# UNITED STATES OF AMERICA

## 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)?**

The United States is not party to the 2004 *Convention on Jurisdictional Immunity of States and Their Property*. While we endorse many of the principles stated in the Convention, the United States has no present intention to accede to it.

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?**

With respect to the immunity of state-owned cultural property on loan, the United States relies upon the provisions of a statute, 22 U.S.C. § 2459, described more fully below, rather than sources of international law.

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

**Specifically cultural objects of foreign States; or**
**more generally, property of foreign States intended for official/public use; or**
**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).**

In 1965, the United States enacted a statute (22 U.S.C. § 2459) to protect from seizure or other judicial process certain objects of cultural significance – whether owned by foreign States or private institutions or individuals – imported into the United States for temporary display or exhibition. Under this statute, cultural objects on loan from abroad for temporary exhibition in the United States are immune from judicial seizure while in the United States if: (1) such objects are determined to be culturally significant and their temporary display in the United States is determined to be in the national interest; and (2) notice of such determinations is published prior to importation. The authority to make these determinations rests with the U.S. Department of State. In order for such determinations to be made, certain threshold statutory prerequisites must be met: (1) there must be an agreement between the foreign owner/custodian of the objects and the United States or one or more exhibiting or displaying cultural or educational institutions, and (2) such exhibition or display must be at a cultural exhibition, assembly, activity, or festival administered, operated or sponsored, without profit, by any such U.S. cultural or educational institution. Once the U.S. Department of State has made the requisite cultural significance and national interest determinations, and such determinations have been timely published, no further action is needed for the immunity protection to adhere. Nor would any court action for the purpose or having the effect of depriving the exhibiting institution, or any carrier engaged in transporting the objects within the U.S., of the objects’ custody or control, be permitted.

If an object is not entitled to protection under 22 U.S.C. 2459, it is possible that it could be immune from attachment, arrest, or execution under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1602 et seq. The FSIA sets forth the comprehensive legal standards governing claims of immunity in civil actions against a foreign state or its political subdivisions, agencies or instrumentalities in courts of the United States. In particular, the FSIA establishes that foreign-state property in the United States is generally immune from attachment, arrest, or execution, unless the property is "used for a commercial activity in the United States" and the property falls within a statutory exception to immunity. 28 U.S.C. §§ 1609-1611.

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?**

We are not aware of any cases in the United States addressing this question. The governing statute in the United States, 22 U.S.C. § 2459, does not include limitations in the event of an armed conflict or where a return obligation might be implicated.

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)?**

As discussed in response to question 3 above, the protection afforded cultural objects under 22 U.S.C. § 2459 is not limited to State-owned cultural property.

**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).**

Since 22 U.S.C. § 2459 was enacted in 1965, the statute has rarely been tested in court, nor have many cases brought under the FSIA involved State owned cultural property on loan. We are not aware of any cases that have resulted in the seizure of State owned cultural property on loan. Below is a description of several cases:

In ***Magness v. Russian Federation*** (84 F. Supp. 2d 1357 (S.D. Ala. 2000)), plaintiffs sought to attach crown jewels owned by the Russian Federation, which were in the United States on temporary exhibition and under Section 2459 protection. Plaintiffs claimed that the objects were not immune notwithstanding the Section 2459 determinations, arguing that the determinations were unfounded at the time they were issued. The United States intervened and moved to dismiss. The Court dismissed the case on Section 2459 grounds and refused to second-guess the cultural significance and national interest determinations made by the Department of State.

In ***Delocque-Fourcaud v. Los Angeles County Museum of Art*** (LACMA) (No. 2:03-cv-05027-R-CT (C.D. Cal. 2003)), plaintiff sought to enjoin the opening of the exhibition of objects on loan from Russia's State Pushkin Museum, and sought compensation for the value of the objects and the exhibition proceeds. Plaintiffs argued that the Section 2459 determinations were void because: (1) LACMA was exhibiting the objects in a "for profit venture", and (2) the Department of State would not have made a favorable national interest determination if it had been aware of plaintiff's competing claims to ownership. The United States intervened,

arguing that institutions such as LACMA and the Pushkin rely on the Section 2459 determinations in arranging for exhibition of cultural objects in the United States, and that such reliance would be impossible if those determinations could be retroactively overturned by the courts. The filing also asserted that the Department's Section 2459 determinations were unsuitable for judicial review. Plaintiffs then voluntarily withdrew their suit and the case was dismissed.

***Malewicz v. City of Amsterdam*** (517 F. Supp. 2d 322 (D.D.C. 2007) was brought against the City of Amsterdam for the alleged taking of 14 works of art by the artist Kazimir Malewicz in the 1950s. The plaintiffs filed their complaint while the works were in the United States as part of a temporary exhibition and under Section 2459 protection. The plaintiffs sought to establish jurisdiction over the City of Amsterdam under the FSIA's "expropriation exception," 22 U.S.C. § 1605(a)(3). The City of Amsterdam moved to dismiss for lack of jurisdiction, and the United States filed statements of interest arguing that permitting jurisdiction over a foreign state based solely on a § 2459-protected exhibition was inappropriate. Despite the United States' arguments, the court concluded that the presence of a § 2459-protected art exhibit could serve as the basis for jurisdiction over a foreign state under § 1605(a)(3), although the decision makes clear that § 2459 prevents the actual seizure of such properties The City of Amsterdam appealed, and the United States submitted an amicus brief to the D.C. Circuit arguing that "[w]hen artwork has been immunized – placed out of bounds for jurisdictional purposes – under § 2459, a court should not conclude that the requirements of the FSIA have been met." The parties ultimately settled before the D.C. Circuit had an opportunity to review the district court's decisions, and *Malewicz* remains the only case to address this issue.

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?**

As discussed in response to Question 3 above, the United States relies on 22 U.S.C. § 2459, a U.S. law enacted to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition.

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

As stated in response to Question 3 above, the protection afforded under 22 U.S.C. § 2459 to certain cultural objects imported into the United States for temporary display or exhibition depends in part on determinations to be made by the U.S. Department of State.