

SPECIAL ISSUE ARTICLE

ACADEMIC FREEDOM: CONCEPTUALISATIONS, CONTESTATIONS AND CONSTITUTIONAL CHALLENGES

The globalization of academic freedom

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Abstract

Liberal democracies and illiberal regimes alike recognize academic freedom as a norm that enables scientific progress. This article investigates the extent to which the globalization of academic freedom has been the result of a global diffusion process in addition to national developments, such as modernization and democratization. Academic freedom spread as part of a wider liberal script after World War II. The empirical analysis shows, however, that the codification of academic freedom at the international and regional level has been slower compared with other parts of the liberal script. To the extent that academic freedom has emerged as a global norm, it has happened through decentralized diffusion processes driven by higher education institutions and civil society networks. Different views on meaning, scope and emphasis made international and regional institutions norm takers rather than norm shapers. They only started to systematically institutionalize academic freedom into the liberal script when networks of scholars and higher education institutions mobilized internationally amidst increasing contestations of their academic freedom since the turn of the millennium.

Keywords: academic freedom; diffusion; liberal script; right to science; scientific freedom

Introduction

Liberal democracies value academic freedom in teaching and research. They guarantee the individual freedom of academics to teach and research, as well as the institutional autonomy and the right to self-governance of universities.¹ As such, academic freedom has become a major target of the ongoing contestations of the liberal script, together with the independence of the judiciary, the freedom of the media and the protected space for civic associations. Some even argue that ‘academic freedom is an indicative facet of freedom within wider society’.² At the same time, illiberal regimes, such as the Soviet Union and China, equally claim(ed) to protect academic freedom.³

¹PG Altbach, ‘Academic Freedom: International Realities and Challenges’ (2001) 41(1/2) *Higher Education* 205.

²T Karran, ‘Academic Freedom: In Justification of a Universal Ideal’ (2009) 34(3) *Studies in Higher Education* 265; AA Preece, ‘Academic Freedom and Freedom of Speech’ (1991) 16 *Bulletin of the Australian Society of Legal Philosophy* 32.

³See Spannagel’s contribution to this special issue.

This article investigates the extent to which the globalization of academic freedom has been the result of a global diffusion process in addition to national developments, such as modernization and democratization. Janika Spannagel's contribution in this special issue shows that constitutional academic freedom provisions have spread globally, though unevenly, since the end of World War II. While her analysis of diffusion processes and their drivers focuses on the national level, in dialogue with her findings, this article seeks to analyse when academic freedom and related concepts became institutionalized at the *international and regional levels* and to what extent international and regional institutions have developed mechanisms to promote and protect academic freedom as they did with regard to other liberal principles, such as individual human rights. It makes a relevant contribution to this special issue by contextualizing the constitutional codification of academic freedom within the larger international order, by identifying the actors who promoted the diffusion, and by investigating the different concepts of academic freedom that were put forward. Our empirical findings reveal that the globalization of academic freedom has been slow compared with other parts of the liberal script and has mainly been driven by civil society networks and higher education institutions.

The codification of academic freedom at the international level started in the second half of the 1960s, when the International Covenant on Economic, Social, and Cultural Rights (ICESCR) added to the right to science recognized in the Universal Declaration on Human Rights the duty of states to respect the freedom of science.⁴ Twenty years later, with the Cold War drawing to an end, university associations in Europe, Africa and the Americas began to push for a *right to science*-based concept of academic freedom at the international and regional levels. It took international and regional organizations another ten years to follow suit, codifying academic freedom as a *professional* right of academics and a basic principle governing university. For the longest time, there has been 'no legally binding international human rights instrument – neither at the global nor the regional level – [which] provides express protection for this right'.⁵ This is only changing slowly through the case law of regional courts in Europe.⁶ To the extent that academic freedom has emerged as a global norm, it has happened through decentralized diffusion processes driven by higher education institutions and networks. International and regional institutions facilitated the spread of academic freedom as a norm. In the absence of a common understanding of its meaning, its scope and its emphasis, however, they used to be norm takers rather than norm shapers. International and regional institutions only started to systematically institutionalize academic freedom into the liberal script when higher education networks and institutions mobilized internationally amidst increasing contestations of academic freedom as a professional right of academics and the institutional autonomy of universities from the turn of the millennium.

Academic freedom and the liberal script

Unlike mass education or women's rights, academic freedom has not been treated explicitly as part of the global script of Western modernity.⁷ This is puzzling, as scientific

⁴See Kinzelbach's contribution to this special issue.

⁵KD Beiter, T Karran and K Appiagyei-Atua, 'Yearning to Belong: Finding a Home for the Right to Academic Freedom in the UN Human Rights Covenants' (2016) 11 *Intercultural Human Rights Law Review* 107; KR Lyer, I Saliba and J Spannagel, 'University Autonomy and Academic Freedom: Causes, Responses, and Implications for Academic Freedom', in KR Lyer, I Saliba and J Spannagel (eds), *University Autonomy Decline* (London: Routledge, 2023).

⁶See Kovács' contribution to this special issue.

⁷JW Meyer *et al*, 'World Society and the Nation-State' (1997) 103(1) *American Journal of Sociology* 144.

knowledge plays a crucial role in societal progress and national development in modern societies.⁸ Higher education institutions are major sites of knowledge production and knowledge dissemination. They serve the agentic individual in the modern knowledge society.⁹ Accordingly, universities and academics need to be shielded against interference by religious or state authorities.¹⁰ Freedom of teaching and research for academics within the university and in society became widely accepted in modern societies.¹¹ About 100 states have constitutional provisions that protect academic freedom in one way or the other.¹² Others, including the United States, France and the United Kingdom, protect academic freedom through statutory laws or other legal means.¹³ It seems that academic or scientific freedom have become part of existing scripts for organizing modern societies, as Kovács and Spannagel argue in the Introduction to this special issue (see their article for further discussion of the 'liberal science script', its relation with academic freedom and a definition of these terms).

A script is a coherent set of shared understandings about the organization of society, expressed in prescriptive and descriptive statements about how a society ought to be and is.¹⁴ These statements are linked by a grammar that integrates them into a coherent set. Scripts justify and legitimize political rule and social order. They compete with each other over relevance and dominance. The core of any script that claims to be liberal is constituted by the right to individual and collective self-determination. On the one hand, all individuals are equal and free to govern themselves. On the other hand, individuals act collectively to determine how the community they form governs itself. The liberal grammar requires a balancing of the tension between individual and collective self-determination without making one ontologically prior to the other. Varieties of the liberal script differ in how they resolve the tension.

The search for truth and the advancement of human knowledge for the benefit of society are major features of modernity. In the liberal script, science is not only linked to rationality but to individual and collective self-determination, constituting its core.¹⁵ On the one hand, science enables the agentic individual to make autonomous choices through a non-dogmatic and critical interpretation of the human condition. As such, academic freedom is closely linked to other individual rights, including the freedom of expression and the freedom of thought. On the other hand, science provides the basis for collective decision-making through the exchange of reasoned arguments. Scientific reasoning provides for the possibility of adjudicating competing truth claims in a

⁸GS Drori *et al*, *Science in the Modern World Polity: Institutionalization and Globalization* (Stanford, CA: Stanford University Press, 2003).

⁹E Schofer and JW Meyer, 'The Worldwide Expansion of Higher Education in the Twentieth Century' (2005) 70(6) *American Sociological Review* 898; DJ Frank and JW Meyer, *The University and the Global Knowledge Society* (Princeton, NJ: Princeton University Press, 2020).

¹⁰Cf JC Lerch, DJ Frank and E Schofer, 'The Social Foundations of Academic Freedom: Heterogeneous Institutions in World Society, 1960 to 2022' (2023) 89(1) *American Sociological Review* 88; M Kumm, *Academic Freedom in Liberal Constitutional Democracies. Justifications, Limits, Tensions, and Contestations* (Berlin: Cluster of Excellence, 2024), <<https://www.scripts-berlin.eu/publications/working-paper-series/Working-Paper-42-2024/index.html>>.

¹¹See Altbach (n 1).

¹²See Spannagel's contribution to this special issue.

¹³KR Lyer, I Saliba, and J Spannagel (eds), *University Autonomy Decline* (London: Routledge, 2023).

¹⁴Cf TA Börzel and M Zürn, *Contestations of the Liberal Script: A Research Program* (Berlin: Cluster of Excellence, 2020).

¹⁵See Kumm (n 10).

rational dispute that facilitates democratic decision-making by deliberation rather than simple majority voting.

With the end of World War II, the liberal script for organizing societies started to globalize. While spreading in waves at the domestic level, involving backlash and regression,¹⁶ its institutionalization at the international level progressed. The liberal international order that became dominant after 1945 enshrined core liberal principles of freedom and human rights as reflected in the UN Charter and various international and regional human rights regimes.¹⁷ The end of the Cold War extended the liberal authority of international institutions.¹⁸

The article investigates whether academic freedom has followed the global expansion of the liberal script. The empirical analysis in the following section will show that academic freedom seems to have globalized, notwithstanding variations in conceptualizations, codification and practices of academic freedom across regions and countries. Yet, compared with other components of the liberal script,¹⁹ the codification of academic freedom has been slower amidst the lack of a common understanding of its meaning, its scope and its emphasis.

The globalization of academic freedom

Before we consider the uptake and diffusion of academic freedom by international organizations, it is important to first understand the extent to which academic freedom has been adopted at state level. If the norm was part of the global diffusion of the liberal script, we should see a global trend in the state adoption of academic freedom, together with other liberal norms such as democracy. The global trend should have started after World War II, when the liberal script was institutionalized at the international level.²⁰ It should follow an s-curve acceleration²¹ or norm cascade²² typical of diffusion processes. Once a critical number of states adopt a norm (tipping point), norm adoption by others exponentially increases. At the same time, we should see two leaps: first in the 1960s, as the result of decolonization that saw the creation of new states being able to adopt the liberal script; and second in the 1990s, after the end of the Cold War when formerly socialist countries became free to follow the liberal script.²³ Finally, the diffusion of academic

¹⁶SP Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

¹⁷GJ Ikenberry, *A World Safe for Democracy: Liberal Internationalism and the Crises of Global Order* (New Haven, CT: Yale University Press, 2020); C Reus-Smit, *On Cultural Diversity: International Theory in a World of Difference* (Cambridge: Cambridge University Press, 2018); DA Lake, LL Martin and T Risse, 'Challenges to the Liberal Order: Reflections on International Organization' (2021) 75(2) *International Organization* 1; RL Jepperson and JW Meyer, *Institutional Theory: The Cultural Construction of Organizations, States, and Identities* (Cambridge: Cambridge University Press, 2021).

¹⁸TA Börzel and M Zürn, 'Contestations of the Liberal International Order from Liberal Multilateralism to Postnational Liberalism International Organization' (2021) 75(2) *International Organization* 1.

¹⁹Meyer et al (n 7). BA Simmons, F Dobbin and G Garrett, 'Symposium: Diffusion of Liberalism' (2006) 60(4) *International Organization* 781.

²⁰See Ikenberry (n 17).

²¹F Gilardi, 'Transnational Diffusion: Norms, Ideas, and Policies', in W Carlsnaes, T Risse and BA Simmons (ed), *Handbook of International Relations* (London: Sage, 2012).

²²M Finnemore and K Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) *International Organization* 887.

²³See Lerch et al (n 10).

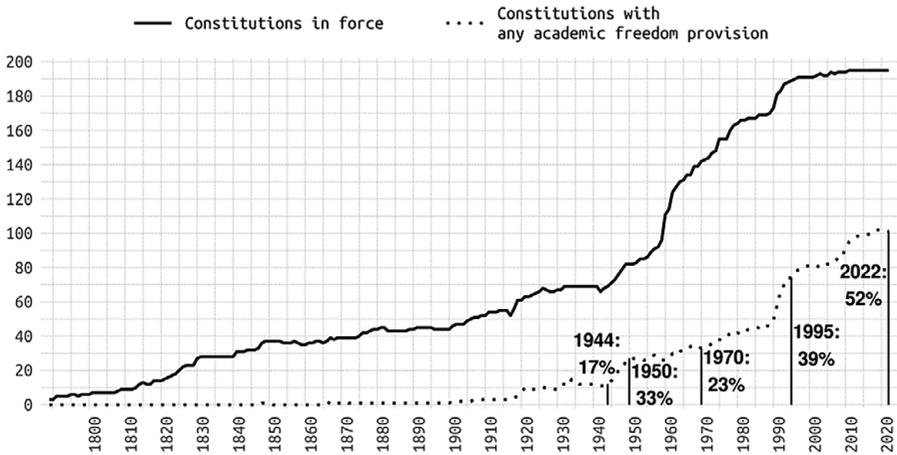


Figure 1. State adoption of constitutional provisions on academic freedom (1789–2022).

freedom should be more pronounced in regions with a higher density of democracies, which should have adopted academic freedom as part of the liberal script (Europe, the Americas).

Two previously collected sources of macro data on the spread of academic freedom, liberal democracy and liberal international institutions seem to support these expectations. First, Spannagel's dataset on constitutional provisions of academic freedom shows that states have increasingly adopted such provisions over time (see Figure 1 and, more extensively, Spannagel's contribution in this special issue). Before the end of World War II, only 17 per cent of existing states had included some reference to academic freedom or related concepts in their constitutions.²⁴ The percentage of state adopters nearly doubled, to 33 per cent, between 1945 and 1950, while the number of existing constitutions went up by only 13 per cent, from 69 to 82. Decolonization has done little to boost adoption – on the contrary, the percentage has dropped. Only few of the independent states included academic freedom in their new constitutions. This changed with the end of the Cold War. Many postcolonial states that initially had not chosen to include academic freedom in their new constitutions did so until 1995, particularly in Africa. It is the post-socialist states, however, that account for the lion's share of new adopters after 1990.²⁵ The most recent increase to 52 per cent occurred in the 2010s and had nothing to do with states becoming independent as indicated by the flattening of the number of constitutions in force. Rather, five Arab countries revised their constitutions to include academic freedom in the context of the Arab spring, together with seven Sub-Saharan African countries. Finally, several long-standing democracies, some of which had adopted the liberal script before or right after World War II (e.g. Switzerland, Sweden, Austria) recently decided to

²⁴See Spannagel's contribution to this special issue and J Spannagel, 'Introducing Academic Freedom in Constitutions: A New Global Dataset, 1789–2022' (2023) *European Political Science*, <<https://link.springer.com/article/10.1057/s41304-023-00446-5>>.

²⁵Some of the post-socialist states had previous constitutions which contained academic freedom provisions – for example, Poland, Estonia, Albania and Georgia.

protect academic freedom in their constitutions against rising contestations.²⁶ Some of these states also sought to lock in academic freedom at the regional level (see below).²⁷

A second macro-level data source is the Academic Freedom Index (AFI), published by the Friedrich-Alexander University Erlangen-Nurnberg and the V-Dem Institute.²⁸ The global average trends confirm the expected spread of academic freedom. The AFI is based on five indicators measured at the country level: freedom to research and teach, freedom of academic exchange and dissemination, institutional autonomy, campus integrity, and freedom of academic and cultural expression. Unlike other measures, the AFI captures the de facto realization of academic freedom and thus evaluates state compliance with AF as a norm, which could be codified in other forms than state constitutions and state laws. The AFI scale reaches from 0 (low) to 1 (high). In 2022, Germany scored 0.96 and North Korea 0.01.²⁹

At the beginning of the twentieth century, academic freedom started out at a modest average level of 0.44 and only slightly improved to 0.46 in 1911. World War I sent academic freedom levels back to where they had been in 1900. During the inter-war period, academic freedom recovered and rose again to 0.47 before it plunged to an all-time low of 0.35 during World War II. After 1945, academic freedom bounced back, but at 0.45 did not exceed pre-war levels. Unexpectedly, academic freedom did not see a steady or exponential increase in the post-war era either. The establishment of the liberal international order (LIO) might have locked in the liberal script at the international level, but it did little to help spread academic freedom compliance. Rather, academic freedom levels stagnated for several decades. This is an important finding, which raises the question of the role – if any – of international and regional institutions in the promotion of academic freedom at that time.

Decolonization did not substantially boost the diffusion of academic freedom compliance as the regional trends confirm (Figure 3). This is not too surprising given that we have seen above that only few postcolonial states initially chose to include academic freedom provisions in their constitutions. Rather, academic freedom declined to a global average level of 0.42 between 1975 and 1978, mostly due to regressions in Latin America and Asia. Only with the end of the Cold War did we finally see the expected diffusion. Between 1988 and 1991, academic freedom levels jumped from 0.48 to 0.58 – for the first time a change that clearly exceeds the uncertainty bounds of the global data (cf. Figure 2). The positive trend had already begun in the mid-1980s predating the collapse of socialism in Eastern Europe and the Soviet Union. While the arrival of Gorbachev at the helm of the Soviet Union in 1985 might account for improvements in Eastern Europe and Central Asia, the global upward trend in the second half of the 1980s was primarily driven by Latin America. Global academic freedom levels continued to rise to reach an all-time high of 0.65 in 2003, where they stayed for ten years before entering into a very slow but steady decline from 2013.

Finally, a comparison of the Academic Freedom Index with V-Dem's Liberal Democracy Index (LDI) shows that the diffusion of academic freedom and the liberal script have indeed gone hand in hand. The LDI measures the extent to which constitutionally

²⁶See Spannagel's contribution to this special issue.

²⁷see Kovács' contribution to this special issue.

²⁸J Spannagel and K Kinzelbach, 'The Academic Freedom Index and Its Indicators: Introduction to New Global Time-series V-Dem Data' (2022) 57 *Quality & Quantity* 3969.

²⁹M Coppedge et al, 'V-Dem [Country-Year/Country-Date] Dataset v13' (Varieties of Democracy (V-Dem) Project, 2023), <<https://doi.org/10.23696/vdemds23>>.

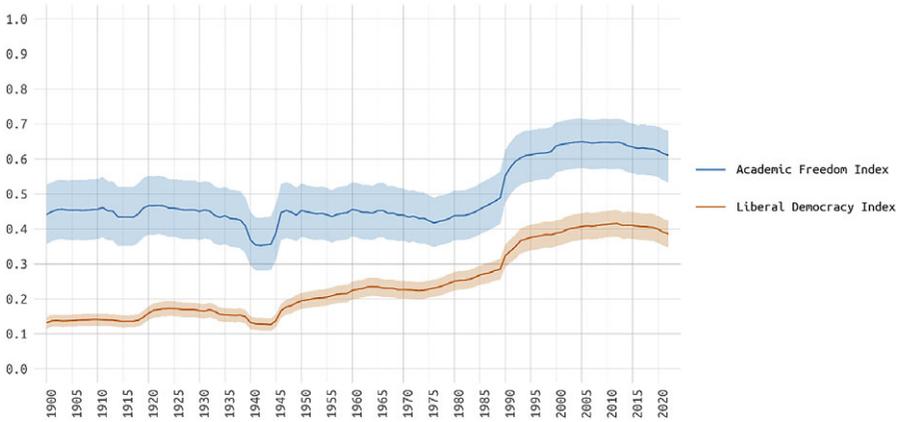


Figure 2. Global trends in academic freedom and liberal democracy, 1900–2022.³⁰

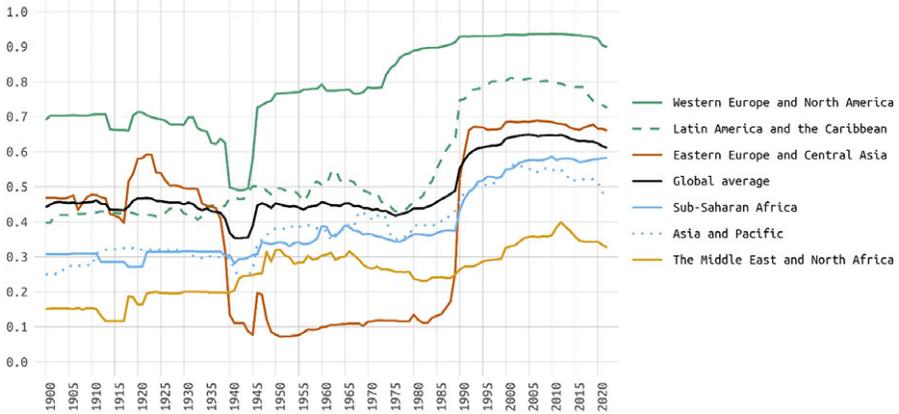


Figure 3. Regional trends in academic freedom, 1900–2022.³¹

protected civil liberties, a strong rule of law, an independent judiciary and effective checks and balances limit the exercise of executive power in countries. We see that academic freedom and liberal democracy have evolved very much in parallel (Figure 2). Breaking down the global trend by regions (Figure 3) further confirms that *de facto* academic freedom levels as measured by the AFI have been highest and above world average in Western Europe and North America, followed by Latin America and the Caribbean – the two regions where liberal democracy has overall been the strongest over this period. Conversely, a decline in academic freedom goes hand in hand with a general trend of democratic regression and autocratization.³²

³⁰Ibid.

³¹Ibid.

³²KR Lyer, I Saliba and J Spannagel, 'Hypotheses on Institutional Autonomy Decline' in KR Lyer, I Saliba, and J Spannagel (eds), *University Autonomy Decline* (London: Routledge, 2023) 179.

In sum, available macro-data confirm that academic freedom – both as a norm and a practice – has spread globally. Its spread follows the s-curve acceleration, which is typical for diffusion processes³³ and norm cascades.³⁴ Academic freedom started its rise after World War II and intensified, if not with decolonization, then towards the end of the Cold War. Moreover, academic freedom has been more prevalent in regions with a strong density of liberal democracies.

At the same time, the data indicate that the establishment of the liberal international order does not seem to be directly related to the spread of academic freedom. The most significant rise in academic freedom levels already started before the LIO was fortified and liberal democracy spread after the demise of socialism in 1990. This is another key finding that leads us to probe the role of international and regional organizations in this process.

A recent large-N study by Lerch, Frank and Schofer³⁵ found a positive correlation between the spread of academic freedom and liberal democracy. Moreover, linkages to liberal international institutions are associated with greater levels of academic freedom as measured by the AFI. Conversely, membership of non-liberal IOs, such as the Shanghai Cooperation Organization or the Gulf Cooperation Council, renders a decline in academic freedom more likely. They see ‘lower levels of academic freedom in countries that are more embedded in the illiberal global and transnational institutions of world society’.³⁶ However, to the extent that the correlation suggests causality, its direction is unclear. Is academic freedom in states declining because of their membership in non-liberal IOs, or are states with declining academic freedom (and democracy levels) more likely to join non-liberal IOs? Likewise, are states adopting academic freedom because they joined liberal IOs or do democratizing countries join liberal IOs because they adopted the liberal script in which academic freedom has been inscribed?

In order for international institutions to protect academic freedom, they have to codify academic freedom in the first place, and possibly develop mechanisms to promote and protect it.³⁷ Conversely, regression by states due to international developments presupposes that international and regional organizations loosened their commitment to academic freedom or never committed to it in the first place.

Data and methodology

To trace the codification of academic freedom as a norm at the international and regional levels, we established a corpus of documents issued by international and regional intergovernmental organizations since the early twentieth century, which addressed academic freedom, the freedom of science, university autonomy and related concepts. In order to obtain a fairly comprehensive collection of such documents, we used four complementary approaches to identify them: the official search engines of the respective organization’s library of documents; cross-references in the annexes of identified

³³See Gilardi (n 42).

³⁴See Finnemore and Sikkink (n 43).

³⁵See Lerch et al (n 10).

³⁶Ibid 12.

³⁷TA Börzel and V van Hüllen, ‘Towards a Global Script? Governance Transfer by Regional Organizations’ in TA Börzel and V van Hüllen (eds), *Governance Transfer by Regional Organizations: Patching Together a Global Script* (Basingstoke: Palgrave Macmillan, 2015). See also Kinzelbach’s contribution to this special issue.

documents (such as the 2017 UNESCO Recommendation on Science and Scientific Researchers); our own and other experts' knowledge of potentially relevant documents; and free searches on the web. The various searches were done primarily in English, as well as Spanish and French for relevant regional organizations, using a list of keywords covering the abovementioned concepts. In addition to international and regional inter-governmental organizations, we also included documents released by transnational NGOs that are referenced prominently in the academic freedom literature and in intergovernmental statements.

In this way, we identified a total of 86 documents, ranging from high-level conventions, treaties and covenants to declarations, recommendations, resolutions, statements, commentaries and reports. These documents were sorted by their date of issuance, categorized by state/non-state authorship, document type and specific academic freedom reference. In a final step, documents were evaluated in more detail for the analysis below and included in a final corpus of 53 key documents based on their relevance, prominence and uniqueness. This selection of documents is displayed in Figures 4a and 4b, which provide a timeline graph from 1915 to 2021 respectively for the international level, the Americas, Europe and Africa/MENA (no documents were identified specifically for Asia). The colours indicate the authorship of the document (state, non-state, intergovernmental/parliamentarian), while the shapes broadly categorize the document type into *agreement* (including inter-state treaties, conventions, protocols, charters), *declaration* (including statements and IO recommendations), *deliberation/proposal* (including proposed action plans, official reports and some RO recommendations), *guidelines* (including codes of conduct) and *interpretations* (of existing law).

Using this material, the next section will analyse the extent to which state and non-state actors have committed themselves to academic freedom (and its three main components – freedom of research, freedom of teaching in higher education, institutional autonomy/self-governance) through international and regional agreements, conventions, treaties and declarations. The empirical analysis will not only look at the timing of the codification of provisions of academic freedom at the international and regional level, but also determine their content. Finally, we will inquire about the extent to which IOs and RIOs have developed rules and procedures to protect and promote academic freedom at the domestic level.

The international and regional codification of academic freedom

IOs recognized academic freedom as a norm for the first time only in 1966, when the ICESCR not only referred to the right to science but also the duty of states to respect the freedom of science.³⁸ It was non-governmental organizations in the Americas that had started to advance and protect academic freedom 50 years earlier.

Pre-1945

In 1915, the American Association of University Professors (AAUP) in the United States issued its Declaration of Principles on Academic Freedom and Academic Tenure, which it considers 'the intellectual foundation for the American conception of academic freedom

³⁸See Kinzelbach's contribution to this special issue.

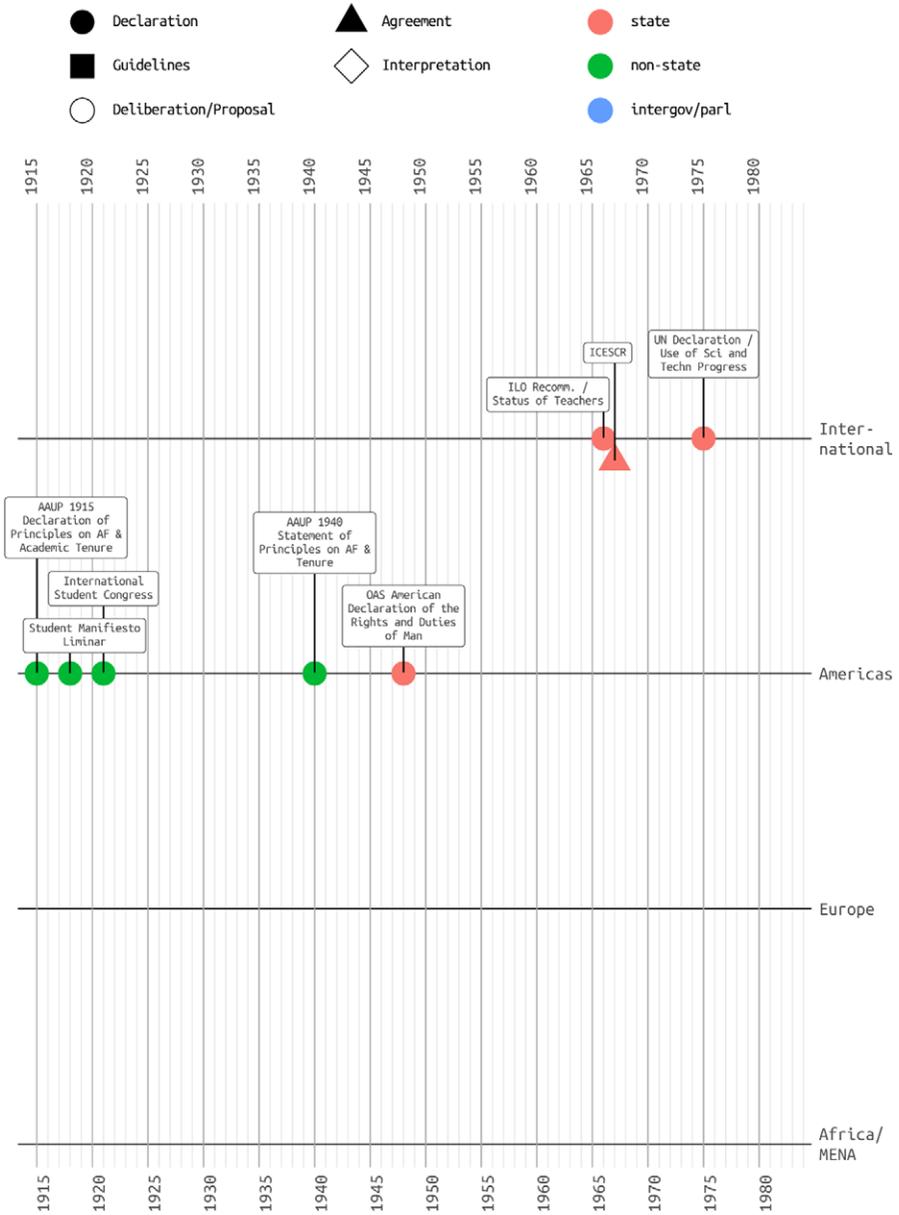


Figure 4a. The institutionalization of academic freedom at the international and regional level (1915–2021).
 Source: Authors.

to this day'.³⁹ The Declaration identified three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance

³⁹See American Association of University Professors, *History of the AAUP*, <<https://www.aaup.org/about/history-aaup>>.

1930s, which resulted in different statements on academic freedom and tenure. The AAUP 1940 Statement of Principles on Academic Freedom and Tenure and its subsequent expansions have been endorsed by over 250 academic organizations in the United States and beyond.⁴⁰

In Latin America, where Peru and El Salvador had pioneered versions of academic freedom in their national constitutions in the late nineteenth century,⁴¹ a transnational movement for academic freedom formed in 1918 when students at the University of Córdoba in Argentina demanded the freedom for universities to define their own curriculum and manage their own budget without interference from the central government. The principle of academic freedom (*libertad de cátedra*), formulated in the *Córdoba Liminar Manifesto*,⁴² was included in the 1920 manifesto of the Argentine University Federation and endorsed by the International Student Congress on University Reform held in Mexico City in 1921, in which delegates from Latin America, United States, Europe and Asia participated.

Academic freedom started to spread across borders in the first half of the twentieth century, yet this process was driven by student and teacher organizations. Moreover, transnational diffusion remained confined to the Americas.

Post-World War II

The American Organization of American States (OAS) was the first regional international organization to make some reference to science. The American Declaration of the Rights and Duties of Man, adopted in 1948, included the right of every person ‘to ... participate in the benefits that result from intellectual progress, especially scientific discoveries’ (Article XIII).⁴³ This right to science is different from the freedom of science or academic freedom, and not only because it is subsumed under ‘the right to the benefits of culture’. It is also addressed to everyone, irrespective of whether the person is a trained scientist. This was the approach followed by the Universal Declaration on Human Rights (UDHR),⁴⁴ which was adopted in the same year. Article 27.1 adds, however, an emphasis on freedom, stating that everyone has ‘the right freely ... to share in scientific advancement and its benefits’.

Neither the right to science nor the freedom of science were recognized in the Council of Europe’s European Convention of Human Rights of 1950 (ECHR)⁴⁵ or the Treaty of Rome, which founded the European Economic Community in 1956. Other freedoms, however, offered indirect protection of academic freedom, including the freedom of thought and conscience (Art. 18 UDHR; Art. 9 ECHR), and the freedom of expression (e.g. Art. 19 UDHR; Art. 10 ECHR).⁴⁶

⁴⁰See American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure*, <<https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>>.

⁴¹See Bernasconi’s and Spannagel’s contributions to this special issue.

⁴²See Wikisource, Translation: Liminar Manifestom, <https://en.wikisource.org/wiki/Translation:Liminar_Manifestom>.

⁴³See OAS, American Declaration on the Rights and Duties of Man (1948), <<https://digitallibrary.un.org/record/573048>>.

⁴⁴See UN, Universal Declaration of Human Rights (1948), <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>.

⁴⁵See CoE, European Convention on Human Rights (1950), <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>>.

⁴⁶See Beiter et al (n 5).

The first international commitment to the freedom of science emerged more than 20 years after the end of World War II. The legally binding International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR) included a similar reference to the American Declaration on the Right and Duties of Man and the Universal Declaration on Human Rights with regard to the right to enjoy the benefits of scientific progress (Art. 15(1)b). The ICESCR added the obligation of states ‘to respect the freedom indispensable for scientific research and creative activity’ (Art. 15 (3)).⁴⁷

The previous year, the UNESCO had been the first IO to actually use the term ‘academic freedom’ in a formally adopted document. The Recommendation Concerning the Status of Teachers, jointly issued with the International Labor Organization (ILO), states: ‘The teaching profession should enjoy academic freedom in the discharge of professional duties’ (Art. 61).⁴⁸

Ten years later, the UN General Assembly still refrained from using the term ‘academic freedom’. Moreover, it continued to address states rather than individuals. The 3384 Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind of 1975 emulated the ICESCR, asking all states to ‘whenever necessary, take action to ensure compliance with legislation guaranteeing human rights and freedoms in the conditions of scientific and technological developments’ (Art. 9).⁴⁹

These modest advances in institutionalizing academic freedom at the international level in the 1960s and 1970s did little to promote its diffusion at the national level. As already discussed, hardly any of the post-colonial states chose to include provisions on academic freedom in their new constitutions. Nor did any of the newly established regional organizations, such as the Organization of African Unity (1963) or the West African Economic Community (1975). Likewise, the OAS refrained from including academic freedom or the freedom of science into the American Convention on Human Rights, adopted in 1969.⁵⁰

End of the Cold War

The institutionalization of academic freedom beyond the nation-state only started to gain momentum in the late 1980s (cf. [Figures 4a](#) and [4b](#)). It took off in Europe and Latin America and was driven mostly by non-governmental higher education institutions rather than intergovernmental organizations at the national and regional level. In 1988, the World University Service, an international non-governmental organization founded in 1920 to support higher education institutions, met in Peru on 6–10 September. Its general assembly adopted The Lima Declaration on Academic Freedom and Autonomy

⁴⁷See UN, International Covenant on Economic, Social and Cultural Rights (1966), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>. Cf. Kinzelbach’s contribution to this special issue.

⁴⁸See ILO/UNESCO, Recommendation Concerning the Status of Teachers (1966), <<https://en.unesco.org/about-us/legal-affairs/recommendation-concerning-status-teachers>>.

⁴⁹See UN, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-use-scientific-and-technological-progress-interests>>.

⁵⁰See OAS, American Convention on Human Rights (1969), <https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf>.

of Institutions of Higher Education.⁵¹ It was one of the first international documents that explicitly defined academic freedom as a human right and emphasized the autonomy of institutions of higher education. At the same time, it tied academic freedom to the role of science in solving societal problems and in promoting democracy.⁵² The Lima Declaration was formulated in response to ‘increasing violations of human rights of teachers, students, researchers, and educational writers’. Its goal was to launch a process of codifying academic freedom at the international level.

The initiative was echoed by the Magna Charta Universitatum, signed by 388 rectors and heads of universities from all over Europe and beyond, who met on 18 September 1988 to celebrate the 900th anniversary of the University of Bologna.⁵³ The Magna Charta contains principles of academic freedom and institutional autonomy as a guideline for good governance and self-understanding of universities in the future. So does the Sinaia Statement on Academic Freedom and University Autonomy, which was adopted in May 1992 by an international conference organized by the UNESCO European Center for Higher Education, the Standing Conference of Rectors, Presidents, and Vice-Chancellors of the European Universities, the National Rectors’ Conference of Romania, and the Romanian National Commission for UNESCO, in cooperation with the Council of Europe.⁵⁴

The Statement defined academic freedom not as a fundamental human right but rather as a basic principle governing universities. On the individual level, this basic right relates to ‘the freedom of individual academics to follow a particular path of intellectual conception and activity within particular higher education institutions’ (Foreword). On the institutional level, it includes the university autonomy defined as ‘the right of a university to be free of interference by the state and by any other external power as regards its operations and affairs’.⁵⁵ Recognizing the universities’ responsibility in helping to tackle the post-Cold War transitions in Europe, the Conference recommended that UNESCO prepare an international instrument for the protection and promotion of academic freedom amidst the social, political and economic upheavals.

The Council of Europe (CoE) sought to support the reforms of higher education in post-socialist states. In 1991, the Standing Conference on University Problems, responsible under the Council for Cultural Cooperation for the CoE activities in higher education, met with delegations from six Central and Eastern European countries, including the Soviet Union. The meeting agreed on a set of recommendations, which acknowledged that the ‘restoration of academic freedom and institutional autonomy has ... been an essential component of the restoration of democracy’ (Art. 3 i).⁵⁶ However, the CoE refrained from amending the European Convention on Human Rights to include academic freedom. Nor did the Maastricht Treaty of 1992 use the chance to promote and protect academic freedom in the European Union.⁵⁷

⁵¹See World University Service, Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education (1988), <<https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf>>.

⁵²See Bernasconi’s contribution to this special issue.

⁵³See Magna Charta Universitatum, (1988), <<https://www.magna-charta.org/magna-charta-universitatum>>.

⁵⁴See Sinaia Statement on Academic Freedom and University Autonomy (1992), <<https://eric.ed.gov/?id=ED381083>>.

⁵⁵Ibid.

⁵⁶See CoE, Standing Conference on University Problems, Draft Agenda, DECS-HE 91 /OJ 12 (1991), <<https://rm.coe.int/09000016809d9e07>>.

⁵⁷See Kovács’ contribution to this special issue.

The OAS was the first regional organization to write scientific freedom into the liberal script for its member states. On 17 November 1988, a protocol was added to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.⁵⁸ Yet, rather than following the trend set by higher education institutions, which promoted scientific freedom as a professional right of academics and institutional autonomy of universities, Article 14 on the 'Right to the benefits of culture' still emulated the ICESCR concept of the right to science of everyone, merely obliging state parties to the protocol 'to respect the freedom indispensable for scientific research and creative activity'.

So did the Organization of Islamic Cooperation, the second largest international organization after the United Nations. Founded in 1969, it has 57 member states and represents the Muslim world. Its Cairo Declaration on Human Rights in Islam adopted in 1990 is modelled on the Universal Declaration of Human Rights (UDHR) of 1948 but bases human rights in the context of the Sharia. Article 17 on Intellectual Property Rights follows the ICESCR in asking states to 'ensure that benefits of such scientific progress (everyone has the right to enjoy [author]) and its application are also enjoyed by everyone, including through the encouragement and development of international cooperation in the scientific and cultural fields' (Art. 17 b.).⁵⁹

The reluctance of regional organizations to institutionalize academic freedom is all the more remarkable as the end of the Cold War saw regional organizations broadening and deepening the scope of their liberal authority with regard to promoting and protecting human rights, democracy and the rule of law to lock in the adoption of the liberal script by their member states. This was also the case in Africa.⁶⁰ However, rather than states, a collective of scholars associated with the Council for the Development of Social Science Research in Africa (CODESRIA), a pan-African non-governmental research organization founded in 1973 by African researchers, adopted the Kampala Declaration on Intellectual Freedom and Social Responsibility on 19 November 1990.⁶¹

The Declaration was a response to the perceived threat of intellectual freedom in Africa by a 'historically produced and persistent economic, political and social crisis' and reinforced by 'the imposition of unpopular structural adjustment programmes' and 'increased political repression, widespread poverty and intense human suffering' (Preamble).⁶² Academic freedom is defined as part of fundamental rights and freedoms (Chapter 1 Section A) and the autonomy of higher education institutions from the state is asserted (Chapter 1 Sections B and C). At the same time, the Declaration called for the social responsibility of academics 'to struggle for and participate in the struggle of the popular forces for their rights and emancipation' (Art. 22) and their obligation 'to encourage and contribute to affirmative actions to redress historical and contemporary inequalities based on gender, nationality or

⁵⁸See OAS, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), <<http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>>.

⁵⁹See Organization of Islamic Cooperation, Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (1990), <https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf>.

⁶⁰See Börzel and van Hüllen (n 37).

⁶¹See CODESRIA, The Kampala Declaration on Intellectual Freedom and Social Responsibility (1990), <<http://hrlibrary.umn.edu/africa/KAMDOK.htm>>.

⁶²Seven months earlier, six staff associations of higher education institutions in Tanzania had adopted the Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics, which defined similar principles for academic freedom. See ARISA et al., The Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics (1990), <<http://hrlibrary.umn.edu/africa/DARDOK.htm>>.

any other social disadvantage' (Art. 25). Academic freedom is thereby justified by, and conditional on, the contribution of science to development.⁶³ This resonates with how the Organization of African Unity (OAU), the predecessor of the African Union, defined the role of higher education institutions and universities in Africa a few years later.⁶⁴ The African Charter on Human and Peoples' Rights of 1981 does not mention academic freedom. Its Article 17 only stipulates the right to education.

Several African states incorporated academic freedom into their constitutions as part of democratization processes boosted by the end of the Cold War.⁶⁵ Unlike with other components of the liberal script (human rights, democracy, rule of law), however, regional organizations in Africa have been slow to institutionalize academic freedom. The Southern African Development Community (SADC) adopted a Protocol on Education and Training in 1997, in which member states agreed to guarantee 'academic freedom in institutions of learning and research as it is the sine qua non for high quality education, training and research and as it ensures freedom of enquiry, experimentation and critical and creative thinking' (Art. 2 g).⁶⁶ The Economic Community of West African States (ECOWAS), the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA) have yet to acknowledge academic freedom. This is all the more remarkable since the African Union (AU), which often acts as a pace-setter for sub-continental regional organizations, has become more active on academic freedom in the past decade (see below).

Non-governmental higher education organizations have continued to carry the spread of academic freedom after the end of the Cold War. Throughout the 1990s, several international conferences bringing together representatives of non-governmental higher education associations issued statements and declarations calling for the protection of academic freedom and university autonomy (see above). UNESCO responded to these calls in its 1997 Recommendation Concerning the Status of Higher-education Teaching Personnel, thus being the first international organization to use and define academic freedom as a professional right (Section VI A) and the autonomy of institutions of higher education as the institutional form of academic freedom (Art. 18).⁶⁷ The Universal Declaration on the Human Genome and Human Rights, endorsed by the UNESCO General Conference in the same year, refers to freedom of research and defines it as 'part of freedom of thought' (Art. 12 b).⁶⁸ UNESCO also supported non-governmental higher

⁶³GP Hagan, 'Academic freedom and national responsibility in an African state: Ghana', in M Mamdani and M Diouf (eds), *Academic Freedom in Africa* (Dakar: CODESRIA, 1994). See Appiagyei-Atua's contribution to this special issue.

⁶⁴See Council of Ministers of the Organization of African Unity, Resolution on the Role of African Universities and Institutions of Higher Learning in Development of the Continent, CM/Res.1601 (LXII) (1995), <https://au.int/sites/default/files/decisions/9614-council_en_21_23_june_1995_council_ministers_sixty_second_ordinary_session.pdf>; Council of Ministers of the Organization of African Unity, Resolution on Strengthening the Role of African Higher Educational Institutions and Universities in the Development of Africa, AHG/Res.215 (XXVIII) (1992), <https://archives.au.int/bitstream/handle/123456789/710/AHG%20Res%20215%20%28XXVIII%29%20_E.pdf?sequence=1&isAllowed=y>.

⁶⁵See Spannagel's and Appiagyei-Atua's contributions to this special issue.

⁶⁶See SADC, Protocol on Education and Training (1997), <<https://www.sadc.int/document/protocol-education-training-1997>>.

⁶⁷See UNESCO, Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997), <<https://www.unesco.org/en/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel>>.

⁶⁸See UN, Universal Declaration on the Human Genome and Human Rights (1997), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/universal-declaration-human-genome-and-human-rights>>.

education organizations in championing academic freedom and institutional autonomy – for example, by co-organizing the World Conference on Higher Education in 1998⁶⁹ and the World Conference on Science in 1999.⁷⁰

In 1999, the UN Committee on Economic, Social and Cultural Rights addressed the issue that academic freedom was not explicitly mentioned in Article 13 of the ICESCR. In the section ‘Academic freedom and institutional autonomy’, Article 38 of its General Comment No. 13 links academic freedom not to the right of science but the right to education, stating that, ‘In the light of its examination of numerous States parties’ reports, the Committee has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.’⁷¹ The Committee linked academic freedom to other individual freedoms, such as expression and association. It emphasized, however, that institutional autonomy was a requirement for the enjoyment of academic freedom.⁷²

Twenty-first century

In 2000, the Charter of the Fundamental Rights of the European Union included the respect for academic freedom in Article 13 on the Freedom of the Arts and Sciences,⁷³ by which time the majority of its (future) member states had codified academic freedom in their national constitutions.⁷⁴ Apart from an occasional reference in Council Conclusions, it took the EU another 20 years to start actively safeguarding and enhancing academic freedom (see below).

The Council of Europe (CoE) has been more consistent in advocating academic freedom as part of the democratic transition in Central and Eastern Europe (CEE). The European Convention on Human Rights still does not refer to academic freedom. In its case law, however, the European Court on Human Rights has subsumed academic freedom under the freedom of expression protected by Article 10 of the Convention, although this does not cover institutional autonomy.⁷⁵ At the political level, the CoE’s Standing Committee on University Problems had issued a number of recommendations in 1991 on how to restore academic freedom *and* institutional autonomy in post-

⁶⁹See UNESCO, L’Enseignement supérieur au XXIe siècle: vision et actions, v. 4: Débat thématique: Autonomie, responsabilité sociale et liberté académique (1999), <<https://unesdoc.unesco.org/ark:/48223/pf0000375653?1=null&queryId=N-EXPLORE-2fb59fbf-4fdc-402c-80d5-498396fc7c8e>>.

⁷⁰See UNESCO, Declaration on Science and the Use of Scientific Knowledge and the Science Agenda: Framework for Action (1999), <<https://unesdoc.unesco.org/ark:/48223/pf0000116994>>.

⁷¹See UN, Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (article 13 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/1999/10 (1999), <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW%2BKyH%2BnXprasyMzd2e8mx4cYID1VMUKXaG3Jw9bo milLKS84HB8c9nIHQ9mUemvt0Fbz%2F0SS7kENyDv5%2FbYYPWAXMw47K5jTga59puHtt3NZr>>.

⁷²See UN, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights (Art.15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/25 (2020), <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQdxONLLJiul8wRmVtR5Kxx73i0Uz0k13FeZiqChA WHKFuBqp%2B4Rax fUzqSAfyZYAR%2Fq7sqC7AHRa48PPRRALHB>>. Cf. Lyster et al (n 5) 9–11.

⁷³See EU, Charter of Fundamental Rights on the European Union, 2012/C 326/02 (2012), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>>.

⁷⁴See Spannagel’s contribution to this special issue.

⁷⁵See Lyster et al (n 5). See also Kovács’ contribution to this special issue.

socialist member states as part of their democratic transition.⁷⁶ With both democracy and academic freedom coming increasingly under pressure in the 2000s, the CoE started to spell out the main principles of academic freedom to be protected. Referring to the Magna Carta Universitatum of 1988, the 2006 resolution of the CoE Parliamentary Assembly called for the guarantee of ‘freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction’ (4.1) as well as ‘the institutional autonomy of universities’ (4.2).⁷⁷

After higher education institutions had voiced concerns regarding the pressures of the financial and economic crisis on their institutional autonomy and research integrity in the late 2000s,⁷⁸ the CoE reaffirmed the importance of academic freedom and institutional autonomy for democracy.⁷⁹ Similar to Latin America and Africa, the CoE has drawn a link between academic freedom and the realization of social and political objectives, such as ‘open democratic societies’.⁸⁰ With the contestations of academic freedom intensifying in the 2010s, higher education and research institutions called for action.⁸¹ In 2020, the CoE directly addressed the threats to academic freedom, emphasizing that ‘stronger action is needed on the part of the Council of Europe and its member states to address academic freedom and autonomy of higher education institutions’.⁸²

⁷⁶See CoE, Proposed action plan in higher education, DECS-HE 91/81 (1991), <<https://rm.coe.int/09000016809d9def>>; see CoE, Conclusions of the Conference on Universities and Democratisation, DECS-HE 92/3 (1992), <<https://rm.coe.int/09000016809dbe39>>. This conference was organized by the Standing Committee on University Problems in Warsaw on 29–31 January 1992, DECS-HE 92/3, 25 February 1992.

⁷⁷See CoE, Parliamentary Assembly Recommendation 1762 (2006): Academic freedom and university autonomy, Assembly debate on 30 June 2006 (23rd Sitting) (2006), <<https://pace.coe.int/en/files/17469/html>>.

⁷⁸See European University Association, Prague Declaration (2009), <<https://eua.eu/resources/publications/616:prague-declaration-2009.html>>; All European Academies, The European Code of Conduct for Research Integrity (2011), <<https://allea.org/code-of-conduct>>; InterAcademy Council/InterAcademy Partnership, Responsible Conduct in the Global Research Enterprise (2012), <https://www.leopoldina.org/uploads/tx_leopublication/2012_10_17_IAC-IAP_Report_Science_Research_Integrity_01.pdf>.

⁷⁹See CoE, Recommendation CM/Rec (2012) of the Committee of Ministers to Member States: The Responsibility of Public Authorities for Academic Freedom and Institutional Autonomy, adopted by the Committee of Ministers on 20 June 2012 at the 1146th meeting of the Ministers’ Deputies (2012), <<https://www.refworld.org/legal/resolution/coeministers/2012/en/88988>>; CoE, Resolution 1907 (2012) of the Parliamentary Assembly: Governance of Higher Education Institutions in the European Higher Education Area (2012), <<https://pace.coe.int/en/files/19170/html>>; Assembly debate on 5 October 2012 (36th Sitting) (see Doc. 12964 and Addendum, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Flego). Text adopted by the Assembly on 5 October 2012 (36th Sitting).

⁸⁰See Council of Europe, Recommendation CMRec (2012) 7 of the Committee of Ministers to Member States on the Responsibility of Public Authorities for Academic Freedom and Institutional Autonomy (2012), <<https://www.refworld.org/docid/50697ed62.html>>; cf. Lyer et al (n 5).

⁸¹See EFoAoSa Humanities, EU Association, and S Europe, ‘Academic Freedom and Institutional autonomy: Commitments Must Be Followed by Action’, <<https://allea.org/allea-eua-and-science-europe-publish-joint-statement-on-academic-freedom-and-institutional-autonomy>>; see Magna Charta Universitatum (2020), <<https://www.magna-charta.org/magna-charta-universitatum/mcu2020>>.

⁸²See CoE, Recommendation 2189 (2020) of the Parliamentary Assembly: Threats to Academic Freedom and Autonomy of Higher Education Institutions in Europe (2020), <<https://rm.coe.int/0900001680a2bc5a>>. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 20 November 2020 (see Doc. 15167, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Koloman Bren); Also See CoE, Resolution 2352 (2020) of the Parliamentary Assembly: Threats to Academic Freedom and Autonomy of Higher Education Institutions in Europe (2020), <<https://pace.coe.int/en/files/28881/html>>.

The EU became equally alarmed amid intensifying contestations and increasing decline of academic freedom in some member states, most notably Poland and Hungary,⁸³ but also Greece more recently. Since the second half of the 2010s, the three countries dropped by more than 0.1 points on the AFI scale that ranges from 0 to 1. The Bonn Declaration on the Freedom of Scientific Research and the Rome Ministerial Communiqué, both adopted in 2020, are key documents in outlining the EU's approach to safeguarding academic freedom within the European Research Area and the European Higher Education Area. The Bonn Declaration explicitly speaks of freedom of scientific research as a universal right, relating it to 'freedom of expression, freedom of association, the freedom of movement and the right to education, among other rights'.⁸⁴ This encompasses the freedom of academics to research and teach and the freedom of academic exchange and dissemination. The declaration also includes a commitment to strengthening 'academic freedom and institutional autonomy' and it emphasizes that the 'freedom of scientific research is a necessary condition for researchers to produce, share and transfer knowledge as a public good for the well-being of society'. So does the Rome Communiqué, referring to academic freedom and institutional autonomy as essential elements of democracy. Academic freedom is defined 'as freedom of academic staff and students to engage in research, teaching, learning and communication in and with society without interference nor fear of reprisal'.⁸⁵ 'It guarantees academics and students the freedom of thought and inquiry to advance knowledge through research and to exchange openly, as well as the freedom to communicate the results of research within and outside of the framework of academic institutions and programme' (Annex 1). The EU has put the safeguarding of academic freedom at the core of its higher education policies and made it an integral part of its efforts to promote and protect European democratic values.⁸⁶

In sum, non-governmental and regional organizations in Europe have become increasingly active with regard to academic freedom. They have drawn support from international institutions adopting recommendations, declarations and guidelines. UNESCO,⁸⁷ the

Text adopted by the Standing Committee, acting on behalf of the Assembly, on 20 November 2020 (see Doc. 15167, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Koloman Brenn).

⁸³See Ziegler's contribution to this special issue.

⁸⁴See Bonn Declaration on Freedom of Scientific Research, (2020), 2, <https://www.bmbf.de/bmbf/shareddocs/downloads/files/_drp-efr-bonner_erklaerung_en_with-signatures_maerz_2021.pdf?__blob=publicationFile&v=1>.

⁸⁵See Rome Ministerial Communiqué, (2020), 5, <<https://eha2020rome.it/pages/documents>>.

⁸⁶See EU Council, Council Conclusions on: European Universities Initiative – Bridging Higher Education, Research, Innovation and Society: Paving the Way for a New Dimension in European Higher Education, CO 8658/21 (2021), <<https://data.consilium.europa.eu/doc/document/ST-8658-2021-INIT/en/pdf>>; European Parliament, Resolution of 8 July 2021: A New ERA for Research and Innovation (2021/2524(RSP)), P9_TA (2021)0353 (2021), <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0353_EN.pdf>; European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Strategy for Universities, COM(2022) 16 final (2022), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A16%3AFIN>>. See also Kovács' contribution to this special issue.

⁸⁷See UNESCO, Universal Declaration on Bioethics and Human Rights (2005), <<https://en.unesco.org/about-us/legal-affairs/universal-declaration-bioethics-and-human-rights>>; UNESCO, Focused Implementation: The 10 Key Areas of the UNESCO Recommendation on the Status of Scientific Researchers (2017), <<https://unesdoc.unesco.org/ark:/48223/pf0000369170>>; UNESCO, *The UNESCO Recommendation on Science and Scientific Researchers* (2017), <https://en.unesco.org/themes/ethics-science-and-technology/recommendation_science>.

ILO⁸⁸ and the OECD⁸⁹ increasingly refer to academic freedom, freedom of science, freedom of research and freedom of scientific research without always spelling out their understanding of the concepts. The UN moved back to placing academic freedom in the context of the right to science, rather than the right to education.⁹⁰ The right to science has been complemented by academic freedom as a professional right of academics and institutional autonomy as a basic principle governing universities.⁹¹

Outside Europe, efforts to safeguard academic freedom have been more mixed. In Africa, nearly two decades after issuing its Kampala Declaration, the non-governmental group CODESRIA again defined standards regarding academic freedom and institutional autonomy in its Juba Declaration on Academic Freedom and University Autonomy in 2007.⁹²

Three years later, the African Commission on Human and Peoples' Rights of the African Union (AU) issued its Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Reporting Guidelines).⁹³ Following the UN Committee on Economic, Social and Cultural Rights General Comments on the Implementation of the ICESCR, the Tunis Reporting Guidelines of 2011 subsumed academic freedom and institutional autonomy under the right to education in Article 17 (Guideline D vi c).⁹⁴ The Nairobi Reporting Guidelines, adopted the same year, defined as one obligation under Article 17 that the states 'ensure academic freedom and institutional autonomy in all institutions of higher learning' (Guideline 71 j). Guideline 71 j referred to Article 2 g of the SADC Protocol on Education and Training as well as the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel. Guideline 71 l also specified that states were to ensure that higher education institutions contributed to economic, social, cultural and human development as well as the promotion and protection of freedom and dignity. The African Union reasserted its commitment to academic freedom and autonomy as well as its link to development in the Statute of the Pan African University adopted in 2013 and revised in 2016 (Articles 2 1. a), 3 b) and 4).⁹⁵

⁸⁸Declaration by the 13th Session of the ILO-UNESCO Joint Committee of Experts on the Application of the Recommendations concerning Teaching Personnel on the Occasion of the 50th Anniversary of the Joint Committee and World Teachers' Day 2018; ILO/UNESCO, Education is not a Commodity: Teachers, the Right to Education and the Future of work (2018), <https://www.ilo.org/global/industries-and-sectors/education/WCMS_646338/lang-en/index.htm>.

⁸⁹See OECD, *Guidelines for the Licensing of Genetic Inventions 2006* (Geneva: OECD, 2006), <<https://www.oecd.org/sti/emerging-tech/guidelinesforthelicensingofgeneticinventions.htm>>.

⁹⁰See UN (n 72).

⁹¹The 2020 report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a set of recommendations on how to protect academic freedom *and* ensure institutional autonomy. See D Kaye, US General, and UHR Council, Promotion and Protection of the Right to Freedom of Opinion and Expression, A/75/261 (2018), <<https://digitallibrary.un.org/record/3883914>>.

⁹²See CODESRIA, Juba Declaration on Academic Freedom and University Autonomy (2007), <<https://codesria.org/spip.php?article349&lang=en>>.

⁹³See AU, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights: Nairobi Reporting Guidelines, <<https://archives.au.int/handle/123456789/2063>>.

⁹⁴See AU, State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights: Tunis Reporting Guidelines, <<https://archives.au.int/handle/123456789/2068>>.

⁹⁵See AU, Revised Statute of the Pan-African University (PAU) (2016), <<https://au.int/en/treaties/revised-statute-pan-african-university-pau>>.

Sub-continental regional organizations, in contrast, have continued to remain silent on academic freedom. The Americas saw the strongest decline in academic freedom since the 2010s (Figure 3), driven by Brazil, Mexico, Nicaragua and the United States. Similar to Europe, non-governmental organizations, such as the AAUP and the American Association for the Advancement of Science (AAAS),⁹⁶ responded to the growing pressures, which have further been fuelled by the COVID-19 pandemic.

At the regional level, the Inter-American Commission on Human Rights of the OAS adopted a Declaration on Inter-American Principles on Academic Freedom and University Autonomy in 2021,⁹⁷ drawing on the 1999 CESCER General Comment No. 13 (see above). Principle I recognized academic freedom as ‘the right of every individual to seek, generate, and transmit knowledge, to form part of academic communities, and to conduct independent work to carry out scholarly activities of teaching, learning, training, investigation, discovery, transformation, debate, research, dissemination of information and ideas, and access to quality education freely and without fear of reprisals’. The declaration continued by emphasizing the collective dimension of academic freedom, ‘consisting of the right of society and its members to receive the information, knowledge, and opinions produced in the context of academic activity and to obtain access to the benefits and products of research and innovation’. The OAS thereby remains faithful to the origins of academic freedom as the right to science enjoyed by everyone. Finally, Principle II declared that ‘autonomy is an essential prerequisite for academic freedom ... As a pillar of democracy and expression of the self-governance of academic institutions, autonomy guarantees the exercise of teaching, research, and extension services, as well as financial, organizational, educational, scientific, and personnel-related decision-making.’⁹⁸

The turn of the millennium saw an intensification of governmental and non-governmental activities to strengthen and protect academic freedom at the international and regional levels in Europe and, to some lesser extent, in the Americas and Africa (see Figure 4). The one region that continues to be inactive on academic freedom is Asia. None of the existing regional organizations, including the Association of Southeast Asian Nations (ASEAN) and the Shanghai Cooperation Organization (SCO), has endorsed the norm – perhaps with the exception of the South Asian Association for Regional Cooperation (SAARC), which granted the newly established South Asian University ‘full academic freedom for the attainment of its objectives’ in 2007.⁹⁹

There is certainly no lack of urgency amidst the decline in academic freedom in Asian countries, including India, Thailand, Myanmar, Bangladesh and Cambodia. The democratic density of the region is low, however, and so is the number of states that have incorporated academic freedom into their constitutions.¹⁰⁰

⁹⁶See AAAS, Statement on the Right to Science (2018), <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CESCR/Discussions/2018/AmericanAssociationAdvancementScience.pdf>>.

⁹⁷See OAS, Inter-American Principles on Academic Freedom and University Autonomy (2021), <https://www.oas.org/en/iachr/reports/questionnaires/2021_principiosinteramericanos_libertadacademica_autonomiauniversitaria_eng.pdf>.

⁹⁸Ibid.

⁹⁹See South Asian Association for Regional Cooperation, Agreement for Establishment of South Asian University, Article 1, <<https://www.saarc-sec.org/index.php/resources/agreements-conventions/29-agreement-for-establishment-of-south-asian-university/file>>.

¹⁰⁰See Spannagel’s contribution to this special issue.

Conclusions

This article has presented an analysis of the globalization of academic freedom as a norm. Academic freedom has spread globally, yet its diffusion has been slower when compared with other components of the liberal script. The inclusion of the right to science in the Universal Declaration on Human Rights notwithstanding, academic freedom was not part of the liberal international order that was institutionalized in the United Nations and the Bretton Woods system after World War II. The freedom of science only started to become institutionalized at the international level in the 1960s, long after the first states had incorporated academic freedom into their national constitutions in Latin America and Western Europe – yet long before academic freedom as a liberal norm was diffused widely through Africa and Eastern Europe. In line with the findings on constitutional adoption of academic freedom in Spannagel's contribution, our analysis of documents by international and regional organizations also shows that both the conceptualization and codification of academic freedom vary across time and space. At first, academic freedom emerged as a norm in the Americas, being related to the freedom of teaching in higher education, which is also reflected in constitutional adoptions of academic freedom. At the international level, however, academic freedom initially had become codified as a part of the right to science, also known as the right to participate in the benefits and advancements of science.

Unlike in the case of women's rights, mass education or environmental protection, for the longest time, international and regional organizations were not primary champions of academic freedom as part of the liberal script. Non-governmental higher education associations have carried the horizontal diffusion of academic freedom among states and from states to the international and regional levels. International and regional organizations have facilitated the decentralized globalization of academic freedom as a world cultural norm, but without necessarily agreeing on its content, scope and emphasis; as a result, they were late-comers to the codification of academic freedom. This started to change with the end of the Cold War. Academic freedom has increasingly become contested as part of a worldwide democratic regression that has been observed since 2006.¹⁰¹ Non-liberal forces have been attacking academic freedom as part of the domestic liberal script they seek to dismantle.¹⁰² Non-governmental higher education networks have mobilized internationally, demanding the protection of academic freedom as a professional right and the institutional autonomy of universities. International and regional organizations have responded by starting to write academic freedom into the global liberal script.

Still, conceptualizations of academic freedom continue to vary across,¹⁰³ as well as within, regions.¹⁰⁴ Different understandings of meaning, scope and emphasis prevail and make agreement on clear global or regional standards difficult.¹⁰⁵ The right to science still figures prominently in Latin America and Africa, while Europe and the United States have always focused on the freedom of science as a professional right of academics. Institutional autonomy has been the emphasis of academic freedom in Latin America. In contrast to the initial opposition of a majority of states in the newly founded United

¹⁰¹L. Diamond, 'Democratic Regression in Comparative Perspective: Scope, Methods, and Causes' (2021) 28(1) *Democratization* 22.

¹⁰²See Ziegler's contribution to this special issue.

¹⁰³See Appiagyei-Atuas's and Bernasconi's contributions to this special issue.

¹⁰⁴See Kovács' contribution to this special issue.

¹⁰⁵See Lyer et al (n 5).

Nations against linking science to any other goal than the search for truth,¹⁰⁶ academic freedom has become justified as a necessary condition for the contribution of science to human well-being around the world. In Europe, however, emphasis is placed on fostering and safe-guarding democracy, whereas African institutions focus on economic, social and cultural development and societal problem-solving.¹⁰⁷ Finally, international and regional institutions have largely failed to develop effective instruments to promote and protect academic freedom at the state level.¹⁰⁸ At the same time, the intensifying contestations of academic freedom around the world have been supporting the emergence of an understanding of academic freedom as a professional right of academics to research and teach freely, as well as a basic principle governing universities in terms of institutional autonomy and self-governance. It remains to be seen whether this global diffusion process will help to empower international and regional institutions to defend academic freedom against its contestations.

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¹⁰⁶See Kinzelbach’s contribution to this special issue.

¹⁰⁷See Appiagyei-Atua’s contribution to this special issue.

¹⁰⁸See Beiter et al (n 5); see Lyer et al (n 5).