 23.07.2018].

<sup>52</sup> [https://www.gesetze-im-internet.de/englisch\\_kgsg/index.html](https://www.gesetze-im-internet.de/englisch_kgsg/index.html) [accessed: 23.07.2018]. For more on German law implementing the Directive, see: R. Peters, *The Protection of Cultural Property: Recent Developments in Germany in the Context of New EU Law*, "Santander Art and Culture Law Review" 2016, Vol. 2(2), pp. 85-102.

<sup>53</sup> *Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury* [Law on the restitution of national cultural goods], Dz.U. 2017, item 1086. For a critical view of this Polish project, see: P. Stec, *The Lady or the Tiger? Legal Pitfalls of Implementing the Return of Cultural Goods Directive*, "Santander Art and Culture Law Review" 2016, Vol. 2(2), pp. 135-148.

the Internal Market Information System (IMI). In order to cooperate and consult with each other, the central authorities of the Member States are obliged to use a module of the IMI.

The State authorities which are coordinators of this internet system are required to cooperate within the IMI system to seek the return of a specified cultural object unlawfully removed and the identity of its possessor, to post information about the discovery of a cultural object, and to act with respect to its return. This new tool is designed to foster the exchange of information, and at the same time it will create a record of this exchange. The registered data will make it easy to trace for the authorities involved.

The Directive also introduces a term of three years for return proceedings.<sup>54</sup> Member States shall provide in their legislation that return proceedings may not be brought more than three years after the competent central authority of the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder. The Directive also determines the question of compensation (Article 10) – in the context of the return of the object – “for the possessor according to the circumstances of the case, provided that the possessor demonstrates that he exercised due care and attention in acquiring the object.”

Although it is too soon to assess the practical effects of the implementation of the Directive with respect to the restitution of cultural objects, it must be noted that by introducing the IMI system restitution can be more effective, and that above all it forces the introduction of unified solutions at the level of the entire EU and obliges States to cooperate with each other.

According to its Article 14, the Directive shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993, but States are free to make other arrangements. It can be postulated that if the cooperation within the framework of this regulation turns out to be successful, Poland and Germany could think about extending its

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<sup>54</sup> But exceptions to this term limit are also included with respect to specific collections demanding special protection; see Article 8 of the Directive.

provisions to determine the question of objects removed from their territories prior to 1993.

## **5. Identified Problems: The Current Polish Legal Approach/German Legal Approach**

At the moment, the main controversies in Polish-German relations concerning cultural heritage which was looted, dispersed, and/or displaced during WWII refer to: 1) insufficiently effective restitution of Polish cultural objects from Germany; and 2) the problem of "Berlinka" and "Goering's aircraft". It seems that the restitution of looted art to Poland will be continued, as more and more initiatives are undertaken at both the governmental and non-governmental levels, including the preparation of universal international databases registering looted art, exchanges between museums, and gestures between States. It also must be noted that the question of restitution of stolen objects has periodically been made dependent on the effects of the negotiations concerning Berlinka, even though there is a clear difference between the legal status of Berlinka and art confiscated by Nazis.

The art stolen or confiscated from Poland during WWII shall be returned by means of its restitution. It was Germany which started the aggressive war, and Germany bears the responsibility for this fact, and thus it bears as well the responsibility for the restitution of stolen cultural property, or to pay compensation in the event requested objects were destroyed. This is regulated by provisions of international law which, as mentioned above, are binding on both States. Restitution was already recognized as part of customary law before the war, and the written principle was confirmed by the 1954 Protocol accepted by States after the war.

The Prussian State Library, i.e. the so-called 'Berlinka' – which constitutes a symbol of German culture – was evacuated during the bombardment of Berlin to the Eastern part of what was then the Third Reich, which after the end of war and upon conclusion of the Potsdam agreement

turned out to be Polish territory. Poland never looted the Prussian library nor took it from anywhere – it was simply found on its territory after the war ended. From that moment on it has been treated as abandoned property and Poland is deemed to be the owner of the collection. Thus returning the library will eventually be connected with its repatriation or return<sup>55</sup> (if the States succeed in their negotiations), as it cannot be subjected to restitution.

German arguments concerning the place of storage or legal status of the Prussian library are not uniform. On the one hand, some German lawyers tend to place the Prussian library within the categories of either “looted art” or the “last prisoner of war”, underlying that its elements are legally and morally part of its national patrimony and should be returned. Tono Eitel, who was the chief German negotiator for the return of cultural objects, recalled The Hague Convention IV of 1907 and Articles 27 and 56 of its regulations to argue that the convention “forbids confiscating art works.”<sup>56</sup> In his opinion, the provisions of this convention require that the library collection be returned to Germany. However, he did not exclude the possibility that the collection might be governed by Polish-German institutions, like a foundation which would take care of the deposited collection. On the other hand certain German voices have appeared proposing a more conciliatory approach as to the place of storage of the Prussian library,<sup>57</sup> emphasising the fact that although it was created in Germany and is mostly connected with the German territory, it also contains a number of objects which can be considered as part of the European cultural heritage and could be exhibited elsewhere.<sup>58</sup>

Poland does not accept the German position referring to the library as looted art. Poland’s main arguments are based on the facts that Poland did not

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<sup>55</sup> W. Kowalski, *Rodzaje roszczeń o odzyskanie utraconych dóbr kultury* [Types of claims for the recovery of lost cultural goods], in: G. Czubek, P. Kosiewski (eds.), *Przemieszczone dobra kultury. Przypadek Europy Zachodniej i problemy państw Europy Środkowej i Wschodniej w XX wieku* [Displaced cultural goods. The case of Western Europe and the problems of the countries of Central and Eastern Europe in the 20th century], Fundacja im. Stefana Batorego, Warszawa 2004, p. 42.

<sup>56</sup> See the interview: <https://polishpress.wordpress.com/2007/08/06/poland-will-not-return-priceless-art-works-to-germany/> [accessed: 23.07.2018].

<sup>57</sup> See D. Matelski, op. cit., p. 134.

commence the aggressive war, it was not an occupying power, and did not steal/loot/confiscate the Prussian library. The regulations of the Hague Convention IV do not refer to it either, as it was not an occupying power. Poland has argued that it legally acquired title to the collection as a result of the Potsdam agreement, and that the collection might be treated as restitution-in-kind to compensate for the policies of the Nazis, who destroyed such a great amount of Polish cultural heritage as to give it grounds for such compensation.<sup>59</sup>

Not surprisingly, this position has been criticized by the German doctrine,<sup>60</sup> which argues that such claims are unjustified as Poland could not obtain the ownership of the collection, and additionally that the doctrine of restitution-in-kind was not accepted by States with respect to cultural heritage after the war. It could be added that the decision on the form of reparation cannot be a unilateral decision of the State seeking compensation.<sup>61</sup>

The situation with respect to the Prussian library must be considered as complicated and complex. In the first place the positions of both States are at the moment non-negotiable, Secondly, the positions are based on different legal grounds and assumptions. Thirdly, the majority of regulations implementing fundamental international principles governing the standard procedures concerning cultural heritage during an armed conflict, which could be useful to resolve the issue, were accepted after the war and cannot be applied to the facts that took place prior to their adoption. At the same time, the international regulations ratified by States before the war (particularly the Hague Convention IV) are rather rudimentary and do not allow for formulating any general statements as to the legal status and the place of storage of the Prussian library. In addition there is no international custom that could be taken into account. It seems that Berlinka is thus held hostage to the Polish

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<sup>58</sup> B. Jurkowicz, *The Collection of the Prussian State Library...*, p. 124.

<sup>59</sup> A. Jakubowski, *State Succession...*, p. 278.

<sup>60</sup> S. Turner, *Das internationale Kulturgüterrecht und die Zerstreung des deutschen Kulturbesitzes nach dem Zweiten Weltkrieg*, in: W. Fiedler (ed.), *Internationaler Kulturgüterschutz und deutsche Frage*, Gebr. Mann Verlag, Berlin 1991, p. 180.

<sup>61</sup> A. Jakubowski, *State Succession...*, p. 279.

expectations of obtaining restitution/compensation from Germany, and Germany does not want to discuss the question of restitution until the Berlinka is returned. Further negotiations are needed to cut through this "Catch 22" dilemma, and they do not necessarily have to be conducted by engaging the governmental institutions involved. It is also possible that by recalling the issue of Berlinka Germany is trying to avoid the question of restitution and relying on the lack of any systemic solution between states to address and/or resolve the claims for restitution. For both States it is a comfortable solution which does not demand any legal effort, especially in that individual restitutions are still pending on a case-by-case basis, so neither party can be accused of inaction or inactivity.

### **5.1. The charm of alternatives**

Alternative suggestions referring to a possible solution to the Berlinka question have been formulated by, *inter alia*, the Copernicus Group, a forum of independent experts representing both Polish and German scholars (lawyers, historians) in their second report.<sup>62</sup> They proposed for example that the Prussian Cultural Heritage Foundation should take Poland as a partner (which requires a change in the statute of the Foundation) and then the collection would be deposited in the new department of the Foundation – the Library of Jagiellonian University. Such a solution does not require a change of place of storage of the collection. But the Copernicus Group also proposed an alternative solution, for example the creation of a European Cultural Heritage Foundation or a Central-European Cultural Heritage Foundation. The Prussian Cultural Heritage Foundation would represent Germany in the newly established institution. Poland could be invited to provide the Foundation with its cultural assets of European significance. Consequently, the countries which conduct bilateral negotiations over the return of cultural property (like Poland

and Germany) would be able to make decisions regarding the preservation of European cultural heritage as equal partners of the Foundation authorities.

Additionally, the report of the Copernicus Group also referred to the cultural goods looted from Poland. According to the experts, Germany should submit a list of the works of art that were illegally confiscated and transported from Poland during WWII. The cultural objects which, according to Poland, do not appear on the list will be investigated by an independent institution and the results of the research will be published. The objects mentioned on the list shall be restituted immediately.

These suggestions have remained only suggestions, and 17 years after their first publication the situation of the Prussian library is almost the same, and its legal status and place of permanent storage has yet to be settled (this refers also to Goering's aircraft).

Apart from this basic dispute over solution the question of Berlinka, several initiatives have taken place concerning the preservation and digitization of the collection and scientific research into it. Among others it must be mentioned that thanks to a grant allocated by the Commissary for Culture and Media (BKM) of the German Federal Government, and cooperation with the Library of Jagiellonian University, the Staatsbibliothek zu Berlin (under the auspices of the Prussian Cultural Heritage Foundation) was able to take first steps towards a virtual reconstruction of the old East Asia Collection of the Prussian Library. In addition Deutschen Forschungsgemeinschaft is supporting the preparation of a collection of French manuscripts from 2006,<sup>63</sup> and one of the most valuable collections of the former Prussian State Library, the "Autographa Collection", has been developed after several years of intensive work and is now included in a comprehensive two-part catalogue (in both book

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<sup>62</sup> Working papers and reports of the Copernicus Group can be obtained here: <http://www.deutsches-polen-institut.de/politik/kopernikus-gruppe/#arbeitspapiere>, both in German and Polish.

<sup>63</sup> Staatsbibliothek zu Berlin, *Katalog der in Krakau verwahrten Autographen-Sammlung der ehemaligen Preußischen Staatsbibliothek erschienen: Ergebnis einer deutsch-polnischen Zusammenarbeit*, 12 November 2007, <http://staatsbibliothek-berlin.de/en/aktuelles/presse-news/detail/article/2007-12-11-22/> [accessed: 23.07.2018].

and CD-ROM versions). The new catalogue replaces an incomplete and difficult-to-read manuscript list from the first half of the 20th century. It describes for the first time the currently largely unknown, historically significant autographs from the former Prussian State Library, which combine letters and other handwritten writings of important personalities from five centuries under the name "Autographa Collection". It contains other most valuable testimonies such as, *inter alia*, 443 music autographs by Bach, Mozart, and Beethoven.<sup>64</sup> As can be seen the foundation maintains professional contacts with Polish cultural institutions that hold the 'displaced' cultural assets.

The collection is also researched by specialists, such as the research team of Piotr Tylus called Fibula, which decided to start a research project on romance manuscripts in the Prussian collection. The actions of the Fibula group include identification of manuscripts, their origins, original ownership, and also their partial digitization.<sup>65</sup> In this way the Berlinka collection is, despite the governmental disputes, living its own life and must be perceived as a truly European cultural heritage.

## **6. Cultural Cooperation in Other Areas**

In other sectors of cultural cooperation the unresolved problems from the past are not obstructing the Polish-German relations concerning the promotion and protection of cultural heritage. Both States, at different levels of cooperation, perceive culture as an instrument serving international dialogue and contributing to soothing political and social tensions. Moreover, the applied solutions between Poland and Germany seem very effective and comprehensive in developing and enhancing their mutual relations. Both

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<sup>64</sup> Ibidem.

<sup>65</sup> The website of the Group is at: <http://www.rekopisy-romanskie.filg.uj.edu.pl/fibula/en>, more about the group in the newsletters published online presenting the results of the research: <http://www.rekopisy-romanskie.filg.uj.edu.pl/fibula/pl/newsletter> [accessed: 23.07.2018].

States have launched a number of joint cultural projects or cultural initiatives, some through a special bilateral commission established on the basis of the 1997 Treaty on cultural cooperation. Many cultural initiatives are also undertaken by both sides not only on the inter-state level, but as initiatives of non-governmental organizations and foundations or artists. Whereas the issues surrounding "Berlinka" and art looted during WWII are problems with a tendency to be raised anew and are dependent on political narratives, the cultural cooperation in other areas is almost free from prejudice and political influences.<sup>66</sup>

The beginning of the cooperation between States is connected with the question of reconciliation and the creation of the Foundation for Polish-German Reconciliation (Stiftung Polnisch-Deutsche Aussöhnung),<sup>67</sup> a non-profit organization founded in 1991 based on a treaty between the governments of the Republic of Poland and the Federal Republic of Germany. The main goals of this institution were/are the protection of victims of the Third Reich and of the Nazi repression and German-Polish reconciliation and the development of dialogue between the societies and generations. The Foundation distributed 500 million DM in Poland, which however was not compensation but a symbolic humanitarian help for the victims of the Nazi repression, specifically with respect to slave and forced labour. Besides these payments, the Foundation was also dealing with cultural cooperation, mainly in the area of education, by developing a European Voluntary Service, recording statements and memories of the Nazi victims in their houses, and taking care of places of remembrance. The Foundation's activity has influenced the popularization of cooperation between cultural institutions and shaped a standard for cultural

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<sup>66</sup> Annual statistics underline the fact that Polish-German relations are estimated by 2/3 of respondents as very good and good, see: A. Łada, *Barometr Polska – Niemcy 2017: Polskie społeczeństwo o niemieckiej polityce i wzajemnych relacjach* [Barometer Poland – Germany 2017: Polish society on German policy and mutual relations], Instytut Spraw Publicznych, Warszawa 2017, p. 14, [http://www.kas.de/wf/doc/kas\\_48898-1522-8-30.pdf?170516224041](http://www.kas.de/wf/doc/kas_48898-1522-8-30.pdf?170516224041) [accessed: 23.07.2018].

<sup>67</sup> Website of the Foundation for Polish-German Reconciliation at: [http://www.fnpn.pl/index\\_en.php](http://www.fnpn.pl/index_en.php) [accessed: 23.07.2018].

cooperation between Poland and Germany. It has been engaged in reconciliation, and through its actions has also facilitated official efforts.

### **6.1. Diplomatic posts**

In referring to cultural cooperation one must definitely note the activities of diplomatic posts, which are the centres developing culture on the national level and carrying out activities connected with promoting Polish culture in Germany and German culture in Poland. These include, *inter alia*, Polish national diplomatic institutions such as the Embassies (Embassy of the Republic of Poland in Berlin) and the Consulates General and Consulates (in Bremen, Cologne, Erfurt, Frankfurt am Main, Hamburg, Leipzig, Lubeck, Munich, and Schwerin), and the German Embassy and consulates in Poland (the Embassy of the Federal Republic of Germany in Warsaw, and consulates in Bydgoszcz, Gdańsk, Gliwice, Kielce, Kraków, Łódź, Olsztyn, Opole, Poznań, Rzeszów, Szczecin, and Wrocław).

### **6.2. Polish culture and German culture – an institutional perspective<sup>68</sup>**

The Polish Institute in Berlin (with its branch in Leipzig) and the Polish Institute in Dusseldorf are institutes acting under the auspices of the Polish Ministry of Foreign Affairs and promote Polish culture, as broadly perceived, in Germany (music, literature, film, and theatre). These institutions must also be perceived as tools of the Polish policy on foreign affairs. The institutes organize exhibitions, discussions, concerts, and other cultural events focused on presenting the current trends and achievements of Polish culture.

The Institutes not only actively support the presentation of Polish culture abroad, but also cooperate with other institutions of Polish culture

which promote Polish culture beyond its borders, such as the Instytut Adama Mickiewicza, Polski Instytut Sztuki Filmowej, Instytut Książki, Instytut Teatralny, or Narodowy Instytut Fryderyka Chopina. In particular, all of these mentioned institutions also cooperate with German foundations and organizations, strengthening and developing Polish-German relations and cooperation. For example, the Instytut Adama Mickiewicza, aimed at promoting Polish culture abroad, cooperates with the Stiftung Genshagen, whose main goal is to strengthen European dialogue and realize concrete cultural and artistic projects.<sup>69</sup> The Genshagen Foundation is supported by, *inter alia*, the Polish Ministry of Foreign Affairs and Deutsch-Polnische Wissenschaftsstiftung (a foundation supporting research projects of German and Polish scholars cooperating in different cultural areas),<sup>70</sup> as well as the Foundation for Polish-German Cooperation (Die Stiftung für deutsch-polnische Zusammenarbeit,<sup>71</sup> which carries out projects in the fields of education, social and political sciences, common national heritage, media, and institutional cooperation).<sup>72</sup>

It must also be noted that thanks to the activities of Karl Dedecius, a Polish-born expert and German translator of Polish and Russian literature, the German Institute of Polish Culture in Darmstadt (Deutsches Polen-Institut)<sup>73</sup> was created in 1979. This Institute is mostly financed by funds from the federal government and constituent entities, including the city of Darmstadt.

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<sup>68</sup> This study lists only examples of initiatives, it is impossible to exhaust the subject in this respect, as noted by M. Wagińska-Marzec, *op. cit.*, p. 182 there are several dozens of Polish-German associations promoting Polish and German culture registered in Germany.

<sup>69</sup> Website of the Genshagen Foundation: <http://www.stiftung-genshagen.de> [accessed: 23.07.2018].

<sup>70</sup> Website of the Deutsch-Polnische Wissenschaftsstiftung: <http://www.dpws.de/index.php> [accessed: 23.07.2018].

<sup>71</sup> Website of the Foundation for Polish-German Cooperation: <https://www.dpg-bundesverband.de> [accessed: 23.07.2018].

<sup>72</sup> See Fundacja Współpracy Polsko-Niemieckiej, *Foundation*, <http://fwpn.org.pl/en/foundation> [accessed: 23.07.2018], citing Wagińska-Marzec: "in 2009 the financial support [of the Foundation] remained high (273 projects for the total amount of 7,730,000 PLN) and in 2008 (271 projects for the amount of over 5,020,000 PLN)", see M. Wagińska-Marzec, *op. cit.*, p. 186.

Its several projects like the Karl Dedecius-Preis for translators, and the activities of the Copernicus Group obtained support from the Robert Bosch Foundation,

In addition, Polish culture is also promoted by Deutsch-Polnische Gesellschaften,<sup>74</sup> which, *inter alia*, publishes a magazine titled "Dialog" aimed at the development of mutual relations and combatting stereotypes; and the Die Deutsch-Polnische Stiftung Kulturpflege und Denkmalschutz (DPS),<sup>75</sup> which engages in cooperation in the area of the conservation of monuments and the renovation of historical objects in Poland (the latest initiatives included the renovation of the Palace in Steinort, renovation of the Mikwe der Synagoge zum Weißen Storch in Breslau, and restoration and renovation of the baroque altar of Cistercian Monastery Church in Paradies (Paradyż)).

As regards the promotion of German culture in Poland, among the many initiatives two are worthy of specific mention: the initiatives of Goethe-Institut,<sup>76</sup> which is called the institute of German culture; and the German Head-Office for Academic Exchange (Deutscher Akademischer Austausch Dienst, DAAD)<sup>77</sup>, which mostly develops educational projects between Poland and Germany.

Additionally the actions of two German foundations must be mentioned: Robert Bosch Stiftung and Konrad Adenauer Stiftung.<sup>78</sup> The first, described above, in addition to its immense contribution in the context of Karl Dedecius-Preis and the Copernicus Group also develops other projects. For example between 1991-2001 it helped to digitize and register in catalogues 40,000 publications recognized as Polish and German cultural heritage, as well as over

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<sup>73</sup> Deutsches Polen Institut, *Karl-Dedecius-Preis*, <http://www.deutsches-polen-institut.de/kultur/karl-dedecius-preis/> [accessed: 23.07.2018].

<sup>74</sup> Website of the Deutsch-Polnische Gesellschaft: <https://www.dpg-bundesverband.de/start.html> [accessed: 23.07.2018].

<sup>75</sup> Website of the Die Deutsch-Polnische Stiftung Kulturpflege und Denkmalschutz: <http://deutsch-polnische-stiftung.de> [accessed: 23.07.2018].

<sup>76</sup> Website of the Goethe-Institut: <https://www.goethe.de/ins/pl/pl/index.html> [accessed: 23.07.2018].

<sup>77</sup> Website of the German Head-Office for Academic Exchange: <https://www.daad.pl/en/> [accessed: 23.07.2018].

five million old prints from the 16th-18th centuries and periodicals from the 19th century, and moreover it has supported partnership programmes between towns.<sup>79</sup>

Konrad Adenauer Stiftung supports political cooperation, and its civic education programmes are aimed at promoting freedom and liberty, peace, and justice. The focus is on consolidating democracy, the unification of Europe, and the strengthening of transatlantic relations, as well as on developmental cooperation.

### **6.3. Examples of concrete cultural initiatives**

It is impossible to list all of the cultural events and educational cultural programmes of common projects which have taken place in Germany and in Poland within the cooperation between the two countries between 1990 and today. They have engaged States, organizations, foundations, and private persons, and take place not only at the inter-state and inter-regional levels, but also in towns, schools, and concert halls.<sup>80</sup>

By the way of example one may mention the Year of Chopin, "Chopin 2010" in Germany; the 20th anniversary of signing the Treaty on good neighbourly relations and friendly cooperation (and later the 25th anniversary of signing the Treaty), celebrated pompously with numerous events and publications.<sup>81</sup>

Along with the anniversary in 2011 an exhibition of art took place in Berlin titled "Side by Side. Poland – Germany. 1000 years of Art and History."<sup>82</sup> Curated by Anda Rottenberg, the binational exhibition concerned ten centuries

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<sup>78</sup> Website of the Konrad Adenauer Stiftung: <http://www.kas.de/wf/en/71.3628/> [accessed: 23.07.2018].

<sup>79</sup> Website of the Robert Bosch Stiftung: <http://www.bosch-stiftung.de/content/language1/html/53764.asp?lang=pl> [accessed: 23.07.2018].

<sup>80</sup> For more, see: M. Wagińska-Marzec, op. cit., p. 193.

<sup>81</sup> The website of the anniversary is at: <http://25pl-de.eu/jubilee-year.html> [accessed: 23.07.2018].

<sup>82</sup> Website of the event: <http://culture.pl/en/event/side-by-side-poland-germany-1000-years-of-art-and-history> [accessed: 23.07.2018].

of cultural exchanges between neighbouring Poland and Germany. The exhibition presented 250 paintings, 30 sculptures, 60 historical volumes, 80 manuscripts, 60 etchings, 70 documents, 100 craft items, and 150 photographs, as well as film, music, and prints. It was the first time that such rich cultural objects had been presented. It included not only old historical pieces, but also presented works by major contemporary artists such as Mirosław Bałka, Artur Żmijewski, Krzysztof Bednarski, Bogna Burska, Edward Dwurnik, Jochen Gerz, Anselm Kiefer, Gerhard Richter, Wilhelm Sasnal, Gregor Schneider, Luc Tuymans, Günther Uecker, Piotr Uklanski, and Krzysztof Wodiczko. This initiative was developed on the basis of an agreement between the Ministry of Culture and National Heritage in Poland and a representative of the Federal Republic of Germany for Culture and Media.

As a result of the ongoing inter-state and inter-regional collaboration, certain initiatives were undertaken to preserve and protect objects of cultural heritage. Among others the inscription on the World Heritage List (WHL) must be mentioned, as in 2005 a jointly administered cultural site was inscribed on the list: Muskauer Park/Park Mużakowski, a park situated on the border between Poland and Germany. In 2006 Germany supported the inscription on the WHL of another site: the Centennial Hall in Wrocław. This clearly demonstrates that certain objects of culture are perceived as the common cultural heritage of both States and that both States wish to preserve and protect it as a heritage for future generations.

Within another project – “Zapomniane dziedzictwo” (Vergessenes Erbe)<sup>83</sup> – under the auspices of the House for Polish-German Co-operation (HPGC),<sup>84</sup> the German consulate in Opole, and public authorities from the region an internet website was created to present those objects which are considered as the heritage of Silesia. The site contains archival and current photographs of places that were once the showcase of the region, and today

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<sup>83</sup> The website of the project “Zapomniane dziedzictwo” is at: <http://zapomnianedziedzictwo.pl/de/> [accessed: 23.07.2018].

<sup>84</sup> House for Polish-German Co-operation, „*Vergessenes Erbe – deutsch-polnische Internetseite*”, <http://www.haus.pl/de/news-1316.html> [accessed: 23.07.2018].

for various reasons have been abandoned, destroyed, not renovated, or somehow forgotten.

The current year (2018) has been proclaimed the European Year of Cultural Heritage, and along with this unique event another project has been undertaken in the context of collaboration between the Czech Republic, Poland, and Germany. The common goal of this German-Polish-Czech cooperation is to make a contribution to the visual history of the transcultural industrial and cultural landscape of Upper Silesia.<sup>85</sup> The project is based, on one hand, on the inventory of historical oblique and vertical aerial photographs created in the Scientific Collections of the Herder Institute in the period 1920-1945, and on the other on current oblique aerial images created by Berlin photographer Thomas Voßbeck, a renowned specialist in industrial photography. This project is a kind of a continuance of previous initiatives, as the idea arose from book and exhibition projects that have already been completed at the Herder Institute. These projects were focused on historical aerial photographs of the cities of Wrocław/Breslau and Gdańsk/Danzig. Both cities share a Polish and German history and constitute a natural heritage of a common past, i.e. while today they are located on the territory of Poland, they were also once part of Germany.

#### **6.4. Research projects**

Lastly, attention must be given to certain scientific projects that can be carried out in the Polish-German scientific space, specifically those funded by the National Science Centre and Deutsche Forschungsgemeinschaft research projects and called Beethoven projects.<sup>86</sup> These research projects refer to the humanities, social, and art sciences, as well as selected disciplines of exact and technical sciences, and are implemented by Polish-German teams. So far a

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<sup>85</sup> Herder-Institute, *Oberschlesien aus der Luft*, <https://www.herder-institut.de/forschung-projekte/laufende-projekte/oberschlesien-aus-der-luft.html> [accessed: 23.07.2018].

<sup>86</sup> See: <https://ncn.gov.pl/ogloszenia/konkursy/beethoven2> [accessed: 23.07.2018].

few editions of Beethoven have been organized and several dozens of teams representing both States have participated in carrying out mutual projects.

## **7. Conclusions**

The key focus of this paper has been on the issues surrounding Polish-German relations in the area of cultural heritage between 1990-2017. As was pointed out, the main dividing lines in mutual relations refer to the unsolved problems from the period of WWII. The main controversy in cultural cooperation between Poland and Germany relates to the issues surrounding war losses and the collections of the Prussian State Library ('Berlinka) evacuated at the end of the WWII by the German administration to the territories which passed under Polish rule in 1945.

The documentation of works of art and culture destroyed and looted from Poland between 1939-1945, and the activities undertaken by state authorities on both sides concerning the search for these works abroad and the restitution of recovered objects have so far been key priorities of the Polish Ministry of Culture and National Heritage since the early 1990s. However, the process of restitution has not been very effective, and this problem still awaits a settlement which specifically implements a comprehensive and effective general measure. This must be connected with a solution to the problems concerning the ownership and place of storage of Berlinka. This is a treasure of German culture, and this should be taken into account as a fundamental assumption and main point of reference in reaching a solution.

In consequence it may be said that Polish-German relations have always been complicated and complex, but recent decades have demonstrated a visible tendency toward reconciliation between the nations and an appropriate policy of remembrance. As noted by L. Gardner Feldman, old

enemies have started to become friends – nations transformed from a community of disputes into a community of partners.<sup>87</sup>

It seems that cultural cooperation in different areas of art, education, and the preservation of cultural heritage must be positively assessed, both at the level of the State (i.e. between the Polish and German governments) and at the ministerial level (between the Polish Ministry of Culture and National Heritage and the relevant German authorities). As Maria Wagińska-Marzec has noted: "The Federal Republic of Germany is one of the largest partners of Poland in the area of culture and it decisively dominates over other countries with respect to the intensity and the quality of cultural contacts."<sup>88</sup> It should be noted that this cooperation creates the right moment to also face the problem of returning former Jewish properties to their rightful owners. In this context Nawojka Cieślińska-Lobkowicz asks: "How much time will it take for Polish authorities and Polish museums to stop perceiving themselves solely as the greatest victims of Nazi cultural destruction and plunder? And how long will it take them to act in accordance with the obligations agreed in Washington (1998) and in Prague (2009)? The works of Polish Jewish artists in national collections and on the art market demand it."<sup>89</sup>

Thus in conclusion it may be said that in many respects full post-war reconciliation still lies ahead of us.

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<sup>87</sup> L. Gardner Feldman, *Germany's Foreign Policy of Reconciliation. From Enmity to Amity*, Rowman and Littlefield Publishers, Lanham, MD 2014, p. 201.

<sup>88</sup> M. Wagińska-Marzec, op. cit., p. 193.

<sup>89</sup> N. Cieślińska-Lobkowicz, *Who Owns Bruno Schulz? The Changing Postwar Fortunes of Works of Art by Jewish Artists Murdered in Nazi-Occupied Poland*, [http://www.lootedart.com/web\\_images/pdf2016/Cieslinska-Lobkowicz-Who-owns-Bruno-Schulz-21-March-2016.pdf](http://www.lootedart.com/web_images/pdf2016/Cieslinska-Lobkowicz-Who-owns-Bruno-Schulz-21-March-2016.pdf) [accessed: 23.07.2018].

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