

Universities' responsibilities to respect and protect human rights transnationally: A critical discussion of collaboration and exchange between the UK and China

Christelle Genoud* and Eva Pils**

Abstract: *Engaging with a debate on universities' responsibilities to protect human rights amidst rising concern about the influence of autocratically governed China, we argue that the United Nations Guiding Principles on Business and Human Rights apply to universities, be it because universities are business enterprises, or because the principles contained in the UNGP are a fortiori relevant to universities. Drawing on the example of UK universities, we show that the UNGP are relevant for universities as "education providers and exporters" to protect academic freedom against China's transnational repression. A review of selected current 'hard' and 'soft' law documents shows not only that to protect academic freedom, there is a need to further concretize the UNGP for the higher education sector, but also that effective protection requires corrections to universities' overly commercialised funding structures.*

Key words: *academic freedom, human rights, UNGP, China, universities*

1. Introduction

The Chinese and other autocratic governments' potential adverse influence on academic freedom and integrity in democratic systems is increasingly an issue of concern for diverse stakeholders in academia, including university staff, management, and students; governments; and civil society actors. This influence can be exacerbated by the marketisation of higher education, a phenomenon that is especially pronounced in the United Kingdom (UK).

* King's College London, London WC2R 2LS, United Kingdom; christelle.genoud@kcl.ac.uk

** Friedrich-Alexander-University Erlangen-Nuremberg, Germany; eva.m.pils@fau.de

Taking these observations as a starting point and focusing on UK universities' interaction with the People's Republic of China ('China'), we advance the argument, firstly, that the United Nations (UN OHCHR, 2011) Guiding Principles on Business and Human Rights (the 'UNGP') must inform a discussion of the responsibilities borne by UK universities about the human rights of their members and other stakeholders. We argue that the UNGP are relevant, be it because UK universities are 'business enterprises' within the meaning of the UNGP, or because the UNGP apply to universities *a fortiori* in settings involving third-state actors. The UNGP therefore shape universities' responsibilities to protect academic freedom and other human rights at risk of transnational violation by autocratic regimes.

Secondly, we discuss how the human rights responsibilities of universities in academic exchanges have begun to be articulated and concretised by the creation of codes of conduct and other guidance documents. We critically analyse the extent to which this developing body of 'soft' law does justice to universities' responsibilities for academic freedom and other human rights in contexts of transnational collaboration and exchange, focusing on the case of the UK's academic relations with China, and juxtapose evolving soft law with new UK legislation purporting to address some of the issues raised in this article through new coercive 'hard' law norms, potentially including the criminalisation of 'foreign interference' introduced in 2023.

Building on these arguments, lastly, we examine the limitations of the application of the UNGP in the context of a broader rethinking of the marketised conception of academia. Marketisation engenders vulnerabilities and dependencies, including funding insecurity and competition, that can act as transmitters of autocratic influence in universities, and that can only be overcome by more profound and radical reforms to university funding structures.

2. Liberal-Democratic Academia's Vulnerability to Autocratic Influence: The UK as Example

Exchange and collaboration between universities, academic staff, and students (institutional and individual 'academic actors') has grown in the wake of globalisation, with some variation across different individual country settings and academic fields (Kaczmarska & Yildiz, 2022). The internationalisation of academia has many well-understood advantages. Democratic academic actors' collaboration and exchange with institutions and individuals in autocratic regimes can have particular benefits (Johnson *et al.*, 2021), as academia has long been a site for learning and understanding across geopolitical divides (O'Mara, 2012).

Such internationalisation has, however, also brought some new challenges, especially in contemporary circumstances of a global 'third

wave of autocratisation.' (Lührmann & Lindberg, 2019). As different systems of academic governance, embedded in different legal political systems, come into contact and at times appear to clash, they can lead to instances of 'autocratic influencing' discussed with increasing concern (Johnson *et al.*, 2021). Research reports on interaction with academic actors in China, for example, have documented attempts to direct the activities of academic visitors and students going abroad from China (HRW 2021a,b; Al Jazeera, 2018) blocking academic staff seeking to go to China (BBC 2021; Yan 2022), pressures on academics to self-censor (de Vise, 2011), monitoring of communication, including digital communication and virtual teaching platforms (Prelec *et al.*, 2022), attempts to exert pressure on academic publishers to self-censor (Kennedy & Phillips, 2017), and attempts to control personnel and curriculum -related decision-making of collaborative programmes and institutions (Sharma, 2022). Some of the evidence in this regard remains anecdotal but there is a growing systematic understanding of the issue:

Firstly, the financial dependency of universities in liberal democracies on funding from autocracies has often been depicted in terms of reliance on overseas students paying high tuition fees, especially in the UK and the US, where tuition tends to account for a big share in university revenues (Minter, 2022). UK trade in education exports was the UK's largest service export in 2018, worth £23.3 billion in 2018, compared to £20 billion for financial services (Johnson *et al.*, 2021). As of 2024, international tuition fee income has become less reliable, partly due to immigration constraints, and is regarded as a factor of growing financial insecurity affecting UK universities (Hillman, 2024; UUK & pwc, 2024).

There is, secondly, an increasingly detailed understanding of the infrastructure of the Chinese party state's management of engagement with the world, including through the Chinese Communist Party's United Front Work Department (Brady, 2018). The Chinese authorities' instructions to academic staff and students going abroad from China have included the exhortation to 'tell China's story correctly' (Ministry of Education of the People's Republic of China, 2016; Bislev, 2017; Greitens & Truex, 2020).¹

Thirdly, a growing body of quantitative empirical work provides insights into the serious effects of autocratic governance practices on academia in the UK. For example, a survey published in 2021 suggests that 40% of the respondent academic staff surveyed self-reported that they had self-censored to accommodate PRC students in their classes.² Concerning any

1 The Ministry of Education of the People's Republic of China (2016) mentions: 'Promote the "going out" of Chinese culture and Chinese language, tell the Chinese story well to the world, spread the Chinese voice well, and enhance the world's understanding and recognition of Chinese culture.'

2 '40% of academics specialising in China report self-censoring when teaching students from the nation, according to a survey looking at attitudes ...on whether academic freedom is at risk from internationalisation.' (Prelec *et al.*, 2022).

practices of censorship or self-censorship, they inevitably also raise the spectre of stigmatisation of students ‘on whose behalf self-censorship or censorship may take place.

In summary, there is clear evidence of autocratic pressures building up on academic life in liberal democracies. China is the to date most widely discussed example of this issue, even though the discussion has extended to other countries including (earlier on) Libya (Vasagar & Syal, 2022) and Russia (Ruddick, 2017).

3. Higher Education Laws and Policies Shaping Transnational Collaboration and Exchange

International and domestic law on academic governance and academic freedom, including norms governing the creation of revenue for academic research, are limited; they do not tell us much about the specific transnational concerns discussed here.

The regulation of UK universities reflects a long history encompassing academic institutions created by the ancient Royal Charter as well as institutions established under the UK Further and Higher Education Act 1992 (Barendt, 2010). Statutory legislation including the UK Education Reform Act (1988; UCU, 2022; Karran & Mallinson, 2021), which also determines the dual status of universities in the UK as public authorities subject to laws binding the state in some contexts,³ establishes universities’ duties to protect academic freedom, even as universities are also rights-holders when it comes to academic freedom, which has institutional, as well as individual dimensions – requiring, for example, that institutional academic actors have freedom to make personnel decisions and set research agendas without interference from the state (Barendt, 2010). Universities’ duties to protect academic freedom were codified only after the academic governance framework had been changed ‘from self-governance to regulation,’ (Shattock, 2019)⁴ ‘plac[ing] a legal duty on universities and other HEPs to take ‘reasonably practicable’ steps to ensure

3 For an overview regarding the UK, see McFarland (2018); in Germany, universities are generally public bodies (Körperschaft des öffentlichen Rechts) and public / state institutions by virtue of legislative definition (staatliche Einrichtungen). S 58 Hochschulrahmengesetz.

4 Relevant legislation includes the [1988 Education Reform Act](#) with its abolition of academic tenure security & codification of a university duty to protect academic freedom, the [1998 Teaching and Higher Education Act](#) re-introducing tuition fees, and the [2017 Higher Education and Research Act which created the](#) Office for Students. Also relevant are the [1999 Human Rights Act](#) in conjunction with Art 10 ECHR: ‘freedom to conduct research, distribute knowledge and truth’ and the [2010 Equality Act](#) (protected criteria include race, religion or belief)

freedom of speech within the law for their members, students, employees and visiting speakers.⁵⁶

At the same time, the increasing role of management in a differently regulated academic environment has led to pressures and the individual academic actors coming increasingly from their management, and correspondingly to the creation of stakeholder organisations representing the interests of university management, University staff, etc. Changes in legislation, such as the 1992 Higher Education Act, incrementally reduced the contribution of state funding, reversing the 1960s law on student grants and replacing it with tuition fees collected from the students at steadily increasing rates from the 1990s onwards (Glavin, 2019). As a result, under UK statutory law, universities derive their autonomy vis-à-vis the state not from principles of academic freedom, but rather from the fact of being charitable corporations, a circumstance that shapes UK universities' rules and practices on external research funding.

As charities, universities can generate external research funding, since research is one of their central purposes. However, recent legislation imposes some direct or indirect restrictions: The UK Higher Education (Freedom of Speech) Act, on the one hand, imposes duties on universities and student unions to protect freedom of speech and on government offices to monitor, regulate and, in the event of complaints upheld by the office, sanction universities for failures to defend the principles of freedom of speech and academic freedom (UK Parliament, 2022). An amendment to the Higher Education Research Act 2017 requires higher education providers to provide the Office for Students (universities' principal state regulator) with information on their overseas funding related to, inter alia, gifts and endowments, research grants and contracts, and educational and commercial partnerships.⁷ In a similar vein, the revised National Security

5 Equality and Human Rights Commission, *Freedom of Expression: A Guide for Higher Education Providers and Students' Unions in England and Wales* (Cardiff: Equality and Human Rights Commission, 2019) [Link](#) (accessed September 23, 2024)

6 For competing definitions see s. 43 vs. 'UCU Statement on Academic Freedom' (UCU, 2022).

7 The [2022 Freedom of speech \(Higher Education\) Bill](#) envisages, inter alia, 'free speech complaints' to OfD and civil litigation avenue in case of breach of duties [to](#) protect free speech/ academic freedom 2022 Freedom of speech (Higher Education) Bill on overseas funding:

- (1) The Higher Education and Research Act 2017 is amended: ... The OfS must monitor the overseas funding of registered higher education providers ...with a view to assessing the extent to which the funding presents a risk to (a) freedom of speech within the law, and (b) the academic freedom of academic staff ...
- (3) The duty in subsection (1) includes a duty to consider in a case where the OfS has found that a registered higher education provider is in breach of its duty [to protect freedom of speech and academic freedom], whether overseas funding was relevant to the breach.
- (4) The information which the...higher education provider may be required to provide: (a) information as to relevant funding from a relevant overseas person [exceeding an OfS-specified threshold] and (b)...such other information as the OfS may reasonably require.

Act criminalises certain acts of ‘foreign interference,’ including conduct ‘(c) causing spiritual injury to, or placing undue spiritual pressure on, a person,’⁸ that might apply in academic exchange contexts of challenging intellectual interaction. Even beyond changes to legal frameworks, immigration policies may affect numbers of students and researchers from certain countries, apparently including China (Colbran, 2023).

The effect of recent legislation and policies enabling the government to stop funding sources for UK higher education providers should not be underestimated. Even if the new laws are intended to protect values central to academia, however, their actual effects are at this point unclear and will likely remain limited because they would require state intervention based on the new legislation. It is therefore all the more important to turn to the roles and responsibilities of academic actors themselves:

4. Universities and the United Nations Guiding Principles on Business and Human Rights

Soft law norms originally drafted to determine the human rights responsibilities of business enterprises can help us understand the human rights responsibilities of universities, as already discussed earlier on, universities in many jurisdictions operate according to commercial principles, albeit to different degrees (Collini, 2018). In the academic exchange context, universities in liberal democracies are facing pressure not from their governments, but rather from repressive autocracies or actors within them. This structural feature of transnational threats to academic freedom renders universities comparable to transnational business enterprises with operations in or related to multiple states. It is therefore useful to turn to the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁹.

The most notable normative innovation of the UNGPs is their articulation of responsibilities on the part of businesses to exercise human rights due diligence. The UNGP three-pillar structure not only recognizes that states ‘*must protect against human rights abuses by third parties, including business*’ but also that ‘*business enterprises have an independent responsibility to respect human rights: that is, to avoid people’s human rights being harmed through their activities or business relationships, and to address harms that do occur.*’ (Ruggie, 2017)¹⁰ According to the UN Office of the High Commissioner for

8 The foreign power condition is defined in section 32 of the Act. [Link](#)

9 The UN Guiding Principles on Business and Human Rights (2011) were annexed to a final report by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council (A/HRC/17/31). The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

10 They also demand that ‘*where individuals’ human rights are harmed, they should have access to effective remedy, and both states and enterprises have a role to play in enabling this*

Human Rights, the UNGP requires that business enterprises must '*seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships*, even if they have not contributed to those impacts.' (Ruggie, 2017: Emphasis added) Principle no 23 requires them to '*comply with all applicable laws and respect internationally recognized human rights, wherever they operate*,' and to '*seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements*.' (Ruggie, 2017)

Taken together, these principles enunciate the idea that, a business enterprise operating in an environment of systematic human rights violations is not a neutral entity but must '*seek ways to honour*' human rights principles. They do not constitute a new international treaty but, rather, derive their normative force through the recognition of pre-established obligations and of social expectations regarding business enterprises' duty to respect human rights, linked to reputational concerns that also affect universities. Indeed, universities' mission statements, which usually specify universities' *raison d'être*, the scope of their operations and their overall purpose (Sauntson & Morrish, 2011), commonly cite academic freedom and closely associated notions, affirming social expectations towards universities, while also resonating with human rights principles that, as observed earlier on, have been understood as duties legislatively imposed on universities in jurisdictions like the UK¹¹.

It is important to note that the UNGP refrain from clearly defining business enterprises.¹² One of the main challenges that Ruggie encountered while drafting the UNGP was the variety of business enterprises that the principles aim to cover and the difficulty of articulating actionable recommendations despite this variety. At the time of the drafting, the economic context had focused attention on the human rights impact of extractive industries. With the evolution of this context, new sectors have become increasingly attuned to / aware of their human rights responsibilities, as conceived by the UNGP (Aaronson & Higham, 2013). In this sense, the UNGP were just 'the end of the beginning: by establishing a common global platform for action, on which cumulative progress can be built' (Report of the United Nations Special Representative, 2011: 5). The question of which enterprises are subjected to human rights responsibilities has remained under debate, as illustrated by the negotiations on a binding international human rights law instrument to regulate the activities of transnational corporations and other business enterprises (FIDH, 2018).

to occur. (Ruggie, 2017).

11 Art. 15 International Covenant on Economic, Social and Cultural Rights: [Link](#); General comment 25 on art. 15: [Link](#)

12 The challenge to provide such a definition has been revived with the latest attempt to develop a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (FIDH, 2018; Human Rights Council, 2022).

The proposition that the UNGP apply to universities can seem counterintuitive because the same liberal principles that inspire the argument that businesses have human rights responsibilities also urge us to consider universities as sites of free academic research and teaching in the sense of public services exempt from the pressures and calculations of market actors (Burnay & Pils, 2022). But we need to engage with the reality of current university governance designs and practices (Rowlands, 2017; Collini, 2020; Shattock, 2019; Calhoun, 2011). In the UK at least, universities, not only act as market participants but also often interpret and justify their actions by reference to market principles. Moreover, the UNGP could be applied to universities also through *a fortiori* analysis, if not directly (LII, 2022; Miron, 2018): if even businesses operating exclusively in the private interest have human rights responsibilities, how could we argue that hybrid institutions with private and public components, claiming to act in the public interest, did not have such responsibilities?¹³

In summary, there are good arguments to the effect that the human rights responsibilities affecting business enterprises under the UNGP apply to at least some universities, depending on their characteristics as well as those of the legal systems in which they are embedded (Precht, 2017). Even insofar as an entity can be characterised as a business enterprise, however, the mere applicability of the UNGP leaves many definitional and interpretive questions about the specific human rights responsibilities thereby engendered unanswered. Following the publication of the UNGP, different business sectors have developed sectorial company guidance on human rights due diligence.¹⁴ The legitimacy of such guidance developed by actors who arrogate the power to create self-governance norms is rightly debated;¹⁵ but such sectorial initiatives constitute the *modus operandi* in most activities,¹⁶ sectors and their substance at least merits scrutiny as a different kind of ‘soft law’ instruments.¹⁷

13 To give but one example, King’s College London describes itself as ‘a civic university with a mission to serve society,’ e.g. at [Link](#) (accessed September 23, 2024).

14 For example, financial institutions have developed the Equator Principles, a risk management framework to implement due diligence in project finance, which is committed to the UNGP [Link](#) (accessed May 16, 2022). In the same vein, the Thun Group of Banks was formed to discuss the implications of the UNGP for the banking sector and produce a practical application guide of their implementation [Link](#) (accessed May 16, 2022).

15 The literature on transnational private regulation analyses dynamics at play when private actors appropriate themselves the power of producing soft norms, such as issues of legitimacy, power struggles, consultation and the retreat of the State. (For a critical approach, see Cutler et al., 1999, Graz & Nölke, 2008, Loconto & Busch, 2010, Ponte et al., 2011).

16 See for example the label Fair Trade for the agricultural sector, the Kimberly process for diamonds, the Round Table on Sustainable Palm Oil for palm oil, etc.

17 The concept of soft law generally denotes agreements, principles and declarations that are not legally binding. [Link](#). Their non-binding nature does not reduce their importance, as some soft law documents sometimes then become integrated into hard law.

5. Concretising Universities' Human Rights Obligations

The understanding of universities' institutional and corporate responsibilities has been affected by the many transformations of higher education including marketisation and the rise of autocratic influence that have taken place over the past few decades (Burnay & Pils, 2022). As growing attention has been paid to the challenges that China and other authoritarian regimes pose to academic freedom abroad, various actors have mobilized to offer guidance. The emergence, over the past years, of significant sets of norms and guidance documents reflects a recognition amongst academics and their organisations that universities do have human rights responsibilities. Yet as we argue in this section, much of this guidance has remained disconnected from the marketisation dynamics taking place in universities, even though civil society and university initiatives challenging marketisation should interact with efforts to protect academic freedom to overcome current protection gaps.

At the level of international and supranational organisations, an early attempt to provide a detailed description of the necessary parameters for academic freedom, seek international support for their implementation, and provide a mode of redress is the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (UNESCO, 1997), the first UN-based international statement (Savage & Finn, 2018), and arguably the most important international instrument linking academic freedom and institutional autonomy to this day.¹⁸ While defenders of the marketisation of higher education – have contested the Recommendations (Savage & Finn, 2018), the UK University and College Union (UCU) presented in 2019 a submission to the UNESCO/ILO committee of experts on the application of the recommendations concerning teaching personnel on allegations relating to *'the low levels of de jure protection for academic freedom offered by the constitution and legislative instruments in the United Kingdom, which has led to academic staff experiencing a low level of de facto academic freedom in their day to day activities as researchers and teachers'* (UK University and College Union, 2019).

In the decades since the UNESCO Recommendation, further documents have clarified the scope of international human rights law provisions such as the right of science as protected in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Beiter, &

18 VA.17: "The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved".

Appiagyei-Atua, 2016)¹⁹ A comment published in 2020 by the affiliated treaty body stresses the need for transparency to ensure that science ‘is not subject to interests that are not scientific or are inconsistent with fundamental human rights principles and the welfare of society’ while also affirming the need for State parties to cooperate internationally and the benefits of such cooperation.²⁰ In the same vein, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in a 2020 report,²¹ discussed the special role played by academics and academic institutions in a democratic society when assured of institutional autonomy and self-governance and identifies a broad range of threats to academic freedom ‘often based on, among other things, political, financial, ideological, and/or social and cultural pressure’. Similarly, beyond the scope of the UN, regional mechanisms including, the Inter-American Commission on Human Rights and the European Commission have produced soft law guidance documents, namely 2021 the Inter-American Principles on Academic Freedom and University Autonomy (Inter-American Commission on Human Rights, 2020), and a 2022 Commission guidance document directly addressing academic freedom as one of its concerns in “Tackling Research and Innovation Foreign Interference” (European Commission, 2022).

At the transnational civil society level, the NGO Human Rights Watch (HRW) in 2019 produced a 12-point code of conduct focused on the risks posed to academic freedom by the Chinese government (HRW, 2019). The Code of Conduct is the result of investigations that the NGO conducted, which found that the Chinese government attempts to restrict academic freedom beyond its borders. The HRW recommendations are very concrete guidance, addressed to colleges, universities, and academic institutions worldwide, that reflects a ‘human rights due diligence’ approach, notable including funding screening recommendations. HRW has produced

19 See also ILO ad UNESCO, “The ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and The UNESCO Recommendation concerning the Status of Higher-education Teaching Personnel (1997) with a user’s guide,” (2008). [Link](#) (accessed July 18, 2022); And General comment No.25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights).

20 General comment No.25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights).

21 In UN OHCHR (2020) *Report on Academic Freedom and the Freedom of Opinion and Expression*, the Special Rapporteur recognizes that there is no single, exclusive international human rights framework for the subject. “Within the corpus of civil and political rights, protected under the UDHR and codified in the ICCPR, the rights to peaceful assembly and association, privacy, and thought, conscience and religious belief can promote and protect academic freedom. Art 13 (right to education) and 15 (right to scientific advancements) of the ICESCR expressly promote rights at the centre of academic freedom”.

further research and recommendations on the case of academic freedom at Australia's Universities (HRW, 2021a, b; 2022)²².

In the UK, too, organisations representing different academic stakeholders have produced guidance that reflects a 'human rights due diligence' approach echoing the ideas of the UNGP (UN OHCHR, 2011). An organisation representing university management, Universities UK (UUK), in a 2021 guidance document on management of collaborative and exchange relationships with academic actors abroad, *'provides information and guidance that will help institutions to develop due diligence processes that assess the security-related risks and mitigate potential damage to the institution'* and states that *'senior management should provide assurances to the institution's governing body that security-related issues are fully incorporated into due diligence (...)'* (UUK, 2020). While national security concerns must surely be taken seriously, the UUK guidance approach is at risk of 'securitisation' of the university if it transposes the state obligation to keep us safe to university actors, for example in the recommendation that *'[u]niversities should place security measures at the centre of their governance and culture and set up processes for reviewing security risks'* (UUK, 2020). As Chubb has critically argued, *'government response to PRC influence is urgent and necessary, but should take a form that strengthens liberal democracy in the UK, rather than undermining it. It can do so by implementing deliberate policy in a way that differentiates between issues of national security, human rights, and academic freedom'* (Chubb, 2022).

Alternative guidance principles have been developed by a group of academic actors not representing university management and arguably at a greater distance from the (UK) state. A group of scholars with which both co-authors are associated, the Academic Freedom and Internationalisation Working Group (AFIWG), has drafted a Model Code of Conduct for universities to acknowledge challenges posed by the internationalization of higher education beyond a national security perspective (AFIWG, 2020). While the Model Code of Conduct, in this regard like the UUK guidance and international guidance documents, adopts a 'due diligence' approach to academic internationalisation, it also seeks to push back against top-down decision-making structures mimicking corporate management by insisting on academic experts' bottom-up participation in the decision-making process of universities, emphasising universities duties of care towards their members (including students) (Fulda & Heathershaw, 2021), and drawing attention to the problems of excessive reliance on private over public sources (AFIWG, 2021). Beyond its Model Code, AFIWG has drawn

22 HRW recommendations were considered and reiterated by the Australian Parliament (HRW 2022). Australian parliament's Joint Committee on Intelligence and Security in its "Inquiry into national security risks affecting the Australian higher education and research sector" Parliamentary Joint Committee on Intelligence and Security, "Inquiry into national security risks affecting the Australian higher education and research sector," 2022 (Issue March).

attention to the wider problem of marketisation.²³ While no university to date has fully adopted the 'Model Code of Conduct,' some universities have updated their self-governance rules on international cooperation and on the acceptance of donations in ways that also reflect a 'due diligence' approach – for example, the University of Cambridge (2022a;b), one of whose colleges, Jesus College, found itself under criticism for accepting donations from Huawei in 2021 (The Statesman, 2021), emphasises freedom of thought and freedom of expression in its mission statement (University of Cambridge, 2022c).

In summary, there is clear evidence of structural correspondence between the UNGP, the codes of conduct and similar guidance documents adopted by UK academic actors in response to a growing threat of the corrosion of academic freedom through their international exchanges and collaborations and their generally rising dependence on international funding sources. Yet as some of the authors of these new guidance documents acknowledge, the 'due diligence' approach they adopt is not fully able to address the wider, structural concerns or to change the power relations shaping academic institutions.

6. Conclusion: Taking the UNGP Seriously

This article has examined how different actors, including universities, can address the rising problem of authoritarian influence adversely affecting the academic freedom and integrity of its members. It has argued, firstly, that although relevant legal frameworks such as international human rights law, domestic constitutions, and statutory law regulating higher education institutions, tend to endorse the rights and freedoms underpinning thriving, independent academia, the regulation of research and higher education also contains norms that enable the transmission of autocratic pressure into universities in liberal democracies, for example by allowing universities to be run based on external funding resources, and by supporting universities' self-perception as competitors in a higher education and research 'market' that requires them to engage with autocratic actors. Although available empirical evidence of the precise impact of 'marketisation' upon higher education and research institutions remains limited, the trajectory of institutional design change of academic governance in the UK, not to mention the evidence on income streams and the rhetoric around university incomes, indicate a significant degree of vulnerability to autocratic pressure, transmitted through the quest for teaching and research funding opportunities in a competitive institutional environment.

Secondly, we have argued that existing normative frameworks to address autocratic pressure can usefully be examined through the

23 For example, at the launch event, House of Commons, 29 June 2022.

analytical frame of the UNGP. Even if universities cannot be understood as business enterprises within the meaning of the UNGP, a *fortiori* analysis suggests that they have human rights responsibilities analogous to those of transnational business enterprises. Recognising these responsibilities here is important because it helps us understand that universities have comprehensive human rights obligations not only for rights such as academic freedom and freedom of speech but also for anti-discrimination rights, which impose special obligations towards potentially stigmatised or excluded members of the academic community, including scholars and students from countries under autocratic pressure. Understanding the significance of the UNGP also allows us to consider universities' responsibility to conduct human rights 'due diligence' in the context of its international engagements, especially with partners in autocracies.

However, if we take the UNGP seriously, there is a further conclusion to be drawn, building on the realisation that even if better due diligence mechanisms are adopted, UK universities will remain institutionally vulnerable to autocratic pressures, as long as they remain dependent on autocratic actors for funding to support their operations, and that the effectiveness of the prohibitive and punitive approaches adopted in recent UK legislation is inherently limited. As noted earlier, the UNGP 'three-pillars' approach also reiterates states' duties to protect human rights: states '*must protect against human rights abuses by third parties*'.^(Ruggie, 2017)²⁴ The duty to protect academic freedom, understood as a human right interdependent with other human rights such as freedom of expression, association, etc, also extends to a state obligation to ensure that overly marketized academic funding structures do not result in unacceptable dependencies from other, nondemocratic states: states which, as potentially powerful third parties, can undermine academic integrity through their 'business partner' roles. Even if we consider universities as 'business enterprises' in some respects (as argued here), we must not overlook their crucial and indispensable public function, e.g. in the fulfilment of a 'right to science,' as discussed above: universities cannot simply be expected to go out of business, or to compromise on academic freedom and integrity when their non-public income streams subside. This insight is not new; it was articulated in the 2009 Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications, which observed that '*[t]he relationship between human rights and science is further complicated by the fact that private and non-State actors are increasingly the principal producers of scientific progress and technological advances. It is the responsibility of States to ensure that all relevant interests are balanced, in the advance of scientific progress, by human rights*'.^(UNESCO, 2009) Under these principles, democratic states must accept their ultimate

24 They also demand that '*where individuals' human rights are harmed, they should have access to effective remedy, and both states and enterprises have a role to play in enabling this to occur*'.^(Ruggie, 2017).

responsibility for university funding to protect these institutions against transnational autocratic erosion of their most central values.

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References

- Aaronson, Susan Ariel, and Ian Higham. 2013. "‘Re-righting Business’: John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms." *Human Rights Quarterly* 35: 333–364.
- Academic Freedom and Internationalisation Working Group (AFIWG). 2020. *Draft Model Code of Conduct*. [Link](#) (accessed September 23, 2024).
- Al Jazeera. 2018. "No Escape: The Fearful Life of China’s Exiled Dissidents." Doha: Al Jazeera. [Link](#) (accessed September 23, 2024).
- Australian Parliament’s Joint Committee on Intelligence and Security. 2022. "Inquiry into National Security Risks Affecting the Australian Higher Education and Research Sector." *Parliamentary Joint Committee on Intelligence and Security*. March.
- Barendt, Eric. 2010. *Academic Freedom and the Law: A Comparative Study*. London: Bloomsbury Publishing.
- BBC News. 2021. "Chinese Sanctions on Newcastle Academic ‘Counter-Productive’." March 26, 2021.
- Beiter, Klaus D., Terence Karran, and Kwadwo Appiagyei-Atua. 2016. "Academic Freedom and Its Protection in the Law of European States: Measuring an International Human Right." *European Journal of Comparative Law and Governance* 3 (3): 254-345.
- Bislev, Ane Katrine. 2017. "Student-to-Student Diplomacy: Chinese International Students as a Soft Power Tool." *Journal of Current Chinese Affairs* 46 (2).
- Brady, Anne-Marie. 2018. "China in Xi’s ‘New Era’: New Zealand and the CCP’s ‘Magic Weapons’." *Journal of Democracy* 29 (2): 68-75.
- Burnay, Matthieu, and Eva Pils. 2022. "The Implications of China’s Rise for Cosmopolitan Academic Citizenship." *The International Journal of Human Rights*. [Link](#) (accessed September 23, 2024).
- Business and Human Rights Resource Centre. "Human Rights Due Diligence." [Link](#) (accessed September 23, 2024).
- Calhoun, Craig. 2011. "The Public Mission of the Research University." In *Knowledge Matters: The Public Mission of the Research University*, edited by D. Rhoten and C. Calhoun, 1–33. New York: Columbia University Press. [Link](#) (accessed September 23, 2024).
- Chubb, Andrew. 2022. *Rights Protection: How the UK Should Respond to the PRC’s Overseas Influence*. London: King’s College London Lau China Institute.
- Colbran, Hannah. 2023. "Evidence of Shrinking Chinese Market for UK Study Continues to Mount." *Global Student Living*, May 12. [Link](#) (accessed September 23, 2024).

- Collini, Stefan. 2018. "The Marketisation of Higher Education." *Fabian Society*, February 22. [Link](#) (accessed September 23, 2024).
- Collini, Stefan. 2020. "Universities and 'Accountability': Lessons from the UK Experience." In *Mission of Universities. Past, Present, Future*, edited by L. Engwall, 115–130. Cham: Springer. [Link](#) (accessed September 23, 2024).
- Cutler, A. Claire, Virginia Haufler, and Tony Porter. 1999. "Private Authority and International Affairs." In *Private Authority and International Affairs*, edited by A. C. Cutler, V. Haufler, and T. Porter, 412. New York: SUNY Series in Global Politics.
- de Vise, Daniel. 2011. "U.S. Scholars Say Their Book on China Led to Travel Ban." *The Washington Post*, August 20.
- Equality and Human Rights Commission. 2019. *Freedom of Expression: A Guide for Higher Education Providers and Students' Unions in England and Wales*. Cardiff: Equality and Human Rights Commission. [Link](#) (accessed September 23, 2024).
- Equator Principles. 2020. The Equator Principles EP4. [Link](#) (accessed May 16, 2022).
- European Commission. 2022. "Tackling R&I Foreign Interference." *European Commission*. "Commission Publishes a Toolkit to Help Mitigate Foreign Interference in Research and Innovation." [Link](#) (accessed July 1, 2022).
- Fédération Internationale pour les Droits Humains (FIDH). 2018. *Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises. Preliminary Comment on the "Zero Draft" Convention*. Paris: FIDH. [Link](#) (accessed September 23, 2024).
- Fulda, Andreas, and John Heathershaw. 2021. "University Governance and Academic Freedom." [Link](#) (accessed September 23, 2024).
- Glavin, Chris. 2019. "Higher Education Governance in the United Kingdom." *K12 Academics*, March 13. [Link](#) (accessed September 23, 2024).
- Graz, Jean-Christophe, and Andreas Nölke. 2008. "The Limits of Transnational Private Governance." In *Transnational Private Governance and Its Limits*, edited by J.-C. Graz and A. Nölke, 225–242. London and New York: Routledge.
- Greitens, Sheena Chestnut, and Rory Truex. 2020. "Repressive Experiences among China Scholars: New Evidence from Survey Data." *The China Quarterly* 242: 349–75. [Link](#) (accessed September 23, 2024).
- Hillman, Nick. 2024. "At Amber: The Financial Position of UK Universities." HEPI, January 13. [Link](#) (accessed September 23, 2024).
- Human Rights Council. 2022. "Report on the Seventh Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises concerning Human Rights." A/HRC/49 (Issue 49th session).
- Human Rights Watch (HRW). 2019. *Resisting Chinese Government Efforts to Undermine Academic Freedom Abroad*. New York: Human Rights Watch. [Link](#) (accessed July 3, 2022).
- Human Rights Watch (HRW). 2021a. "They Don't Understand the Fear We Have: How China's Long Reach of Repression Undermines Academic Freedom at Australia's Universities." New York: Human Rights Watch.
- Human Rights Watch (HRW). 2021b. "Academic Freedom Best Practice: A Guide for Australian University Administrators and Teaching Staff on Protecting Students from China, Hong Kong, and Taiwan from Harassment, Intimidation, and Self-Censorship." New York: Human Rights Watch. [Link](#) (accessed July 20, 2022).
- Human Rights Watch (HRW). 2022. "Australia Inquiry on Beijing Academic Freedom Threats: Foreign Interference, Harassment of Students and Academics." [Link](#) (accessed July 20, 2022).

- ILO and UNESCO. 2008. *The ILO/UNESCO Recommendation Concerning the Status of Teachers (1966) and The UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997) with a User's Guide*. [Link](#) (accessed July 18, 2022).
- Inter-American Commission on Human Rights. 2021. *Inter-American Principles on Academic Freedom and University Autonomy*. Washington D.C.: Inter-American Commission on Human Rights.
- Johnson, Jo, Jonathan Adams, Janet Ilieva, Jonathan Grant, Jess Northend, Niall Sreenan, Vivienne Moxham-Hall, Kristin Greene, and Seema Mishra. 2021. "The China Question: Managing Risks and Maximising Benefits from Partnership in Higher Education and Research." Cambridge and London: Harvard Kennedy School Mossavar-Rahmani Center for Business and Government and King's College London (KCL) The Policy Institute. [Link](#) (accessed September 23, 2024).
- Kaczmarek, Katarzyna, and Yeşim Yaprak Yıldız. 2022. "Introduction to the Special Issue on Academic Freedom and Internationalization." *The International Journal of Human Rights* 26 (10): 1691-1697. [Link](#) (accessed September 23, 2024).
- Karran, Terence, Klaus D. Beiter, and Lucy Mallinson. 2021. "Academic Freedom in Contemporary Britain: A Cause for Concern?" *Higher Education Quarterly*. [Link](#) (accessed September 23, 2024).
- Kennedy, Maev, and Tom Phillips. 2017. "Cambridge University Press Backs Down over China Censorship." *The Guardian*, August 21.
- Legal Information Institute (LII). 2022. [Link](#) (accessed July 7, 2022).
- Loconto, Allison, and Lawrence Busch. 2010. "Standards, Techno-Economic Networks, and Playing Fields: Performing the Global Market Economy." *Review of International Political Economy* 17 (3): 507-536. [Link](#) (accessed September 23, 2024).
- Lührmann, Anna, and Staffan I. Lindberg. 2019. "A Third Wave of Autocratization Is Here: What Is New about It?" *Democratization* 26 (7): 1095-1113. [Link](#) .
- McFarland, Christopher. 2018. "Are Universities, Higher Education Institutions and/or Further Education Colleges Operating in Wales Considered Public Authorities for the Purposes of the Human Rights Act 1998?" *Public Law Q&A, Legal Guidance*, LexisNexis. [Link](#) (accessed September 23, 2024).
- Ministry of Education of the People's Republic of China. (2016). Implementation Opinions of the Party Group of the Ministry of Education of the Communist Party of China on Deepening Patriotic Education in the Education System. [Link](#) (accessed September 23, 2024)
- Minter, Adam. 2022. "Decline in Chinese Students in the US Is a Bad Sign." *Bloomberg*, August 15. [Link](#) (accessed September 5, 2022).
- Miron, Alina. 2018. "Per Argumentum A Fortiori." In *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law*, edited by J. Klingler, Y. Parkhomenko, and C. Salonidis, 197-210. Wolters Kluwer. [Link](#) (accessed September 23, 2024).
- O'Mara, Margaret. 2012. "The Uses of the Foreign Student." *Social Science History* 36 (4): 583-615. [Link](#) (accessed September 23, 2024).
- Ponte, Stefano, Peter Gibbon, and Jakob Vestergaard. 2011. "Governing through Standards: An Introduction." In *Governing through Standards: Origins, Drivers and Limitations*, edited by S. Ponte, P. Gibbon, and J. Vestergaard, 1-24. London: Palgrave Macmillan.
- Precht, Robert Edward. 2017. "Engagement versus Endorsement: Western Universities in China." *Open Global Rights*. [Link](#).

- Prelec, Tena, Saipira Furstenberg, John Heathershaw, and Catarina Thomson. 2022. "Is Academic Freedom at Risk from Internationalisation? Results from a 2020 Survey of UK Social Scientists." *The International Journal of Human Rights* 26: 1–25. [Link](#).
- Rowlands, Julie. 2017. "Academic Governance in the Contemporary University: Perspectives from Anglophone Nations." In *Academic Governance in the Contemporary University*, 1–33. Singapore: Springer. [Link](#).
- Ruddick, Graham. 2017. "Should Oxford and the V&A Take Millions from Ukrainian-Born Billionaire Len Blavatnik?" *The Guardian*, September 3. [Link](#) (accessed August 25, 2022).
- Ruggie, John Gerard. 2017. "The Social Construction of the UN Business and Human Rights Principles." Corporate Responsibility Initiative Working Paper No. 67. Cambridge, MA: John F. Kennedy School of Government, Harvard University.
- Sauntson, Helen, and Liz Morrish. 2011. "Vision, Values and International Excellence: The 'Products' That University Mission Statements Sell to Students." In *The Marketisation of Higher Education and the Student as Consumer*, edited by M. Molesworth, R. Scullion, and E. Nixon, 73–85. London and New York: Routledge.
- Savage, Donald C., and Patricia A. Finn. 2018. *The Road to the 1997 UNESCO Statement on Academic Freedom*. Ottawa: Canadian Association of University Teachers CAUT. [Link](#) (accessed September 23, 2024).
- Sharma, Yojana. 2022. "University Funding Row Raises Chinese Influence Fears." *University World News*, January 26. [Link](#) (accessed September 23, 2024).
- Shattock, Michael. 2019. *The Governance of British Higher Education: The Impact of Governmental, Financial and Market Pressures*. London: Bloomsbury Higher Education Research.
- The Statesman. 2021. "Huawei infiltrates Cambridge University", Sept. 13, [Link](#) (accessed August 29, 2022).
- Thun Group of Banks. "The Implications of the UNGP for the Banking Sector." [Link](#) (accessed May 16, 2022).
- UK Education Reform Act. 1988. [Link](#) (accessed 25.08.2023).
- United Kingdom Parliament. 2022. Higher Education (Freedom of Speech) Bill [Link](#); [Link](#) (accessed 25.08.2024)
- UN Working Group on Business and Human Rights. [Link](#) (Accessed July 7, 2022).
- United Nations Educational, Scientific and Cultural Organization (UNESCO). 1997. Recommendation Concerning the Status of Higher-Education Teaching Personnel.
- United Nations Educational, Scientific and Cultural Organization (UNESCO). 2009. "Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and Its Applications."
- United Nations Office of the High Commissioner on Human Rights (UN OHCHR). "UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." New York and Geneva: United Nations. [Link](#). (accessed July 20, 2022).
- United Nations Office of the High Commissioner on Human Rights (UN OHCHR). 2020. *Report on Academic Freedom and the Freedom of Opinion and Expression*. New York and Geneva: United Nations. [Link](#) (accessed July 1, 2022).
- United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Ruggie, John G.). 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. UN Doc A/HRC/17/31. [Link](#) (accessed September 23, 2024).

- Universities UK (UUK). 2020. *Managing Risks in Internationalisation: Security Related Issues in Higher Education*. London: Universities UK. [Link](#) (accessed July 1, 2022).
- Universities UK (UUK) and PricewaterhouseCoopers LLP (pwc). 2024. "UK Higher Education Financial Sustainability Report." January. [Link](#) (accessed September 23, 2024).
- University and College Union. 2019. "Submission to the UNESCO/ILO Committee of Experts on the Application of the Recommendations Concerning Teaching Personnel." January.
- University and College Union (UCU). 2022. 'UCU Statement on Academic Freedom'. 25 January 2022. [Link](#) (accessed 26.11.2022)
- University of Cambridge. 2022a. 'Handling and acceptance of donations.' [Link](#) (accessed August 25, 2022)
- University of Cambridge. 2022b. 'International Engagement – Principles and Guidance.' [Link](#) (accessed August 25, 2022).
- University of Cambridge. 2022c. 'The University's mission and core values.' [Link](#) (accessed August 25, 2022).
- Vasagar, Jeevan, and Rajeev Syal. 2011. "LSE Head Quits over Gaddafi Scandal." *The Guardian*, March 4. [Link](#) (accessed August 24, 2022).
- Yan, Sophia. 2022. "I Could Be Extradited to China, Says Sanctioned British Academic." *The Telegraph*, April 9, 2022.