State immunity and cultural objects on loan
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Foreword

“Museums and their collections are part of our common memory. They select, preserve and conserve our past and also our present. But more than that, they tell us stories and they are places to enjoy our heritage and to learn from art, culture and history. They bring the past alive, to interact with the present world and also help us understand the future.”¹

Since long, cultural objects and collections are on the move. Questions ensuing from art loans concern packing, securing, shipping, insuring, handing, etc. But apart from these questions, another question has come up: are these travelling cultural objects immune from seizure? Or should those objects be immune from seizure?

Before I started with this study, it occurred to me that it was not clear whether States actually knew what the current state of affairs was with regard to immunity from seizure of cultural objects belonging to foreign States while on loan abroad. A convention on jurisdictional immunities of States and their property had been established, addressing, among other things, immunity for cultural State property on loan. That convention, however, has not yet entered into force. I thus decided to investigate whether another rule of international law was already applicable: a rule of customary international law. After all, that rule would be binding upon States, without necessarily becoming a party to a convention.

This study therefore investigates whether a rule of customary international law exists, to the effect that cultural objects belonging to foreign States are immune from seizure while on loan to another State for a temporary exhibition. Or if not, whether such a rule is emerging. In the present study, information until the date of 1 July 2011 has been taken on board.

Although immunity from seizure is something else than immunity from jurisdiction, these two aspects of State immunity are without doubt interlinked. That is the reason why this study, besides immunity from seizure, also pays some attention to the question of immunity from jurisdiction where State-owned cultural objects are involved. Several States and State institutions have been (or are being) confronted with this issue and in several cases their cultural objects are the involuntary subject matter of legal disputes before foreign (generally

US) courts. I thus thought that it would be appropriate to pay some attention to these related cases as well, without necessary expanding my central research question.

Many people assisted me in making this study as complete as possible, either by giving me information, by referring me to the appropriate experts or sources, or by receiving me for interviews and patiently answering my questions. Those persons are listed at the end of this study and I am very grateful for their assistance.

Finally, it is the intent that this study will provide more clarity and legal certainty in the field of lending and borrowing cultural State property and that it will be of assistance to States and cultural institutions.

Nout van Woudenberg
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