



## State Immunity, Anti-Seizure and Customary International Law

### Transparency, Integrity, Mobility and Security

*under*

### Cross-Border Loans and other Sharing Transactions

**withers** LLP

*affecting*

**Cultural Objects**



**Blackwall Green**

(A MEMBER OF HEATH LAMBERT GROUP)

**A two-day conference convened by the Institute of Art and Law in association with the Foundation for International Cultural Diplomacy, Blackwall Green and Withers LLP  
London 17<sup>th</sup>-18<sup>th</sup> July 2008**

Great pressure exists on museums to maximise public access to their collections, rationalise collecting policies, fashion new ways of sharing their resources and explore international commercial opportunities. Art collections have become diplomatic and economic assets as well as scholarly resources. They are expected to fulfil an ambassadorial role in an international setting where competition for exhibitions is mounting and “loan fees” offer seductive inducements.

These developments are reflected in the rise of anti-seizure or immunity statutes that seek to protect cultural objects from entanglement in legal proceedings while on exhibition in foreign states. Part 6 of the Tribunals Courts and Enforcement Act 2007, enacted by the UK Parliament, is an inventive but controversial contribution to this trend.

But concurrently with its response to an increased demand for circulation, the museum world is developing a heightened appreciation of the perils of illicit material and of the need to avoid the taint of profiting from dubious transactions. Museums that value their reputation need to devise ways of isolating such material from the ethical sphere of art lending and exchange and of securing the return of unlawfully removed objects to their dispossessed owners. Does legal immunity support or subvert that need?

Regrettably not every object in a museum collection, or accepted on loan by a museum from a private collector, will have an impeccable lineage. Some museums are for historical reasons reluctant even to exhibit material on their own premises, let alone to expose it to international scrutiny. Sometimes it may be obvious that an object has been illegally removed from a country of origin but impossible to determine that country.

The main object of the conference is to explore the balance between two paramount modern imperatives in the field of art and antiquities:

the unhindered cross-border movement of cultural material by way of loan, exchange, joint ownership schemes and other means, and

the vindication of legal and other interests in cultural objects so that legitimate principles supporting legal title and national heritage are honoured.

In pursuit of this objective, the conference will look in detail at the policies demanding cross-border mobility, the legal vehicles for achieving such mobility, the risks that threaten the itinerant work of art and the devices that exist to afford legal immunity or other protection. On the latter point particular focus will be placed on the practical application and value of modern anti-seizure statutes, looking critically at their pragmatic workability and functional differences, as well as the searching questions of principle that they provoke.

## Programme

### Day One: INTERNATIONAL LAW AND CROSS-BORDER CLAIMS TO CULTURAL OBJECTS

#### *Morning*

The Principle of Immunity: Promoting Public Access, Honouring Private Rights

Professor David Lowenthal

10.30 – 10.40

Art Claims and Public International Law

Kevin Chamberlain CMG

10.40 – 11.25

Commercial Transactions and State Immunity under Private International Law

Professor Kurt Siehr

11.45 – 12.05

#### *Break*

12.05 – 12.25

Legal Archaeology and the Mobility of Title: Vindicating Title within Cross-Border Cultural Property Claims

Professor Norman Palmer

12.25 – 12.45

Regulating the Export of Cultural Goods: the Justiciability of National Export Laws

Jeremy Scott, Withers LLP

12.45 – 13.05

#### *Afternoon*

War Reparations, Restitution in Kind and Customary International Law

Charles Goldstein, Herrick Feinstein

14.00 – 14.20

Museums and Human Rights: the Natural History Museum episode and its Lessons for International Museums

Geoffrey Robertson QC

14.20 – 14.40

Anti-seizure laws and the European Convention on Human Rights

Gilead Cooper QC

14.40 – 15.00

Break

[The Legal Implications of Iraq for the Mobility of Archaeological Objects]

Discussion

*Close; Reception for speakers and delegates*

## Day Two: ANTI-SEIZURE STATUTES AND SAFE CONDUCT FOR ITINERANT ART

### *Morning*

Immunity of International Artwork Loans From Seizure versus Claims to Recover Wrongfully Expropriated Artwork: A United States Court's Recent Resolution of the Competing Interests -- Malewicz v. City of Amsterdam  
Howard Spiegler, Herrick Feinstein, New York  
10.15 – 10.45

The Nuts and Bolts of Museum Immunity: Devising a Balanced Regime of Safe Conduct for Itinerant Art  
Freda Matassa, Museums Consultant, former Registrar, Tate  
10.45 – 11.05

Operating a Due Diligence Regime under National Anti-Seizure Laws  
Anna O'Connell, solicitor, Klein & Co  
11.05 – 11.25

### *Break*

11.25 – 11.45

Finally from Russia: The Royal Academy Bailments  
Cayetana Castillo, Head of Exhibitions, Royal Academy, London  
11.45 – 12.05

Drafting an International Anti-Seizure Convention: is Cross-Border Agreement Attainable?  
Kevin Chamberlain CMG  
12.05 – 12.25

### *Lunch*

12.25 – 13.25

### *Afternoon*

National Systems of Immunity from Suit and their Comparative Interrelation:  
A panel question-and-answer session involving participants from several national jurisdictions, including Israel, Austria, England and Wales, Italy, Australia, Spain, USA, France, Greece, Germany, Switzerland, the Netherlands.

### *First session*

13.25 – 15.00

Judge Shoshana Berman, Professor Manlio Frigo, Josh Knerly

### *Break*

15.00 – 15.15

### *Second session*

15.15 – 16.50

Laura Pastor, Professor Matthias Weller, Dr Benno Widmer, Nout van Woudenberg, Anthony Baumgartner

16.50 Discussion and Closing Addresses

