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Dear United Nations Special Rapporteur on the Right to Education,

I have the honor and the pleasure to send you my contribution for your upcoming report to the Human Rights Council on academic freedom and freedom of expression in educational institutions, to be presented in June 2024.

1. General remark about academic freedom as a professional freedom of academics [question 1]

Academic freedom does not figure in either the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights: it is not an explicit part of the family of human rights. This does not mean, however, that some of its dimensions are not deeply rooted in human rights. The strongest evidence for the human rights roots of academic freedom can be found in the ICESCR when it speaks about State responsibilities “to respect the freedom indispensable for scientific research and creative activity” (Article 15.3 ICESCR) and to “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields” (Article 15.4 ICESCR). However, the notion “freedom indispensable for scientific research” is narrower than academic freedom because the latter also encompasses the freedom to teach; the notion is also larger because scientific research can be carried out outside academic institutions. Both State responsibilities are important preconditions for academic freedom, nevertheless. Other human rights, such as freedom of expression, peaceful assembly and association, and indeed education, are also prerequisites for or components of academic freedom but academic freedom as such is not mentioned in either the ICCPR or the ICESCR.

This has a reason. Academic freedom is not a human right but a professional freedom of academics. It is governed by the same restrictions as the right to freedom of expression, but on top of this comes an additional restriction: it can only be invoked if it is used during a peer-controlled search for the truth. In other words, freedom of expression is a necessary but not sufficient condition for academic

freedom: academic freedom is a special subset of free expression. The additional restriction makes academic freedom a professional freedom for academics rather than a human right for everyone. This professional freedom is strong: it belongs to individual scholars but because these scholars work at universities they also enjoy the additional protection of university autonomy (see on autonomy my last observation).

2. The academic freedom of students [question 2]

Students do not have a full right to academic freedom: they have a *qualified* 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.

3. Academic freedom and primary and secondary education levels [questions 2 and 9]

In my view, academic freedom, as a professional freedom of academics, 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 particular importance as an additional restriction ground for teachers.

4. A note on autonomy [question 4]

Institutional autonomy has several dimensions: legal, strategic, organizational, financial, personnel, and academic. Strategic autonomy means the right to determine long-term goals; personnel autonomy covers recruitment, salary, dismissal, and promotion; academic autonomy includes programs, quality control, teaching language, and admission of students. A university can rank high on one dimension of institutional autonomy and low on another. It is, however, unclear where the power to exercise institutional autonomy resides: in the governing board, the senate, or the board of trustees.

It is a fatal fallacy to confuse academic freedom and institutional autonomy. Institutional autonomy is not a goal on its own, its basic rationale is the protection of academic freedom. It may surprise that UNESCO’s definition of academic freedom – through the rights of criticism and co-governance –

protects academics against their own universities. On closer scrutiny, however, this is not so strange because in practice institutional autonomy and academic freedom often have a tense relationship. The reason is that universities sometimes take controversial decisions that put academic freedom under pressure. One can think of their powers to dismiss staff, to not promote personnel, to suspend subjects and disciplines, to reorganize or close departments, to reallocate personnel, and to associate or merge with other institutions. All these operations potentially cause much tension among staff members (and students as well). As a rule, efficient governance has a tense relationship with academic freedom. If the principle that institutional autonomy should be at the service of academic freedom is not heeded, the tension between both can degenerate into institutional autonomy becoming an internal threat to academic freedom.

5. Further information

For more information, please see also: Antoon De Baets, “[Academic Freedom between History and Human Rights in a Global Context](#),” in Joseph Zajda, ed., *Third International Handbook of Globalisation, Education and Policy Research* (Dordrecht: Springer, 2021), 923–943. [Second updated edition forthcoming 2024].

With best wishes,

Antoon De Baets