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# Bruges Bridge between Civilizations



**Peter Barenboim, Naeem Siddiqi**

“Bruges, the Bridge between Civilizations. To the 75th Anniversary of the Roerich Pact”, Letny Sad, Grid Belgium, 2010. — 158 p.

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The year 2010 marks the 75th anniversary of the Roerich Pact, and this new book of the Society of Friends of the City of Bruges is being made available to the international public. The first International Conference dedicated to the promulgation of the Roerich Pact established “Union International pour le pact Roerich” (Bruges, Belgium) on September 13-15, 1931. The Second International Conference of the Roerich Pact (Bruges) established “Foundation Roerich pro Pace, Arte, Scientiae et Labore” in August 1932. Bruges played an important role in the history of the Roerich Pact.

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*Dear Cordell. As you know I am very keen about the Roerich Peace Pact and I hope we can get it going via "the Americas" — Will you and Henry Wallace talk this over and have something for me when I get back? FDR.*

From a handwritten note  
by Franklin Delano Roosevelt  
addressed to Cordell Hull, the US Secretary of State

*The Committee appointed by the Governing Board to report on the steps that might be taken by the Pan-American Union to contribute to the realization of the idea originally expressed by Professor Nicholas Roerich and incorporated in the Pact for the Protection of Artistic and Scientific Institutions and Historic Monuments, the adoption of which was recommended to the nations of America by the Seventh International Conference of American States, has the honor to report as follows:*

*The Committee has taken the fundamental principles of the instrument originally proposed by Professor Roerich as a universal pact and given them the form of an inter-American draft treaty, which is herewith submitted to the consideration of the Board.*

REPORT OF THE SPECIAL COMMITTEE  
OF THE GOVERNING BOARD OF THE PAN AMERICAN UNION  
ON THE ROERICH PACT, APPROVED BY THE GOVERNING  
BOARD ON APRIL 4, 1934.

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## The Roerich Pact Chronology

**1904:** Nicholas Roerich conceived the idea of the protection of artistic and scientific achievements of humanity, which he proposed to the Society of Architects in Russia.

**1914:** N. Roerich proposed his idea to the then Russian Imperial Government during World War I.

**1929:** N. Roerich proposed to the nations to establish a pact for the preservation of the artistic and scientific world treasures.

**1930:** Pact was submitted to and approved by the Museums Committee of the League of Nations. Founded: “Committee of the Roerich Banner of Peace” (New York) and “Comité pour le Pact Roerich” (Paris).

**1931:** Founded: “Union International pour le pact Roerich” (Bruges, Belgium). September 13—15, 1931-First International Conference dedicated to the promulgation of the Roerich Pact (Bruges).

**1932:** August 8-9, 1932 — Second International Conference of the Roerich Pact (at Bruges). Founded: “Foundation Roerich pro Pace, Arte, Scientiae et Labore” (Bruges).

**1933:** November 17-18, 1933 — Third International Convention of the Roerich Pact and Banner of Peace (Washington, USA).

**1935:** April 15, 1935-the Treaty of the Roerich Pact signed at the White House, Washington, USA, by 21 countries of the Pan American Union.

The UN “Convention for the Protection of Cultural Property in the event of armed conflict” was adopted in The Hague on May 14, 1954. The Roerich Pact was used as a foundation for this Convention. The Hague Convention became effective on August 7, 1956.

# TREATY ON THE PROTECTION OF ARTISTIC AND SCIENTIFIC INSTITUTIONS AND HISTORIC MONUMENTS

M E S S A G E

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITING

A TREATY ON THE PROTECTION OF ARTISTIC  
AND SCIENTIFIC INSTITUTIONS AND HISTORIC  
MONUMENTS WHICH WAS SIGNED

AT WASHINGTON ON APRIL 15, 1935, BY THE RESPECTIVE  
PLENIPOTENTIARIES OF THE 21 AMERICAN REPUBLICS

*May 20, 1935. — Agreement read the first time and referred to the Committee on Foreign Relations, and, together with message, ordered to be printed in confidence for the use of the Senate*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a treaty on the protection of artistic and scientific institutions and historic monuments which was signed in my presence at the White House on April 15, 1935, by the respective plenipotentiaries of the 21 American republics. It was signed for the United States by the Secretary of Agriculture by virtue of a full power issued to him by me. As is stated in the accompanying report of the Secretary of State, the treaty, embodying the «Roerich Pact» which was initiated by the Roerich Museum in the United States, was prepared in its present purpose of carrying out a recommendation made to the governments in a resolution approved on December 16, 1933, by the Seventh International Conference of American States at Montevideo.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *May 20, 1935.*

THE PRESIDENT:

The undersigned, the Secretary of State, has the honor to lay before the President, with a view to its transmission to the Senate to receive the advice and consent of that body to ratification, should his judgment approve thereof, a treaty on the protection of artistic and scientific institutions and historic monuments. This treaty, embodying the «Roerich Pact» which was initiated by the Roerich Museum in the United States, was prepared in its present form by the governing board of the Pan American Union in pursuance of a resolution approved on December 16, 1933, by the Seventh International Conference of American States at Montevideo, and was signed at Washington on April 15, 1935, by the respective plenipotentiaries of the 21 American Republics.

The treaty has for its object the protection of historic monuments, museums, scientific, artistic, educational, and cultural institutions both in time of peace and in time of war, and provides for the use of a distinctive flag to identify the monuments and institutions coming within the protection of the treaty.

Respectfully submitted.

CORDELL HULL.  
DEPARTMENT OF STATE,  
*Washington, May 20, 1935.*

**TREATY FOR THE PROTECTION OF ARTISTIC AND  
SCIENTIFIC INSTITUTIONS AND HISTORIC MONUMENTS  
(ROERICH PACT) SIGNED AT THE WHITE HOUSE BY  
REPRESENTATIVES OF THE TWENTY-ONE AMERICAN  
REPUBLICS, APRIL 15, 1935, AT 12:00 O'CLOCK**

*Resolution of the Seventh International Conference of American  
States on the Roerich Pact*

The Seventh International Conference of American States,  
RESOLVES:

To recommend to the Governments of America which have not yet done so that they sign the "Roerich Pact," initiated by the Roerich Museum in the United States, and which has as its object the universal adoption of a flag, already designed and generally known, in order thereby to preserve in any time of danger all nationally and privately owned immovable monuments which form the cultural treasure of peoples.



**REPORT OF THE SPECIAL COMMITTEE OF THE  
GOVERNING BOARD OF THE PAN AMERICAN UNION  
ON THE ROERICH PACT, APPROVED BY THE GOVERNING  
BOARD ON APRIL 4th, 1934.**

The Committee appointed by the Governing Board to report on the steps that might be taken by the Pan-American Union to contribute to the realization of the idea originally expressed by Professor Nicholas Roerich and incorporated in the Pact for the Protection of Artistic and Scientific Institutions and Historic Monuments, the adoption of which was recommended to the nations of America by the Seventh International Conference of American States, has the honor to report as follows:

The Committee has taken the fundamental principles of the instrument originally proposed by Professor Roerich as a universal pact and given them the form of an inter-American draft treaty, which is herewith submitted to the consideration of the Board.

The Committee recommends that the Governments, members of the Union, be asked to grant their Representatives on the Board plenary powers to subscribe to the pact, which is to be signed on April 14th, 1935, or at an earlier date to be determined by the Board if all its members have received plenary powers before April 14th, 1935. After April 14th, 1935, the pact will be open to the accession by non-signatory States.

## TREATY

The High Contracting Parties, animated by the purpose of giving conventional form to the postulates of the Resolution approved on December 16, 1933, by all the States represented at the Seventh International Conference of American States, held at Montevideo, which recommended to “the Governments of America which have not yet done so that they sign the ‘Roerich Pact’, initiated by the Roerich Museum in the United States, and which has as its object, the universal adoption of a flag, already designed and generally known, in order thereby to preserve in any time of danger all nationally and privately owned immovable monuments, which form the cultural treasure of peoples”, have resolved to conclude a treaty with that end in view, and to the effect that the treasures of culture be respected and protected in time of war and in peace, have agreed upon the following articles:

### ARTICLE I

The historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents.

The same respect and protection shall be due to the personnel of the institutions mentioned above.

The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational and cultural institutions in time of peace as well as in war.

### ARTICLE II

The neutrality of, and protection and respect due to, the monuments and institutions mentioned in the preceding article, shall be recognized in the entire expanse of territories subject to the sovereignty of each of the signatory and acceding States, without any discrimination as to the State allegiance of said monuments and institutions. The respective Government agrees to adopt the measures of internal legislation necessary to insure said protection and respect.

### ARTICLE III

In order to identify the monuments and institutions mentioned in Article I, use may be made of a distinctive flag (red circle with a triple red sphere in the circle on a white background) in accordance with the model attached to this treaty.

### ARTICLE IV

The signatory Governments and those who accede to this treaty, shall send to the Pan-American Union, at the time of signature or accession, or at any time thereafter, a list of the monuments and institutions for which they desire the protection agreed to in this treaty.

The Pan-American Union, when notifying the Governments of signatures or accessions, shall also send the list of monuments and institutions mentioned in this article, and shall inform the other Governments of any changes in said list.

### ARTICLE V

The monuments and institutions mentioned in Article I shall cease to enjoy the privileges recognized in the present treaty in case they are made use of for military purposes.

### ARTICLE VI

The States, which do not sign the present treaty on the date it is opened for signature, may sign or adhere to it at any time.

### ARTICLE VII

The instruments of accession, as well as those of ratification and denunciation of the present treaty, shall be deposited with the Pan-American Union, which shall communicate notice of the act of deposit to the other signatory or acceding States.

### ARTICLE VIII

The present treaty may be denounced at any time by any of the signatory or acceding States, and the denunciation shall go into ef-

fect three months after notice of it has been given to the other signatory or acceding States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, after having deposited their full powers found to be in due and proper form, sign this treaty on behalf of their respective governments, and affix thereto their seals, on the dates appearing opposite their signatures.

## INTRODUCTION

**S**ince the end of WWII, there has been a booklet, always in print, about the Roerich Pact and Banner of Peace. The year 2010 marks the 75th anniversary of the Pact, and this new book of the Society of Friends of the City of Bruges is being made available to the international public. The first International Conference dedicated to the promulgation of the Roerich Pact established “Union International pour le pact Roerich” (Bruges, Belgium) in September 13-15, 1931. The Second International Conference of the Roerich Pact (Bruges) established “Foundation Roerich pro Pace, Arte, Scientiae et Labore” in August 1932. Bruges played an important role in the history of the Roerich Pact.

The essential principles put forth by the Pact are, in fact, timeless, but their expression changes as the years pass. Still, we all watch with dismay as the world undergoes great upheavals, and often it seems that the Pact has no relevance or effect, as nations continue to invade and destroy one another, and develop, manufacture, and stock ever more terrible weapons of destruction. Peace seems to be ever more elusive. And the cultural heritage of humanity continues to be stolen, vandalized, bombed, and otherwise destroyed. In some countries, Iraq for example, every shovelful of dirt contains smashed bits of the glorious heritage of an ancient civilization.

If to some of us, such conditions point to the irrelevance of the Pact, to others they point to the continued necessity for it. There must be a means to educate humanity about the dangers of such disregard for what is most important in our lives and our history, and the Roerich Pact is a great tool for this. It creates a practical framework for dealing with the problem of human destructiveness.

This booklet is to a great extent the work of the accomplished Russian legal expert, Peter Barenboim, who intends to point out

the importance of the Pact for today's world, and to also point out the ways in which this Pact uniquely deals with world problems that other similar pacts, covenants, and treaties do not. The result of his work, supported by the Friends of Bruges Society, is a book that deals with today's world problems in a more modern way. We are certain that it will have a renewed impact, to demonstrate to the world's readers that there is a way to peace that does not involve war, that the spirit of protection and conservation can nurture an equivalent spirit of peaceful existence among all nations.

*Daniel Entin,*

*Director Nicholas Roerich Museum, New York*

# Preface of the Friends of Bruges Society

*Peter Barenboim*

*Co-chairman of the Friends of Bruges Society*

*President of the Moscow Florentine Society*

*Naeem Sidiqi*

*Executive Director of the Friends of Bruges Society*

*“Dear Cordell. As you know I am very keen about the Roerich Peace Pact and I hope we can get it going via “the Americas” — Will you and Henry Wallace talk this over and have something for me when I get back? FDR”.*

From a handwritten note  
by Franklin Delano Roosevelt,  
addressed to the US Secretary of State  
Cordell Hull

**T**oday, when the idea of “A Clash of Civilizations” is considered by Western intellectual circles as one of the greatest achievements of the human thought in the early twenty-first century, it is critically important to remind the humankind of the philosophical and legal teachings of the great Russian painter and philosopher Nicholas Roerich (1874-1947) whose almost superhuman efforts initiated the modern movement for the defense of cultural objects, for the idea of “Peace of Civilizations”. Besides the recognition as one of the greatest Russian painters, Roerich’s most notable achievement during his lifetime was the Roerich Pact signed on April 15, 1935 by the representatives of 21 states in the Oval Office of the White House (Washington, DC). It was the first international treaty signed in the Oval Office where President Obama is now working.

It was Franklin D. Roosevelt who had relocated the US presidential office to the White House. Incidentally, Roosevelt kept in his private rooms a bust of Roerich.

Nicholas Roerich was born on October 9, 1874, in St. Petersburg. His parents encouraged him to study law, but seeing their son's inclination for painting, allowed him to study both, which he did with much success. In 1900, Roerich went to Paris to take lessons from Fernand Cormon, the famous tutor of Van Gogh and Toulouse Lautrec. Upon his return to St. Petersburg, he married Helena Shaposhnikova, who later developed the Agni Yoga philosophy. Soon Roerich became quite a successful painter. One of his paintings was purchased by Tsar Nicolas II himself. Roerich also worked as stage and costume designer for several operas and ballets by Maurice Maeterlinck and Igor Stravinsky, premiered in St. Petersburg. The visual image of the *Bridge of the Worlds* (across which the Messiah or the Teacher of the World is to come to humankind), as we see it in the Roerich's painting *Miracle*, was suggested to the painter by the unique stone bridges of Bruges. The Roerich's sketches for the opera "*La Princesse Maleine*" (he called them the "sketches-messengers of Bruges") can well prove this assertion.

In 1917 Roerich went to live on a lake in Finland to strengthen his health. After the border between Russia and Finland was closed in 1918, the family traveled across several Scandinavian countries to Great Britain and eventually left for America in 1920. There, Roerich founded two cultural institutions: "*Cor Ardens*" (Flaming Heart, a fraternity of artists from several countries) and "*The Master Institute of United Arts*" (an organization for education, science, and philosophy). In 1923, the *Roerich Museum* was founded in New York. In 1929, it moved to a new building. Presently, the Roerich Museum is located in Manhattan, at the corner of 107th Street and Riverside Drive. After leaving America, the Roerich family had settled down in the Kulu Valley at the bottom of the Himalayas where they established the Urusvati Institute. Nicholas Roerich died of a cardiac arrest on December 13, 1947.

Roerich was much distressed by the damage to the cultural heritage caused by numerous revolutions and wars. He decided that, sim-



ilar to the protection offered to the humanitarian organizations by the internationally respected Red Cross, the buildings and monuments of cultural value should also be protected by an internationally recognized symbol. And Nicholas Roerich created such a symbol — a flag showing three red spheres within a red circle on a white background. He called it the *Banner of Peace*. The three red spheres represent the past, present and future achievements of the humankind, while the enclosing circle symbolizes the idea of their eternal protection and safekeeping. In 1929, Nicholas Roerich created the legal foundation for the Roerich Pact to further develop the idea of the *Banner of Peace*. The organization was founded in New York. In 1930, similar committees were founded in Paris and Bruges under the name *Union Internationale pour le Pacte Roerich*. Camille Tulpinck took the initiative for the Bruges committee: he organized the first international congresses for the committee in 1931 and 1932.

The image of Bruges is presented as a symbol of the finest “High Renaissance” antiquity, which lives no more, but which must be preserved and kept in centuries to come, as the dream-come-true of the humankind to serve both as a reproach and a challenge to the future generations. In his novel “Le Carillonneur”, the Belgian-Flemish writer George Rodenbach says about Bruges: “Undoubtedly, fine cities engender fine souls... The souls not to stand above all others, but the souls to glorify the Art and Beauty, introducing something of the Eternity into the ever-fleeting Time...”

One of the well-known experts in European culture, the Russian writer Ilya Ehrenburg (1891-1967) wrote: “Small museums of sleepy and idle Bruges became my elementary school in Art... I do not know wherein the explanation lies — either in the unchanging traditions or in a particular landscape of Flanders, to be exact, in its unique lighting conditions, — but the Flemish are superb painters... The Art of the Past not only opens our eyes, but also reveals itself to us, as if unfolding from their inquisitive ardor.”

The uniqueness of Bruges among cities of Northern Europe largely owes to the international (first of all, Italian) cultural influence on the formation of the architectural image of this city in the fourteenth and fifteenth centuries.

Nowadays, Bruges in its entirety is one open-air museum, for it has completely preserved its medieval image. Among its main sightseeing attractions are several Gothic churches built in XIII-XV centuries, the Town Hall (1376—1421), and the “Cloth Burse” (1284—1364).

Bruges is often called Northern Florence. This is because it stands out not only for the world’s-highest concentration of architecture, sculpture, and painting, but also for its unique aura of high spirituality.

We know that none other but the Flemish masters from Bruges taught the Florentines the art of oil painting. The interaction of cultures had greatly contributed to the success of the Italian Renaissance in those times.

The Italian Renaissance influence on the artistic development of Bruges had never been a one-way street. The canvasses of Flemish painters were known and much appreciated in Italy. In 1456, a humanist from Genoa by the name of Bartolomeo Fachio, the recently appointed historiographer at the Naples royal court, included the names of Jan van Eyck and Rogier van der Weyden in the list of the greatest people of his time on a par with the most famous Italian masters.

The Medici financed the international trade carried out by the Hanseatic League, which at that time also included several cities of Russia. In other words, the then Russians were enjoying a wide-open door to Europe, which later was nailed shut by their monarch who chose to destroy the trade independence of Great Novgorod and Pskov. And now we in Russia are still painfully trying *to hack ourselves a window to Europe...*

The ongoing restoration (since 1965) of churches and other historical buildings has now managed to completely recover Bruges to its former splendor and magnificence. Since all the architects and construction engineers working in Bruges are permanently participating in the restoration of its architectural heritage, the new buildings, erected by them, always preserve the continuity of the city’s architectural and artistic traditions.

George Rodenbach writes in his *Le Carillonneur*:

So much glory lies in the Bruges’ future as an art museum, which has always been the best part of its destiny! The city owes its past

glory to the Art. So the artists, archeologists, and aristocrats of spirit could have started coming to it in flocks from everywhere. How much deserved contempt and how much laughter could have been caused by the news that this city had fallen from the height of its dreams, having renounced the dreams of becoming an ideal city, something exclusive, in favor of an ordinary and mediocre vanity to become yet another seaport town... All the pictures by the primitive Flemish artists should have been purchased, collected and put on exclusive display in Bruges... Thus Bruges could have become the center of pilgrimage for the chosen. People would have come here once a year from everywhere, from all the remotest corners of the Universe, as if to pay homage to a holy tomb, to the tomb of Art.

It is hardly known to everybody that the City of Bruges played a very significant role in the origination of the Roerich Pact. The Belgian authors Heidi Deneweth and Jan D'hondt did an interesting research in their article "The Roerich pact (1935), and Camille Tulpinck in Bruges" published in the "Bruges Ommeland" (*Surroundings of Bruges*) edition 45, 2005. They described the remarkable activity of Camille Tulpinck who lived in de Waalsestraat 1 in Bruges. He was a painter, vice-consul of Greece, member of the Royal Commission of Monuments and Landscapes, corresponding member of the Royal Academy for Archeology, Chairman of the organization Pro Pace, Arte, Scientia et Labore and Chairman of the art circle called 'Les Amis de Bruges'. Tulpinck also founded an association called: 'L'association pour la reconstruction de notre patrimoine artistique, monumentale et pittoresque'. This association was working on the restoration of the artistic heritage in the old Bruges Style. In this endeavor, Tulpinck had found a strong ally in the person of Nicholas Roerich with whom he was closely associated ever since.

In the autumn of 1931, Bruges became the venue for the 1st International Conference of the 'Roerich Pact' that attracted much attention worldwide. The Conference took place in the building of 'Provinciaal Hof' at the market square. The 2nd World Conference took place in 1932 at the Grand Hotel in the Sint-Jakobsstraat. For Bruges, this conference resulted in the foundation of the association called

'Roerich *pro Pace, Arte, Scientia et Labore*' in which Camille Tulpinck became the chairman, and Professor M. Adatci, the former President of the International Court in Den Haag, the patron.

In 1934, many individuals and organizations, on Camille Tulpinck's request, sent their petitions to the City Council, demanding the establishment of a *Pro Pace, Arte, Scientia et Labore* museum. Bruges was the city of choice for such a museum serving the cause of the protection of art in the times of war. Initially, the petitioners selected the Kervyn Hotel at the Dijver, but the municipal authorities first gave them the house in the Grauwwerkersstraat, and later changed their decision to the house Steylaers (The Red Stone) at the Jan Van Eyck Square, 8. In February of 1936, the Tulpinck-Roerichmuseum was opened for public access. It exhibited not only the works by Nicholas Roerich, but also the paintings by other artists.

On September 1, 1946, the museum was re-opened, and Camille Tulpinck was granted an official permission to renovate its building using whatever funds he could procure. At that time, the museum collection consisted of 18 paintings donated by Nicholas Roerich. But the events took an unexpected turn: on March 5, 1946, Camille Tulpinck passed away. In the absence of its proactive director, the museum was doomed to closure. In the 1950's, the house on the Jan van Eyckplein was occupied by the municipal office for tourism.

We borrowed this information on the museum's history from the already mentioned article by Heidi Deneweth and Jan D'hondt. Our own research shows that "*Les Amis de Bruges*" (*De Vrienden van Brugge* — The Friends of Bruges) did not disappear from the public scene after WWI, but was mentioned in the documents related to the 1st Conference of 1931.

Later, in the period from November 1947 to May 1948, the Friends of Bruges organized at the Roerich-Tulpinck Museum an exhibition of the painter Armand Jamar. This information is important to us, because we consider our association —The our Friends of Bruges Society—as a spiritual heir to "*Les Amis de Bruges*".

We already take part in creation of "Moscow-Bruges Concept of a Single Legal and Rule of Law Space for Europe and Russia".

This Concept is identified with the cities of Moscow and Bruges. In fact, Bruges and Russia have a long history in common. The city of Bruges was a counterpart to the Russian city of Great Novgorod during fifteenth century within the Hanseatic financial trade system. Hanseatic League (the Hansa) was medieval league of free cities in Germany and the adjoining countries, with Russian Great Novgorod as its eastern point and Flemish Belgian Bruges as its international financial center. It was a relatively short but unforgettable historical moment when Russia was a part of a single European market. At that time a single legal and economic space uniting Europe and Russia arose for the first time and developed until its unfortunate interruption.

Trade in the Hanseatic league was financed by Italian banks and was therefore a natural network for the spread of Roman law which had been revived by the Italian academics of Bologna University a couple of centuries earlier. This receptivity to the old Roman law is a remarkable example of implementing the best legal European standards in the national legislation of different countries. The Russian Federation today needs a similar type of receptivity. This could well take the form of implementation of selected European legal standards in Russian legal system in the rule of law, as well as in commercial and corporate law. The Roerich Pact ideas of defense of cultural treasures and of reduction and abolishment of military rights to destroy culture in any possible circumstances could be the “Higher Law” for Single Rule of Law Space for Europe and Russia.

In 2002, when Bruges was granted the status of a cultural capital of Europe, the dream of its great bard, George Rodenbach, had finally come true. From November 4 to December 18, 2005, the City Archives of Bruges hosted a remarkable exhibition named “The 70<sup>th</sup> Anniversary of the Roerich Pact”.

In 2010, when Bruges becomes the venue of the European Cultural Festival, we also may celebrate the 75th Anniversary of the Roerich Pact.

## BRUGES — THE CITY OF THE BANNER OF PEACE AND THE BRIDGE OF THE WORLDS

**T**he Himalayas are traditionally regarded as the best place for soul-searching, meditation, and self-perfection. Today anyone can fly to the capital of Nepal — Katmandu, get a tourist visa right at the airport, and then set out on a journey to see the world's highest mountain peaks — Everest, Annapurna, and Kailas. Just as easily, one can find accommodation at one of the Katmandu's Buddhist monasteries and try getting at least a step closer to Nirvana — the state of being completely free from suffering, greed, hatred, and delusion.

Rainer Maria Rilke, one of the most prominent poets and art critics of the twentieth century, loved Bruges and Flanders and tried to explain their significance for the world culture. He was especially attracted by the unique character of the Flemish painters who first had introduced landscape as a very meaningful expressive component to their canvasses. He wrote:

It appears that the theme and intent of any art lie in the individual's ability to be at peace with the Universe, and that such acme is the artistically crucial moment, when the scale is in balance. Indeed, it might be very tempting to bring this balance to light, as it manifests itself in different types of art: showing, for instance, how in a symphony the voices of a hectic day mingle with the rush of our blood, or how a building may look the one half similar to a forest, and the other half — to ourselves... At times, Nature appears to be closing in, making even cities look like landscapes ...

It might be interesting to trace how different generations became to be influenced either by this or that side of Nature: ones sought clarity by roaming forests, while others in their soul-searching needed the protection of mountains and castles. Our

soul is not the same as our fathers'. We still can understand the castles and canyons, in which our fathers were raised, but where we have nothing to do anymore. Our senses fail to extract from those even a slightest shade of meaning; there, our thoughts cease multiplying, and we feel as if confined to an old-fashioned interior, where it is impossible to dream about the future. What we need is the things that our fathers were wont to disregard, while riding in their closed carriages, feeling bored with the trip and impatient to finish it. Wherever they parted their jaws for a yawn, we lift our lids for a gaze, since we are living under the sign of flatlands and skies. These are two words, but in fact they embrace the same experience — that of a flatland. It is the flatland feeling that unites us. We understand the flatland. It appears exemplary to us. Everything in it is full of importance: the great circle of horizon, the sparsely scattered objects—both significant and simple in the face of sky—and, finally, the sky itself, the evenings and mornings of which each of a thousand leaves on a shrub can describe differently — the sky which at night houses so many stars more than the narrow, congested skies above cities, forests, and mountains... It is on this flatland that the painters, we are going to tell about, live. It is to this flatland that they owe their making — and what is more: to the infinity and grandeur of which they owe the perpetual continuation of their making.

All this rings quite true, but we still believe that some old Flemish painters from the fifteenth century Bruges might have somewhat disagreed with the Rilke's opinion. Otherwise, how can one explain those impenetrable snow-clad mountain peaks, which the leading painter of the Northern Renaissance and the inventor of oil colors, Van Eyck, (...) and his Flemish followers, had placed on the landscape depicting the city of Bruges, if Bruges is in fact surrounded by the flatland so romantically described by Rilke? Flanders' highest "mountain" located far from Bruges can hardly exceed two hundred meters above the sea level. So, whence come these mountains next to Bruges and what can be their symbolic meaning? Most art experts prefer just to point vaguely at the mys-

tical meaning of these paintings and rarely endeavor to provide any substantial explanations. In some paintings by Roerich, we also come across the similar imaginary mountains, already seen on the canvasses of the old Flemish school.

The famous English philosopher, Isaiah Berlin, once wrote in his article dedicated to Sir Winston Churchill that in the life of a creative individual there comes a moment when his personality and his art become one. We believe that this remark fully applies to Roerich, when the pinnacles of this thought and the mountain peaks from his paintings become inseparable. In the same article, Berlin mentions the “broader perspective, available only to those who live either on mountain tops or on wide flatlands.” The same thoughts might have occupied Roerich’s mind in the 1930s, when this Russian painter, philosopher and humanist expressed the following ideas in his articles:

Had someone ever tried to review historically the world’s aspiration towards the Himalayas, it might have been a remarkably significant study... Even in the Middle Ages, even in the most remote countries, many people still dreamed about beautiful India, which was so naturally represented in their minds by the huge and mysteriously impenetrable snow mountains... These highest feats of valor indeed require surrounding splendor, and what can be more splendid and magnificent than these unsurpassed mountains with their indescribable radiance and infinite variety. How miserable and bald would it be to compare the Himalayas with other, however picturesque, highlands of the globe. The Andes, Caucasus, Alps, and Altai—all these fairest and loftiest heights—would seem just a few scattered peaks, once you imagine the entire splendor of the Himalayan ultimate uplands... Agni Yoga says, “Deafening the everyday commonness, Darkness is crying, Darkness loathes the confidence of Light... Master the dreams — the highest form of thought. Let us dare! Let us not be afraid of dreaming of heights. The view from above is better. The Tables of the Covenant were given on a mountaintop. It is from the mountains that descend both the heroes and their deeds of valor...



The noble idea to convene in Bruges an international conference for the approval of our Peace Pact touches me deeply. It is so precious to see this candid cultural initiative for the protection of all treasures created by the human genius... It was not by chance that the Conference will meet in Bruges. Unique is the appeal of the beauty of antiquity typified in your city, that living treasury of human genius. May the chimes, which inspired me and which I so greatly admired when visiting your beautiful city, accompany all your solicitous decisions with their victorious carillon. I am often reminded of the music of the opera "Princesse Maleine," dedicated to me and based on the beneficent harmony of the bells of old Bruges. I would like to salute the Conference in Bruges as the beginning of the League of Culture. Its inner meaning should be truly remarkable to allow opening new gates for the future glorious edifices of culture. The Bruges Conference should not become a moth burning its wings in the first flame. It shall form a resplendent legion, the fiery wings of which are to grow in unison with the feat of great beauty and glorious necessity... I send my most heartfelt greetings to the glorious city of Bruges, which has become the immortal symbol for a multitude of beautiful names... We should not be afraid of enthusiasm. Only those ignorant and spiritually impotent can sneer at this great and pure feeling... We are tired of destruction и mutual misunderstanding. Only Culture, only the all-uniting ideas of Beauty and Knowledge can give us back the panhuman language...

From the snowy mountaintops of Himalayas, for the sake of the all-encompassing and omni-triumphant beauty of creation in its widest sense, I salute you, my dear friends and associates in Culture, and may our unity in the Beautiful multiply our powers, infuse harmony into our thoughts, and, due to the convincing character of beautiful necessity, attract in our ranks a multitude of co-workers for Culture.

The remarkable Belgian poet and writer George Rodenbach (...), who had dedicated many of his works to Bruges, once compared (four centuries after Van Eyck and without mentioning the

Himalayas) the towers of Bruges to the highest mountain peaks, as being equally capable of elevating the individual above the platitudes of everyday life. *Le Carillonneur*, the George Rodenbach's novel about Bruges, in the Russian translation was quite appropriately entitled *Vyshe Zhizni* (Rus. *above the [worldly] life*). Let quote from the novel:

“... As he [Borlut, the Bruges bell-ringer] approached the tower, the thought going through his mind was: to withdraw high above the world. Was that not what he could do now, what he would be doing from that day onwards when he climbed up there? [...]

He had also immediately sensed the enchantment of being the sole possessor, so to speak, of the high belfry, of being able to ascend there whenever he liked, to look down on the world of men, to live as if in the threshold of infinity.

High above the world! He repeated the mysterious phrase to himself, a fluid phrase which seemed to soar itself, straight up into the air, then descend in steps to the heavy syllables of the world below... High above the world! At an equal distance between God and the Earth. To have something of eternity while still remaining human so as to savor, thrill and fell through his senses, through his flesh, through his memories, through love, desire, pride, dream. The world: so much that was sad, evil, impure; high above: an ascension, taking flight to a Delphian tripod, a magical refuge in the air where all the ills of the world would melt away and die, as if the atmosphere were too pure for them.

So there he would make his abode, on the edge of the sky, the shepherd of the bells, living like the birds, so far from the city and men, on a level with the clouds... [...]

High above the world! Now he climbed the bell-tower as if he were climbing up into his dream, with a little step, relieved of the vain afflictions love brings, petty private sorrows, which had for too long hampered his ascent to higher goals. He went through a heroic period. The clock face on the tower glittered like a shield with which it defended itself against the night. And the carillon sang proud anthems. No longer a trickle of music that sounded

like the tears of the man who climbed the tower and was crying in the town; nor even a slither of music, like shovefuls of earth cast into the grave of a dead past. It was a concert of deliverance, the free and virile song of a man who feels himself delivered, looks to the future, dominating his destiny as he dominates the town. [...]

Oh! What a sweet transformation! He owed it to this high tower, to its conquered pinnacle whose castellated platform now seemed to be an altar to the Infinite. [...]

He felt as if he was looking down on the world from the summit of Eternity..."

The sensations of the Rodenbach's novel protagonist are purely Himalayan in their character. Roerich, most probably, read *Le Carillonneur* which was quite popular in the early-twentieth-century Russia. Possibly, he also paid special attention to the following, even more Himalayan, lines written by Rodenbach:

"Oh! How beautiful was Bruges when looked at from high above, with a multitude of its bell-towers and gabled roofs, whose tiered ledges resembled the steps leading the ascent to the dream..."

The tiled roofs of Bruges as mountain ledges leading skywards! Rodenbach did not mention the Himalayas only because he had not been there, but in fact he, like the old Flemish painters, uses the same simile, the same image.

According to Maria Veselovsky, the Russian translator of many Rodenbach's works, the bell-tower on the Bruges' main town square represents for Borlut, the protagonist of *Le Carillonneur*, the symbol of the spiritual height to which he strives throughout his entire life. She writes, "This is a very interesting and characteristic excerpt. There, we are told what Borlut sometimes sees in this unusual, high and architecturally remarkable tower. It is the high mountain, mentioned by [the sculptor] Rubek from the Ibsen's drama [*When We Dead Awaken*]; it is the fifth element of which the powerful, awakened soul of Alma is dreaming in the tragedy by [Nikolay] Minsky."

According to Roerich, the Himalayan mystical land of Shambala is shown on the very old Flemish map, which was allowed for publication by the ruling Catholic clergy. The technique of tapestry that we now call *Gobelin tapestry* originally came to France and Italy from Flanders, in which Bruges was the acclaimed center of its production. On many historic tapestries displayed at the Bruges museum and their copies sold in the town's art boutiques one can see the Unicorn, a mythical animal with a body of a large deer and a sole straight horn on the head-. This fantastic animal carries a significant mystical meaning in the culture of medieval Western Europe. Roerich, however, mentions the existence of its real analogue — the monocerous Nepalese antelope.

In the Himalayan Indo-Tibetan culture (not unlike the culture of ancient Egyptians, or that of Mesoamerican Incas and Maya) a very significant symbolical place belongs to such animals as rats, mice, bats, and mongooses, which often tend to merge into one generic image. Both in the traditional sculpture and painting, this image always accompanies the images of such high-standing Hindu gods as *Ganesha* or *Kubera*. However, in the traditional West European culture, this image carries no symbolical meaning. Still, on a huge late-fifteenth-century Flemish tapestry depicting the handover of royal power over Flanders from Queen Isabella of Portugal to her seventeen-years-old son, Duke Philip (who was later to become King Philip II of Spain), we can see right in the center of attention (in addition to the life-sized images of Isabella and Philip, with dozens of attending courtiers) the unmistakable image of a mongoose or a rat. Most art experts refer to this image by saying that it carries some yet unidentified mystical symbolism, without even trying to compare it to its mythical Himalayan analogue.

It is here that we find the idea of the *Bridge of the Worlds*, depicted in the Roerich's painting entitled *Miracle*. Let us quote the following passages from Roerich:

I offer my heartfelt thanks for this medal to the city of Bruges and the International Union of my Pact. It is precious for me to know that this medal has been stricken for the sake of world peace.

Without this most desired peace, the evolution of entire human-kind should become impossible. It is precious for me to know that this medal has been stricken in Belgium and given to me in Bruges, of which I cherish long-lasting memories. I have always been attracted by the city of Van Eycks and Memling. And indeed, are there any other cities in Europe to have preserved its antique way of life in such integrity? It is this integrity of the Beautiful that is so necessary when thinking about the protection of all treasures created by the human genius. Providence itself has assigned Bruges to permanently host the seat of our peaceful union. It is not a coincidence that the consecration of our banner should take place at the Basilica of the Holy Blood — to honor all Blood of Martyrdom shed for the sake of Beautiful Truth. Where so many lofty symbols do unite, a true stronghold arises.

I remember that in my youth Bruges was first mentioned to me by Villiers de l'Isle Adam, who was urging me to visit with him Bruges, before its renovation. We will never forget our visits to Bruges: its bells, to be heard nowhere else; its paintings, as if kept wherever they have been created; its streets, preserving the footprints of great messengers of the Beautiful; its wooden sabots, clucking on a stone pavement; and, finally, its centenarian lacemaker, inviting us to her cubbyhole to show her works. So many things wonderful, both big and small! And when the opera "La Princesse Maleine" was being written, it was the chimes of Bruges carillon, on which its opening theme became based. This music was dedicated to me who had visualized Maeterlinck's characters and who always adored old Bruges. It was for the sake of Belgium, for the sake of Bruges that I was conjuring the war away on March 14, 1914, with my painting "Conflagration". Now, the images of Maleine and Bruges in my paintings reside in six countries: at Riksmuseum in Stockholm; at Ateneum in Helsinki; in Moscow, Kiev, and Paris; in Poland; at our New York museum; in Boston, Chicago, and faraway Nebraska; in Omaha — "The Princesse Maleine Tower". I am listing whatever I can remember, with a dual purpose. Firstly, our Committee should know where my envoys for Belgium, Bruges, Princesse Maleine and Sister Bea-

trice are located. And I, remembering them myself, do weave a new heart-to-heart link with Bruges, with the precious drop of the Holy Blood, both creating and revitalizing... Hereto I attach my proclamation, which, according to the resolution of our Committee in New York, should be read on September 27 in all NY churches. Undoubtedly, the Basilica of the Holy Blood, as well as other glorious temples of Belgium, should co-sponsor this good initiative of our Committee. With a heartfelt gratitude I would like to say these parting words to all of our fellow-members, "To everyone, setting off according to his powers, without delay and procrastination, — farewell and God speed!" Once again I extend my thanks to heroic Belgium and the glorious city of Bruges for a highly cultured action for the Benefit of Humankind.

The visual image of the Bridge of the Worlds (across which the Messiah or the Savior or the Teacher of the World is to come to humankind), as we see this bridge in the Roerich's painting *Miracle*, was suggested to the painter by the unique stone bridges of Bruges. This can be clearly seen from the Roerich's sketches for the opera *Princesse Maleine*, which he called "sketches-messengers of Bruges."

It is worth mentioning that the prayer-invocation for the deliverance of Bruges from the war (1914), which Roerich refers to in connection with his painting *Conflagration*, is also apparently reflected in his other paintings, such as *Doomed City*, the look of which easily brings to memory the image of Bruges, especially its powder towers. The famous Russian writer Maxim Gorky purchased this canvas for his collection. After looking at this painting, Gorky called Roerich "the greatest intuitive visionary of our time." The Bruges salvation during WWI, when half of Flanders was demolished by artillery fire and poisoned by gas, may appear to be a miracle. If so, the Roerich's prayer-invocation was part of that miracle. In any case, the city remained intact, and in the Roerich's canvas *Dead City*, painted at the end of WWI, in 1918, the same horrible dragon soaking with blood crawls away not from Bruges, but from some other town.

Bruges played a notable part in the movement for a Peace Pact. We can say that two international Peace Pact conferences held in Bruges had a decisive influence on the development of the world movement for peace. Bruges was saved again during WWII, this also can be called a miracle, but more probably it was due to a collective effort of its population who promoted the Peace Pact internationally. The name of Bruges stayed on the front pages of many European newspapers in connection with the Peace Pact movement. Maybe this is how it became known to the general of German Wehrmacht who later revoked his order to raze it to the ground. Another possibility is that, in connection with the favorite Roerich's idea of powerful ideation creating respective energy, the energy generated by the population of Bruges during their work for promotion of the Peace Pact movement could have created an impregnable power shield to save the town from demolition. Or maybe Roerich's original prayer-invocation of 1914 was so powerful that it sufficed for two wars... Somehow, the paintings *Doomed City* and *Miracle*, both connected with Bruges, were later referred to by some critics as the "voice of our time."

# 1931 First and 1932 Second International Conferences of Roerich Pact (Bruges, Belgium)

## Peace Pact Conference In Bruges Letter to M. Camille Tulpinck, 1931

Dear Colleague:

Mme. de Vaux Phalipau has informed me of the contents of your letter of March 25th, and I want to thank you sincerely for your invitation to me to take part in your Conference. Unfortunately, I will not be able to assist this summer, as my work takes me to Lahoul, in the chain of the Himalayas. Your noble idea to call an International Assembly in Bruges to support the Peace Pact proposed by me, has touched me profoundly. It is most precious to hail each new initiative in the realm of Culture for the defense of the treasures of human genius. Certainly, heroic Belgium, as well as glorious France has profoundly historic interests in this question. Belgian heroes have been witness to the destruction of superb churches, historic mansions, libraries and other artistic monuments, which can never be replaced. And it is not only in time of war that such human errors may occur. With each insurrection or internal hostility the monuments of Culture are equally menaced by dangers as grave as those in time of war.

At this time especially, humanity should concentrate all its efforts for the protection of the treasures of creative power. If the Banner of the Red Cross has not always served as a guarantee of complete security, nevertheless it has introduced into human consciousness a most powerful stimulant. Similarly true with the Banner which we propose for the protection of the treasures of culture; for although it may not always succeed in safeguarding these precious monuments, at least it will always and everywhere, call to mind our indispensable duty of caring for the fruits of creative genius. It will give the human spirit another stimulant-the inspira-



tion of culture, the inspiration of esteems for all that concerns the evolution of humanity. We, who have shared in the work of museums and collections; we, who have watched over the works of creative power, have experienced the innumerable Calvaries of Art and Science. No one will dare say that the project of safeguarding the treasures of human genius is superfluous, exaggerated or useless. Beyond deepening the sentiment of protection and respect for the monuments of Culture, our project offers the possibility of revising and cataloguing once more the treasures of creative power, and of placing them under the protection of all humanity; because, I repeat, not only during war, but daily, is it necessary to protect the most beautiful and precious works of creative genius.

It is valuable to note that our project has been instantly acclaimed with exceptional response in all parts of the world. I know you will be happy to learn that besides the great representatives of Culture and the governments of the world, there are among the social organizations inspired by our idea, powerful societies numbering millions of members. Thus, at a meeting on March 24th in New York, dedicated to the Peace Pact, Mrs. Sporborg, President of the New York State Federation of Women's Clubs spoke of the Peace Pact in the name of the Federation which includes over 400,000 members. Moreover we have received proofs of interest and sympathy from organizations which have over three million members. Thus, the plan for the protection of Culture is supported by public opinion. A number of the institutions supporting our plan are ready immediately to raise the all-unifying Banner of Peace, guided by public opinion. For these institutions as well as for us, the essential thing is the fact itself- the seed itself-which will grow by its own irresistible vitality. Is it possible that some one will dare oppose this emblem of the amicable union and protection of Culture? Such a one would thus reveal himself the opponent of human evolution. Such a denial would forever remain a shameful negation. But the true workers in all the domains of Culture are never negative, and by their constructive positivism, they create indefatigably, since without creation life does not exist. I know that in talking thus, I express your own sentiments, as well

as those of all our friends in various countries. I wish to hail your noble idea with all my heart and that of His Excellency M. le Ministre Jules Destree and of His Excellency Dr. Mineitciro Adacti. I also want to express to you and all those attending the Conference that we have a multitude of friends throughout the world who hope to see the all-unifying Banner of Culture float over their institutions. For there where we rise in defense of righteousness, beauty and culture we are invincible enthusiasts.

It was not by chance that the Conference will meet in Bruges. Unique is the appeal of the beauty of antiquity typified in your city, that living treasury of human genius. May the chimes, which inspired me and which I so greatly admired when visiting your beautiful city, accompany all your solicitous decisions with their victorious carillon. I am often reminded of the music of the opera "Princesse Maleine," dedicated to me and based on the beneficent harmony of the bells of old Bruges. In the name of World Peace, in the name of Culture and luminous creation, in the name of the heroic aspirations which ennoble humanity, I send, dear Colleague, my heartfelt greetings to you and to all the members of the Conference and to the heroic people of Belgium.

**Himalayas, April 24th, 1931.**

*(N. Roerich, Realm of Light. "New Era Library" Roerich Museum Press, N.Y. 1931, pp 104-107.)*

## **Greetings to The Bruges Conference 1931**

HEARTIEST salutations to all assembled in the name of the Banner of Peace, in the name of reverence to all cultural treasures!

I have already expressed my admiration for the noble project of M. Camille Tulpinck to convene a Conference in Bruges to spread and enforce in life our Peace Pact. M. Tulpinck will undoubtedly acquaint the honored assembly with some of the considerations, which I have outlined in my communications to him.

Now, I should like to address all present and in this salutation, to bear witness to the enthusiasm already transmitted to us from countries throughout the world for this cause. To me, this Conference appears as the foundation of that long-anticipated League of Culture. This League will sustain the universal consciousness in its realization that true evolution is constructed only upon the foundations of Knowledge and Beauty.

Only the values of culture will solve the most complex problems of life. Only in the name of the treasures of culture, may humanity prevail. At the very root of this concept, so sacred to us, is enfolded the entire veneration of Light, the true service to Bliss. For it is precisely the concept of culture that must be regarded, not as sterile abstraction but as the virility of creativeness; it lives, nourished by the indefatigable achievements of life, of enlightened labor and of creation. Not for our own sakes because We are already mindful of it, but for the sake of those growing generations to come, let us repeat again and again that during the proudest epochs of human history, a renaissance and efflorescence were achieved where the tradition of reverence for culture grew. And we know that this tradition cannot be strengthened instantaneously. It must be tended daily by the benediction of light. For even the worthiest garden withers in darkness and in drought.

Hence the Banner of Peace is indispensable for us, not only in the hour of war but perhaps, even more, as a necessity each day, when unmarked by the roar of cannons, irrevocable errors are committed against culture.

Of universal significance are the cultural spiritual values of mankind; and an equally peace-imparting unification is effected by the cordial handclasp in the name of the glorious treasures of all generations.

In our wide program, the multifold ways of how to care for Culture are to be discussed. Multifold also will be the useful suggestions, we shall undoubtedly hear, all so needed in this universal movement. And the question which concerns us is only how best and in what order to apply them. "We shall also hear of a Universal Day of Culture, when simultaneously in all schools and education-

al institutions, a day shall be consecrated to the full appreciation of all national and universal treasures of culture. We shall discuss which monuments of culture and which cultural collections shall be protected by the Banner of Peace. We shall discuss a universal inventory of all treasures of human genius. We shall discuss the entire complex of protective measures for Beauty and Knowledge, which must verily become the responsibility of all rational humanity introducing firm foundations into life. There will certainly also be discussed the organizing of special Committees in all countries, the representatives of which have already expressed, or are prepared to express their endorsement of this cultural work. The organization of such a Committee has already begun in America. In our first Annals, which we have had the pleasure to offer to this Assembly, are outlined the measures which have thus far been fulfilled by us for this Pact. We are of course certain that not only will the Annals indicate the development of the Peace Pact, but that another edition will be issued, dedicated to all questions pertaining to the universal inventory of cultural treasures.

Beginning with this Fall, on the basis of the sympathies and approval of the Pact by organizations numbering millions of members, we are inaugurating a Fund for the Banner of Peace. A special meeting dedicated to the Banner of Peace in our Museum in New York, proved once again what powerful sympathies fortify our idea. One must also mark that some institutions have already flown the Banner of Peace above their treasures, thus confirming the undeferrability of this decision. It is necessary to emphasize that all these actions must proceed along one channel. The concept of Culture must arouse in us also the consonant concept of unity. We are tired of destruction and of common misunderstanding. Only Culture, only the all-unifying conception of Beauty and Knowledge, can restore the pan-human language to us. This is not a dream! It is founded upon my experience during forty-two years of activity in the domain of Culture-Art and Science. And in unison we may pronounce an irrevocable oath, that we shall never abandon the defence of culture and the League of Culture, neither we, nor our associates. Nor can we be deluded, for our experiences

in the domains of art and knowledge have filled us with an unquenchable enthusiasm. Not only one nation, nor one class is with us, but multitudes, for, above all, the human heart is open to the Beauty of creativeness.

From the snowy peaks of the Himalayas, in the name of all-embracing and all-conquering Beauty of creativeness, in its vastest conception, I greet you! I greet the friends-devotees of Culture. And this Union in the Beautiful will multiply our strength, it will imbue our thoughts with harmony and with its impelling power as a Beautiful Necessity will attract to us multitudes of co-workers for culture.

The conception of Culture belongs among the invincible synthesizing concepts. Only ignorance can be hostile to Culture; and wherever it reveals itself, we must regret it. However, we must remember how slowly even the most evident ideas enter the consciousness. Let us remember that even the Banner of the Red Cross, which has since rendered incalculable service to humanity, at first was received with derision, mistrust and ridicule. Similar were the cases also with numerous examples of the most useful discoveries and innovations. But these deplorable facts serve to imbue us with conviction of the necessity and vitality of the Banner of Peace and League of Culture.

After all, what we propose in nowise belittles anyone or anything; it does not involve complicated measures, but is feasible through very simple means. Certainly, great works cannot be carried through instantaneously long and indefatigable labor is needed. And for this we are prepared. But fire is ignited instantaneously, thus let this sacred fire, the fire of the Chalice of Ascent, unite us all undelayingly to join and unfurl in friendship the Banner of Peace, the Banner of Culture.

*(N. Roerich, Realm of Light. "New Era Library" Roerich Museum Press, NY. 1931, pp 114-118.)*

# INTERNATIONAL CONFERENCE FOR ROERICH PEACE BANNER

The date for the International Peace Conference to be held in the city of Bruges, for the purpose of promoting world-wide adoption of the Roerich Sanner of Peace to protect the world's cultural treasures, has been fixed from September 13 to 20. The Conference is called "Union Internationale Pour le Pacte Roerich», and is under the chairmanship of M. Camille Tulpinck, member of the Royal Academy of Archaeology of Belgium and President of the Friends of Bruges, with Professor Roerich as President d'Honneur. The Conference will be under the Protectorate of His Excellency Marquis Adatci, President of the Court of International Justice at the Hague. Among others who will act as patrons of the Conference are Count and Countess Carton de Wiart, respectively former Minister of State, and second Maid of Honor to the Queen of Belgium and Vice-President of the Council of Museums; also the Nonce and the Prince de Ligne.

The Program of the Conference which is now being completed in detail, is to be divided into Eight Sections and has been announced from Belgium as follows:

"We have the honor to bring to your attention an International Assembly of librarians, curators of historic documents and art collections, jurists, scholars and protectors of the beauty of nature, which will meet in the ancient city of arts, either by the end of August or the beginning of September, with the following aims:

I — To discuss, complete and support, through a universal movement, the initiative of Professor Nicholas Roerich, Honorary President of the Roerich Museum in New York, in order to promote an international pact for the protection of works of art and science, either public or private.

2 — To propose and study different means for:

a) General Protection.

b) Preservation against the injurious effects of gas.

The work is divided into Eight Sections:

First Section: Monuments, Museums, collections, Folklore, etc.

Second Section: Archives, Manuscripts, Etchings, Libraries, Coins, Medals, Seals, Glass collections.

Third Section: Fauna, Flora, Mineralogy, Chemistry, Means of preservation against the injurious effects of gas.

Fourth Section: Determining the location of natural works of beauty, general sites, rocks, trees, etc.

Fifth Section: General Legal Studies, supplementary to the project.

Sixth Section: Teaching and diffusion of the idea of Protection, Popular action, Publicity.

Seventh Section: Grouping of historic Chateaux and Seignorial Palaces.

Eighth Section: Alliance of Ancient Cities of Art.

The work of intellectual safeguarding which we bring to your attention is of general interest, and its high moral value can be readily appreciated.”

Membership of the Conference is divided into the following classes: Honorary Members, Association Members, Sustaining Members, Active Members.

In the numerous discussion to be held, the Prince de Ligne is to act as Honorary President of the Section of Historic Chateaux. It is reported that the interest around the Conference has been such that some of the round tables of the day have already been subdivided into thirty different questions.

Another outstanding aim of the Conference will be under the aegis of the Roerich Banner of Peace to further an Alliance of Ancient Cities as Rome, Rouen, Athens and others, which in themselves comprise such universal art heritage that their destruction would constitute a universal calamity. Already several cities have expressed their interest in entering this International Alliance.

Although details in regard to all sessions have not yet been received, it is known that there will be a special opening on September 13th when some of Europe's greatest cultural leaders will speak on great advantages of adoption the Roerich Banner of Peace as a universal symbol of cultural unity, and also tell of feasibility of its inauguration.

The Roerich Banner of Peace, incorporated in the Roerich Peace Pact, already endorsed by the International Museum's Office

of the League of Nations, was originated by Nicholas Roerich, inter-

nationally well-known artist, for the purpose of preventing the atrocities against museums, cathedrals, libraries and other lasting memorials, which have characterized not only wars, but all moments of national and international stress.

The idea of the Banner of Peace was inaugurated by Professor Roerich in 1929. In practice it presents a project for the feasibility of which the Red Cross may be regarded as precedent.

Briefly, it provides that "educational artistic and scientific institutions, artistic and scientific missions, the personnel, property and collections of such institutions and missions shall be deemed neutral and as such shall be protected and respected by belligerents. Protection and respect shall be due to the aforesaid institutions and missions» in all places, subject to the sovereignty of the high contracting parties, without any discrimination as to the State allegiance of any particular institution or mission.

In order to insure this, a banner was designed by Professor Roerich which would wave over the monuments of culture -- universities, museums, cathedrals--and proclaim their inviolability during war and peace.

It is hoped that the international vigilance created by universal respect for this Banner of Peace, will prevent the destruction of priceless and irreplaceable monuments of beauty, and serve as a cultural bond of understanding between nations.

The prospective International Conference in the City of Bruges is the next practical step in the movement for the adoption of the idea of universal peace.

*(Archives of the Nicholas Roerich Museum in New York)*



## Extracts from the letter of Mme. de Vaux-Phalipau, dated October 16, 1931

“...The Conference has been a true success and will promote in a great measure the adoption of the Pact; the city and its shops were draped, with -American and French flags, but if the populations showed its sympathetic to the cause, it still remain calm, as is the way of the Flemish character. Only the participants in the Congress could understand all the grandeur of the Movement which has been started, and to my opinion, the reception at the Hotel St. George where the elite of the society of Bruges mingled with the foreign delegate», had far greater importance than the parade in the street, although that was very picturesque,

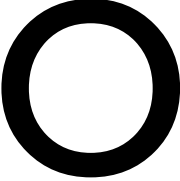
“In Bruges, I have arranged for the exchange of the Journal of Urusvati with the remarkable Bulletin of the Missions, published by the Abbey Benedictine of St. Andre, where Prince Obolinsky is librarian.”

*(Archives of the Nicholas Roerich Museum in New York)*

# History of the Roerich Pact

## Cultural Unity of Nations

By Prof. H. E. Nicholas de Roerich

 Our times are verily difficult, because of all the commotions of the spirit, all non-understanding and all attacks of darkness against Light. Quite recently there were pictures in magazines showing the *auto-da-fe* (i.e. burning) of precious books in the streets. It is hard to realize that this could have taken place in the present age, after millions of years of the existence of our planet. But perhaps this terrible tension is the impulse to direct humanity through all storms and over all abysses to peaceful construction and mutual respect.

What an epoch-making day might be before us when over all countries, all centres of spirit, beauty and knowledge could be unfurled the one Banner of Culture! This Sign would call everyone to revere the treasures of human genius, to respect culture and to have a new valuation of labour as the only measure of true values. From childhood people will witness that there exists not only a flag for human health but also there is a sign of peace and culture for the health of the spirit. This sign, unfurled over all treasures of human genius, will say: "Here are guarded the treasures of all mankind; here above all petty divisions, above illusory frontiers of enmity and hatred, is towering the fiery stronghold of love, labour and all-moving creation."

Real peace is desired by the human heart. It striven to labour creatively and actively. For it labour is a source of joy. It wants to love and to expand in the realization of Sublime Beauty. In the highest perception of Beauty and Knowledge all conventional divisions disappear. The heart speaks its own language; it wants to rejoice at that which is common for all, uplifts all, and leads to the radiant Future. All symbols and tablets of humanity contain one hieroglyph, the sacred prayer — Peace.

It is truly beautiful, if amidst the turmoil of life, in the waves of unsolved social problems, we still may hold up before us the eternal Flambeau-torches of Peace at all ages. It is beautiful through the inexhaustible well of love and tolerance to understand the great movements, which connected the highest knowledge with the highest aspirations. Thus, in studying and admiring, we are becoming real co-operators with evolution and out of the brilliant rays of supreme Light may emerge true knowledge. This refined knowledge is based on real comprehension and tolerance. From this source comes the great understanding. And from the great understanding rises the Supremely Beautiful, the enlightening and refining enthusiasm for Peace. Contemporary life is changing rapidly; the signs of a new evolution are knocking at all doors. In real unconventional science we feel the splendid responsibility before the coming generations. We understand gradually the harm of everything negative. We begin to value enlightened positiveness and constructiveness and in this measure, in merciful tolerance, we can prepare for our next generation a vital happiness, turning vague abstractions into beneficent realities.

On the scrolls of command it has been inscribed that a spiritual garden is daily in need of the same watering as a garden of flowers. If we still consider the physical flowers the true adornment of our life, then how much more must we remember and prescribe to the creative values of the spirit the leading place in the life which surrounds us? Let us then with untiring, eternal vigilance, benevolently mark the manifestations of the workers of culture; and let us strive in every possible way to ease this difficult path of heroic achievement.

Let us also mark and find a place in our lives for the Great Ones, remembering that their name no longer is personal, with all the attributes of the limited ego, but has become the property of pan-human culture, and must be safeguarded and firmly cared for in most benevolent conditions.

We shall thus continue their self-sacrificing labour and we shall cultivate their creative sowing which, as we see, is so often covered with the dirt of non-understanding and overgrown with the weeds of ignorance.

As a caring gardener, the true culture-bearer will not forcefully crush those flowers which entered life not from the main road, if they belong to the same precious kinds, which he safeguards. The manifestations of culture are just as manifold as are the manifestations of the endless varieties of life itself. They ennoble Being. They are the true branches of the one sacred Tree, whose roots sustain the Universe.

If you shall be asked, of what kind of country and of what a future constitution you dream, you can answer in full dignity: "We visualize the country of Great Culture." The country of Great Culture shall be your noble motto. You shall know that in that country will be peace, where Knowledge and Beauty will be revered.

Everything created by hostility is impractical and perishable. The history of mankind gave us remarkable examples of how necessary just peaceful creativeness was for progress. The hand will tire from the sword but the creating hand sustained by the might of the Spirit is untiring and unconquerable. No sword can destroy the heritage of culture. The human mind may temporarily deviate from the primary courses, but at the predestined hour will have to recur to them with renovated powers or the spirit.

Culture and Peace make man verily invincible and realising all spiritual conditions he becomes tolerant and all-embracing. Each intolerance is but a sign of weakness. If we understand that every lie, every fallacy shall be exposed, it means that first of all a lie is stupid and impractical. But what has he to hide who has consecrated himself to Peace and Culture? Helping his near he helps general welfare which at all ages was appreciated. Striving to Peace he becomes a pillar of a progressing State. Not slandering the near, we increase the productiveness of the common creativeness. Not quarrelling we shall prove that we possess the knowledge of the foundations. Not wasting the time in idleness we shall prove that we are true co-workers in the plough field of Culture. Finding joy in every day's labour we show that the conception of Infinity is not alien to us. Not harming others we do not harm ourselves and eternally giving we realize that in giving we receive. And this blessed receiving is not a hidden treasure of a miser. We under-

stand how creative is affirmation and how destructive is negation. Amidst basic conceptions those of Peace and Culture are the conceptions which even a complete ignoramus will not dare to attack.

There where is Culture, is Peace. There where is the right solution for the difficult social problems, is achievement. Culture is the cumulation of highest Bliss, of highest Beauty, of highest Knowledge.

We are tired of destructions and negations. Positive creativeness is the fundamental quality of the human spirit. Let us welcome all those who surmounting personal difficulties, casting aside petty selfishness, propel their spirits to the task of preserving Culture, thus insuring a radiant future.

We must not fear enthusiasm. Only the ignorant and the spiritually impotent would scoff at this noble feeling. Such scoffing is but the sign of inspiration for the true Legion of Honour. Nothing can impede us from dedicating ourselves to the service of Culture, so long as we believe in it and give to it our most flaming thoughts.

Do not disparage! The great Agni sings the drooping wings. Only in harmony with evolution can we ascend! And nothing can extinguish the selfless and flaming wings of enthusiasm!

*(Roerich Pact. Peace Banner. The Red Cross of Culture, New World Library, I.M.H.Press, Delhi, 1939, pp 26-30.)*

## Call To World Unity

With each crisis in history man has paused to take inventory of the facts and issues of the day. This is an opportune time to reflect upon the enormity of World War II and its global devastation. We find there is no longer a national insurance against war. Nations can no longer seek immunity from war in their geographical barriers. Mountains, oceans and climes are no longer obstacles to modern science. Wars cannot be prevented by interdicts, disarmaments, nor large standing armies. In the wake of World War II there are millions of people dead, crippled and diseased, wanton destruction

of property and barbarous vandalism. More than a year after the war's termination the world is still a fused keg of dynamite ready to explode at the faintest spark. Today the common man knows, for the first time, there can be no peace without a world peace.

How can this be obtained? What is the foundation of World Peace? The answer lies in the oft-preached, seldom practiced—"Know Thy Neighbor". This ageless teaching must be practiced now, more than ever before, to establish the world peace for which so many gave to the last measure. It could be done if we were to live among our global neighbors. Obviously it is impractical. However, in the absence of the desired personal contact the knowledge necessary for mutual understanding can be secured through Culture. Availing a people's constructive genius to others is the basis of—"Knowing Thy Neighbor". Esteem and appreciation of this Culture can insure the common understanding necessary to unity and permanent peace.

Culture belongs to no one man, group, nation or era. It is the mutual property of all mankind and the heritage of generations. It is the constructive creation of human endeavor. It transcends all obstacles, prejudices and intolerances. It is the highest perception of Beauty and Knowledge. Without Culture there is no truth, no unity, no peace.

The creative mind and its equally important sponsors are aware of Culture's omnipotence as the sole instrument for permanent world peace. In the same breath Culture must be availed to and sponsored by all mankind and generations. It must be made sacred and inviolate to the human mind and hand. It is to the fulfillment of this beneficent goal that humanity must dedicate itself.

Our past is filled with deplorably sad and irreparable destructions. Not only in times of war but in times of peace, creations of human genius are destroyed. At the same time the elite of humanity understand that no evolution is possible without the accumulations of Culture. The ways of Culture are untold and difficult. Hence, the more carefully one must guard the paths which lead to it. It is this generation's duty to create for the younger generation the traditions of Culture for there, where Culture is, there is Peace.

Mankind must strive for Culture's Day of Triumph. This will occur when, simultaneously in all schools and all educational institutions, the world will be reminded of the true treasures of humanity, of creative heroic enthusiasm, of a richer and fuller life. The ennobled consciousness, having contacted the Realm of Culture, will naturally enter upon the path of peaceful construction, discarding as shameful rubbish all belittlement of human dignity created by ignorance. For this purpose our cultural heritage must be safeguarded by all available means. These treasures must be consciously valued, remembering that every contact with them will ennoble the spirit. The one pan-human desire is to make inviolate the cultural achievements of mankind and thus insure permanent unity and peace, the world over.

Material effort and endeavor in this fulfillment is not new. This goal had its inception in 1929 when the Roerich Peace Pact proposed a special Banner of Peace for the protection of all cultural treasures. An International Congress for the Roerich Pact and Banner of Peace was established with its central seat in Bruges, Belgium. This agency was spreading the ideals of Peace through Culture with most significant results. It proved conclusively how close this aim is to the hearts of all positive people of the world.

The lists of adherents to the Banner of Peace are long and glorious. The Banner has been consecrated already. Sacred oaths have been offered to introduce *it* everywhere. This ideal must continue to its complete fulfillment. The late President Franklin D. Roosevelt in 1935 said of the Roerich Peace Pact, "This treaty possesses a spiritual significance far deeper than the text of the instrument itself." The Roerich Pact for the protection of cultural treasures is needed not only as an official regulation, but as an educating law which, from the first school days, will imbue the young generation with the noble idea of safeguarding the true values of all humanity. It condemns not only the destruction of Culture in war but also all the barbaric acts by which the symbols of Culture are endangered in the time of peace. The Pact instills unceasingly into the minds of our children, our grandchildren and all who surround us the impulse to strive toward constructive creation. Thus, it inscribes an essential page in the history of cultural achievements.

The Roerich Peace Pact has been justly named the Red Cross of Culture. Truly, it stands in closest relation to the great Red Cross, which at the time of its inception was received rather skeptically, but now has become an indisputably humanistic foundation of life. If humanity recognized the Red Cross as a protection to the physically wounded and ill, then it will also recognize the Banner of Peace as the symbol of peaceful prosperity and health of spirit.

All cultural centers of the world should proclaim ceaselessly the call to the Roerich Pact and Banner of Peace, thus eliminating the very possibilities of war. There can be created for generations new lofty traditions of veneration for real cultural treasures. Untiringly, everywhere the Banner of Peace unfurling, the very physical fields of war will be destroyed.

Time is short! Not an hour nor day must be lost! Man's cultural heritage must be made inviolate. The ideals of the Roerich Peace Pact must be availed to all. Its text is a cultural covenant which is the welding force necessary to world unity and peace. Under the Banner of Peace mankind will proceed towards the one Supreme Culture in powerful and peaceful union as the World League of Culture!

## **The Banner of Peace**

**By Nicholas Roerich**

This sign of the triad which is to be found all over the world may have several meanings. Some interpret it as a symbol of past, present and future, enclosed in the ring of Eternity; others consider that it refers to religion, science and art, held together in the circle of culture, but whatever be the interpretation the sign itself is of the most universal character.

The oldest of Indian symbols, Chintamani, the sign of happiness, is composed of this symbol and one can find it in the Temple of Heaven in Peking. It appears in the Three Treasures of Tibet; on the breast of the Christ in Mending's well-known painting; on the Madonna of Strasbourg; on the shields of the Crusaders and coat



of arms of the Templars. It can be seen on the blades of the famous Caucasian swords known as 'Gurda'.

It appears as a symbol in a number of philosophical systems; it can be found on the images of Gessar Khan and Rigden Djapo; on the "Tamga" of Timurlane and on the coat of arms of the Popes. It is to be seen in the works of ancient Spanish painters and of Titian, and on the ancient ikon of St. Nicholas in Ban and that of St. Sergius and the Holy Trinity.

It can be found on the coat of arms of the city of Samarkand, on Ethiopian and Coptic antiquities, on the rocks of Mongolia, on Tibetan rings, on the breast ornaments of Lahul, Ladak and all the Himalayan countries, and on the pottery of the Neolithic age.

It is conspicuous on Buddhist banners. The same sign is branded on Mongolian steeds. Nothing, then, could be more appropriate for assembling all races than this symbol, which is no mere ornament but a sign which carries with it a deep meaning.

It has existed for immense periods of time and is to be found throughout the world. No one therefore can pretend that it belongs to any particular sect, confession, or tradition, and it represents the evolution of consciousness in all its varied phases.

When it is a question of defending the world's treasures, no better symbol could be selected, for it is universal, of immense antiquity and carries with it a meaning which should find an echo in every heart.

To day when humanity is burying its treasures to save them from destruction, the Banner of Peace stands for other principles. It affirms that works of art and of genius are universal and above national distinctions, it proclaims '*noli me tangere*'—"Do not treat the world's treasures in a sacrilegious way."

(*Flamma*, No. 7, Autumn 1939.)

## Banner Of Peace

New York Times, March 11, 1930

HUMANITY is striving in divers ways for peace, and every one, in his own heart, realizes that this constructive work is a true prophecy of a new era. In view of this it might seem incongruous to hear discussions on the comparative desirability of various bullets or on whether one type of ship is closer to the conception of world unity than the cannons of two battleships. Let us, however, consider these discussions as preliminary steps toward the same great peace that will tame the belligerent instincts of humanity by the resplendent and joyous creations of the spirit.

The fact remains, however, that the shells of even one of these cannons can destroy the greatest treasures of art and sciences as successfully as a whole fleet. We deplore the loss of the library of Louvain and the irreplaceable loveliness of the Cathedral of Rheims; we remember the beautiful treasures of private collections which perished during the world's misunderstandings. We do not, however, wish to inscribe above them words of enmity; let us simply say, "Destroyed by human errors, and re-created by human hope." Nevertheless, errors in this or any other form may be repeated, and other precious milestones of human achievement can be destroyed.

Against such errors of ignorance we should take immediate measures; even though these may be only preliminary measures of safeguarding, some very successful steps can be made. No one can deny that the flag of the Red Cross proved to be of immeasurable value and reminded the world of humanitarianism and compassion.

For this reason, a plan for an international peace pact which would protect all treasures of art and science through an international flag has been outlined by the Roerich Museum for presentation through America to all foreign governments. The purpose of the project, which has been submitted to the State Department and the Committee on Foreign Relations, is to prevent the repetition of the atrocities of the last war on cathedrals, museums, libraries and other lasting memorials of creation of the past.

It is the plan of the project to create a flag which will be respected as international and neutral territory, this to be raised above museums, cathedrals, libraries, universities and any other cultural centers. The plan, projected by the Roerich Museum, was drawn up according to the codes of international law by Dr. George Chklaver, doctor of international laws and of political and economical sciences, Paris University; lecturer in the Institute of International High Studies, in consultation with Professor Albert Geouffre de la Pradelle, member of the Hague Peace Court, vice president of the Institute of International Law of Paris, and member of the faculty of law, the Sorbonne. Both are honorary advisers of the Roerich Museum.

As set forth in Article I of the pact, "educational, artistic and scientific institutions, artistic and scientific missions, the personnel, the property and collections of such institutions and missions shall be deemed neutral and as such, shall be protected and respected by belligerents.

"Protection and respect shall be due to the aforesaid institutions and missions in all places subject to the sovereignty of the high contracting parties, without any discrimination as to the State allegiance of any particular institution or mission."

When the idea of an international cultural flag was first propounded, we were not surprised to find that it met with unanimous interest and enthusiasm. Experienced statesmen wondered why it had not been thought of before. When we asked our honorary advisers, Dr. George Chklaver and Professor Albert Geouffre de la Pradelle, to frame this idea into an international formula, we received not only a splendidly formulated project of international agreement, but also many answers full of panhuman sympathy.

This international flag for the protection of beauty and science would not in any way demean any interests or lead to misunderstandings. On the contrary, it elevates the universal understanding of evolutionary discoveries, as though new human values had been created and we were moving on to a path of progress and peace. And this understanding of a creative striving toward peace becomes more real. Above all else, this guardian of peace reminds

one of the necessity for impressing cultural treasures in the world annals. This is not difficult and in many countries it is already accomplished, although there are gaps, and each enrichment in the universal consciousness must be greeted. As the Red Cross flag needs no explanation to even the most uncultured mind, so does this new flag, guardian of cultural treasures, speak for itself. It is simple enough to explain, even to a barbarian, the importance of safeguarding art and science.

We often repeat that the cornerstone of the future civilization rests upon beauty and knowledge. Now we must act upon this thought, and act quickly. The League of Nations, which has progressed toward international harmony, will not be opposed to this flag, for it expresses their aims of a world unity.

That the idea was originally conceived in the United States is not an accident. By its geographical position the United States is least personally affected by such measures of protection. Hence, this proposition comes from a country whose own art treasures are in no particular danger, illustrating the better that this flag is a symbol of peace, not of one country, but of civilization as a whole.

The flag designed for this project has three spheres within a circle on a white ground, symbol of eternity and unity. Although I do not know when this banner may wave above all the world's cultural institutions, the seed is already sown. Already it has attracted many great minds and travels from heart to heart, spreading once again peace and good-will among men.

Really it is imperative to take immediate measures to preserve the noble heritage of our past for a glorious posterity. This can only come if all countries pledge themselves to protect the creations of culture, which, after all, belong to no one nation but to the world. In this way we may create the next vital step for a universal culture and peace.

*(N. Roerich, Realm of Light. "New Era Library"  
Roerich Museum Press, NY. 1931, pp 100-103.)*

## Rabindranath Tagore Letter to Nicholas Roerich, 1931

“I am delighted to receive your letter and to know that your cultural colony in Nagar, Kulu, is thriving as it should. I have keenly followed your most remarkable achievements in the realm of Arts and also your great humanitarian work for the welfare of the nations of which your Peace Pact idea with a special Banner for protection of cultural treasure is a singularly effective symbol. I am very glad indeed that this Pact has been accepted at the League of Nations and I feel sure that it will have far-reaching effects on the cultural harmony of nations.”

### Jawaharlal Nehru's Tribute to N. Roerich

Pandit Nehru, Prime Minister, opening an exhibition of paintings by the late Nicholas Roerich, referred to the importance of paying special attention to India's cultural monuments.

*“I hope that when we are a little freer from the cares of the moment, we shall pay very special attention to the ancient cultural monuments of the country, not only just to protect them from decay but somehow to bring them more in line with our education, with our lives, so that we may imbibe something of the inspiration that they have”.*

*“One other fact so many of you may know about Nicholas Roerich and which is very pertinent in India especially, is his conception of preserving artistic and cultural monuments and the like. He started a kind of pact between nations for the preservation of these cultural and artistic monuments. Many nations agreed to it. I do not know exactly what the value of their agreement was because we agree to many things which we forget in times of war and trouble. We have seen recently in the late war the destruction of so many great monuments of culture in spite of all the previous agreement to protect them. Nevertheless, the fact remains that it is a tragedy for*

*destruction to overtake these great cultural monuments of the past. We in India have a great number of them and it should be our duty to respect them, honour them and imbibe their inspiration.”*

Nicholas Roerich Memorial Exhibition,  
December, 1947 — New Delhi

*(From: Nicholas Roerich By His Contemporaries: A Few Excerpts,  
W.Judge Press, Bangalore 4, 1964, pp 2-3).*

## **The Mission of Womanhood**

**By Nicholas Roerich.**

War is difficult, but still more difficult is post-war reconstruction. When the fundamentals of culture are exposed to danger, when the body and spirit of man is alarmed and suffering from bloody wounds, then above the elements there is again uplifted some calm miraculous force, the purpose of which is to heal man, harassed in dissonances and unreason, and to lead him to the heart's reason by the gentle contacts of spirituality. This force is the Eternal Feminine. When things are difficult in the home we turn to woman, who herself has been baptized by the fire of suffering. When it is difficult for the world we turn to woman whose heart aches at the wounds to culture and to the spirit.

When we speak about culture, surely we have in mind primarily woman who widely and irresistibly bears the Banner of refined and exalted Culture at all points from the cradle to the throne.

Indeed from the fireside to the government, woman implants the fundamental of Culture. In one form or another the child hears the first word about Culture from its mother. With the utmost selflessness and with no personal egotistical principle, woman introduces cultural bases in the structure, whether in her own small family or those of nations.

From the most ancient days, woman has worn a wreath upon her head. With this wreath she is said to have pronounced the

most sacred incantations. Is it not the wreath of Unity? And is not this blessed unity the highest responsibility and beautiful mission of womanhood? From woman, one may learn that we must seek disarmament not in warships and guns but in our spirits. And from where can the young generation hear its first caress of unification? Only from the mother.

To both East and West, the image of the Great Mother-womanhood-is the bridge of ultimate unification. To Raj-Rajeswari, the all-powerful Mother, the Hindu of yesterday and today sings his song- To her the women bring their golden flowers, and at her feet they lay the fruits for benediction, carrying them back, to their hearths. After glorifying her image, they immerse it in the water, lest an impure breath should touch the Beauty of the World. To the Mother is dedicated the site on the Great White Mountain which has never been climbed. Because when the hour of extreme need strikes, it is said that there She will stand and will lift up Her Hand for the salvation of the world. And encircled by all whirlwinds and all light, She will rise like a pillar of space, summoning all the forces of the far-off worlds.

In this way it happens that when the West speaks of the “Hundred-Armed One” of the Orthodox Church, it is but another facet of the images of the many-armed all benevolent Kwan Yin. When the West exalts with reverence the gold embroidered garment of the Italian Madonna, and feels the deep penetration of the paintings of Duccio and Fra Angelico, we are reminded of the symbols of the many-eyed Omniscient Dukkar. We remember the All-Compassionate. We remember the multitudinous aspects of the All-Bestowing and All-Merciful. We remember how correctly the psychology of the people has conceived the iconography of symbols and what an enormous knowledge lies hidden at present under the dead lines. There, where the conceptions disappear and prejudice is forgotten, appears a smile!

The images of the Mother of the World, of the Madonna, the Mother Kali, the benevolent Dukkar, Ishtar, Kwan-Yin, Miriam, the White Tara, Raj-Rajeswari, Nyuka — all these great images, all these Great Self-Sacrificing Beings merge together in one concep-

tion, as one Benevolent Unity. And each of these, in spite of the differences of language, comprehensible to all, ordains that there should be, not division, but construction. They say that the day of the Mother of the World has come. In the smile of Unity all becomes simple. The Aureole of the Madonna becomes a scientific physical radiation — the aura long since known to humanity.

The symbols of today, so poorly interpreted by rationalists, instead of being regarded as supernatural, suddenly become subjects for investigation to the sincere research worker. And in this miracle of simplicity and understanding, one distinguishes the breath of the evolution of Truth. A Hindu of today who has graduated from many universities addresses the Great Mother, Raj-Rajeswari Herself, in full reverence.

At the same time, at the other end of the world, people sing: "Let us glorify Thee, Mother of Light!"

And the old libraries of China and the ancient Central-Asiatic centres preserve, since the most ancient days, many hymns to the same Mother of the World.

Throughout the entire East and in the entire West there lives the Image of the Mother of the World, and deeply significant salutations are dedicated to this High symbol.

Treasures of the human spirit are so often endangered by destruction, not only during war, but also during all kinds of inner unrest. The mission of the womanhood is great. When there are difficulties in the home, we turn to the woman. When accounts and calculations are no longer of aid; when enmity and mutual destruction reach their limits, we turn to the woman. When evil forces overcome one, then woman is invoked. When the mechanical mind becomes helpless, then one remembers the woman. Verily, when wrath obscures the judgment of the mind, only the heart finds saving solutions. And where is the heart which can replace the Woman's? And where is the courage of the heart fire, which can be compared with the courage of woman at the brink of the insoluble? What hand can replace the calming touch of conviction of a woman's heart? And what eye, having endured the pain of suffering, will respond so self-sacrificingly, in the name of Bliss?



Among these great missions of guidance of Womanhood, adamant like is the Cultural Mission to affirm and propagate the creativeness of mankind. Sponsoring creative thoughts, the consciousness strives towards true progress.

It is you, daughters of the Great Mother of the World, whose hands wave the Banner of Peace, unfurled in the name of the most Beautiful.

Who then if not woman must now rise up and be unified in the name of Culture and the Beautiful?

Precisely, was it ordained to a woman first to announce the good tidings of the Resurrection?

Under diverse veils human wisdom nevertheless assumes one face of Beauty, Self-sacrifice and Endurance. And again on a new mountain must woman go interpreting the eternal paths to those near her.

Sisters! Fearlessly you shall stand on guard for the improvement of life. You kindle at each hearth a beautiful fire, creative and inspiring. You speak the first word about beauty to the children. You teach them about the blessed hierarchy of knowledge. You relate to the little ones thought about creativeness. You can guard them from dissolution, and from their first days of life instill the concepts of heroism and achievement. You first tell the little ones about the primacy of cultural values. You pronounce the sacred word Culture.

Great and beautiful is the work ordained to you women.

Dear sisters, Carry on and fear not. Tagore said: "Let me not pray to be sheltered from dangers, but to be fearless in facing them. Let me not beg for the stilling of my pain, but for the heart to conquer it. Let me not look for allies in life's arena, but to my own strength."

*(Roerich Pact. Peace Banner. The Red Cross of Culture, New World Library, I.M.H.Press, Delhi, 1939, pp 31-35.)*

## The Roerich Pact and Banner of Peace

THE 17th of November-the anniversary of the Roerich Peace Banner Day-was celebrated with great solemnity and enthusiasm in New-York, Paris and other centers of the world, where this epoch-making cultural treaty has lately made such progress towards recognition and adoption by various nations. The Banner of Peace, as is well known now, is the symbol of the Roerich Pact under which the agreeing countries pledge themselves to guard, esteem and sponsor all those immeasurable and irreplaceable treasures of the achievement of the human spirit, which otherwise, as has unfortunately been proved only too often, are neglected and destroyed, either by vandalism, or lack of care and understanding, both in times of war and so-called peace. This great humanitarian idea thus provides in the field of mankind's cultural achievements the same guardianship as the Red Cross provides in pity for the physical suffering of man. As Articles I and II of the Pact state: "Educational, artistic and scientific institutions, artistic and scientific missions, the personnel, the property and collections of such institutions and missions shall be deemed neutral and as such shall be protected and respected by belligerents. Protection and respect shall be due to the aforesaid institutions and missions in all places, subject to the sovereignty of the High Contracting Parties, without any discrimination as to the State allegiance of any particular institution or mission. The Institutions, Collections and Missions thus registered may display a distinctive flag, which will entitle them to special protection and respect on the part of the belligerents, of governments and peoples of all the High Contracting Parties."

Prof. Nicholas de Roerich-whom the Honorable George Gordon Battle named "undoubtedly one of the greatest cultural leaders of all times"-in a recent address at the opening of a new "Banner of Peace Committee" beautifully expressed the ideals of the Pact in the following words:

"The world is striving towards Peace in many ways and every one realizes in his heart that this constructive work is a true prophecy of the New Era. Of course arguments about the com-

parative qualities of various kind of shells or about the advisability of replacing the guns of two battleships by one ship of a newer type,- do not contribute harmonically to constructive ideas for peace. But let us hope that even these discussions are preliminary steps towards the same great concept of Peace, which will take place, thanks to a taming of belligerent instincts of nations, by great brilliant creations of the Spirit. But the fact remains in the meantime, that shells of these guns can destroy the greatest treasures of art and science as thoroughly as those of an entire fleet... We deplore the loss of the libraries of Louvain and Oviedo and the irreplaceable beauty of the Cathedral of Rheims, we remember the beautiful treasures of private collections, which were lost during world calamities. But we do not want to inscribe on these deeds any words of hatred; let us simply say: "Destroyed by human ignorance-rebuilt by human hope!" Nevertheless errors of one form or another may occur again and thus other valuable achievements of humanity remain in constant danger of being destroyed. Against such ignorant errors we must immediately take precautions and definite measures. Hence first of all let us sacredly protect the creative treasures of humanity. First of all let us agree on that, which is the most simple-so that, as with the Red Cross, the Banner may significantly summon the conscience of men to the protection of that, which in essence, belongs not to one nation alone, but to the entire world, and constitutes the real pride of the human race.

The design of the Banner of Peace shows three spheres surrounded by a circle in magenta colour on a white background. Of the many national and individual interpretations of this symbol, which is so beautiful in its simplicity, the most usual are perhaps those of: Religion, Art and Science as aspects of Culture-the surrounding circle; or that of: Past, Present and Future achievements of humanity guarded within the circle of Eternity. "Both these interpretations-says Prof, de Roerich, the creator of the Pact and Banner-are just as good, for they represent a synthesis of life, and that is my ruling precept."

A brief outline of the history of the Roerich Pact and Banner of Peace gives the following important milestones:

Conceived and proposed by Prof. Nicholas de Roerich as early as in 1904 to the Society of Architects and in 1914 during the war to H. M. the Tzar Nicholas II and the Grand Duke Nicholas (when in both cases it was received with highest interest but delayed owing to wars), the project was formally promulgated in New York in 1929, according to the codes of International Law; the text of the Pact having been drafted by Dr. Georges Chklaver, Doctor of International Law and Political Sciences of Paris University. In the same year a Committee of the Banner of Peace was founded in New York and the principles were published through the press. The following year similar Committees were founded in Paris and Bruges, in the latter under the title "Union Internationale pour le Pacte Roerich." In the autumn of 1931 the Union convened the First International Conference, which proved the great interest of many Governments and in the next year another enthusiastic World Conference took place in the same city. Thousands of approving opinions came from religious, educational, artistic, scientific and other cultural bodies and personages from all over the world and it is only right and fair to state that none of the greatest men of our times omitted to take part in voicing their approval. To quote the Italian Ambassador at Washington, Signor A. Rosso: "I feel no one can be against such a great idea. Whoever would go against the Roerich Pact, will have the sanctuary of public opinion to deal with." It is also of interest that the great military authorities (like the late Marshal Lyautey, Admiral Taussig, General Gouraud, etc.) were in complete favour of the Pact. The first volume of collected statements and letters was published in New York and Paris under the title "The Roerich Pact and Banner of Peace". In the same year in Bruges the "Fondatio Roerich pro Pace, Arte, Scientiae et Lahore" was inaugurated after the Session of the Second International Conference in that City. The following year-1933-saw the Third International Convention of the Roerich Pact, held on November 17th and 18th in Washington at the Mayflower, where 36 nations sent their representatives and this Convention unanimously passed the resolution to "recommend the adoption of this humanitarian measure to the Governments of all Nations" for

“adoption or adhesion by unilateral action, through proclamation of the executive; by bilateral action through international agreements and by multilateral action through declaration of international conferences.” Hardly a month later, the Seventh Conference of the Pan-American Union at Montevideo passed the unanimous resolution to accept the above and to urge their participants-the 21 governments of the North, Central and South Americas- to sign the Pact and thus to apply the great principles in life. The Washington Convention of the Roerich Pact and Banner of Peace also elected a “Permanent Committee for the Advancement of the Adoption of the Roerich Pact and Banner of Peace” located at 310 Riverside Drive, New York, with Prof. and Mme. de Roerich as Honorary Presidents; the Honorable Henry A. Wallace, U. S. Secretary of Agriculture, as Honorary Chairman; Mr. Louis L. Horch, President of Roerich Museum, as its Chairman; Miss F. R. Grant, Vice-Chairman and Prof. Ralph V. D. Magoffin of the New-York University as its Secretary-General. This body negotiates with all governments, organizations and individuals interested in the promotion and adoption of the Pact and receives their expressions of formal adherence. The Proceedings of the Washington Convention have just been published in New York in book-form.

The Paris Committee of the Pact is under the presidentship of Baron M. A. de Taube, Member of the International Court at the Hague, and Georges Chklaver-Doctor of International Law is the Secretary-General. The “Union Internationale pour le Pacte Roerich” in Bruges has M. Camille Tulpinck, Vice-Consul of Greece, as its President and Prof. M. Adatci, former President of the International Court at the Hague, as its Protector.

The current year-1934-saw the establishment of a “ Roerich Pact and Banner of Peace Committee” in the Far East in Harbin, Manchukuo, with Archbishop Nestor as Honorary President, N. L. Gondatti-President and Prof. G. K. Hinz as Vice-President. A similar Committee was also inaugurated in Bruxelles with Mr. K. de Munck as President at Mr. Hendrickx, barrister, as Secretary-General and under participation of Count C. de Wiart, Minister; the Governors of Luxembourg and Western Flanders and a member

of the Chamber of Deputies and a member of the Court of Cassation, on the Committee.

At the same time the following countries, which are members of the Pan-American Union have either deposited their signatures of adherence or have appointed plenipotentiary delegates to do so, at the next Pan-American Conference to be held on Pan-America Day, April 14th 1935. Panama (which thus was the first country officially to notify of its readiness to ratify the Roerich Pact), Honduras, the United States, Ecuador, Uruguay, Guatemala and Brazil. Further Chile and China have informed of their readiness to ratify the Pact shortly and many countries of Europe have informed the Board of the Permanent Committee that their respective Governments have the Pact under consideration. In Japan the Banner of Peace was actually already hoisted over the Ministry of Education on Nov. 17th 1933- the day of the Washington Convention and many educational and other cultural organizations have already unfurled the Banner.

As regards the United States, President F. D. Roosevelt has on August 11th officially empowered Secretary Henry A. Wallace as plenipotentiary to sign the Inter-American Treaty on the Roerich Pact. The Honorable Henry A. Wallace has recently given out to the Press the following statement, which after a review of the history of the Pact, concludes:

“I regard the Roerich Pact as an inevitable step in international relations. At no time has such an ideal been more needed. While the individual nations are working out their separate economic and national problems, it is also necessary that they recognize their responsibility as *peaceful* community of nations. I am not one to urge visionary substitutes in the place of effective action in a world of hard economic facts, yet I do say that it is high time for the idealists who make the reality of tomorrow, to rally around such a symbol of international cultural unity. It is time that we appeal to that appreciation of beauty, science, education which runs across all national boundaries to strengthen all that we hold dear in our particular governments and customs. It is for this reason that I regard the ratification of the Roerich Pact as so significant

a step. Its acceptance signifies the approach of a time when those who truly love their own nation will appreciate in addition the unique contribution of other nations and also do reverence to that common spiritual enterprise which draws together in one fellowship all artists, scientists, educators and truly religious of whatever faith. I feel that this age owes a great debt to Nicholas Roerich in the creation of this ideal-for such ideals alone afford reality to our efforts for creating material wealth and working out improved social machinery for its distribution. While we work out these myriad individual problems we must have a unifying principle to which all our hearts can give supreme allegiance. In this we can work with faith and anticipation towards those spiritual and cultural realities of which the Roerich Pact is the symbol.”

It is indeed a great asset to know that in our present material and critical times there are not only thousands of individuals but also leading statesmen, who see and urge the fact of paramount importance-that the future of humanity is shaped more by actual spiritual strivings and cultural achievements and that the present age owes everything positive, that it has, to true Culture and that thus the safeguarding of these pan-human achievements is so imperative.

Here in India one finds also a wide appreciation of the ideal for which the Roerich Pact stands. It would be impossible to quote all these signs of cultural understanding in so short a review as the present one. But besides the adherences to the Pact as expressed by Sir Rabindranath Tagore, Sir Jagadis C. Bose, Sir S. Radhakrishnan, Sir C. V. Raman, Dr. James H. Cousins, Dr. Kalidas Nag, Prof. Suniti Kumar Chatterji, the late Prof. S. R. Kashyap, S. V. Ramasvamy Mudeliar, O. C. Gangoly, Asit Kumar Haider, N. C. Mehta, the late Ven. Sri Devamitta Dharmapalla, etc. and institutions like the Andhra Historical Research Institute, the Allahabad Municipal Museum, the Bharat Kala Bhawan in Benares, the Maha Bodhi Society, the Women’s Indian Association, the Y. M. B. A. of Ceylon, the Madanapalle College, the Travancore Cultural Association, etc. etc. and almost all the organs of the press,-the following two short quotations are expressive of the general enthusiastic attitude towards the Pact.

Mr. Gurdial Mallik, of the League of Nations' Union, writes in the Sind Observer on Banner of Peace Day, after a short description of the aims: "In the realization of this great and glorious ideal it is necessary to have the cooperation of the intelligentsia of the world to organize a strong public opinion in favour of the preservation of the artistic and cultural treasures of every country, so that mankind may have a continuous record of its achievements... To this end it is desirable that the governments of world would all ratify the Roerich Pact guaranteeing this preservation and treating these treasures as the heritage not only of any particular nation, but of the whole humanity and as such to be immune from the ravages of war and destruction."

Another distinguished writer, Swami Jagadiswarananda, states in a message to the Banner of Peace Convention: "Professor Roerich, the founder and leader of this Unique humanitarian movement, is himself the personification of Universal Art and Universal Culture. He has truly been called by Dr. James H. Cousins as 'Himalayan in Soul,' for he is really the Prophet of the New Humanity and the Messenger of a New Cultural World. . Let us pray for the long life and sound health of Professor Roerich, our Leader, who has opened a significant Chapter in human history by inaugurating this movement and the Pact. Let the present Convention of Art and Culture prove to warring nations of the world by waving the Roerich Banner of Peace, that Art and Culture are the Divine property-the Universal Treasure of all mankind and write on the portal of every institution of the world: "Help and not fight, assimilate and not destroy Harmony and Peace, and promote not dissension!"



*(Supplement to the preceding Article)*

*Since writing the foregoing brief outline on the Roerich Pact early this year, new significant events have taken place, which make it necessary to add the following Chapter.*

## **ROERICH PACT SIGNED BY UNITED STATES AND ALL LATIN AMERICAN GOVERNMENTS**

On April 15, 1935, at noon, in the office of President F. D. Roosevelt, at the White House in Washington, the United States of America and all the other twenty Latin American countries-members of the Pan-American Union : Argentine, Bolivia, Brazil, Chile, Cost-Pica, Cuba, the Dominican Republic, Ecuador, El-Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Peru, Columbia and Venezuela-have signed the Treaty of the Roerich Pact.

The American Press attached great importance to this sign of cultural unity and understanding, which not only united the whole of North and South America, but which it is expected will also shortly be joined by all the other nations of the world. All leading American papers printed columns of the event, the Presidential address and speeches of the Government officials and foreign diplomatic representatives; and newspapers all over the world, including India, published particulars of this historical occurrence.

The signing of this Treaty was a very solemn occasion. The President had invited to his office besides the diplomatic representatives of the twenty American republics, also the Secretary of State, Mr. Cordell Hull; the Secretary of Agriculture, Henry A. Wallace ; the Directors of the Pan-American Union, Dr. L. S. Rowe and Dr. E. Gil Borges, and the Trustees of the Roerich Museum, members of the Permanent Committee of the Roerich Pact. After the signing of the Pact, Secretary H. A. Wallace presented the pen, with which the Pact had been signed, to Mr. Louis L. Horch, Chairman of the Permanent Committee of the Roerich Pact as a historical souvenir.

At the close of the signing, President Roosevelt made the following address over the radio, which was broadcast over the whole world: “ It is most appropriate that on this day, designated as Pan-American Day, by the chief executives of all the republics of the American continent, the Governments-members of the Pan-American Union -should sign a treaty which marks a step forward in the preservation of the cultural achievements of the nations of this hemisphere. In opening this Pact to the adherence of the nations of the world, we are endeavoring to make of universal application one of the principles vital to the preservation of modern civilization. This Treaty possesses a spiritual significance far deeper than the text of the instrument itself. It is but one of the many expressions of that basic doctrine of continental solidarity, which means so much to the present and to the future of the American republics. On the occasion of this celebration of Pan-American Day let us again dedicate ourselves to the task of translating into deeds the essential unity of interest of the nations of this continent. Let us also bring renewed allegiance to those high principles of international co-operation and helpfulness, which, I feel assured, will be a great contribution to civilization by the Americas.”

Other speeches were delivered by Secretary H. A. Wallace; Dr. Ricardo Alfaro, Minister of Panama; Mr. Louis L. Horch, President of Roerich Museum.

Secretary Wallace compared the Treaty to the Red Cross and underlined the necessity of “the protection of those cultural treasures” which the enlightened spirits of all lands recognize as worthy of preservation no matter how tense and bitter the strife in the physical and economic world... To-day it is appropriate that we should give recognition to the genius of Nicholas Roerich, in whose mind this Pact and Banner first originated...It would seem desirable to hold up before the world, in times like these, the ideal of the Unity of the Human Heart, regardless of nation, in the worship of Beauty, of Culture, of Religion, of Science and of Education. There are thousands of people in each of the nations of the world, animated by these finer, broader human aspirations and they welcome the mechanism of the Roerich Pact as a means of

making more manifest on earth those intangible forces, which they have long recognized as the true guides of international good feeling ...I believe the Roerich Pact is in conformity with the deepest, most sacred laws of the universe and that it has become an international reality at an especially propitious time!"

Mr. Louis L. Horch in his speech gave an outline of the Roerich Pact and concluded: "The pledge between nations which has been consummated to-day at the White House by twenty one nations of the American continent in signing the Roerich Pact has put into effect an agreement respecting the inviolability of the products of the human genius, thus safeguarding the true heritage of man for posterity. This enlightening event marks a significant milestone in the cause of international understanding and friendship as well as a step forward in the spiritual and cultural progress of mankind. On this Pan-American Day we send salutations to our sister Nations!"

The Minister of Panama, His Excellency Dr. Ricardo J. Alfaro, declared: "The historic act which has just taken place is one that marks a signal victory in the perennial struggle of the better sentiments of man against the ravages of war." He then drew an outline of the history of all the previous international conventions and conferences, commencing with the Red Cross Pact seventy one years ago and said: "And then a great idealist and a fervent apostle of peace, Professor Nicholas Roerich, conceived the plan of an international convention for the neutralization and protection of the cultural treasures of the world. And today the Republics of the Western hemisphere sought and attained the honour of carrying the lofty project to a successful conclusion. The Montevideo Conference sponsored the Roerich Pact and this day the Republics of America have subscribed a Covenant, open also to the signature of all other nations, whereby for the first time in history the neutrality and protection of Culture are incorporated into one single and complete body of conventional international law. The deep significance of this occasion has been enhanced by the gracious hospitality which the President of the United States has shown the Plenipotentiaries of the Signatory Nations by inviting them to perform the historic act in the White House."

The U. S. Secretary of State, Mr. Cordell Hull, who delivered a speech the same evening at the Pan-American Union, concluded it as follows: "Let us appeal to all nations to join and to march forward together under the Banner of peace, commerce and honest friendship. Let those who repudiate these righteous principles and seek to retard human progress and to foment strife and to provoke war, be characterized by all enlightened nations as enemies of civilization and as world-outlaws."

Thus on April 15, 1935, has come to consummation that great, humanitarian ideal for which the most distinguished expounders of True Culture and Spiritual Aspirations- Professor Nicholas Roerich and his wife Mme. Helena Roerich-have given so self-sacrificingly all their life and energy and guiding advice, of what the author of this historical outline has had the great privilege to be a constant close witness. Thus humanity has forever recorded in history its grateful appreciation of these illustrious Initiators and Patrons of the Movement, for the work they have done for the Benefit of Mankind!

India:

V. A. SHIBAYEV.

May 7, 1935.

LION PRESS, LAHORE

## The Roerich Pact

*NagariPracharini Sabha endorses Roerich Pact.*

On November 6th 1938 the Nagari Pracharini Sabha, the oldest literary Society of Benares, passed the following resolution:

Resolution No. 39

of 6-11-1938

"Resolved that the Nagari Pracharini Sabha of Benares which always endeavoured towards the preservation and protection of the Indian cultural monuments and records through its Bharat

Kala Bhawan, fully appreciates the efforts of Professor Nicholas de Roerich to protect the historical monuments, museums, scientific, artistic, educational and cultural institutions of the world from human destruction in time of war as well as peace. It whole-heartedly supports the Roerich Pact". (Signed) Ram Narayan Misra,

*(Signed) R. B. Shukla,*

## **Roerich Peace Banner unfurled in Karachi**

At mid-day on the 17th of November 1938, the Roerich Banner of Peace was unfurled by Mr. H. C. Kumar which ceremony was followed by a song. The audience then adjourned to "Sarnagati" lecture hall. Mr. Sujan, R. A. spoke for a few minutes on Peace giving very interesting figures of the cost of war and emphasized on how fruitful for culture the fund of resources expended on fighting would be if only the mind of man could be directed to desirable activities.

Mr. Kumar addressed the gathering for about half an hour. He said that peace is the ultimate end of man and that peace activities are gaining ground all over the world. The Roerich Banner of Peace stars as a symbol of an ideal for peace.

\* \* \* \*

Monsieur Camille Tulpinck, President of the Union Internationale pour le Pacte Roerich in Bruges, writes that in 1939 a commemorative Exhibition will be held in connection with the Hans Memling Celebrations, during which M. C. Tulpinck plans to submit the Roerich Pact for adherence.

## The Roerich Pact

Report by Dr. Georges Chklaver

to the First Congress of International Studies, Paris.

“Les Editions Internationales” in Paris have just published the proceedings of the First Congress of International Studies organized in Paris on Sept. 30-Oct 7 1937 by l’Association des Etudes Internationales under presidentship of Alfonso Garcia Robles. This Congress unanimously passed the resolution of adherence to The Roerich Pact.

The following is the text of the address by Dr. Georges Chklaver, Professor at the Institute for High International Studies at the Paris University:

‘To save works of art from the horrors of war, was, at all times, the wish of those who hoped to stop the ravages of war by applying to it certain laws. The whole of humarity must be opposed to a general war’.

These words of M. de La Pradelle well express the thought of all those who have endeavoured to limit the devastations of war. In spite of the efforts attempted since 1919 to eliminate violence from international relations, it has been impossible to make it so that changes in the world should take place peacefully, one has been forced, alas!, to face the terrible possibility of war, and, for this reason, laws for the safeguarding of civilians, the wounded, the sick, and cultural works, must be strengthened.

Certain people have said — but we do not agree with them—that since the Briand-Kellogg Pact, there could not be any lawful war, in view of the fact that in future it would be prohibited as an instrument, of national politics. But we know that the Pact of Paris could not have for its object the suppression of all wars: War of secession, war for the fulfillment of collective obligations (for example, article 16 of the League of Nations Convention) are allowed. Moreover, the years following the signature of the Briand-Kellogg Pact by all nations of the world, have proved that war still continues to be used even as an instrument of national politics by several States—and this in every continent—in Asia, America, Africa and Europe. Some people will say that, as international treaties are not respect-

ed, as we have just stated, laws solemnly proclaimed by the entire international community are violated, what is the object of creating new rules, particular standards destined to be applied in the heat of battle and, consequently, more likely than others to be ignored

We already had the opportunity to answer this objection. The violation of legal rights does not involve their abolition. Within a State legal rights are exposed to many transgressions. The breach of international law is often noted for the fact that it remains unpunished. But the same phenomenon occurs in constitutional law where sanctions have not been created to punish those who, victoriously, upset the established constitutional order. The criterion of the sanction is not the *signum specifum* of the legal rules that have a psychological foundation. The *violation* of rights, especially those remaining unpunished, attract attention and engender skepticism. But apart from these violations, one must not forget the infinitely greater number of deeds that take place in accordance with judicial laws. If, for instance, there were numerous cases of violation of the "Geneva Convention for the improved conditions for wounded soldiers", they have been outnumbered, especially during the Great War, by those where the Red Cross flag was respected.

These are, in short, the reasons that brought about a vast movement in favour of the safeguarding of artistic and scientific treasures.

There is yet one other reason in favour of this plan. The buildings to be protected must not, of course, be put to any military use. Consequently, their destruction could not have any strategic or tactical significance. At the most they might have moral importance. But, in destroying the buildings already mentioned, and without gaining the slightest military advantage, the enemy exposes himself to immediate and effective reprisals for, especially in aerial warfare, the right of reprisal can be put into effect without delay, even the weaker State can send planes over the capital of its more powerful neighbour. Belligerent nations will therefore have a tendency to abstain, as if by tacit agreement, from attempts of this nature. During the Great War there were cases of tacit agreement of that kind: we allude to the enemy headquarters exempt from bombardment.

The idea of creating a plan for the international safeguarding of art and science goes back several centuries. Grotius and Vattel had already spoken of it. But it is to Nicholas de Roerich, a jurist and a J great thinker as well as a renowned artist that its achievement is due. As early as 1904 he prepared the foundation of a Pact in favour of the preservation of works of art and historical monuments, but it is only in 1929 that circumstances permitted international discussions on the definite rules of the agreement which has since been christened the Roerich Pact.

The Roerich Pact foresees that buildings dedicated to art and science should be registered beforehand, thereby allowing for an international classification of monuments, identical to the national classification in existence in all civilized countries. The buildings which are registered can fly a special ensign to protect them: the flag comprises a scarlet circle with three spheres of the same colour inscribed in the centre, on a white background. The colours are similar to those of the Red Cross.

Buildings flying this banner cannot be used for military purposes and must not be bombed. If the Roerich Pact were violated, it has been arranged that an enquiry should be held by an international commission and a report published, in this way appealing to general public opinion.

The generous initiative of M. de Roerich, supported in most countries in the world by masters of international law and by public opinion, has had an unmitigated success. On April 15th, 1935 the Roerich Pact was signed in Washington by 21 nations. The United States of America and all the States of the New Continent have adhered to it. We wish that States in other continents would also adhere to this Pact which is, in certain respects, a homage by humanity to the most precious treasures in the world : beauty and knowledge.

It is most important, we think, that the Congress of International Studies should pass a resolution favouring the universalization of the Roerich Pact and it is with this desire that we conclude the report which we have had the honour to put before you."

The President then stated: "I will now read to you the various resolutions, which have been adopted, so that the plenary meeting



can vote and express its opinion on them. If they are passed they will be written in the official report of the closing meeting and will appear under the heading 'Resolutions of the Congress of International Studies/I. -Roerich Pact. This Congress of International Studies considers it is highly desirable that all States should ratify the Roerich Pact for the Protection of Historical Monuments in time of war. It further suggests the creation of an 'International Commission for the Classification of Historical Monuments'. Proceeding by order I now want to discuss the first question in M. Chklaver's Report, that is to say the Roerich Pact. Has anyone at this meeting got any objection to raise or amendment to make? No one. I put it to the vote." (Carried unanimously.)

In the chapter 'Resolution of the Congress' we read: "I. The Congress of International Studies unanimously approves the reports of the three Committees and accepts the conclusion to which these Committees have come."

## **Formal Draft of Roerich Pact and Banner of Peace**

Prepared by Dr. Georges Chklaver, August 1928

### **INTERNATIONAL PACT FOR THE PROTECTION OF ARTISTIC AND SCIENTIFIC INSTITUTIONS, HISTORIC MONUMENTS, MISSIONS AND COLLECTIONS ORIGINATED BY NICHOLAS ROERICH BETWEEN THE HIGH CONTRACTING PARTIES**

The President of the United States of America.

The President of the German Republic.

His Majesty, the King of Great Britain, Ireland and of the British Dominions beyond the seas, Emperor of India.

The President of the French Republic.

His Majesty, the King of Italy

His Majesty, the Emperor of Japan.

Etc., Etc., Etc.

Whereas their high offices impart on them the sacred obligation to promote the moral welfare of their respective Nations and the advancement of Arts and Sciences in the common interest of Humanity,

Whereas the Institutions dedicated to the education of youth, to Arts and Sciences, constitute a common treasure of all the Nations of the World, Recalling the ideas sponsored by a wise and generous foresight which have guided the High Contracting Parties in framing the Geneva Convention of August 22nd, 1864, for the amelioration of the condition of the wounded.

The General Act of the Conference of Berlin of February 26th, 1885, which provides for a special protection to be accorded to scientific Expeditions,

The Final Acts of the Hague Conference of July 29th, 1899, and of October 18th, 1907, and especially Article 27 of the Annex of the Fourth Convention of the Second Conference relative to the safety of buildings consecrated to Religion, to Arts, to Sciences and to Charity as well as to historic Monuments, in case of siege and bombardment.

Article II of the Convention of St. Germain-en-Laye of September 10th, 1919, confirming the above mentioned provisions of the General Act of Berlin of 1885, concerning the special solicitude to be granted by the High Contracting Parties to scientific Missions, to their equipment and to their Collections,

The Pact for the renunciation of War as an instrument of national policy signed at Paris on the 28th of August 1928;

Adopting the propositions of Professor Nicholas Roerich tending to create an efficient protection for all centers of Culture,

Have resolved to conclude a solemn Pact with the aim of perfecting the protection enjoyed by all civilized countries by Institutions and Missions dedicated to Arts and Sciences, as well as by

artistic and scientific Collections, and historic Monuments, And have nominated for this purpose their respective Plenipotentiaries, to wit: who, after having respectively presented their full powers in due and proper form, have agreed as follows:

#### ARTICLE I

The historic Monuments, educational, artistic and scientific Institutions, artistic and scientific Missions, the personnel, the property and collections of such Institutions and Missions above mentioned shall be deemed neutral and, as such, shall be protected and respected by belligerents.

Protection and respect shall be due to the aforesaid Institutions and Missions in the entire expanse of territories subject to the sovereignty of the High Contracting Parties, without any discrimination as to the State allegiance of any particular Institution or Mission.

#### ARTICLE II

Each of the High Contracting Parties may furnish to the Registrar of the Permanent Court of International Justice at the Hague, to the International Institute of Intellectual Cooperation at Paris or to the Educational Department of the Pan-American Union of the City of Washington, as it may choose, a list of Monuments, Institutions, Collections and Missions, either public or private, which it desires to place under the special protection provided for by the present Pact.

The Monuments, Institutions, Collections and Missions thus registered may display a distinctive flag (red circle with a triple red sphere in the circle on a white background) which will entitle them to the special protection and respect on the part of the belligerents, of Governments and Peoples of all the High Contracting Parties.

The aforesaid Monuments, Institutions, Collections and Missions shall cease to enjoy the privileges of neutrality in case they are made use of for military purposes.

#### ARTICLE III

In case of any act alleged to be in contradiction to the protection and respect due to artistic and scientific Institutions, Monu-

ments, Collections and Missions, as stipulated in the present Pact, the complaining Institutions or Missions shall have the right to appeal, through the intermediary of its Government, to the International Institution with which it has been registered. The International Institution concerned shall then bring the complaint to the cognizance of all the High Contracting Parties who may decide to constitute an International Committee of Inquiry on the case. The findings of such an International Committee of Inquiry may be rendered public. The details regarding the constitution and functioning of the above mentioned Committee of Inquiry shall be regulated by a special agreement.

#### ARTICLE IV

The High Contracting Parties declare that it is their intention to provide by appropriated measures of internal legislation the enforcement of the protection enjoyed in their respective territories by artistic and scientific Institutions, Monuments, Collections and Missions, either National or Foreign.

The present Pact shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods.

The instruments of ratification shall be deposited with the State Department of the United States of America.

The present Pact shall go into force as soon as it has been ratified by the majority of the original signatories thereof.

The Powers who are not signatories to the present Pact shall have the right to join it, by means of a notification addressed to the Government of the United States of America.

In witness whereof the respective Plenipotentiaries have signed the present Pact and affixed their seals, one in duplicate (one copy in the English language and the other in the French language) both of which to be regarded as being equally authentic in the city of Washington, on the.....day of.....of the year.....

Signatures.

*(The Roerich Pact and the Banner of Peace. New York, 1947, pp 27-29.)*

# The Roerich Pact importance for development of major legal doctrines for twenty-first century: Rule of Law and Legal State (Rechtsstaat)

*“In opening this Pact to the adherence of the Nations of the world, we are endeavoring to make of universal application one of the principles vital to the preservation of modern civilization. This Treaty possesses a spiritual significance far deeper than the text of the instrument itself.”*

Franklin Delano Roosevelt,  
President of the USA

(from the speech upon the signature  
of the ‘Roerich Pact’ Treaty)

*“The ancient monuments in their entire splendor will serve as the best foundation for any state. It is for their beauty’s sake that the traffic on national thoroughfares should increase, it is for their sake that the Minister of Finance should provide the most convincing arguments in his financial suggestions. It is not an overstatement to call the treasures of art a people’s stronghold. All construction, all education, all spiritual inspiration, all joy and salvation are conceived upon the foundation of Cultural values. At first, we should recognize and preserve our Culture, and then the banknotes of our country would become attractive.”*

Nicholas Roerich

**T**he Russian painter Nicholas Roerich studied law at the St. Petersburg University in 1893-1897, and the greatest American politician, four times elected President of the USA — Franklin D. Roosevelt studied law at the Columbia University in 1905-1907. Their professors belonged to different legal traditions: European continental civil law in Roerich’s case and Anglo-American common law in Roosevelt’s.

The situation with finding a common language between lawyers of the common law and the civil law countries was not much better in the first part of the twentieth century than it is today. And today it is still not good enough. The Rule of law concept is often perceived as “foreign” in the civil law countries, the legal tradition of which is based on the *Rechtsstaat* concept (meaning ‘legal state’, ‘law-bound state’, or ‘law-governed state’) introduced by the German philosopher Immanuel Kant in the late eighteenth century.

We may note that German language found a very interesting workaround when referring to the rule of law concept. As was mentioned in the “Moscow Rule of Law Symposium White Paper”, the original Russian approximate rendition of the Rule of Law concept was “правовое государство” (literally: “the Legal state”), as inherited from the German legal tradition, where it sounded as “Der Rechtsstaat”. The modern *Langenscheidt — Harper Collins German-English Dictionary* translates *the rule of law* as *die Rechtsstaatlichkeit* instead of just using loaned translations, as other European languages do. This concept adopts the written constitution as a supreme law of any country (the rule of constitution).

The Roerich Pact is not only a relatively short text of the international treaty. It is a conglomerate of legal ideas about a new state order in which the State and the Culture are not different but instead very closely permeate each other. A measure of this interference is the share of state budget annually spent on culture, art and education, which is always to exceed military expenses. Another point is the legal recognition of the fact that the defense of cultural objects is more important than the defense in its traditional meaning, and the protection of culture always has precedence over any military necessity. Extremely important in the framework of ideas of the Roerich Pact is the recognition that the safety of any foreign cultural object on the territory of a foreign state must be also respected and treated as a factor much higher in significance than military willingness to bomb, destroy or use it for military purposes. One may say that it is a utopian, unrealistic, and impossible approach, but it were the Roerich Pact ideas that laid the founda-

tion of an international treaty promoted by one of the greatest US Presidents. This was because Roosevelt, like Roerich, considered the care for future generations to be a corner stone of the existence of the rule of law and the legal state.

The famous Russian thinker and artist Nicholas Roerich managed to continue and have developed into a profound and feasible doctrine the famous maxim first proclaimed by Fyodor Dostoyevsky, "The Beauty will save the World!" Hence starts a very powerful Russian movement in the development of the concept of aesthetical statehood, which as yet stays beyond the spotlight of attention of philosophy of law and legal science.

The concept of state as a work of art was first suggested in the nineteenth century by Jacob Burckhardt, who was Swiss historian of art, specializing in Italian Renaissance, and who gave this name to a chapter of one of his books, where he was comprehensively describing the types of Italian statehood in the 14<sup>th</sup> and 15<sup>th</sup> century with all the advantages and disadvantages of its development. The concept itself had not been formulated to a completion and was expressed in a general idea that the states of that period, as well as their rulers, considered the achievements in culture and art as most important for securing the prestige both of their states and their own, which finally resulted in the overwhelmingly victorious march of the unique Italian Renaissance art, literature, philosophy and science across many lands and centuries to come.

Roerich produced ideas based on the approaches used by Burckhardt and Dostoevsky, and Roosevelt shared his ideas and joined Roerich. It is important to realize that the Roerich Pact was only the first step towards the future development of a new legal culture. Roosevelt and Roerich, both lawyers by their background, also shared this idea. So it would have been better to call this treaty the "Roerich-Roosevelt" Pact.

These people admired each other. We know from the memoirs of the female painter, who was doing FDR's portrait at the moment when he died on April 12, 1945, that Roosevelt kept a bust of Nicholas Roerich in the living room of his "Little White House"

in Warm Springs, Georgia. Almost a decade after the signing of the Roerich Pact in the Oval office of the “Big” White House, FDR still kept this memory tribute to Roerich.

Obviously, Roosevelt was much closer to the aesthetic concept of the state than many people, including several of his biographers, were aware of. Famous British philosopher Isaiah Berlin wrote in his article published in 1949:

“Thus Mr. Roosevelt stands out principally by his astonishing appetite for life and by his apparently complete freedom from fear of the future; as a man who welcomed the future eagerly as such, and conveyed the feeling that whatever the times might bring all would be grist to his mill, nothing would be too formidable or crushing to be subdued and used and molded into the pattern, of the new and unpredictable forms of life, into the building of which he, Mr. Roosevelt, and his allies and devoted subordinates would throw themselves with unheard-of energy and gusto. This avid anticipation of the future, the lack of nervous fear that the wave might prove too big or violent to navigate, contrasts most sharply with the uneasy longing to insulate themselves so clear in Stalin or Chamberlain.

So passionate a faith in the future, so untroubled a confidence in one’s power to mold it, when it is allied to a capacity for realistic appraisal of its true contours, implies an exceptionally sensitive awareness, conscious or half-conscious, of the tendencies of one’s milieu, of the desires, hopes, fears, loves, hatreds, of the human beings who compose it, of what are impersonally described as social and individual “trends.” Mr. Roosevelt had this sensibility developed to the point of genius. He acquired the symbolic significance which he retained throughout his Presidency, largely because he sensed the tendencies of his time and their projections into the future to a most uncommon degree. His sense, not only of the movement of American public opinion but of the general direction in which the larger human society of his time was moving, was what is called uncanny. The inner currents, the tremors and complicated convolutions of this movement, seemed to reg-



ister themselves within his nervous system with a kind of seismographic accuracy...

This feeling of being at home not merely in the present but in the future, of knowing where he was going and by what means and why, made him delight in the company of the most varied and opposed individuals, provided that they embodied some specific aspect of the turbulent stream of life, stood actively for the forward movement in their particular world, whatever it might be ...

Something not unlike this same chasm divides America from Europe (and the twentieth century from the nineteenth). The American vision is larger and more generous: its thought transcends, despite the parochialism of its means of expression, the barriers of nationality and race and differences of outlook, in a big, sweeping, single view. It notices things rather than persons, and sees the world (those who saw it in this fashion in the nineteenth century were considered Utopian eccentrics) in terms of rich, infinitely moldable raw material, waiting to be constructed and planned in order to satisfy a worldwide human craving for happiness or goodness or wisdom. And therefore to it the differences and conflicts which divide Europeans in so violent a fashion must seem petty, irrational, and sordid, not worthy of self-respecting, morally conscious individuals and nations; ready, in fact, to be swept away in favor of a simpler and grander view of the powers and tasks of modern man ...

To Europeans this American attitude, the large vista possible only for those who live on mountain heights or vast and level plains affording an unbroken view, seems curiously flat, without subtlety or color, at times appearing to lack the entire dimension of depth, certainly without that immediate reaction to fine distinctions with which perhaps only those who live in valleys are endowed...

Mr. Roosevelt was imaginative, optimistic, Episcopalian, self-confident, cheerful, empirically-minded, fearless, and steeped in the idea of social progress: he believed that with enough energy and spirit anything could be achieved by man; he shrank as much

as any English schoolboy from probing underneath the surface, and saw vast affinities between the peoples in the world, out of which a new, freer, and richer order could somehow be built”.

Also, Isaiah Berlin mentioned that Roosevelt did not leave to history explanations of many of his actions. He wrote, “Mr. Roosevelt has not left us his own account of his world as he saw it; and perhaps he lived too much from day to day to be temperamentally attracted to the performance of such a task.”

As of the early twenty-first century, the rule of law has become a worldwide international movement. However, no clear and global definition of the “Rule of Law” has yet been articulated that can be recognized and easily translated into all languages and cultures, because the term itself has been used primarily in the English-speaking countries. Right now most of American law students, as well as some professors of law schools will answer that “rule of law” means “black letters” or concrete rule established in every judgment of the court. The legal and philosophical concept of the rule of law as “Rule According to Higher Law” is not so broadly known even in the USA. It is seems quite ironical that, when the American Bar Association is trying to introduce the rule of law abroad, it lacks its more certain and single-minded definition at home.

A conundrum is presented when the government acts in strict accordance with well-established and clearly defined legal rules and still produces a result that many observers consider unfair or unjust. For instance, before the Civil War in the USA, African Americans were systematically denied their freedom by means of carefully written codes prescribing the rules and regulations between the master and a slave. Although these slave codes were often detailed, unambiguous, and known to the public, their government enforcement often produced negative results from the viewpoint of the rule-of-law concept. As a matter of fact, until the sixties (for the USA) and the nineties (for South Africa) of the twentieth century some legal rules and regulations were limiting the rights of people because of the colour of their skin. One of the

most recent and widespread examples are the anti-terrorist laws passed and used in many countries that give a free hand to the policing with little or no respect to human rights.

Such repugnant laws do not comply with the rule of law. Some leaders argue that a government may deprive its subjects of fundamental liberties as long as it does so pursuant to a duly enacted law. During the NUREMBERG TRIALS, some political, military, and industrial leaders of the Nazi Germany unsuccessfully advanced this argument to defend themselves against Allied charges that they had committed abominable crimes against European Jews and other ethnic minorities during WWII. Despite its ancient common law history, the rule of law was not celebrated in all quarters. The nineteenth-century English philosopher Jeremy Bentham described the rule of law as “nonsense on stilts.” The twenty-first century saw its share of political leaders who, by using domestic law, oppressed persons or groups without warning or reason, governing as if no such thing as the rule of law as “Rule according to Higher Law” existed.

All written laws must conform to the universal principles of morality, fairness, and justice. It is a necessary corollary to the legal axiom that “no one is above the law,” the rule of law requires the government to treat all persons equally under the law. The unwritten principles of morality, fairness, and justice, equality, autonomy, dignity, and respect are said to transcend ordinary written laws that are enacted by the government. Sometimes known as a higher law theory, such unwritten and universal principles were invoked by many who argue for the existence of two-level legal regulations: one in the national law of any country, and the second higher level, sometimes written in the UN or other international treaties or Human Rights International Conventions, sometimes unwritten in legal documents and implemented mostly from time to time by the courts decisions. We may find in the history of human thought, for instance, that Thomas Aquinas and, later, Francisco Suarez argued that the rule of law represents the natural order of God as ascertained through divine inspiration and human reason which is higher than the law created by hu-

man legislators or executives. In the seventeenth century, the English lawyer Edward Coke said that “when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.” Here common sense and common law almost replace God’s will. Maybe it is not a bad definition for common law countries but civil law countries including continental Europe, Japan, Korea, some Asian, Latin American and African states can not use it. Now with a lot of religious scepticism the former “God’s will” should be replaced by a more concrete definition to describe “higher law.”

In this century, the Roerich Pact concept may give both the international and any other national legal community “the Higher Law” in the form of a Law on the defence of Culture on behalf of the future generations.

The *Rechtsstaat* doctrine introduced by German philosopher Immanuel Kant in the late eighteenth century is based on the concept of a written constitution as a supreme law of any country. The content of written national constitutions is a serious resource for establishing the vital role of rule of law in every civil law state, if the doctrine of *Rechtsstaat* and the rule of law will be closely knit together. Corporate law in civil law and common law countries has significant differences, whereas constitutional law is basically very similar. Constitutions in civil law countries are usually written in accordance with high international legal standards of humanity and thus we can use the supremacy of these constitutions over any other law in order to advance a constitutional framework for the rule of law implementation. And in this case the rule of law will be “national” and better accepted. To date, the term “rule of law” has been used primarily in the English-speaking countries.

In Russia, for instance, the definition of “Legal state” (law-governed state), derived from German legal tradition, is probably close to the Rule of Law concept and is an important principle reflected in the text of the Constitution of the Russian Federation adopted in 1993. The fact that the Rule of Law and Legal state is

very similar concepts thus in fact has the effect of making internationally accepted standards of the Rule of Law mandatory on Russian authorities. A similar situation may be found in many other transitional and developing countries because overwhelming majority of them have written constitutions that include progressive legal provisions. The content of written national constitutions is a serious resource for establishing the vital role of Rule of Law in every state.

Almost by definition, constitutional law and the constitution itself enjoy supremacy over other laws and have a spiritual basis. Any country will be more sensitive to the rule of law in general if it values, first of all, the national constitution and constitutional principles, instrumental in creating a proper distribution of national wealth and economic resources.

In our time, the most prominent legal organizations of the Western world admit an obvious deficiency (for the needs of the twenty-first century) in the subject matter of the well-known legal and philosophical principle, called the 'Rule of Law'. This was expressed in the energetic efforts undertaken by the International Bar Association, with its million-plus members in more than 200 countries of the world; and the American Bar Association, with its half-a-million membership, to initiate the so-called World Movement for Creation of the Up-to-date Rule of Law subject-matter in close connection with all of the most important aspects of human life.

Continental Europe is far less active in the support of its own Legal State (Rechtsstaat) concept, which was generally formulated in the late 18<sup>th</sup> century, — the concept which now does not appear adequately advanced to live up to the needs of the early third millennium.

As for Russia, the situation here is quite special, since the Legal State (low-bounded, law-restricted, often translated as rule of law state") is both a principle and a norm of its Constitution adopted in 1993. Therefore, the development of a Legal state doctrine and concept, adequately adapted for the needs of the twenty-first century, is not a mere free will of the state, but a legal obligation

both for the state and society. In this connection, it is necessary to take into account the aesthetical concepts of statehood, which could play a key role in the development of a Legal state concept, i.e. help Russia (and many others countries) realize in what kind of state we are living now; or, to put it more exactly, what kind of state do we need to build.

The concept of state as a work of art was first suggested in the nineteenth century by Jacob Burckhardt had not been formulated to a completion and was expressed in a general idea that the states of that period, as well as their rulers, considered the achievements in culture and art as most important for securing the prestige both of their states and their own. The lack of precise definitions in the formulated concept can be easily explained, on the one hand, by its intuitive theoretical conspicuity, and, on the other hand, by absence of significant constitutional legal analysis of relationships between state and culture.

On the one hand, we have bookish sophistications of Plato, Thomas More, Suarez, and Kant; and, on the other hand, — the idealization of ancient Athens, Renaissance Florence, the Jesuit Guarani Republic in the 18<sup>th</sup> century Paraguay, the “Golden” and “Silver” Age Buddhist states, whether they really existed or not. The rule of philosophers, the Russian Old Believers’ freedom land of Belovodye, the mystic Tibetan Shambala and its Western analog — Shangri-la...

Besides, the aesthetical concept of a Legal state are very closely intertwined, which was perceived already in the early twentieth century by such an intuitive philosopher as Nicholas Roerich (1874-1947), but was not yet so evident to others.

Somehow, the tradition of Russian philosophical science refers the aesthetical concept of statehood to the achievements of German philosophical thought and pays little attention to the significant contribution made to the former by Russian thinkers of the twentieth century.

Undoubtedly, the German philosophers, especially Kant, should be given all due credit they deserve. The infatuation with Hegel, inherited from the Marxist borrowings of his ideas, and, therefore,

allowed even under the Soviet regime, has somewhat overshadowed for us the true significance of Immanuel Kant (1724-1804) as the author of the Rechtsstaat (Legal state) doctrine. But the time for implementation of this doctrine in Russia has come only recently, after the adoption of 1993 RF Constitution, since Kant was basing his doctrine on none other but constitutionalism.

Kant had thus formulated the main problem of constitutionalism, “The constitution of a state is eventually based on the morals of its citizens, which, in its turns, is based on the goodness of this constitution.”

But Kant’s central idea is that the history of future is created today, being based not on the acquired experience of either negative or positive results achieved during previous activity, but rather on some constitutional ideal, which can be perceived axiomatically, *a priori*, by way of its indisputability. This, for example, can be the achievement of peaceful and happy existence of all people under the aegis of a common constitution. Kant’s idea is the foundation for the new constitutionalism of the twenty-first century and constitutional economics.

If we use properly edited translations of Kant’s works, we will see that even such his traditionally believed complicated for understanding work as *The Critique of Pure Reason* proves to be quite a page-turner. Let us cite from there the classical definition crucial for correct understanding of the essence of the Legal State (Rechtstaat) according to Kant,

“...A constitution of the *greatest possible human freedom* according to laws, by which the *liberty of every individual can consist with the liberty of every other* (not of the greatest possible **happiness**, for this follows necessarily from the former), is, to say the least, a necessary idea, which must be placed at the foundation not only of the first plan of the constitution of a state, but of all its laws. And, in this, it not necessary at the outset to take account of the obstacles which lie in our way —obstacles which perhaps do not necessarily arise from the character of human nature, but rather from the previous neglect of true ideas in legislation. For

there is nothing more pernicious and more unworthy of a philosopher, than the vulgar appeal to a so-called adverse experience, which indeed would not have existed, if those institutions had been established at the proper time and in accordance *with the ideas of a perfect state*... Now although a perfect state may never exist, the idea is not on that account the less just, which holds up this maximum as the archetype or standard of a constitution, in order to bring legislative government always nearer and nearer to the greatest possible perfection. For at what precise degree human nature must stop in its progress, and how wide must be the chasm which must necessarily exist between the idea and its realization, are problems which no one can or ought to determine — and for this reason, that it is the destination of freedom to overstep all assigned limits between itself and the idea.” (*Chapter 5, End of Section 1*)

Now remember the word “happiness” used by Kant in the above quotation. When Kant in his *Critique of Pure Reason* came straight up to the issue that the idea of “happiness” needed to be provided with a legal definition so that the right for happiness (or, as the Russian Constitution puts it, “well-being and prosperity”) could become considered as *quid juris* (a legal issue), rather than from a standpoint of “universal condescension”. These words of Kant can be taken not as a mere explanation but rather as a manifest of the Legal state, especially when accepting his correct and more than timely naming of inferior legislative activity as a significant impediment to the making of a Legal state. Besides, a legal constitutional definition of happiness as “well-being and prosperity” is directly related to the aesthetical concept of statehood, for which, in its turn, the modern concept of constitutional economics is very important.

This “improbable realism” of our present and future is also based on the ideas, discovered by Immanuel Kant, for example, in his *Groundwork of the Metaphysic of Morals*:



“The task of establishing a universal and permanent peaceful life is not only a part of theory of law within the framework of pure reason, but per se an absolute and ultimate goal. To achieve this goal, a state must become the community of a large number of people, living provided with legislative guarantees of their property rights secured by a common constitution. The supremacy of this constitution... must be derived *a priori* from the considerations for achievement of the absolute ideal in the most just and fair organization of people’s life under the aegis of public law.”

Here we must pay attention to the words of Soviet Georgian eminent philosopher Merab K. Mamardashvili from his lectures at the University of Tbilisi (*Mamardashvili M. K. Estetika myshleniya, M.: Moskovskaya shkola politicheskikh issledovaniy, 2000*):

“Both unacceptable and alien European philosopher, which is what Kant has been on the Russian soil. Russian philosophy and culture have always been demonstrating some antagonism against Kant...”

Maybe because of this antagonism against Kant that the modern Russian philosophy of law spins in its ruts, especially when it comes to developing the constitutional concept of a Legal state (Rechtstaat). Lagging 200 years behind in the proper understanding of Kant’s ideas of the Rechtstaat, Russian legal science can turn to more recent and, as expressed in Russian, aesthetical concepts of statehood belonging to the famous Russian thinker and artist Nicholas Roerich who managed to continue and have developed into a profound and feasible doctrine the famous maxim first proclaimed by Fyodor Dostoyevsky about Beauty which save the World.

It is known that Roerich used to dictate his main philosophical treatises and articles (with description of ideas of Roerich Pact), his secretary recalls that he was typewriting these dictations to a clean copy in real time and afterwards sent then directly to pub-

lishers. This makes Roerich's works feel so uniquely conversational, spared from editorial interventions, containing unexpected digressions and, sometimes, repetitions. In any case, Roerich's style greatly differs from the academic style universally accepted in the official philosophical and legal science works, additionally bled dry by the Soviet editorial censorship with its deeply rooted evil traditions.

This Socratic-Platonic style of presentation appears to have enhanced the author's thought and did not let escape even a smallest important detail. He cannot wait to share his thoughts with others, he believes them to be so evident that at times looking in the window on the snow-clad crests of the Himalayas and inhaling the world's purest air, he presents his ideas in the form which "flies above" the conventional mind of a city dweller. Sure enough, such a domestic man as Kant, who had never traveled in his life, could simply look up at the spire of the city cathedral, whereas old Flemish artists could do the same, regarding the belfries of Bruges churches or the top of its watchtower as their symbolic spiritual Himalayas, but all this still does not belong to the category of mass perception.

Mamardashvili said in his lectures of 1987, speaking about the process of presentation and perception of philosophical thoughts and ideas:

Plato says, for the man who thinks to embellish and glorify himself with his thoughts, and not to remember something, references to Plato's writings simply do not exist for one reason — on what Plato is in fact thinking of (and the ideal state is indeed the matter of his thinking), there can exist nothing in writing.

... In this sense, any philosopher or thinker is a borderline being, a representative of the inexpressible... But let's return to Plato who then said quite interestingly that the thing expressible was only something that had momentarily flashed exclusively during a free conversation. This something can flash in the air as a spark between people engaged in a conversation for a split second, completely unintended by the one who was talking. Usually, we con-

sider our speech as something prefabricated to express an already formed thought.

These observations sufficiently illustrate Roerich's wisdom trying to combine the Socratic-Platonic method of ideation with the immediate putting to paper and subsequent publication of his thoughts, flashing through his mind like lightning or a shooting star. The above-cited words of Plato to the effect that "the thought flashing at the utmost exertion of human abilities of the ideation producer" requires "the respective strenuous effort" on the part of the recipient are fully applicable to Roerich.

The study of Roerich's philosophical and legal heritage is absolutely imperative for the Legal state doctrine development task, — first of all, because Roerich could formulate both the foundation and the most characteristic trait of a Legal state without which the corresponding doctrine development may become unattainable, at least, at the present stage.

Any attempt to treat the views of Roerich on statehood and law condescendingly, justifying such an approach by his status of a "mystic" and a free-lance artist, must be immediately repudiated. Firstly, Nicholas Roerich had a law degree; his graduation dissertation presented at the St. Petersburg University in 1898 was entitled "The legal standing of artists in Ancient Rus." Secondly, based on his aesthetical concept of statehood and still in his lifetime, with his direct participation, dozens of countries throughout the world had adopted new progressive laws and signed important international treaties. Only very few thinkers of all times can put a similar feather in their caps. Thirdly, and the most important for us, — Roerich's ideas provide the decisive approach routes for the making of the Legal state doctrine, which is still in embryo, both on the global scale, in general, and in the version adapted for Russia, in particular, according to the authoritative opinion of Valery Zorkin, President of the Russian Constitutional Court.

The seeming naïveté of some Roerich's ideas is matched by the similar naïveté of his contemporaries, the leading statesmen and politicians, among which we can, first and foremost, name the US President Franklin Delano Roosevelt, who in 1943 kept at his

home a bronze bust of Roerich, and tried to acknowledge his ideas by way of adopting a universal law. Before Roosevelt, a similar naïveté was demonstrated by President Abraham Lincoln, and even earlier by an almost entire body of US Founding Fathers. Maybe, today's Russia more than ever before lacks the naïveté of Roerichian proportions.

Besides, it was our “naïve” Roerich who for the sake of his ideas had risked his life so many times, becoming the first European who had twice crossed the entire Himalayas — from South to North and back. It was our “naïve” but inexorable Roerich who had been getting closer to the Shambala of his dream and his creed. His deeds of physical valor appear sufficient to overbalance the combined physical efforts of all leading philosophers of the twentieth century. Now we would like to consider Roerich's views on the issues of philosophy and statehood without getting involved into discussions on mysticism, esotericism, theosophy, visions and night dreams, and mahatmas' letters. Simply said, let's put aside Roerich's own soul beliefs, since, as he writes in the end of his book *Altai-Himalaya*, those who have never visited the Orient (i.e. primarily Tibet and the Himalayas) could hardly get his verbal message targeted at the future.

Let's now turn to concrete conceptual provisions (completely unrelated to the theme of *Journey to the East*) of Roerich's philosophical and legal concept of the state. This concept is based on the main provision saying that the primary duty of the state is to sustain and develop the spiritual unity of its citizens, by carefully preserving the best specimens of national cultural heritage, promoting universal Culture and spiritual growth of all people, especially the young ones. Roerich acknowledges the authority and adequacy of a national leader only if the latter has the qualities of a true spiritual leader, i.e. if his cultural level allows him to cope with the above-mentioned state tasks. The spiritual development of a nation must be based on positive (creative) values and must be free of any destructive charge, intended to demolish any other cultures and their most prominent cultural monuments. At that, as opposed to the notorious post-9/11 analysts, ratioci-

nating on ‘the war of civilizations’, — primarily, on that between the Western (Judeo-Christian) and Eastern (Islamic) civilizations (such voices were heard already in Roerich’s lifetime), Roerich emphasizes the fundamental similarity of all world religions and cultures, as well as their interpenetration and their intertwined essence, which is still pending recognition and research by the modern historical science. By developing and promoting this historical similarity, seen as a fusion of cultures and religions both within and without the borders of multi-confessional and multicultural countries, the state will be realizing its main task of development of cultural and spiritual unity which alone should become a prerequisite for propitious and peaceful development accompanied by corresponding economical benefits and an increase of popular well-being. At that, the major share of profits received by the state should be directed at the development of culture, which, as it was already mentioned, would lead to a further growth of economical prosperity.

These are in brief the main provisions of Roerich’s philosophical and legal concept of the state. He perfectly realizes the difficulties on the way to its implementation and in his book *Heart of Asia* quotes a passage from the body of ancient written Oriental wisdom, saying that an attempt to enlighten the world is undertaken once in a century but none of these attempts were successful. He also writes *ibid.*, “Be it in peculiar manifestations, or be it in the vexations of spirit, but let the human heart beat for the sake of culture in which all creative findings should merge together. To think in the right direction means to be already moving along the victory path.”

If we look from the above viewpoint at the direction (if such a direction exists at all) our philosophical and legal science takes when defining the fundamental provisions of its rule-of-law state doctrine (doing so not for the sake of pure academic theory, but for practical application of the concept and principle of a Legal state, as is stipulated by Article One of the Russian Constitution), we will see that Nicholas Roerich’s approach is totally correct. Incidentally, what puts Roerich closer to Kant and makes the for-

mer, among other things, a follower of Kantian philosophy, is the axiomatic assumption that human happiness is based on peaceful creative existence under protection of the state and its leaders, and such an assumption must be accepted *a priori*, i.e. indemonstrably.

But a different thing is much more important, it is the orientation of the state towards the prosperity and well-being of future generations and evolutionary making of a better future civilization by way of developing and promoting people's culture and education.

It is the corresponding spending of the state money when yet unborn future generations are as if given the floor at each budgetary committee of any Parliament (not only during readings of medium- and long-term economical and financial programs), even before the adoption of annual budgets. And this is what is called constitutional economics in 21<sup>st</sup> century.

We need to understand that the famous Roerich Pact was needed not for its own sake but it marked a significant milestone in trying to influence similar processes happening inside every state. Its most important part was the appeal to internal legislations of the participating countries, and, above all, the implantation into the mind of the national public of the idea of inviolability, applied to the most significant art treasures and monuments of culture. Roerich wrote: "Peace cannot be established by government decrees. The real peace will be guaranteed only when the nations realize the worthlessness of mutual enmity and strife for destruction. 'Peace through Culture' — we shall never cease reiterating this truth."

One Russian expert in Machiavelli is fond of repeating in his publications the same platitude, — "It is a known fact that politics is a dirty business." By saying and thinking so, he demonstrates a sheer ignorance of the subject matter of his decades-long research. As a matter of fact, Machiavelli was describing the horrors and treachery of evil rule with an intention to clean the politics of a desired worthy state from dirt and blood. Here also we see not a hidden but an openly demonstrated key to the realization of Ro-

erich's philosophical and legal credo, — “Politics is a clean business!”

We were told within Russian philosophical community that the concept of a state as a work of art had been proactively and successfully used in the Third Reich, which adopted an ancient solar symbol — the swastika, proclaimed the similitude of Arian national cultures, revived the ancient tradition of torchlight processions, performed the operas of Richard Wagner, and, finally, collected the works of art obtained from wherever possible.

But in fact the Nazi aesthetics cannot pass the primary doctrinal criterion set forth by Roerich, viz. tolerance and respect towards the cultural, religious and other values of other peoples and nations, with the ensuing hence rejection of war and any violence towards other peoples and their cultures. It is no mere chance that Germany refused to join the Roerich Pact in the 1930s, the Soviet Union did the same, — obviously feeling indisposed to support Roerich, a de-facto émigré. The Nazi atrocities failed to surprise Roerich who had correctly evaluated the cultural potential of German political elite way back in the first month of WWI, when after the burning of the ancient Flemish city of Leuven with its famous university and library he wrote, “There is nothing to be surprised of. When Justice starts paying dues to the Belgian valor, please remember that German museums have some objects of art, which might somewhat, compensate for the losses sustained by the museums of Belgium. Let the art treasures go from the hands of barbarians in the hands of brave and cultured people... Long live Belgium! Eternal shame to Germany!”

The state, as an instrument for the preservation and development of Culture, the instrument defending both domestic and foreign cultural treasures, the instrument maintaining peace and avoiding wars, the instrument building a new civilization, based on the best cultural traditions of today and, therefore, spending the utmost economically reasonable assets for these purposes, — all this can be called a Renaissance state whose chief priority is the realization of “regenerating” (N. Roerich) ideas. Such aesthetical model of the state, explicitly and exclusively based on all variants

of the main world religions and axiomatic unity of the Occident and Orient, hardly has any analogs in the publication of all known world philosophers, and can be called the most complete presentation of the state-as-a-work-of-art concept. What is more, it provides the science of constitutional law and philosophy of law with all necessary methodology to initiate the development of the rule-of-law and legal state doctrines, which, in its turn, should lay the constitutional foundation for the Renaissance of Russia and create there, using Roerich's words, "a state of the future" and "a civilization of the future."

The Roerich Pact, still legally valid for many states of the American continent, including the USA, failed to become part of the UN international legislation, to a large extent because of the USSR opposition, nor did it serve as a foundation for the changes in Russian legislations, which could have allowed to efficiently protect our cultural heritage and create "a civilization of the future". But Peru and Honduras, based on the ideas of Roerich, had made a strong commitment during both war and peace "to provide by appropriated measures of internal legislation the enforcement of the protection enjoyed in their respective territories by artistic and scientific Institutions, Monuments, Collections and Missions, either National or foreign", while the country of the Russian philosopher's mother tongue refused to undertake similar obligations.

At the time when communication was so painfully long, when intercontinental flights and mobile telephones existed only in science fiction, when nobody could even think of something like the Internet, a poor Russian émigré in a period of 15 years (1920-1935) had assured the ratification by 21 countries of North and South America of the international treaty he himself had drafted, having become the leader of an influential international public movement, supported by organizations with millions of members. That is why his aesthetical model of statehood well deserves to be accepted as a subject for serious scientific research and analysis.

Any subterfuges to the effect that the idea of a rule-of-law state, as a state with a high aesthetical component, cannot be real-



ized must be rejected once and for all. One simply needs to work and substantiate further the conditions for the making of Legal state using the constitutional and legal notions and terminology. The idea of a Legal state must become the driving force for the achievement of well-being and prosperity for the citizens of Russia. The idea is primary, while the corrupted, over-bureaucratized and leading from war to war and from one crisis to another state matter is only secondary. Constitutionalism is an idealism of the higher order and the purest tint. Besides, the idea, written in the Constitution does itself become a law, which must be observed and implemented by the executive power. The constitutional ideals can and must be put into practice. And this shall happen, when the philosophers of law have become true constitutionalists and experts in the methodology of constitutional economics, while the constitutional jurists have become philosophers of law. Development of the Legal state doctrine can be started from the application and realization of the aesthetical concept of a Legal state, proposed by Nicholas Roerich.

Let us compare the provisions of the *Roerich Pact* with those of the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, adopted at The Hague (Netherlands) on May 14, 1954, and, in particular, the means of this protection. Let us also consider other related acts of international law: in the first place, the *First Protocol (On Protection of Victims of International Armed Conflicts)* (1977) to the *Fourth Geneva Convention (On Protection of Civilian Persons in Time of War)* (1949) and the *Second Protocol* (1999) to the already mentioned Hague Convention of 1954. According to Chapter 1, Article 4, Paragraph 1 of the *Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, "...Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such

property.” However, the next paragraph already contains a reservation clause saying that, “The obligations mentioned in Paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.”

This proviso refers to the objects of cultural property, which, pursuant to the Hague Convention of 1954, are subject to *general protection*. The Convention provides, besides general protection, also *special protection* for “a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing monuments and other immovable cultural property of very great importance.” But for these the Hague Convention also contains a proviso: their protection status is granted, “provided that they... are not used for military purposes.” Therefore, the protection of cultural property, stipulated by the Hague Convention of 1954, is always bundled with a reservation clause, with a proviso. But a reservation clause providing for “imperative” and “unavoidable” military necessity, inevitably “...opens a possibility for intentional destruction of cultural monuments from purely military considerations. Therefore, such wording is absolutely unacceptable and must be changed.”

In 1997, the *Amendment Protocol to the Geneva Conventions relating to the protection of victims of international armed conflicts* (also known as *Protocol I of 1997*) was adopted. This protocol stipulates that solely hostile military installations are to be made the target of military attack, while the civilian objects and population as such, as well as individual civilians of the unfriendly side, shall not be the object of such attacks. The objects of cultural property, being entirely civilian and as such, shall not be made the target of hostile military acts, directed against them, either. Therefore, the civilian objects, and, consequently, cultural property cannot be made the target of military attacks, unless the above civilian objects have been converted to hostile military use. This rule allows no exceptions.

In 1992, the Dutch government, in conjunction with UNESCO, commissioned Professor Patrick Boylan to conduct an extensive analysis of the Hague Convention of 1954 (together with its First

Protocol signed in the same year) in order to identify the reasons of its “evident unsuccess” in realization of the clearly defined and noble objectives stated therein. Having considered the recommendations contained in Prof. Boylan’s report, an international conference was convened, during which on May 17, 1999 was signed the *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, which became legally effective in 2004 and by April 2010 has already been ratified by 56 states. The Protocol inherited the provision of Protocol I of 1977 saying that the objects of cultural property may not become the target of hostile acts, unless these objects have been converted to military installations by the affected side. Protocol II of 1999, as opposed to Protocol I of 1977, has limited the scope of conditions, allowing the opposite side to treat an object of cultural property as the one converted to hostile military use. The Second Protocol (1999) to the Hague Convention creates a new framework of *enhanced protection* of cultural property having very great importance to the entire humankind, while preserving the *special protection*, stipulated by the Hague Convention. The objects of cultural property subject to *enhanced protection* must be entered into a separate list. The legal requirement for the qualifying distance from industrial centers or military installations, at which the protected objects should be located, was removed. At the same time, the exact understanding of the safeguarding scope for protection of cultural property remains vague and requires a simultaneous legal interpretation of several international treaties.

People wearing military uniform would hardly be able to correctly interpret the document, which, among other things, introduces criminal liability for the war crimes against Culture, if the meaning of such a document appears clear only to a narrow circle of highly qualified experts in international law; even more so, if a comparative analysis of provisions in several international treaties is also required. This alone should become a driver for the immediate creation of a new UN Convention for the Protection of Cultural Property in the Event of Armed Conflict, in which all provisions on the protection of cultural property should be worded

consistently and unambiguously. We believe that such an approach should not depend on the changes in the existing doctrines and can be supported by a majority of those participating in the discussion of this problem.

When developing a draft of this new Convention, it is important to go back to the Roerich Pact doctrine: the precedence of cultural property protection over the so-called *military necessity*. It is our deep conviction that ongoing progress in this direction should be inevitable, just as there should be no reasonable grounds to refuse incorporating the doctrine of Roerich into international treaties of the twenty-first century, if this approach had already been adopted and implemented seventy-five years ago by dozens of countries.

Text of the Hague UN Convention of 1954 “FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT” contains the following acknowledgement regarding a wider use of the Roerich Pact, “In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact...” Unfortunately, the Hague Convention did a very bad thing: it turned the main doctrinal pillar of Roerich Pact—the precedence of cultural property protection over military necessity—upside down, by establishing the decisive priority of the latter. This is why calling it figuratively — the “Roerich Pact” would be totally wrong, since, despite the fact that the Hague Convention of 1954 had developed some ideas borrowed from the Roerich Pact, it then completely changed the direction in which the development of international legal protection of culture from militarists was moving. That is why it was needed, within the framework of an international working group, to start the development of the new UN Convention for protection of culture, based on the doctrine first introduced by Nicholas Roerich. We expect this initiative to be proposed by Russia, but if the red tape in Russia naturally chooses to procrastinate, this movement can

be even more naturally initiated by Belgium or the Netherlands, or even by Belarus, Latvia, or Lithuania.

Nonetheless, ratification of the Second Protocol to the Hague Convention, as well as compliance with its requirements, still remains an important task for Russia — and this task does not run contrary to the development of a new Convention, since the latter's perfection and ratification could take many years, whereas the realization of the requirements of the Hague Convention of 1954 and its Second Protocol can be initiated already in 2010 — of course, if there is a respective political will. This can be done in the form of a ratification of the Hague Convention and accompanied by the adoption of corresponding statutory instruments in its support.

The Second Protocol has removed many shortcomings of the 1954 Hague Convention, but, at the same time, it remains to be very poorly suited for the concrete needs of its observation by military personnel. The Second Protocol is only a *supplement* to the Hague Convention, that is why it fails to remove the reference of “military necessity” from its text. It equally fails to introduce the unambiguous precedence, and, therefore, the absolute protection of cultural property, which was first proclaimed by the Roerich Pact. The Second Protocol, in comparison with the Roerich Pact, fails to protect scientific and educational institutions, only partially protecting cultural monuments, even though today, in the twenty-first century, the time is ripe for considering the need for protection of practically all objects of culture in the world.

We can make the following conclusions: the Convention of 1954 has proved itself inefficient and worthless. Even its most progressive provisions cannot refute this sad fact. That is why the creation of a new Convention, fully compatible with the ideas expressed in the Roerich Pact and dictated by the needs of the twenty-first century, is required. This new Convention must be utterly consistent and unambiguous in order to be clearly understood and complied with even by the military.

Without protecting Culture, we cannot ascend to Renaissance, and without Revival we cannot hope for a better future for our country.

“It would not be an overstatement to say that the language of art has many times become the most convincing, attractive and uniting language in the world. Not only the names of Apollonius, Rubens and many others are immortalized in the state edifices expressed through the language of art. The objects of art themselves many times proved to be the best messengers bringing peace and friendship to other countries. We often mentioned how the mutually beneficial exchange of cultural values sometimes helped to overcome misunderstanding and get ahead of verbal agreements. If our world, in Plato’s words, is controlled by ideas, then sowing the noble seeds of art should yield the best-loved harvest. That is why to acknowledge the widest significance and real value of art would not appear to us as something premeditated and artificial. So, let us value and preserve all things beautiful with our heartfelt care,” — **this is what and how Roerich wrote, having convinced dozens of countries, except for his own.**

**The Moscow-Bruges concept, combined with the “Tanchev-Zorkin” concept and the Roerich Pact ideas, provides a theoretical basis for the creation of a common legal and rule-of-law space for Europe and Russia in the twenty-first century**

In October 2009, it was my good fortune and privilege to become the initiator (together with the London-based magazine “The European lawyer”) of a discussion on the links and balance between the concepts of the Rule of Law and the Legal State (*der Rechtsstaat*). Actually, this discussion has never ceased to develop within the two major directions of the recent world movement for the rule of law. This movement was simultaneously and independently initiated in 2005 by the International Bar Association (IBA) where I am member of the Council and the American Bar Association (ABA). But ABA was mostly ignoring the *Rechtsstaat* concept, while IBA paid but very little attention to it.

For instance, in the book “The Rule of Law. Perspectives from around the Globe” (LexisNexis, 2009), edited by the great leader of the movement and the former IBA President, honorable Francis Neat, which is the summary of the IBA Rule of Law Symposiums for the previous four years, the Legal state is mentioned only twice, and even those two references contradict each other. On page 5, Francis Neate writes about the *Rechtsstaat* concept that it emerged in Germany and elsewhere, and that it “refers to a State in which the exercise of governmental power is subject to restrictions. It is this concept of Rechtstaat which most agree is the closest that many civil law countries have to the Rule of Law. While it focuses more on preventing unrestricted state power (in contrast to the protection of the rights of individuals which is, perhaps, emphasized more in common law countries) which is clearly part of any definition of the Rule of Law”. Probably with understanding that his “contrast” between restriction of state power and protection of individuals rights may not create clear definition, Francis Neat writes on page 55:

“The Rule of Law is an English concept. I am told that the equivalent in Russia, and possibly in other countries, is better translated as ‘Legal State’, or ‘a state governed by law’. If the latter phrase is acceptable then surely we are talking about the same thing. In a paper published in 2004, Mr. Valerii Zorkin, Chair of the Russian Constitutional Court, used the expression: ‘Supremacy of Law’. The best way to determine whether or not we are talking about the same concept is to look at the essential characteristics of the Rule of Law and to determine whether or not they are similar to the essential characteristics of the ‘Legal State’. This is what I propose to do.”

I more than agree with this proposal. I may mention that an additional problem is created by a “conformist” translation, when the Legal state (*der Rechtsstaat*) gets rendered into English from the texts in Russian or other languages as the “rule of law state”, thus tying the two concepts together linguistically, but not academically and conceptually.

On the suggestion of Mary Heaney, “The European Lawyer” Editor-in-Chief, I wrote an article that was published in the October 2009 issue of the magazine:

### ***Defining the Rules***

*As of the early twenty-first century, the rule of law has become a worldwide international movement thanks to efforts undertaken by the International Bar Association and some other organizations. However, to date no clear and global definition of “Rule of Law” has been articulated that can be recognized and easily translated into all languages and cultures, because the term itself has been used primarily in the English-speaking countries. The rule of law doctrine is not yet fully clarified even with regard to such established democracies as, for instance, Sweden, Denmark, France, Germany, and Japan. A common language between the lawyers of common law and civil law countries, as well as between the legal communities of developed and transitional countries is critically important for the success of the rule-of-law movement. But this concept is often perceived as “foreign” in the civil law countries, the legal tradition of which is based on the Rechtsstaat concept.*



## **Nuances**

*Der Rechtsstaat—meaning a legal state, law-bound state, law-governed state—is very close to, but still different from the rule of law, since it focuses on the issues of state and government — and it is this difference that creates numerous nuances. The Rechtsstaat doctrine was introduced by the German philosopher Immanuel Kant in the late eighteenth century and is based on the concept of a written constitution as the supreme law of any country.*

*About fifty percent of the world's countries have adopted new constitutions after 1990, and many of them — even after 2000. Such newly written constitutions serve as the supreme law in these countries. Most of these constitutions include an internationally accepted package of social and economic rights. In Russia, the term “legal state” is an important principle reflected in the text of its constitution. A similar situation may be found in many other countries, since an overwhelming majority of countries prefer to use written constitutions.*

*The content of written national constitutions is a serious resource for establishing the vital role of rule of law in every civil law state, if the doctrines of the Rechtsstaat and the rule of law become closely knit together. The corporate law in the civil law and the common law countries has significant differences, whereas their constitutional law appears to be very similar. Constitutions in the civil law countries are usually written in accordance with the high international legal standards of humanity and thus we can use the supremacy of these constitutions over any other law in order to advance a constitutional framework for the implementation of the rule of law. In this case the rule of law will look “national” and will be better accepted.*

## **Spiritual basis**

*The twenty-first century witnesses a significant development in constitutional economics — the academic discipline first introduced by the US Nobel laureate James Buchanan in the late 1980's. The rule of law movement has a strong spiritual basis, but without direct implications for the economic development it will often be regarded as utopian by most developing countries.*

*Constitutional economics focuses on such topics as proper distribution of the national wealth. It also studies government spending on the courts. In many countries with transitional and developing economies the courts are completely financial dependent from the executive power. This undermines the principle of “checks and balances” and creates an improper dependence of the judiciary.*

*Constitutional economics also investigates the latent governmental spending on the judiciary in the form of privileges, such as state-provided cars, country houses, and other bonuses. Such a system is completely outside the realm of transparency and creates a precedent for the corruption of the judiciary by the executive power.*

*Without using a constitutional economics approach, it will be difficult to ensure the real separation of powers in any national legal system.*

The President of the Constitutional Court of Bulgaria Evgenii Tanchev wrote a very valuable comment to my article:

“Expansion to new areas of constitutional regulation has been one of most impressive trends of our time. Growth of the constitutional law has been particularly in the fourth generation constitutions, which have included special provisions on the economic life and the economic principles. Constitutional economic regulation developed simultaneously with the principle of social state and both of them upgraded the classic legal state (Rechtsstaat) concept.

I strongly support Peter Barenboim’s position that the rule of law for the civil law countries must be explained through the legal state (Rechtsstaat) doctrine based on the concept of a written constitution as the country’s supreme law. The legal state doctrine in Europe has supremacy on the national state level for the countries having written constitutions, but on the European level the concept of rule of law will be very important”.

I mentally tie this opinion of Mr. Tanchev with the opinion of Valery Zorkin, the President of the Constitutional Court of Russia, who says that ongoing legal reform in Russia must be, first of all,

enforced within the legal system of spiritual and legal values of the Constitution, whereas both the laws and any changes thereof must be subordinate to the implementation of constitutional principles and norms. I consider a combination of the ideas expressed by the two heads of the constitutional courts of Bulgaria and Russia, who, as well as myself, have graduated from the Department of Law of the Moscow State University, as a very important new legal concept, which may harmonize the concepts of the rule of law and of the Legal state.

Therefore, calling this the “Tanchev-Zorkin Concept”, I publish it under this title solely as my personal viewpoint. I alone am to be held responsible for such an interpretation of the ideas expressed by the two leading constitutional thinkers of our time.

I would like quote another important comment to my article in the framework of discussion started by “The European lawyer” by well-known expert on Russian legal system Arthur Heath:

“Dr Peter Barenboim’s Comment “Defining the rules” in the October 2009 issue of *The European Lawyer* caught my attention because it is a window on an important and current discussion among common law and civil law lawyers on the meaning of the concepts “rule of law” and the “legal state”. I have recently been teaching aspects of the commercial law of the CIS to MBA candidates at the University of South Carolina, based largely on my experience in managing the Russian legal affairs of a major US bank for many years and in development consulting in Ukraine. In making any serious study of the law of such countries, one cannot fail be impressed by the astonishing rapidity with which sophisticated legal systems have been created since 1991, i.e. the actual creation of a “legal state”. One also cannot fail to notice the shortcomings and difficulties of that process.

The concept of “legal state” (“*pravovoe gosudarstvo*” in Russian, “*Rechtsstaat*” in German) is a fundamental, but undefined, principle that appears in the very first dispositive provision of Russia’s post-Communist constitution: “The Russian Federation — Russia — constitutes a democratic federative legal state with a republi-

can form of governance.”<sup>1</sup> Similarly, the very first dispositive provision of Ukraine’s Constitution declares: “Ukraine is a sovereign and independent, democratic, social, legal state.”<sup>2</sup> The effort to give that phrase meaning is anything but theoretical.

In the first instance, the phrase “legal state” in the former socialist camp was defined by what it was not. It was a reaction to the arbitrary rule of totalitarian regimes, just as the *Rechtsstaat* was a reaction to the arbitrary rule of feudal and absolutist regimes. The contrast between the legal state and what preceded it is not limited to the obvious political features of totalitarianism: suppression of individual expression, a meaningless electoral process, the use of the courts to imprison opponents, and in the worst periods mass terror. The contrast also embraced, in the purely civil sphere, the use of administrative command-control methods to govern the subdivisions of a monopolistic economic mechanism instead of the use of legal principles to guide economic relations and resolve disputes between independent parties; such methods were reflected in the atrophied condition of Soviet legislation<sup>3</sup>.

If the concept of “constitutional economics” seems somewhat foreign to our ideas of constitutionalism, perhaps it is because we have not had the recent historical experience of both political and economic activities being governed by top down decision-making rather than being regulated under an (ideally) impartial framework of rules adopted by a representative government. The concept is an important part of defining the legal state.

I interpret Peter Barenboim’s Comment in part as a call to flesh out the “legal state” in his and other countries with specific im-

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<sup>1</sup> Paragraph 1 of Article 1 of Chapter 1 of Section First of the Constitution of the Russian Federation (“Российская Федерация — Россия есть демократическое федеративное правовое государство с республиканской формой правления”).

<sup>2</sup> Article 1 of Section I of the Constitution of Ukraine (“Україна є суверенна і незалежна, демократична, соціальна, правова держава”).

<sup>3</sup> Of course the Soviet system had laws. That did not make it a “legal state”. In criminal law, it was not just that thousands of people were shot on the basis of lists initialed by Stalin, Molotov and others; for example, even the 1922 RSFSR Criminal Code from the supposedly liberal period of the NEP contained draconian definitions of counter-revolutionary capital crimes — including ex post facto provisions — which were antithetical to a “legal state”. In civil legislation, the short socialist Civil Codes were largely irrelevant to significant economic relations.

provements to the structures created in the last 20 years. The creation of those structures involved significant international cooperation. The methodology and specific tasks of such cooperation have dramatically changed, but it is an effort worth renewing. The benefit is mutual. Working on specific problems with lawyers from a different legal tradition invariably leads to a better understanding of one's own tradition as well as to a better ability to distinguish between what are genuinely universal principles and what are merely familiar conventions.”

Former Executive Director and General Counsel of the New York Stock Exchange Richard Bernard also writes his comment on my article:

“Peter Barenboim, writing in October 2009 issue of the European Lawyer, observes that if the rule of law movement fails to take into account the direct implications for economic development, most developing countries will regard the movement as utopian. To support his point, Barenboim highlights the contribution of US Nobel laureate James Buchanan, who argued that establishing the rule of law meant devising and improving rules under the umbrella of a national constitution so that ordinary economic life can proceed with minimal interference.

My career representing the New York Stock Exchange, first as a partner at Milbank, Tweed, Hadley and McCloy and then as the NYSE's General Counsel, gave me the opportunity to help in the development of the Russian and Egyptian securities markets. My experiences in Moscow and Cairo illustrate and extend Barenboim's points.

In trying to explain to my Russian and Egyptian colleagues the importance of establishing the rule of law in the development of capital markets, I often pointed to the risk premium that foreign investors charge in the absence of the rule of law. Like Gaul, investment risk is divided into three parts: enterprise risk, sector risk and country

risk. When evaluating a Russian oil company during the early 1990s, an investor cared deeply about how well the company was run (enterprise risk) and whether OPEC had opened up the oil taps (sector risk). But the investor also worried about whether the broker would abscond with the investor funds or the company would erase the investor's holdings from the share register. As a result, Russian stocks typically traded far more actively in New York and London than in Moscow. Investors (including Russian investors) knew that a NYSE or LSE trade removed the transaction risks that were, in part, a function of inchoate legal rules and institutions in Russia.

While predictability in the substance and enforcement of the rules of economic activity ranks first among an investor's concerns, Professor Buchanan's call for optimality in the rules also figures in an investor's risk analysis. But optimality does not mean simply importing best practices from abroad. Humility requires us to recognize that different national legal traditions and cultures may provide different paths to achieving predictability and optimality. When the then NYSE Chairman, John Phelan, led Wall Street luminaries to Moscow in 1990, he urged the Soviets to replicate the NYSE's origins in the coffee houses of Manhattan. But what the Soviets did not know about markets, they more than made up for in their knowledge of computers and of their own, far-flung country. So I — a champion of floor trading -- ended up helping the Russians create an electronic trading system.

Finally, we can see from the Russian and Egyptian experience (as well as from the Chinese experience) that the concept of a legal state based on pure constitutionalism may not be a predicate to an economic system based on the rule of law. Russia's, Egypt's and China's legal institutions generally fail to protect their citizens from the arbitrary exercise of governmental authority. Yet, globalization has required all three countries to heed Professor Buchanan's call, and devise and improve upon their rules of economic activity. This phenomenon underscores Barenboim's recognition that the concept of the rule of law finds its first expression in the economic arena."

On March 1, 2010 the Law Society of England and Wales launching its policy manifesto “Delivering Justice” today. The Society “*challenges all parties to commit to four major principles when campaigning and governing — if elected — after the next general election.*

*Ensuring meaningful access to justice for all;*

*Properly defending the rights of the people;*

*Working actively for good governance and better-law making;*

*Ensuring a strong and independent legal services sector for the benefit of all.”*

Law Society President Robert Heslett said:

“The Law Society has always worked to secure a fair and just society where the rights and liberties of citizens are properly protected. In our view all political parties need to commit publicly to ensuring that their policies support — rather than endanger — the rule of law. We risk destroying our freedoms under the law whilst we seek security. In recent years the policies of the major parties have not focused heavily enough on ensuring access to justice — and the increasing lack of availability of legal aid is a very worrying trend — the rule of law means nothing if there is no access to justice. We also need to ensure that civil rights and liberties are protected — not eroded — and that the process of governing itself is improved. All too often political parties react in a knee-jerk way to short term pressures, with legislation sometimes being rushed through with inadequate scrutiny from all sides. He added: “In our manifesto, published today, we focus on a return to the rule of law as our society’s principle in a time of economic, social and political change. The solicitors’ profession has been crucial, over the years, in supporting and maintaining the ‘rule of law’ and it remains committed to this. However, it is important that politicians of all parties themselves commit to supporting the rule of law both in their campaigning and governing. We challenge them to support our four principles.”

The statement of the Law Society is strong but then we come to definition of the rule of law it seems a little uncertain and too general.

The World Rule of Law Movement is an important initiative, with real practical consequences given the fact that a substantial majority of the world's states are developing or transitional countries among the twenty-one new states that have emerged from the former Soviet Bloc. About 50 percent of all countries of the World have adopted new constitutions since 1990, many of them since 2000. On the one hand, these written constitutions are the supreme law of the country and, on the other hand, most of them include an internationally accepted "package" of social and economic rights. This new wave of the constitutions creates a new situation with implications for the meaning of both constitutionalism and the Rule of Law. The rule of law in the twenty-first century should be more aptly called the "Rule of Constitutions" for civil law countries. The constitutions of post-socialist countries are indeed more than a mere set of declarations, which tended in socialist days to separate the constitution from the realities of society. This is why the Rule of Law has received in recent years "new fuel and a new engine" for movement into the third millennium.

The Moscow City Chamber of Advocate made its own contribution which may be found on its Website and also on <http://helmet.stetson.edu/artsci/polsci/media/worldruleoflaw.pdf>



## The Moscow-Bruges Concept of a Single Legal and Rule of Law Space for Europe and Russia

Moscow — Bruges working group first established by the Moscow City Chamber of Advocates, the Federal Chamber of Lawyers of the Russian Federation and the International Union (Commonwealth) of Advocates for preparation to the Rule of Law Symposium of the International Bar Association, which took place in Moscow on July 6, 2007, included the President of the Moscow State Legal Academy, Member of the Board of the Russian Academy of Sciences **Oleg Kutafin**, Russian banker and economist **Alexander Zakharov**, the President of the Academy of National Economy under the Government of Russia **Vladimir Mau**, **Dr. Marc M.R. Vuijlsteke** of the College of Europe, Bruges, Belgium, the President of the Union of Advocates of Ukraine **Tatiana Varfolomeeva**, **Sergey Kashkin** and **Paul Kalinichenko** of the Moscow State Legal Academy,

the President of the Moscow Chamber of Advocates **Genry Reznick**, Dean of Law School of the University of Economy and Finance, Sankt Petersburg **Alexei Liverovsky**, Deputy Director of the Institute of Legislation and Comparative Law under the Government of Russia **Vladimir Lafitsky** and others.

In order to be successful at the local level we will inevitably have to take into account the diversity of countries and legal systems. Therefore, it is important to adopt several tailored approaches that help establish the rule of law worldwide.

One of the appropriate directions for the study of rule of law and economic development to expand is to go beyond a business and corporate law perspective to study of fundamental principles of constitutional and institutional analysis. This constitutional approach is not purely theoretical, but should be utilized to serve more practical issues discussed within the rule of law concept.

Initial implementation of the rule of law as it impacts economic development naturally occurs at the constitutional level, and at this level there is an early commonality among countries that is

not the case for corporate law. Constitutional law includes the text of a constitution, constitutional principles, precedents in constitutional practice and decisions of the supreme national courts<sup>1</sup>, international human rights treaties and conventions, and decisions of international courts. Corporate laws vary significantly across countries. A major area of analysis could be the constitutional principles and texts, which have more similarity among the countries that regard themselves as democracies. For instance, corporate law in civil law and common law countries has significant differences, whereas constitutional law is basically very similar.

Almost by definition constitutional law and the constitution itself have supremacy over other laws. Any country will be more sensitive to the rule of law in general if they value first of all the national constitution and constitutional principles which are instrumental to creating a proper distribution of national wealth and economic resources.

Demonstrating the importance of the rule of law importance should be accomplished by citing concrete ideas for its practical implementation. Developing countries may have become a tired of a confusing flow of ideas for improvement addressed to them from developed countries and multinational institutions. To avoid confusion acceptance of the recent world rule of law movement, it is necessary to show the interrelations between the recent rule of law movement and with previous international technical assistance programs of economic improvement, legal and judicial reforms, and human rights etc.

We often see how mixed and indistinct one from another are the definitions of “constitutional reform”, “legal reform”, “law reform” and “judicial reform”. The rule of law movement is a good opportunity to clarify distinctions between them and create worldwide conventional terminology.

One could say that the rule of law is another way of describing legal reform because rule of law is not static term but calls for concrete actions to improve of the acceptance of the ideas of civil

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<sup>1</sup> I.e., final instance national court for constitutional matters, whatever their formal designation.

society acceptance and law enforcement over voluntaristic actions by politicians or governmental bodies. The Rule of law is not the supremacy of ANY law but supremacy of law which is “legitimate” when judged under international legal standards and rights described in UN and other international conventions as well as from view point of “constitutionally correct” spending of national money inside and outside of the budget process.

However, constitutions in transitional countries are usually written, for whatever motivation, in accordance with high international legal standards of humanity and thus we can use supremacy of these constitutions above other law to advance a constitutional framework for implementation of the rule of law. And in this case the rule of law will be “national” and better accepted.

Constitutions are very much spiritual documents focused on the present but even more oriented toward the future, which is why some people consider many constitutional provisions unrealistic and even utopian. That is why legal reform is an ongoing process of continual enforcement of constitutional norms according to the level of contemporary economic possibilities.

The twenty-first century will witness a significant development in constitutional economics. It is almost impossible to enforce democracy and the rule of law in transitional and developing countries without also finding a way to facilitate economic development and visibly increase the prosperity of individuals. The rule of law movement has a spiritual basis, but without direct implications for economic development it will often be regarded as utopian in most developing countries. We believe that legal reform is a vital mechanism to facilitate growth in transitional economies and a practical instrument to enforce the rule of law in developing countries.

The President of the Constitutional Court of Russia Valery Zorkin acknowledges the connection between legal reform and constitutional economics. We argue that constitutional economics is a vital bridge between economics and the rule of law, and serves as a connecting link between the rule of law and legal reform worldwide.

Legal reform should be considered as permanent mechanism of enforcement of the Rule of law in transitional countries for many decades ahead.

The relation of the rule of law and to economic development should be deeply studied by academics, both economists and jurists, within the framework of the rule of law movement.

Constitutional economics studies such issues as proper national wealth distribution. It also includes governmental spending on the courts, which is completely controlled by the executive power in many transitional and developing countries. This undermines the principle of “checks and balances” on power and creates a critical financial dependence in the judiciary. One solution could be allocation to the judicial system of a fixed percentage of annual governmental expenditure. In Costa Rica, for instance, 6% of the annual federal budget must be spent on the judicial branch according to the constitutional provision.

Another important area that constitutional economics covers is latent governmental spending on the judiciary in the form of privileges (free cars and country houses, etc). Such a system is completely outside the realm of transparency and creates a precedent for the corruption of the judiciary by executive authorities. In this situation, an opportunity to “trade” such privileges or even officially allocated funds is read as the price for judicial flexibility and loyalty to governmental interests. It is important to distinguish two methods of corruption of the judiciary: governmental (through budget expenditures and privileges — the most dangerous form of corruption), and private. State corruption of the judiciary makes it almost impossible for business to optimally facilitate growth and development of the national market economy.

Without a constitutional economics approach it will be difficult to create any kind of index to measure the real separation of powers in any national legal system.

A constitutional economics approach allows for a combined economic and constitutional analysis and helps to avoid a one-dimensional understanding. It has been noted that the term “consti-

tutional policy” is rather poorly suited to describe the interrelation between economics and constitutions.

Constitutional economics standards for the annual budget process and its transparency are of primary guidance importance to the rule of law. Access of civil society to an effective court system in a situation of unfair governmental spending and executive impoundment of previously authorized appropriations is critically important for the rule of law. Rule of law for the budget process is primarily an issue of constitutional law and only after it of budget law and then filters down to specific corporate law principles and rules

As for yet unborn generations, they will simply have to consume whatever was cooked for them by the chefs of yesterday in their former political kitchens. Buchanan believes, and correctly so, that a constitution, intended for the use by at least several generations of citizens, must adjust itself for pragmatic economic decisions, and also balance the interests of state and society with those of individuals and their constitutional rights of personal freedom and private happiness.

We should mention that there is an almost “dialectical” aspect to constitutional economics: both unity and the struggle between permanent constitutional form and annual economic funding, or, to be more exact, between the constitutional content of state activity and its economic framework. We can also speak simply about the unity of constitutional-legal and economic content of the state activity. In constitutional economics, we talk not only of a self-evident and necessary mutual complementarities of legal and economic analysis, but also of their partial merger and interpenetration, both in the theory and in practice, i.e. methodological unity with a view to eliminating their actual contradiction.

Constitutional values sometimes look to the future. They include principles that cannot always be immediately realized due to lack of resources or other reasons. However, an excessive departure of constitutional norms and principles from objective economic reality creates a danger of ignoring constitutional requirements and provisions in the everyday activity of the State.

Since constitutions in many countries with transitional political and economic systems are still being considered as abstract legal documents, not directly connected to the practical economic activities of the state, the introduction of constitutional economics becomes a fundamental and crucial aspect of democratic development of both state and society of such countries.

Moscow-Bruges working group is considering the writing of a research paper “The Rule of Law and a Single Legal Space for Europe and post-Soviet states” as a result of the Moscow Symposium of 2007. This presents an important opportunity to involve more experts in a worldwide discussion of this issue, which may finally become ultimately useful for further Rule of Law development in Europe and the post-Soviet space.

But our Concept is limited to an implementation of that previous approach to relations just between Europe and Russia. This Concept is identified with the cities of Moscow and Bruges. In fact, Bruges and Russia have a long history in common. The city of Bruges was a counterpart to the Russian city Great Novgorod during fifteenth century within the Hanseatic financial trade system. Hanseatic League (the Hanse) was medieval league of free cities in Germany and the adjoining countries, with Russian Great Novgorod as its eastern point and Flemish Belgian Bruges as its international financial center. It was a relatively short, but unforgettable, historical moment when Russia was a part of a single European market. At that time a single legal and economic space uniting Europe and Russia arose for the first time and developed until its unfortunate interruption.

Trade in the Hanseatic league was financed by Italian banks and was therefore a natural network for the spread of Roman law which had been revived by the Italian academics of Bologna University a couple of centuries earlier. This receptivity to the old Roman law is a remarkable example of implementing the best legal European standards in the national legislation of different countries. The Russian Federation today needs a similar type of receptivity. This could well take the form of implementation of selected

European legal standards in Russian legal system, first of all, in commercial and corporate law.

### **The Rule of Law as a Vehicle for Integration of Russia and Europe**

Establishment of the Rule of Law as a governing principle at the level of relations between EU and Russia will create an opportunity for development of the Concept of single legal space at the national level of the respective member states of EU and Russia. In addition, achievements in economic development coupled with active integration processes create the necessary and sufficient conditions for the worldwide spread of the Concept of a Single Legal Space in the twenty-first century.

Globalization of human rights has already taken place since adoption of the Universal Declaration of Human Rights in 1948. Accordingly, one of the most important components of the Rule of Law, respect for the human rights, has already become the global principle in the international relations.

In accordance with the 1992 EU Treaty, the EU respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such rights stem from constitutional traditions that are common to the Member States and serve as general principles of EU law.

These are solid reasons for confidence in the idea of a single legal space for the post-Soviet countries and the EU. It would be even better to call this a Single Rule of Law Space for Europe and Russia. Indeed, Russia and the other post-Soviet countries need to be receptive to European legal standards in most areas of law.

Foundation of the single legal space for Europe and Russia should be based on the Rule of Law and contain its basic elements as common principles of law. Maintaining the Rule of Law as an important value of European civilization is directly connected to the formation of European Law and the development of a Single European Legal Space.

This also applies to the Commonwealth of Independent States (C.I.S.) which includes all 12 post-Soviet states. A significant oversight of its creators was the absence in its statutory provisions of

ideas of adherence to the common values of liberty, sovereignty and democratic ideals on the basis the Rule of Law and common cultural heritage of the republics of the former USSR. This caused a crisis in this integration organization. The C.I.S. will be able to obtain its 'second life' in the XXI century only if it adopts the ideas of the Rule of Law and creates a new basis for economic, social and cultural prosperity of the peoples for its member countries.

The question of whether the Rule of Law and other shared values should become the main trend of internal and external policies in Russia and the other post-Soviet countries will depend, first of all, on its peoples. But it is critically important to set forth valid priorities in the area of legal development for a situation in which post-Soviet countries must quickly fill the gaps in legal development created over several decades.

#### **Legal reform to provide a Rule of Law foundation for the single space for Europe and Russia**

As we mentioned earlier, the Rule of law could serve as a solid basis for interstate integration. Although it takes a great deal of effort to bring countries with different economic and legal development into one multinational organization, we should admit that the process of integration makes it easier to cooperate at all levels, i.e. economic, cultural, diplomatic as well as legal. To illustrate the way in which legal reform could be developed and implemented we refer to one of the most seminal works created in the post-Soviet countries in recent years: "Theses for Legal Reform in Russia". This paper was produced in 2004 by the President of the Constitutional Court of Russia, Valery Zorkin. He states, "The main engines of legal reform should be nation-wide introduction of economic disciplines into the curricula of law schools and active adaptation of European legal standards to those of the Russian legislation. A technological breakthrough can be possible only on the basis of compliance with international legal standards. Flagrant nihilism in respect of international legal values ends up being all too costly during the solution of any serious problem, be it privatization or regulation of the securities market.



The problems of creating a single legal space can be solved by means of utilizing the experience of the European Union. This organization unites countries with absolutely different standards of life, levels of economic, political and cultural development, which create difficulties for creating unified norms of the law.”

The development of the concept of a single legal space is clearly reflected in its basic objectives:

- legal development up to the international level, first of all in economic and corporate law;
- harmonization of law of Russia on the basis of European legal standards;
- establishment of a single legal base to create a single economic space uniting Europe and Russia;
- legal integration development facilitated by constitutional economics approach.

The concept of the single legal space is not aimed at transformation or destruction of national identity of the Russian Federation. Together with development of the single legal space as a prerequisite for the growing volume of business and investments, development of business activity and an increase in the competitive potential of national economies may have a positive effect on the social policy, culture and economic prospects of Russia.

Possible legal vehicles for the creation of the single legal space could be multilateral agreements, the provisions of which do not conflict with national legislation and constitutions. However, differences in legislation may have serious negative consequences for development of the economy of Russia. Valery Zorkin commented on this subject as follows: “Regarding the formation of the as yet undeveloped system of legislation in Russia, it is outdated approaches that still prevail, including those in the legislative codes. Especially lacking a holistic and systematic approach is corporate law, which is partially regulated by the Civil Code, and partially by other legislative acts, poorly coordinated among each other. In

these circumstances, a reasonable internationalization of Russian law becomes extremely important.

Most logical in this connection seems the adaptation of the new Russian legislation to the European Community standards, which are currently being actively integrated into the legislation of the Baltic states and those of Eastern Europe, i.e. the legislation of countries in many aspects quite comparable with modern Russia. The concept of uniform a legal space for Russia and EC countries can become a foundation for the development of future Russian legislation.

More importantly, divergences in the legislation can have serious negative consequences for the development of the economic and financial integration with Europe and, accordingly, also for the development of the economy of Russia. Therefore, the Concept of a single legal space for Russia and Europe, which should provide a firm basis for the development of Russian legislation is becoming very important.

Russian legal scholar Oleg Kutafin and economist Alexander Zakharov produced a Concept of a Single Legal Space for the C.I.S. and Europe in 2002. This idea was fully incorporated in the resolution of the 2003 Moscow Legal Forum. The Forum gathered representatives of more than 20 countries including 10 CIS countries. In 2007 both the International Union of Jurists of the CIS and the International Union (Commonwealth) of Advocates passed resolutions that strongly support the Concept of a Single Legal Space for Europe and post-Soviet Countries.

Obviously, to improve its legislation Russia should be oriented toward the continental legal family of European law. The civil law system is much closer to the Russian and will be instrumental in harmonizing legislation of Russia and the European Community.

It is suggested that the introduction of the concept of a single legal space or a single Rule of Law space for Europe and Russia be implemented in four steps:

1. Development plans at the national level regarding adoption of selected EC legal standards in the Russian legislation;

2. Promotion of measures for harmonization of law with the goal of developing a single legal space for Europe and Russia in the area of commercial and corporate law;
3. Making the harmonization of judicial practice of Russia compatible with Rule of Law principles and coordination of the basic requirements of the Rule of Law in Russia with the EU legal standards.
4. Development of the Roerich Pact ideas in the Russian and European law.

The only from good will of European legal community will depends where the “Legal Europe” will situated in 20-40 years: at the Pacific Ocean or on the western border of Russia.

## Moscow Working Paper on the Rule of Law and Economic Development

At the beginning of the twenty-first century the rule of law has become a worldwide international movement. However, to date no clear and global definition of the “Rule of Law” has been articulated that can be recognized and easily translated into all languages and cultures, because the term itself has been used primarily in English-speaking countries. Moreover, most American law students will answer that “rule of law” means “black letters” or concrete rule established in every judgment of the court. The major treasury of the legal and philosophical concept of rule of law as “Rule According to Higher Law” is not so broadly known even in the USA. It is looks quite ironical that, when the American Bar Association is trying to introduce the rule of law abroad, it obviously lacks its more certain and single-minded definition for domestic use.

The unwritten principles of morality, fairness, justice, equality, autonomy, dignity, and respect are said to transcend ordinary written laws that are enacted by government, sometimes known as a higher law theory. The rule of law doctrine is not yet fully clarified even with regard to such established democracies as, for instance, Sweden, Denmark, France, Germany, and Japan are often perceived as “foreign” in the civil law countries, the legal tradition of which descends from the *Rechtsstaat* doctrine introduced by German philosopher Immanuel Kant in the late eighteenth century and based on the concept of a written constitution as the supreme law of any country. The spirit and content of written national constitutions is a serious resource for establishing the vital role of rule of law in every civil law state, if the doctrine of *Rechtsstaat* and the rule of law are to be closely knitted together. Constitutions in the civil law countries are usually written in accordance with high international legal standards of humanity and thus we can use the supremacy of these constitutions above other laws to advance a

constitutional framework for the implementation of an idea of a higher law. In such a case, the rule of law would appear “national” and, therefore, should become more acceptable.

About 50 percent of all countries of the World have adopted new constitutions since 1990, many of them since 2000. This new wave of constitutions creates a new situation with implications for the meaning of both constitutionalism and the Rule of Law. For the civil law countries in the twenty-first century, the rule of law should rather be called the “Rule of Constitutions.”

One important aspect of the rule of law initiatives is the study and analysis of the rule of law’s impact on economic development. The rule of law movement can not be fully successful in transitional and developing countries without a more or less certain answer to the question: does the rule of law matter for economic development or not?

In March 2007, a Working Group of the American Bar Association (ABA) issued for purposes of preliminary discussion a White Paper entitled *The Rule of Law and Economic Development*. It advocates the joint work of economists and lawyers on rule of law issues and suggests that the Nobel Prize should be awarded not only for economics but also for “law and economics”. The paper quotes Jeffrey Sachs that lawyers and economists working together had a great role to play in previous projects of judicial reform for developing countries and that the economy is far too important to be left only to the economists. (We could add that the Rule of law is too important to be left only to the lawyers).

ABA President Bill Neukom announced that the ABA is going to commission “a Nobel-quality study and paper to answer simple, straightforward questions: does the rule of law matter, and how does it matter? Is it truly a platform for economic development?” He also expressed willingness to spread the rule of law movement beyond the legal community across the globe and link it to such areas as social justice and culture. The ABA held a Scholarship Workshop headed by two Nobel laureates in economics, which should resulted in the publication of papers on the above subjects. According to my knowledge it does not published to this moment, March of 2010.

## *2. Finding a Common Definition of the “Rule of Law”*

The Rule of Law is especially important as an influence on economic development in developing and transitional countries. However, to date no clear and global definition of “Rule of Law” has been articulated that can be recognized and easily translated into all languages and cultures. The Moscow White Paper on the Rule of law and Economic Development reminds us of the global discussion on “corporate governance” that was initiated by multi-lateral institutions and developed markets in the mid-1990s. This term had an intuitive meaning for developed markets, but did not translate into other languages and was confusing to the audience in emerging markets. Today that term has become more or less understandable in most transitional countries due to development of its definition and applied meaning.

To date, the term “rule of law” has been used primarily in English-speaking countries. Frankly, the “rule of law” doctrine is not yet fully clarified even with regard to such established democracies as, for instance, Sweden, Denmark, France, Germany, and Japan. A common language between lawyers of common law and civil law countries as well as between legal communities of developed and transitional countries is critically important for the rule of law. This is not purely an academic task. The recent rule of law movement may be characterized as an amazing effort of the world legal community to clarify and virtually enforce worldwide through national bar associations the “ideological” and almost spiritual legal concept of the rule of law. But this concept is often perceived as “foreign” in developing countries, if it is links in economic area the only or first of all with availability of foreign investments.

The World Rule of Law Movement is an important initiative, with real practical consequences given the fact that a substantial majority of the world’s states are developing or transitional countries among the twenty-one new states that have emerged from the former Soviet Bloc. About 50 percent of all countries of the World have adopted new constitutions since 1990, many of them since 2000. One the one hand, these written constitutions are the

supreme law of the country and, on the other hand, most of them include an internationally accepted “package” of social and economic rights. This new wave of the constitutions creates a new situation with implications for the meaning of both constitutionalism and the Rule of Law. The rule of law in the twenty-first century may be more aptly called the “Rule of Constitutions”. The constitutions of post-socialist countries are indeed more than a mere set of declarations, which tended in socialist days to separate the constitution from the realities of society. This is why the Rule of Law has received in recent years “new fuel and a new engine” for movement into the third millennium.

In Russia, for instance, the definition of “legal state” (law-governed state), derived from German legal tradition, is probably close to the Rule of Law concept and is an important principle reflected in the text of the Constitution of the Russian Federation adopted in 1993. The fact that the Rule of Law and legal state is the same (or very similar) concept thus in fact has the effect of making internationally accepted standards of the Rule of Law mandatory on Russian authorities. A similar situation may be found in many other transitional and developing countries because overwhelming majority of them have written constitutions which include progressive legal provisions. The content of written national constitutions is a serious resource for establishing the vital role of Rule of Law in every state.

### ***3. Inclusive Approach to a “Rule of Law and Economic Development” Discussion***

In connection with the broadening of the rule of law discussion and implementation to a worldwide legal community, we believe it is necessary (even critical) to shift the focus of the discussion from merely corporate law and attraction of foreign investment to a broader discussion that encompasses aspects of domestic economic prosperity and well-being. Consideration of the rule of law as a, first of all, mechanism for attraction of foreign investment may be misunderstood by the legal communities in transitional and developing countries as something “foreign” and even imperialistic or

paternalistic. Many countries, especially in Asia and Latin America, have not met strict rule of law criteria but in fact successfully attract substantial foreign investment due to political, market perception and economic potential. Some emerging markets are not so much interested in foreign investments as focusing on the development of their own domestic economy, believing that such a focus will ensure stability as foreign investment ebbs and flows.

The “rule of law and economic development” approach aims at promoting the rule of law concept in many countries around the globe. In order to be successful at the local level we will inevitably have to take into account the diversity of countries and legal systems. Therefore, it is important to adopt several tailored approaches that help establish the rule of law worldwide.

One of the appropriate directions for the study of rule of law and economic development to expand is to go beyond a business and corporate law perspective to study of fundamental principles of constitutional and institutional analysis. This constitutional approach is not purely theoretical, but should be utilized to serve more practical issues discussed within the rule of law concept.

Initial implementation of the rule of law as it impacts economic development naturally occurs at the constitutional level, and at this level there is an early commonality among countries that is not the case for corporate law. Constitutional law includes the text of a constitution, constitutional principles, precedents in constitutional practice and decisions of the supreme national courts<sup>1</sup>, international human rights treaties and conventions, and decisions of international courts. Corporate laws vary significantly across countries. A major area of analysis could be the constitutional principles and texts, which have more similarity among the countries that regard themselves as democracies. For instance, corporate law in civil law and common law countries has significant differences, whereas constitutional law is basically very similar.

Almost by definition constitutional law and the constitution itself have supremacy over other laws. Any country will be more

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<sup>1</sup> I.e., final instance national court for constitutional matters, whatever their formal designation.



sensitive to the rule of law in general if they value first of all the national constitution and constitutional principles which are instrumental to creating a proper distribution of national wealth and economic resources.

#### ***4. Application of the Legal Reform Approach***

Demonstrating the importance of the rule of law importance should be accomplished by citing concrete ideas for its practical implementation. Developing countries may have become a tired of a confusing flow of ideas for improvement addressed to them from developed countries and multinational institutions. To avoid confusion acceptance of the recent world rule of law movement, it is necessary to show the interrelations between the recent rule of law movement and with previous international technical assistance programs of economic improvement, legal and judicial reforms, and human rights etc.

We often see how mixed and indistinct one from another are the definitions of “constitutional reform”, “legal reform”, “law reform” and “judicial reform”. The rule of law movement is a good opportunity to clarify distinctions between them and create worldwide conventional terminology.

One could say that the rule of law is another way of describing legal reform because the rule of law is not a static term but one that calls for concrete actions to improve the acceptance of the supremacy of the ideas of civil society and regular law enforcement over the voluntaristic and arbitrary actions initiated by politicians or governmental bodies. The Rule of law is not the supremacy of ANY law but supremacy of law which is strictly “legitimate” when judged under international legal standards and rights described in UN and other international conventions as well as from the viewpoint of “constitutionally correct” spending of national money inside and outside of the budget process.

However, constitutions in transitional countries are usually written, for whatever motivation, in accordance with high international legal standards of humanity and thus we can use supremacy of these constitutions above other law to advance a constitutional framework for implementation of the rule of law. In such a case,

the rule of law will appear “national” and, therefore, will be better acclaimed by the public.

Constitutions are very much spiritual documents focused on the present but even more oriented toward the future, which is why some people consider many constitutional provisions unrealistic and even utopian. That is why legal reform is an ongoing process of continual enforcement of constitutional norms according to the level of contemporary economic possibilities.

The twenty-first century will witness a significant development in constitutional economics. It is almost impossible to enforce democracy and the rule of law in transitional and developing countries without also finding a way to facilitate economic development and visibly increase the prosperity of individuals. The rule of law movement has a spiritual basis, but without direct implications for economic development it will often be regarded as utopian in most developing countries. We believe that legal reform is a vital mechanism to facilitate growth in transitional economies and a practical instrument to enforce the rule of law in developing countries.

The President of the Constitutional Court of Russia, Valery Zorkin, acknowledges the connection between legal reform and constitutional economics. We argue that constitutional economics is a vital bridge between economics and the rule of law, and serves as a connecting link between the rule of law and legal reform worldwide.

Legal reform should be considered as permanent mechanism of enforcement of the Rule of law in transitional countries for many decades ahead.

### ***5. Application of a Constitutional Economics Analysis***

The relation of the rule of law to economic development should be studied in-depth by academics, both economists and jurists, within the framework of the rule of law movement.

It is argued that the constitutional economic approach allows for a combined economic and constitutional analysis and helps to avoid one-dimensional understanding. “Constitutional econom-

ics” studies the “compatibility of economic and financial decisions within the existing constitutional framework and the limitations or the favorable conditions created thereby.”<sup>1</sup> It could be characterized as a practical approach enabling application of the tools of economics to constitutional problems.<sup>2</sup>

Constitutional economics studies such issues as proper national wealth distribution. It also includes governmental spending on the courts, which is completely controlled by the executive power in many transitional and developing countries. This undermines the principle of “checks and balances” on power and creates a critical financial dependence in the judiciary. One solution could be allocation to the judicial system of a fixed percentage of annual governmental expenditure. In Costa Rica, for instance, 6% of the annual federal budget must be spent on the judicial branch according to the constitutional provision.

Another important area that constitutional economics covers is latent governmental spending on the judiciary in the form of privileges (free cars and country houses, etc). Such a system is completely outside the realm of transparency and creates a precedent for the corruption of the judiciary by executive authorities. In this situation, an opportunity to “trade” such privileges or even officially allocated funds is taken as the price for judicial flexibility and loyalty to governmental interests. It is important to distinguish between the two methods of corruption of the judiciary: governmental (through budget expenditures and privileges — the most dangerous form of corruption), and private. State corruption of the judiciary makes it almost impossible for business to optimally facilitate the growth and development of the national market economy.

Without a constitutional economics approach to the “Rule of Law and Economic Development” it will be difficult to create any kind of index to measure the real separation of powers in any national legal system.

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<sup>1</sup> Peter Barenboim, Constitutional Economics and the Bank of Russia, *Fordham Journal of Corporate and Financial Law*, Vol. 7, Number 1, 2001, p. 160.

<sup>2</sup> Christian Kirchnezh, The Principles of Subsidiary in the Treaty on European Union: A Critique from a Perspective of Constitutional Economics, 6 *TUL. J. INT’L. & COMP. L.* 291, 293 (1998).

A constitutional economics approach allows for a combined economic and constitutional analysis and helps to avoid a one-dimensional understanding. It has been noted that the term “constitutional policy” is rather poorly suited to describe the interrelation between economics and constitutions.

Constitutional economic standards for the annual budget process and its transparency are of primary guiding importance to the rule of law. Access of civil society to an effective court system in a situation of unfair governmental spending and executive impoundment of previously authorized appropriations is critically important for the rule of law. The rule of law for the budget process is primarily an issue of the constitutional law and only after that of the budget law, then filtering down to specific corporate law principles and rules.

The rule of law and economic development has been studied by several economists. This field of research was considerably developed in economics by James Buchanan, who was awarded the Nobel Prize in 1986 “for applying constitutional and contract thinking to economic theory and the political process.”<sup>1</sup> He is considered to be the founding father of constitutional economics. He wrote: “I called upon my fellow economists to postulate some model of the state, of politics, before proceeding to analyze the effects of alternative policy measures. I urged economists to look at the ‘constitution of economic policy,’ to examine the rules, the constraints within which political agents act.” Special emphasis in the Buchanan Nobel lecture is given to the problem of achieving balance between the economic possibilities of adjacent generations, which, even living contemporaneously with each other, still do not have equal access to the process of decision-making on financial issues, and thus influencing other generations either directly or indirectly.

As for yet unborn generations, they will simply have to consume whatever was cooked for them by the chefs of yesterday in their former political kitchens. Buchanan believes, and correctly so, that a constitution, intended for the use by at least several generations of citizens, must adjust itself for pragmatic economic

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<sup>1</sup> <http://www.nobel.se/economics/laureates/1986>

decisions, and also balance the interests of state and society with those of individuals and their constitutional rights of personal freedom and private happiness.

We should mention that there is an almost “dialectical” aspect to constitutional economics: both with unity and the struggle between permanent constitutional form and annual economic funding, or, to be more exact, between the constitutional content of state activity and its economic framework. We can also speak simply about the unity of the constitutional legal and economic content of the state activity. In constitutional economics, we talk not only of the self-evident and necessary mutual complementarities of legal and economic analysis, but also of their partial merger and interpenetration, both in the theory and in practice, i.e. methodological unity with a view to eliminating their actual contradiction.

Constitutional values sometimes look to the future. They include principles that cannot always be immediately realized due to lack of resources or other reasons. However, an excessive departure of constitutional norms and principles from the objective of economic reality creates a danger of ignoring constitutional requirements and provisions in the everyday activity of the State.

Since constitutions in many countries with transitional political and economic systems are still being considered as abstract legal documents, not directly connected to the practical economic activities of the state, the introduction of constitutional economics becomes a fundamental and crucial aspect of democratic development of both state and society of such countries.

James Buchanan rejected “any organic conception of the state as superior in wisdom, to the individuals who are its members”. This philosophical position is in fact close to the subject matter of constitutional economics. The issue of balance between the rights of an individual and those of the state is the basic issue of democracy in general and of constitutional law in particular. Constitutional economics connects idealistic, forward-looking and sometimes almost utopian, constitutional demands with the practical material conditions of life and in so doing essentially supplements and develops traditional constitutional analysis. Constitutional

economics is essential to judges in complicated cases when it is necessary to establish a balance between constitutional rights and economic development.

Although he generally does not use the word “constitution”, the work of Amartya Sen, a Nobel Prize winner in economics, is closely related to the most important issues faced in constitutional economics. He came to the conclusion in his book *Development as Freedom* that “even with relatively low income, a country that guarantees health care and education to all can actually achieve remarkable results in terms of the length and quality of life”<sup>1</sup>, and therefore economic stability and growth. Here he gives a deep definition of the essence of economic significance of a constitution: “Political rights, including freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves” (p. 154)

He argues that “use of public resources for purposes where the social benefits are very far from clear”<sup>2</sup> should be eliminated. Thus, an enforceable right in the civil society is an expression of opinion on the allocation of national financial resources through the judiciary, the media or through other democratic institutions is a milestone for the rule of law.

## ***6. The Model of Constitutional Economics for Transitional Countries***

Economic development poses new challenges for the traditional science of constitutional law and the purely legal approach to the rule of law’s practical enforcement. In 2004, the President of the Constitutional Court of Russia, Valery Zorkin, published an article entitled “Theses for Legal Reform in Russia” that calls for development of constitutional economics as a separate research field and an educational course. In addition, Mr. Zorkin emphasized the importance of the development of legal reform and constitutional economics as key elements in the creation of a legal state (the term used in

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<sup>1</sup> Amartya Sen, *Development as Freedom*, Oxford University Press, 2001, p. 144

<sup>2</sup> *Ibid*, p. 145

the Russian Constitution for the rule of law).<sup>1</sup> This “Zorkin thesis” may be considered as a constitutionally based opposition to the well-known “Lee thesis” that the rule of law is not necessary for successful economic development in transitional countries with Asian political traditions (which certainly may be applicable to the Russian past).

This is reinforced by the fact that the English language concept of constitutionalism is much broader than the continental one. The word “constitution” in the English language has more accepted meanings, which encompass not only national constitutions, but also charters of public organizations, and informal and unwritten rules of various clubs, encounter groups, etc. The model of constitutional economics for transitional countries focuses only on the concept of constitution in the sense of the Fundamental Law of the State. In this respect, constitutional economics demands a multi-dimensional economic strategy inside and outside of the country, instead of often arbitrary economic decisions made for the sake of momentary benefit without respect to constitutional values.

The model of constitutional economics for transitional countries is based on an understanding that it is necessary to narrow the gap between practical enforcement of the economic, social and political rights granted by the constitution and the annual and mid-term governmental economic policy, budget legislation and administrative policies. It is difficult to have real transparency in the budget process and to establish governmental economic priorities without using constitutional economics as a measure of balance between constitutional social and economic rights and the practical instruments to enforce of constitutional rights.

The major characteristics of the model of constitutional economics for transitional and developing countries are as follows:

1. Constitutional economics is a bridge between the rule of law and economics;
2. Constitutional economics is a practical and theoretical bridge between economists and lawyers;

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<sup>1</sup> Valery Zorkin, Theses for Legal Reform (in Russian), *Zakonodatelstvo i ekonomika* (Legislation and Economics), No. 2 (2004).

3. Economics and constitutional law both have equal claims in constitutional economic analysis;
4. Constitutional economics is a basis for legal reform in transitional countries;
5. Constitutional economics is developing in three major directions: education; constitutional law and economic theory; and practical methodology for evaluating legislation, especially annual budget legislation;
6. Research is conducted by the joint efforts of lawyers and economists;
7. Authors of textbooks in constitutional economics for use in economic and law departments of universities are both lawyers and economists;
8. Independence of a country's central bank is one of the constitutional guarantees in the economic sphere against the bureaucratic voluntarism of the executive branch and the populism of the legislative branch.
9. The psychological barrier in transitional countries between a society and its constitution in the economic sphere can be removed through the persistent efforts of legal communities and courts.

We note in connection with the foregoing that the independence of central banks is a relatively new but crucial idea within the theme of rule of law and economic development. In the EU it was financial practitioners who initially developed a concept very similar to the approaches of constitutional economics and this was connected to the principle of central bank independence, mainly from the executive power. This reflects one of the main ideas of constitutional economics: the financial assets of the state belong not to the state, but to its people. This means that public funds should be spent in conformity with the national constitution, which is usually authored in the name of the people as specified, for example, in the preambles of the Constitutions of Russia and the United States of America.

This abstract idea has practical implications. The independence of central banks is incorporated in the legislation of the most de-



veloped countries and even partly in Article 75 of the Constitution of Russia. Constitutional economics gives theoretical support for these provisions. At a symposium dedicated to the 200<sup>th</sup> anniversary of the *Banque de France* this was explicitly mentioned by its governor Jean-Claude Trichet: “We shall wait till a new Montesquieu shows that modern democracy can naturally go hand in hand with nonparty independent financial power”. He went on to declare that central banks do not belong to any branch of state and are accountable directly to the people, to the citizens of the country. The traditional doctrine of separation of powers in this case is supplemented and developed not by means of traditional constitutional law, but by using approaches of constitutional economics.

Many lawyers do not yet fully appreciate the value of constitutional economics. In the absence of constitutional economics, constitutional law risks becoming a formal systematization of constitutional texts and study of their structure and history.

The absence of an understanding of constitutional economics has adverse implications for the doctrine of separation of powers in that it undermines the ability of judicial power to form independent judgments on issues involving a complex of constitutional and economic problems.

Jaivir Singh has argued that in India “the ‘right of property’ with respect to state takings has been weakened by the failure to uphold the doctrine of separation of powers” and that “a set of social costs has emerged as a direct consequence of the violation of the doctrine of separation of powers.”<sup>1</sup>

In fact, constitutional economics in general has special relevance for political systems in transition, where the state does not properly respect constitutional norms and principles during the economic decision-making.

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<sup>1</sup> Jaivir Singh, Separation of powers and the erosion of the ‘right to property’ in India, *Constitutional Political Economy* (2006), vol. 17, p. 322.

# THE RULE OF LAW AND THE WORLD JUSTICE PROJECT: WHAT'S IN A NAME?

By Peter Barenboim and Boris Meshcherykov

A common language between lawyers of common law and civil law countries is critically important for the rule of law. This is not purely an academic task. The recent rule of law movement may be characterized as an amazing effort of the world legal community to clarify and virtually enforce through worldwide national bar associations the “ideological” and almost spiritual legal concept of the rule of law. It is important to pay a closer attention to the linguistic implications of the project naming concepts in order to avoid their possible misunderstanding, especially among non-native English-speaking nations. Such approach could be very beneficial for the advancement of the Rule of Law movement on a global scale.

<http://helmet.stetson.edu/artsci/polsci/media/worldruleoflaw.pdf>

## Background

The Rule of Law movement was initiated by the International Bar Association (IBA), comprising about two hundred national bar associations through the Rule of Law Resolution, adopted at the IBA Council session held in September 2005, in Prague.

In an effort to explore how individuals and organizations — governmental and non-governmental — could strengthen efforts to advance the rule of law around the world, the American Bar Association (ABA), together with other organizations committed to advancing the rule of law, convened an International Rule of Law Symposium in Washington, D. C., in November 2005. The Symposium witnessed a remarkable gathering of 400 leaders from 40 countries in the fields of business, government, law, public health, civil society, international development, and others.

This Symposium and another one, held by IBA and ABA in September 2006, have raised awareness of the importance of the rule

of law and energized much of the core constituency for this cause. The challenge now is to expand this constituency and give it the data, tools, and other resources necessary to strengthen the rule of law. Discussions at the symposia suggested an inclusive approach to advancing the rule of law worldwide and pointed to four follow-on initiatives, including a World Justice Forum. These initiatives comprise the near-term work of the World Justice Project (WJP).

## World Justice vs. International Rule of Law

In the previous passages, taken almost verbatim from The World Justice Project brochure, published by the American Bar Association, we can see the obvious co-existence of two terms: *World Justice* and *International Rule of Law* (the latter also appears as *the rule of law worldwide* and *the rule of law around the world*). After reading this document, it becomes clear that its authors construe both terms identically and, therefore, use ‘*world justice*’ to actually mean ‘*international rule of law*’, e.g. in such names as “World Justice Forum” and “World Justice Project”. Following is another quote from the same source to support our assumption (like before, we undertook to apply bold face for highlighting the terms in question):

“The World Justice Project will also hold international multidisciplinary meetings in Europe and Africa in July 2007 and Asia and Latin America in September 2007.

These outreach meetings will explore how the rule of law impacts different disciplines’ work and will create the basis for collaboration among these disciplines to advance the rule of law. The World Justice Project expects these meetings to begin a sustained dialogue among various disciplines about the implementation of the rule of law.”

Thus, the primary goal of the World Justice Project, according to its brochure, is to promote and implement the rule of law principle worldwide.

But what does the expression “World Justice Project” mean to someone, unfamiliar with this background information, or not versed in Legalese, and who has to take this name “at face value”, having seen it in a newspaper article or a in a TV news spot?

Firstly, such a person is faced with the problem of attributing the word “World” — does it belong to “Justice” or to “Project”? The present context hardly helps one in making the proper attribution.

We polled about a dozen non-native English speakers, living in Moscow, and the overwhelming majority voted in favour of immediate interpretation of “World Justice Project” as “Project for World Justice” as opposed to “World Project for Justice”. Similar preference in attribution was demonstrated by a group of Moscow-based translators (Russian nationals), who were offered to promptly translate “the World Justice Project” into their working languages. The results were “Le projet de justice mondial”, “Das Weltgerechtigkeit-Projekt”, “El proyecto de justicia mundial”, etc.

This poses another question: how are we to interpret the expression “World Justice”? Here is the explanation of the word “justice” taken from the 13-volume, almost 7000 pages-long, *West’s Encyclopedia of American Law*, 2<sup>nd</sup> Ed., according to which justice is

The proper administration of the law; the fair and equitable treatment of all individuals under the law. A title given to certain judges, such as federal and state supreme court judges.

If we take the definition provided by the *Random House Webster’s Unabridged Dictionary*, one of the most comprehensive and authoritative lexicographical sources of American English, it is as follows:

1. the quality of being just; righteousness, equitableness, or moral rightness: to uphold the justice of a cause.
2. rightfulness or lawfulness, as of a claim or title; justness of ground or reason: to complain with justice.
3. the moral principle determining just conduct.


4. conformity to this principle, as manifested in conduct; just conduct, dealing, or treatment.
5. the administering of deserved punishment or reward.
6. the maintenance or administration of what is just by law, as by judicial or other proceedings: a court of justice.
7. judgment of persons or causes by judicial process: to administer justice in a community.
8. a judicial officer; a judge or magistrate.
9. (cap.) Also called Justice Department, the Department of Justice.

From the two above definitions we may deduce that, in the legal context, the word “justice” should primarily mean “proper administration of the law” (WEoAL) or “administration of what is just by law, as by judicial or other proceedings” (RHWUD).

Looking into the *Cambridge Learner’s Dictionary*, 2<sup>nd</sup> Ed., we will see an even terser definition:

1. FAIR BEHAVIOUR [U] behaviour or treatment that is fair and morally correct.
2. LAW [U] the system of laws, which judges or punishes people, e.g. the criminal justice system.

**Close to this is the definition found in the *Longman Dictionary of Contemporary English*:**

1. system of judgement: the system by which people are judged in courts of law and criminals are punished, e. g.:  
*a book on the criminal justice system*  
*The killers will be brought to justice (=caught and punished).*  
*Acts of terrorism must not escape justice.*  
 Do not use *justice* when you mean the laws of a country and the ways in which these laws operate. Use *legal system* instead.
7. judge [countable], also *Justice*
  - a) American English: a judge in a law court
  - b) British English: the title of a judge in the High Court

An interesting twist is added by the *Oxford Advanced Learner's Dictionary*:

1. [U] the legal system used to punish people who have committed crimes: the criminal justice system.
  - The European Court of Justice (BrE). (Compare this to International Court of Justice (ICJ) or World Court. — B. M.)
  - They were accused of attempting to pervert the course of justice. (NAMe)
  - They were accused of attempting to obstruct justice. — See also: miscarriage of justice.

[...]

4. (also: Justice) [C] (NAMe) a judge in a court (also used before the name of a judge)—see also: chief justice
5. Justice [C] (BrE, CanE) used before the name of a judge in a court of appeal: Mr. Justice Davies

IDIOM: bring sb to justice — to arrest sb for a crime and put them on trial in court

And finally, the academic multi-volume Oxford English Dictionary renders the most exhaustive definition of justice:

- I. The quality of being just.
  1. The quality of being (morally) just or righteous; the principle of just dealing; the exhibition of this quality or principle in action; just conduct; integrity, rectitude. (One of the four cardinal virtues.)
  2. *Theol.* Observance of the divine law; righteousness; the state of being righteous or 'just before God'. *Obs.*
  3. Conformity (of an action or thing) to moral right, or to reason, truth, or fact; rightfulness; fairness; correctness; propriety; = IUSTNESS 2, 3.
- b. Just claim, right (*to something*). *Obs.*
- II. Judicial administration of law or equity.
  4. Exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; requital of desert<sup>1</sup>.

<sup>1</sup> Here: reward or punishment that is deserved.

5. The administration of law, or the forms and processes attending it; judicial proceedings; in early use, Legal proceedings of any kind (*obs.*).
  - b. The persons administering the law; a judicial assembly, court of justice. *Obs.* (In early quotes it is difficult to separate from pi. of sense 8.)
  - c. Judicial authority, jurisdiction. *Obs.*
    6. Infliction of punishment, legal vengeance on an offender; *esp.* capital punishment; execution, *to do justice on or upon (of)*, to punish, *esp.* by death. *Obs.*
    - b. A place or instrument of execution; a gallows. *Obs.*
    7. Personified, *esp.* in sense 4: often represented in art as a goddess holding balanced scales or a sword, sometimes also with veiled eyes, betokening impartiality. (= L. *Justitia.*)
- III. An administrator of justice.

The name *Justitia* was applied (in the 11th cent.) in a general way to persons charged with the administration of the law, *esp.* to the sheriffs; it was subsequently limited to the president or one of the members of the Curia Regis, out of which the courts of King's Bench, Common Pleas, and Exchequer were developed. These judges were specifically denominated *justices itinerant, in eyre, of assize, of oyer and terminer, of jail delivery*, etc.: see these words. In the Court of Exchequer (which had a peculiar history) they were termed *barons*.

8. *generally*. A judicial officer; a judge; a magistrate.
9. *spec.* In Great Britain and the United States: A member of the judicature, a. A judge presiding over or belonging to one of the superior courts, *spec.* in England, one of the courts of King's Bench, Common Pleas, and Exchequer; since the consolidation of the courts in 1875, a member of the Supreme Court of Judicature; formerly applied also to various officers exercising special judicial functions, as the commissioners who governed Ireland during the absence of the Lord Lieutenant or the vacancy of that office.

*High Justice* (in quot.<sup>2</sup> 1297) = JUSTICIAR 1. *Chief Justice* or *Lord Chief Justice*, formerly, the title of the judges

presiding over each of the courts of King's Bench and of Common Pleas; both offices are now merged under the title of *Lord Chief Justice of England*. The judges of the Court of Appeal are called *Lords Justices*, and have the style of *Right Honourable*; a judge of the High Court of Justice is called *Mr. Justice*, and has the style of *Honourable*. In the United States *Chief Justice* is the designation of the presiding judge in the U. S. Supreme Court, and in the supreme court of each state. So elsewhere in places formerly or still under British influence. See also JUSTICE-CLERK, JUSTICE-GENERAL. b. A justice of the peace (see next) or other inferior magistrate; esp. in pi. *the Justices*.

10. Justice of the peace (justice of peace): an inferior magistrate appointed to preserve the peace in a county, town, or other district, and discharge other local magisterial functions. Abbreviated J. P. Hence *justice-of-peaceship*.

Justices of the peace were instituted in England in 1327, and are appointed by the sovereign's special commission, directing them, jointly and severally, to keep the peace in the area named. Their principal duties consist in committing offenders to trial before a judge and jury when satisfied that there is a *prima facie* case against them, convicting and punishing summarily in minor causes, granting licenses, and acting, if County Justices, as judges at Quarter Sessions. See also QUORUM.

#### IV. Phrases and combinations.

11. Phrase, *to do justice to* (a person or thing): a. to render (one) what is his due, or vindicate his just claims; to treat (one) fairly by acknowledging his merits or the like; hence, To treat (a subject or thing) in a manner showing due appreciation, to deal with (it) as is right or fitting, *to do oneself justice*, to perform something one has to do in a manner worthy of one's abilities.
- b. To pledge in drinking. *Obs.*
12. *attrib.* and *Comb.*: *attrib.*, as *justice-box*, — *business*, — *day*, — *hall*, — *height*, — *hill*, — *parson*, — *room*; objec-



tive, etc., as *justice-maker*, *justice-dealing*, — *like*, — *loving*, — *proof*, — *slighting* *adj.*; justice-broker, a magistrate who ‘sells’ justice; justice-court, a court of justice; *spec*, the Court of Justiciary; justice-eyre (-air): see EYRE; justice-seat, seat of justice, judgement-seat; *spec*, (see quot. 1641).

Based on all of the above, we believe that there exists a significantly and accountably high risk that people, yet unfamiliar with the publications containing a detailed description and explanation of the goals and objectives undertaken by the World Justice Project, may fall into a trap of false interpretation of its proclaimed name. Such people, both native and non-native speakers of English (the latter being even more susceptible to misunderstanding and misinterpretation than the former) may construe the World Justice concept not as something closely related both in meaning and content to the Rule of Law concept (which we intend clarifying further), but rather as something much closer to a category of World Order maintained by a Supranational Punitive Agency (or even to a combined role of the World Law Enforcer and the World Judge, played by a certain superpower), all of which, I emphasize, may be deduced by an unprepared mind from the definitions provided above, as these signify the most common interpretations deeply rooted in the public conscience.

Now we would like to produce for comparison various definitions of the rule of law in order to see whether they are indeed so close, as those who gave to WJP its present name might have surmised. But first, let us quote from the document entitled “Moscow Rule of Law Symposium White Paper on the Rule of Law and Economic Development: constitutional economics approach”, which was compiled by the “Moscow” working group for preparation of the Rule of Law Symposium of the International Bar Association, held in Moscow on July 6, 2007. One of its chapters is called “Finding a Common Definition of ‘Rule of Law’”. It says:

The rule of law is especially important as an influence on economic development in developing and transitional countries. However, to

date no clear and global definition of “rule of law” has been articulated that can be recognized and easily translated into all languages and cultures. In many ways, this reminds us of the global discussion on “corporate governance” that was initiated by multilateral institutions and developed markets in the mid-1990s. This term had an intuitive meaning for developed markets, but did not translate into other languages and was confusing to the audience in emerging markets. Today that term has become an understandable and mainstream concept in most countries due to development of its definition and applied meaning.

Frankly, the “rule of law” doctrine is not yet fully clarified even with regard to such established democracies as, for instance, Sweden, Denmark, France, Germany, and maybe also for Japan. To date, the term “rule of law” has been used primarily in English-speaking countries. Therefore, the task of creation of clarification and definition is important. In Russia, for instance, the definition “the legal state” (derived from German legal tradition) is very close to a rule of law concept and is an important principle in the text of the Russian Constitution adapted in 1993.

A common language between lawyers of common law and civil law countries is critically important for the rule of law. This is not purely an academic task. The recent rule of law movement may be characterized as an amazing effort of the world legal community to clarify and virtually enforce through worldwide national bar associations the “ideological” and almost spiritual legal concept of the rule of law.

We would like also to include an excerpt from the speech of Geoffrey Vos, the Chairman of the Bar Council of England and Wales, prepared for the Moscow Rule of Law Symposium:

This morning, Francis Neate has already grappled with the true meaning of the ‘Rule of Law’. One thing is for sure: there will always be as many definitions as there are lawyers speaking about it. Just this year, there have been 3 new and authoritative definitions that I have come across, in addition to the IBA resolution to which Fran-

cis has referred. I have put these three definitions in an appendix to this paper so that 'rule of law definition junkies' can study them at leisure. They emanate from the American Bar Association, Lord Bingham, the senior Law Lord in England, and an important and widely supported UK think tank called 'Justice'. But a quick glance at the appendix will show that definitions vary in terms of their parochial content. Some are so general as to be hard to interpret, because they have attempted universality. Some are so specific as to be inapplicable outside the UK or Europe or the US.

### **The Rule of Law Definitions**

#### **Lord Bingham delivering the Sir David Williams lecture on 16<sup>th</sup> November 2006: [2007] 66 CLJ 67**

1. Lord Bingham suggests 8 sub-rules:
  - (1) The law must be accessible, and so far as possible, intelligible, clear and predictable.
  - (2) Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
  - (3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
  - (4) The law must afford adequate protection of fundamental human rights.
  - (5) Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
  - (6) Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purposes for which the powers were conferred and without exceeding the limits of such powers.
  - (7) Adjudicative procedures provided by the state should be fair.
  - (8) The existing principle of the rule of law requires compliance by the state with its obligations in international law.

American Bar Association: Bill Neukom, Vice President of the ABA

2. Four principles as follows:

- (1) A system of self-government subordinate to the citizenry.
- (2) A system based on fair, public, understandable and resilient rules (laws).
- (3) A robust and accessible legal process providing the framework for transactions and dispute resolution.
- (4) Diverse, competent and independent lawyers and judges.

### **Justice's Manifesto for the Rule of Law**

3. Justice has seven principles:

- (1) The UK should adhere to international human rights standards both in its domestic and foreign policy.
- (2) The independence of the legal profession and the judiciary must be upheld
- (3) Due process and the right to a fair trial must be protected.
- (4) Every person has the right to equality before and under the law.
- (5) Every person in the UK, however poor or disadvantaged, has the right of access to justice
- (6) Parliament should have greater powers to scrutinise legislation and hold ministers to account.
- (7) Greater cooperation between European Union member states must be accompanied by greater protection for the rights of individuals affected.

Now let us turn to various authoritative dictionaries and encyclopaedias to see what interpretations and definitions of the “rule of law” are available to the interested (but not yet fully initiated) native and non-native speakers of English.

The first definition was taken from the *Black's Law Dictionary*, mentioned in the same connection by the Chairman of the Constitutional Court of the Russian Federation — Valery Zorkin in his

memorable speech delivered during the Rule of Law Symposium in Moscow. The definition is as follows:

RULE OF LAW. A legal principle, of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition. Called a “rule,” because in doubtful or unforeseen cases it is a guide or norm for their decision.

Obviously, the Black’s dictionary is explaining only the concept of a rule of law (which translates into Russian as “норма права” or “правовая норма”), but not that of the rule of law, which is the subject of our consideration.

A much more detailed and useful explanation of the rule of law is provided in the *Oxford Law Dictionary*:

1. The supremacy of law.
2. A feature attributed to the UK constitution by Professor Dicey {law of the Constitution, 1835). It embodied three concepts: the absolute predominance of regular law, so that the government has no arbitrary authority over the citizen; the equal subjection of all (including officials) to the ordinary law administered by the ordinary courts; and the fact that the citizen’s personal freedoms are formulated and protected by the ordinary law rather than by abstract constitutional declarations.

Actually, the definition #1 sounds identical to the currently accepted Russian rendition of the rule of law — “верховенство права”. Unfortunately, both “закон” and “право” (where the latter is taken as the objective category), are translated into English with the same word — “law”. Therefore, in translation, the required differentiation of meaning can be either induced by the context or supplemented by modifiers, e.g. “statutory law” for “закон”.

Incidentally, we would like to note that the German language has found a very interesting workaround when referring to the rule of law concept. As was mentioned in the “Moscow Rule of Law Sym-

posium White Paper”, the original Russian approximate rendition of the Rule of Law concept was “правовое государство” (literally: “the legal state”), as inherited from the German legal tradition, where it sounded as “Der Rechtsstaat”. The modern *Langenscheidt — Harper Collins German-English Dictionary* translates the rule of law as *die Rechtsstaatlichkeit* instead of just using loaned translations, as other European languages do. See, for example, the following calqued renditions in Spanish and Italian: *gobierno de ley* and *supremazia della legge*, respectively. But an even better example of proper approach to the translation of ‘the rule of law’ is demonstrated by the Hachette-Oxford French-English Dictionary: *séparation constitutionnelle de la justice et du pouvoir*. Here the French lexicographers seem to have come to the very gist of “the rule of law”.

In this connection, we would like to quote one more similarly accurate explanation of the term provided by the *Concise Oxford English Dictionary*, a real masterpiece of brevity and exactness, rule of law — *the restriction of power by well-defined and established laws*.

From the above we can see that the concepts of “justice” and “the rule of law”, as construed by the most authoritative dictionaries, do not seem to belong to the same semantic field or even to significantly overlap. While “justice” is centered on the consistent administration of law, which ideally, but not necessarily, needs to be just; “the rule of law” rather focuses on the limitation (ideally — the complete elimination) of arbitrary authority of executive power (especially, when commanding two other powers) over individual citizens, as well as on the implementation of constitutional separation of, at least, the judiciary and the executive.

Leaving conclusions and decisions to whom they belong, we would like to end this paper with a quote comprising the entire article dedicated to the Rule of Law in the *West’s Encyclopedia of American Law*:

#### RULE OF LAW

*Rule according to law; rule under law; or rule according to a higher law.*

The rule of law is an ambiguous term that can mean different things in different contexts. In one context the term means rule according to law. No individual can be ordered by the government to pay civil damages or suffer criminal punishment except in strict accordance with well-established and clearly defined laws and procedures. In a second context the term means rule under law. No branch of government is above the law, and no public official may act arbitrarily or unilaterally outside the law. In a third context the term means rule according to a higher law. No written law may be enforced by the government unless it conforms with certain unwritten, universal principles of fairness, morality, and justice that transcend human legal systems.

### *Rule According to Law*

The rule of law requires the government to exercise its power in accordance with well-established and clearly written rules, regulations, and legal principles. A distinction is sometimes drawn between power, will, and force, on the one hand, and law, on the other. When a government official acts pursuant to an express provision of a written law, he acts within the rule of law. But when a government official acts without the imprimatur of any law, he or she does so by the sheer force of personal will and power.

Under the rule of law, no person may be prosecuted for an act that is not punishable by law. When the government seeks to punish someone for an offence that was not deemed criminal at the time it was committed, the rule of law is violated because the government exceeds its legal authority to punish. The rule of law requires that government impose liability only insofar as the law will allow. Government exceeds its authority when a person is held to answer for an act that was legally permissible at the outset but was retroactively made illegal. This principle is reflected by the prohibition against *EX POST FACTO LAWS* in the U. S. Constitution.

For similar reasons, the rule of law is abridged when the government attempts to punish someone for violating a vague or poorly worded law. Ill-defined laws confer too much discretion upon government officials who are charged with the responsibil-

ity of prosecuting individuals for criminal wrongdoing. The more prosecutorial decisions are based on the personal discretion of a government official, the less they are based on law.

For example, the DUE PROCESS CLAUSE of the Fifth and Fourteenth Amendments requires that statutory provisions be sufficiently definite to prevent ARBITRARY or discriminatory enforcement by a prosecutor. Government officials must not be given unfettered discretion to prosecute individuals for violating a law that is so vague or of such broad applicability that even-handed administration is not possible. Thus, a Florida law that prohibited VAGRANCY was held VOID FOR VAGUENESS because it was so generally worded that it encouraged erratic prosecutions and made possible the punishment of normally innocuous behavior (*Papachristou v. City of Jacksonville*, 405 U. S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 [1972]).

Well-established and clearly defined laws allow individuals, businesses, and other entities to govern their behavior accordingly (*United States v. E. C. Investments, Inc.*, 77 F. 3d 327 [9th Cir. 1996]). Before the government may impose civil or criminal liability, a law must be written with sufficient precision and clarity that a person of ordinary intelligence will know that certain conduct is forbidden. When a court is asked to shut down a paint factory that is emitting pollutants at an illegal rate, for example, the rule of law requires the government to demonstrate that the factory owner failed to operate the business in accordance with publicly known environmental standards.

### *Rule Under Law*

The rule of law also requires the government to exercise its authority under the law. This requirement is sometimes explained with the phrase “no one is above the law.” During the seventeenth century, however, the English monarch was vested with absolute sovereignty, including the prerogative to disregard laws passed by the House of Commons and ignore rulings made by the House of Lords. In the eighteenth century, absolute sovereignty was transferred from the British monarchy to Parliament, an event that was



not lost on the colonists who precipitated the American Revolution and created the U. S. Constitution.

Under the Constitution, no single branch of government in the United States is given unlimited power. The authority granted to one branch of government is limited by the authority granted to the coordinate branches and by the BILL OF RIGHTS, federal statutory provisions, and historical practice. The power of any single branch of government is similarly restrained at the state level.

During his second term, President RICHARD M. NIXON tried to place the EXECUTIVE BRANCH of the federal government beyond the reach of legal process. When served with a subpoena ordering him to produce a series of tapes that were anticipated to link him to the WATERGATE conspiracy and cover-up, Nixon refused to comply, asserting that the confidentiality of these tapes was protected from disclosure by an absolute and unqualified EXECUTIVE PRIVILEGE. In UNITED STATES V. NIXON, 418 U. S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974), the Supreme Court disagreed, compelling the president to hand over the tapes because the Constitution forbids any branch of government from unilaterally thwarting the legitimate ends of a criminal investigation.

Members of the state and federal judiciary face a slightly different problem when it comes to the rule of law. Each day judges are asked to interpret and apply legal principles that defy clear exposition. Terms like “due process,” “reasonable care,” and “undue influence” are not self-defining. Nor do judges always agree about how these terms should be defined, interpreted, or applied. When judges issue controversial decisions, they are often accused of deciding cases in accordance with their own personal beliefs, be they political, religious, or philosophical, rather than in accordance with the law.

Scholars have spent centuries examining this issue. Some believe that because the law is written in such indefinite and ambiguous terms, all judicial decisions will inevitably reflect the personal predilections of the presiding judge. Other scholars assert that most laws can be interpreted in a neutral, objective, and apolitical fashion even though all judges may not agree on the appropriate

interpretation. In either case the rule of law is better served when judges keep an open mind to alternative readings of constitutional, statutory, and common-law principles. Otherwise, courts run the risk of prejudging certain cases in light of their own personal philosophy.

### *Rule According to Higher Law*

A conundrum is presented when the government acts in strict accordance with well-established and clearly defined legal rules and still produces a result that many observers consider unfair or unjust. Before the Civil War, for example, African Americans were systematically deprived of their freedom by carefully written codes that prescribed the rules and regulations between master and slave. Even though these slave codes were often detailed, unambiguous, and made known to the public, government enforcement of them produced negative results.

Do such repugnant laws comport with the rule of law? The answer to this question depends on when and where it is asked. In some countries the political leaders assert that the rule of law has no substantive content. These leaders argue that a government may deprive its citizens of fundamental liberties so long as it does so pursuant to a duly enacted law. At the NUREMBERG TRIALS, some of the political, military, and industrial leaders of Nazi Germany unsuccessfully advanced this argument as a defence to Allied charges that they had committed abominable crimes against European Jews and other minorities during WORLD WAR II.

In other countries the political leaders assert that all written laws must conform to the universal principles of morality, fairness, and justice. These leaders argue that as a necessary corollary to the axiom that “no one is above the law,” the rule of law requires that the government treat all persons equally under the law. Yet the right to equal treatment is eviscerated when the government categorically denies a minimal level of respect, dignity, and autonomy to a single class of individuals. These unwritten principles of equality, autonomy, dignity, and respect are said to transcend ordinary written laws that are enacted by government. Sometimes

known as NATURAL LAW or higher law theory, such unwritten and universal principles were invoked by the Allied powers during the Nuremberg trials to overcome the defence asserted by the Nazi leaders.

The rule of law is a concept explained in classical time. In Greece ARISTOTLE wrote that “law should be the final sovereign; and personal rule, whether it be exercised by a single person or a body of persons, should be sovereign in only those matters which law is unable, owing to the difficulty of framing general rules for all contingencies.” In ancient Rome the *Corpus Juris Civilis* established a complex body of procedural and substantive rules, reflecting a strong commitment to the belief that law, not the arbitrary will of an emperor, is the appropriate vehicle for dispute resolution. In 1215 Magna Charta reined in the corrupt and whimsical rule of King John by declaring that government should not proceed except in accordance with the law of the land.

During the thirteenth century, Thomas Aquinas argued that the rule of law represents the natural order of God as ascertained through divine inspiration and human reason. In the seventeenth century, the English jurist SIR EDWARD COKE asserted that the “king ought to be under no man, but under God and the law.” With regard to the legislative power in England, Coke said that “when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the COMMON LAW will control it, and adjudge such act to be void.” In the United States, ALEXANDER HAMILTON applied the rule of law to the judiciary when he argued in *The Federalist*, no. 78, that judges “have neither Force nor Will, but merely judgment.”

Despite its ancient history, the rule of law was not celebrated in all quarters. The nineteenth-century English philosopher JEREMY BENTHAM described the rule of law as “nonsense on stilts.” The twentieth century saw its share of political leaders who oppressed persons or groups without warning or reason, governing as if no such thing as the rule of law existed. For many people around the world, the rule of law is essential to freedom.

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Bruges Bridge  
between Civilizations

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