Introducing Interface between Law and Aesthetics: Contributions of Nicholas K. Roerich to International Law through Roerich Pact

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Abstract

People from every discipline of knowledge have contributed directly or indirectly to discipline of law; its jurisprudence, legal philosophy, law-making processes, protection mechanisms and interpretations. This shows the interplay of knowledge from every discipline with the discipline of law. Arts in all their forms, aesthetics of every kind and, culture from every part of the world have always sought protection of various types from the law of land to which they belong to either during their life-times or posthumously, through their creators or legal protectors. The realm of law and its protections to art and artists is well-known. However, what is ought to be more-known is how an artist came forward to help law; legislators make laws to protect what artists create, Statespersons to think what they should do to art, artists and art-creations and, Governments to act in order to protect art-works of art world. This article explores the contributions of Nicholas K. Roerich who made an International Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), 1935 that was followed by the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954. This article explores the interface between law and art.

KEYWORDS: Art, Artists, Culture, Historic Monuments, Intellectual Property Rights, Legal Protection

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Introduction to Law and Art (GNLU, 2015; ICR-i, 2015):

Law as a discipline by its intrinsic nature encompasses all other disciplines of knowledge. All disciplines of knowledge come to the discipline of law for a final rescue when they come to defining and asserting interrelationships among variables, effects and outcomes. Arts and aesthetics as a discipline enhance beauty of form, sweetness of thought and charm of feeling to our culture and social development of every one of us. Its contributions to the growth and development of human mind, emotions and aesthetics since the dawn of human civilization across various parts and times of the world are well known. Studies on arts through culture (Arts Council England, 2014; Pizzigati, 2004; Sidford, 2000), anthropology (Price, 2015; Sharman, 1997; D'Azevedo, 1958), social psychology (Glaveanu, 2012; UNESCO, 2006; Iwai, 2003), child development (NCCAS-i, 2012; Lowenfeld & Brittain, 1987), arts and education (NCCAS-ii, 2012) and many interrelation researches have been undertaken to study the deeper dimensions of human thoughts and emotions and their representations through various forms of beauty, things and articles of creation. The interrelationships that art and artists have with the life and growth of a society are as fascinating as art-creations when we study the biography of the great artists of any time and age. Artists communicate the language of beauty, charm and sweetness where live expressions come to us through strikes of a paint brush, or voices and sounds that ascend and descend in scales, words of a poem, or a hand that chisels

wood, stones or objects and many more. All artists invariably see, feel, work, produce and claim that they create things of beauty, sweetness and charm of a different world. Though they live in, and for a different world, they cannot forget or dissociate themselves from the very world where they create such art-works of beauty, sweetness and charm. An artist's relation with his or her art is personal, but his or her relation with people who come into contact with their art-works and creations of art are beyond personal. It enters various realms such as social, political, religious, economic, psychological and cultural aspects to name a few. At this juncture, it is impossible to avoid seeing the connection that artists and their art-creations have with the discipline of law, legal knowledge and legal systems. Thus, we see an interface between law and arts, artists and art-works. Arts and art-creations are generally dealt by municipal laws and the domestic jurisdictions where they are created or for the purpose of which they are commissioned by an agreement or simply where they are located and housed. It can be for the purpose of charity, sale, or for its own artistic sake and posterity. In all these art and art-creations cannot avoid the realm of law, legal systems, its rules and regulations. It is interesting to read the introductory contents on art and law from every source though they do not form part of the main focus of the present article which is all about the contributions of Mr Roerich to art and art-preservations in the discipline of law. However, to read them is to enhance the scope and area of work that Roerich had done to art-world through an important historical phenomenon that took place in this century which deals with art and law whereby Roerich created an international treaty to protect art-works and monuments.

Objective:

It would be relevant to know the entire gamut with which law and art or aesthetics are interconnected. Understanding of the same forms the objective of this article. It reads the following (HG, 2015). *Art law is a unique specialty area of the law. After all, art occupies many roles in our culture and serves many functions for businesses, governments, museums, families, and artists. Art can be a form of expression, it can be a decoration, it can be a currency, and it can serve as the basis for many careers. Common issues for art law include how works of art should be valued, how to protect intellectual property rights in art, free speech issues, authenticating and dealing with stolen artworks, and a variety of business issues related to the art industry. Art valuation is particularly important for determining tax consequences of dealing in art and for testamentary purposes. It also has relevance to insurance claims disputes, and when using the art pieces for collateral when obtaining a loan. And, of course, when one chooses to donate all or a portion of their art collection to a museum or other non-profit organization, the value of the art can have important consequences to both the donor and the donee for taxes, insurance, and in retaining not-for-profit status. Intellectual property interests in art include protecting copyrights to various works and determining whether a piece was created independently or as a work for hire. A common question is whether a work has been illegally copied or not. Another issue is whether an artwork can be moved from its original installation or not. Free speech issues in art often relate to whether something is art or obscenity. Occasionally, issues about free speech may also relate to whether something is art or a violation of some other law. For example, is "tagging" or spray painted graffiti, a form of protected artistic expression or a crime?* In this article we explore this objective with only the aesthetic understanding of an artist and the requirement of legal protection from the viewpoint of art-works and art-locations.

Research Methods:
With the objective of this article set in interdisciplinary method between law and aesthetics whereby the contributions of Roerich through his Roerich Pact in international law, research method involves both doctrinal and empirical studies, of both deductive and inductive method.

Complexity of Art-issues Necessitating Art-law:

In addition to the aforementioned paragraph, yet another way to understand the contribution of Roerich is to survey the host of art issues that the society, state and people who value and treat art in various ways throughout the world. There are numerous other issues in relation to art and artists that we come to know which shows the interface between law and art, where art and artists are in need of protection and remedy from law and legal systems. Some of the interesting aspects are given below as given in a collected *art-law corpus* of the well known Law Firm Network Directory HG. They are; Legislations Governing the Export and Ownership of Cultural Property (IFAR-ii, 2015), Recommendations concerning the International Exchange of Cultural Property (UNESCO, 1976), Framework Convention on the Value of Cultural Heritage for Society by the Council of Europe (Council of Europe, 2005), Art & Cultural Heritage Law Committee of the American Bar Association (American Bar Association, 2015), The International Foundation for Art Research (IFAR-i, 2015), The Bureau of Educational and Cultural Affairs' (ECA) of the United States and the people of other countries by means of Educational and Cultural Exchange that assist in the Development of Peaceful Relations (Bureau of Educational and Cultural Affairs, 2015), Registry and Network for the Loss of Art-works (Artloss, 2015), Art-Law Foundation that aims to Promote and Coordinate the Work and Research in the field of Art-law (Art Law Foundation, 2013), The National Community Legal Centre for the Arts in Australia (Arts Law Centre of Australia, 2015), International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM, 2015), CINOA as the World Association of Art & Antique Dealer Associations (CINOA, 2015), ICOMOS as a Non-governmental International Organisation dedicated to the Conservation of the World's Monuments and Sites (ICOMOS, 2015), The Lawyers' Committee for Cultural Heritage Preservation (LCCHP, 2015), Art Theft and Art-crime Detection (Saz, 2008), the Division of Art and Cultural Property Crime of the FBI (FBI, 2015), Central Registry for Looted Art (The Central Registry of Information on Looted Cultural Property, 2015), the Finding of Stolen Art Goods (Find Stolen Art, 2012), Saving Antiquities For Everyone (SAFE, 2015) and numerous educational institutions that propagate the discipline of Art-law (Art Law Library, 2015; Blogspot, 2015; Center for Art Law, 2015; Lerner & Bresler, 2015; Georgetown Law Library, 2015; Institute of Art & Law, 2015; Spencer, 2012) show us the need for the study of law and legal systems for art, art-creations, artists and their world or popularly known as art-law. Are all these sufficient enough to excite us to know who was Mr Roerich? What were his contributions in the field of art-law? How is law and aesthetics connected?

Who was Mr Roerich?

Born on October 9, 1874, named Nicholas K. Roerich was a Russian, more a painter, an effective writer, a passionate archaeologist, deeply influenced theosophist and considered by many as a philosopher with enlightenment with a leading personality of

public stature in Russia and India and those interested in oriental studies. Besides his art work he was also interested in occultism, hypnosis and other spiritual practices especially of the oriental bent. Hailed from Saint Petersburg, Russia to a family of well-to-do notary public, he visited various places in the world, attracted and attached to snow-clad Himalayas to the extent that he found his passionate residence in the higher transcendental Himalayan altitudes of Himachal Pradesh, India. More than what he was known for in artistic creations that earned a name for him as master of mountains, he was fondly remembered for the creation of an international treaty to protect objects of culture. The treaty is popularly known as Roerich Pact. His biography is full of adventurous thrills and reading them gives an interesting account of the nature of a man whose personality is more than what has been recorded about him, whose artistic inclination and inspiration led him to knock the doors of States and open the gateway of public international law for his rescue (ICR-ii, 2015).

What is Roerich Pact?

The Treaty on Protection of Artistic and Scientific Institutions and Historic Monuments, signed on April 15, 1935 is what is known as Roerich Pact. The excavationist in Roerich along with his wife Helena Roerich led both of them to visit various ancient cities in Russia in the early 1900s to explore the cultural traditions of Russia. Every place they visited, they were saddened by the atrocities and destructions committed on artistic objects and historic monuments during the times of conflicts, battles or wars. On their return Roerich submitted a report to the then Russian Archaeologist Society requesting it to take immediate steps towards their protection. In the heat of his passion he questioned the State's inactions as to who and what will replace and restore the damaged and destroyed articles worth of cultural wealth in the same way they were made. He was deeply worried with the state of affairs afflicting the art and art-world by the modern development of society and states in the political and cultural front. For more than a decade he directed his efforts towards the protection and preservation of art objects located in historic monuments. He wrote to the Governments of various States, contacted the military personnel and called on the Heads of the State to come forward and think on the lines of protection of art, artists, and art-locations. With the onslaught of World War I, his agony and pain made him write to Russian Emperor Nicholas II and Great Prince Nicholas Nikolayevich with an appeal for national protection of cultural values during the times of conflicts. He argued the art-works and historic monuments be protected both during the times of war as well as peace. Still, another decade had to pass by. With one of the renowned academicians of Paris Dr George Chklaver who was well-versed in the understanding of international law and political relations, Roerich and Chklaver together gave an initial form to an international treaty later identified as 'Roerich Pact'. It was to become an international treaty only in 1935, after a lapse of time again to another 6 years. It is difficult to clearly ascertain whether the anti-spiritual or anti-mystic policies of the then Russian social fraternity gave this cold-face to the warm heart of an artist-Roerich who was by then widely accorded a spiritual status in the inner circles of Theosophy, Blavatsky and mystic Russia that was widely condemned by large sections of rationalistic and communistic ideas of the Russian society. Finally, the treaty came into existence in the year 1935 as Treaty on Protection of Artistic and Scientific Institutions and Historic Monuments and, became effective in the 1936. It took more than three decades for him to conceive and convince States to agree to his proposal for an international treaty.

The Roerich Pact was signed in the Oval office of the United States of America by the then President Franklin D Roosevelt as an inter-American union treaty though Roerich did not see the pact as only an inter-American treaty. He encouraged everyone to support this cause in every means. In spite of all the gloomy historical details, what is interesting to note is how this Pact since its inception is receiving attention every year from United Nations Organizations to UNESCO, the reaches of North and South Poles where they post the Flag of Roerich Pact known as the Banner of Peace, the travelling and touring exhibitions of his art-works and depictions of the Pact all over the world, responses of various Governments of States in the international community and, recently to an order of the Indian Supreme Court which upheld the Constitutional validity of the land acquisition for public purpose of Roerich's Research Estate in the State of Karnataka in the year 2014 in order to protect his legacy, ideas and thoughts of culture as peace, culture as protection and culture as social order. It goes without saying that this culture from where peace, protection and social order emanate is *sin qua non* of the rule of law, rule of order, aim and function of law and legal systems around the world.

Roerich Pact (ICR-iii, 2015)**: Cultural Dimensions of Roerich's ideas giving birth to Legal Dimensions**

It is interesting in the spectrum of legal research to identify and interpret legal issues from every discipline of knowledge. It would be highly adventurous if we extrapolate ideas from an artist to know how and what an artist thinks about law where the main preoccupation is aesthesis, beauty of ideas, form and feelings. Let us analyse the legal ideas of Roerich from his own Pact that he created.

1. The pact which is titled as *'Protection Of Artistic And Scientific Institutions And Historic Monuments Treaty Between…'* indicates in one way the nature and scope of art as a discipline which Roerich has conceived. Is art a science or pure arts that deal with only Humanities? In his artistic vision he sees art as having both the forms of pure art as well as pure matter of science. His spirit of artistry was such that it did not distinguish the art from science and science from art, when it comes to pure knowledge and skill of both art as well as science. In fact the modern views on technology are closer to this view where technology is considered both science and art. His views on creativity are a blend and mixture of art and science. When it comes to investigation, ideas, theories, and hypotheses both art and science are experimented and tested in both places; one in art-studio and the other in scientific-laboratory. In yet another way Roerich held that for art as well as science - society, people, relationship with culture, causes, history and deeper aspects of religion play a crucial role in their development and hence they both must be on the same footing without differentiation. Hence the importance of protection given to artistic and scientific institutions and historic monuments by Roerich shows the scientific temper in art and artistic appreciation of science whereby both science and art are to be preserved and protected. He called the energy behind art and science is one and the same in which knowledge is revealed in the form of beauty and aesthetic expression. He explained these issues in great detail in his ideas that he developed as 'living ethics' that culminated in the form Agni Yoga later through the writing of his wife Helena Roerich (Gindilis & Frolov, 2003). The foundation for this community of seekers of living ethics came from Roerich who believed in the unison of mind, energy and body of both artists and scientists. It is worth taking note here when religion and science

take extreme stand of rejecting the other, claiming the superiority over the other and finally drawing State policies that promote and demote the other. Roerich felt this trend and mind of the societies across the world and international community across the globalising world is a danger to the future of humanity. Indian Constitution too under Article 51(A) speaks about the protection of cultural heritage and public property and development of scientific temper under one Article. The connection between art and science is an old debate (Garfield, 1989) but its persisting nature brings debates which make them always fresh. Roerich is certainly a pioneer in merging the knowledge of both the forms of human expression. The Leavis-Snow controversy of two cultures (Luckhurst, 2007; Ortolano, 2007) of arts and sciences can get an answer probably in the mind of Roerich where art-ism and scient-ism took a coalescing position that led him to bring legislative intuition in international law as expected by renowned jurist C.W. Jenks in his writing on *A new world of law? A study of the creative imagination in international law* (1969).

2. The Preamble of the Treaty-Pact in addition to the legal and introductory note mentions; universal adoption of a flag as depicted in the Pact, preservation of both nationally and privately owned immovable monuments in times of danger both in war as well as in peace. This is an interesting phase in the life and times of Roerich who believed that the worth of culture (through arts and art-creations) is in the protection and preservation for posterity and, which is, in turn must be for 'all-times' without any exception. Fixation of time-limit in the legal protection and preservation of art-worth is to delimit the human energies from its inherent freedom of play which is its fundamental nature. This highlights several views of his that he held on art and its relation with law. Art is eternal in value and hence must be given eternal protection by law. Though this condition is something unachievable given the nature of precarious situations that human societies, State policies and borders become vulnerable at times in the current globalising world, still he was undeterred in his commitment which shows his value for art transcends the past-present and future of our existence, the time-zone with which law and its discipline confronts other disciplines. He felt law is for man and, man must obey the law that he creates. This unwritten law of the *ius naturale* is something that man cannot avoid except that he must strive to make this unwritten law in the written mode positively through a *positivist* legal mentality. This in nutshell is the artist's logic towards legal logic. Through this, Roerich has carved a niche for himself not only in the world of arts, but also in the art of legal reasoning and logic.

3. Article I of the Treaty-Pact specifies the nature and subject of protection such as '*historic monuments, museums, scientific, artistic, educational and cultural institutions'* which shall be considered as *neutral* and as such respected and protected by belligerents. The same respect and protection shall be given to personnel of these institutions where such artistic creations are located both in times of peace and war. Roerich demands neutrality for all places of historic monuments, museums, scientific, artistic, educational and cultural institutions, which automatically puts limitation on any kind of military operations in the same way what Red Cross has achieved. The Flag as mentioned in the Preamble is a sign and symbol which when allowed flying automatically indicates and demands the protection of all kinds from any possible disturbance or potential destruction. Roerich believed that art-creations arise out of peace and beauty of vision and, hence they ought to be protected by the same breadth of vision and power of peace that must bring notice of attention in the eyes of those

who point to shoot people and places that disrespects and humiliates art-works and art-locations. Neutrality in international humanitarian law is well-known to law researchers. However, neutrality based on aesthesis is something that Roerich created and must be seen to appreciate the interface between law and arts. He felt that aesthetic art-work blossoms from the inner-most chambers of an artistic inspiration. It is private and, hence ought to be neutral as it is devoid of any connection with anything other than artistic inner spirit and inner insight. Such inner spirit and insight cannot be questioned by any means as it is based on peace which is what the humanity and social existence struggles for. It is a matter of right to privacy which cannot be limited to only the creators of the art or to the times during which the creators exist to protect. State takes it as a legal obligation to protect the creator's aesthetic right from where works of peace and expressions of beauty remain alive in the art-work even after the creators have passed away. Law in its utmost scope aims at peace and when such peace and beauty emanates from any corner of the society taking an expressive turn through aesthesis, law must then intervene, in its noblest duty to protect such expressions of aesthesis born out of peace transcending time and personality behind art-works. The understanding of this time-less and personality-less jurisprudence has taken various forms in the current modern legal systems which we can see in the case of Amarnath Segal and his fight for moral rights in the Supreme Court of India (Nandrajog, 2005), moral and other derivative rights across different jurisdictions (US Code Title 17, 1990) and other international protections through treaties.

4. Article II that follows the principle of neutrality from Article I recognizes the 'spatial-element' and its scope and range of the expanse of territories where protection is implied in physical and geographical borders and boundaries. The time-element of Article I is followed by space-element in Article II. It goes without saying that only an artist of his magnitude can bring such interpolation between two disciplines of knowledge. This Article is a wonderful provision which unravels certain complexities involved in the protection of objects that are worthy of art. It reads that 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, protection is accorded to the entire expanse of the territory where artistic creations and their worth are located and indentified. The spatial element in protecting every space that occupies the art-worth, every space that supports the art-worth must be protected. Both aspects of time and spatial elements add interesting depths to legal logic and reasoning. Yet another feature is the responsibility of the respective Governments to adopt measures of internal legislation necessary to insure the said protection and respect. It is worth remembering the International Law Commission's (ILC) Draft Articles on State Responsibility under Article 3 which reads as follows (UN, 2001).

Article 3. Characterization of an act of a State as internationally wrongful The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

The commentary given by the ILC is very interesting.

Commentary

(1) Article 3 makes explicit a principle already implicit in article 2, namely that the characterization of a given act as internationally wrongful is independent of its characterization as lawful under the internal law of the State concerned. There are two elements to this. First, an act of a State cannot be characterized as internationally wrongful unless it constitutes a breach of an international obligation, even if it

violates a provision of the State's own law. Secondly and most importantly, a State cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law. An act of a State must be characterized as internationally wrongful if it constitutes a breach of an international obligation, even if the act does not contravene the State's internal law—even if, under that law, the State was actually bound to act in that way.

(2) As to the first of these elements, perhaps the clearest judicial decision is that of PCIJ in the Treatment of Polish Nationals case. The Court denied the Polish Government the right to submit to organs of the League of Nations questions concerning the application to Polish nationals of certain provisions of the Constitution of the Free City of Danzig, on the ground that: according to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter's Constitution, but only on international law and international obligations duly accepted ... [C]onversely, a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force ... The application of the Danzig Constitution may ... result in the violation of an international obligation incumbent on Danzig towards Poland, whether under treaty stipulations or under general international law ... However, in cases of such a nature, it is not the Constitution and other laws, as such, but the international obligation that gives rise to the responsibility of the Free City.

(3) That conformity with the provisions of internal law in no way precludes conduct being characterized as internationally wrongful is equally well settled. Interna tional judicial decisions leave no doubt on that subject. In particular, PCIJ expressly recognized the principle in its first judgment, in the S.S. "Wimbledon" case. The Court rejected the argument of the German Government that the passage of the ship through the Kiel Canal would have constituted a violation of the German neutrality orders, observing that: a neutrality order, issued by an individual State, could not prevail over the provisions of the Treaty of Peace. ... under Article 380 of the Treaty of Versailles, it was [Germany's] definite duty to allow [the passage of the Wimbledon through the Kiel Canal]. She could not advance her neutrality orders against the obligations which she had accepted under this Article.

(4) ICJ has often referred to and applied the principle. For example, in the Reparation for Injuries case, it noted that "[a]s the claim is based on the breach of an international obligation on the part of the Member held responsible ... the Member cannot contend that this obligation is governed by municipal law". In the ELSI case, a Chamber of the Court emphasized this rule, stating that: Compliance with municipal law and compliance with the provisions of a treaty are different questions. What is a breach of treaty may be lawful in the municipal law and what is unlawful in the municipal law may be wholly innocent of violation of a treaty provision. Even had the Prefect held the requisition to be entirely justified in Italian law, this would not exclude the possibility that it was a violation of the FCN Treaty.

Conversely, as the Chamber explained: the fact that an act of a public authority may have been unlawful in municipal law does not necessarily mean that that act was unlawful in international law, as a breach of treaty or otherwise. A finding of the local courts that an act was unlawful may well be relevant to an argument that it was also arbitrary; but by itself, and without more, unlawfulness cannot be said to amount to arbitrariness ... Nor does it follow from a finding by a municipal court that an act was unjustified, or unreasonable, or arbitrary, that that act is necessarily to be classed as arbitrary in international law, though the qualification given to the

impugned act by a municipal authority may be a valuable indication. The principle has also been applied by numerous arbitral tribunals.

(5) The principle was expressly endorsed in the work undertaken under the auspices of the League of Nations on the codification of State responsibility, as well as in the work undertaken under the auspices of the United Nations on the codification of the rights and duties of States and the law of treaties. The Commission's draft Declaration on Rights and Duties of States, article 13, provided that: Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty. (6) Similarly this principle was endorsed in the 1969 Vienna Convention, article 27 of which provides that: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

(7) The rule that the characterization of conduct as unlawful in international law cannot be affected by the characterization of the same act as lawful in internal law makes no exception for cases where rules of international law require a State to conform to the provisions of its internal law, for instance by applying to aliens the same legal treatment as to nationals. It is true that in such a case, compliance with internal law is relevant to the question of international responsibility. But this is because the rule of international law makes it relevant, e.g. by incorporating the standard of compliance with internal law as the applicable

international standard or as an aspect of it. Especially in the fields of injury to aliens and their property and of human rights, the content and application of internal law will often be relevant to the question of international responsibility. In every case it will be seen on analysis that either the provisions of internal law are relevant as facts in applying the applicable international standard, or else that they are actually incorporated in some form, conditionally or unconditionally, into that standard.

(8) As regards the wording of the rule, the formulation "The municipal law of a State cannot be invoked to prevent an act of that State from being characterized as wrongful in international law", which is similar to article 5 of the draft adopted on first reading at the 1930 Hague Conference and also to article 27 of the 1969 Vienna Convention, has the merit of making it clear that States cannot use their internal law as a means of escaping international responsibility. On the other hand, such a formulation sounds like a rule of procedure and is inappropriate for a statement of principle. Issues of the invocation of responsibility belong to Part Three, whereas this principle addresses the underlying question of the origin of responsibility. In addition, there are many cases where issues of internal law

are relevant to the existence or otherwise of responsibility. As already noted, in such cases it is international law which determines the scope and limits of any reference to internal law. This element is best reflected by saying, first, that the characterization of State conduct as internationally wrongful is governed by international law, and secondly by affirming that conduct which is characterized as wrongful under international law cannot be excused by reference to the legality of that conduct under internal law.

(9) As to terminology, in the English version the term "internal law" is preferred to "municipal law", because the latter is sometimes used in a narrower sense, and because the 1969 Vienna Convention speaks of "internal law". Still less would it be appropriate to use the term "national law", which in some legal systems refers only to the laws emanating from the central legislature, as distinct from provincial, cantonal or local authorities. The principle in article 3 applies to all laws and

regulations adopted within the framework of the State, by whatever authority and at whatever level. In the French version the expression droit interne is preferred to législation interne and loi interne, because it covers all provisions of the internal legal order, whether written or unwritten and whether they take the form of constitutional or legislative rules, administrative decrees or judicial decisions.
The ILC which brought out these fine distinctions and definitions of what is internal law of the State was directly solved by Roerich by one shot of his commitment to protection of culture. This Article of the Treaty-Pact gives three important dimensions such as spatial context, equality of protection by the acceding State to all objects of worth without any discrimination and finally stresses on the theory of specific-adoption as a measure of percolation of international law in the national constitution and municipal laws. Probably, one can safely presume that the hair-splitting conflict between the natural and positive school loyalists was known to Roerich who had swiftly and deftly adhered to a positivist mentality of legislation without giving any scope of ambiguity for natural law applications that become visible by their invisibility. Though the attitude of Roerich is monist, his method was a strong dualist. The international legal theory of monism and dualism (Marian, 2012), the relationship between national law and international law (Muller, 2013) and the enforcement of international legal obligations in a national jurisdiction which are within the scholastic traditions of legal punditry of international and constitutional law had not dissuaded the pure artistic mind of Roerich. For, his sheer thirst to protect to art and art-worth had taken him straight to the goal without ambiguity of interpretations and contradictions of methods in legal systems.

5. Article III of the Treaty-Pact stresses the importance of the distinctive flag made of a red circle with a triple red (magenta to be accurate) sphere in the circle on a white background which ought to be used by the acceding State to conspicuously put the flag in a public place that can warrant the notice of attention. According to Roerich the three red spheres symbolise the three aspects of culture namely Religion, Art and Science as well as past-present-future. The UNO and UNESCO through their culture of dialogue among civilizations based on the theory of clash of civilizations by Samuel P. Huntington, Hans Köchler's dialogue between different civilizations and the role of intercultural dialogue of Cultural Self-comprehension of Nations under the auspices of Senegalese President Léopold Sédar Senghor are working hard to bring what Roerich in his Pact brought nine decades ago. It is obvious that Roerich was much ahead of his times and environmental milieu where he saw not only the art-form and art-worth of the artists of his contemporary times, but envisioned a future for artists and their works of aesthesis beyond social and cultural posterity. He knew that the present is based on past out of which the future has to emerge. In all his paintings and poems that he gave shape, one can always see the continuity of the spirit of past-present-future through small images or signs. For example; a painting of a snow-clad mountain is a beauty of nature. However his depiction of the same brings in a painting a portrayal or rendering of either an old artefact in a tomb or temple top symbolising the past, a man or a woman or both symbolising the present and finally the panoramic and landscape vision of the stretches of the glaciers and mountain ranges under shining sun or sober moonlight reflects the timeless future of the reality of things (Roerich, 1932; Roerich, 1924).

6. Article IV speaks about the time of signature or access, registry and list of monuments and institutions for protection, Article V speaks about the cancellation of

the enjoyment of the *privileges recognized in the Pact in case they are made use of for military purposes,* Article VI gives invitation for signature at any time, Article VII speaks about *ratification and denunciation of the Pact,* and finally Article VIII speaks about time and notice of denunciation.

Jurisprudence of Roerich's Culture Necessitated International Treaty:

Roerich defined culture in the following words (Shaposhnikova, 2005). He said, *"Culture is reverence of Light, Culture is love of humanity. Culture is fragrance, the unity of life and Beauty. Culture is the synthesis of uplifting and sensitive attainments. Culture is the armour of Light. Culture is salvation. Culture is the motivating power. Culture is the Heart. If we gather all the definitions of Culture, we find the synthesis of active Bliss, the altar of enlightenment and constructive Beauty."* This culture has three aspects which are religion, art and science symbolised as three red circles in the white background of peace banner and flag. It is interesting to connect Roerich *Living Ethics* philosophy (Shaposhnikova, 2003) to the discipline of law. His approach is simple and straightforward. Roerich considered religion as the inner science; art is the expression of true beauty, charm and feeling and science is the exploration of matter whose inner dimensions according to him are revealed and expressed through art. Science and art according to him are not two different ends or opposite poles. They are one line that stretches from the visible to the invisible, from the science to the art, from the matter to the spirit. He said man has inherent potential and *energetics* (a word that he often used irrespective of its appropriateness of usage in English language) in which science of form must take the spirit of art from inside and express it through culture which law must protect. This *energetics* which he spoke about in *Living Ethics* has the possibility for a new age of humanity and society where peace and beauty, science and art will propel man to the next development. This must be the exercise of man, social collectivity and growth of nation-state. Through this world can achieve unity and peace. Every art-creation is a synthesis of art, science and expression which is what is defined as culture based on the *energetics* that blossom inside man during his times of peace and beauty of charm and feeling. State and society must support this by protection. In the same way he distinguished between civilization and culture. Former refers to that which is verifiable and scientific, and the latter refers to verifiable rather at the inner dimensions of spirit and hence supra or extra-scientific. Culture of society brings and merges both these dimensions of space; inner and outer, spirit and matter, art and science. If human civilization and world-order have to exist and move forward, cultural dimensions must exist and be protected by law. Artists and creators of this culture and their works of immortal value transcending time-space-personality must be protected and cannot be allowed to be destroyed or destructed.

Conclusion:

With the Red Cross as his model, Roerich proposed a legal recognition of culture and art neutrality in the ways of medical neutrality. The flag, which he called as the 'Banner of Peace' is symbolic taken from one of the depictions of his paintings, Madonna Oriflamma, where a woman is shown as the carrier and defender of the peace for artists. A movement based on the Roerich Pact, called *Pax Cultura*, embodies Roerich's vision for humanity in the context of protection and preservation of art and artistic creations. It is a noble vision set by Roerich through symbols of art

and culture that man must understand to secure his future. Finally Roerich opined that *educational law that, from the very first school days, will educate the young generation with noble ideas of preservation of the whole of mankind's true values* (Senior, 2011). In 'Cultural Unity' Roerich said: 'Real Peace, Real Unity is desired by the human heart. It strives to labour creatively and actively (as a) source of joy. The heart speaks its own language; it wants to rejoice at that which is common to all, uplifts all and leads to the radiant future. All symbols and tablets of humanity contain one hieroglyph, the sacred prayer – Peace and Unity (Senior, 2011). It goes without saying in conclusion that the contribution of Roerich from his aesthetic mind and heart has lead him to a crucial understanding about law and legal systems and how they must protect artists and art-works. In short, Roerich contributions in connecting law and aesthetics are like his paintings that connected unknown colours of beauty, emotion and charm of art to unknown legal obligations of the state, legislature and the executive at the international level.

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