

## MEXICO

### 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)?**

Mexico signed the United Nations Convention on Jurisdictional Immunity of States and Their Property on September 25, 2006 and the Senate approved it on April 29, 2014.

- 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?**

Regarding the customary character of Part IV of the UN Convention, it must be borne in mind that (i) it was a quite controversial part to be adopted whilst at the drafting of the Convention and (ii) the Convention has not yet entered into force, and out of its 33 signatory State parties, only 15 have ratified it.

However, some provisions of this Part can be regarded as codifying customary international law. For instance, in its *Jurisdictional Immunities of the State* (Germany v Italy) decision of 2012, the International Court of Justice, though acknowledging the circumstances on the adoption of the UN Convention's Part IV, recognized that its article 19 codified customary international law and that for a State property to be lawfully seized by a foreign authority (i) a waiver of such immunity or (ii) nongovernmental commercial purposes of such property must convey. The ICJ established that a foreign State cultural property abroad was intended to be deemed for governmental non-commercial purposes and thus remains immune from execution.

Pertaining to the second question, in light of the above mentioned, the State practice and the current *opinio juris*, it is difficult to question the current emergence of a general customary understanding that cultural property on loan serves only governmental non-commercial purposes.

Nonetheless, by signing the Convention, Mexico has expressed its commitment to conclude the domestic procedure in order to become a State party to such Convention.

- 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).**

No.

**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?**

In general, as recognized by the ICJ, State owned property, regardless of its nature, is not immune from enforcement whenever (i) the owner State has explicitly waived such immunity or (ii) that property is intended to be used for solely nongovernmental commercial purposes, which in the context of cultural property is presumed to the contrary.

Pertaining to the second part of the question, it is important to highlight the fact that for Mexico, a State that in accordance with international law and its constitutional provisions has renounced the use of force as an instrument of foreign policy, the question's hypothesis falls outside the context of its legal system. Nonetheless, Mexico does consider that even in the context of armed conflicts the immunity of State owned cultural property on loan, in light of its unique and irreplaceable nature, should be upheld and respected.

As to the second particular and final exception, Mexico would not go as far as to stress that there is a current uniform State practice nor *opinio juris* that in the event of existence of an obligation to return certain cultural property, whether by virtue of international or European law, such property would not be entitled to protection or immunity.

**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)?**

In light of what it is established in the UN Convention, as long as the referred property is intended to be used exclusively for governmental non-commercial purposes, it must be deemed as immune from enforcement.

## **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).**

No.

**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?**

Yes. For instance, in 2007, as a conclusive step of the negotiations between Mexico and Egypt for the loan to the former of 144 State owned Egyptian cultural objects, Mexico extended a letter guarantying Egypt the safety and protection of the items from administrative confiscation or seizure, while in Mexico.

**8. Is the immunity granted automatically to State owned cultural property on loan or is it subject to approval by a State authority?**

No, the immunity is granted automatically.