

University of Groningen **Faculty of Arts**

Em. prof. dr. Antoon De Baets  
Professor of History, Ethics and Human Rights  
Department of History, University of Groningen  
The Netherlands  
Tel (+31 ) 651 941 381  
e-mail: a.h.m.de.baets@rug.nl

*Date:* 20 September 2023

*Subject:* Commentary on the draft *Principles for Implementing the Right to Academic Freedom*

To: Working Group on Academic Freedom  
Attention: Rob Quinn, Mylène Bidault, Jesse Levine  
scholarsatrisk@nyu.edu

Dear Working Group, dear friends,

Congratulations on the draft *Principles for Implementing the Right to Academic Freedom* that I have read with great interest. To my knowledge, this would be the first set of academic freedom principles of global application.

At the same time, I am fairly critical of the present draft. I list my comments below in the hope that they may serve their purpose of tweaking the draft Principles here and there.

In fact, I had so much to say that I only commented on the Introduction (page 1 of the draft), which arguably summarizes the kernel of the Principles. Passages of the draft are in italics, comments follow after the bullet.

*Academic freedom is essential to quality teaching, research, innovation, and the production, dissemination and application of knowledge.*

- Do you mean “knowledge” or “scientific knowledge”?

*It safeguards democratic self-governance and human rights.*

- Democratic self-governance of what? Of higher education institutions?

*It is protected by existing international human rights standards and international education principles ...*

- Where do we find these “international education principles”?

*the constitutional or national laws of most states*

- the domestic law, including the constitution, of most states.

*the following principles articulate nine essential aspects of the right of academic freedom*

- The following principles articulate nine essential aspects of the *implementation* of the right of academic freedom. Remember that your title is not Principles for the Right of Academic Freedom, but Principles for *Implementing* the Right of Academic Freedom.

However, I think that, in fact, you want to do both. In that case, the title should be: *Principles of Academic Freedom and Its Implementation*.

*Principle 1: Academic freedom is the right to develop knowledge and ideas*

- What you describe here is the right to freedom of thought, not the right to academic freedom.

*Principle 2: Academic freedom is protected by international human rights law*

- This should be: “Some aspects of academic freedom are protected by international human rights law.” Academic freedom is not entirely protected by international human rights law. Compare this with copyright: the moral aspects of copyright are protected by the ICESCR, most material aspects are not.

*Principle 3: Academic freedom requires autonomy of institutions*

- This should be: “Academic freedom requires autonomy of higher education institutions.” Even this narrower formulation is not correct because there are cases in which scholars and scientists exercised their academic freedom although their institution was not autonomous. Therefore, a more precise formulation would be: “Academic freedom flourishes only in autonomous higher education institutions.”

*Principle 4 : Academic freedom includes intramural and extramural expression*

- This should be: “Academic freedom includes intramural and extramural expression if it is related to the expertise of scholars and scientists.” Intramural and extramural expression that is not related to that expertise is not covered by academic freedom but by freedom of expression.

*Principle 5: Academic freedom requires access to information*

- This should be: “Academic freedom requires access to information of public bodies.” It is doubtful whether the requirement extends to private information.

*Principle 6: Academic freedom requires freedoms of movement and association*

- This should be: “Academic freedom requires freedoms of movement, assembly, and association.”

*Principle 7: Academic freedom is essential to all levels of education*

- This is not untrue but it is controversial. In my view, academic freedom is *directly* related to higher education institutions and *only indirectly* to primary and secondary education institutions, namely to the extent that scientific knowledge is applied in curricula and textbooks at these levels and to the extent that this knowledge is transmitted by teachers. All the other utterances in primary and secondary education institutions are covered by the freedom of expression regime described in ICCPR Article 19.3, of which the clause “The exercise of the rights provided for in paragraph 2 of this article carries with it *special duties and responsibilities*” is of importance. Please note that this clause was used in cases against teachers by the UN Human Rights Committee in *Ross* (2000) and the European Court of Human Rights in *Gollnisch* (2011).

*Principle 8: Students have the right to academic freedom*

- This should be: “Students have a qualified right to academic freedom.” Students do not have a full right to academic freedom. It is uncontroversial that they should be able to express their thoughts freely. Furthermore, they are entitled to receive quality education. They are allowed to defend controversial opinions in the classroom and have the right to be free from indoctrination and propaganda. They can claim a right to receive an impartial assessment of their work and to have a say in the determination of curricula. As far as I can see, other aspects of academic freedom are not applicable to them.

*Principle 9: Protection of academic freedom is a shared responsibility*

- Principle 9 should mention the classic triad – respect, protect, promote – and should therefore read: “Respecting, protecting and promoting academic freedom are shared responsibilities.” To my knowledge, the triad was first explicitly formulated in CESCR General Comment 13 [Right to education] (1999), para. 46.

*When fully implemented, these principles would substantially guarantee protection, promotion, and enjoyment of the right of academic freedom.*

- Same comment as above.

I also missed three principles:

*Principle: “Academic freedom is a professional freedom that has its roots in human rights.”* Indeed, academic freedom is a professional freedom, some aspects of which have roots in human rights whereas others have not. Academic freedom itself is not a human right.

*Principle: “The primary purpose of the autonomy of institutions is respecting, protecting and promoting academic freedom.”* Academic freedom is subject not only to external threats but also to internal threats. Institutional autonomy is not only seven centuries older than academic freedom, it also has frequently been abused to curtail academic freedom. In fact, rather than academic freedom’s greatest ally, it is sometimes its greatest threat.

*Principle: “The exercise of academic freedom carries with it special duties and responsibilities.”* The most important duties/responsibilities are the duties (1) to honestly search the truth; (2) to respect the academic freedom of other academics and students, and (3) to ensure fair discussion of contrary views (See UNESCO Recommendation of 1997).

In 2021 I wrote a [chapter](#) about academic freedom in an edited collection and in 2020 I wrote a [comment](#) on the draft General Comment on Science and Economic, Social and Cultural Rights which may be useful if you are interested in the details of some of my comments.

Good luck with your further work on the Principles. Please let me know whether I can be of further help.

With warmest best wishes,