

Religious heritage in international law: Nationalism, culture, and rights

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This Article explores the work that religious heritage performs in our thinking about the uses of heritage in the construction of politics, society, and culture. Seen as heritage, religion is an important part of nation-building, divorced from fundamental canons, and seen as a social practice, which for the most part is a positive development in line with the international human right to freedom of religion. The Article explores religious heritage in international law through the Russian experience both in the 1972 World Heritage Convention and the 2003 Intangible Cultural Heritage Convention. The author argues that, for the most part, heritage values prevail over religious ones, at least inasmuch as heritage is a proxy for secularism and cosmopolitanism. At the same time, however, the human right to freedom of religion can aid religious communities to tap into the possibilities for heritage safeguarding to protect their faith. Thus, while giving religion a privileged position may be seen as incompatible with the worldview of peace and dialogue among nations, which international law tends to privilege, heritage law processes can also aid religion and religious communities. The coupling of heritage law with human rights can create incentives for countries like Russia to engage more seriously with the possibilities of heritage mechanisms to protect certain religious practices and curb the ascent of dangerous nationalism. Russia should therefore seriously consider ratifying the Intangible Cultural Heritage Convention, at least inasmuch as this treaty can benefit the treatment of religious heritage and its use in the country, and also help promote freedom of religion as a human right with both individual and collective dimensions.

Keywords: religion, secularism, intangible heritage, world heritage, international law, conflict of rights, individual rights, collective rights, Russian heritage.

Introduction

Religious practice is intimately connected with social life. As such, it becomes an important element of culture and cultural life, contributing to a community's or people's identity. Religion is also enduring, either in its built elements (often monumentally beautiful, and thus outstanding examples of architecture from a given period) or its intangible characteristics (religious rites tend to be passed down from one generation to the next with little to no modification)¹.

For its centrality to social life and endurance, religion's association with cultural heritage seems easy and obvious. And, in effect, this association is seen in the way heritage is institutionalized and protected. UNESCO estimates, for instance, that about 20 % (twenty percent) of 1000-plus monuments and sites on the World Heritage List have important re-

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¹ See: *Lixinski L. Religious Cultural Heritage: The Law and Politics of Conservation, Iconoclasm, and Identity // Heritage at the Interface: Interpretation and Identity / ed. by G. Hooper. Florida: University Press of Florida, 2018. P. 121–135.*

ligious aspects connected to them, and contribute to a monument or site's "outstanding universal value"².

However, the "cult of heritage"³ is different from a religion, too, in many respects, which can make an otherwise easy relationship fraught with difficulties. For instance, the cult of heritage often requires easy and superficial consumption of snapshots, whereas religion requires paced, meditative and long-term commitment. Heritage is also predominantly secular, bridging between different civilizations in the interests of humanity and peace; as a result, it is accessible to all, sanitized, authorized⁴. Religious practice is often incompatible with these goals: not only has a version of religion (fundamentalism) been used historically to justify warfare, oftentimes religion still requires the exclusion of others from its sacred practices, which is incompatible with heritage's idea of being accessible to all.

Added to the mix are the ways in which religion can be used to reinvigorate national identity and nationalism, and the fact that religion is protected as a human right. The former connection is key in countries like Russia, in which religion survived the Soviet Union and re-emerged as a mechanism of social cohesion from the 1990s, but abhorred in societies like Turkey, in which religion is seen as an enemy of a secular society that requires secularism for its integrity. Common to the two is the question of whether religion is embraced as religion, or its transformation into heritage or culture neutralizes it and renders religion a historical relic that is subordinated to a broader national narrative. Religion as culture becomes an artefact of national unity, whether it is unity around one shared past and present that helps reject a more recent and difficult past (the Orthodox faith in Russia as the largest religion)⁵, or multiple overlapping pasts that melt into a secular pot of unity (the Orthodox and Islamic faiths in Turkey).

Said position is, of course, to be expected from international cultural heritage law, inasmuch as these instruments and frameworks have a clear mandate to protect cultural heritage, but not a mandate to protect religion. International human rights law, on the other hand, seems to have dual duties, to protect cultural identity and freedom of religion. But even the international human right to (freedom of) religion can admit limitations in favor of secularism.

In relation to freedom of religion as a human right, the framing of religion as cultural heritage can protect and promote faith. Protecting religious buildings as heritage preserves them also for worship, and is thus a conduit to practicing religion; and religious rituals themselves can be protected as intangible cultural heritage. The same tensions with respect to the religious or secular uses of religion arise here, but the human rights element signals towards safeguarding the interests of believers. At the same time, however, the heritage frame portrays religion as a collective endeavour, which does not sit well with freedom of religion as an individual right.

This Article explores some of the convergences and divergences between religion and cultural heritage, and international law's place in attempting to mediate these tensions. I argue that, for the most part, heritage values prevail over religious ones, at least

² Initiative on Heritage of Religions Interest // UNESCO World Heritage Center. Available at: <http://whc.unesco.org/en/religious-sacred-heritage> (accessed: 18.12.2020).

³ *Lowenthal D.* The Heritage Crusade and the Spoils of History. Cambridge: Cambridge University Press, 2005.

⁴ *Smith L.* The Uses of Heritage. Oxfordshire: Routledge, 2006.

⁵ On the diversity of religions in Russia and the predominance of the Russian Orthodox faith, see: *Agadjanian A.* Religious pluralism and national identity in Russia // International Journal on Multicultural Societies. 2000. No. 2 (2). P.97–124; *Shterin M.* New Religions in the New Russia // Nova Religio: The Journal of Alternative and Emergent Religions. 2001. No. 4 (2). P.310–321. For a comparison of majority religions in Russia and Turkey, see: *Tasch L.* Defining Nation and Religious Minorities in Russia and Turkey: A Comparative Analysis // Politics and Religion. 2010. No. 3 (2). P.327–351.

inasmuch as heritage is a proxy for secularism and cosmopolitanism. At the same time, however, the human right to freedom of religion can aid communities of faith to tap into the possibilities of heritage safeguarding to protect faith. Thus, while privileging religion may be seen as incompatible with a worldview of peace and dialogue among nations, which international law tends to privilege, heritage law processes can also aid religion and communities of faith. The coupling of heritage law with human rights can create incentives for countries like Russia to engage more seriously with the possibilities of heritage mechanisms to protect certain religious practices.

In privileging heritage over religion when there is any incompatibility, international heritage law reasserts structures that privilege the global over the local, and thus run the risk of excluding communities from their own heritage. Religion thus becomes a site of resistance against the normalizing and authorizing power of the heritage discourse. But it can also be a site of resistance against something else. When minority culture is at stake, and religion is part of minority identity, heritage listing can be a limited way of gaining recognition within or even despite the nation-state. However, the promise of emancipation through heritage-listing is often over-hyped, and its potential limited⁶.

In order to further explore these tensions, the Article is structured as follows: the next section (2) places religious cultural heritage in the context of the multiple instruments for the protection of cultural heritage under UNESCO, as well as the importance of religious heritage in Russia seen through the World Heritage List created under the 1972 World Heritage Convention (WHC)⁷, where Russian sites are overwhelmingly religious. Section 3 reconsiders the relationship between religion and heritage, but taking religion as the starting point, and using Russian intangible cultural heritage to discuss the possibilities of using heritage law to protect living heritage practices, making a case for Russia to ratify UNESCO's 2003 Convention for Safeguarding of the Intangible Cultural Heritage (ICHC)⁸. Section 4 offers some concluding remarks.

1. Religious World Heritage as Nationalism and Secularism

One of the problems with the regulation of religious heritage is the multiple different layers of regulation. This chapter focuses on the regulation under state-centric international law, but fully aware that there are a number of background rules that affect the possible effectiveness of international law⁹. Many of these implementation problems arise from the fact that religion has a separate status in many jurisdictions (such as tax-exemption status), which is not accommodated by international law, which sees the state as unitary. Further, many religions are in themselves also transnational networks not fully accommodated within the confines of state territoriality, which is the basis for most of international law, particularly international heritage law¹⁰.

According to Alessandro Chechi, the definition of religious heritage encompasses heritage that meets two out of three criteria: 1) current religious value; 2) symbolic or pro-

⁶ For an in-depth discussion in a different context, see: *Lixinski L.* Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation and Emancipation in International Law through International Cultural Heritage Law // *Asian Journal of International Law*. 2015. No. 5 (2) P. 387–409.

⁷ Convention concerning the Protection of the World Cultural and Natural Heritage 1972 (adopted 23 November 1972, entered into force 15 December 1975) 1037 UNTS 151 (WHC).

⁸ Convention for Safeguarding of the Intangible Cultural Heritage 2003 (adopted 17 October 2003, entered into force 20 April 2006) 2368 UNTS 3 (ICHC).

⁹ *Augustinos N.* The Role of Non-State Actors in the Cultural Heritage Field — The Case of the Orthodox Church and Its Heritage in Turkey // *Santander Art and Culture Law Review*. 2018. No. 4 (2). P. 280.

¹⁰ *Chechi A.* Protecting Holy Heritage in Italy — A Critical Assessment through the Prism of International Law // *International Journal of Cultural Property*. 2014. No. 21. P. 397.

fane value, related to associations of value to people not affiliated with that faith, which can be a living or dead religion; and 3) its artistic or cultural value, embodying the idea that many religious buildings are also masterpieces of a certain architectural style. This framework helps explain why religious heritage can be valued as such by believers and non-believers alike¹¹.

Most heritage classified as religious seems to be valued by believers, and therefore religious heritage is made fundamentally different from secular heritage by its living character. Living religious heritage, by ensuring the continuity of forms, ends up elevated above the documentary and historical values of heritage, and the continuity of religious practices becomes the primary goal of conservation, from the perspective of those living with it¹². In terms of conservation, the important difference is that religious heritage was born with its associated values clearly defined, whereas we require time and distance to be able to attribute value to secular heritage¹³. Therefore, the need to involve communities is much more present in dealing with religious heritage, as it is the original source of values needed to justify conservation efforts¹⁴.

There are several issues that need to be addressed in reconciling faith and conservation in the heritage context. Those include dealing with changing liturgical and functional needs of religious sites, the competing requirements of co-existing faiths, the fluctuating interest in religion by society at large, growing secular pressures on religious places, the museification of religious places and objects, the competing interests of scientific conservation and religious rules (for instance, the need in some religions for decay of wooden structures)¹⁵. These issues lead to potential solutions, such as more dialogue between religious communities and conservators (not always successful, particularly with respect to natural heritage, where scientific interests tend to prevail above all others, often to the detriment of the site)¹⁶, and the reconciliation of conservation rules and religious laws (such, as for instance, a ban on the use of pig skin in the conservation of Jewish or Muslim artefacts)¹⁷. The primary care for religious heritage, thus, should lie with religious communities themselves, and conservation professionals should be experts at the service of those communities¹⁸. But are these solutions in conservation practice, particularly the prominent role of religious communities, reflected in the specific international legal regimes around cultural heritage?

As far as the existing treaties under UNESCO for safeguarding cultural heritage go, most of them can apply in some way to religious heritage, too, even if that connection is not always openly made in the conventional texts. The first UNESCO treaty in this area, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, draws its inspiration from International Humanitarian Law (IHL) rules, particularly as

¹¹ *Chechi A.* Protecting Holy Heritage in Italy. P. 401.

¹² *Stovel H.* Introduction // Conservation of Living Religious Heritage: Papers from the ICCROM 2003 Forum on Living Religious Heritage: conserving the sacred / eds H. Stovel, N. Stanley-Prive, R. Kilick. Rome, ICCROM, 2005. P. 1–11; *Wijesuriya G.* The past is in the present: perspectives in caring for Buddhist heritage sites in Sri Lanka // *Ibid.* P. 31–43.

¹³ *Wijesuriya G.* The past is in the present: perspectives in caring for Buddhist heritage sites in Sri Lanka. P. 31.

¹⁴ *Stovel H.* Introduction. P. 2.

¹⁵ *Ibid.* P. 3–5.

¹⁶ For a case study of failure, see: *Nyathi P., Ndiweni C. B.* A living religious shrine under siege: The Njelele Shrine / King Mzilikazi's Grave and Conflicting Demands on the Matopo Hills Area of Zimbabwe // *Ibid.* P. 58–66. Cf.: *Whiting D.* Conserving built heritage in Maori communities // *Ibid.* P. 12–18.

¹⁷ See: *Zekrgoo A. H., Barkeshli M.* Collection management of Islamic heritage in accordance with the worldview and Shari'ah of Islam // *Ibid.* P. 94–101; *Maggen M.* The conservation of sacred materials in the Israel Museum // *Ibid.* P. 102–106.

¹⁸ *Stovel H.* Introduction. P. 10.

codified in the 1949 Geneva Conventions. And the Geneva Conventions do treat religious buildings and sites as a particular type of protected property. Thus, even if the Hague Convention was created to specify the rules for one specific type of protected property (cultural), they still rely on the same rules that apply to religious monuments and sites, and analogical application is natural, if not required, even if it is up to each state to determine what heritage is to be considered as protected under the specific regime during wartime.

The Hague Convention is relevant for present purposes because of the example of the Vatican City, a micro-state whose international personality is exercised by the Holy See, and which is the seat of the Christian Catholic faith for believers around the world¹⁹. The entirety of the Vatican City has been added to the list created by the 1954 Hague Convention, meaning the entire city is off-limits in the event of armed conflict²⁰. It is noteworthy, however, that in adding the buildings to the protective scope of this treaty, the Vatican City effectively renders those emblems of the Catholic faith protectable because of their cultural, and not religious, value. There are thus strategic advantages to the configuration of religion as culture, at least in that it means one can tap into a more protective regime like that of international heritage law. The tradeoff, however, is that values other than religion need to be identified, and from this legal frame's perspective supersede, religious sentiment.

The 1970 Convention on the Means to Prevent and Prohibit the Illegal Import, Export and Transfer of Ownership of Cultural Property mentions religious heritage specifically in its text, but it defers to states in deciding what heritage is worthy of protection²¹. In doing so, religious heritage aligns with the treaty's purpose of using heritage to promote national cultural identity, and religious artefacts as heritage align with nationalism²².

The WHC does not mention religion in its text, but the Operational Guidelines for the Implementation of the World Heritage Convention (2019) do mention religious or spiritual significance as a ground upon which to assess the importance of cultural landscapes, and in recognition that these cultural landscapes (broadly defined as the combined works of humans and nature) often have deep religious or spiritual meanings that justify their existence and safeguarding²³. Religious or spiritual values are also important for another subtype of world heritage, heritage routes (which often include pilgrimage routes)²⁴. It is noteworthy that religious or spiritual value does not factor into the assessment of "Outstanding Universal Value" of monuments and sites that is essential for inscription on the World Heritage List, which can be read as meaning that outstanding universal value needs to transcend religion and represent a secular or at least multi-faith relevance.

In spite of the only partial embrace of religion in the assessment of value of world heritage, religious elements are seen in a number of sites listed on the World Heritage List, as a result of the initiative of expert bodies and other organizations working with UNESCO on the implementation of the WHC. In thinking about religious communities as stakeholders, the view of the World Heritage Center's "Initiative on Heritage of Religious Interest" (launched in 2010) is that specific policies are required in order to protect and manage those sites, in a way that accommodates their distinct nature. More specifically, the concern is to avoid clashes between the views of the conservation or expert community (to whom international heritage law has traditionally primarily catered, alongside nation-

¹⁹ *Duursma J. C.* Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood Cambridge: Cambridge University Press, 1996. P. 386.

²⁰ *Ibid.* P. 396.

²¹ *Chechi A.* Protecting Holy Heritage in Italy. P. 400.

²² *Lixinski L.* Religious Cultural Heritage. P. 121–135.

²³ Operational Guidelines for the Implementation of the World Heritage Convention (adopted 10 July 2019), UNESCO Doc. WHC. 19/01. Para. 10.

²⁴ *Ibid.* Para. 24.

states)²⁵ and the views of the religious communities still using the site, seen as they are the people who will in effect undertake most of the conservation and management efforts.

By including religious communities in the process, the World Heritage system opens itself up to incorporating the views of non-state actors other than experts, in what is a remarkable development in the system. The “Statement on the Protection of Religious Properties within the Framework of the World Heritage Convention” recognizes the role that communities play in the “creation, maintenance, and continuous shaping of sacred places, and the custodial role played by them in caring for these as living heritage”²⁶. The same statement also commits to “enhancing the role of communities and the avoidance of misunderstandings, tensions, or stereotypes”²⁷. By putting religious communities front and center, it seems that the World Heritage system is willing to bridge the schism between the interests of conservation and the imperatives of interacting with heritage. It is still to be seen how these strategies are developed within the World Heritage system, and how they spread to other regimes under UNESCO. Also importantly, it remains to be seen how states will respond to these intended changes, especially in the context of minority religions.

Religion, and religious communities and sentiment, have long played a key role in Russian history and heritage. Much of pre-Revolution Russian heritage protection was aimed at straddling the East-West divide, since the country is on both sides of it, and in the 19th century it included religious Buddhist heritage in Eastern Russia, for instance²⁸. Much of ancient Russian heritage is related to religion that was a center of the daily interest of Russian people. The Russian Orthodox Church engages with the status of religious buildings as heritage by contributing to the reconstruction, restoration and renovation of churches and monasteries²⁹.

Even during the Soviet Union, which in its more radical conception was premised on the eradication of religion, heritage remained a strong political instrument³⁰, and with it, religion. The destruction of heritage, and iconoclasm and the destruction of churches in particular, was a part of the Bolshevik Revolution’s mythology and actual operation³¹. However, great effort was also undertaken to preserve and create heritage that was seen as useful to the Soviet cause. In other words, “By assuming the role of protector of cultural property and by forging a legislative space dictating that action, the young Bolshevik government sought to establish new values”³². The Soviet regime’s approach to heritage is often remembered because of Socialist heritage, that is, heritage that was produced during the Soviet regime to represent and narrate the ideals of the October Revolution. This heritage, while important, is only a second phase in Soviet heritage, the first one being dedicated to the protection of “Old Russia” heritage, and the history and memory of greatness that was important to validate the Soviet regime. Much of this heritage was religious in nature, which allowed for religion as culture to survive the Soviet regime’s distaste for it. Churches were tolerated during the Second World War, for instance, because of their abil-

²⁵ For a critical discussion, see: *Lixinski L.* International Cultural Heritage Regimes, International Law and the Politics of Expertise // International Journal of Cultural Property. 2013. No. 20 (4). P. 407–429.

²⁶ Statement on the Protection of Religious Properties within the Framework of the World Heritage Convention. Para. 4.

²⁷ Ibid. Para. 9.

²⁸ *Mironenko P.* Conservation Issues on UNESCO World Heritage Sites in Russia. From the Roerich Pact to Contemporary Challenges // Cultural Landscape in Practice / eds G. Amoruso, R. Salerno. New York: Springer, 2009. P. 145–150, 145–146.

²⁹ Ibid. P. 149.

³⁰ *Deschepper J.* Between future and eternity: a Soviet conception of heritage // International Journal of Heritage Studies. 2019. No. 25 (5). P. 492.

³¹ Ibid. P. 493–494.

³² Ibid. P. 494.

ity to galvanize nationalism, and thus played a secular role that was separate from religious rite, and aligned with Soviet aspirations³³.

Religious heritage was, however, decidedly made non-religious during the Soviet regime. The religious repression of the 1920s and 1930s, as well as Khrushchev's anti-religious campaign from the late 1950s to 1964, saw many religious buildings destroyed or closed. Attacks on these buildings were seen as attacks not only on the institution of religion, but also on the local communities themselves³⁴. Further, many surviving religious buildings were turned into stables, barns, cultural halls, garages, administrative offices, small factories, and libraries³⁵. State museums were created in former monasteries and churches, the buildings valued because of their "cultural and historic significance". Despite the view that these were destructive actions, however, there was a strong preservationist impulse behind them, and a recognition of religion as a major component of Russian heritage and identity³⁶. Museification of religious buildings had a dual purpose: the protection of heritage; and the use of monasteries as platforms for anti-religious propaganda³⁷. Some of these museums were transferred back to the Orthodox Church at the end of the Soviet regime, creating conflict between religious and secular cultural institutions³⁸.

At the end of the Soviet regime, religious buildings had their status as "towering examples of national heritage, potentially available to contenders for political and economic power as symbolic capital to exploit in their struggles for power" revived. Heritage became a central part of the struggle to redefine (and control) the national identity of post-Soviet Russia. But new renditions of Russianness "could not compete with long-standing renditions that played on themes of a strong state, patriotic wars, Russia's historic vulnerability to foreign invasion and, increasingly, on the theme of Holy Russia"³⁹. State and the Orthodox Church therefore formed an axis around which national identity was built⁴⁰.

This approach to heritage mattered both within and outside Russia. During the Soviet era, heritage and international politics were closely related, and the Soviet Union very purposefully politicized heritage at UNESCO during that period⁴¹. Therefore, it is safe to assume that the political power of heritage, tapped into through Soviet heritage diplomacy, was also used by the post-Soviet regime and its embrace of religious heritage. Religious heritage in Russia, therefore, is not really about religion: it is about the role of religion in politics, and religion as a coalescing force for creating and controlling national identity.

Russia has been a party to the WHC since 12 October 1988, which is not long before the collapse of the Soviet Regime. However, the participation in international legal instruments does not seem to have much domestic purchase, at least from the perspective of the WHC, since inscription on the World Heritage List does not have a significant effect

³³ *Smith S. A. Contentious Heritage: The Preservation of Churches and Temples in Communist and Post-Communist Russia and China // Past and Present. 2015. No. 10. P. 187.*

³⁴ *Ibid. P. 186.*

³⁵ *Ibid. P. 188.*

³⁶ *Ibid. P. 178.*

³⁷ *Ibid. P. 184.*

³⁸ *Takahashi S., Maejima N., Kobayashi H. UNESCO World Heritage and the regional powers: Changing representations of religious cultural heritage // Eurasia's Regional Powers Compared — China, India, Russia / ed. by Sh. Tabata. Abingdon: Routledge, 2014. P. 232–233.*

³⁹ *Smith S. A. Contentious Heritage. P. 201.*

⁴⁰ *Ibid. P. 202.*

⁴¹ *Geering C. Protecting the heritage of humanity in the Cold War: UNESCO, the Soviet Union and sites of universal value, 1945–1970s // International Journal of Heritage Studies. 2020. Vol. 26, No. 12. P. 1142.*

on internal tourism, and therefore little commercial influence. At the same time, however, there is significant political and social influence that flows from heritage status in Russia⁴².

A large proportion of world heritage sites in Russia has a religious element to them. Of the 18 Russian cultural sites on the World Heritage List (plus 11 natural sites), at least 11 are religious, making them the majority of Russian sites on the World Heritage List. Of those, only one is not tied to the Orthodox faith, and refers to the presence and impact of Islam in Russian history: the Bolgar Historical and Archaeological Complex, on the World Heritage List since 2014⁴³.

Among the many Orthodox sites, a key example is the Cultural and Historic Ensemble of the Solovetsky Islands, on the list since 1992 (that is, shortly after the collapse of the Soviet regime, and one of the earliest Russian sites on the List)⁴⁴. Initially, the Russian government wanted it listed as a mixed property, acknowledging both cultural and natural features of the site, but the site was ultimately listed only as cultural⁴⁵. The listing allowed for the continued management of the site as secular, but, over time, the Orthodox Church has gained increasing control over the management, conservation, restoration, and use of the site⁴⁶.

Therefore, the connection between World Heritage and religion, like with other areas of international heritage law discussed above, focuses primarily on the importance of religion for the past of a nation, which then can shape the present and the future selectively. The pervasiveness of religious heritage among Russia's World Heritage sites attests to the importance of religion for the shaping of Russian national identity. At the same time, though, the extent to which these heritage narratives actually aid religion, as opposed to serving a nationalist narrative, is unclear. Part of that unease is attributable to the fact that heritage law focuses on "objective" values of a building or structure, as opposed to the religious practice itself, which may or may not depend on specific physical support. The next section focuses on international heritage law's possibilities of protecting religion not as a building, but as a living practice.

2. Intangible Cultural Heritage and Religion as a Platform for Religious Rights

The last major treaty under UNESCO for our purposes, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (ICHC) is also important for thinking about the relationship between heritage and religion. More broadly, the ICHC was conceived as a means to challenge many of the traditional tenets of heritage conservation and management, and to include communities more centrally in safeguarding processes, even if this promise has not always been fulfilled⁴⁷. When it comes to religious heritage, the definition of Intangible Cultural Heritage (ICH) in the convention mentions that belief systems can be considered intangible heritage (ICHC, Article 2). But the drafting history of the treaty indicates a consensus that religion itself is not part of intangible heritage, at least with respect to their canons. The rituals of religion can be considered ICH, but not religion itself

⁴² Takahashi S., Maejima N., Kobayashi H. UNESCO World Heritage and the regional powers. P.232.

⁴³ Bolgar Historical and Archaeological Complex // UNESCO World Heritage Center. Available at: <https://whc.unesco.org/en/list/981> (accessed: 18.12.2020).

⁴⁴ Cultural and Historic Ensemble of the Solovetsky Islands // UNESCO World Heritage Center. Available at: <https://whc.unesco.org/en/list/632> (accessed: 18.12.2020).

⁴⁵ Takahashi S., Maejima N., Kobayashi H. UNESCO World Heritage and the regional powers. P.233–234.

⁴⁶ Ibid. P.235.

⁴⁷ For a fuller exploration, see: Lixinski L. Intangible Cultural Heritage in International Law. Oxford University Press, 2013.

in its moral and theological aspects⁴⁸. That way, the ICHC avoids passing judgment on the validity of religious practices, and embraces diversity in a more open way, allowing religious communities to ultimately control the meaning of their own practices. A remaining question with respect to ICH is to what extent, if any, the relationships between heritage and religion are changed by this new way of thinking about heritage.

Despite the exclusion of religion from the ICH definition, a range of religious practices are recognized within the ICHC, testifying to “their importance as elements of cultural identity”⁴⁹. Religious rituals like processions and sacred dances can be considered ICH for international law purposes, as long as they are seen not as “canonical or orthodox practices”, and as “popular religious customs” instead⁵⁰. Religious rituals have thus been listed from countries as diverse as Belgium, Croatia, the Republic of Korea, Bolivia, Luxembourg, Spain, and Zimbabwe⁵¹. These have been listed as religious practices, and also as practices that are labelled religious while in fact serving other purposes within the community, such as the protection of older and more powerful elements of social cohesion⁵².

If religion is quintessentially living culture, and rituals such as processions have been listed in the ICHC lists, how separate can heritage mechanisms really be from religion? After all, ICH listing has a commodifying effect that, albeit smaller than in other regimes, still has the power of fixating meaning, and, most importantly, fixating control. So, even if the ICHC system does not pass judgment on religious canon, it still has effects on, for instance, the political uses of heritage. Depending on how control over the meanings and uses of ICH is configured through the listing process, religion can be stripped off its political content, which is often central to a religion’s mandate and social relevance⁵³, or it can become a tool of resistance⁵⁴.

Taken together, the international legal framework around cultural heritage seems to have promoted an important shift in allowing for more community control over their own heritage. Thus, religious sensitivities can be more easily accommodated, even if they are necessarily sanitized in their translation for and through the other non-state stakeholders, namely experts and conservators. But heritage is still placed front and center, and that relevance presumably means that, when a religious community fundamentally diverges from the views of heritage managers about the uses of a religious site, the conservator’s view will prevail. Perhaps a framework that puts the protection of religious belief front and center will lead to a different result. International human rights law, and the right to freedom of religion under it, is one such framework.

International human rights law is a fairly developed framework, and cultural identity and heritage matters have often been adjudicated under it. The 1966 International Covenant on Civil and Political Rights is particularly important for present purposes, as it is the most widely ratified international human rights treaty of general application, and it con-

⁴⁸ *Cechi A.* Protecting Holy Heritage in Italy. P.400; *Ubertazzi B.* Article 2 (2): Manifesting Intangible Cultural Heritage // *The 2003 UNESCO Intangible Heritage Convention: A Commentary* / eds J. Blake, L. Lixinski. Oxford: Oxford University Press, 2020. P.70.

⁴⁹ *Francioni F.* Article 2 (1): Defining Intangible Cultural Heritage // *The 2003 UNESCO Intangible Heritage Convention: A Commentary*. P.55.

⁵⁰ *Ubertazzi B.* Article 2 (2): Manifesting Intangible Cultural Heritage. P.70 (citing: UNESCO, Representative List of the Intangible Cultural Heritage of Humanity 2009. UNESCO Publ., 2009. Element No. 4).

⁵¹ *Ibid.* P.70–71.

⁵² *Ibid.* P.71.

⁵³ See for instance: *Aykan B.* How Participatory is Participatory Heritage Management? The Politics of Safeguarding the Alevi Semah Ritual as Intangible Heritage // *International Journal of Cultural Property*. 2013. No. 20. P.381–405.

⁵⁴ See for instance: *Xue A.* Religion, Heritage, and Power: Everyday Life in Contemporary China, PhD Dissertation. Edith Cowan University, 2014.

tains a specific provision protecting freedom of religion (Article 18), in addition to a provision protecting minority cultures (Article 27).

With respect to Article 27, very little of its jurisprudence relates to religious practices, mostly focusing on other practices such as language, economic activities, and Indigenous law. Commentators also indicate that generally matters relating to religious minorities would be dealt with under Article 18, and subsumed under that article's protection⁵⁵. That subsumption will place the interests of minorities under the "public morals" limitation to freedom of religion, inasmuch as that clause is read as meaning the views of the majority. However, the Human Rights Committee has made it clear that "public morals" measures must reflect a pluralistic view of society, and not that of the majoritarian culture⁵⁶. Further, the provision on minority rights is fairly unique to the ICCPR, and other comparable international human rights treaties do not have a specific provision on minority protection, and would thus deal with religious heritage issues under the right to freedom of religion. Therefore, and because not all cultural heritage is minority-related, I will focus primarily on the right to freedom of religion as a means through which religious heritage can be interpreted in international human rights law. The question to be answered is whether religious community interests can be accommodated in the event of clash with heritage protection.

Within the framework of the ICCPR's freedom of religion provision, protection is extended not only religious practices themselves, but also to the very right to have or adopt a religion⁵⁷. Limitations are however permissible to this right, based on a number of grounds, and subject to a standard proportionality analysis (that is, that the limitation is required by law, connected to a specific governmental goal, and ultimately the impingement on the freedom is proportionate to the benefit for the government's goal)⁵⁸. Public morals is a permissible ground applicable in the context of religious minorities, as seen above.

In order to make a case that heritage protection measures impinge on freedom of religion (for instance, curtailing a religious community's ability to change the interior of a heritage-listed temple), the religious community will have to make a case that the infringement on their ability to change the interior of the temple curtails their ability to practice a specific and essential tenet of their religion. In other words, the protection of freedom of religion is not possible for all religious practices within a certain belief system; rather, the religious practice needs to be essential to the belief system, as the jurisprudence on conscientious objection shows⁵⁹. When it comes to cultural heritage protection, it means that a certain degree of latitude is given to the state to protect the heritage-based interests of non-believers. Therefore, even the protection of freedom of religion puts heritage interests above religious interests in most cases, unless a compelling case can be made for why the heritage protection measure will affect a fundamental tenet of religion.

Religion and heritage can therefore be seen from at least two relative positions: the listing of religious practices as heritage; and heritage interests in conflict with religious practices. In both of those instances, the effect of heritage is to focus on religion as a platform for identity that relates to society at large, rather than a inward-looking, self-reinforcing set of beliefs. In this respect, the relationships between religion and heritage may seem at odd with the commitment to protect religious freedom as a human rights, which focuses on religion for its own sake, and also largely on religion as an individual, rather

⁵⁵ *Joseph S., Schultz J., Castan M.* The International Covenant on Civil and Political Rights: Cases, Materials, Commentary. 2nd ed. Oxford: Oxford University Press, 2004. P. 789.

⁵⁶ *Ibid.* P. 510–511.

⁵⁷ *Ibid.* P. 504.

⁵⁸ *Ibid.* P. 507–508.

⁵⁹ For the ICCPR, see: *Ibid.* P. 511–512. For the European Convention of Human Rights, see: *Lixinski L.* Intangible Cultural Heritage in International Law. P. 166–167.

than collective, endeavour. However, that apparent mismatch does not withstand closer scrutiny.

The international human right to freedom of religion, while seemingly protecting the right of all to practice and profess their faith, does not in fact protect religion for its own sake. Rather, it protects the ways in which people choose to use their religion. What is protected is not the core of religious tenets, but the ability to practice them. The case law of the European Court of Human Rights seems to confirm the same idea in the *Case of the Jewish Liturgical Association Cha'Are Shalom ve Tsedek v. France*⁶⁰. This case revolves around the regulation of ritual slaughter of animals for consumption. In its judgment, the European Court determined that the practice was essential for Judaism, but it did not enter into the question of whether ritual slaughter could be impinged upon by law; instead, it focused on a system of governance and certification of kosher meat. Thus, human rights law can sidestep the core belief and thus allow states to regulate it indirectly, with more leeway⁶¹.

Secondly, with respect to the right to freedom of religion as an individual or collective right, there are strong arguments to be made about this right being exercised on an individual basis, and at any rate with the primary of its individual aspects over collective ones⁶². The recognition of religious heritage would suggest otherwise, at least inasmuch as heritage, particularly intangible heritage, is safeguarded for the benefit primarily of communities, and only then smaller groups or even individuals⁶³. Nevertheless, the effect of safeguarding religion as an individual right is not to exclude its collective dimensions, but rather to again dissociate tenet from practice: religious tenets can be held collectively, but said collectivity is abstract, controlled by a privileged few individuals, and there is therefore room for abuse. Focusing on the practice does away, or at least greatly dilutes, the possibility of using religion for oppressive purposes, whether that is within the religious group (which is when conflict between individual or collective rights usually flares up in the context of religion), or in the relations of the religious group with the community at large (which is on what heritage focuses, alongside international human rights cases on the persecution of religious minorities)⁶⁴. Therefore, the work that heritage law does in highlighting the collective aspects of religion should not be seen as detracting from the work of the right to religious freedom, and religion as culture has an important role to play in human rights questions, by allowing for greater dialogue among religious communities, complementing the focus of international human rights law.

⁶⁰ Case of the Jewish Liturgical Association Cha'Are Shalom ve Tsedek v. France (Application No. 27417/95), judgment of 27 June 2000.

⁶¹ For more commentary on this case, see: *Lixinski L. Intangible Cultural Heritage in International Law*. P. 167–168. On the European approach in general, see: *Temperman J.*: 1) Recognition, Registration, and Autonomy of Religious Groups: European Approaches and their Human Rights Implications // *State Responses to Religious Minorities* / ed. by D. Kirkham. Farnham: Ashgate, 2013. P. 151–165; 2) *Of Crosses and Homophobia: The European Court of Human Rights on which Manifestations of Religion One May Bring to Work*. Available at: <http://ssrn.com/abstract=2316736> (accessed: 18.12.2020); 3) *Religious Symbols in the Public School Classroom* // *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* / ed. by J. Temperman. Leiden: Brill, 2012. P. 142–176.

⁶² *Scolnicov A. The Right to Religious Freedom in International Law: Between group rights and individual rights*. Abingdon: Routledge, 2011. P. 2.

⁶³ On the discussion of the relationships between communities, groups, and individuals in the context of ICH safeguarding, see: *Jacobs M. Article 15: Participation of Communities, Groups, and Individuals — CGIs, not Just “the Community”* // *The 2003 UNESCO Intangible Heritage Convention: A Commentary*. P. 273–289; *Soggetti G. D. Article 15: Participation of Communities, Groups, and Individuals — Participation and Democracy* // *Ibid.* P. 290–305.

⁶⁴ See generally the paradigmatic case of *Kokkinakis v. Greece*, Judgment, Merits and Just Satisfaction, App. No. 14307/88, A/260-A, [1993] ECHR 20, (1994) 17 EHRR 397, IHRL 2980 (ECHR 1993), 25th May 1993, European Court of Human Rights [ECHR].

A similar issue on the engagement of a religious community with broader society, but with respect to built heritage, was the subject of a case before the US Supreme Court. In *Boerne v. Flores*⁶⁵, a local congregation in Boerne (Texas) wanted to expand their church to accommodate their growing numbers⁶⁶. The church was at the time unable to accommodate all those coming to services, but it was also listed under local regulations protecting the historical district. The case served as an important test of the Religious Freedom Restoration Act (RFRA), which protected religious practices by requiring the government to prove a compelling interest in order to justify an interference substantially burdening religion, and that the interference is the least restrictive means of furthering that interest (a threshold very similar to the proportionality test adopted by international human rights bodies). RFRA had been passed in order to re-establish the compelling government interest test, which had been watered down with respect to religion in a case involving the ceremonial use of Peyote, where the Court held that government should not be required to prove a compelling interest, and that laws of general application were subject to less strict scrutiny⁶⁷. RFRA rejected those cases, going back to previous case law on the compelling government interest test⁶⁸, but adding the least restrictive means prong.

The US Supreme Court decided that RFRA exceeded governmental authority, and thus struck it down. It said that RFRA was a federal intrusion into states' rights to regulate for the health and welfare of their citizens ("welfare" being the category under which heritage protection falls)⁶⁹, and that it was not designed to identify and counteract laws that were likely to be unconstitutional because of their treatment of religion. Because RFRA was too broad, it was struck down in its totality. Therefore, the necessity of proving that a practice was essential to a belief system was also done away with, making the law under the United States Constitution less protective of religion, and giving more leeway to cultural heritage protection. But states can choose to regulate differently, and exempt religious buildings from historic preservation laws (even if these exemptions could be seen as favoring certain religions, thus violating the separation between church and state and the Constitution overall, at the opposite end of the spectrum we have discussed so far)⁷⁰. The main decision of *Boerne v. Flores*, in this context, is that the federal government cannot make those decisions for communities.

Laws of general applicability (such as cultural heritage laws) with incidental burdens on religion are to be protected⁷¹, and RFRA's sweeping application would impair government's ability to create laws of general application. Persons affected by heritage protection laws (assumed to be neutral)⁷² are not more affected because of their religious beliefs; geography is the determining factor (that is, living in a specific protected area), rather than

⁶⁵ *City of Boerne v. Flores*, 521 US 507 (1997) (6-3 decision).

⁶⁶ For a fuller discussion of this case in the context of cultural heritage law, see: *Lixinski L. Religious Cultural Heritage*.

⁶⁷ *Employment Div. Dept. of Human Resources of Ore. v. Smith*, 494 US 872 (1990).

⁶⁸ In *Sherbert v. Verner*, 374 US 398 (1963); and *Wisconsin v. Yoder*, 406 US 205 (1972).

⁶⁹ See generally: *Williamson E. C. City of Boerne v. Flores and the Religious Freedom Restoration Act: The Delicate Balance between Religious Freedom and Historic Preservation // Journal of Land Use & Environmental Law*. 1997. No. 13 (1). P. 107–159.

⁷⁰ *Guiffre E. If They Can Raze it, Why Can't I? A Constitutional Analysis of Statutory and Judicial Religious Exemptions to Historic Preservation Ordinances // Scholarship @ Georgetown Law*. 2007. Available at: http://scholarship.law.georgetown.edu/hpps_papers/20 (accessed: 18.12.2020).

⁷¹ *City of Boerne v. Flores*, 521 US 507 (1997), 531.

⁷² *Hatcher Jr. R. B. City of Boerne v. Flores: Defining the Limits of Congress's Fourteenth Amendment Enforcement Clause Power // Mercer Law Review*. 1998. No. 49. P. 565–588. Heritage protection laws, however, are not necessarily neutral, they are just assumed to be so in this case vis-à-vis religious protection laws.

religion itself, at least insofar as built heritage is concerned⁷³. It was characterized by the US Supreme Court as an “attempt [at] substantive change in constitutional protections”⁷⁴, by allowing religious beliefs to displace the needs of a secular society, thereby opening the way for certain religions to intrude on the lives of practitioners of other faiths. Religious protection went too far under RFRA, an act that was supposed to not allow government impingement on religion, instead of allowing religious impingements on government, which seemed to be one of its effects. After all, claims that a law burdens the exercise of religion are difficult to contest⁷⁵, and the logic of international human rights law of requiring that the religious practice be central to the belief system is very subjective.

Therefore, even human rights law, a field of law that is meant to protect religion before protecting heritage, seems to still privilege in many instances heritage protection. That logic can be seen in international human rights cases, in which there is a burden on the religious community to prove that the religious practice being impaired by heritage protection is essential to the belief system, a decision ultimately made by the human rights body and that removes from religious communities the ability to enforce the parameters of their own religion against others. And, in a comparable US case, the communities themselves do not even get the chance to argue that their religious belief system is disproportionately burdened: as long as the heritage protection law is neutral and of general applicability, it can burden religion.

The position under human rights law (and US constitutional law) is thus that secularism (and heritage as a symbol of it) takes precedence over religion, even if the two can coexist if religious communities are willing to accommodate heritage protection norms. At the same time, however, to think of religion as heritage through the lenses of human rights also makes room for the accommodation of difference. The protection of the rights of others in international human rights law, a legitimate ground for restriction of freedom of religion, can tone down the possible uses of religion to promote group thinking that excludes outsiders, as well as the related use of religion to create or encourage nationalistic thinking. Therefore, human rights law, by forcing the accommodation of the concerns of the larger community, and not just the perspective of believers, prevents the totalization of religion. Cultural heritage law brings to the table the recognition of religion as a collective endeavor, and not just an individual right that is harder to consider in its social effects. Human rights law and cultural heritage law thus both bring important elements to our thinking about religion and the role that it plays in society, particularly when religious practice is so deeply embedded in society so as to achieve heritage status. This combination helps engage religion and the rights of believers in a productive dialogue that does not necessarily subject religion to the demands of secularism, but instead creates pathways for acknowledging the culturally relativist role of the human right to freedom of religion in the shaping of harmonious communities.

Cultural relativism with respect to human rights is a key feature of the regime governing intangible cultural heritage, despite the limitation in the definition of intangible heritage that only allows for the recognition of intangible heritage that is in compliance with international human rights standards⁷⁶. What this embrace of relativism shows is that cultural heritage law is a space where identities can be rendered more malleable, and dialogue had more productively, than in the realm of international human rights law. Community control over intangible heritage also means that, instead of religion being coopted by the

⁷³ City of Boerne v. Flores, 521 US 507 (1997), 535.

⁷⁴ Ibid., 532.

⁷⁵ Ibid., 534.

⁷⁶ For this discussion, see generally: *Lixinski L. The Convention for the Safeguarding of the Intangible Cultural Heritage and Human Rights: Relativism and Collectivism 2.0? // The 2003 UNESCO Intangible Heritage Convention: A Commentary. P. 463–477.*

state to serve a nationalist narrative, it serves a community's aspiration to cohesion and dialogue with society at large.

Russia is not a party to the ICHC, but there is Russian practice under this treaty because of a transitional provision that incorporates the program of Masterpieces of the Oral and Intangible Heritage of Humanity (a predecessor to the ICHC) into the Representative List of the Intangible Cultural Heritage of Humanity⁷⁷. Therefore, Russia is effectively tied to the ICHC in this respect, and that connection offers a window to examine the possibilities of safeguarding Russian religious heritage in international law.

Specifically, one of the two Russian items from the Masterpieces program is the "Cultural space and oral culture of the Semeiskie"⁷⁸. This manifestation of intangible heritage was added to the Masterpieces program list in 2001, and then incorporated into the ICHC list in 2008. The Semeiskie community is constituted primarily of "Old Believers", which date back to the seventeenth century and were repressed over the course of the history of the Russian Orthodox Church, particularly by Catherine the Great. Exiled to Siberia, they were able to preserve important elements of their culture, and the space east of Lake Baikal where they concentrated has become an important area for the practice of their religion, but also a significant remnant of pre-seventeenth century Russia. This religious community and their practices, through persecution and exile, became a time capsule of Russian history and identity. The end of the Soviet Union also ended their isolation, but their contact with mainstream Russian culture has also put pressure on their cultural traditions, even if they are willing to safeguard much of their intangible practices themselves⁷⁹.

Cultural spaces in the ICHC are akin to cultural landscapes in the WHC (which, as discussed above, is where most of the connection between world heritage and religion is to be found in the Operational Guidelines). There is thus an important element to the connection between place and human groups, and the role of religion in cementing and amplifying those connections. Religion can thus serve not only as a cultural practice in its own right, but also a means to ground communities. For Russia specifically, the safeguarding of the Semeiskie cultural space is a strong indicator that other ways of thinking about religion as culture are possible in international law, and to promote narratives that are not about nationalism at the exclusion of others, but to remember that religion can be (but should not be) used to persecute minority groups, and that ultimately those once-persecuted groups contain the same values we wish to promote through culture and cultural dialogue. Religious heritage as ICH, therefore, underscores the role of religion in bridging different groups, and that in the long-term the exclusion of certain groups on the basis of their religious beliefs or lack thereof is a hollow enterprise, as fundamentally all communities have a right to coexist.

In light of the above, to safeguard religion and the right to freedom of religion through heritage is no easy task, because it requires thinking of religion in its collective aspects, whereas religion is usually imagined and protected as an individual right. Nevertheless, there are past examples of imagining religion as the collective practice of a community within domestic rights frameworks, and therefore international human rights law can make an accommodation for these collective dimensions, while remaining mindful of the need to protect individual religious identity first.

Further, religion as culture does not need to be always secularized to be safeguarded, as the example of Russian intangible heritage shows. Hence, there is a strong case to be

⁷⁷ For a commentary, see: *Aikawa-Faure N.* Article 31. Transitional Clause on the Relationship to the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity // *The 2003 UNESCO Intangible Heritage Convention: A Commentary*. P. 408–431.

⁷⁸ UNESCO Intangible Cultural Heritage. Cultural space and oral culture of the Semeiskie. Available at: <https://ich.unesco.org/en/RL/cultural-space-and-oral-culture-of-the-semeiskie-00017>.

⁷⁹ *Ibid.*

made for Russia to ratify the ICHC, so religion can be brought to life as a cultural manifestation, but one that is centrally controlled by the communities of faith to pursue their identities conditioned to tolerance values that are in sync with core religious tenets, as opposed to the risk of cooption of religion to promote nationalism that is otherwise seen in international heritage law. The secularization of religion that is a key effect of cultural heritage law in other domains does not always address the problem of intolerance, it can simply hide it away by creating a barrier between religion and the world. Safeguarding religion as intangible heritage necessarily renders that barrier porous and makes much needed room for engagement with religious tenets subordinated to human rights values that are already at the core of most religions.

Conclusions

Cultural heritage law, religion, and human rights are part of a complicated equation about the shaping of national identity and the promotion of intercultural dialogue and just societies. For the most part, international heritage law leans towards the secularization of religion, and focuses on the social work that religion does. While this turn to secularism can be seen as going against religious tenets, it is actually well in line with the protection of the human right to freedom of religion, inasmuch as it prevents the abuse of religious canon against certain communities, groups, and individuals, whether internal or external to the specific religion. There is therefore much to be gained from thinking about religion as cultural heritage. Problems remain in the use of religion as a driver of nationalism, which is facilitated by thinking of religious heritage as divorced from (religious) communities, as seen in the example of the WHC, even though significant efforts are being undertaken by UNESCO in this area. But the focus on religious heritage as living heritage, enabled by treaties like the ICHC, allow for heritage and religion to contribute to a broader conversation about humanity and the values we wish to espouse. There is a strong case for Russia to ratify the ICHC so as to benefit from these possibilities of intercultural dialogue within the framework of Russia's cherished religious heritage.

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Религиозное наследие в международном праве: национализм, культура и права

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В статье исследуется та роль, которую религиозное наследие играет в нашем мышлении об использовании нематериального культурного наследия в политическом, социологическом и культурном аспектах. Рассматриваемая как наследие, религия выступает важной частью национального строительства, оторванной от фундаментальных канонов и воспринимаемой как социальная практика, что, по мнению автора, по большей части является развитием в правильном направлении в соответствии с международно признанным правом человека на свободу вероисповедания. В статье исследуется религиозное наследие в международном праве через российский опыт восприятия как Конвенции о Всемирном наследии 1972 г., так и Конвенции о нематериальном культурном наследии 2003 г. С точки зрения автора, ценности такого наследия преобладают над религиозными, по крайней мере поскольку концепция нематериального культурного наследия выступает в качестве посредника для распространения секуляризма и космополитизма.

Однако в то же время право человека на свободу вероисповедания способно помочь религиозным общинам использовать возможности сохранения наследия для защиты веры. Таким образом, в то время как придание религии привилегированного положения рассматривается как несовместимое с ориентацией на установление мира и диалога между нациями, которой международное право имеет тенденцию отдавать приоритет, процессы имплементации права наследия также обладают потенциалом содействия религии и религиозным общинам. По мнению автора, связь правовых норм о нематериальном культурном наследии с концепцией прав человека создает для таких стран, как Россия, стимулы более серьезно заниматься возможностями имплементации механизмов защиты этого наследия для охраны определенных религиозных практик и сдерживания роста опасного национализма. Поэтому России следует серьезно рассмотреть вопрос о ратификации Конвенции о нематериальном культурном наследии, по крайней мере для того, чтобы она принесла пользу обращению с религиозным наследием и его использованию в стране, а также способствовала расширению свободы вероисповедания как права человека, признаваемого и в индивидуальном, и в коллективном измерениях.

Ключевые слова: религия, секуляризм, нематериальное наследие, мировое наследие, международное право, коллизия прав, индивидуальные права, коллективные права, российское наследие.

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