

NETHERLANDS

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)?**

No, not yet, but ratification is foreseen.

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?**

Yes, cultural property owned by a foreign State that is not offered on sale is considered non-commercial property

3. **Has your State adopted a national legislation on immunity concerning:**

- a. **Specifically cultural objects of foreign States; or**

No

- b. **more generally, property of foreign States intended for official/public use; or**

No

- c. **more generally, cultural objects either owned by foreign States or by private individuals?**

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?**

Yes. The Netherlands considers that the prohibition of looting and plundering of cultural objects during armed conflict constitutes an obligation of general international law. The obligation of non-recognition in international law applicable to situations created by a breach of an obligation obliges the Netherlands not to attach any legal recognition to acts contrary to this norm and from assisting in the continuation of a situation contrary to this norm. Thus, the Netherlands does not provide immunity from seizure to State owned cultural property (including Judaica) that has been acquired contrary to this prohibition.

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)?**

No, the immunity is only provided when the state is the legal owner of the cultural object.

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, there have been no attempts at seizure of State owned cultural property on loan leading to judicial procedures.

- 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.

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

Pursuant to the rule of international law recognizing the immunity of state owned cultural property on loan, which also applies in the Dutch legal order, State owned cultural property on loan enjoys immunity under Dutch law. The Ministry of Foreign Affairs may, after having approved a request to that extent, issue a letter of comfort describing the legal basis for the immunity of State owned cultural property on loan. It is not possible to prevent anyone from instigating a judicial procedure with a view to the seizure of certain property, and whether immunity will in fact be upheld in court depends on whether there is sufficient evidence that the object in question is indeed state owned and with a non-commercial destination.