



RESEARCH ARTICLE

Do Universities Have a Duty of Care Towards Their Employees and Students when They Travel Abroad on University Business? A Critical Analysis of the State-of-the-Art and the Relevant Practice*

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ABSTRACT

Among the consequences of the growing globalisation of education there is the increasing international travel of University's students and employees, who go abroad for work or study purposes on behalf of their academic institution. In those instances, it is logical to assume that Universities have the obligation, known as duty of care (DoC), to mitigate any 'foreseeable' risk that their employees and students may face. The primary scope of the present article is to contribute to filling the gap in the existing literature and analysing the principal features of the Universities' DoC. To this end this article will focus in particular on three aspects: i) the legal foundations of Universities' DoC; ii) the content of the DoC obligation incumbent on academic institutions, paying special attention to fieldwork activities and their planning, risk assessment and management; and iii) how the Universities' DoC has been addressed in the recent case law.

KEYWORDS: Duty of Care, Universities, Employees, Students, Risk Assessment

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1. Introduction

In the aftermath of Giulio Regeni's death at the beginning of 2016, politicians and commentators have not been shy in blaming the University of Cambridge for not 'doing enough' to protect a talented doctoral candidate who was conducting his research in Egypt. Mr Regeni's work dealt with a very sensitive issue in a complex environment, due to Egypt's political instability and poor record on human rights. Besides the shock and sadness that the murder of Mr Regeni has sparked worldwide, this episode has also triggered some difficult questions for academic institutions, concerned with striking a balance between the need to ensure the safety of their employees and students and the academic freedom that shall guide the choices autonomously made by every researcher. It is blatant to observe that, regardless of their destination and/or of the scope of their trip, nowadays travelers are exposed to increasing safety, security and health risks as they leave their home country and find themselves in different and sometimes dangerous surroundings (Claus & Yost, 2010). Within a University context, the category of 'travelers' often encompasses students, administrative staff and faculty. In light of the growing number of activities that the Universities' constituencies are expected to perform during international missions it is worth investigating to what degree Universities must exercise their 'duty of care' (DoC). The DoC concept (sometimes also called 'duty of protection', 'due diligence', 'duty to safeguard the lives and the wellbeing of the employees', 'framework for accountability') is rapidly gaining momentum in both the public and private sector (Claus, 2009).

In recent years the DoC has been mainly associated with the obligations pertaining to corporate employers (Claus, 2009; 2011) and International Organizations (IOs), operating both at the Regional and Universal level, (de Guttery, 2015), but it has not been sufficiently examined with regard to other entities such as NGOs and Universities. The case *Dennis v. Norwegian Refugee Council* (NRC), which concerns a claim brought by Mr Dennis against the NGO he was working for while deployed in Kenya, where he was kidnapped, has been recently addressed by the Oslo District Court, which found the NRC responsible for a breach of its DoC.

More in detail the Court found that the risk of kidnapping was foreseeable, that the NRC could have implemented mitigating measures to reduce and avert the risk of kidnapping, that the NRC acted with gross negligence and that the NRC's negligent conduct was a necessary condition for the kidnapping to have occurred (Merkelbach & Kemp, 2016). Therefore, the Court ordered the NRC to pay a compensation of approximately 465,000 EUR to its employee (Case No: 15-032886TVI-OTIR/05, *Steven Patrick Dennis v Stiftelsen Flyktninghjelpen* [the Norwegian Refugee Council]). This case marked an important step towards the recognition, as well as the definition, of the DoC incumbent upon stakeholders different from corporations and IOs, including academic institutions, which represent the focus of this article.

A few caveats are needed from the outset, as the present contribution deals especially with the Universities' obligations towards their employees, a term broadly adopted here as to include faculty, administration and staff (Claus, 2015), as well as towards their students, encompassing those enrolled in both undergraduate and postgraduate programs. Clearly, the origin of the legal obligation underpinning the Universities' DoC towards employees and students is different, as with regard to the former this stems directly from the employment contract. In relation to students, it is not worth to linger on the various legal doctrines that have been used to explain their relationship with Universities (Yeo, 2002), but it is possible to affirm that there is, indeed, an obligation as the DoC exists whenever one individual's actions or inactions could reasonably be expected to affect another person. Therefore, the University owes to each of its students a duty to take reasonable care for his/her well-being, health and safety.

Notably, at the graduate level there is a very thin line between 'student' and 'employee', which is exacerbated by the fact that many doctoral programs require students to teach or conduct research before earning their degrees. Universities, traditionally, argue that they have an educational, not economic, relationship with those students. Nonetheless, even though this is not the norm worldwide, in some countries across Europe, including Norway, Denmark, Germany and the Netherlands, doctoral students are already treated like employees. In the United States a

significant step in this direction has been achieved with the adoption of a decision issued by the National Labor Relations Board on 23 August 2016. The ruling states that teaching assistants and graduate researchers at Columbia University are workers under the National Labor Relations Act and could vote to form a union. This decision does not reject the ‘master-apprentice’ relationship between graduate students and Universities, but at least it has conceded that they can have two roles at once, i.e. a graduate student may be both a student and an employee. This article will not dwell on the extent to which the legal standard for establishing a duty of care obligation differs in relation to the status of the person undertaking a trip overseas on behalf of an academic institution, but it will move from the assumption that Universities have a legal and moral responsibility to mitigate foreseeable risk both towards their employees and towards their students.

Broadly speaking, it is possible to register a growing level of awareness on the part of employers with regard to their DoC obligations for employees who travel abroad (Claus, 2011). However, it should be stressed that, according to a 2011 Global Benchmarking Study on DoC, in this particular sphere the scholastic sector appears at the very bottom of the ranking among all sectors and industries (Claus, 2011). Since Universities worldwide pursue a stronger internationalization strategy (Bhattacharjee, 2012), there is a need to discuss the questions related to their DoC, taking into account the fact that an increasing number of heterogeneous safety policies and guidelines have been adopted over the past few years. As mentioned above, the case of Giulio Regeni, the young Italian Ph.D. researcher enrolled at the University of Cambridge and killed while conducting field research in Egypt, has contributed to fuel the debate on the issues at stake. The University of Cambridge has been accused of not cooperating with the Italian authorities and of negligence for allowing Mr Regeni to carry out a sensitive research in a volatile and unstable environment without taking the necessary precautions. In response to the latter accusation the University of Cambridge stated that Mr Regeni was ‘an experienced researcher using standard academic methods’ (i.e. the so-called ‘participatory research’) to study trade unions in Egypt.

The Regeni case on the one hand has triggered a number of political considerations, including for instance its impact on the overall Italian Mediterranean strategy in the short term (Colombo & Varvelli, 2016), and it certainly casted a shadow over the relations between Egypt and its Western counterparts, i.e. Italy and all European Union (EU) Member States (see for instance the EU Parliament Resolution of 10 March 2016 on Egypt, notably the case of Giulio Regeni, 2016/2608(RSP)). On the other hand, and in line with the scope of the present article, the case is also an illustrative, and of course extreme, example of how the question of the sending institution's responsibility arises whenever an employee or a student (i.e. the official status applicable to Mr Regeni under the current UK framework) is harmed while abroad for work or study purposes. Without claiming to provide an exhaustive overview of the Universities' DoC towards their employees and students, this article will discuss a number of key and underexplored issues, thus, seeking to breathe new life into the surrounding, and still embryonic, debate. In order to better outline and critically discuss the current problems and challenges connected to the Universities' exercise of their duty of care, the present article will make reference to the policies and strategies implemented by different Universities that stand out from the widespread poor duty of care performance among educational institutions, and are located in both common law and civil law countries. This article will consider in particular three key aspects: *i*) the legal foundations of Universities' DoC; *ii*) the content of the DoC obligations incumbent on academic institutions, paying special attention to fieldwork activities and their planning, risk assessment and management; and *iii*) how the Universities' DoC has been addressed in the recent case law. After analysing the current state of the art, this article will present some conclusive remarks on the effectiveness of the policy and legal framework governing the Universities' DoC towards their employees and students who travel internationally on University business.

2. The Legal Foundations of Universities' Duty of Care

Besides its moral connotation, the DoC is first and foremost an obligation imposed on an individual or organization by law requiring that they adhere to a

standard of reasonable care while performing acts (or omissions) that present a foreseeable risk of harm to others (Blay & Baker, 2005). The failure to adhere to a standard of reasonable care causing loss or damage is commonly defined as ‘negligence’. The standard of reasonable care is typically assessed by reference to the actions of a reasonable person – i.e. a typical person acting with ordinary prudence – in the same or similar circumstances. Notably, such standard is not fixed and it may vary from country to country. Broadly speaking the civil law systems tend to refer to ‘legal responsibility’ rather than to ‘duty of care’, which is an Anglo-Saxon concept used mainly in the common law world (Kemp & Merkelbach, 2011). This is not a mere terminological difference – even though for reasons of convenience this article privileges *tout court* the use of the term DoC – as most civil law jurisdictions tend to impose on employers a level of legal responsibility called ‘strict liability’, where a person is legally responsible for the damage and loss caused by his or her acts or omissions without the need to prove intentional or negligent conduct. Hence, on the one hand there is the duty of care in common law jurisdictions, which is a ‘fault-based concept’ where imposition of liability on a party requires a finding of negligence – for instance in a hypothetical civil suit brought against the University of Cambridge to ascertain its responsibility in relation to Mr Regeni’s death – and the burden of proof falls upon the plaintiff, who will be expected to provide evidence of the four cumulative elements of negligence, i.e. *i*) the existence of a relationship between the parties recognised by the law (due to this relationship, one party has a legal obligation to exercise its duty of care towards the other); *ii*) a breach of the duty of care; *iii*) a causal nexus between the breach and the harm; and *iv*) the damage suffered as a proximate result of a defendant's breach of duty (Goldberg & Zipursky, 2011). On the other hand there is the concept of legal responsibility, often, but not always, declined in the form of ‘strict’ liability, which imposes a much higher standard for employers and makes it harder for the employer to avoid to pay compensation for the damage caused.

With regard to the sources of an employer’s DoC, the most common ones encompass, *inter alia*, contractual terms; statutory sources such as national health

and safety laws or codes; judge-made or ‘common law’ principles of negligence and recklessness; social security programs; international norms such as European Union Directives or International Labour Organisation (ILO) Conventions. Even across States that share similar legal systems, e.g. common law countries, there is a heterogeneous approach towards the sources of the DoC and this applies also to Universities. Nonetheless, as the coming paragraphs are going to show, it is possible to affirm that usually there is a general framework, which consists of domestic laws or regulations dealing with the health and safety of the employees, and a more specific one that consists of policies and procedures for different workplaces, including the Universities, taking into account the potential hazards that their personnel could encounter. Providing a detailed and comprehensive overview of how Universities’ are fulfilling their DoC obligations in common law and civil law countries would fall beyond the scope of this paper. Instead, this article will present a number of relevant examples, predominantly stemming from common law countries where this principle is more developed, in order to demonstrate that, even though educational institutions overall still have poor duty of care performance, a growing number of Universities are becoming aware of the importance of implementing DoC policies and strategies (Claus, 2015).

2.1. An Overview of Selected Common Law Systems

This paragraph will focus on the DoC obligations of Universities in common law countries. As explained above the DoC concept is deeply rooted in the common law tradition and this emerges in relation to the legal systems in place in Australia, UK and US. In the case of Australia the Workplace Health and Safety (WHS) laws were known as Occupational Health and Safety (OH&S) laws, which differed across Australian States and territories. In order to enhance the laws consistency across the whole country, in 2012 the State and territory governments agreed to develop ‘model laws’ (the so-called WHS Act and Regulations), on which they could base their health and safety laws. Model WHS Laws operating in most Australian jurisdictions can apply extraterritorially so that in prescribed circum-

stances liability extends even where elements of an offence are ‘partly’ or ‘wholly’ committed overseas (International SOS, 2013). Building on the general domestic framework, several Australian Universities have developed their own internal policies. For instance the University of Sydney in 2016 has adopted a Work Health and Safety Policy which is binding upon ‘University, Fellows, members of Senate committees, staff, students and affiliates (including volunteers and contractors)’ for all activities conducted by or on behalf of the University.

For employers across the UK the DoC is spelled out in the Health and Safety at Work Act (HSW Act) adopted in 1974, which extends health and safety legislation to all areas of work, including higher educational establishments. Section 2(1) of the HSW Act places upon the employer a far reaching obligation stating that ‘it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees’. As a result of this general obligation it can be inferred that the primary responsibility for the management of health and safety for a member of staff and for any post doctorate researcher or postgraduate student while on fieldwork lies with the institution; as spelled out in the Guidance on Health and Safety in Fieldwork (GHSF) issued in 2011 by the UK Universities and Colleges Employers Association. Moreover, according to the GHSF also undergraduate students fall within the scope of the HSW Act as Section 3(1) affirms that ‘it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety’.

Also relevant for the purposes of this study is the Management of Health and Safety at Work Regulations (1999), which applies to work within the UK - although an employer may be prosecuted for health and safety offences if it fails to comply with the law when conducting a preliminary risk assessment in the UK before sending employees overseas - and requires employers to undertake risk assessment and to introduce proactive measures to control identified risks. Furthermore, it is worth mentioning that under the Corporate Manslaughter and Corporate Hom-

icide Act 2007 (Manslaughter Act), a company can be civilly or criminally charged if an employee's death occurred in a foreign country was 'the result of a gross breach of a relevant duty of care owed by the organization to the deceased'. Prosecutions will be of the corporate body and not individuals, but the liability of directors, board members or other individuals under health and safety law or general criminal law, will be unaffected; and the corporate body itself and individuals can still be prosecuted for separate health and safety offences. In the case of Mr Regeni's murder the Corporate Manslaughter and Corporate Homicide Act 2007 would not be applicable since, as explained in the introductory paragraph, doctoral students are not regarded as employees under the current UK legal framework.

Within the above mentioned general framework, UK Universities develop their own internal policies, which vary significantly in terms of accessibility (e.g. in the case of the University of Cambridge the information is accessible only to those who possess a University account), thoroughness, comprehensiveness etc... For example, the Health and Safety policy in place at the University of Saint Andrews states that 'at any level in the University, staff who have responsibility for managing or supervising other employees, contractors or visitors are responsible for the health and safety of those under their care or control' and, similarly, that 'at any level in the University, staff who have for whatever duration oversight of students or responsibility for their welfare are responsible for the health and safety of those under their care or control', also when they perform work and study tasks abroad. Furthermore, under the authority of the Principal's Office, three Health and Safety management groups have been established, one of which, i.e. the Fieldwork, Placement and Travel Risk Management Group, oversees all the policies and procedures relating to fieldwork, placements and travels by University's employees and students.

Concerning the Universities based in the United States, it is worth noting that generally speaking, under US law, employers owe to their employees a duty to provide as safe a work environment as possible under the circumstances of the nature of the workplace, as established under the Occupational Safety and Health Act

(OSHA) Act 1970, which is the primary federal law outlining the general framework applicable to most employees, with the exception of miners, transportation workers, some categories of public employees, and the self-employed. The OSHA does not have extraterritorial reach, however, there is no doubt that under the common law concept of torts a University' DoC obligation exists towards the employees, whether they work on or off campus (Claus, 2015).

Within the US legal framework employers can sometimes shift the DoC burden by including clearly articulated assumption of risk waivers within employment agreements (Kemp & Merkelbach, 2011, p. 47). The inclusion of risk waivers may reduce the employer's liability and it is admissible under the US legislation, although not in line with the international standards enshrined in the ILO Occupational Safety and Health Convention (Convention No.55) entered into force in 1983 and not yet ratified by the US. A report of the US Association of Public and Land-grant Universities issued in 2016 and eloquently titled 'A Guide to Implementing a Safety Culture in Our Universities' offers a comprehensive overview of procedures and recommendations to strengthen a culture of safety on campuses, with a particular focus on the Universities' laboratories and facilities. Across the US, there is, however, a growing attention towards research activities conducted abroad, in fact some Universities, like Duke University, Berkeley and the University of Texas at Austin, have developed specific guidelines for risk and safety during fieldwork (Hammett et al. 2015, p. 127). As already stressed, more complex appears to be the relationship between Universities and students as the US courts over the past 40 years have moved from the steady application of the *in loco parentis* legal doctrine – resulting in courts deferring to the institutions to determine how to protect the morals and personal safety of their students (Melear, 2002; Swartz, 2010) – to the final recognition that under certain circumstances, academic institutions have a legal duty to protect students engaging in off-campus activities (including international travels) and the failure to fulfil that duty may lead to liability for damages (Fisher & Sloan, 2013, p. 8). Such circumstances, as clarified in the 2015 *Boisson v. Ariz. Bd. of Regents case*, are: (1) the purpose of the activity; (2) whether the activity was part of

the course curriculum; (3) whether the school had supervisory authority over the activity; (4) whether the risk existed independent of the school involvement; (5) whether the activity was voluntary; (6) whether a school employee was present during the activity, or should have been; and (7) whether the activity involved a dangerous project initiated on-campus but built off-campus (Claus, 2015, p. 5).

2.2. An Overview of Selected Civil Law Systems

As discussed above, in common law countries the DoC of employers has been embedded in national legislations for a long time. Instead, in most EU Member States that predominantly share a civil law tradition, the prevention and protection of workers against occupational accidents and diseases has been either introduced, or at the very least better outlined, with the entry into force of the European Framework Directive on Safety and Health at Work (OHS Directive). Article 153 of the Treaty on the Functioning of the European Union (TFEU) gives the EU the authority to adopt directives in the field of safety and health at work. The OHS Directive, which dates back to 1989 and has been amended several times, represents a landmark in the EU legal framework as it contains general principles concerning the prevention of risks; the protection of safety and health; the assessment of risks; the elimination of risks and accident factors; the informing, consultation and balanced participation and training of workers and their representatives.

The OHS Directive applies to all sectors, both public and private, except for specific public service activities, such as armed forces, police or certain civil protection services. Furthermore, the OHS Directive identifies basic obligations for both employers and workers. However, the workers' obligations - which encompass making correct use of the machinery, apparatus, tools, dangerous substances; immediately inform the employer of any work situation presenting a serious and immediate danger and of any shortcomings in the protection arrangements; cooperate with the employer in fulfilling any requirements imposed for the protection of health and safety - should not affect the principle of the responsibility of the employer. In order to comply with this broad framework, EU Member States have im-

plemented domestic legislations that aim at strengthening the safety and health of workers. Italy, for example, has adopted a number of laws and regulations that ultimately flowed into a consolidated text called ‘Testo Unico in materia di Salute e Sicurezza nei luoghi di lavoro’ (Testo Unico, D.Lgs. 81/2008, as amended by the D.Lgs. 106/09). Furthermore, Article 2087 of the Italian Civil Code places on the employer the obligation to adopt all the possible measures to prevent the risks connected to a certain job, both the intrinsic and the extrinsic ones. Significantly, a judgment issued in 2016 by the Corte di Cassazione (Cass. Civ. Sez. lav., 30 June 2016, n. 13465), has clarified that this obligation does not give rise to the so-called ‘strict’ or ‘objective’ responsibility since it can be framed as an obligation of means and not of result. In other words, the responsibility of the employer does not automatically spring from every damage suffered by an employee, but emerges only when the employer has not put in place all the preventive measures imposed by the law or foreseeable in light of the typology of work, as suggested by the relevant experience and the recent technique. Moreover, it is worth stressing that the Italian jurisprudence (*inter alia* Cass. pen. Sez. IV, 17 June 2011, n. 34854; Cass. civ., Sez. lav., 22 March 2002, n. 4129) has consistently deemed the existing legal framework applicable also when the employee is temporarily deployed abroad. The Testo Unico does not contain specific provisions devoted to the academic institutions, thus entailing that the DoC of Universities does not differ from that of other employers. To the best of these authors’ knowledge, Italian Universities so far have not developed internal policies concerning the health and safety of their employees and students. In this context the Scuola Superiore Sant’Anna stands out for the recent adoption of a document that outlines the steps that must be undertaken by anyone, student or employee of the Scuola, willing to engage in work or study activities abroad and identifies the risk minimizing measures to be adopted by the competent academic authorities.

The authors are not aware of internal policies and procedures regarding DoC in many other EU Universities, with the exception of the Netherlands, where great attention is paid towards the safety of the Universities’ students who travel

abroad. In the Netherlands the Working Conditions Act (so called *Arbowet*) adopted in 1980 forms the basis for the regulations pertaining to safe and healthy work. The Working Conditions Act embeds, *inter alia*, the overriding obligation to organise wide range activities to ensure the best possible working conditions. Furthermore, for companies with more than 100 employees there is a requirement to report annually on these conditions, whereas for companies with more than 500 employees the Act foresees also the obligation to set up safety departments staffed by specialised personnel. Moreover, it shall be noted that the amendment to the Working Conditions Act, which came into force on 1 January 2007, offers employers and employees the opportunity to compile a Health and Safety Catalogue at the sector level. During the Collective Agreement consultations of 27 November 2007, the Association of Universities in the Netherlands (VSNU) and the employees' organizations decided to compile their own Health and Safety Catalogue. To this end, a Health and Safety Catalogue Monitoring Committee was installed, with members representing both employers and employees. The Health and Safety Catalogue for Dutch Universities forms part of the Collective Agreement for Dutch Universities (CAO-NU) and it is divided in sub-catalogues approved by the Labour Inspectorate. None of the sub-catalogues deal specifically with research or study activities conducted abroad, however, most Universities across the country have adopted internal policies that aim at preventing the risks connected to travelling abroad. For example the University of Amsterdam provides for fieldwork's guidelines that enshrine requirements and procedures tailored to each of the different postgraduate programs offered by the Graduate School of Social Sciences. More in detail the guidelines explain that the lecturer/supervisor is required to assess the feasibility and safety of the proposed research project abroad and in any event no approval will be granted if the Dutch Ministry of Foreign Affairs has issued a warning 'advising against non-essential travel' for that particular country or for a specific region. If a student still travels abroad despite consent not having been granted, the proposed research plan is deemed unapproved and the right to supervision and assessment of the research project lapses, thus meaning that the University will not accept respon-

sibility for the destination proposed for the research project. Notably, the guidelines are specifically meant for students, whereas the University is silent on the procedures and the measures, if any, that pertain to the other constituencies.

3. The Content of the Duty of Care Obligation incumbent on Academic Institutions, with Special Attention Paid to Fieldwork Activities

What emerges from the overview presented in the previous paragraphs is that at the domestic level, and even in civil law countries, there is a growing and widespread attention towards the improvement of employees' health and safety, also when they travel abroad for work. With regard to Universities, this is not always true, and the peculiar status of students makes it even more difficult to analyse the existing framework and its applicability towards all the University's constituencies. This loophole of protection and legal clarity gives rise to a number of issues, but first and foremost results in the lack of adequate policies and regulations, meaning for example that in most Universities around the world researchers are simply 'trusted' to do research in the field without any safety guidelines or precautions in place (Williamson & Burns, 2014) and the same consideration applies to other activities performed by students, administrative staff and faculty. Instead of sparking rage among those potentially affected by the lack of sufficiently developed measures, the general cluelessness about Universities' DoC is often condoned. The hesitant attitude of the Academic community towards the Universities' duty of care may be due to a number of different reasons, including, for instance, the fact that the precise contours of this principle are not always immediately perceivable; Universities' decision makers still tend to overlook or minimize risks connected to international travels (Claus, 2015); and there is an understandable fear that pursuing a more proactive approach could end up limiting the academic freedom of researchers and students.

Nonetheless, based on the existing, although still scant, studies in this field and on the limited jurisprudence one may well conclude that the following are the main components of the duty of care principle: i) the obligation to inform the person going abroad about the specific risks (safety and security, health etc.) and haz-

ards which might be encountered and to support the staff to properly plan the mission according to the potential risks identified; ii) the obligation to provide a life insurance scheme and a proper health insurance; iii) the obligation to have a proper policy to analyze, reduce and minimize the potential risks (for example by offering a proper training); iv) the obligation to have an emergency system which allows the person abroad to contact the sending organization in cases of emergency situation; v) the obligation to enforce a proper monitoring system about the evolution of the situation in a given country, which allows the sending University to immediately inform its employees. In this framework the risk assessment procedures to be enforced in a professional manner by the sending academic bodies raise most of the problems. As stressed by the GHSF of the UK Universities and Colleges:

Each institution is unique with its own set of objectives and values. Each institution therefore needs to develop its own thinking around its tolerance of risks posed by its off-site activities, for example whether or not to allow fieldwork to a remote area of an unstable country. It is important that such decisions are made systematically, objectively, and at an appropriate level in the institution. This implies that robust escalation processes are in place for activities, which pose unusual hazards, or where there are high levels of residual risk (GHSF, 2011, p. 11).

The GHSF also explains that, in order to be effective, a documented risk analysis and management system should include the following: risk assessment for the activities; threat analysis for the destination and travel; incident management and emergency response plans; accident, incident and near miss reporting; competency and training; robust authorization and approval processes; a review process, including the actions in response to review outcomes.

Clearly, each University is free to develop its own strategy to the planning, risk assessment and management of international travels. A few examples that concern a particular activity often undertaken abroad, i.e. fieldwork, can provide an overview of the heterogeneous approach adopted by some of the Universities that have in place specific policies dealing with this issue. The University of Saint An-

draws, for instance, requires researchers to complete a Travel Planning Outline Checklist and a 'solo' or 'group' Risk Assessment Form (RAF) prior to engaging in fieldwork, and submit them to the relevant departmental safety officer. Notably, the fieldwork risk assessment process is undertaken alongside the ethical review process as they usually inform each other. The RAF stresses that 'it is not the purpose of this assessment to stop high-risk projects where there is significant academic value to the project. The purpose is to ensure that the work is done safely'. To this end the form places upon the researcher the duty to self-assess the risk, including both the foreseeable hazards and the 'degree of residual risk', i.e. the level of assessed risk remaining after reasonably practicable controls have been implemented, taking account of the level of impact of the hazard or threat, the likelihood of its realisation and the robustness of control measures. The degree of residual risk shall be estimated using an ad hoc table to determine the likelihood of hazards causing harm after the control measures have been implemented.

The University of Leeds has three different RAFs, respectively for 'low risk', 'medium risk', and 'high risk' fieldwork and it requires the researcher to indicate which level of risk matches his/her work. With regard, instead, to the University of Amsterdam, which as mentioned above is primarily concerned with its DoC towards students, the risk assessment process is undertaken by the lecturer/supervisor, who is required to appraise the feasibility and safety of the proposed research project. Once the research proposal is approved, the University of Amsterdam, in order to provide students with the possibility to be directly supervised also in the field, has set up a procedure to appoint a 'local supervisor', who receives a remuneration of € 300,00 per student supervised and is in charge of various tasks, including introducing the student to key informants and stakeholders, discussing interview questions, survey questionnaires, or possibly the content of other methods the student will use to collect information, and being available for discussions with the students on how the research develops.

A further example of the heterogeneous approach towards fieldwork planning and risk assessment stems from the RAF of the University of Sidney in Aus-

tralia, which provides also an overview of the risk assessment methodology that shall be used by those who fill the form in; according to it:

Assessing the risk is a brainstorming exercise, which is most effectively carried out in a team environment with the people required to complete the activity or process. Most activities or processes are broken down into a variety of separate tasks. For each task, consider the hazards, the potential harm or negative outcomes and the conditions required for those negative outcomes to occur.

Furthermore, the RAF of the University of Sidney spells out which are the main risk factors associated with each task, namely: the physical activities required to complete the task; the work environment, e.g. lighting, work layout, traffic, thermal comfort, working in isolation; the nature of the hazard itself, e.g. working with chemicals, microorganisms, radiation, machinery, potentially violent interlocutors; the individual workers involved, e.g. level of training, skills, experience, health, age, physical capacity. The information gathered from the risk assessment process must be used to develop a Safe Work Procedure (SWP), which outlines all the steps involved in a potentially hazardous task or activity and specifies how the risks associated with identified hazards will be eliminated or reduced.

The University of Oxford places particular emphasis on the fieldwork conducted by 'lone workers'. According to the University of Oxford's safety policy a lone worker may be at greater risk than a group member, therefore it is essential that departments formulate clear guidelines on the scope of activities that may be undertaken alone and that an effective means of communication is duly planned and established. The safety policy places upon the lone worker the duty to ensure that his/her daily itineraries are known locally and that some responsible person (e.g. a hotel owner, or the local police) will raise the alarm if he/she fails to return at the end of the specified working period. In most UK Universities the peculiarities and the potential broader risks of lone working, both on and off campus, are addressed in specific documents, for example the 'Guidance on Lone Working' of the University of Manchester.

Notably, all students enrolled at the University of Cambridge are required to undertake a full risk assessment before going abroad and to follow the Foreign and Commonwealth Office's guidelines on advice to travelers, otherwise their research plans are not approved. The 'Work Away from Cambridge' page on the University's website explains that the University has a legal obligation to assess the risks of all its activities where they affect staff or students. The Head of Department is responsible for ensuring that appropriate risk management is in place for periods of working away and must therefore approve the risk assessment form. Furthermore, the University of Cambridge offers to University employees and students the possibility to undertake a training course in lone working in order to 'enable managers and supervisors to assess which tasks may be undertaken by lone workers, assess which may not, and decide on appropriate control measures, together with associated guidance produced by the Safety Office'. The University of Cambridge's website is silent on whether the training is mandatory for those who are undertaking lone working, or simply recommended.

Clearly, all the surveyed guidelines and policies highlight that it is the responsibility of the individual person to take care as far as possible of his/her own safety and the safety of those affected by their acts or omissions. This, as mentioned above, is a duty that stems also from Article 13 of the OHS Directive and infers that the University's employees engaged in fieldwork have some personal responsibility to appropriately plan and manage the activities undertaken. There is no such legal obligation on students, but, as stressed in several policies, e.g. the safety policy adopted by the University of Oxford, they should be 'strongly advised to behave in a similar way to employees in this respect'.

Further aspects commonly included in the set of preventive measures adopted by the Universities to fulfil their DoC concern the incident reporting procedure and the insurance policies stipulated for staff and students. Several Universities have in place an incident reporting procedure, which in general applies to both accidents and incidents while at work. Notably, in occupational health and safety jargon the terms 'accident' and 'incident' may appear to be interchangeable, but they

are not. Whereas an incident is any situation that unexpectedly arises in the workplace and has the potential to cause injury, damage or harm; an accident is actually an incident that resulted in someone being injured or damage being done to property (Beus, et al. 2016, p. 3). The reporting procedure is different for each institution, although across the UK each University, including the University of Cambridge, has a Safety Office, which collects and processes the forms submitted by staff and students. Most Universities have also stipulated insurance policies – or asked students and employees to autonomously take out at least a standard one – which are associated with certain types of insurable losses ranging from property to health, for their personnel as well as for the students. Usually, those travelling abroad for a University purpose should also register for the University’s travel insurance.

In the case of Mr Regeni it is possible to affirm, also on the basis of the statements made by the Head of Department that approved Mr Regeni’s risk assessment, that the Foreign and Commonwealth Office’s travel advice has been consulted prior to his departure (on the website’s map Cairo, where Mr Regeni was studying, at the time was, and still is, ranked ‘green’, not red, suggesting only that travel advice should be consulted) and that the procedures of the University of Cambridge have been duly implemented. Thus, what should be called into question rather than if the University has fulfilled its DoC is the usefulness of the standards in place, as the basis for health and safety policy of researchers in the field.

4. The Consequences of DoC Breaches: An Overview of the Recent Case Law

Failure to comply with the DoC requirements can have serious consequences for both Universities and individuals. The possible sanctions, of course, depend on the national legislations applicable in the specific context, and might include fines and imprisonment, in addition to the fact that any legal action is likely to result in significant reputational damage for the University.

It is worth stressing that, in addition to the insurance policies mentioned above, all the Universities located in the UK must hold legal liability insurance poli-

cies. More in detail, UK Universities are required to hold Employer's Liability insurance and Public Liability insurance. The former covers staff acting in the course of their employment (in respect of any death or injury they might suffer for which the University is liable at law); whereas the latter covers the legal liability for loss, damage or injury to third parties as employers are vicariously liable for the negligent acts of their employees while at work if such acts cause injury to others. These policies will indemnify the Universities, and those acting on their behalf, like the head of department and the fieldwork supervisors, against any third party claim for damages arising from death, personal injury, or third party property damage where there is a liability at law and providing that a risk assessment has been completed, like in the case of Mr Regeni.

Remarkably, cases of employees and/or students suing their educational institutions for bodily injuries caused by negligence are not a rarity. And this occurs in spite of the inherent nature of schools and Universities' activities which at least in principle, are not such as to create substantial risks in comparison with most commercial and industrial enterprises. The existing, although limited jurisprudence, plays an important role in better shaping the contours of the Universities' DoC.

The US jurisprudence is the most advanced in this specific sector as a number of cases have been brought before national courts, concerning injuries suffered abroad by employees and students. With regard to the former, it is worth mentioning here the civil lawsuit (*Thea Ekins-Coward and Amy Ekins-Coward vs. University of Hawaii, Dr Jian You, Dr Richard E. Rocheleau et al.*) against the University of Hawaii brought in January 2017 by an English postdoctoral researcher who lost her arm in a laboratory explosion occurred in March 2016 and blames her supervisors for failing to warn of the dangers or providing appropriate safety training. The case is still pending before the Circuit Court, however in September 2016 the Hawaii Occupational Safety and Health division (HIOSH), which is the national body that administers the Occupational Safety and Health Program as established under the OSH Act and conducts inspections of the workplaces under its jurisdiction, issued a citation for 15 serious violations and imposed on the University a fine of \$115,500. The

University reached a settlement agreement that combined some violations, reducing the number to nine and the fines to \$69,300. The violations cited in the settlement include technical issues, e.g. failure to ground the tank of flammable gases or to wear gloves to prevent discharge of static electricity from the researcher to the tank; and organizational flaws, such as failure to ‘ensure that [the University’s] safety practices were followed by employees and underscored through training, positive reinforcement and a clearly defined and communicated disciplinary system’, and the failure of ‘supervisors [to] understand their responsibilities under the safety and health program’.

In other instances US Universities and schools have been sued for breaches of their DoC towards their students engaged in off-campus activities (Yeo, 2002). For example in the case *Mintz v the State University at New Paltz* (1975) – concerning two students who drowned during an overnight canoe trip organized by the staff of the defendant University – the New York Supreme Court held that in principle the University owes a duty to its students to exercise reasonable care in the planning and execution of the trip. Furthermore, the Court found that it is logical for the students to rely on the staff members to put in place measures able to protect them from ‘the reasonably foreseeable’ injury. Moving from these premises, according to the Court in the case under scrutiny there was no liability on the part of the University as ‘the deceased students were 20 years of age, cognizant of the risks, able to care for themselves and not in need of constant supervision and the University took all reasonable precautions to guarantee a safe outing’ (Winston et al. 2001, p. 142, emphasis added), but it could not predict the occurrence of a sudden unexpected storm which was the cause of the accident.

Another much debated case recently brought before the US courts is *Munn v. Hotchkiss School*. Ms Cara Munn, a 15 year old student, was bitten by a tick while hiking on a mountain in China during a summer trip organized by the Hotchkiss School. The tick transmitted encephalitis, which has left her permanently unable to speak. Cara and her parents sued Hotchkiss in a federal court, arguing that the school was ‘negligent for failing to warn them that the trip might bring her into

contact with disease-bearing insects and for failing to take steps to ensure that she used insect repellent, wore proper clothes while walking in forested areas and checked herself for ticks'. A jury awarded her \$10 million in economic damages and \$31.5 million in non-economic damages. The Hotchkiss School appealed to the US Court of Appeals for the Second Circuit. Unsure about how to apply Connecticut tort law (as it is required to do), the Court of Appeals invited the Connecticut Supreme Court to provide it with guidance on two key questions: (a) whether a private school owes a duty of care to students when they participate in school trips, and (b) whether the jury's damages award was excessive. The judgment is currently pending, although several commentators have promptly dismissed the first question for being 'as preposterous in tort law as it is in common sense' since under the law of Connecticut schools owe a common law duty of care to students under their custody (Zipursky, 2017). The much more difficult question is whether the Hotchkiss school fulfilled its DoC or it was really careless in failing to provide its students with sufficient warning of and protection from insect-borne illnesses.

Overall US courts seem to have upheld a common trend, according to which the DoC required when students and employees travel abroad is the same as the one bestowed on campus. Whether this is a standard that matches the perils and risks that may be encountered while working or studying in a dangerous setting and/or while undertaking a particularly sensitive research represents a different question, that has not been addressed by any judicial body yet.

5. Conclusive Remarks

Universities are complex and peculiar organizations, however, like any other employer in the public or private sector they are increasingly scrutinized for their failure to assess and mitigate the risks associated with their DoC. What makes Universities *sui generis* is, for instance, the fact that a University's reputation represents its most prized asset. Such asset, which is difficult to quantify or assess in objective terms, is crucial to the University's capability to recruit staff and students, to forge high quality partnerships and to influence policy and other decision-makers, both

nationally and internationally. Serious incidents or issues that may cause major reputational damages, like injuries suffered by employees and students while abroad on behalf of the University, can have a negative impact and need to be prevented to the maximum extent possible.

Bearing this caveat in mind, this article provided the reader with an overview of the key aspects that concern the Universities' DoC towards their employees and students travelling abroad on official business. In the third section the analysis undertaken focused specifically on fieldwork activities, seeking to stimulate the debate on an underexplored and under researched area that hit the headlines in the aftermath of the brutal murder of Mr Giulio Regeni. It goes without saying that ruling out any responsibility directly ascribable to the University of Cambridge does not downplay the need to achieve justice for Mr Regeni and his family. On the contrary, reaching such conclusion provides a further impetus to focus on Egypt's responsibility and should boost Italy's resort to the legal mechanisms and tools available at the domestic and at the international level (Violi & Buscemi, 2017).

Moving from this shocking event, the present article sought to shed light on the breadth of the duty of care that academic institutions bear towards their employees and students. As highlighted in this contribution heterogeneous levels of safety and health protection are established and implemented in different countries, regardless of whether they share the same legal system or whether centralized attempts to harmonize the national legislations have been undertaken. Particularly relevant in this sense is the case of the EU Member States, which must rely on general principles and basic standards set by the OHS Directive, but are of course free to introduce additional and more protective measures to improve the safety and health of the workers under their jurisdiction. The OHS Directive's general principles, which are also embedded in most extra EU national legal frameworks, encompass the possibility to 'exclude or limit the employer's responsibility where occurrences are due to unusual and unforeseeable circumstances, beyond the employer's control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care', as enshrined in Article 5(4) of the OHS Di-

rective. Furthermore, the employer's duties amount to, *inter alia*, implementing preventive measures as well as provisions of information and training; evaluating the risks to the safety and health of workers; and taking appropriate steps to ensure that only workers who have received adequate instructions may have access to areas where there is serious and specific danger.

All these, to some degree even trivial, obligations represent the core of the DoC of any employer, including Universities. Most of the Universities worldwide do not seem to be fully aware of their specific obligations in this frame and have not yet adopted any specific internal regulations. Instead, a relatively small number of academic institutions have been quite active in this regard and their efforts have been explained and summarized in the course of this work. As this article has showed, most of the surveyed Universities have, to different extent, embedded their DoC obligations in specific guidelines and policies concerning off-campus activities and are no longer preoccupied only with their in campus DoC, which pertains to the activities conducted in Universities' laboratories and internal facilities.

As stressed, for example, by the University of Oxford's safety policy, the UK national legal framework requires the risks associated with fieldwork and other activities conducted abroad to be assessed and managed 'in the same way as any other University activity'. To the present authors this seems to be the minimum standard binding all academic institutions, regardless of the national legal framework according to which they operate, and as such it shall be respected and duly implemented worldwide. We do welcome the increasing adoption of policies and strategies that outline in more detail the obligations and the rights of the parties involved in the planning and management of international trips undertaken for work or study purposes. Furthermore, we appreciate the fact that such policies and strategies cannot be uniform as they are ingrained in the broader legal system and tradition of the country where a University is based. Nonetheless, it is questionable whether the 'tick box' approach currently in place, which tackles 'foreseeable risks' and it is likely to effectively shield Universities from compensation claims, is enough to profess that Universities are doing everything in their power to protect employ-

ees and students who travel abroad, especially when their activities focus on sensitive issues that can trigger unpredictable dangers.

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