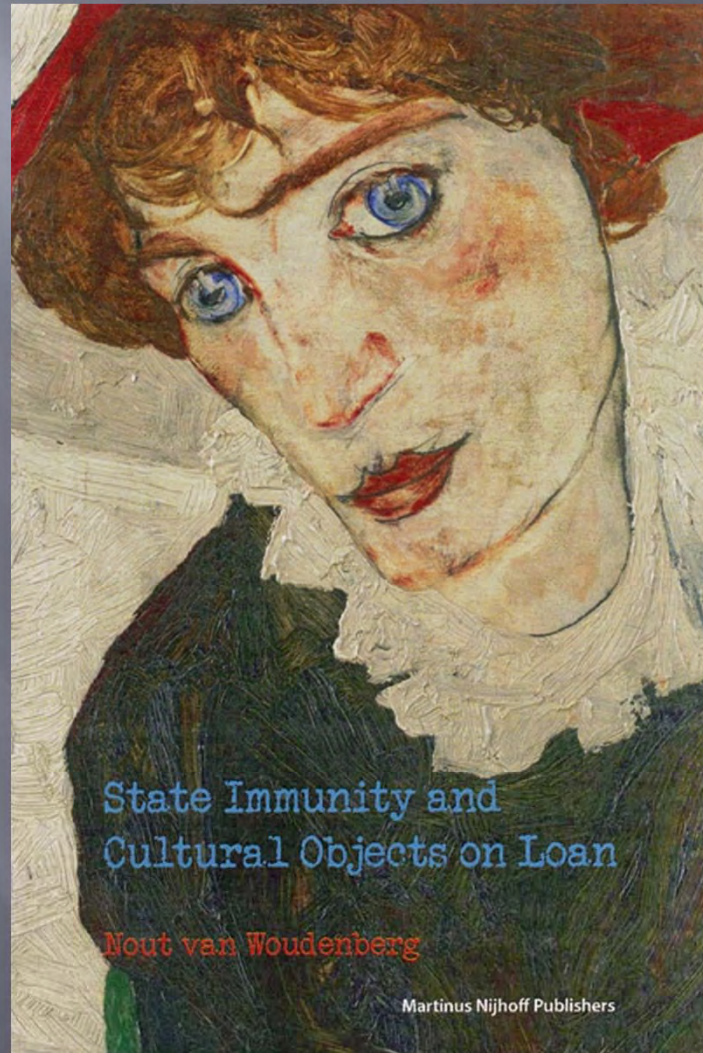


State Practice



State Immunity and
Cultural Objects on Loan

Nout van Woudenberg

Martinus Nijhoff Publishers

“Does your country, on the basis of (customary) international law, treat cultural property belonging to foreign States as goods intended for public use, and as meaning that those goods are considered to be non-commercial?”

Belgium, Cyprus, Denmark, Estonia,
Finland, Malta, the Netherlands,
Poland, Portugal, Romania, Slovenia,
Spain, the United Kingdom

Two elements:

=> the States consider cultural property belonging to foreign States as goods intended for public, non commercial use;

=> the States do so on the basis of the belief that an underlying rule of customary international law exists.

Austria
Czech Republic
Germany
Switzerland
Russian Federation
United States of America

Immunity from Seizure legislation

- ▣ United States of America (1965)
- ▣ France (1994)
- ▣ Germany (1999)
- ▣ Austria (2003)
- ▣ Belgium (2002/2004)
- ▣ Switzerland (2005)
- ▣ Liechtenstein, United Kingdom (2007)
- ▣ Netherlands
- ▣ Finland, Czech Republic (2011)
- ▣ Hungary (2012)
- ▣ Poland / Italy (ongoing discussions)

Israel

Canada

Japan

Australia

(Territory of) Taiwan

Reasons for legislation:

=> to protect more than cultural State property

=> to implement international law in domestic legal system

=> to guide the judiciary in its assessments

=> because of wishes of other States

Czech Republic:

Act on State Monument Care

Section 20: 'Cultural heritage in relation to foreign States'

New paragraph 3, with the aim of preventing court injunctions from being applied to loaned cultural objects during the loan

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Cyprus, Estonia, Finland, Greece,
Hungary, Italy, Lithuania,
Netherlands, Poland, Portugal,
Romania, Slovenia, Spain,
United Kingdom

Russian Federation, Japan

Declaration on Jurisdictional Immunities of State Owned Cultural Property

“In accordance with customary international law as codified in the Convention

- property of a State forming part of its cultural heritage or its archives or forming part of an exhibition of objects of scientific, cultural or historical interest, and not placed or intended to be placed on sale cannot be subject to any measure of constraint, such as attachment, arrest or execution, in another State; and
- therefore, such measures of constraint can only be taken if immunity is expressly waived for a clearly specified property by the competent national authorities of the State owning the property or if the property has been allocated or earmarked by that State for the satisfaction of the claim which is the object of the proceeding concerned.”

Austria
Czech Republic
Netherlands
Latvia
Slovakia
Georgia
Romania
Estonia
Albania
France
Armenia
Belgium
Belarus
Luxembourg
Ireland
Russian Federation

THANK YOU! (END OF PART 2)

