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# **COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**

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**Questionnaire on “Immunity of State owned cultural property on  
loan”**

**47<sup>th</sup> meeting**  
Strasbourg, 20-21 March 2014

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## QUESTIONNAIRE ON “IMMUNITY OF STATE OWNED CULTURAL PROPERTY ON LOAN”

### FOREWORD

At the 45<sup>th</sup> meeting of the CAHDI (Strasbourg, 25-26 March 2013), the delegation of the Czech Republic, supported by the delegations of Austria and of the Netherlands, presented an initiative aimed at elaborating a draft declaration in support of the recognition of the customary nature of the pertinent provisions of the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004) regarding the issue of the immunity of State owned cultural property on loan.

This draft declaration was presented at the 46<sup>th</sup> meeting of the CAHDI (Strasbourg, 16-17 September 2013). On this occasion, the members of the CAHDI held an exchange of views on this issue and instructed the Secretariat and the Chair to draw up a draft questionnaire aimed at providing an overview of specific national legislations in this field.

On 18 November 2013, the Minister of Foreign Affairs of the Czech Republic and the Federal Minister for European and International Affairs of Austria signed the declaration.

### ACTION REQUIRED

The delegations are invited to examine the questionnaire below and to submit their replies, which will be included in the new database of the CAHDI on « Immunities of States and international organisations ».

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## QUESTIONNAIRE

### Legal basis

1. Is your State a party to international legal instruments guaranteeing the immunity of State owned cultural property on loan (including bilateral agreements) such as the *United Nations Convention on Jurisdictional Immunity of States and Their Property* (2004)?
2. Does your State recognise the customary international law nature of Part IV of the *United Nations Convention on Jurisdictional Immunity of States and Their Property* (2004)? More specifically, does your State consider that, pursuant to a rule of customary international law, cultural property owned by a foreign State while on temporary loan is not considered as property specifically in use or intended for use by the State for other than government non-commercial purposes?
3. Has your State adopted a national legislation on immunity concerning:
  - a. Specifically cultural objects of foreign States; or
  - b. more generally, property of foreign States intended for official/public use; or
  - c. more generally, cultural objects either owned by foreign States or by private individuals?

If so, please provide information concerning national legislations (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).

4. Does your State consider that there are limitations to the rule of immunity of State owned cultural property on loan, in particular in the event of an armed conflict or when there are return obligations deriving from international or European law?
5. Does your State consider that the rule of immunity of cultural property extends to other categories of property other than those owned by a State, i.e. property in possession or control of a State (such as property belonging to a State museum)?

### National practice and procedure

6. Is there national case-law in the field of immunity of State owned cultural property on loan? If so, please provide information on these decisions (date of the judgment, authority that issued the judgment, name of the parties, main points of law, French or English translation of the judgment or summary of the judgment in English or in French).
7. Does your State resort to “letters of comfort” or other practice guaranteeing the recognition of the immunity from seizure of State owned cultural property on loan?
8. Is the immunity granted automatically to State owned cultural property on loan or is it subject to approval by a State authority?