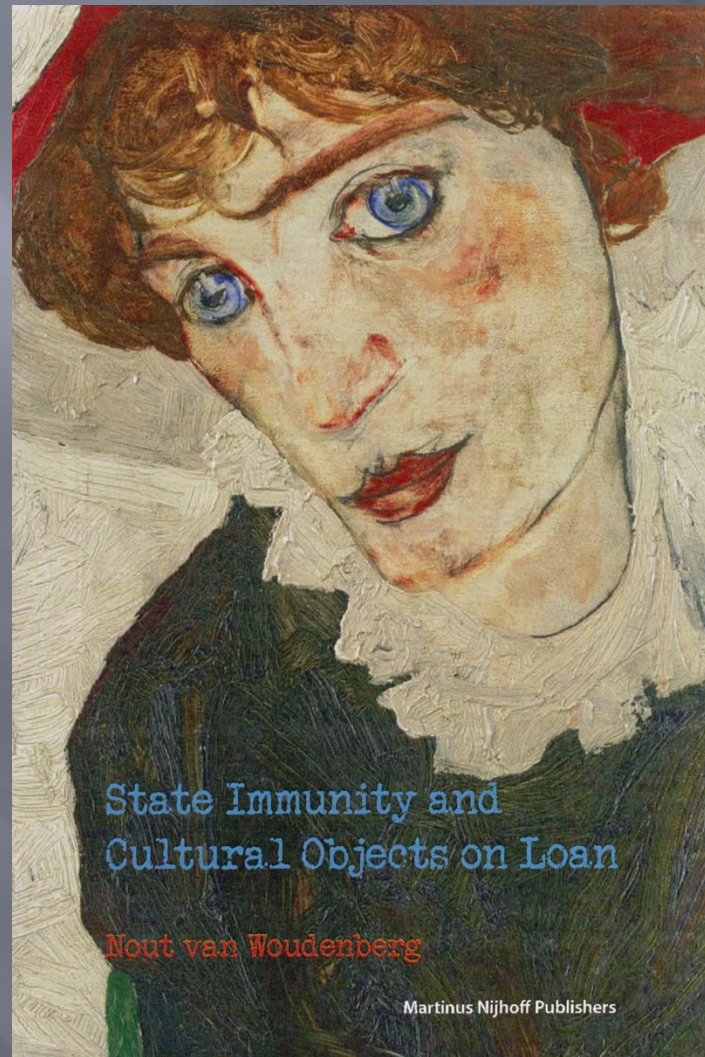
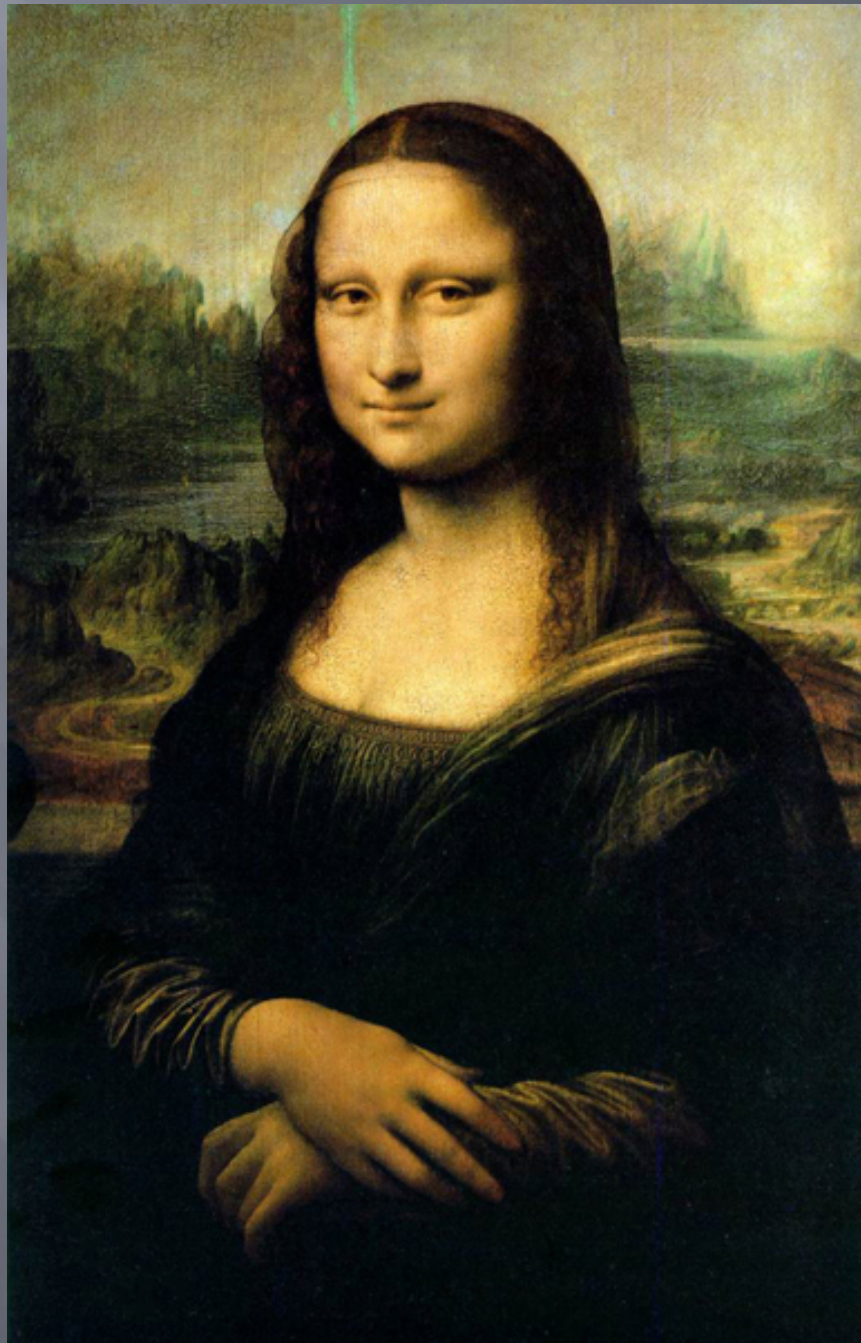


STATE IMMUNITY AND CULTURAL OBJECTS ON LOAN



Dr. Nout van Woudenberg – Prague, 23 September 2016



Does a rule of customary international law exist, to the effect that cultural objects belonging to foreign States are immune from seizure while on loan to another State for a temporary exhibition?

Immunity => *immunitas* =>
freedom from taxes or services

Seizure includes: attachment,
execution, sequestration,
forfeiture, requisition,
foreclosure, replevin, detinue
(*etc.*)

Immunity from Seizure

“The legal guarantee that cultural objects on temporary loan from another State will be protected against any form of seizure during the loan period.”

(2006 Action Plan for the EU Promotion of Museum Collection Mobility and Loan Standards)

Why to seize a cultural
object?

Two main situations:

- ▣ If there is an ownership dispute over the cultural object on loan.
- ▣ If an individual/company is of the opinion that the owner of the cultural object on loan owes a debt to the claimant.
- ▣ In the context of a criminal investigation.
- ▣ Carrier could have a lien on the object.





PEK





Why to provide immunity from seizure

- Chicago Tribune

BRUCE WILLIS
HOSTAGE

‘Good Will Ambassadors’

CUSTOMARY INTERNATIONAL LAW

CUSTOMARY INTERNATIONAL LAW:

=> widespread / representative /
virtually uniform practice of States

=> conviction that this practice is
accepted as law (*opinio juris*)

“States whose interests are specially affected”

- judgments;
- diplomatic correspondence;
- policy statements;
- legal advice by governmental legal counsels;
- rules and regulations;
- reservations and declarations when signing or ratifying treaties or memoranda of understanding;
- [...]

States should act out of a
certain legal belief /
conviction

not merely a political or
moral gesture

2004 United Nations
Convention on Jurisdictional
Immunities of States and
Their Property

Article 21(1)(d):

“property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.”

What is a State?

What is State property?

State property:

=> owned by a State

=> in possession of a State

=> under control of a State
(custodian / right of disposal)

CONCLUSIONS

In recent years, there is a growing State practice pointing towards protection against the seizure of cultural objects on loan belonging to foreign States.

Many States count:

- ▣ on the general rule of customary international law in regard to immunity of State property
- ▣ on the existence of a specific rule of international law immunising cultural State property on loan

A relatively young rule of customary international law exists, although not yet firmly established or well defined in all its aspects, stating that cultural objects belonging to foreign States and on temporary loan for an exhibition are immune from seizure.

The rule only applies to cultural objects in use or intended for use by the State for government non-commercial purposes.

The rule applies not only to State-owned property, but also to property in possession or control of a State.

What kind of cultural State property is excluded?

(reminder:)

A rule of customary international law needs to be based on a widespread, representative and virtually uniform State practice.

(+ *opinio juris*)

The practice should reflect wide acceptance among the States particularly involved in the relevant activity.

**cultural objects plundered
during armed conflict**

1998 Washington Principles
on Holocaust Era Assets

2000 Vilnius Declaration
on Holocaust Era Looted Cultural Assets

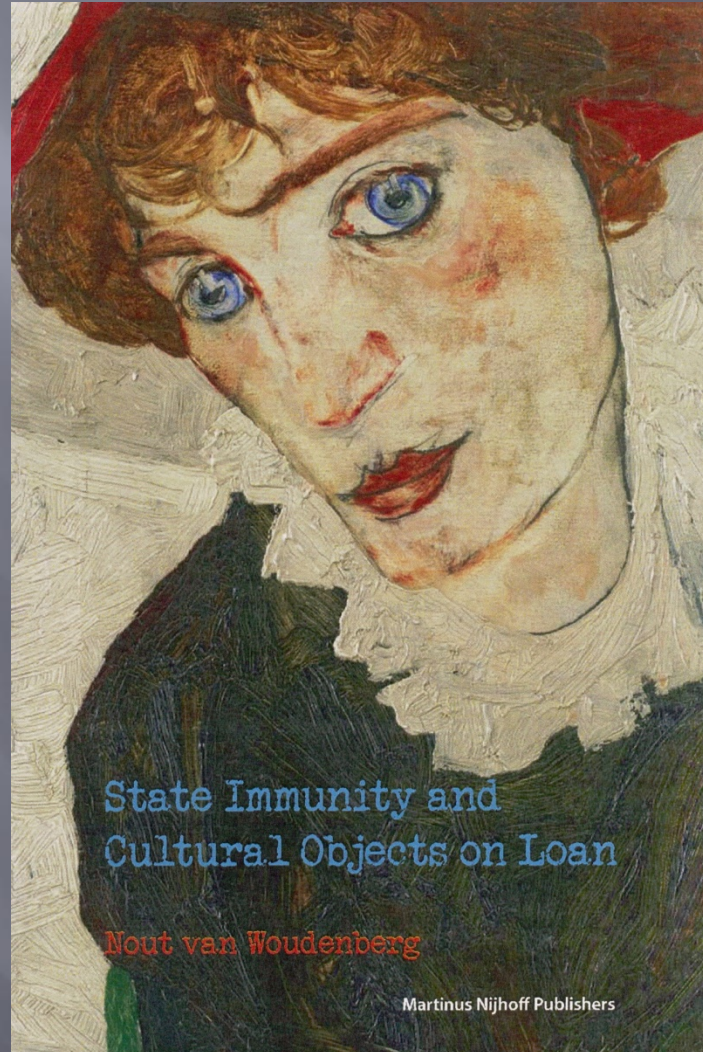
2009 Terezin Declaration
on Holocaust Era Assets and Related Issues

1970 UNESCO Convention
on the Means of Prohibiting and Preventing the
Illicit Import, Export and Transfer of Ownership
of Cultural Property

1995 UNIDROIT Convention
on Stolen or Illegally Exported Cultural Objects

1993 European Union Directive
on the Return of Cultural Objects Illegally
Removed from the Territory of a Member State

THANK YOU! (END OF PART 1)



State Immunity and
Cultural Objects on Loan

Nout van Woudenberg

Martinus Nijhoff Publishers