

ARTICLE

The Role of Universities and Law Schools in Documenting Serious International Crimes and Advancing the Rule of Law

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Looking at how the rule of law is protected, defended, or even advanced by non-state actors operating below the state level is vitally important in understanding how rule of law principles get recognized, operationalized, and implemented. This article aims to contribute to a growing strand of scholarship looking at how the rule of law is protected and bolstered 'from below.' It does this by exploring the role of a specific type of civil society actor in the documentation and investigation of serious international crimes and efforts at accountability, namely the university. Over the last decade, there has been a transformation of human rights fact-finding and how it impacts the rule of law and accountability for serious international crimes. Universities, often through their legal clinics, are making significant contributions to the rule of law and accountability efforts. It explores what implications the role of independent documenter or investigator has for academic institutions in protecting and advancing the rule of law. It calls for greater recognition of societal engagement with universities and for more research on the impacts of universities and students on advancing the rule of law and accountability for serious international crimes.

Keywords: atrocity crimes; documentation; investigation; civil society; universities; accountability

1. Introduction

On 5 October 2020, three NGOs, the Open Society Justice Initiative, Syrian Archive, and the Syrian Center for Media and Freedom of Expression, filed the first criminal complaint related to the use of chemical weapons in Syria with the Office of the German Federal Prosecutor in relation to the sarin attacks on Ghouta in 2013 and in Khan Shaykhun in 2017.¹ The dossier includes the most detailed investigations to date with new evidence and investigative leads, and identifies a number of Syrian government officials and chains of command responsible for the attacks.² Using German universal jurisdiction legislation,³ this historic filing is remarkable for a number of reasons but especially for the crucial collaborations in pulling the dossier together. The three NGOs not only worked with one another but also with technology companies like C4ADS,⁴ and university partners, in this case the University of California at Berkeley

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¹ Open Society Justice Initiative, 'Justice Initiative Joins Syrian Groups in Filing First Criminal Complaint on Behalf of Sarin Attack Victims' (Press Release, 6 October 2020). <<https://www.justiceinitiative.org/newsroom/justice-initiative-joins-syrian-groups-in-filing-first-criminal-complaint-on-behalf-of-sarin-attack-victims>> accessed 6 January 2021.

² Open Society Justice Initiative, 'Eastern and Western Ghouta Sarin Attack' (Public Summary of Evidence, 5 October 2020) <https://www.justiceinitiative.org/uploads/4bc2c0f7-81ad-48c5-8166-281ab35301ab/sarin-complaint_ghouta-public-summary_10062020.pdf> accessed 6 January 2021.

³ See *Völkerstrafgesetzbuch* (Code of Crimes against International Law) (VStGB) of 26 June 2002, *Bundesgesetzblatt* (Federal Law Gazette) (BGBl.) 2002 I, 2254; amended by Article 1 of the Act of 22 December 2016, BGBl. 2016 I, 3150, Sections 6 to 12 VStGB. See also Open Society Justice Initiative and Trial International, *Universal Jurisdiction Law and Practice in Germany*, March 2019. <<https://www.justiceinitiative.org/uploads/0b3c66af-68e0-4fd3-a8e0-d938a6e2b43b/universal-jurisdiction-law-and-practice-germany.pdf>> accessed 24 May 2021.

⁴ C4ADS is a nonprofit organization dedicated to providing data-driven analysis and evidence-based reporting on global conflict and transnational security issues, see <<https://c4ads.org/>> accessed 10 June 2021.

(UC Berkeley).⁵ Student researchers at UC Berkeley's Human Rights Center used open source investigation methods to build and corroborate evidence for the case file.⁶ As noted by the Center, 'through this work, UC Berkeley students contributed to the wider international efforts for justice and accountability for crimes committed during the Syrian civil war.'⁷ While not mentioned explicitly, in many ways, these students also helped advance the rule of law for atrocity crimes.

Civil society actors have long been involved with documenting serious human rights and humanitarian law violations.⁸ Over the years their support and networks have significantly increased, resulting in better standardization and professionalization within the documentation field.⁹ This change, coupled with technological developments, has allowed a greater number of civil society actors to use their documentation efforts to pursue different avenues of accountability for those states and individuals believed to be responsible for serious violations.¹⁰ Examples range from human rights NGOs bringing complaints before regional human rights bodies to hold states responsible,¹¹ as well as filing criminal complaints or pursuing private prosecutions against suspected individuals in domestic criminal courts.¹² Indeed, there has been a transformation of human rights fact-finding and how it impacts the rule of law and accountability for serious crimes.¹³ Importantly, civil society actors, such as human rights NGOs or community groups, are not working alone. In many instances, like in the example given above, these groups have formed formidable relationships with university partners. They regularly collaborate with universities through what is often referred to as community engaged learning (CEL).¹⁴

Within legal education, the most common form of CEL is clinical legal education. Clinical legal education, or similar types of projects, provide law students with the opportunity to gain real-life work experience by engaging with real people or organizations that have legal questions or problems. Clinical legal education is growing around the world,¹⁵ and according to Richard J. Wilson 'the origins, growth and acceptance of clinical legal education throughout the world is the greatest single innovation in law school pedagogy.'¹⁶ One of the underlying benefits of clinical legal education is that 'law students learn about their professional responsibility for—and develop a personal commitment to—sustaining and supporting the *rule of law*, human rights, and social justice.'¹⁷ On the whole, however, the individual law student (or even law school) has not

⁵ Human Rights Center, 'Chemical Weapons Attack in Eastern Ghouta, Syria: A Visual Summary of an Open Source Investigation' (*UC Berkeley School of Law*, 7 October 2020). <<https://storymaps.arcgis.com/stories/56c19f1dbcbb4054b524cacc5f6a9fa5>> accessed 6 January 2021.

⁶ Human Rights Center, 'Berkeley Protocol on Digital Open Source Investigations' (*UC Berkeley School of Law*, 1 December 2020) <<https://humanrights.berkeley.edu/programs-projects/tech-human-rights-program/berkeley-protocol-digital-open-source-investigations>> accessed 6 January 2021.

⁷ Human Rights Center (n5).

⁸ Civil society actors can generally be defined as individuals and groups who 'engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realization of development, and the promotion and respect of human rights.' UN Office of the High Commissioner for Human Rights, *Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society* (UN 2014), 3.

⁹ See Brianne McGonigle Leyh, 'Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations' (2017) 33 *Utrecht Journal of International and European Law* 44.

¹⁰ See Philip Alston and Sarah Knuckey, *The Transformation of Human Rights Fact-Finding* (Oxford University Press 2016).

¹¹ Aikaterini Tsampi, 'The Role of Civil Society in Monitoring the Executive in the Case-Law of the European Court of Human Rights: Recasting the Rule of Law' (2021) 17 *Utrecht Law Review* [PAGE NUMBER]; Clara Burbano Herrera and Yves Haeck, 'The historical and present-day role of non-governmental organisations before the inter-American human rights system in documenting serious human rights violations and protecting human rights and the rule of law through ensuring accountability' (2021) 17 *Utrecht Law Review* [PAGE NUMBER].

¹² Karolina Aksamitowska, 'Digital Evidence in Domestic Core International Crimes Prosecutions: Lessons Learned from Germany, Sweden, Finland, and the Netherlands' (2021) *Journal of International Criminal Justice* at 11–12 <<https://doi-org.proxy.library.uu.nl/10.1093/jicj/mqab035>> accessed 24 May 2021.

¹³ See Alston and Knuckey (n10); Catherine Harwood, *The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order: Navigating between Principle and Pragmatism* (Brill 2020).

¹⁴ Community engaged learning is also often referred to as community service learning, service learning, community-based learning. All of these names indicate a process whereby students, teachers, and societal partners work together through civic engagement. See Robert G. Bringle and Julie A. Hatcher, 'A service-learning curriculum for faculty' (1995) 2(1) *Michigan Journal of Community Service Learning* 112–122.

¹⁵ See Richard J. Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (Cambridge University Press 2018); Alberto Alemanno and Lamin Khadar (eds.), *Reinventing Legal Education: How Clinical Education Is Reforming the Teaching and Practice of Law in Europe* (Cambridge University Press 2018).

¹⁶ Richard J. Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 *German Law Journal* 359.

¹⁷ Open Society Justice Initiative, 'Legal Clinics: Serving People, Improving Justice' (2009) <https://www.justiceinitiative.org/uploads/0763f81d-04c4-4f72-bd88-67f6ee89dd69/legalclinics_20090101.pdf> accessed 6 January 2021. Emphasis added.

been seen as a noteworthy actor in directly supporting the rule of law, whether domestic or international, as such. Rather, states, as well as international organizations like the UN, are customarily seen as the primary entities responsible for rule of law compliance and protection.¹⁸ In almost all of the documents espousing the significance of the rule of law, and in the billions of Euros poured into rule-of-law assistance programs beginning in the 1990s, the recipients of the funding and attention are states or international institutions.¹⁹ Accordingly, research on the rule of law has tended to focus on the role of states or larger governmental institutions in respecting rule of law principles or have approached the concept from a more theoretical basis.²⁰ Less scholarly attention has been placed on looking at the role of actors operating below the state level in protecting and defending the rule of law.

This article aims to contribute to a growing strand of scholarship looking at how the rule of law is protected and bolstered 'from below.'²¹ As noted in the introduction to this special issue, the phrase 'from below' has been used in a number of different fields of study, from history to transitional justice.²² It is generally employed as a means to denote a focus on the views or efforts of common people, as well as those that may be more marginalized in society, in comparison with state leaders or other influential actors. It is associated with a more inclusive way of looking at specific fields, in this case the legal field, and democratising the sources and materials examined.²³ This article investigates the rule of law from below by exploring the role of a specific type of civil society actor; one that is not necessarily readily associated as being part of civil society and that typically holds a relatively privileged position in society, namely the university.²⁴ Moreover, it examines the role of the university in a particular type of practice related to the rule of law: the documentation and investigation of serious international crimes and efforts at ensuring accountability.²⁵ Research looking at actors below the state level, such as the role of civil society actors, has tended to focus on distinct aspects of the rule of law, such as around transparency or accountability, or more usually focusing on its counterpart: human rights.²⁶ Yet, looking at how the rule of law is protected, defended, or even advanced

¹⁸ See Robert Stein, 'Rule of Law: What Does it Mean' (2009) 18 *Minnesota Journal of International Law* 293; Machiko Kanetake and André Nollkaemper, 'The International Rule of Law in the Cycle of Contestations and Deference' in Machiko Kanetake and André Nollkaemper (eds.), *The Rule of Law at the National and International Levels* (Hart Publishing 2016).

¹⁹ Rosa Ehrenreich Brooks, 'The New Imperialism: Violence, Norms, and the "Rule of Law"' (2003) 101 *Michigan Law Review* 2275, 2279.

²⁰ See for example Daniel B. Rodriguez, Mathew D. McCubbins and Barry R. Weingast, 'The Rule of Law Unplugged' (2010) 59 *Emory Law Journal* 1455 and Friedrich A. Hayek, *The Constitution of Liberty* (University of Chicago Press 1960).

²¹ See Gordon A. Christenson, 'World Civil Society and the International Rule of Law' (1997) 19 *Human Rights Quarterly* 724; Kieran McEvoy and Lorna McGregor (eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing 2008); David Backer, 'Civil Society and Transitional Justice: Possibilities, Patterns and Prospects' (2003) 2 *Journal of Human Rights* 297; Naomi Roht-Arriaza, 'Civil Society in Processes of Accountability', in M.C. Bassiouni (ed.), *Post-Conflict Justice* (Transnational Publishers 2002).

²² See E.P. Thompson, 'History from Below', *Times Literary Supplement*, 7 April 1966, 279–80; Howard Zinn, *A People's History of the United States* (Longman 1980); McEvoy and McGregor (n21).

²³ Kevin Myers and Ian Grosvenor, 'Collaborative Research: History from Below', University of Bristol and the AHRC Connected Communities Program, September 2018, 12, <https://connected-communities.org/wp-content/uploads/2018/07/History_From_Below_SP-1.pdf> accessed 10 June 2021.

²⁴ As is typical in legal scholarship, the author carried out desk research focusing on the concepts of rule of law, rule of law from below, community engaged learning, and clinical legal education. Specific open source research was done on legal clinics carrying out documentation work known to the author through her own work in the field, and specifically related to the documentation of serious international crimes. The author has more than 12 years of experience coordinating and supervising international law clinics not involved in documentation efforts. And, for the past five years, she has been involved with civil society documentation work through the Public International Law & Policy Group. In order to fill in gaps and provide additional insights into the operation of specific clinics, in addition to the desk research the author carried out 11 informal interviews with heads of university legal clinics directly involved with documentation activities and with staff from NGOs and international organizations working with legal clinics. In addition to her own clinical, legal, and education networks, as well as those of the individuals contacted, a call was sent around on the ATLAS Facebook page (a network of over 6000 women working in international law) and Twitter using #academictwitter to seek additional examples of universities working directly on documentation of serious international crimes. Undoubtedly, however, examples have been missed. A larger list of programs, including those not mentioned in the article, are on file with the author. The author hopes that this piece contributes to a larger conversation about the role of universities, and legal clinics in particular, in contributing to documentation and accountability efforts for serious crimes.

²⁵ This article uses the terms documentation, investigation, and fact-finding interchangeably to denote the collection of information around serious international crimes, including the collection of information from crimes scenes, victims' experiences, witness accounts, archival records, and open source records. For more on terminology choices, see Public International Law & Policy Group (PILPG), *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices* (PILPG 2016) 15–16.

²⁶ McEvoy and McGregor (n21); see in particular Catalina Diaz, 'Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia' in Kieran McEvoy and Lorna McGregor (eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing 2008).

by non-state actors operating below the state level is vitally important to understanding how rule of law principles get recognized, operationalized, and implemented.

This article first explores the concept of the rule of law and how that is connected to accountability for serious international crimes. Next, it unpacks the role played by universities, often through their clinical legal education, in assisting with the documentation and investigation of serious international crimes and pursuing accountability. It shows how universities are increasingly involved in documentation and investigation themselves, often working together with multiple societal partners. It goes on to explore what implications the role of independent investigator means for academic institutions in protecting and advancing the rule of law. It suggests that despite not adopting a rule of law frame, the universities advance or bolster the rule of law by (1) basing their work around international norms and standards; (2) engaging with and utilizing institutional accountability frameworks for serious international crimes and lending legitimacy to their work; and (3) heavily supporting other civil society actors through direct cooperation as well as training the next generation of actors in rule of law implementation.

Following on from these observations a few things become clear. The success of these various programs should foster greater recognition of the need for societal engagement from universities around rule of law initiatives. Also, since many of these universities hold privileged positions in society, they are well-placed to help build capacity amongst civil society actors as well as amongst their peers and counterparts in the Global South. Finally, more research on the impacts of universities and students on advancing the rule of law and accountability for serious international crimes is needed in order to better understand contributions by actors 'from below' to the rule of law.

2. The Rule of Law and Accountability for Serious International Crimes

The concept of the rule of law, while celebrated by legal scholars and practitioners, has been notoriously difficult to define and delineate clearly.²⁷ Countless academic conferences, special publications, and monographs have been dedicated to the subject.²⁸ Boiled down to its most basic, it can be seen as the regulation of the exercise of authority.²⁹ However, understandings have ranged from formal and 'thin' conceptions to more robust, 'thicker' conceptualizations, namely those underpinned by human rights and democratic ideas. Dicey has outlined three understandings of the rule of law: (1) the rule by regular law, and not by arbitrary power; (2) equality before the law; and (3) the protection of individual rights by judicial decisions.³⁰ The concept is said to cover issues from judicial review over government action to publicly promulgated laws laid out in advance of application, as well as adherence to basic standards of fairness.³¹ Legal scholars tend to now agree that overall 'thicker' rule of law principles provide, amongst other things, that laws are clear and applied fairly; that everyone is accountable under the law; and that fundamental rights should be protected.

Whether as ideal or ideology, respect for the rule of law is central to the international legal and political order,³² and it is a cornerstone of the protection of human rights as well as calls for accountability for serious international crimes.³³ UN Member States have time and again affirmed 'that human rights, the rule of law

²⁷ Richard H. Fallon, 'The Rule of Law as a Concept in Constitutional Discourse' (1997) 97 *Columbia Law Review* 1, 1; George P. Fletcher, *Basic Concepts of Legal Thought* (Oxford University Press 1996), 12; Simon Chesterman, 'An International Rule of Law?' (2008) 56 *American Journal of Comparative Law* 331, 342.

²⁸ See Simon Chesterman, 'An International Rule of Law?' (2008) 56 *American Journal of Comparative Law* 331, 333–340; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press 2004), 7–31; World Justice Project, Rule of Law Summit (The Hague, 12 July 2013); American Bar Association, annual Rule of Law Conferences <https://www.americanbar.org/advocacy/rule_of_law/newsroom_events/rule-of-law-conference/> accessed 10 June 2021; RECONNECT, Conference Democracy and the Rule of Law in the EU (5 July 2019).

²⁹ Machiko Kanetake, 'The Interfaces between the National and International Rule of Law: A Framework Paper' in Machiko Kanetake and André Nollkaemper (eds.), *The Rule of Law at the National and International Levels: Contestations and Deference* (Hart Publishing 2016).

³⁰ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (reprint of 8th edn Mac Millen publishers 1915, Liberty Fund 1982).

³¹ *ibid.*

³² UN General Assembly has adopted resolutions entitled 'The Rule of Law at the National and International Levels', see, for example, UNGA Res 61/39 (18 Dec 2006) UN Doc A/RES/61/39; Report of the Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies' (2004) UN Doc S/2004/616, para. 6; in relation to the Rule of Law, the UN sees its role as one of strengthening legal and justice systems at the international and national level; Kenneth J Keith, 'The International Rule of Law' (2015) 28 *Leiden Journal of International Law* 403, 403.

³³ Report of the Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies' (2004) UN Doc S/2004/616.

and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.³⁴ In institutional documents stressing accountability for serious international crimes, the rule of law is routinely evoked.³⁵ Accountability processes are seen as part of the effort to restore or re-establish the rule of law in regions or countries where the rule of law has failed for one reason or another.

Notwithstanding its clear importance, the rule of law has become a buzzword at the international level—sometimes with little meaning attached. So much so, that in 2003 one author referred to there being an ‘explosion in “rule of law” promotion.’³⁶ It has been so overused in political and legal rhetoric that Judith Shklar, the late Harvard political theorist, already remarked in the late 1980s that it ‘has become meaningless thanks to ideological abuse and general overuse[...]. No intellectual effort need therefore be wasted on this bit of ruling-class chatter.’³⁷ Though many academics would disagree on this last point, it is clear that the rule of law is a contested and messy concept, but nonetheless significant for underpinning accountability efforts for serious international crimes.³⁸

3. Universities, Community Engaged Learning, and Clinical Legal Education

While definitions differ, the Office of the High Commissioner for Human Rights defines civil society actors as individuals and groups who ‘engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realisation of development, and the promotion and respect of human rights.’³⁹ Schools and universities, as social institutions, as well as churches and other cultural institutions, fall under this definitional umbrella when their work connects with these aims. Universities are a category of higher education institutions (HEIs), defined by UNESCO as establishments providing higher education and recognized by competent authorities as belonging to their higher-education systems.⁴⁰ They vary greatly in terms of size, focus, and accessibility. They can be public institutions funded by the state or private universities funded largely by higher tuition payments and donor contributions. These different factors all impact the educational programs offered to students and the various roles that they play in communities.

Within universities, and beyond regular course work, students often connect with the promotion of and respect for human rights (and rule of law) through CEL. CEL is experiential education in which students, teachers, and external partners work together on societal challenges.⁴¹ CEL integrates societal engagement with academic study and reflection to enrich and enhance the learning experience and contribute to community needs.⁴² A key aspect of CEL is a strong focus on reflection and helping students analyze and critically think about their experiences in the context of their project goals and working environments.

³⁴ UNGA, ‘Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels’, Res 67/1 (30 November 2012) UN Doc A/RES/67/1, para 5; See also, for example, UN Human Rights Council, ‘Human rights, democracy, and the rule of law’, Res 19/36 (19 April 2012) UN Doc A/HRC/RES/19/36; UNGA, ‘2005 World Summit Outcome’, Res 60/1 (24 October 2005) UN Doc A/RES/60/1, para 119–145, including a section on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

³⁵ Report of the Secretary-General, ‘Report to the Security Council: The rule of law and transitional justice in conflict and post-conflict societies’ (23 August 2004) UN Doc S/2004/616; OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives* (HR/PUB/06/4, UN 2006). <www.ohchr.org/documents/Publications/RuleoflawProsecutionsen.pdf> accessed 6 January 2021.

³⁶ Ehrenreich Brooks (n19), 2276.

³⁷ Stein (n18), 296, citing Judith N. Shklar, ‘Political Theory and The Rule of Law’ in C. Hutchinson and Patrick Monahan (eds.), *The Rule of Law: Ideal or Ideology* (Carswell 1987).

³⁸ Fallon (n27); Margaret Jane Radin, ‘Reconsidering the Rule of Law’ (1989) 69 *Boston University Law Review* 781, 781.

³⁹ United Nations Office of the High Commissioner, ‘Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society’ (UN, October 2014), 3 <http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSysm_Guide.pdf> accessed 6 January 2021; for universities as human rights actors, see Eva Brems, Laurens Lavrysen and Lieselot Verdonck, ‘Universities as Human Rights Actors’, (2019) 11 *Journal of Human Rights Practice* 229.

⁴⁰ UNESCO, Global Convention on the Recognition of Qualifications concerning Higher Education 2019, CL/4318, 25 November 2019, Article 1.

⁴¹ Andrew Furco, ‘Service-Learning: A Balanced Approach to Experiential Education’, in B. Taylor and Corporation for National Service (eds.), *Expanding Boundaries: Service and Learning* (Corporation for National Service 1996).

⁴² Maimoona Salam, Dayang Nurfatimah Awang Iskandar, Dayang Hanani Abang Ibrahim, & Muhammad Shoaib Farooq, ‘Service learning in higher education: A systematic literature review’ (2019) 20 *Asia Pacific Education Review* 573; Kathryn Steinberg, Julie A. Hatcher, and Robert G. Bringle, ‘A north star: Civic-minded graduate’ (2011) 18 *Michigan Journal of Community Service Learning* 19; Michelle Lasen, Louisa Tomas, and Angela Hill, ‘Potential of service-learning to promote sustainability competencies in pre-service teachers: A case study’ (2015) 26 *Teaching Education* 341; US National Commission on Service-learning, ‘Learning in Deed: the power of service-learning for American schools’ (*Report National Commission on Service-learning* 2002) 3 <http://ed253jcu.pbworks.com/f/LearningDeedServiceLearning_American+Schools.PDF> accessed 6 January 2021.

The reflection includes covering questions related to the limits of their work and their limited ability to address community needs at a structural level.⁴³ Unlike volunteer work or internships, the university plays a central role in ensuring the student's work links with academic content and the values of the institution.⁴⁴ For academic staff, CEL increases collaboration with societal partners,⁴⁵ which can be beneficial for both teaching and research activities. For the universities, CEL projects often benefit its external image in the community. An important advantage of CEL for society is that societal partners can work with and use the expertise of students and academic staff to collectively help them solve or address complex challenges.⁴⁶

When these challenges involve legal questions or concerns, the work will likely be part of clinical legal education or a similarly set up program or project. Legal clinics generally comprise small groups of students providing work to real clients or societal partners for real-world use. Supervised by lecturers or practitioners, law students gain first-hand knowledge of legal institutions, acquire in-depth understanding of particular fields of law, follow important jurisprudential developments, and develop a range of valuable skills pertaining to legal research, analysis, writing, communication and time management. Legal clinics first (re)emerged in the 1960s in the US,⁴⁷ where they began focusing on cause-based lawyering.⁴⁸ These causes were largely linked to domestic social justice issues such as access to housing or other benefits, immigration, or discrimination cases.⁴⁹

Legal clinics have since spread throughout the world,⁵⁰ making a significant impact on legal education.⁵¹ They have expanded in scope from domestic social justice issues to addressing global legal challenges.⁵² For instance, there is a growing number of international human rights and environmental law clinics and programs that tackle abuses around the globe. In the dynamic and rapidly expanding field of international law, courts, organizations, and individuals have increasingly benefited from these types of legal services provided by universities (read students and teachers) through their international legal clinics. Notable examples include the international human rights clinics at American University's Washington College of Law, Columbia University, UC Berkeley, the University of Miami, Harvard University, Seattle University, and Stanford University. Each of these international clinics, and many others,⁵³ has influenced or impacted international human rights bodies and their operation or decisions. As with most domestic legal clinics, the students in these internationally-oriented programs are regularly sent into the field to carry out human rights field work or fact-finding, in order to compile or build the factual basis on which their legal argumentation will rest. This frequently involves interviewing clients and other relevant individuals, filing freedom of information requests, archival research, and other forms of information and evidence collection.

Student documentation and investigation work has the possibility of offering students a closer look into the lived experiences of those individuals at the heart of their work. It has a number of pedagogical advantages including introducing students to 'empathic lawyering, issues of difference and privilege, sound legal judgement, collaboration, and inter-disciplinary approaches to legal problems.'⁵⁴ It requires

⁴³ John W. Eby, 'Why Service-Learning is Bad' (1998). <<http://bonnernetnetwork.pbworks.com/w/file/attach/54644691/Why%20Service%20Learning%20Is%20Bad%20Eby.pdf>> accessed 6 January 2021.

⁴⁴ Robert Sigmon, 'Service-learning: Three Principles' (1979) 8 *Synergist* 9.

⁴⁵ Salam, Awang Iskandar & Abang Ibrahim (n42).

⁴⁶ Raina Rutti, Joanne LaBonte, Marilyn Michelle Helms, Aref Agahei Hervani & Sy Sarkarat, 'The service learning projects: Stakeholder benefits and potential class topics' (2016) 58 *Education + Training* 422.

⁴⁷ James Moliterno, 'Legal Education, Experiential Education and Professional Responsibility' (1996) 38 *William and Mary Law Review* 71; Stephan Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2002) 70 *Fordham Law Review* 1929, 1933. Margaret Martin Barry, John C. Dubin & Peter A. Joy, 'Clinical Education for this Millennium: the Third Wave' (2000) 7 *Clinical Law Review* 1, 11.

⁴⁸ Kris Gledhill, 'Establishing An International Human Rights Clinic in the New Zealand Context' (2013) 19 *International Journal of Clinical Legal Education* 295, 296; Jane H. Aiken, 'Provocateurs for Justice' (2001) 7 *Clinical Law Review* 287, 287.

⁴⁹ Kris Gledhill, 'Establishing An International Human Rights Clinic in the New Zealand Context' (2013) 19 *International Journal of Clinical Legal Education* 295, 296; see also Wizner (n47).

⁵⁰ See Wilson (n15); Alberto Alemanno and Lamin Khadar (eds.), *Reinventing Legal Education: How Clinical Education Is Reforming the Teaching and Practice of Law in Europe* (Cambridge University Press 2018).

⁵¹ Wilson (n15); Mohammad Mahdi Meghdadi and Ahmad Erfani Nasab, 'The role of legal clinics of law schools in human rights education; Mofid University legal clinic experience' (2011) 15 *Procedia Social and Behavioral Sciences* 3014.

⁵² Johanna Bond, 'The Global Classroom: International Human Rights Fact-Finding as Clinical Method' (2001) 28 *William Mitchell Law Review* 317, 319.

⁵³ The American Bar Association has a list of public interest legal clinical programs at US-based universities <https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_pi_clinics/> accessed 10 June 2021. This directory lists no fewer than 25 clinical programs focusing on international human rights, with a growing number being set up around the world.

⁵⁴ Johanna Bond, 'The Global Classroom: International Human Rights Fact-Finding as Clinical Method' (2001) 28 *William Mitchell Law Review* 317, 327.

information-gathering and interpersonal communication skills, which in cross-cultural contexts and trauma environments can be particularly challenging to develop. In many circumstances, it allows students the opportunity to strategize for broader legal activism.⁵⁵ There will also likely be numerous 'disorienting moments,' where students will begin to question previously held understandings of the world.⁵⁶ Quigley argues that these present opportunities, through reflection and discussion, to learn lessons of social justice.⁵⁷ Nevertheless, in addition to these benefits, fact-finding and investigations are also potentially dangerous. Students will be exposed to trauma environments, graphic material, and possibly to harmful individuals. The classroom support should provide the opportunity to teach the students about the importance of both mental and physical well-being and how best to identify and address any risks.

Not all legal clinics, however, have fact-finding, documentation, or investigation components. In fact, most *international* legal clinics do not engage with direct-service client representation or engage directly in independent documentation work at all.⁵⁸ Rather, they contribute to legal analysis and argumentation through reports and legal memoranda to clients or the filing of amicus briefs based on fact-finding carried out by local partners or professionals. This allows, for example, students working on serious international crimes to undertake their work at a safer distance (both geographically and visually in terms of not having to view graphic images) than their counterparts in other legal clinics that may have a documentation or investigation component. With a handful of important exceptions, which this article will explore, most international clinics dealing with serious international crimes, such as war crimes, crimes against humanity, and genocide have not involved students in independent factual investigations.⁵⁹ Importantly, however, this is beginning to change.

4. Examples of universities engaged in documenting serious crimes to aid in accountability

A select number of universities have increasingly taken on documentation and investigation roles in relation to serious international crimes to later be used for accountability purposes. This growing trend at universities coincides with the rising numbers of civil society organizations also taking on private investigations (and even prosecutions) for serious international crimes.⁶⁰ Alston and Knuckey have identified two reasons for the changes: (1) advances in investigative methods and new technologies available to a wider array of actors and (2) aspirations to impact existing legal frameworks, such as international criminal justice.⁶¹ In addition to these, universities have faced mounting calls to better connect their research and education initiatives with societal needs to generate positive societal impact.

Probably one of the most well-known early examples of a university wading into the waters of documentation of serious international crimes was that of Yale University and its work in setting up the Documentation Center of Cambodia (DC-Cam). DC-Cam was established already back in January 1995 in Phnom Penh, Cambodia as a field office by the Cambodian Genocide Program at Yale University.⁶² The project was funded by the US Department of State, Yale University, and other international actors including the Dutch government.⁶³ It set to work documenting the crimes and harms suffered during the Democratic Kampuchea (DK) regime that lasted from 1975–1979. Yale University supported the training of DC-Cam staff and set out to: (1) collect, study, and preserve all information about that period in Cambodian history; (2) make this information available to a court or tribunal with jurisdiction to prosecute alleged perpetrators; and (3) generate a critical, analytic understanding of genocide to help prevent political and ethnic violence

⁵⁵ *ibid* 329.

⁵⁶ Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37.

⁵⁷ *ibid* 37.

⁵⁸ Bond (n54), 319; for example, in 2015, the Allard K. Lowenstein *International Human Rights Clinic at Yale Law School* published a report detailing evidence of genocide against the Rohingya population in Myanmar. While the students reviewed primary sources, they did not undertake an independent, factual investigation. See Allard K. Lowenstein Law Clinic, 'Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State?' (*International Human Rights Clinic at Yale Law School*, October 2015), 4 <<https://law.yale.edu/sites/default/files/documents/pdf/Clinics/fortifyrights.pdf>> accessed 6 January 2021.

⁵⁹ Kevin Jon Heller, 'What is an International Crime? (A Revisionist History)' (2017) 58 *Harvard International Law Journal* 353.

⁶⁰ McGonigle Leyh (n9).

⁶¹ Alston and Knuckey (n10).

⁶² Genocide Studies Program, 'DC-Cam 1995–2005' (Yale University) <<https://gsp.yale.edu/dc-cam-1995-2005>> accessed 15 June 2020.

⁶³ *ibid*.

against populations elsewhere in the world.⁶⁴ DC-Cam, with the assistance of the university, became an NGO in Cambodia and created the largest geographic database on the crimes in Cambodia. The information collected has been directly used in court proceedings before the Extraordinary Chambers in the Courts of Cambodia and was made available not only to the lead co-Prosecutors but also to defense counsel and legal representatives of civil parties.

Another notable example was the collaboration that took place between Chadian survivors, lawyers, the global NGO Human Rights Watch (HRW), the Human Rights Data Analysis Group (HRDAG), and Harvard Law School's Human Rights Program to bring Hissein Habré to justice for crimes he committed while president of Chad.⁶⁵ With the financial and practical assistance of the Human Rights Program, LLM students/recent graduates traveled to Chad to collect and then smuggle out documentation of the crimes that would later be used in his trial.⁶⁶ Without a doubt, the work was dangerous and not without controversy. Encouraging or supporting students or interns to travel to foreign countries where their lives or security could be at risk is not something that universities take lightly. Nevertheless, Harvard's Human Rights Program, including its human rights clinic, is known as one of the most active and successful human rights programs in the world, and well versed in documentation work.

A more recent example was in 2014, when the Interantional Human Rights Clinic at Harvard Law School published a legal memorandum, following from a four-year investigation, finding that the Myanmar military committed war crimes and crimes against humanity in 2005–2006.⁶⁷ The students undertook 11 field missions and compiled more than 1000 pages of draft affidavits from more than 150 in-depth interviews within and outside of Myanmar, including from former Myanmar army soldiers.⁶⁸ Security concerns did limit the work of the students, restricting them from carrying out further investigations. Despite these concerns, as one of many reports produced by the clinic, the memorandum made a signifiant impact upon early calls for accountability for serious interantional crimes in Myanmar. Although the memorandum deals with crimes occurring between 2005–2006, and not the time frame covered under the investigation by the International Criminal Court (2016–2017) or under the complaint filed by The Gambia against Myanmar before the Interantional Court of Justice (2016–2017),⁶⁹ it does help to show patterns of violence carried out by the military and could be relevant to both court proceedings. The quality of the memorandum is indicative of the high standards expected from the students and highlights the extraordinary opportunities afforded to Harvard students.

Like Harvard, a handful of other elite US universities have also carried out investigative work on serious international crimes and used their platforms to call for accountability.⁷⁰ At Stanford University, for instance, students in the Human Rights Clinic, run by Beth van Schaack, take on significant documentation work around serious international crimes. Working with civil society organisations, UN investigative bodies, and international courts, Stanford students have engaged with open source investigations, tracking the prices of milk and other food commodities and the rates of child marriages to show how starvation is used as a weapon of war. They have also been sent to relevant regions to carry out interviews of affected populations.⁷¹

⁶⁴ Genocide Studies Program, 'Introduction to the Cambodian Genocide Program' (*Yale University*) <<https://gsp.yale.edu/introduction-cambodian-genocide-program>> accessed 15 June 2020.

⁶⁵ See McGonigle Leyh (n9); Dustin Sharp, 'Prosecutions, Development, and Justice: The Trial of Hissein Habré'(2003) 16 *Harvard Human Rights Journal* 147, 148–9; David Bosco, 'Dictators in the Dock' (*The American Prospect*, 14 August 2000) <<http://prospect.org/article/dictators-dock>> accessed 6 January 2021.

⁶⁶ Sharp (n65).

⁶⁷ Harvard Human Rights Program, 'Clinic Investigation: Senior Myanmar Officials Implicated in War Crimes and Crimes Against Humanity', (Press Release, 7 November 2014) <<https://hrp.law.harvard.edu/press-releases/clinic-investigation-senior-mynamar-officials-implicated-in-war-crimes-and-crimes-against-humanity/>> accessed 6 January 2021; International Human Rights Clinic, 'Legal Memorandum: War Crimes and Crimes against Humanity in Eastern Myanmar' (Harvard Law School, 2014) <<http://hrp.law.harvard.edu/wp-content/uploads/2014/11/2014.11.05-IHRC-Legal-Memorandum.pdf>> accessed 10 June 2021.

⁶⁸ *ibid*; International Human Rights Clinic, 'Legal Memorandum: War Crimes and Crimes against Humanity in Eastern Myanmar' (Harvard Law School, 2014) <<http://hrp.law.harvard.edu/wp-content/uploads/2014/11/2014.11.05-IHRC-Legal-Memorandum.pdf>>, 15–16.

⁶⁹ *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ICC Pre-Trial Chamber III, ICC-01/19–27 <https://www.icc-cpi.int/CourtRecords/CR2019_06955.PDF> accessed 6 January 2021; *Application Instituting Proceedings and Request for Provisional Measures (Republic of The Gambia v. Republic of the Union of Myanmar)* (Pending) ICJ Press release 2019/47 <<https://www.icj-cij.org/public/files/case-related/178/178-20191111-PRE-01-00-EN.pdf>> accessed 6 January 2021.

⁷⁰ There are many ways to categorize an institution as 'elite,' but the term remains ambiguous. Generally, it is seen as ranking high on any one of the numerous school ranking systems that exist. These schools are extremely selective, have high graduation rates, large endowments, tend to have smaller class sizes, and have strong reputations.

⁷¹ For a list of past projects by Stanford's International Human Rights Clinic, see <<https://law.stanford.edu/international-human-rights-and-conflict-resolution-clinic/#slnav-past-projects>> accessed 5 February 2021.

One of the most new and innovative examples of universities and students engaging in documentation and investigation work is the group of universities involved in Amnesty International's Digital Verification Corp (DVC), which launched in 2016.⁷² In contrast with the more traditional documentation approach of interviewing victims, witnesses, or perpetrators, these universities have a unique approach to documentation. Led by Sam Dubberley of Amnesty International, and assisted by teams of professors and professionals around the world, students working with the DVC are trained to use modern technology, namely open source investigations, to document, verify, and analyse serious international crimes. The advantage of this work is that students are not directly placed in harms way. Still, there are risks associated with the work such as through vicarious trauma.

Amnesty International first partnered with the UC Berkeley on this work. Berkeley has a long history of engaging students with documentation projects through the work of professors like Eric Stover and others. Already back in 2008, Berkeley's Human Rights Center began making connections with technologists and technology companies, seeing the possibilities and utility that technology can bring to the justice sector. Soon they were partnering with major actors in the justice and accountability field, including Commissions of Inquiry, UN investigative bodies, international courts, and a wide range of civil society organizations. Berkeley has the largest documentation project set up at a university, with roughly 70 students per semester from across disciplines and graduate levels participating on 10–12 investigations at any one time. According to Alexa Koenig, Executive Director of Berkeley's Human Rights Center, one of the strengths of the program is the diversity of the student body (both in terms of experience and language capacity) and the emphasis they place on well-being, community, and cooperation.

Indeed, the university not only promotes strong cooperation skills among Berkeley students but also with student bodies at other universities, with Essex University being one of the early partners. Essex University's Law School launched its Digital Verification Unit in 2016 as part of the DVC partnership. In addition to Berkeley, Essex had one of the first university-based human rights investigation units of its kind using open source investigations for international organizations and courts; and partnering with UN Commissions of Inquiry and other NGOs.⁷³ Just like at Berkeley, students are trained to verify user generated information on potential war crimes and they work to document and verify digital evidence pertaining to serious human rights abuses and to use open source investigative techniques to pursue accountability.⁷⁴ Other university partners now include the University of Pretoria in South Africa, the University of Toronto in Canada, Hong Kong University, and Cambridge University in the UK—with Ibero-American University in Mexico joining soon. Not all of these programs operate at the same scale as Berkeley,⁷⁵ but they are no less impressive. One aspect that is particularly important in maintaining the strong partnerships is their annual Global Summit that brings students and supervisors from all of the programs together. This event helps create a shared sense of community through common values and purpose.

Other noteworthy international examples, though these are more limited in scope, include work carried out by the University of Amsterdam, students at the University of Edinburgh, and at the Harry Radzyner Law School in Israel.⁷⁶ At the University of Amsterdam's International Law Clinic students have undertaken open source investigations to aid in future accountability initiatives. One example was a project where students used open source material to identify corporate activity linked with the repression of Uyghurs in the Xinjiang province in China.⁷⁷ Another project related to open source investigations and the financing of property in the West Bank for advocacy work. At the University of Edinburgh, students have taken the lead in setting up clinical legal education and using open source investigation methods to contribute to investigations of serious international crimes and accountability. As with students involved with the DVC, they have partnered with other global NGOs to help document, verify, and analyse serious international crimes. Outside of Europe, the Interdisciplinary Center Herzilya at Harry Radzyner Law School in Israel also

⁷² Paola Verhaert, 'Amnesty International's Dignity Verification Corps: New Networks and Methods for Human Rights Research' (The Engine Room, 19 June 2017) <www.theengineroom.org/digital-verification-corps/> accessed 6 January 2021.

⁷³ University of Essex, 'Digital Verification Unit' <essex.ac.uk/research-projects/digital-verification-unit> accessed 6 January 2021.

⁷⁴ *ibid.*

⁷⁵ At Hong Kong University, for example, they have a team of 10–15 students per year involved in the DVC project.

⁷⁶ In 2015, the Public International Law & Policy Group launched its Handbook on Civil Society Documentation of Serious Human Rights Violations, which is used in trainings around to world and especially in situations where serious international crimes have occurred. A joint clinic between Utrecht University and the Free University of Amsterdam helped produce the Handbook and accompanying Field guide. However, the students were not directly involved in documentation work themselves.

⁷⁷ Interview with former supervisor. For published reports from the Amsterdam International Law Clinic, see <<https://ailc.uva.nl/legal-services/recent-reports/completed-reports.html>> accessed 5 February 2021.

undertakes documentation work with its students by identifying, interviewing, and strategizing with asylum seekers who were victims of international crimes and working with them to seek accountability. These are only a small number of examples from around the world but again it is important to note that these types of examples (working on independent investigations related to serious international crimes) are far fewer in number than their counterparts working on human rights documentation more generally.

For most universities operating a legal clinic or student-inclusive project on serious international crimes, students will not take part in independent fact-finding, documentation, or investigation work. There are a number of reasons for this. First, depending on the circumstances of a project, there may be inherent dangers in exposing students to documentation work in situations of ongoing conflict or tension. Serious crimes contexts are complex and sensitive and any type of investigation could be deemed undesirable from the actors involved and too much of a liability risk for the universities involved. Second, teachers may feel that students lack the maturity to carry out certain types of documentation work. This concern was raised by a number of project supervisors in conversations with the author. It is particularly true when it comes to interviewing victims, perpetrators, or witnesses of mass atrocities or international crimes. There may not be the quality assurances necessary to place trust in students understanding confidentiality, privacy, or sensitivity issues. Some of this may come down to age or life experience. Third, there may simply be time limitations. Many of the above-mentioned legal clinic projects where students engage with documentation are carried out over an extended period of time of one year, often working 20–40 hours per week on a project. This is possible at American law schools because of their three-year duration, but within one-year LLM programs this becomes more difficult unless it is opened up to LLB and other bachelor students. These obstacles essentially mean that most universities will refrain from documentation work though still seek to contribute to accountability efforts in other ways. Such contributions may include the filing of *amicus curiae* briefs or the publishing of reports or memoranda about abuses—all of which are possible without directly engaging students in independent fact-finding. For those universities that do engaged directly with documentation work, there are some key aspects to help the quality of the work and learning environments: institutional support; connection with societal partners; reflection and vicarious trauma support; and specialized knowledge.

Institutional Support

Not all universities have the infrastructures and funding to support intensive clinical legal education, under which most of these projects were carried out. Successfully operating international clinical programs can be expensive and usually does not take hold without strong financial and administrative support from the respective law school. With a few exceptions, the examples that came to light in this research generally represent well-regarded, Global North institutions. These are institutions and programs that are highly selective or expensive to attend. Most clinical projects operate with between 5 and 15 students, some as low as 2–4 per year. The ability to participate in these projects remains a scarce opportunity for a privileged few. The student-led Edinburgh project was an important exception as the student volunteers do not necessarily need to attend the university. However, this project struggles to find funding and broader institutional support.

Connection with Societal Partners

Regardless of the size or level of institutional support, all of the projects mentioned above have established crucial relationships with important societal partners, which is a key component of CEL and clinical legal education in particular. Amnesty International's DVC aside, most of the projects only included one university partner working with societal partners on a project basis. The DVC work is unique in that Amnesty International works with multiple university partners around the world and facilitates collaboration amongst the universities and students. This global collaboration network between the NGO and universities spanning different continents illustrates the importance of the diversity of actors needed in documentation work. Verification of online material improves when different actors, with diverse backgrounds and knowledge, assess information and contribute to accountability.

Reflection and Vicarious Trauma Support

Overall, all of the programs seemed to be aware of the secondary or vicarious trauma that can result from documentation work.⁷⁸ Vicarious trauma 'is the emotional residue of exposure' that comes from working with people and 'hearing their trauma stories and become witnesses to the pain, fear, and terror that trauma

⁷⁸ See Julie Canfield, 'Secondary Traumatization, Burnout, and Vicarious Traumatization: A Review of the Literature as It Relates to Therapists Who Treat Trauma' (2008) 75 *Smith College Studies in Social Work* 81.

survivors have endured'.⁷⁹ Whether through interviews or exposure to graphic images, vicarious trauma can arise at any time during a clinic experience. Almost all the law clinics explored in this article have incorporated specific components in their programs to assist students in identifying signs and symptoms and addressing personal well-being. Some hold specific trauma-related workshops and others organize weekly or bi-weekly group reflection sessions. The individual and group reflection components of the various clinics are an integral aspect of the learning process and particularly well-suited for addressing issues of trauma. That said, not all of the clinics partner with psychosocial care professionals, which may be desirable and easily arranged given their university environments.

Specialized Knowledge

The various illustrations of clinics around the world, but predominantly in the US and Western Europe that this article touches on, demonstrate how the expertise of students and teachers can be successfully employed to assist societal partners in documenting serious international crimes and then using that to support different types of accountability processes. It requires a specific type of legal knowledge, namely public international law, international criminal law, international human rights law, and in some cases international humanitarian law, in addition to more specialized knowledge around specific subjects such as documentation, fact-finding and investigations, ethics, victimology, trauma, and well-being. Not all universities focus on these fields or areas of expertise. Since the subject matter is more specialized, and many of these projects were established through friendships and professional networks, it is easy to understand why the examples are limited in comparison to the far larger number of human rights clinics carrying out documentation work around a broader category of issues.

5. Contributions to the Rule of Law

When asked how their clinics or documentation projects contribute to society, almost all of the program leaders or supervisors interviewed for this research responded with answers evoking terms like justice, accountability, and human rights, but refrained from using rule-of-law language in their responses about the contributions of their work. When asked whether they ever use the language of the rule of law in their work, all but one said rarely if ever, again favoring terms like justice, accountability, and human rights. The one exception came from one of the universities involved in the DVC, where the supervisor explained that a rule of law framing, in their particular context, was often more useful and strategic than using terms like human rights. The responses from all of the supervisors of the various programs were in line with the online materials available on these projects as well. International legal clinics and other projects make broad claims such as contributing to the realization of human rights or accountability but few, if any, make claims about contributing directly to the rule of law.⁸⁰ In fact, in all of the examples looked at for this study, none of the programs or clinics mention the rule of law on their websites or in their promotional materials—although their respective centers regularly organize a multitude of rule-of-law events for students with guest speakers on relevant topics.

Despite 'rule of law' rhetoric being overused by international institutions like the UN or states involved in development, accountability, and human rights work, it appears from the interviews and online material that universities are more reluctant to use the concept to frame their work. Perhaps it boils down to semantics, and the acknowledgement that people ascribe different meanings to the concept. Or perhaps it is simply a pragmatic choice to focus on more digestible, and arguably concrete, aspects of the concept such as accountability and human rights. That said, the term 'justice' is replete with complexities and uncertainty but is still invoked more than 'rule of law' by the law schools and universities. Does this lack of rhetorical use of the concept by the universities, as juxtaposed against state and international institutional actors, support Sklar's argument that the concept boils down to 'ruling class chatter'? Or is the concept simply not useful when framing the work of the students? As one clinic supervisor remarked, 'a rule of law frame is too broad and too narrow at the same time.'

While more research is needed on the disconnect between the use of the concept by UN and state institutions and the apparent absence of the concept in the discourses of university civil society actors, that absence does not detract from their contributions to the concept overall. Although not directly applying the

⁷⁹ American Counseling Association, 'Fact Sheet No. 9, Vicarious Trauma' <<https://www.counseling.org/docs/trauma-disaster/fact-sheet-9--vicarious-trauma.pdf>> accessed 6 January 2021.

⁸⁰ cf Open Society Justice Initiative, 'Legal Clinics: Serving People, Improving Justice' (2009) <https://www.justiceinitiative.org/uploads/0763f81d-04c4-4f72-bd88-67f6ee89dd69/legalclinics_20090101.pdf> accessed 6 January 2021.

phrase to frame their work, there are a number of significant contributions to bolstering the rule of law (at least in a broader sense) made by the universities.

First, the universities base their work around international norms and standards. In all of the programs, students and supervisors are trained in international law, international human rights law, international criminal law, and/or international humanitarian law. Legal norms and standards from these fields, often together with domestic legal codes, also guide their analysis when pursuing accountability. Their work makes concrete contributions to specific accountability processes (through strengthening investigations) by using legal norms and standards in the work of claiming human rights and protecting human rights. This is a key aspect of the thicker conception of the rule of the law. Examples include the memoranda produced by Harvard Law students working on the documentation of crimes in Myanmar. In their 2014 report, they use the international criminal law framework to lay out the contextual elements of war crimes and crimes against humanity and then detail the underlying crimes and identify possible perpetrators.⁸¹

Second, the universities are directly engaging with and utilizing institutional frameworks at the international, regional, and national levels to pursue accountability. This is important since much of the UN's focus on rule-of-law programming/assistance includes institution building and institutional reforms. Universities are often seen as legitimate, objective actors and their involvement with specific institutional actors lends to the legitimacy of those institutions. This involvement may include direct cooperation with the institution, namely providing documentation support to the institution's work, or using the institution to pursue accountability on behalf of victims. In either case, the role of the university in the operation of the institutions lends credence to their work. An example of directly contributing to accountability efforts can be seen in the German filing in relation to the sarin attacks on Ghouta in 2013 and in Khan Shaykhun in 2017 where the students' work contributed to new evidentiary leads, suspect and witness identification, and the establishment of chains of command of responsibility.⁸² In the Darfur situation before the ICC, satellite imagery has played a significant role in the investigations, tracking relevant developments from the burning and destruction of villages to the movement of populations and the location Sudanese government forces.⁸³ The availability of this satellite imagery was due, in part, to the collective efforts of university actors, namely the Harvard Humanitarian Initiative, civil society actors, such as Amnesty International, and technology partners, such as Google Earth.

Third, the rule of law depends profoundly on the support of the public and civil society, and the universities' documentation work heavily supports other civil society actors. They not only work with global NGOs and larger technology companies, but importantly the universities are partnering and working directly with local societal partners. The knowledge sharing between the various groups is a crucial aspect of the success of the documentation work. Amnesty International's DVC annual Global Summit is a good example of knowledge sharing across universities and civil society partners. It allows those taking part to identify lessons learned and to strategize for future work.⁸⁴ Moreover, the universities are not simply supporting current civil society actors. They are training the next generation of documenters and investigators. This new generation of fact-finding experts will leave university more prepared (and more connected) than previous generations, enabling a potentially far greater impact on accountability processes. The reflection and wellness trainings that they receive as students may also help protect them from vicarious trauma and leaving the field of documentation earlier than would be the case otherwise.

Flowing from these observations around the contributions of the universities to the rule of law, a few things become clear. To begin with, the success of these various programs allowing for substantial student contributions to documentation, investigation, and accountability efforts should foster greater recognition of societal engagement on the part of universities around rule of law initiatives. More CEL and clinical legal education programs involving future lawyers working with serious international crimes are needed. Thankfully, the number of opportunities to contribute to accountability for serious international crimes

⁸¹ International Human Rights Clinic, 'Legal Memorandum: War Crimes and Crimes against Humanity in Eastern Myanmar' (Harvard Law School, 2014) <<http://hrp.law.harvard.edu/wp-content/uploads/2014/11/2014.11.05-IHRC-Legal-Memorandum.pdf>> accessed 10 June 2021, 42–57.

⁸² Open Society Justice Initiative, 'Eastern and Western Ghouta Sarin Attack' (Public Summary of Evidence, 5 October 2020) <https://www.justiceinitiative.org/uploads/4bc2c0f7-81ad-48c5-8166-281ab35301ab/sarin-complaint_ghouta-public-summary_10062020.pdf> accessed 6 January 2021.

⁸³ Lindsay Freeman, 'The Impact of Digital Technologies on International Criminal Investigations and Trials' (2018) 41 *Fordham International Law Journal* 283, 306.

⁸⁴ Daragh Murray, 'Essex Human Rights Clinic Digital Verification Unit Participates in Amnesty International Summit in Hong Kong', University of Essex, Human Rights Centre Blog, 12 June 2019 <<https://hrcessex.wordpress.com/2019/06/12/essex-human-rights-clinic-digital-verification-unit-participates-in-amnesty-international-summit-in-hong-kong/>> accessed 24 May 2021.

is growing. No longer are accountability efforts confined to a small number of international(ized) criminal courts. Rather, in addition to the various international courts, a number of new UN investigative bodies have been created to not only collect information on serious crimes but also to prepare criminal case files to facilitate fair and independent criminal proceedings, in accordance with international law.⁸⁵ Additionally, states around the world, and European states in particular, are increasingly turning to universal jurisdiction to prosecute individuals suspected of committing serious international crimes.⁸⁶ Universal jurisdiction allows for the domestic prosecution of certain crimes regardless of where the crimes occurred or the nationality of the alleged perpetrator or victims.⁸⁷ Although the challenges in building successful prosecutions remain high, domestic prosecutions are beginning to offer some results. This is due, in large part, to stronger transnational networks of cooperation between states and non-state actors, including universities.

Additionally, the university holds a privileged position in society, meaning that not everyone has access to attend and very often those attending come from higher socio-economic backgrounds.⁸⁸ Amongst universities around the world, those considered the most privileged are at the forefront of occupying the space around serious crimes documentation and accountability. Often, though not always, it is Global North institutions carrying out this work in situations and countries located in the Global South. These factors have implications for what types of students get the opportunity to work in this field and contribute directly to rule of law initiatives aimed at accountability for serious international crimes. Efforts should be made to build capacity amongst universities and students around the world and not those concentrated in the Global North. In practice, this could mean that more well-off universities partner with others to share knowledge and experiences. Existing university networks, such as the Talloires Network or European Network for Clinical Legal Education, could play a role here.

Finally, more research on the impacts of universities and students on advancing the rule of law and accountability for serious international crimes is needed. One of the more challenging questions that arose during the research and interviews of clinic supervisors was whether universities can really be considered actors 'from below.' On the one hand, universities can be categorized as part of civil society and are not necessarily part of state rule-of-law structures—making the case to be seen as falling below the state level. On the other hand, if 'from below' is employed as a means to denote a focus on the views or efforts of common people, as well as those that may be more marginalized in society, viewing the university as 'from below' may be more problematic. Universities are not always associated with a more inclusive way of looking at specific fields.⁸⁹ The broad array and diversity amongst university actors is especially relevant here. A better understanding is needed of whether 'from below' refers to all non-state actors regardless of their positioning or whether it is meant to evoke grassroots processes where individuals and organizations not in positions of great power, influence, or legitimacy play a role. Developing further the role of the wide spectrum of non-state actors would surely result in complex and interesting findings, from universities to private businesses and armed rebel groups. It seems imperative to not lump the varying actors into broad stroke categories given the power differentials at play when they take up roles in advancing the rule of law. Equally, research is needed into coordination efforts across the justice landscapes, as well as how traditional rule of law actors can better acknowledge and utilize the efforts of those 'from below.'

6. Conclusion

Scholars have noted that the rule of law expresses 'a worthy aspiration that rightly finds voice in the hard work of good-intentioned activists.'⁹⁰ This article has focused on the university and its students and teachers as these 'good-intentioned activists' and sought to explore how, often together with other civil society actors,

⁸⁵ UN General Assembly Resolution of 21 December 2016, 71/248; United Nations Security Council, Resolution 2379, UN Doc S/RES/2379 (2017); United Nations, Human Rights Council, Resolution 39/2 of 27 September 2018 on the situation of human rights of Rohingya Muslims and other minorities in Myanmar, UN Doc A/HRC/39/L.22; Z.D. Kaufman, 'The Prospects, Problems and Proliferation of Recent UN Investigations of International Law Violations' (2018) 16 *Journal of International Criminal Justice* 199.

⁸⁶ European Parliament, Policy Department for External Relations, Report, *Universal Jurisdiction and International Crimes: Constraints and Best Practices*, September 2018, 9; see also Aksamitowska (n12).

⁸⁷ Princeton Project on Universal Jurisdiction, 'The Princeton Principles on Universal Jurisdiction' (Princeton University 2001) <https://lapa.princeton.edu/hosteddocs/unive_jur.pdf> accessed 6 January 2021.

⁸⁸ See John Jerrim, Anna K. Chmielewski, and Phil Parker, 'Socioeconomic inequalities in access to high-status colleges: a cross-country comparison' (2015) 42 *Research in Social Stratification and Mobility* 20; Higher Education Funding Council for England, 'Trends in participation for young men and women', October 2013, <https://dera.ioe.ac.uk/18687/1/HEFCE_2013_28.pdf> accessed 5 February 2021.

⁸⁹ Myers and Grosvenor (n23).

⁹⁰ Rodriguez, McCubbins and Weingast (n20), 1459.

they protect, defend, and advance the rule of law. It did this by examining how universities, through their clinical legal education, have increased their documentation and investigation work in relation to serious international crimes and efforts at accountability. Though still limited in number, there is an increase in the number of universities carrying out independent fact-finding work. And although the universities do not frame their work around the rule of law *per se*, their projects advance the rule of law in three ways: (1) basing their work around international norms and standards; (2) directly engaging with and utilizing institutional frameworks; and (3) supporting other rule of law actors such as civil society. Given the fact that universal jurisdiction cases like the ones in Germany for crimes in Syria are on the rise, with a 40 percent increase in named suspects across European jurisdictions over the last few years,⁹¹ it is very likely that university partnerships with civil society actors working on accountability will intensify. Having a better understanding of these contributions is vitally important to grasping how rule of law principles get recognized, operationalized, and implemented at all levels. Yet, the jury is still out about whether it is useful to see the university (or just the students) as simply an actor 'from below' when the institution of the university itself so clearly holds a privileged position in society. For this reason, and others, more research needs to be done on the role of the university in advancing the rule of law and accountability for serious international crimes.

Competing Interests

The author has more than 12 years of experience coordinating and supervising international law clinics at Utrecht University, and for the past five years, has been involved with civil society documentation work through the Public International Law & Policy Group.

⁹¹ See Trial International, Universal Jurisdiction Annual Review 2019, <https://www.fidh.org/IMG/pdf/trialinternational_ujar5_final_digital.pdf> accessed 10 June 2021; Trial International, Universal Jurisdiction Annual Review 2020, <https://redress.org/wp-content/uploads/2020/03/UJAR_2020_WEB.pdf> accessed 24 May 2021.

How to cite this article: Brianne McGonigle Leyh, 'The Role of Universities and Law Schools in Documenting Serious International Crimes and Advancing the Rule of Law' (2021) 17(2) *Utrecht Law Review* pp. 87–101. DOI: <https://doi.org/10.36633/ulr.666>

Published: 07 October 2021

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