

# WHAT INTERNATIONALS KNOW: IMPROVING THE EFFECTIVENESS OF POST-CONFLICT JUSTICE INITIATIVES

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## I. INTRODUCTION

The international community is intensely involved in the field of post-conflict justice. The United States, the United Nations, and many other international organizations, governments, and institutions have contributed to hundreds of trials and programs aimed at achieving post-conflict justice [“PCJ”] goals. Prominent among these aims is achieving some degree of legal accountability for atrocities committed during conflicts, primarily through international criminal law [“ICL”] trials in internationalized criminal tribunals or national courts. Another central objective is rebuilding local and national justice systems that respect human rights and

rule of law, primarily through rule of law [“ROL”] programs that engage in activities such as assisting with drafting new laws or training judges and attorneys. Through these initiatives, the field of post-conflict justice has developed rapidly over the last thirty years.

Post-conflict justice constitutes not only a field of work, but also an emergent body of legal knowledge, composed of substantive standards, rules of procedure, best practices, and other elements. In courtrooms, conferences, workshops, books, and law journals, the appropriate content and structure of PCJ norms, processes, and institutions have been hotly debated.<sup>1</sup> Just as the field of post-conflict justice has grown quickly on the ground, its body of knowledge has also rapidly become an established, if still evolving, set of norms and practices.

As the field of post-conflict justice has matured, institutional and scholarly attention has begun to shift from establishing its basic structures and processes to evaluating and improving its effectiveness.<sup>2</sup> And as questions of effectiveness have come to the fore, case studies and reviews of international interventions in a variety of post-conflict settings over a number of years have reported concerns related to high turnover of international staff and to the rapid circulation of these “internationals” among jobs and locations. For example:

- In Bosnia-Herzegovina and Kosovo in 2005, international judges lacked an understanding of the local laws, judicial system, history, and politics, because they arrived with little local knowledge, started working immediately, and quickly left again. High turnover also caused the loss of institutional knowledge.<sup>3</sup>

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1. The literature on post-conflict justice and the many venues in which it has been debated are far too vast to cite meaningfully here. Purely by way of example, some recent publications include: MARK DRUMBL, *REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY* (2012); RACHEL KLEINFELD, *ADVANCING THE RULE OF LAW ABROAD: NEXT GENERATION REFORM* (2012); Leila Nadya Sadat, *Crimes Against Humanity in the Modern Age*, 107 *AM. J. INT'L L.* 334 (2013).

2. We have seen an evolution, for example, in the structure of international criminal tribunals to incorporate more involvement with the concerned post-conflict states, with the purpose of increasing the positive impact of ICL trials in those states. Such changes have included the proliferation of hybrid courts and the development of outreach sections and victims and witnesses units. Concomitantly, there have been numerous scholarly articles addressing questions of ICL tribunals' national impact and legacy. *E.g.*, Charles Chernor Jalloh, *Special Court for Sierra Leone: Achieving Justice?*, 32 *MICH. J. INT'L L.* 395 (2011); Pdraig McAuliffe, *Hybrid Tribunals at Ten: How International Criminal Justice's Golden Child Became an Orphan*, 7 *J. INT'L L. & INT'L REL.* 1 (2011); Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 *MICH. J. INT'L L.* 1 (2010).

3. ALMUT SCHRÖDER, *STRENGTHENING THE RULE OF LAW IN KOSOVO AND BOSNIA AND HERZEGOVINA: THE CONTRIBUTION OF INTERNATIONAL JUDGES AND PROSECUTORS* 20–21 & 24

- In Afghanistan in 2008, the U.S. State Department struggled to maintain continuity in its ROL programs and to coordinate with other organizations concerning interrelated ROL initiatives due to “continuous turnover” amounting to “[a]most 100% turnover every year” of U.S. embassy staff.<sup>4</sup>
- At the International Criminal Tribunal for Rwanda in 2009, several trials had to be delayed because attorneys resigned shortly before the start of trial. Turnover was increasing and was perceived to be undermining institutional memory.<sup>5</sup>
- In 2012, an audit of European Union ROL programs in Kosovo found that the standard one-year secondments of international staff were “insufficient” because “in some cases staff can only become fully operational after 12 months. This frequent turnover of key advisers is not conducive to the effective transfer of knowledge to the Kosovo authorities and undermines the effectiveness of the MMA [Monitoring, Mentoring and Advising] actions.”<sup>6</sup>

Underlying many of these concerns with turnover and circulation are questions of internationals’ knowledge. For internationals to work successfully, they must arrive in a post-conflict institution or location equipped with relevant PCJ knowledge; they must then attain any additional necessary information, skills, and relationships that are specific to that particular context; and they must adapt and implement that

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(2005), available at [http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/Almut\\_11.04.05.pdf](http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/Almut_11.04.05.pdf).

4. UNITED STATES DEPARTMENT OF STATE AND THE BROADCASTING BOARD OF GOVERNORS OFFICE OF THE INSPECTOR GENERAL, ISP-I-08-09, REPORT OF INSPECTION, RULE-OF-LAW PROGRAMS IN AFGHANISTAN 2 & 15 (2008), available at <https://oig.state.gov/system/files/106946.pdf>.

5. Address by President of the ICTR, Judge Dennis Byron, to the United Nations Security Council (June 4, 2009), <http://www.unictr.org/Default.aspx?TabId=155&id=1030&language=en-US&mid=560&SkinSrc=%5BG%5DSkins/UNICTR/PrintSkin&ContainerSrc=%5BG%5DContainers/UNICTR/PrintContainer&dnnprintmode=true> [hereinafter Byron Address].

6. European Court of Auditors Special Report No. 18, European Union Assistance to Kosovo Related to the Rule of Law, at 31 (2012), available at <http://www.europarl.europa.eu/document/activities/cont/201305/20130506ATT65663/20130506ATT65663EN.pdf>. See also UNITED STATES DEPARTMENT OF STATE AND THE BROADCASTING BOARD OF GOVERNORS OFFICE OF THE INSPECTOR GENERAL, ISP-IQO-06-01, REPORT OF INSPECTION, INSPECTION OF RULE-OF-LAW PROGRAMS, EMBASSY BAGHDAD 36 (2005) (describing “constant turnover and staffing gaps” in U.S. ROL staff that were undermining both institutional memory and relationships with Iraqi counterparts), available at <http://oig.state.gov/system/files/103473.pdf>; ANTONIO CASSESE, REPORT ON THE SPECIAL COURT FOR SIERRA LEONE 42–43, & 66 (2006) (noting a staff turnover problem), available at <http://www.rscsl.org/Documents/Cassese%20Report.pdf>.

combined knowledge set in service of their cases or projects. When internationals play the roles of mentoring national counterparts or building the capacity of national institutions, they must also exchange knowledge with those counterparts or institutions. As such, developing, using, and transferring PCJ knowledge is central to the effectiveness of PCJ work.

These critiques also draw our attention to the many forms of knowledge that are required for PCJ work. The types of knowledge represented in these reports encompass, but are not limited to, international legal norms and rules. They include internationals' local knowledge of post-conflict states' laws and legal systems, their institutional knowledge of ongoing processes and cases, and their relational knowledge of their counterparts in national and international institutions, among others. This practice-oriented concept of PCJ knowledge incorporates all the forms of information and skills that internationals need to do their jobs effectively.<sup>7</sup>

Finally, these reports highlight the relationship between knowledge and job movement. From an individual international's perspective, her movement between jobs, institutions, and post-conflict states can prevent her from attaining necessary local knowledge and relationships and from adapting and implementing her pre-existing knowledge and skills. Similarly, from an institutional perspective, turnover disrupts local relationships, erases institutional knowledge, and interrupts implementation of programs and cases. On the other hand, internationals' movement also represents a conduit for the transfer of information and skills from one institution or location to another, as well as a mechanism for bringing together colleagues with different experiences and skill sets to collectively create new norms and practices.

This Article contributes to the literature on the effectiveness of PCJ initiatives by examining the relationships between internationals' job movement and their development and transfer of knowledge from one post-conflict setting and institution to another. To explore these issues, I interviewed fifty internationals about their perceptions of the knowledge relevant to their work, patterns of job movement and turnover, and the effectiveness of the PCJ initiatives in which they have been involved. During these interviews, I observed differences in how internationals in

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7. This concept of knowledge is espoused by international relations scholar Emanuel Adler and organizational theory scholar Etienne Wenger, who study knowledge as developed and implemented in practice. EMANUEL ADLER, *COMMUNITARIAN INTERNATIONAL RELATIONS: THE EPISTEMIC FOUNDATIONS OF INTERNATIONAL RELATIONS* (e-book ed. 2005); ETIENNE WENGER, *COMMUNITIES OF PRACTICE: LEARNING, MEANING AND IDENTITY* (1998).

ROL and ICL described the dynamics of job movement and knowledge-related processes in their areas of work. In this Article, by examining these divergences, I identify factors that influence internationals' development and use of knowledge. These factors include the types of knowledge that are regarded as most critical for the work, the nature of the work, the degree of similarity among the relevant institutions and post-conflict states, and the amount of contextualization to local settings that is required, among other features.

Through this analysis, I conclude that the development and use of a broad knowledge set is central to the effectiveness of PCJ work and that existing patterns of job circulation and turnover undercut the ability of internationals to develop and implement the necessary knowledge. Accordingly, I propose that PCJ institutions should take measures to systematically support internationals' knowledge-related activities. These measures include two new concepts, "delegating contextualization" and "time-shifting movement," which represent ways of more effectively retaining and transferring important knowledge in the context of frequent job movement by the involved internationals.

While the appendices describe the study and its methods in some detail, for purposes of engaging with the issues discussed in this Article, the reader should be aware of the following aspects of the nature and scope of the study. This was a qualitative study based on thoughtful analysis of interviewees' perceptions of their work experiences. Most interviews were recorded and transcribed, with the permission of the interviewees; I coded the transcripts for relevant concepts and experiences and analyzed the coded materials.<sup>8</sup> Also, the study was designed to identify themes that arose across a variety of institutional and national contexts and to look for convergences and divergences in how those themes emerged in different settings. Accordingly, the study includes participants from many different institutions and settings, but frequently there are only a few participants from within most individual institutions and settings.<sup>9</sup> Finally, while the

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8. Appendix A provides more detail about the study's methods.

9. As detailed in Appendix B, my interviewees include people working for or with all the international and hybrid criminal tribunals (ICC, ICTY, ICTR, ECCC, SCSL, STL, Timor-Leste Special Panels, Bosnia Special War Crimes Chamber), as well as the United Nations, OSCE, European Union, agencies of the U.S. government, agencies of several other governments, the U.S. and British armed forces, ABA-CEELI/ABA-ROLI, and numerous other institutions, non-governmental organizations, and private contracting companies. My interviewees have worked in or on a wide range of post-conflict countries, including but not limited to Iraq, Afghanistan, Lebanon, Timor-Leste, Cambodia, Nepal, Liberia, Sierra Leone, Rwanda, Congo, Uganda, Sudan, South Sudan, Somalia, Kenya, Peru, Colombia, Guatemala, Haiti, Cyprus, Georgia, and all the countries of the former Yugoslavia. Because most of the interviewees requested anonymity, their names and institutional

participants have worked in a wide variety of institutional contexts and post-conflict settings, the vast majority of interviewees are, by nationality, from the United States, the United Kingdom, and other European and Commonwealth countries.<sup>10</sup> As such, my analysis focuses on the experiences and perspectives of people from those regions and, when relevant, on the practices and policies of the governments and other institutions with which they have interacted. The information provided by my interviewees suggests that patterns of movement among internationals from other regions may differ from those examined here.

This Article begins with a discussion of job movement and turnover in Part II. Part II.A identifies a set of prominent movement patterns and their association with transfer of information and skills, and Part II.B considers interviewees' perceptions of turnover and the factors affecting turnover and movement. Part III focuses on internationals' knowledge. It begins by identifying the core knowledge needed for international criminal law and rule of law work in Part A, and then reviews how that knowledge is developed and transferred, first in international criminal law, and then in rule of law, in Parts B and C. The Article concludes with some final observations and recommendations. Appendix A provides information concerning the study's methodology, and Appendix B contains aggregate information about the interviewees.

## II. MOVEMENT

People move between jobs in every field, and the risk that turnover poses to institutional knowledge in a variety of contexts is well established in the literature.<sup>11</sup> What is distinctive and significant about job movement and turnover in the PCJ context is the relationship of these dynamics to the effectiveness of international involvement in post-conflict justice. There are particular patterns of circulation in post-conflict justice that influence whether internationals acquire and transfer the knowledge they need to do their jobs. As suggested by the reports cited in the introduction, this, in

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affiliations are not divulged, but aggregate information about the interviewees and their professional experiences is provided in Appendix B.

10. This was not an aspect of the study design; rather, it is a description of the study results. Internationals from all regions were invited to participate in the study, but those who responded came disproportionately from the listed regions.

11. Recent studies addressing this issue include: Filipe Fidalgo & Luis Borges Gougeia, *Employee Turnover Impact in Organizational Knowledge Management: The Portuguese Real Estate Case*, 2 J. KNOWLEDGE MGMT., ECON. & INFO. TECH. (2012); Urbancová Hana & Linhartová Lucie, *Staff Turnover as a Possible Threat to Knowledge Loss*, 3 J. COMPETITIVENESS 84 (2011).

turn, is impacting the effectiveness of PCJ initiatives. Accordingly, understanding these movement patterns and the factors that contribute to them is important to analyzing internationals' production and use of knowledge, and ultimately, to assessing and improving international interventions in post-conflict justice.

This section of the Article analyzes PCJ internationals' job movement from two perspectives. Part A constructs categories of internationals' movement patterns and offers an initial assessment of how each of those patterns facilitates the development and transfer of knowledge and skills. Part B explores several factors that interviewees identified as affecting decisions about job movement and patterns of turnover.

#### *A. Movement Patterns*

Internationals circulate among PCJ settings and institutions and shift between PCJ positions and other domestic and international work in a wide range of ways. This spectrum of behaviors can be categorized into movement patterns that have significance for the acquisition and use of knowledge and skills. The “tribunal-hopping” by “post-conflict justice junkies” that I described in a previous article<sup>12</sup> is one of these categories, and there are several others.

In this section, I identify several distinctive movement patterns and the roles that the members of those groups play in developing and transferring knowledge and skills. Of course, these groups are my own construct, not an organic phenomenon. Not everyone working in the field fits neatly into one of these categories, nor do all members of these groups necessarily fulfill their archetypical knowledge transfer role. I have developed these categories because identifying these patterns helps in understanding the relationship between job movement and knowledge and skills, which is discussed in detail in Part III.<sup>13</sup>

The chart below provides a summary view of the categories, their movement patterns, and their roles in knowledge transfer. In order to put

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12. Elena Baylis, *Tribunal-Hopping with the Post-Conflict Justice Junkies*, 10 OR. REV. INT'L L. 361 (2008).

13. These categories were developed from interviewees' descriptions of their own and others' career paths, as well as their evaluations of the reasons for and significance of their job movement. To protect the anonymity of my interviewees, I do not describe anyone's career path in any detail here. To further protect interviewees' identities, this section and the next also use a separate set of anonymous codes, different from those used in conjunction with the substantive information provided by interviewees, when describing interviewees' movement patterns. Aggregate information about the interviewees is provided in Appendix B.



this information in chart form, I have had to generalize; more details are provided in the discussion below the chart.

<b>Category</b>	<b>Who they are</b>	<b>Movement patterns</b>	<b>Knowledge Transfer</b>
<b>Career PCJ Professionals (ROL and ICL)</b>	Employees and contractors who work long-term and full-time in ROL, ICL or both. Includes the Justice Junkies, Long-Timers and others.	Move within PCJ circuits. Speed of movement ranges on a spectrum from fast-moving Justice Junkies to Long-Timers who spend ten years or more in a single context.	<b>Justice Junkies and others:</b> transfer various knowledge transnationally with varying effectiveness <b>Long-Timers:</b> maintain local and institutional knowledge
<b>The Talent (ROL)</b>	Contractors who may either work full-time or moonlight in ROL.	Spend a few days, weeks or at most months in each short-term ROL project. May circulate exclusively amongst ROL settings or back and forth between ROL and domestic work.	Transfer specialized knowledge into post-conflict settings
<b>Interns (ICL)</b>	Students and recent graduates who take unpaid internship positions. ICL tribunals make extensive use of interns.	Spend 6 months, or less, in each internship; may circulate between tribunals in consecutive internships.	Transfer detailed knowledge of cases & holdings between tribunals
<b>Litigators (ICL)</b>	Attorneys who start in domestic litigation practice, then are hired by ICL tribunals.	Start in domestic litigation, then shift into ICL litigation. May then circulate exclusively amongst ICL settings or back and forth between ICL and domestic work.	Transfer litigation skills into tribunals
<b>Domestic Practitioners (ROL)</b>	Contractors who have previously focused exclusively on their domestic careers.	Start in domestic work; recruited into ROL work on short-term contracts. May return to domestic careers after one or two contracts or shift into professional PCJ careers.	Transfer professional knowledge from domestic settings into post-conflict settings, with varying effectiveness

### 1. Career PCJ Professionals

Career PCJ Professionals are internationals who are working in post-conflict justice long-term and full-time; they are characterized by their commitment to PCJ work as their careers.<sup>14</sup> They move between jobs and countries at varying rates of speed, with the Justice Junkies at one extreme and the Long-Timers at the other, and a spectrum of moderated levels in between.

#### a. Justice Junkies (ROL and ICL)

The justice junkies are the group identified in my earlier essay, who move frequently from one post-conflict mission or tribunal to another.<sup>15</sup> They tend to change postings, employers, jobs, and countries of focus rapidly. Some stay strictly within ICL or ROL work, while others move back and forth between the two at least occasionally, especially in contexts where the fields intersect to some extent, such as the Office of the Special Prosecutor in Kosovo. Of those interviewed, roughly 25% fit the justice junkie profile, and virtually all interviewees mentioned having justice junkie colleagues and friends.<sup>16</sup>

On the ICL side, justice junkies tribunal-hop from one internationalized criminal tribunal to another, perhaps with some occasional stints doing rule of law, practicing complex criminal litigation domestically, or working for an academic, government, or non-governmental employer on ICL issues. The primary context for their work and movement is post-conflict settings; ICL work is by its nature focused predominantly on post-conflict issues,<sup>17</sup> and if these justice junkies do some ROL work, it will also be in a post-conflict state. ICL justice junkies are likely to slow their movement and/or shift to positions based primarily in The Hague as they become more senior.<sup>18</sup>

14. See Stephanos Bibas & William W. Burke-White, *International Idealism Meets Domestic-Criminal-Procedure Realism*, 59 DUKE L.J. 637, 664–67 (2010) (also identifying a category of “career seekers” among ICL internationals).

15. See *supra* note 12.

16. Throughout this part, I provide information on the percentage of interviewees who fit each category. This is intended to give the reader a sense of the significance of this group in the data I have gathered. I have no reason to believe that these percentages represent the proportion of such people in the PCJ population as a whole.

17. Modern ICL has its roots in Nuremburg and was revitalized with the creation of the ICTY and the ICTR in response to the conflicts in the former Yugoslavia and Rwanda. See Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremburg*, 10 PACE INT’L L. REV. 203 (1998).

18. Interviewees who fit the justice junkie profile and have worked predominantly in ICL are: 5,

ROL justice junkies may be found operating as career contractors or consultants, as employees within governments and international organizations, and in the military. The overall context for their careers and movement tends to be ROL work as such, which takes place in both post-conflict and non-post-conflict settings. Thus, their movement patterns often involve circulation between relatively stable countries and post-conflict states; the common thread is the nature of the work, not the nature of the setting. ROL justice junkies seem to be more likely to keep moving at a fairly rapid pace throughout their careers, if they stay in the field. While The Hague is not on the short list of places to do this work, they do have options for ROL work that are not exclusively in the more difficult post-conflict settings, should they wish to wrap up their careers in more comfortable surroundings.<sup>19</sup>

However, the development of hot spots for ROL work that have inspired a great influx of resources (into the Balkans in the 1990s and early 2000s, and then into Afghanistan and Iraq since 2001)<sup>20</sup> has created the conditions for ROL justice junkies who truly are post-conflict or even conflict justice junkies. Members of this group began their ROL work in the Balkans, Afghanistan, or Iraq and have continued to work entirely amongst these conflict and post-conflict environments.<sup>21</sup>

*b. Long-Timers (ROL and ICL)*

At the other end of the Career PCJ Professional spectrum are the long-timers, who spend a decade or more working in a particular institution (“company (wo)men”) or on a particular post-conflict country (“true believers”). These different commitments produce different patterns of

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6, 14, 19, 21, 23, 25 (both ROL and ICL), & 27 (both). Some of these are transitioning into or out of this category, for example, Anon 6 worked for a number of years in one tribunal and so fit the “company wo-/man” profile, but since s/he left that tribunal has moved between tribunals at a pace befitting a justice junkie. See also Bibas & Burke-White, *supra* note 14, at 664–65.

19. Interviewees who fit the justice junkie profile and have worked predominantly in ROL are: 22 (both ROL & ICL), 30 (both), 31, 36, 39, 40, 41, & 46.

20. See United Nations Interim Administration Mission in Kosovo, <http://www.un.org/en/peacekeeping/missions/unmik/>; Liana Sun Wyler & Kenneth Katzman, Afghanistan: U.S. Rule of Law and Justice Assistance, Congressional Research Service Report, at 27 (Nov. 9, 2010), [http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/R41484\\_11092010.pdf](http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/R41484_11092010.pdf); EU Integrated Rule of Law Mission for Iraq (Jan. 2014), [http://www.eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/pdf/facsheet\\_eujust-lex\\_iraq\\_en.pdf](http://www.eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/pdf/facsheet_eujust-lex_iraq_en.pdf); Office of the Special Inspector General for Iraq Reconstruction, Sustaining the Progress Made by Rule of Law Programs in Iraq Remains Questionable (Oct. 25, 2012), <http://cybercemetery.unt.edu/archive/sigir/20131001165214/http://www.sigir.mil/files/audits/13-001.pdf>.

21. Interviewees who fit the nascent ROL conflict/post-conflict justice junkie profile are 34 (Iraq), 35 (Balkans), & 37 (Afghanistan).

movement. About 10% of those interviewed fell into the long-timer category. All of my long-timer interviewees worked in ICL; however, several ROL interviewees mentioned knowing ROL long-timers and described them as playing important roles in creating continuity and transferring local knowledge.<sup>22</sup>

Company (wo)men spend long stretches of time in the same institution, perhaps being promoted or moving to new kinds of positions, perhaps even changing focus to a new post-conflict country, but not changing employers unless there is a compelling reason to do so. They can serve as a source of institutional memory and continuity, in counterpoint to the movement of justice junkies and others in and out of these institutions.<sup>23</sup>

True believers are focused on a particular country and are committed to the cause of legal reform and/or accountability for atrocities in that country. They may work in different jobs, for different employers, and may even change postings to work both within and without the country in question, but their focus stays on the same country. They can also serve as a source of continuity for work focused on that post-conflict country or as a point of connection between initiatives within the same country.<sup>24</sup>

## 2. *The Talent (primarily ROL)*

“The talent”<sup>25</sup> are hired as contractors to carry out short-term projects on narrow topics within their areas of expertise. They may start out their careers by developing particular spheres of expertise in domestic work that then enable them to transition into international consulting in that subject, or they may do a few stints of full-time ROL work abroad before transitioning into short-term ROL projects. Either way, once they take on the role of “the talent,” they are typically based in one location and travel to post-conflict countries for a few days, a few weeks, or at most a few months at a time. They are often independent consultants. They may do this work on a part-time basis, moonlighting from their regular jobs, or may make a full-time career out of this work.

The talent’s movement is characterized by frequent changes in jobs and employers, as well as in countries of focus. They do not change postings

22. E.g., ROL long-timers were mentioned by Epsilon & X. Interview with Epsilon (Aug 23, 2011); Interview with X (Nov. 29, 2010).

23. Interviewees who fit the company (wo)men profile are: 2 (more than 10 years with one ICL employer) and 17 (more than 10 years with one ICL employer), as well as now-justice junkie 6 (more than 10 years with one ICL employer).

24. True believer interviewees were 9 & 10, both of whom worked in ICL.

25. Thanks to Kappa for this catchy term.

frequently, as they tend to be based in one location and travel to their short-term jobs from there. Theirs is a highly specific and stylized role, and the talent have distinctive approaches both to developing relationships and to transferring skills and information rapidly into post-conflict settings. Of those interviewees who do primarily ROL work, approximately one-third have moved into this role, though they may have played other roles earlier in their careers.<sup>26</sup>

### 3. Interns (primarily ICL)

Interns are students or recent graduates who take short-term, unpaid internship positions in ICL tribunals for the purpose of gaining experience or as a point of entry into an ICL career. Participation in this social group is of limited duration by definition; participants either become a member of the other social groups or exit post-conflict justice entirely.

While there are certainly interns in ROL institutions, they seem to play a particular role in ICL tribunals. Tribunals systematically sponsor such positions and rely on a steady rotation of young people eager to break into international criminal law and willing to work for free, at least for a while; internships at the tribunals typically are three to six months in duration.<sup>27</sup> While some interns leave when their internships end, others head into second internships or entry-level positions, either at the same tribunal or elsewhere. This has produced some circulation of relatively young people, who are more immersed in the details of particular cases and rules than their superiors, and who serve as a point of connection both between different institutions in the same location and between institutions in disparate locations. Approximately half of the interviewees who worked primarily in ICL had started as interns.<sup>28</sup>

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26. Interviewees who have become “the talent” were: 28 (started with full-time ROL and ICL work), 29 (started with full-time ROL and ICL work), 33 (started with full-time ROL work), 39 (alternates between short-term and longer-term stints, started with domestic work), 36 (started with full-time ROL work), 49 (started with domestic work), & 50 (started with domestic work).

27. See, e.g., Internships and Visiting Professionals Program, International Criminal Court, [http://www.icc-cpi.int/en\\_menus/icc/recruitment/internships%20and%20visiting%20professionals/Pages/the%20internships%20and%20visiting%20professionals%20programme.aspx](http://www.icc-cpi.int/en_menus/icc/recruitment/internships%20and%20visiting%20professionals/Pages/the%20internships%20and%20visiting%20professionals%20programme.aspx).

28. Interviewees who had been interns: 3 (1 internship, then left ICL), 5 (2 ICL-related internships, then stayed in ICL), 7 (2 internships, left ICL), 8 (1 internship, stayed in ICL), 11 (1 internship, then left ICL), 12 (1 internship, then left ICL), 14 (1 internship, stayed in ICL), 18 (2 internships, stayed in ICL), 19 (2 internships, stayed in ICL), 20 (2 internships, left ICL), 23 (1 ROL internship, then both ICL and ROL work), & 28 (1 ROL internship, then both ICL and ROL work).

#### 4. *Litigators (primarily ICL)*

Litigators are exclusively focused on litigation work. They are predominantly involved in ICL work and do not take ROL jobs unless they are litigation positions. They typically start their careers doing domestic litigation and develop strong courtroom skills in a domestic context. They move between ICL positions more slowly than the justice junkies, but more quickly than the long-timers, and their moves are usually motivated by the opportunity for professional development or career advancement. They may move back and forth between domestic and international work, often litigating complex criminal cases in the domestic context.

Litigators provide links between tribunals and domestic legal systems, drawing in former colleagues from domestic practice and transferring litigation skills into the tribunals. Of those interviewees who worked primarily in ICL, approximately 15% would best be described as “litigators.”<sup>29</sup>

#### 5. *Domestic Practitioners (primarily ROL)*

In the ROL context, the group I term “domestic practitioners” are people with exclusively domestic careers in a legal or law-related area who are then hired by contracting companies and NGOs to fulfill particular ROL contracts. Domestic practitioners typically have no prior knowledge of ROL work or of the concerned post-conflict country. In the Balkans in the 1990s, companies hired large numbers of police and prison personnel for such initiatives. In the context of the present ROL initiatives in Afghanistan and Iraq, contracting companies have also recruited domestic attorneys, judges, and others to undertake full-time ROL work in the concerned country on short-term contracts with high pay.<sup>30</sup> Like the interns, this is a temporary category. People tend to either return home after one or two contracts or to transition into another PCJ social group and pattern of movement, such as the nascent conflict/post-conflict ROL justice junkies group described above.<sup>31</sup>

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29. Interviewees who fit the “litigator” category were: 13, 15, 16, & 17. *See also* Bibas & Burke-White, *supra* note 14, at 666–67.

30. *See, e.g.*, Justice Advisors, PAE Group, <http://paecivpol.meshhire.com/EJob.aspx?&j=SPWoUFviVy8%3D> (recruiting attorneys to work in Afghanistan).

31. Interviewees who have done primarily ROL work and are or have been Domestic Practitioners are 32 (Iraq), 33 (Afghanistan), 37 (Afghanistan), 42 (Sudan), 43 (Iraq), & 44 (Timor).

The ROL domestic practitioners group is in some senses similar to the litigators group in the ICL context. Both start in domestic practice, and both can potentially play the role of transferring domestic knowledge and skills into PCJ settings. But their participation in PCJ work arises in different ways, which affects their roles. In the ROL context, the recruitment of domestic practitioners is part of some donors' practice of outsourcing program implementation to private contracting companies and NGOs. Those contractors seek people to fill donors' program requirements; based on program size and funding, some places and institutions have many domestic practitioners, while others have fewer.

In the ICL context, there is no such practice; instead, tribunals hire employees directly, and there is no need to recruit large numbers of people practicing domestically as positions are typically quite competitive.<sup>32</sup> Litigators generally enter ICL individually, not in groups; and apply because of an interest in the field, not because they are offered high-paying contracts to do so. Internationals' decisions to enter and leave ICL relatively swiftly appear to relate more to personal preferences or to an overall scarcity of available positions across the whole field than to an institutional demand for large numbers of people in a particular location.<sup>33</sup> Thus, litigators do not have the same sort of concentrated impact in particular locations that domestic practitioners have in ROL. About 30% of interviewees working primarily in ROL are or have been domestic practitioners.

#### 6. *Snapshot of Circuits of Movement*

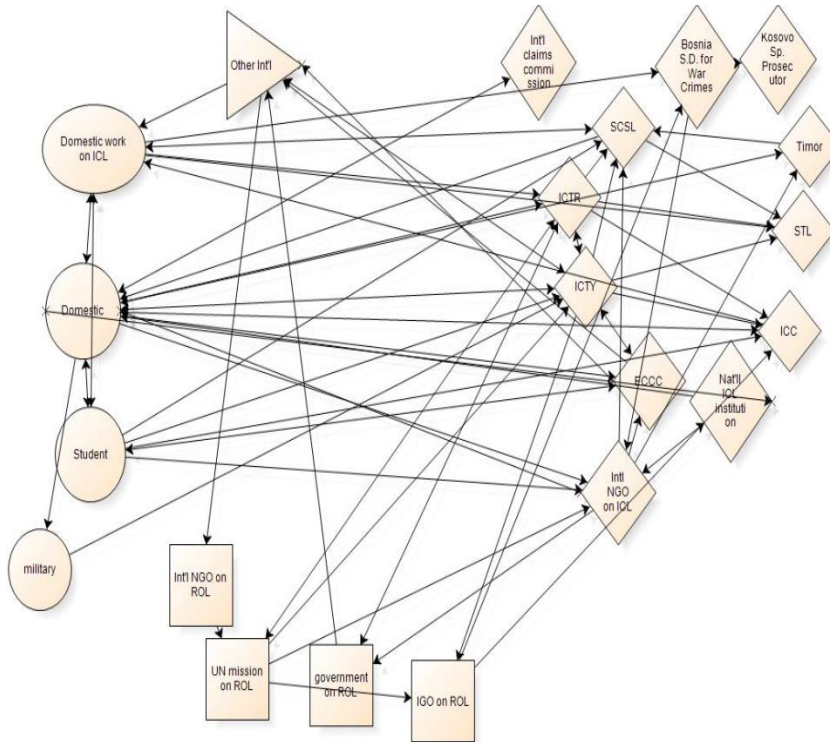
In principle, PCJ internationals' circuits of movement offer ample opportunity for transferring knowledge. By way of example, the diagram below is an illustration of the movement of interviewees who have worked in ICL.

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32. The ICC and other tribunals hire directly and list employment opportunities directly on their websites, rather than hiring contractors through contracting companies. *See, e.g.*, Job Opportunities, International Criminal Court, [http://www.icc-cpi.int/EN\\_Menu/ICC/Recruitment/Job%20Opportunities/Pages/icc%20e\\_recruiting.aspx](http://www.icc-cpi.int/EN_Menu/ICC/Recruitment/Job%20Opportunities/Pages/icc%20e_recruiting.aspx).

33. *See* Bibas & Burke-White, *supra* note 14, at 664–67.

ICL INTERVIEWEE MOVEMENT CIRCUITS<sup>34</sup>



While these movement circuits provide opportunities for information transfer, whether internationals can in fact develop, transfer, and implement their knowledge and skills between institutions and settings depends on other factors in addition to their patterns of movement, including timing and the nature of the skills and setting, as will be

34. The arrows show the direction of movement. Similar institutions are grouped together, and the shapes also symbolize the type of institution, but the size of the shapes is not significant. ICL institutions are grouped together as diamond shapes on the right side of the diagram, ROL institutions are grouped as squares on the bottom, domestic positions are on the left as circles and ovals, and other international work is grouped as a single triangle at the top. To avoid having the diagram become unduly complicated, I have not designated individual employers in non-ICL positions, but rather have grouped them into a single shape by type of employer. The diagram also does not illustrate the volume of movement; there is only one line between connected institutions, regardless of the number of internationals who have moved between those institutions.



discussed below in Parts III.B and III.C. But before we reach those questions, for purposes of understanding the importance of movement to PCJ work, we should consider interviewees' perceptions of the turnover issues raised in the introduction and of the factors affecting turnover and movement patterns.

### *B. Factors and Turnover*

This section reviews the factors that interviewees identified as affecting internationals' decisions about job movement and as contributing in certain situations to relatively high turnover rates like those described in the introduction. The structure of PCJ employment is a complex topic that could comprise a paper in itself and cannot be fully discussed here; nor is this structure the focus of this Article, which is concerned with PCJ knowledge and what impedes or promotes its successful development, conveyance and use. Accordingly, this section addresses these issues only briefly, and by reference to what is important for purposes of the knowledge-related issues discussed in the following section. The analysis in this section highlights some of the aspects of PCJ work that contribute to the movement patterns identified in the previous section. It also lays the foundation for consideration in Part III of how movement intersects with internationals' development and use of knowledge and skills.

For purposes of this Article, there are a couple of key points that emerged from the interviews. First, the factors that interviewees identified as affecting their job movement choices are closely tied to the nature and structure of PCJ interventions and would be difficult to change. These factors include issues relating to PCJ employment practices, such as contract length and renewal, which are often dependent on institutional and political mandates; the availability of opportunities for professional development and promotion, which are tied to institutional staffing decisions, bureaucratic procedures, and patterns of international intervention; and living conditions, which are linked to the locations of PCJ work.<sup>35</sup>

Also, just as there are several patterns of movement by internationals, so also turnover is not distributed evenly across all post-conflict settings

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35. Bibas & Burke-White also identify the lack of opportunities for promotion as a significant factor in ICL turnover. Bibas & Burke-White, *supra* note 14, at 666. The importance of contract conditions, job security and opportunities for advancement as factors affecting turnover is well established in the literature. *See, e.g.*, JAMES MARCH & HERBERT SIMON, *ORGANIZATIONS* (1958); Hana & Lucie, *supra* note 11, at 89–90. Some of these factors are also acknowledged in the reports quoted in the introduction. *See, e.g.*, Byron Address, *supra* note 5.

and contexts. Instead, interviewees' descriptions suggested that turnover varies considerably from one workplace and post-conflict state to another, so that some experience near-constant turnover while others have quite a bit of continuity.<sup>36</sup> Particularly relevant for our purposes are the differences in perceptions of turnover and of the factors affecting turnover and job movement as between internationals working in ROL and internationals working in ICL. Accordingly, I will review the factors identified above—employment practices, opportunities for promotion, and living conditions—in the context of a comparison of the roles those characteristics play in ROL and ICL work.

Like the reports at the outset of this Article, interviewees described patterns of rapid circulation by some internationals and high turnover in some settings, to an extent that in some situations interfered with their knowledge and the effectiveness of their work.<sup>37</sup> ICL tribunal interviewees tended to describe turnover as being moderate overall, and to view turnover-related problems as being relatively isolated to particular circumstances. To be sure, ICL interviewees described situations with high turnover:

[W]hen you have this long duration of the trial, it's very frequent that your colleagues, some of your colleagues, can all move or decide to leave. It's very frequent.<sup>38</sup>

[T]he turnover I think does hurt sometimes. . . . [T]here are lot of judgments that have taken a bit too long, years to come out. . . . [D]id the turnover on [*Government II*] and other cases at the ICTR, does it have something to do with delays? Possibly so.<sup>39</sup>

However, many ICL interviewees also pointed to examples of people who had stayed for a long time with a single employer and concluded that while there was turnover, it was not ubiquitous or constant:

36. E.g., Interview with I (May 12, 2011), Interview with L (Apr. 15, 2011); Interview with O (Sept. 19, 2011); Interview with Omicron (Nov. 30, 2010); Interview with R (Mar. 20, 2011); Interview with S (Mar. 9, 2011); Interview with Upsilon (Mar. 29, 2011); Interview with W (Dec. 8, 2010); Interview with Z (Nov. 29, 2010).

37. E.g., Interview with A (Jul. 16, 2011); Interview with Alpha (May 12, 2011); Interview with Eta (Sept. 6, 2011); Interview with I (May 12, 2011); Interview with Kappa (Dec. 2, 2010); Interview with L (Apr. 15, 2011); Interview with Lambda (Feb. 10, 2011); Interview with Mu (Dec. 6, 2010); Interview with O (Sept. 19, 2011); Interview with Omega (Dec. 15, 2010); Interview with Omicron (Nov. 30, 2010); Interview with Phi (Feb. 9, 2011); Interview with R (Mar. 20, 2011); Interview with T (Feb. 7, 2011); Interview with U (Jan. 5, 2011); Interview with V (Dec. 14, 2010); Interview with W (Dec. 8, 2010); Interview with Xi (Nov. 30, 2010); Interview with Z (Nov. 29, 2010).

38. Interview with O (Sept. 19, 2011).

39. Interview with Eta (Sept. 6, 2011).

I recently went again to [a tribunal] . . . seven years later. And you know what? Most of the same people were still working there. . . . They never moved out in seven years. . . . A lot of the national staff, but also international.<sup>40</sup>

On each trial, each time I started a trial, I more or less finished with my team.<sup>41</sup>

Instead, ICL interviewees characterized problematic levels of turnover as occurring under what they regarded as exceptional circumstances: specifically, when tribunals are shutting down and when cases last an extraordinarily long time. (Of course, in light of how long ICL trials tend to be and how many ICL tribunals are currently in the process of closing, it is arguable whether these circumstances are truly unusual.)<sup>42</sup>

Fundamental to these perceptions was ICL tribunal interviewees' sense that their jobs were ordinarily relatively secure. Even when they had relatively short contracts of only a year, such employment contracts were regularly renewed at the international and hybrid ICL tribunals. Accordingly, most of those I spoke with at the tribunals did not see job security as an important issue outside of the tribunal closure context; instead, they tended to be more focused on other factors, discussed below, in planning their departures. In contrast, tribunal shutdowns, even if years away, breed a sense of insecurity, especially when they are accompanied by extremely short contracts of less than a year and by immediate uncertainty about contract renewal as a consequence of tribunals' completion strategies. In these contexts, employees look for other jobs before their positions are eliminated, creating what interviewees perceived as problematic levels of turnover.<sup>43</sup>

The other factor frequently noted by ICL interviewees as motivating their job movements and producing some systemic effects were opportunities for professional development and advancement. Several interviewees reported that it tends to be easier for people to be promoted by changing tribunals rather than by attempting to progress within their

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40. Interview with S (Mar. 9, 2011).

41. Interview with Beta (July 12, 2011); *see also* Interview with P (Apr. 5, 2011); Interview with Psi (Apr. 16, 2011).

42. *E.g.*, Interview with Alpha (May 12, 2011); Interview with I (May 12, 2011); Interview with L (Apr. 15, 2011); Interview with Rho (Mar. 29, 2011). This is in accord with the report on the ICTR cited in the introduction, which focused on the problem of personnel loss in the context of the ICTR's completion strategy. *See* Byron Address, *supra* note 5. However, Bibas & Burke-White characterize turnover as a problem in ICL tribunals generally. Bibas & Burke-White, *supra* note 14, at 664–67.

43. *E.g.*, Interview with I (May, 12, 2011); Interview with L (Apr. 15, 2011); Interview with Sigma (Apr. 6, 2011); Interview with Z (Nov. 29, 2010).

tribunal. This was due in part to the explosions of hiring that take place when new tribunals are initially created and when they ramp up their staff, as well as to the inability of existing tribunals to match offers elsewhere in a timely manner because of bureaucratic obstacles to rapid employment decisions. As a consequence, ICL interviewees and others they knew had felt compelled to change employers to advance in their careers. Over time, this can mean the loss of quite a few of the personnel working on longstanding cases, to the detriment of those cases.<sup>44</sup>

When ROL interviewees were questioned about their references to turnover, many concluded that turnover was both high and problematic:

Rotation was a real problem. . . . Every month there was somebody leaving and somebody else arriving.<sup>45</sup>

If you're with a mission for longer than three years, then that's already very long.<sup>46</sup>

[T]he life expectancy of an expat there was pretty much limited to 18 months, two years. People burnt out really quickly. . . . And then often it easily takes between 3 to 6 months to get somebody new to replace them. So during that time, the program, if the person is a key personnel, that program just grinds to a halt, and it doesn't work.<sup>47</sup>

Like ICL interviewees, ROL interviewees also identified particular factors that they felt contributed to disruptive rates of turnover in certain post-conflict states and institutions, as discussed below. But unlike ICL internationals, ROL internationals were less likely to characterize those circumstances as unusual; they seemed to regard them as relatively pervasive in post-conflict contexts. Overall, the emphasis among ROL interviewees was on a pattern of disruption, not continuity.<sup>48</sup>

44. *E.g.*, Interview with Eta (Sept. 6, 2011); Interview with I (May 12, 2011); Interview with Iota (May 12, 2011); Interview with Theta (Sept. 8, 2011). This was due in part to the tendency for large number of positions to suddenly open up at all levels in new tribunals and for there to be expansions in hiring at all levels as those new tribunals develop, as compared to the small number of positions that tend to open up at high levels in existing, fully-staffed tribunals. Internationals also cited the inability of tribunals to match offers elsewhere due to the amount of red tape involved in hiring and the concomitant slow pace of the hiring process. *See also* Bibas & Burke-White, *supra* note 14, at 666–67 (also noting the paucity of opportunities for career advancement in ICL tribunals).

45. Interview with W (Dec. 8, 2010).

46. Interview with R (Mar. 20, 2011).

47. Interview with Zeta (Aug. 25, 2011).

48. This is not an entirely uniform pattern, of course; several ROL interviewees called attention to the existence of a corps of long-timers in the settings where they had worked, and at least one

ROL interviewees pointed particularly to the combination of very short contracts and uncertainty about contract renewal as encouraging higher levels of turnover and more frequent job movement. Unlike ICL tribunal interviewees, who linked this convergence to what they regarded as the relatively rare circumstance of tribunal closures, ROL interviewees connected it to some relatively ordinary aspects of ROL contracting and funding, such as the need for approval and extensions of funding and mandates for international interventions, and the uncertainty that accompanies those processes. International missions and programs often require political approval and funding, and frequently these are granted on a relatively short-term basis of a year or a few years, notwithstanding the fundamentally long-term nature of ROL work. In turn, funding governments and organizations extend contracts to private companies and NGOs to carry out their programs and projects on similar timelines. Implementing organizations (whether the funders or contractors) cannot issue contracts that extend beyond the end of their own mandates and funding. Nor can they renew contracts until their own mandates and funding are re-approved. This limits the terms of the contracts and also creates uncertainty about renewal when mandates or funding are up for approval.<sup>49</sup>

The continuous need to seek renewed approval and the dynamics associated with that process can instigate cycles of turnover and discontinuity like those described at the beginning of this section; at their worst, these turnover cycles undermine the work in the affected missions:

[The constant turnover led] to other wastes of time and mistakes with the [nationals] because you have a fresh new guy eager to do—willing to go outside the wire, meeting [national] judges, police, whatever. And it's normal, he's going to ask, 'What do you need? . . . [How] could I help you? And, by the way, what is the procedure to become a lawyer?' And for 5, 6, 7 years [nationals] have been meeting people like that. For instance, my first meeting . . . [with a national counterpart], he literally told me, 'You are person number nine. I always respond to the same questions. I will not meet you, no more.' . . . I can understand. He was right.<sup>50</sup>

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regarded the pace in his/her setting as moderate. Interview with Epsilon (Aug. 23, 2011); Interview with R (Mar. 20, 2011); Interview with Upsilon (Mar. 29, 2011).

49. *E.g.*, Interview with T (Feb. 7, 2011); Interview with Omicron (Nov. 30, 2010); Interview with Xi (Nov. 30, 2010); Interview with Zeta (Aug. 25, 2011).

50. Interview with W (Dec. 8, 2010); *see also* Interview with I (May, 12, 2011).

Interviewees described the turnover and the effect on their work as being particularly acute when these contracting patterns intersect with other practices and circumstances, including use of the combination of short contracts and high salaries to attract internationals to otherwise unappealing settings; recruitment of the “domestic practitioners” I identified in the previous section, who do not have prior experience with ROL work; and the difficult living conditions in many post-conflict states, and especially in areas of ongoing conflict.<sup>51</sup> Another contributing factor is that even ROL internationals who have permanent positions are often required to regularly change postings, so that the use of permanent employees to staff missions can also be a source of instability.<sup>52</sup>

Overall, the most important thing to understand about the features identified by ICL and ROL interviewees as affecting their job movement and, in some instances, converging to produce high turnover, is that many of them are deeply embedded in the structure and nature of PCJ work. As discussed in Part III below, these features and the patterns of circulation and turnover that they facilitate affect internationals’ development and use of necessary information and skills, and thus ultimately the effectiveness of PCJ initiatives. Accordingly, efforts to improve PCJ effectiveness by supporting internationals’ development and use of knowledge will need to take into account these characteristics and the circulation and turnover patterns they promote.<sup>53</sup>

The differences in perceptions of ROL and ICL interviewees concerning how problematic turnover seems to relate in part to the

51. *E.g.*, Interview with Kappa (Dec. 2, 2010); Interview with Omicron (Nov. 30, 2010); Interview with T (Feb. 7, 2011); Interview with U (Jan. 5, 2011); Interview with W (Dec. 8, 2010).

52. *See, e.g.*, UNITED NATIONS CAREERS, <https://careers.un.org/lbw/home.aspx?viewtype=SC> (last visited Aug. 4, 2015) (“Staff members . . . are expected to serve at different duty stations throughout their career[s] . . .”). In contrast, ICL tribunals do not hire permanent staff. *See, e.g.*, *Employment and Internships*, UN-ICTY, <http://www.icty.org/sid/106>.

53. Several of the reports cited in the introduction suggest that the relevant institutions should take measures to retain staff, such as increasing contract length. Schröder, *supra* note 3, at 5, 25. Some ICL tribunals have taken such steps on a temporary basis. Financial and any other implications resulting from the introduction of a staff retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, Report of the Advisory Committee on Administrative and Budgetary Questions, U.N. Doc. A/61/591, ¶ 3 (Nov. 22, 2006) [hereinafter 2006 Report]; Report of the Advisory Committee on Administrative and Budgetary Questions, U.N. Doc. A/60/591, ¶ 44 (Dec. 15, 2005) [hereinafter 2005 Report]. This Article proceeds on the assumption that fundamental changes in contracting and promotion policies are unlikely to occur systematically, due to the political, financial, and bureaucratic constraints on the involved institutions. It therefore proposes approaches for mitigating the negative effects of turnover, rather than for reducing turnover as such. However, this is not meant to suggest that this Article opposes such measures; to the contrary, the introduction of mechanisms aimed directly at decreasing high turnover where it is having a negative impact on PCJ work would be welcome.

frequency of the features they identify as producing high turnover. ICL interviewees saw those features and problematic turnover as cabined to situations of closing tribunals and unusually long trials, while ROL interviewees saw them as relatively common to work in post-conflict settings. Other relevant factors relate to ROL and ICL interviewees' perceptions of their core knowledge sets. ROL and ICL interviewees expressed different visions of the skills and knowledge necessary to do their work effectively, and of how readily those skills and knowledge could be transferred from place to place. ICL interviewees also identified several mechanisms that insulated ICL processes from the potentially negative effects of the departure of key personnel. As a consequence of these differences, ROL programs seem to be particularly vulnerable to disruption due to turnover and rapid circulation of personnel amongst jobs and postings. This is discussed in Part III.

### III. KNOWLEDGE AND SKILLS

The effects of the job movement patterns described in Part II on the development and transfer of skills and knowledge depend on several factors, including which skills and knowledge are being developed and transferred, in which settings, by which groups of people, engaged in which activities.<sup>54</sup> The most consistently reported effect was that, as expected, interviewees confirmed that rapid job movement quashed internationals' attainment of local knowledge; however, the perceived significance of this effect varied across contexts. But while there is no universal rule, there are patterns in skill and information development and transfer through movement and networks, and these patterns have ramifications for the ultimate effectiveness of internationals' work in post-conflict justice.<sup>55</sup>

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54. The collective development of knowledge within organizations and the transfer of knowledge between organizations through the circulation of personnel are both well-established dynamics in the literature. Among the many articles examining the processes by which knowledge development and transfer occur in various settings are: Paul Almeida & Bruce Kogut, *Localization of Knowledge and the Mobility of Engineers in Regional Networks*, 45 MGMT. SCI. 905 (1999); Linda Argote & Paul Ingram, *Knowledge Transfer: A Basis for Competitive Advantage in Firms*, 82 ORG. BEHAV. & HUM. DECISION PROCESSES 150 (2000).

55. While this Article focuses on the effects of job movement as such, transnational and local networks and communities can also serve as mechanisms for developing, transferring, and absorbing knowledge and skills, depending on the networks/communities' extent and functionality. Since there are linkages between movement and networks, from time to time the following sections will reference these network effects, but the role of networks and communities are explored in detail in another Article. Elena Baylis, *Function and Dysfunction in Post-Conflict Justice Networks and Communities*, 47 VAND. J. TRANSNAT'L L. 625 (2014) [hereinafter *Function*].

In ICL tribunals, a combination of factors make it relatively easy to successfully transfer skills and knowledge from one tribunal to another and implement them effectively in one's new workplace. The work activities and the necessary skill set are not very context-specific, particularly since little value is placed on local knowledge. The tribunals themselves are relatively alike as contexts, since they make use of much of the same law and have similar structures and processes. And the nature of the litigation process incentivizes litigators to time their job movement to the end of their cases when possible, minimizing the disruptive effects of their movement and improving the odds of successful integration of their replacements and their skill sets. Of the social groups originally identified in this study, interns may be particularly effective at transferring information from one tribunal to another. However, outside of the international tribunal setting, the picture is more complex. The more that ICL interviewees were immersed in a post-conflict setting, the more they problematized these issues, and the more their perceptions resembled those of ROL people working full-time in post-conflict states.

In ROL, in contrast, the work is highly context-specific. Many of the key activities of one's job involve operating through one's relationships with others, which can only be developed locally and cannot be transferred. Even when skills can be transferred, post-conflict settings tend to be quite different from one another, so that it typically takes considerable time and effort to integrate one's skills and knowledge into a new context. The extremely rapid movement that characterizes the justice junkies often does not allow enough time for this process, and consequently, rapid movement can prevent effective use of an international's pre-existing knowledge and skills, as well as quashing the development of local knowledge and relationships. Also, ROL professionals did not express the same need to stay through the end of a project that ICL litigators did *vis-à-vis* their cases. In fact, most reported that people frequently left in the middle of projects, increasing the disruptive effects of their job movement and making it difficult for their replacements to integrate their skills and knowledge into an ongoing initiative; however, as with ICL, the picture is not entirely monolithic. The members of the group I have called "the talent" typically perceive themselves as working relatively effectively and transferring knowledge and skills smoothly from one location to another, even though they move relatively quickly from place to place and spend little time there. While one cannot simply take this self-assessment at face value, there are identifiable differences between the structure of the talent's work and that



of other ROL internationals, which could be exploited to make ROL initiatives more effective.

In addition to the analysis of internationals' knowledge and skills and the lessons that can be drawn from it, there are two key takeaways in this section, one drawn from ROL work and the other from ICL. From ROL comes the concept I am calling "delegated contextualization." An evaluation of the techniques used by the talent reveals that those who take seriously the need for local buy-in and ownership deploy this strategy. They do not attempt to adapt their knowledge and skills to the local setting themselves with the limited time and knowledge available to them. Instead, they structure their work to include processes and periods of time devoted to others' contextualization of their models, and they rely on local actors and on other internationals to carry out that contextualization process.

From ICL comes the idea of "time-shifting movement." When asked about job movement, ICL interviewees frequently referred to the desire of litigators to finish their cases. They considered that this cultural norm, when followed, tended to keep in check the potential negative effects of frequent job movement, because even a flood of departures at the end of a case does not disrupt the team's knowledge of the case or its progress. It is only when this cultural norm is disrupted for some reason that mid-case departures become more frequent, with the attendant negative consequences. Rather than being concerned with the rate of movement as such, by time-shifting movement to the ends of cases, ICL institutions are more resilient to internationals' job movement.

#### *A. Core Knowledge and Skills*

Overall, interviewees seemed to conceive of their core knowledge and skills by reference to their primary work activities. Their sense of the goals of their work also informed their descriptions of their knowledge and skill sets, although less explicitly.<sup>56</sup> The categories of knowledge that interviewees described, and their focus on development of knowledge through experience, comport with the practice-oriented concepts of knowledge put forth by organizational theorist Etienne Wenger and international relations theorist Emanuel Adler. In brief, Adler and Wenger

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56. Although I began with my own categorization of types of knowledge, as set forth in an earlier article, I did not directly raise these with interviewees, but instead, allowed interviewees to define their own categories of knowledge and skills in the interviews, according to their own points of reference. Baylis, *supra* note 12.

advocate an expansive understanding of knowledge that includes not only information, but also skills, informal practices, and modes of communication that individuals use to operate and work toward their goals in the context of a community with a joint purpose.<sup>57</sup>

For ICL interviewees working in tribunals, that core activity was most often litigation. Even for ICL interviewees not directly engaged in litigation activities, litigation was nonetheless a key reference point, as non-litigators' work concerned supporting or assessing ICL litigation activities in some way. Litigation is a complex process, to be sure, but at least within the tribunals, it is a bounded process comprising a limited set of formal procedures. The immediate audience for litigation is judges, who will determine the success of one's endeavors according to a relatively narrow set of precepts. Accordingly, many ICL interviewees identified technical skills as fundamental to their work, together with knowledge of ICL norms and rules and of "the facts," procedural and cultural flexibility, and an understanding of how ICL institutions function.

For ROL interviewees, their core activities were designing and implementing legal reform projects in local legal systems. These are complex and multifarious processes that often require engaging in both formal and informal law and policy-making and implementing procedures. The direct audience for one's endeavors is diffuse and variable, including politicians, lawyers, judges, police officers, and the population at large, who will determine the success of one's work according to their own sets of precepts. Accordingly, ROL interviewees identified local knowledge and relationship-building and the skills to carry out that relationship building as key to their work. Knowledge of one's substantive technical area, knowledge of the relevant law, and understanding of international institutions' activities in post-conflict settings rounded out their essential skill sets.

Thus, on the one hand, ICL and ROL interviewees described toolboxes of knowledge and skills that, while far from identical, contain strong parallels in content and also in perceptions of where and how the relevant skills and knowledge can best be acquired.

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57. Like the PCJ interviewees, Adler and Wenger conceive of knowledge as developed and shared in a communal context and focus on the effectiveness of that knowledge as operationalized in the context of community members' shared activities. *See* ADLER, *supra* note 7; WENGER, *supra* note 7. These issues are discussed in more detail in another article focusing on the role of PCJ networks and communities. *Function*, *supra* note 55.

## COMPARISON OF ICL AND ROL CORE KNOWLEDGE AND SKILLS

ICL KNOWLEDGE/SKILL	ROL COUNTERPART KNOWLEDGE/SKILL	WHERE BEST ACQUIRED	HOW ACQUIRED
Technical skills, especially litigation skills	Technical & institutional knowledge, e.g., court administration	Domestic practice	Experience
Knowledge of “the facts”	Local knowledge & relationship	ICL: Any setting ROL: National post-conflict settings	ICL: Study or from witnesses & defendants ROL: Experience
Flexibility about international procedures & processes; people skills	Local knowledge-acquisition & relationship-building skills, including flexibility	ICL: Any international setting ROL: Any setting, but especially post-conflict settings	Experience
Legal knowledge of ICL	Legal knowledge, e.g., of relevant treaties & laws	Any setting	Study
Understanding of ICL institutions	Understanding of international institutions’ post-conflict activities	ICL: ICL institutions ROL: Post-conflict settings	Experience

But while there are pairs of corresponding skills, there is also a sharp divergence in what interviewees most valued: people working in ICL tribunals frequently focused on the need for technical litigation skills, whereas ROL internationals tended to emphasize the importance of building constructive relationships based on trust and mutual respect with local actors.<sup>58</sup> These differences in perception relate directly to the divergence in the core activities of these groups. ICL is a litigation process, much of which can be carried out without relying on external actors (although of course the tribunals need local cooperation at particular points in the process, like arrests). ROL is an amalgam of consensus-building, policymaking, and educational processes that relies heavily on the buy-in of local actors. The other divergences in the paired sets are also important in considering where and how these skills can be developed and how transferable to and immediately useable in new settings they are, once developed.

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58. *E.g.*, Interview with Beta (July 12, 2011); Interview with Eta (Sept. 6, 2011); Interview with I (May 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with O (Sept. 19, 2011); Interview with P (Nov 30, 2010).

## B. ICL

As suggested in the chart above, ICL interviewees indicated that the main producer of the knowledge and skills needed to work in ICL was relevant experience as such, not experience in multiple tribunals, nor sometimes even experience in tribunals at all. They did not suggest that they took any particular value from comparative experience in multiple tribunals; rather, they tied progression in their knowledge and skills to their years of experience and the quality of that experience. However, they also did not see tribunal-hopping or other job movement as detrimental to that process; rather, they largely saw it as a matter of indifference as far as skill acquisition was concerned.

Once they acquired relevant skills and knowledge, interviewees saw the transfer of those assets to a new institution as virtually seamless, primarily because of the similarities between international tribunals and the nature of their work activities; however, these questions are more complex for ICL interviewees working in national and hybrid settings. There, local knowledge and relationships gain importance, external knowledge must be contextualized, and transfer and implementation of knowledge and skills is more difficult. Also, ICL institutions benefit from the cultural norm of staying through the end of trials to remain relatively resilient in the face of turnover, but turnover can be a problem in certain contexts.

The first part of this section focuses on skill development and transfer in internationalized tribunals; the second part discusses the effects of location in national settings and work outside the tribunal structure; and the third focuses on additional factors common to all settings.

### 1. *Internationalized Tribunals*

#### a. *Litigation Skills*

ICL tribunal interviewees repeatedly emphasized the central importance of technical litigation skills to ICL work.<sup>59</sup> In so doing, they

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59. Here, I focus on litigation skills, but of course, non-litigators have their own sets of technical skills, like writing skills for attorneys in Chambers, litigation support skills for those in support roles, or administrative and management skills for those in the Registry or similar positions.

consistently indicated those skills could best be initially acquired through domestic practice, not in an ICL tribunal:

[T]his gets back to the earlier point about what the core work is, what the actual fundamental work is . . . . [A]t the end of the day, yeah, these are international crimes, but they're crimes and this is criminal work and it's—the people who really are good at this work are people with criminal law experience, whether as investigators or prosecutors or defense lawyers.<sup>60</sup>

Interviewees offered several reasons for this. Although attorneys do of course improve their litigation skills while working at a tribunal, the kinds of cases heard by the tribunals are too grave to allow junior attorneys as much responsibility as would be optimal for their professional development. In addition to the cases' significance, their enormous size and slow development means that junior attorneys cannot get repeated, intensive practice at core litigation skills the way they would working, for example, in a high volume litigation setting.<sup>61</sup>

As such, it is difficult for interns and attorneys who join tribunals without prior litigation experience to learn those skills for the first time at a tribunal. This is the primary reason I identified the litigators category and their patterns of movement as particularly relevant to the issue of knowledge and skill transfer in the first section of this Article. Because members of the litigation group already have significant experience in domestic litigation when they join international tribunals, they are the ones who bring mature litigation skills to the tribunals.

Once litigation skills are acquired, interviewees reported that they can be transferred readily into tribunals from domestic systems and from one tribunal to another by litigators and by career PCJ professionals. They did not express any concerns about the speed of movement between tribunals as affecting this skill transfer.<sup>62</sup>

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60. Interview with Beta; *see also* Interview with I (May 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with Theta (Sept. 8, 2011); Interview with Xi (Nov. 30, 2010).

61. *E.g.*, Interview with D (May 31, 2011); Interview with P (Apr. 5, 2011). This is not to say, of course, that ICL practitioners do not have any opportunity to develop their litigation skills. To the contrary, all interviewees reported that they had learned a great deal from their tribunal work. Also, some interviewees noted that the complexity of ICL cases is more analogous to large organized crime cases than to the smaller, less serious domestic cases that a junior district attorney or defense attorney might be expected to handle. Interview with Iota (Sept. 12, 2011); Interview with Psi (Apr. 16, 2011).

62. Interview with Beta (July 12, 2011); Interview with I (May 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with P (Apr. 5, 2011); Interview with Theta (Sept. 8, 2011); Interview with Xi (Nov. 30, 2010).

One important reason for this high transferability is that the tribunals are relatively similar to each other in their structure and procedures. It is not that there are no adjustments to be made, of course. Each court has some procedural and other differences that have to be learned upon transition, and there are also differences between domestic and international litigation styles and processes. But nonetheless, when interviewees spoke about the tribunals, their judgment was overwhelmingly that they were in many ways very much alike:

Well clearly, they've all got their own little unique twists in how things are done, and how issues are approached given the rules, and what not. Yeah, there are clearly differences between the different tribunals. But notwithstanding that, I still think there is a huge degree of similarity and overlap, just in terms of the approaches and in terms of that the issues and types of issues that we face, just given the difficulty of doing these types of cases. So even though the procedural framework is slightly different in all the courts, the practical work we actually do is quite similar. And that's another reason I think that there's—quite often people move from one court to another.<sup>63</sup>

These observations resonate across the skills identified by ICL interviewees working in internationalized tribunals. They viewed their skills as highly and immediately transferable with minimal adaptation. They expressed no concerns about any negative effects of rapid circulation amongst tribunals by the fast-moving justice junkie category as far as knowledge and skill transfer was concerned. And they attributed this ease of transfer primarily to the similarity of the tribunal settings.

*b. Other ICL Skills*

Unlike litigation skills, acquiring legal knowledge of ICL does not require experience, just study; but it seems to be equally unaffected by job movement. While it is useful to have learned ICL norms and rules in

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63. Interview with Iota; *see also* Interview with Beta (July 12, 2011); Interview with S (Mar. 9, 2011). Many people also mentioned the civil law/common law divide in the blended but nonetheless typically (though not universally) more accusatorial tribunals. *E.g.*, Interview with Beta (July 12, 2011); Interview with I (May 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with M (June 29, 2011); Interview with O (Sept. 19, 2011); Interview with Pi (Dec. 7, 2010). But as discussed at greater length below, several people distinguished internationalized tribunals (whether international or hybrid) from work on hybrid panels within national institutions, on the basis that the institutional structures and also to some extent the necessary skills were different. Litigation skills were needed in both, however. *E.g.*, Interview with Epsilon (Aug. 23, 2011); Interview with Xi (Nov. 30, 2010).

school, it is also plausible to learn them while on the job at any tribunal or ICL-related institution, if one does not already have the knowledge. It is also for the most part the same legal knowledge that is needed from one tribunal to the next, so this information can also be readily used in a new work context.<sup>64</sup>

In order to work effectively in an international tribunal, ICL internationals also need two other, less concrete sets of knowledge and skills. One is a set of relational skills: a sense of cosmopolitan flexibility, cultural sensitivity, and what is often called “people skills.” Internationals need to be flexible in adapting to international tribunal processes rather than clinging to domestic processes as a model. Similarly, one needs to deploy cultural sensitivity and people skills to work successfully with a diverse set of international co-workers from numerous legal backgrounds. This experience could come from a tribunal or from any other international settings.<sup>65</sup>

The other skill often mentioned by interviewees was one that was specific to tribunals as a type of institution, although not to any particular tribunal: an understanding of tribunals’ bureaucracy, policies, and processes, including the timeline of the trial process.

[I]t’s just the cognizance of how proceedings tend to play out. I was able to anticipate how long a witness would be. Hey, do we need to get another witness here? Who to talk to. Okay, if I want to know that estimate, talk to that person. These proceedings are kind of a unique beast, and the more you work with them, I guess the more familiar you are with what’s likely to happen and you know who to ask. . . . [K]nowing the proceedings and the players a bit better to allow me to anticipate and act accordingly. . . . And also to just understand the dynamic of the personalities, how the judges want to be treated, how the parties want their information, that sort of stuff.<sup>66</sup>

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64. *E.g.*, Interview with Beta (July 12, 2011); Interview with L (Apr. 15, 2011); Interview with Rho (Mar. 29, 2011); Interview with S (Mar. 9, 2011); Interview with Sigma (Apr. 6, 2011); Interview with Theta (Sept. 8, 2011); Interview with Xi (Nov. 30, 2010). This is not meant to minimize the effort required to learn an entire body of law, just to indicate that it is knowledge that can be acquired anywhere, with sufficient study. Also, there are some exceptions, such as the Special Tribunal for Lebanon, because of its focus on terrorism.

65. *E.g.*, Interviews with Beta (July 12, 2011); Interview with D (May 31, 2011); Interview with Iota (Sept. 12, 2011); Interview with P (Apr. 5, 2011).

66. Interview with I (May 15, 2011); *see also* Interview with Beta (July 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with J (Apr. 29, 2011).

By their nature, both of these skills are also readily transferable from one workplace to another, in no small part because of the similarities between the tribunals as work settings discussed above.

Apart from contributing to an attitude of cosmopolitan flexibility, job movement seemed to promote the development of new ICL skills only when particular circumstances arose that prevented interviewees from getting the desired experience in their initial position. For example, one of the structural reasons for movement between jobs discussed in the section above is a systematic lack of opportunities for advancement. By this, people did not solely mean promotions, but also opportunities for professional development. In such instances, by moving to a new job they can develop new information and skills.<sup>67</sup>

But while job movement may not promote the development of skills as such, interviewees consistently expressed the view that each of these categories of knowledge and skills was readily transferable from one tribunal to another and could be integrated into the new setting relatively quickly. In contrast to ROL interviewees (as discussed below), ICL interviewees viewed this process as straightforward and unproblematic, at least as concerns the internationalized tribunals (as opposed to work in national settings, also discussed below).<sup>68</sup>

The primary reason interviewees offered for this was the similarity of the tribunal settings and procedures, as discussed above. The other was the common culture and people they found from one tribunal to the next. In part because there is considerable circulation amongst tribunals, internationals found the same types of people (and indeed sometimes the very same individuals) and shared attitudes and expectations as they moved from tribunal to tribunal, making it easier for them to integrate themselves and their knowledge into the new work setting. Of course, interviewees referenced some differences in culture and composition of personnel between the tribunals, but these differences are relatively slight as compared to the incredible differences in ROL settings, discussed in the ROL section below. As a consequence, circulation amongst tribunal was self-reinforcing: that movement amongst tribunal by career PCJ professionals over time established commonalities amongst the tribunals

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67. *E.g.*, Interview with I (May 12, 2011); Interview with Iota (Sept. 12, 2011); Interview with P (Apr. 5, 2011); Interview with Xi (Nov. 30, 2010).

68. *E.g.*, Interview with Beta (July 12, 2011); Interview with I (May 12, 2011); , Interview with Iota (Sept. 12, 2011) Interview with L (Apr. 15, 2011); Interview with P (Apr. 5, 2011); Interview with Rho (Mar. 29, 2011); Interview with S (Mar. 9, 2011); Interview with Sigma (Apr. 6, 2011); Interview with Theta (Sept. 8, 2011); Interview with Xi (Nov. 40, 2010).



that facilitated continued circulation and the easy implementation of one's knowledge and skills in any of these settings.<sup>69</sup> The sense of community produced by job movement and its role in facilitating the development of knowledge and skills is the subject of another article.<sup>70</sup>

*c. Local Knowledge*

Many ICL interviewees viewed local knowledge as playing a very narrow role in their work; this attitude contributed to their sense that their skills and knowledge were easily developed and used in consecutive job contexts. In contrast to ROL interviewees, ICL interviewees working in international tribunals rarely mentioned local knowledge or relationships of their own accord. When they talked about it at all, it was often as “the facts” of their cases: “[O]f course, you have to learn your facts . . .”<sup>71</sup> And in contrast to the ROL understanding of the need for immersion, for ICL interviewees, “the facts” were often learned at a distance, from reading documents and talking to witnesses and defendants.

Of course, one's knowledge of the facts from one post-conflict setting cannot usefully be transferred to a tribunal focused on a different post-conflict setting. Also, the facts can be complex, and it can be time-consuming to learn them; indeed, several interviewees identified this as being one of the biggest things they had to learn going in to a job at a new tribunal:

You don't get very many people who walk into the ICTY who know much about the break-up of the former Yugoslavia. You don't get many people who know much about the Rwandan genocide before they start at the ICTR. And, of course, at the ICC, you've got lawyers occasionally bouncing around from situation to situation. And you know, one day they're dealing with Darfur, and the next day they're dealing with election violence in Kenya, and then they're dealing with the events in Libya. So you've always got that kind of thing. The biggest part of it is just getting your head around what the case is all about.<sup>72</sup>

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69. *E.g.*, Interview with Beta (July 12, 2011); Interview with Eta (Sept. 6, 2011); Interview with Iota (Sept. 12, 2011); Interview with Psi (Apr. 16, 2011).

70. Function, *supra* note 55.

71. Interview with S (Mar. 9, 2011).

72. Interview with Iota (Sept. 12, 2011); *see also* Interview with Rho (Mar. 29, 2011).

However, they did not view this as problematic, just as a matter of effort. To the extent that you need to know the facts of a new situation, you can learn them by sitting down and studying them, the same way one learns the law.<sup>73</sup> And ICL tribunal interviewees did not, for the most part, see a need for local knowledge beyond the facts relevant to the legal issues they litigated.<sup>74</sup>

Thus, the sense expressed by ICL interviewees that the important skills and knowledge for their work are readily transferable comes, not from a belief that local knowledge can be easily transferred, but from the belief that one needs only a very limited set of local knowledge in order to do one's job. While rapid movement stifles the development of local knowledge, and transfer is rarely possible (except perhaps on the rare occasions where one moves from one tribunal to another addressing the same situation), ICL interviewees did not see this effect as particularly relevant to their work.

## *2. ICL Work in National Settings and Institutions*

These observations about local knowledge and its perceived role are primarily true of fully international tribunals located outside the country in question; the more immersed in the national system an ICL institution is, the more relevant local knowledge and relationships tend to be to the internationals who work there. An international tribunal is a unique international law context, with a particular set of procedural rules, substantive law, institutional structure, and personnel. Many tribunals are not located in the concerned post-conflict countries, so many ICL attorneys are not working in the post-conflict setting in any sense. Thus, to work effectively in an international criminal tribunal, one has to understand the workings of tribunals as such, rather than the workings of the relevant domestic legal, political or social systems. To a great extent, this accounts for the perceptions of ICL interviewees about the transferability of their skills from one tribunal to another and about the relevance of local knowledge and relationships.

However, there is a spectrum of ICL work contexts. At one extreme, there are international courts located outside the country, which are relatively isolated from the post-conflict setting itself. In the middle are

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73. *E.g.*, Interview with Eta (Sept. 6, 2011); Interview with Theta (Sept. 8, 2011).

74. A few interviewees expressed the view that a greater awareness of local realities, and in particular, of the ramifications of ICL tribunals' actions for the concerned post-conflict justice countries might be desirable. Interview with L (Apr. 15, 2011); Interview with Tau (June 15, 2011).

hybrid courts located in the country but outside the ordinary judicial system, where internationals work with local actors in their workplace at least to some extent and are in the general post-conflict environment, but are not required to interact with it constantly. And at the other extreme are institutions like the special panels that were formed in Bosnia and Timor as entities within the national justice systems, which make use in part of national law and draw internationals into daily contact with nationals in a way that resembles the types of interactions internationals often have in ROL work. Even if an ICL attorney is working in a tribunal located in the concerned post-conflict country, its procedural rules and applicable law are typically separate from that of the national legal system, and its culture is likely to be heavily influenced by international norms, procedures, and personnel. However, the more particularized a tribunal is to the concerned post-conflict country, the less similar it is to other tribunals, and then the issue of movement as it relates to the development or transfer of knowledge becomes more complex.

This emerges in several ways. At the most technical level, if internationals are embedded in the national system or in a hybrid tribunal that considers national law, they have to learn national law as it relates to the crimes before the court. As a consequence, internationals cannot simply transfer their legal knowledge from a prior tribunal.<sup>75</sup>

In addition, when ICL internationals interact directly with nationals as part of their job, they must deploy the relationship-building skills that are more typically emphasized by ROL internationals:

[W]hen you live in [a post-conflict country] and you work in [that country], there is a way to speak to witnesses. There's sort of an approach of speaking to people, of not expecting too much on the first occasion, of going to people's houses, sitting down with them, talking to them, drinking coffee, eating with them. A sort of, in a way that you're not there for five minutes. Much of the international community, it's always that you're there for five minutes and then you disappear, then you go to the next place. It's a process of gaining the trust of people. And that's a process that takes a very long time and certainly doesn't work from The Hague or from

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75. The ECCC, a hybrid court, applies Cambodian law, for example. Law on the Establishment of Extraordinary Chambers in Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, Art. 3.

anywhere else other than when you're living and working in the environment where you're prosecuting and investigating.<sup>76</sup>

Similarly, internationals who are expected to mentor their national counterparts have to develop relational skills and engage in relationship-building activities. This can create tensions with the other aims of ICL work: some interviewees expressed the view that it was difficult to reconcile this mentoring role with results-oriented litigation goals that demand that large amounts of information be efficiently prepared for trial, that court-imposed deadlines be met, and so on. There is also a great deal of variation in the regularity of interactions between nationals and internationals in such settings, and so the extent to which internationals end up grappling with these issues varies considerably as well. But overall, ICL internationals who engaged directly and regularly with nationals as part of their jobs feel the need for a level of local knowledge and relationship-building that does not permit the near-immediate integration into a new tribunal described by other ICL internationals.<sup>77</sup>

Finally, another dynamic emerged in hybrid and national tribunals that was less related to movement as such and more related to the ultimate roles of the tribunals and how internationals conceptualized their work and its purposes. Working side by side with nationals, and particularly when they are involved in mentoring, internationals expressed a sense that they became aware of the political and social dynamics that inform nationals' relationships with and attitudes toward the court.<sup>78</sup> These socio-political dynamics are relevant to the purposes of ICL, because many of the long-term, larger goals of ICL—reconciliation, justice for victims, and so on—depend to some extent on the reception of the relevant trials in the concerned post-conflict country. But when they are working in tribunals outside the concerned post-conflict state, internationals tend to be more distanced from these dynamics, both on a day-to-day basis and in assessing the effectiveness of their efforts. While everyone is of course aware of these issues as a backdrop for their work, ICL internationals working in international tribunals seemed to be immersed in the everyday

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76. Interview with Xi (Nov. 30, 2010).

77. *E.g.*, Interview with D (May 31, 2011); Interview with H (May 15, 2011); Interview with I (May 12, 2011); Interview with N (Apr. 14, 2011); Interview with P (Apr. 5, 2011); Interview with Xi (Nov. 30, 2011).

78. Interview with D (May 31, 2011); Interview with Epsilon (Aug. 23, 2011); Interview with H (May 15, 2011); Interview with J (Apr. 29, 2011); Interview with K (Apr. 20, 2011); Interview with N (Apr. 14, 2011).

process of litigation and focused on the results of that litigation as the measure of their success:

[I]t's funny because in one sense this work is so—it's obviously important and it's in the newspapers and so forth. But for me, the job satisfaction comes from the nuts and bolts of the work: if you are actually getting evidence and moving forward and progressing on your individual case, or if you're working several cases on your various cases, and succeeding in court, and convicting your person if you're a prosecutor. It's those fundamental things that are more essential.<sup>79</sup>

Of course, courts as institutions are supposed to be focused on the internal litigation process, not on external political outcomes. But if ICL institutions intend to pursue their ultimate aims within the concerned post-conflict states in a deliberate way, then international tribunals will need to establish those local connections in some way, albeit outside the litigation process.

These issues emerge again in the ROL context in the contrast between the work of most ROL internationals and that of “the talent.” As described below, the talent have a way of delegating contextualization of their expert knowledge to local contexts that could serve as a model for ICL institutions looking to create connections with post-conflict states.

### 3. *Other Factors*

#### a. *Timing and Time-Shifting Movement*

There are several other factors that seem to affect the extent to which ICL knowledge and skills can be developed and used in tribunals. One is the timing of job movement. Those directly involved in handling cases expressed a sense of obligation or desire to stay through the end of their cases if they could: “You go there for a particular case, you invest, you learn the facts. You want to take it to its natural fruition.”<sup>80</sup> This cultural norm of time-shifting job movement to the ends of cases is very useful for the purposes of developing and maintaining knowledge about particular cases. When internationals leave at the end of a case, their job movement takes place at a point when it is relatively undisruptive; the people who

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79. Interview with Beta (July 12, 2011).

80. Interview with I (May 12, 2011); *see also* Interview with Beta (July 12, 2011); Interview with P (Apr. 5, 2011).

replace them are more likely to have ample time to learn the facts of a new case and integrate into the team and/or the court's procedures, rather than coming up against a trial immediately.<sup>81</sup>

As discussed in Part II.B., there are certain situations (i.e., when the trials are extremely long or when the tribunals are shutting down) in which people do not see their trials through to the end. Interviewees frequently presented these circumstances as exceptional, but they are not by any means extraordinary, with the SCSL, ICTY and ICTR shutting down, and with multi-year cases common at all the tribunals. In these circumstances, turnover in the midst of cases becomes more common.<sup>82</sup> Departing internationals may take important knowledge with them at critical points in the process, and newcomers may not be as easily integrated into the case:

Of course, turnover is horrible, bad. I mean the people that are writing this judgment that is taking ten years never saw any of the witnesses. And one of the judges only saw half of the witnesses.<sup>83</sup>

The changing of staff and the moving on of staff and the lack of resources [due to the tribunal's completion strategy] is really having practical effects on the way cases are run, regardless of whether it's chambers, prosecution or defense, just in different ways.<sup>84</sup>

In the case of long trials, the problems of turnover and length are mutually reinforcing, as cases take longer to reach judgment and for judgments to be produced if new staff have to get up to speed, and the longer a case goes on the more likely it is that staff will leave.<sup>85</sup>

Some interviewees also talked about the importance of the trial team structure as a way of maintaining institutional knowledge when one person departs in the middle of a case:

[When someone leaves midway through a case,] . . . there can be in the team a certain crisis, a certain interruption. This is possible, and it happened in my experience. But because the team was a real team, . . . [when] one person [was] leaving, immediately we managed this problem . . . . [We had] frequent team meetings with

81. *E.g.*, Interview with Beta (July 12, 2011); Interview with P (Apr. 5, 2011); Interview with Psi (Apr. 16, 2011).

82. *E.g.*, Interview with Alpha (July 16, 2011); Interview with Beta (July 12, 2011); Interview with I (May 12, 2011); Interview with O (Sept. 19, 2011); Interview with Theta (Sept. 8, 2011).

83. Interview with I (May 12, 2011); *see also* Interview with Eta (Sept. 6, 2011).

84. Interview with L (Apr. 15, 2011).

85. *E.g.*, Interviews with Eta (Sept. 6, 2011); Interview with I (May 12, 2011).

the team, frequent exchange and discussion, so it was very easy . . . to facilitate the entry of a new colleague, so to help him, to assist him or her, in order that a new colleague became familiar with the case results. So this was what we have done. Very frequently, it is true! But also very successfully . . .<sup>86</sup>

This question of the timing of job movement relates directly to the issue of turnover addressed previously and to the perceptions of ICL interviewees that turnover was not undermining their work. The cultural norm of finishing cases provides ICL with some resilience against turnover as compared to ROL, which lacks this norm vis-à-vis finishing projects and programs.<sup>87</sup> Thus, the cultural norm of time-shifting one's job movement to the ends of cases, rather than taking opportunities that arise midway through a case, presents a model for mitigating the negative effects of turnover on knowledge.

*b. Intern Circuits*

In addition, several interviewees described the “interns” group identified at the outset and their circuits of movement between tribunals as a highly effective way of transferring certain information about recent and ongoing cases from one tribunal to another. This seems to work for several reasons: interns are privy to the details of recent and ongoing cases, their internships typically last less than six months so they carry that information in a timely fashion from one place to another, and the type of information that they have—the fundamentals of recent cases and decisions—is both useful and easily integrated into the new tribunal. In sum, in at least some instances, intern movement appears to transfer some legal norms and information with the efficiency that I originally expected to see from the justice junkies, which is why I identified interns as an important category for purposes of knowledge development and transfer at the outset of this Article.

There has arisen a species of—I don't know what you call it—professional international tribunal interns, where they rotate from one court to another in internships. Those kids are extremely valuable. Because they already know the drill, they know how

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86. Interview with O (Sept. 19, 2011); *see also* Interview with Psi (Apr. 16, 2011).

87. See discussion *infra* Part III.C.3.a.

intense it's going to be, and they're up to speed in the latest jurisprudence. In fact, they wrote some of it themselves!<sup>88</sup>

I think there are features of jurisprudence, features of law, which have been mostly researched by interns and junior members, P2s, P3s, which then get pushed on to the judgment book. Then when that intern or more junior member moves to another tribunal, that outlook, that piece of judicial thinking which they have been responsible for writing, that gets transferred across, because it's too hard to reinvent it. And one's proud of it in any event . . . . That is one way in which the law is developing.<sup>89</sup>

Of course, not all interns play this role. Some have only one internship, and others may not have the opportunity to raise their knowledge from other tribunals, may not find it relevant, or may be reluctant to assert themselves with their senior colleagues. But if institutions are aware that interns can have useful knowledge from other tribunals, they can structure opportunities to gain and take advantage of that knowledge by, for example, deliberately bringing in interns from other tribunals and by debriefing them about their prior work and any potential relevance (within the bounds of the requirements of confidentiality of course). Due to their particular role in ICL tribunals, interns are one category of internationals who seem to contribute positively to the circulation of critical information about developments in legal norms and practices by moving between tribunals.

#### 4. *ICL Conclusions*

Overall, ICL interviewees describe a set of skills that can be acquired in a variety of settings: domestic practice (litigation skills), any ICL tribunal (institutional knowledge), any international context (flexibility and cosmopolitanism), or anywhere (ICL law). Local knowledge and relationships—the kinds of skills and knowledge that are the most context-specific—played a very limited role in the purely international tribunals, although they were important for some people working in national and hybrid settings. Significantly, this means that many ICL workers do not need to spend time gaining experience in a particular tribunal in order to work effectively in that tribunal. To the contrary, ICL interviewees emphasized again and again the incredible transferability of their skills:

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88. Interview with J (Apr. 29, 2011).

89. Interview with Theta (Sept. 8, 2011).



that once acquired in one of a variety of domestic, international or ICL institutions, they could be readily put to use in any ICL setting.

When ICL internationals are working in national courts or even in hybrid tribunals, however, the need for local knowledge and relationships can rise to the fore and complicate the process of transferring and applying knowledge and skills for ICL interviewees. There are also two identified contexts—extremely long cases and tribunal closures—in which turnover rises to a troublesome point and begins to disrupt institutional knowledge and the continuity of work on cases. One important take-away from ICL interviewees’ descriptions of their work is that, ICL institutions are shielded from the worst effects of turnover because internationals engage in what I call “time-shifting movement,” delaying their job moves until after they have finished their cases.

### *C. ROL*

In contrast to ICL tribunal interviewees, ROL interviewees focused on highly context-specific knowledge and skills in discussing their work. As expected, there was consensus that local knowledge and relationships could only be developed on the ground, in the relevant post-conflict setting, and could not be transferred. In addition, because post-conflict states can be quite different from each other, even those skills and knowledge that are transferable from one place to another cannot simply be applied “as-is” in the new location. Rather, a nuanced understanding of the local setting is necessary to adapt that information to the new setting.

Overall, in contrast to ICL interviewees’ confidence in the immediate transferability and utility of their skills from one tribunal to another, ROL interviewees emphasized the importance of the time-consuming, delicate process of contextualization. Consequently, ROL projects tend to be more readily affected by turnover and rapid movement than ICL cases. ROL institutions also have not created sufficient mechanisms to mitigate high turnover and rapid movement where it occurs, although there are models like the strategies deployed by the talent that might be used to do so.

#### *1. Contextualizing Transferable Skills*

The ROL parallel to litigation skills in ICL is experience-based technical understanding of legal institutions and processes. While they did not emphasize this type of knowledge as frequently as did ICL interviewees, ROL interviewees felt that a technical understanding of the subject of reform (whether evidence-gathering, case management systems,

or some other topic) was both necessary to their work and best acquired domestically, before beginning ROL work.<sup>90</sup>

One way this issue frequently arises is with regard to training and experience in the appropriate type of legal system. Many post-conflict states use civil law systems; as one would expect, many Americans, Britons, and others who were trained in and have practiced in common law systems are often unfamiliar with civil law systems. This can lead to misapprehension of some aspects of the system and mistakes in dealing with those areas. In addition, legal systems and systems of regulation and conflict resolution that are outside the state legal system are far from unusual in post-conflict countries, and ROL internationals are not typically trained or experienced in such systems.<sup>91</sup>

Like ICL professionals, ROL interviewees also agreed that knowledge of the relevant law was important, when they raised the issue. They did not, however, raise this issue nearly so consistently as ICL internationals did. In ICL, there is a body of law particular to the field, and the development of the body of law that constitutes ICL is new, ongoing, and central to the identity of the field.<sup>92</sup> In ROL, however, there is not one particular body of law, as there is in ICL; rather, depending on the subject area of the laws or institutions to be developed, one might be dealing with international human rights law, international trade law, foreign criminal law models, or something else.<sup>93</sup>

In addition, interviewees stressed the need to have an understanding of how international institutions operate in PCJ settings, a relatively generalizable knowledge set that can be learned in any post-conflict setting and applied in another.

One of the things that you always have to be aware of when you're implementing these programs, I think, is how they might interact with other programs, how the work you're doing fits into overall development objectives, because there's a whole lot, especially in a

90. *E.g.*, Interview with Zeta (Aug. 25, 2011).

91. *E.g.*, Interview with Gamma (Aug. 23, 2011); Interview with Kappa (Dec. 2, 2010); Interview with Pi (Dec. 7, 2010); Interview with T (Feb. 7, 2011); Interview with U (Jan. 5, 2011); Interview with X (Nov. 29, 2010); Interview with Y (Nov. 6, 2010).

92. The Rome Statute of the International Criminal Court sets out the most recently articulated forms of four core international crimes: genocide, crimes against humanity, war crimes and aggression. *See* Rome Statute of the International Criminal Court, arts. 6–8 (1998), [http://www.icc-cpi.int/en\\_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/rome%20statute.aspx](http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/rome%20statute.aspx). Earlier articulated forms can be found, *inter alia*, in the Geneva Conventions, the Genocide Conventions, and the Statutes of the International Criminal Court for the Former Yugoslavia and the International Criminal Court for Rwanda, among other sources.

93. *E.g.*, Interview with Kappa (Dec. 2, 2010); Interview with U (Jan. 5, 2011).

post-conflict environment, I think. There are all these like moving pieces and you're kind of down in the weeds, and you see this one little thing. And it's not always totally clear how or if at all it relates to these other things. When you kind of get up above it a little bit, you can see that they're intended in some ways to relate to and complement each other, but a lack of kind of coordination at the implementation level means that people don't often see that. And that can make you less effective. Because if you don't know why what you're doing might be affecting some other sector, you can't think about it, you don't have the right perspective. So I do think that people who have worked in other post-conflict environments tend to have more of that perspective because you see the sameness of programming from environment to environment. You start seeing how the pieces fit together.<sup>94</sup>

Any of these types of knowledge could be developed outside of a particular post-conflict setting; however, in order to make use of one's knowledge effectively in working on local legal reform processes, one cannot simply replicate it directly in the post-conflict setting. Rather, the knowledge must be applied with both an understanding of the local context and a flexibility that often comes from international experience.<sup>95</sup>

This perspective forms a stark contrast to that of ICL interviewees working in international tribunals, who emphasized the immediacy with which they could begin applying skills in a new setting. In contrast to ICL, where the tribunals are in many respects quite similar to each other, local post-conflict settings can be quite different from each other. This is not to say of course that all locations are totally dissimilar, but the general trend is just the opposite of ICL tribunals' basic similarity:

[That country] is very different. . . . [There] what I was told personally by high court officials and judges was that they were not interested in Western values, they were not interested in what we were promoting, and they don't wanted to be like us. . . . Now in other systems, expertise and foreign expertise is quite well received, quite well received with open arms.<sup>96</sup>

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94. Interview with T (Feb. 7, 2011); *see also* interview with Epsilon (Aug. 23, 2011); Interview with R (Mar. 20, 2011).

95. *E.g.*, Interview with B (June 22, 2011); Interview with Mu (Dec. 6, 2010); Interview with Zeta (Aug. 25, 2011).

96. Interview with B (July 12, 2011).

[Those two postings] were incredibly different actually. . . . [T]here was a hierarchy of justice-related personnel doing other work in [the first posting]. . . . [In the second posting] I was the sole person looking at this. If it was all about leveraging resources in [first posting], it was ten times that in [second posting]. And advocating for a much longer-term view of things, why this would benefit things.<sup>97</sup>

As a consequence, unlike in ICL, where litigation skills could be put to work immediately and effectively, it takes quite a long time to get up and running in a new ROL setting, as discussed further below. Some interviewees did express a sense that experience in another post-conflict setting gave them some idea of the kinds of issues that could arise in the next:

[The experience in another post-conflict country]. . . gave us a general idea of what the kinds of things they were going to need and what they wanted. But it was interesting because of the differences in the way they perceived [particular issues], that some of them [the imported solutions] worked and some of them would not.<sup>98</sup>

But as this quote suggests, ROL internationals were also wary of analogizing. Unless one has a solid understanding of the new post-conflict setting, one might contextualize wrongly based on past experience, by assuming that this post-conflict setting will operate like the last.

This need to adapt and integrate one's knowledge into different kind of settings means that even the kinds of knowledge that are readily obtained outside a particular post-conflict setting and that are in principle transferable from one to another cannot be transferred instantly. As a consequence, whereas ICL interviewees expressed no concerns about the speed of movement between tribunals, the speed of career PCJ professionals' movement from one post-conflict setting to another matters. This factor is even more important for local knowledge.

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97. Interview with Y; *see also* Interview with Epsilon (Aug. 23, 2011); Interview with Mu (Dec. 6, 2010); Interview with Phi (Feb. 9, 2011); Interview with U (Jan. 5, 2011); Interview with V (Dec. 14, 2010).

98. Interview with V (Dec. 14, 2010); *see also* Interview with T (Feb. 7, 2011); Interview with Zeta (Aug. 25, 2011).

## 2. *Local Knowledge and Relationship-Building*

More than any other form of knowledge, ROL interviewees emphasized the importance of local knowledge and local relationships for their work. Unlike other areas of knowledge, local knowledge and relationships are utterly untransferable.

Taking legal knowledge as an example, naturally one needs to learn the local legal system in order to work on it; doing so takes significant time and effort.<sup>99</sup> Furthermore, as difficult as it is to understand a foreign legal system completely in any context, in post-conflict contexts it may be particularly difficult. At the most basic level, the legal texts may be difficult or impossible to find:

But to actually trace the laws that they had, a lot of them were just—there's no real records anymore. It's the same with prosecution. If you want to talk about deporting someone or prosecuting someone for trafficking, based on law, there's nothing there. There's no records whatsoever. So I had to basically glean what little was available, based on the past. . . .<sup>100</sup>

In addition, there is much more to any legal system than its legal texts, and these other aspects are often more complex and less accessible:

[O]bviously [there is] the challenge of language. There's the challenge of kind of [multiple] layered [legal] systems. . . . There's kind of widespread corruption so even when you can figure out what the institutions are supposed to be doing, they're rarely doing it. . . . So those are the issues. And then . . . they have this kind of image of themselves and this ideal of independence that makes that not particularly welcoming to outsiders. So all of those things are kind of layered together, at least that's how I see it.<sup>101</sup>

Learning a post-conflict legal system is a complex and time-consuming task. In addition, it is not solely legal knowledge that is required, but also an understanding of the sociopolitical situation, cultural norms, and so on.

[T]he mission was very, very political . . . . [P]robably it wasn't to the average person, but maybe in the area that I was sort of working in, that it was quite political. And I think what I sort of learnt was

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99. *E.g.*, Interview with Kappa (Dec. 12, 2010); Interview with Xi (Nov. 30, 2011); Interview with Zeta (Aug. 25, 2011).

100. Interview with Lambda (Feb. 10, 2011).

101. Interview with T (Feb. 7, 2010).

my understanding of what . . . [our task] was in those areas and what the [post-conflict nationals] were looking for. I think you had to read between the lines. They often don't tell you upfront what they're really wanting, if you know what I mean. You have to read the local newspapers, you have to sort of see what's going on locally to actually understand what they're looking for from [the international institutions]. . . . [M]y awareness of what was required, I think had improved. And I think in the first mission I was more just sort of doing my job and not really thinking about my—the second time [in the same post-conflict setting] I was given the chance of looking and thinking about what was happening.<sup>102</sup>

Beyond local knowledge as such, with all its complexities, ROL interviewees repeatedly emphasized building local relationships as a key aspect of their work. While building relationships does not fall neatly into the category of knowledge or skills and is also closely connected to the question of networks and communities (as discussed in a previous article<sup>103</sup>), I address it briefly here because of its tight connection to local knowledge in the process of legal reform.

The centrality of relationships to ROL work is founded in the fact that internationals are not in control of the results of their ROL initiatives; their local counterparts are. Unlike in the ICL context, where internationals can issue indictments, file briefs, argue in court, and so on, ROL trainers need judges and attorneys to attend their trainings, those pursuing legislative reform need the legislature to enact their proposed bills, and so on. As a consequence, internationals cannot simply move ahead and implement their work; they need buy-in and action from local actors, which in turn requires trusting professional relationships.

People described building those relationships in a variety of ways, including ordinary gestures of friendship:

So it was a normal sort of process of having to build up trust. The fact that I was a lawyer meant that there was sort of a reason for them to have some degree of mutual respect there. . . . I was treating them with respect. We had quite friendly meetings. We had to meet in a series of dilapidated bombed out buildings at times. And so we would bring tea and cakes to the meetings, and they would be serious meetings in which we're talking about the details of the law,

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102. Interview with Omega (Dec. 15, 2010); *see also* Interview with Phi (Feb. 9, 2011); Interview with V (Dec. 14, 2010); Interview with Zeta (Aug. 25, 2011).

103. *Function*, *supra* note 55.

but they were—especially as time went on—good-natured meetings in which we were occasionally having a laugh. . . . By the end of the process, it was all hugging and presents and that sort of thing.<sup>104</sup>

Interviewees talked about how they work to foster aspects of these relationships that are important to the success of ROL initiatives, including the concepts of buy-in, local ownership, facilitating versus controlling legal reform processes, and so on: all familiar subjects in ROL discussions and important issues for promoting the effectiveness of their work. But without going into detail on those subjects, for purposes of this part and its focus on the effects of movement, what is important is that local relationships are critical to their work, that they can only be built slowly, and that they are individual and particular:

[M]y model has been deliberative engagement, . . . listening respectfully, engaging with it, understanding [that one's national counterparts] might be right and you might be wrong, that you have something to learn, but also that if not, that you may as well have something to offer. And make that case to people. And it obviously takes a lot longer. And I think that over time that's what gets you a more robust relationship.<sup>105</sup>

[W]orking with the actors in these institutions . . . requires a certain skill. . . . Because you don't come in and say, 'You people are corrupt. We're here to change you. We're going to work with you.' You come in and say, 'How can we work on mutually agreed goals that both of us want, and how can we do this in a way that you take the lead?' . . . [Y]ou have to do a constructive dialogue. It might take you six months before you can even get in. . . . And then you once you build the rapport, you can start getting buy-in. But you just can't say here's the contract, sign, and they'll move to their part. They don't see things that way. And also, you have to find reformers within this system that will get the momentum and the buy-in.<sup>106</sup>

Of course, while such local knowledge and relationships cannot be transferred between post-conflict settings, the skills of understanding the need for acquisition of local knowledge and of relationship-building can be.

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104. Interview with Kappa (Dec. 2, 2010); *see also* Interview with R (Mar. 20, 2011).

105. Interview with Delta (Aug. 22, 2011).

106. Interview with Gamma (Aug. 23, 2011).

And I think that it's very, very helpful for me to have worked in the field. . . . [O]f course every country is different, but you do have a sensitivity for the fact that, you know, you might not understand all of the undercurrents and all of the issues that they deal with on a daily basis. So since you've been in that position yourself, you can relate to that very well.<sup>107</sup>

Thus, it is not that nothing can be taken from one job to another. One can transfer one's relationship-building skills and one's attentiveness to these issues. One may even make use of some cultural cues and historical and legal knowledge if one stays within the same general region. And one can of course continue to make use of local knowledge and relationships in job moves that keep one within the same post-conflict setting.<sup>108</sup>

Nor is any movement at any speed or any time necessarily detrimental. But the extremely rapid movement that characterizes the justice junkies category identified at the outset certainly is. The process of building relationships and one's knowledge set in a new place is too time-consuming to occur with rapid movement.<sup>109</sup> Members of the domestic practitioner group, who are often working on very short-term contracts and may come and go in less than a year, also necessarily struggle to build effective relationships and gain the required knowledge in such a short time. As a consequence, locations that experience consistently rapid turnover suffer both from a persistent lack of local knowledge and relationships and from the inability of internationals to tailor the skills and knowledge they bring with them to the local environment in the brief time they are there.

### 3. *Other Factors*

#### *a. Timing and Time-Shifting Movement*

There are other structural elements of ROL programs that exacerbate the disruptions of relationship-building and loss of knowledge caused by job movement and especially by rapid turnover. Unlike ICL lawyers, ROL internationals did not express a sense that they needed to stay until their

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107. Interview with R (Mar. 20, 2011); *see also* interview with C (June 19, 2011).

108. *E.g.*, Interview with X (Nov. 29, 2010); Interview with W (Dec. 8, 2010).

109. Baylis, *Function and Dysfunction in Post-Conflict Justice Networks and Communities*, 47 *VAND. J. TRANSNAT'L L.* 625, 638 (2014).



projects end, with the consequence that mid-project personnel movement is typical and can be devastating:

The previous project manager had . . . only stayed in [there] for a couple of months and then left. . . . [T]he net result of that was effectively the rule of law project there wasn't properly staffed for about a year prior to my arrival. . . . So effectively the [local organizations] had become distrusting of [the international organization]. People had gone in and promised all this and then not delivered anything and money had never come through and it was a real mess.<sup>110</sup>

Exacerbating this problem is the failure of many institutions to take measures to assure as much continuity as possible. For example, when personnel leave a project, there is often no overlap between the departing person and their replacement; in fact, there can often be significant gaps in time between the two, with deleterious effects on the retention of relevant knowledge and the success of the project.

[T]here's no overlap built into these systems. So when somebody goes, well, . . . then the person goes, and then they start advertising for somebody new. And then often it easily takes between 3 to 6 months to get somebody new to replace them. So during that time, the program, if the person is a key personnel, that program just grinds to a halt, and it doesn't work. . . . And obviously that leads to a lot of loss of institutional memory. And all the know-how that that [departing] person might have acquired just goes straight out the window. So that's another problem. And the way to address that is by building in—and that obviously goes to the issue of costs, because then it makes programs more expensive—but donors should insist on that, really, if they're going to ensure continuity of programs, that when a key personnel goes, they have to ensure that there's an overlap of some kind. . . . Of course, it makes things more expensive, but it's a pretty small cost compared to the problems of starting all over again when you get new key people.<sup>111</sup>

In addition to overlap between personnel, ROL institutions could take aim at the fundamental problem of high mid-project turnover by taking measures to influence career PCJ professionals to time-shift their

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110. Interview with A (July 16, 2011); *see also* Interview with T (Feb. 7, 2011).

111. Interview with Zeta (Aug. 25, 2011); *see also* interview with I (May 12, 2011); Interview with Lambda (Feb. 10, 2011); Interview with W (Dec. 8, 2010).

movement until the end of their projects, as ICL internationals do, such as direct incentives and structural changes aimed at aligning contracts and project timelines.

*b. Mentors and Teams*

There are also other potential mechanisms for retaining information and ensuring continuity. Several people who worked in high-turnover settings stressed the importance of the mentoring relationships they developed with colleagues in the same institution, for example. The long-timer category of people who have been working in an area for many years could be a natural fit for this role. But while such relationships arose naturally from time to time, there did not seem to be institutional mechanisms in place for facilitating them, notwithstanding their utility. Making deliberate use of the team structure deployed in ICL could also be useful in mitigating turnover.<sup>112</sup>

*4. The Talent and Delegating Contextualization*

While many ROL interviewees stressed the importance of time and immersion to successfully implement ROL initiatives, one set of interviewees worked in very short stints and felt that they were successful in doing so: the talent. The talent are the experts who are brought in to work on a single piece of an ROL project. Their visits last from days to months, depending on the scenario. As such, they cannot spend long stretches of time learning the local situation and building relationships. Nonetheless, despite the fact that the structure of their work flies in the face of the observations of interviewees in other roles, they tended to feel that their work was effective and, specifically, that it was locally integrated and appropriate. While one should not take this positive self-assessment at face value, the difference between this and the views of other ROL interviewees about the importance of relationships and the time it takes to build them is worth exploring.

The talent offer a useful line of sight on questions of movement and PCJ work for several reasons. Because ROL work is so vulnerable to turnover, identifying some of the mechanisms and conditions that enable more effective ROL work on a short-term basis would be useful. Also, the talent may have some insights to offer for ICL as well. They insulate

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112. Interview with A (July 6, 2011); Interview with W (Dec. 8, 2010); Interview with Zeta (Aug. 25, 2011).

themselves from the need for local knowledge in a way that has some conceptual parallels to ICL litigation in tribunals, but they nonetheless bridge the gap to local implementation in a way that ICL tribunals typically do not.

The most important aspect of the talent's work vis-à-vis the questions discussed in this Article is that they present an example of the role of delegating contextualization. Instead of trying to learn the local situation in great detail and build relationships themselves, the talent rely on two inter-related strategies: turning over control to local actors, and the flexibility and cosmopolitanism typically mentioned by ICL interviewees. In essence, they turn over to national counterparts the process of adapting and implementing their information to the local context. In so doing, they also relinquish ownership of the project and responsibility for its consequences to their national counterparts as well.

In practical terms, the approach to work as "the talent" is characterized by three qualities: subject area expertise; narrowly defined, short-term projects; and the dual role of providing information and facilitating adaptation. The talent are experts in discrete substantive areas, e.g., case management systems, policing practices, or lustration laws. This expertise may be gained either in a post-conflict setting or another domestic setting, but the specific, technical expertise of the talent set them apart from other interviewees working in ROL, who were often (though not always) generalists and found their agendas defined by donors' plans and programs rather than by their own areas of expertise. Some, though not all, formalize their expertise in a model or set of best practices that can be adapted as needed.<sup>113</sup>

Just as critical is the definition of the talent's role and purpose. The talent are typically brought in for short-term projects with tightly defined goals, focused on their areas of expertise:

[N]ormally short term assignments are quite specific. You have two months to do a, b, c and that's what you do. You're not involved in the project management. You're not involved in the strategy development. You are an asset that comes with a very definite purpose. You do it and you leave.<sup>114</sup>

As they describe it, the talent then have two roles. The first is to present their expertise to local actors, often but not always in the form of a model.

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113. *E.g.*, Interview with Kappa (Dec. 2, 2010); Interview with Mu (Dec. 6, 2010); Interview with Phi (Dec. 7, 2010).

114. Interview with B (June 22, 2011); *see also* Interview with Chi (June 14, 2011).

The second role is to facilitate the process as local actors adapt the model and/or advice.<sup>115</sup> This process of facilitating requires a degree of cosmopolitan flexibility and relinquishment of control to those doing the adaptation and implementation:

[T]he preparation of the plan is not too difficult if you are familiar with the subject matter. The implementation is a completely different ball of wax, because the implementation is based on the direct interaction with the counterparts. And the counterparts are normally of a different ethnic background, of a different culture, of different customs, of different perceptions, about gender, about rule of law, . . . about foreigners and the acceptance of [your country's] foreign policy, or perhaps whatever institution you are representing. . . . So you have to be rather sensitive and rather flexible.<sup>116</sup>

[O]ne of the reasons for the different trips, which I indicated, was not only so [the national participants] wouldn't rely on me so much but in effect they had to do the next draft or rewrite. . . . The initial drafts came from me. Then from there all of the editing and changes and additions came from them.<sup>117</sup>

When the adaptation is complete, the talent's job is done. The ultimate integration and results of this work are the responsibility of the local actors. They also fall, undoubtedly, to the ROL international managing the project.

By delegating the process of contextualization to the nationals of the concerned post-conflict country, the talent leave that process in the hands of those with the most local knowledge and avoid the problem of obtaining sufficient local knowledge and relationships to undertake that process themselves. Notably, however, they do not completely abandon the process; most described playing the role of facilitating progress by providing assistance in various forms, such as feedback on drafts, deadlines in the form of meeting dates, and so on.

This also underlines the importance of internal continuity and the timing of departures that was discussed in Part III.B on the ICL. One consequence of this role being so short-term is that there is very little chance of the talent leaving the project midway through. Some significant

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115. *E.g.*, Interview with Kappa (Dec. 2, 2010); Interview with Lambda (Feb. 10, 2011); Interview with Mu (Dec. 6, 2010).

116. Interview with B (June 22, 2011).

117. Interview with Mu (Dec. 6, 2010).

part of the damage caused by turnover in ROL projects comes from the loss of knowledge and relationships caused by mid-project departures, not by the speed of turnover per se. So long as an international is present for the entire project segment to which their knowledge is important, the rapidity of their departure is less likely to have an impact on the project as a whole. In this vein, it's notable also that under the talent's strategy the local knowledge remains with the local actors throughout this process and thus is not totally lost when the international departs, so long as the local actors stay with the project. As long as there is someone continuously overseeing the project as a whole (and that person might in principle be an international or a national actor), internationals can cycle in and out as project milestones are reached with relatively little harm to the project as a whole.

Of course, the talent are able to take the approach they do only because there are other internationals managing the programs. And their sense that their work is successful is undoubtedly due in part to the fact that they are able to define their goals relatively narrowly, as compared to other ROL internationals. Rather than being forced to confront the complexities of the socio-political situation and to frame their success in that context as other ROL interviewees did, the talent were more likely to focus on the achievement of their task as the measure of success and then to move on. In this, also, they were more like ICL tribunal interviewees.<sup>118</sup>

But while the situation of the talent is in many ways different than other ROL internationals, their experience suggests the concept of delegating contextualization as an answer to the tension between the need for local knowledge and the reality that many internationals are moving too rapidly to attain it. In some form, delegating contextualization could be a mechanism for addressing the need for those who are adapting ROL models to local contexts to have local knowledge and relationships.

##### 5. *ROL Conclusions*

As a consequence of these differences in the nature of the core skills and activities of ROL, ROL interviewees saw tribunal-hopping and other forms of rapid turnover as considerably more detrimental to their work than did ICL interviewees. Spending time in the concerned post-conflict environment is critical to developing the relationships and local knowledge that are fundamental to ROL, in and of themselves, and for

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118. *E.g.*, Interview with Phi (Feb. 9, 2011).

purposes of effectively making use of one's other knowledge and skills. When an international moves, those relationships and knowledge are not transferable, and even if that person has honed their relationship-building skills, it will take months or even years to build new relationships and knowledge in a new setting. In contrast, the key litigation skills needed for ICL can be transferred quite easily from one tribunal to another, and the tribunal context are similar enough to allow easy transfer of other skills as well, so that tribunal-hopping does not have much impact on how effectively those skills can be developed or used.

However, the talent present several important lessons for ROL work generally. Because their time on the job is so short, the problem of mid-project departures is eliminated, and continuity is assured, pointing to the importance of timing and time-shifting movement, as discussed in the ICL section. The talent also delegate the task of contextualizing their work to local actors and thereby avoid the need to spend a great deal of time on the ground learning the local systems themselves, while still ensuring the opportunity for the knowledge and skills they are transferring to be adapted to the local context.

#### IV. CONCLUSIONS

Internationals working in post-conflict justice develop core knowledge sets that encompass several forms of critical information and skills. It is important to the success of PCJ initiatives that internationals should be able to attain, transfer, and use that information as they circulate among PCJ jobs. Accordingly, I advocate that PCJ institutions should take steps to systematically support internationals' knowledge-related functions, in order to make their work more effective. This is of particular significance for two reasons: because in some instances transfer of information and skills is the very purpose of internationals' involvement, and because current policies and practices do not systematically support and at times even undermine internationals' acquisition and use of the necessary knowledge.

In particular, there are two significant dynamics that emerged from the comparison of rule of law and international criminal law; institutions could leverage these dynamics to more effectively make use of internationals' knowledge and to mitigate the negative effects of turnover and job movement. These dynamics address concerns that frequently arise about internationals' job movement between post-conflict states and PCJ institutions.

The first dynamic is what I have dubbed “time-shifting movement.” It presents a way of mitigating the disruption that internationals’ job movement poses to ongoing programs and cases. From the ICL context comes the insight that it is the timing of job movement that matters for maintaining the continuity of knowledge, skills, and relationships during ongoing cases and programs, more than the amount of time an international spends in a job in absolute terms. Therefore, institutions should focus on time-shifting internationals’ job movement to the ends of programs and cases to ensure retention of institutional knowledge and consistent strategies and relationships over the lifespan of those programs and cases.<sup>119</sup>

The second dynamic, “delegating contextualization,” comes from ROL work; it is a response to the complexity of learning a new post-conflict setting or institution and of appropriately adapting and implementing pre-existing knowledge and skills in the new context. When internationals move between PCJ settings, it is critically important for them to adapt their existing knowledge and skills to their new setting, whether a PCJ institution or a post-conflict state. In some contexts, like international criminal tribunals, this can be done relatively easily and quickly, but often this process is time-consuming and complex. In such instances, it is important to have actors who possess local knowledge and relationships carrying out that contextualization process. But when internationals move between post-conflict settings and institutions rapidly, they often do not have sufficient opportunity to acquire the necessary local knowledge and relationships and to adapt their knowledge and skills. Thus, while timing is most important for continuity, absolute time in a post-conflict setting or institution matters for enabling contextualization. Accordingly, when possible, the fundamental, delicate process of contextualization should be delegated to local actors and/or to locally knowledgeable international personnel. Expecting all involved internationals to effectively contextualize their knowledge and skills is unrealistic in light of existing patterns of job movement, misplaces international resources, and unnecessarily limits both international and local involvement.

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119. Of course, in many instances time-shifting movement to the end of a project or case will in fact mean extending the length of time that an international stays on the job. The importance of the concept of time-shifting is that it defines the relevant period of time in a purposeful way, rather than arbitrarily designating a longer time span as desirable. If we were to focus instead on extending the duration of internationals’ time in a position as such, we would make the mistake of equally valuing longer periods of work irrespective of whether they interrupt project cycles or correspond to them.

These issues are particularly acute when an international's job movement is rapid and when turnover in a PCJ institution or post-conflict state is high. However, the fact that internationals move between PCJ jobs, settings and institutions, and that some of them do so rapidly, is not likely to be easily changed. Incentives for these movement patterns are interwoven into the structure of international interventions in post-conflict justice. Accordingly, I assume that the facts of job circulation, including some rapid movement and high turnover, will stay the same. Rather than trying to change aggregate rates of job movement, my analysis in this Article is aimed primarily at improving continuity, adaptation, and implementation of knowledge and skills within the context of the existing patterns of job movement.

There are several measures that institutions could take to provide structural support for internationals' knowledge, to encourage internationals to time-shift their job movement to the ends of cases and projects, and to delegate contextualization to local actors or key internationals. These measures range from relatively small changes in policies and procedures within existing structures to major structural changes in employment policies and/or program development and implementation. Each of these recommendations relates to one of the three major conclusions of the Article. I have not attempted to be comprehensive with these proposals; there are, of course, any number of other specific recommendations that others may be able to develop that would build from the findings and conclusions of this Article.

#### *A. Structural Support for Internationals' Knowledge*

##### *1. Training (Both ROL and ICL)*

Employers should provide training for new employees. Some employers presently provide no training at all.<sup>120</sup> In the contracting context, donors should require that contractors include time and budget for training in their proposals. In addition, training should be more than a safety briefing or safety skills session. It should focus on key information and skills that are not readily transferable from prior contexts, such as information about the particular institution and setting. In particular, ROL internationals indicated they would have valued training in the following areas: the national/local legal system(s); the national/local culture; the

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120. A number of interviewees reported receiving no training whatsoever upon starting some positions, including V. Interview with V (Dec. 14, 2010).



national/local language; how to work with interpreters; and the overall program context, including the program for which the international was hired, related programs by the same donor and other institutions, and related national policies, programs, and laws.<sup>121</sup>

## 2. *Personnel Overlap (Both)*

Overlap between outgoing and incoming personnel in the same job position is a highly effective way of ensuring transition of relevant knowledge, as well as continuity in relationships and activities from one person to the next. Interviewees repeatedly advocated for overlap and decried the negative consequences of lack of overlap, particularly when there was actually a hiatus between one international's departure and the hiring of the next person.<sup>122</sup> ICL interviewees indicated that the team structure of their work provided some buffer against loss of knowledge. It was in ROL that this seemed to rise to the level of a crisis, particularly in instances where a long hiatus occurred between the departure of one person and the arrival of the next. In such instances, programs could lie dormant for months and the loss of institutional and local knowledge and relationships was described as extreme.<sup>123</sup>

There appear to be several reasons that overlap does not happen presently, including the cost of temporarily paying two people for one position, policies against permitting two people to occupy the same position simultaneously, and extremely slow hiring processes that prevent that some institutions from hiring new personnel quickly enough to permit overlap. As far as contracted projects are concerned, like training, personnel overlap is something that donors should insist that contractors plan and budget for in their proposals. Like including training, it will cost more, but like training, it provides fundamental structural support to enable internationals to obtain the knowledge they need to do their jobs. In the context of direct employment by governments and IGOs, it may be more difficult to shift institutional hiring policies and bureaucratic practices, but it would be worthwhile to make some effort to do so.<sup>124</sup>

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121. Interview with Kappa (Dec. 2, 2010); Interview with Mu (Dec. 6, 2010); Interview with S (Mar. 9, 2011); Interview with T (Feb. 7, 2011).

122. See discussion *supra* Part III.C.3.a.

123. Interview with I (May 12, 2011); Interview with Lambda (Feb. 10, 2011); Interview with W (Dec. 8, 2010); Interview with Zeta (Aug. 25, 2011).

124. Interview with I (May 12, 2011); Interview with Zeta (Aug. 25, 2011).

### 3. *Mentoring Relationships (Both)*

Several ICL and ROL interviewees mentioned the value of mentoring relationships.<sup>125</sup> Of course, such relationships provide a useful mechanism for conveying knowledge and skills. They also provide a way of mitigating gaps in training and in personnel overlap. Nonetheless, no one mentioned any institutional support for such relationships; rather, they seemed to develop as a matter of chance. Institutions could provide structural support for these relationships, e.g., by building mentoring into job descriptions and tasks, taking into account mentoring activities in job evaluations and consideration for promotion, or by creating formal mentoring pairings.

### 4. *Intern Circuit (ICL)*

Several ICL interviewees affirmed that the circulation of interns between ICL tribunals is an effective way of conveying useful information from one tribunal to another.<sup>126</sup> However, tribunals do not appear to have any process for taking advantage of interns' knowledge; rather, whether any such knowledge comes to light seems to be largely a matter of chance, depending on whether an intern happens to be given work that relates to something they did at the previous tribunal.<sup>127</sup> Tribunals could create some sort of formal mechanism to address this, such as conducting intake interviews with interns as part of their initial training, to ascertain what cases they worked on and what information they might be able to share as a result. Just as useful might be simple awareness-raising, so that interns are conscious that the knowledge acquired in their previous internships might be valued and may be more likely to proactively share information, and so that intern coordinators and attorneys can create opportunities for them to do so.

In the ROL context, interns did not seem to play such a prominent role, raising the question of whether an intern circuit might serve the same function in the ROL context. The dissimilarity of the work contexts and the need for contextualization suggests that it would be more difficult to replicate this dynamic in the ROL context, but perhaps there are some

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125. Interview with A (July 16, 2011); Interview with Iota (Sept. 12, 2011); Interview with W (Dec. 8, 2010); Interview with Xi (Nov. 30, 2010).

126. Interview with Iota (Sept. 12, 2011); Interview with J (Apr. 29, 2011); Interview with Theta.

127. Interview with Iota (Sept. 12, 2011); Interview with J (Apr. 29, 2011); Interview with Theta.

relatively fungible institutions and contexts in which an intern circuit might be a viable knowledge resource.

#### *5. Civil Law Experts and Other Qualifications (ROL)*

While internationals can and do learn on the job, not all knowledge and skills can be picked up that way. If we are to take internationals' role as knowledge-conveyers and implementers seriously, we need to distinguish between the knowledge and skills they can reasonably acquire on the job and those that cannot and assure that they are already qualified in the latter areas. One particularly glaring example that seems to arise frequently, especially for Americans, Brits, and other Commonwealth attorneys, is the deployment of common law lawyers to work on civil law systems. Certainly, there are many areas in which common law lawyers can offer assistance, but attorneys whose only experience is in common law systems are not likely to be well qualified for many roles within civil law systems, such as serving as judges or attorneys within those systems, or working directly on drafting legislation or reform of the legal institutions within those systems.<sup>128</sup>

#### *B. Mechanisms for Time-Shifting Movement*

In this part, I identify three categories of mechanisms for time-shifting internationals' movement to the beginnings and ends of cases and projects: structural support, targeted incentives, and cultural norms. I suggest a few possible approaches in each category, but of course, one might implement any number of other particular tactics, depending on the circumstances.

##### *1. Structural Support*

Institutions should take steps to structure positions to make it appealing for internationals to stay in their jobs over the course of a project or case, or at least through milestones in the project or case. Useful measures would include having a realistic timeline of the project or case and linking employee contract length and/or assurance of contract renewal to that timeline. It would also be helpful to build in opportunities for professional development and advancement within the context of the case/project so that people do not have to leave to advance, e.g., by allowing for significant increases in pay grade or rank in the project or case budget.

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128. Interview with Gamma (Aug. 23, 2011); Interview with T (Feb. 7, 2011).

## 2. Targeted Incentives

Employers could also offer incentives for staying through certain milestones or through the end of a project or case. Such incentives could be framed in a variety of ways, such as bonuses, preferences for promotion, or preferential selection for movement to a new litigation team or project for those who stay through the end. For example, the Special Court for Sierra Leone reportedly offered bonuses to retain key personnel through milestones in its completion strategy; the ICTR and ICTY reportedly did not.<sup>129</sup>

## 3. Cultural Norms

ICL interviewees perceived the desire of litigation attorneys to stay through the end of their case as a cultural norm relating to their professional identity, rather than a practice sparked by external incentives. Cultural norms are of course not something an institution can implement at will. They do, however, seem more likely to develop in a context of institutional structures that permit and incentives that encourage such behavior, such as those discussed above. Institutions could also take symbolic or expressive steps to encourage the development of such norms, such as explicitly stating during hiring that they want to hire and retain personnel for the entire project, thereby setting personnel's expectations and decreasing the incentives for them to seek new employment as a safeguard against the uncertainty of contract renewal. An expectation of staying for the entire project or case might promote a mutually reinforcing cycle: if people expect to be retained for the whole project or case and to be associated with its success or failure, they may be more likely to put energy into working on it; once having put energy into it, they may be more inclined to stick with it until the end; and so on.

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129. 2006 Report, *supra* note 53, ¶ 3; 2005 Report, *supra* note 53, ¶ 47; LUC REYDAMS, JAN WOUTERS, & CEDRIC RYNGAERT, INTERNATIONAL PROSECUTORS 285 (2012).

*C. Mechanisms for Delegating Contextualization to Local Actors and/or Key Internationals*

Just as contextualization is the most delicate of knowledge-conveying processes, so also whether and how to delegate contextualization is the most context-specific of these categories and the one that requires the most careful touch. It is also the conclusion that entails significant rethinking about some basic structures of international interventions, rather than simply tweaking the current structure. Accordingly, I present some conceptual ideas below but do not make specific suggestions as to how they might be implemented. A specific plan of action should be developed for each context individually.

*1. Building ICL Connections (ICL)*

In ICL, the problem of contextualization is situated differently than it is in ROL. By the nature of ICL litigation, only very limited contextualization, focused primarily on “the facts” of a case, is necessary for the litigation process itself. Thus, the question of contextualization arises, not so much for purposes of the internal litigation process, but as a means of connecting that process to the country in question. This seems to come to the fore in three contexts: cooperation issues, outreach, and mentoring in the hybrid tribunals. So in ICL, contextualization has already been delegated for the most part to the staff tasked with managing cooperation and outreach.

Thus, especially in the international tribunals, one question is how to more effectively engage the relatively isolated and decontextualized litigation process with the post-conflict state. In the hybrid tribunals and panels, another question is how to manage the complexities of mentoring and working with national colleagues, especially in light of the demands of the litigation process. The problem of contextualization for ICL is centered on the engagement of nationals with the tribunals’ findings and developing processes for the deliberate, thoughtful construction of national meanings for the litigation process and its findings. Contextualization processes could be entirely external to the litigation process or could have interconnections with it, but are unlikely to take place entirely within the litigation process itself.

## 2. *Role of Domestic Practitioners (ROL)*

Domestic practitioners present a difficult contextualization problem, particularly when domestic practitioners are recruited in large numbers by contracting companies. They typically arrive with knowledge from a single domestic context and little if any knowledge of the post-conflict state, ROL programming, or international institutions. As a consequence, their knowledge and skills typically need a great deal of contextualization, and they are not in a position to do that work themselves for quite a while, if at all. If they stay for only one contract term, that will barely leave them time to learn the local setting before they depart, much less to contextualize their skills to it. In the ICL context, litigators (the ICL equivalent of domestic practitioners) bring valuable litigation skills to the tribunals and can be relatively swiftly integrated into the comparatively fungible tribunal setting. In ROL, integration of domestic practitioners' skills is neither swift nor easy.

As such, recruitment of domestic practitioners for full-time, embedded work in a post-conflict state raises several questions: First, do domestic practitioners bring some useful skill set to ROL work that would not be brought by career PCJ professionals? Next, even if they do, is it worth hiring domestic practitioners for these positions at all, as opposed to experts to do short-term interventions on the same topics? And finally, if the answers to the previous two questions are yes, then is there some way to delegate contextualization of their work so as to more effectively integrate them and to mitigate the limitations of their single-source domestic knowledge? The answers to these questions will vary for different projects.

Relatedly, it is worth pointing out that with domestic practitioners, one issue repeatedly raised by interviewees was how to get "good people" with valuable knowledge and skills. According to several ROL interviewees, the best people in any domestic job won't jeopardize their long-term careers at home for a short-term stint abroad. Indeed, anyone who is doing even reasonably well is not going to walk away from a secure, long-term domestic career even for a fairly large sum of money. As a consequence, institutions need a mechanism for preserving nationals' jobs at home to attract good people.<sup>130</sup> The mechanism that has been used thus far in the United States is typically short-term contracts, on the theory that people

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130. Interview with Kappa (Dec. 2, 2010); Interview with Lambda (Feb. 10, 2011); Interview with Omega (Dec. 15, 2010); Interview with U (Jan 5, 2011).

are more likely to be able to get a leave of absence for the short-term than the long-term. But there are other approaches: one method of job protection is to hire staff through secondments; another is to reach agreements with particular employers to allow leaves of absence.<sup>131</sup>

### 3. *Structure of ROL*

Overall, the problem of contextualization in ROL relates to issues of both timing and time: it is most severe when projects face repeated, mid-project turnover that occurs too rapidly for internationals to properly contextualize their work. ROL internationals repeatedly indicated that it took them months to years to learn the local legal system and other relevant political and cultural information and to build local relationships.<sup>132</sup> By its nature, the process of contextualization cannot co-exist with project and employment structures that require, encourage, or at least do not deter mid-project departures and movement in less time than is necessary to internalize and implement local information and to form professional relationships with local counterparts.

There are several possible structural approaches to this problem, in addition to the time-shifting mechanisms discussed above. One is to adopt a model like that suggested in the “domestic practitioners” section above: to staff ROL projects more lightly with embedded full-time staff who play the role of policy planners, local knowledge-attainers, and local relationship-builders. The embedded staff can then bring in “talent” to play the substantive roles that would otherwise have been taken by other embedded staff. Embedded staff can either play the role of contextualizers for these experts or can facilitate contextualization by local counterparts, or both. If this model were deployed, it would be critical to have successfully implemented time-shifting to ensure continuity in the embedded career staff. Another possibility is to center institutional memory in career staff outside the country and to delegate contextualization entirely to local actors. In any circumstance, the key is that someone with the knowledge of the local setting and the project—whether an international or local actor—should undertake the process of contextualization.

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131. Interview with Lambda (Feb. 10, 2011).

132. Interview with C (June 19, 2011); Interview with Gamma (Aug. 23, 2011); Interview with Kappa (Dec. 2, 2010).

All in all, there are a variety of measures that PCJ institutions could take to facilitate internationals' development and conveyance of the knowledge they need to do their work. These include incentives to encourage internationals to time-shift their movement to the end of their cases and projects, and processes to enable internationals to delegate contextualization of their knowledge to actors with better understandings of the local settings, among other mechanisms. What is most important is to recognize the broad range of relevant practice-oriented knowledge that is critical to PCJ initiatives, and to develop some ways of supporting the creation, adaptation, and transfer of that knowledge, so that internationals and the PCJ organizations they represent can do their work more effectively.



## APPENDIX A: METHODOLOGY

## I. BACKGROUND

A few years ago, in an essay entitled “Tribunal-Hopping with the Post-Conflict Justice Junkies,” I drew on my observations in post-conflict countries to write about the internationals who do PCJ work. I focused on a particular subset of internationals, a group I dubbed the “post-conflict justice junkies,” and their pattern of “tribunal-hopping” from one post-conflict setting and institution to another. The quintessential “post-conflict justice junkie,” as I explained it, is a junior or mid-level professional, an attorney, or a legal officer or adviser working in the field of post-conflict justice. She moves frequently from one internationalized criminal tribunal or legal reform program to another. Wherever she goes, she finds people she knows and people to whom she is connected through friends from her previous postings. I posited that this “tribunal-hopping” facilitated the production and transfer of skills and information from one post-conflict setting and institution to another, while simultaneously suppressing internationals’ ability to attain the local knowledge that is also critical for designing and implementing PCJ initiatives.<sup>133</sup>

The study on which this Article is based explored the ideas introduced in that essay. I began with four hypotheses:

(1) There is a network or epistemic community of “post-conflict justice junkies” who engage in the characteristic behavior of “tribunal-hopping,” moving rapidly from one PCJ position to another.

(2) Tribunal-hopping is to some extent part of the structure of international interventions in post-conflict settings, and is not merely idiosyncratic or situational.

(3) Tribunal-hopping promotes the development of certain kinds of knowledge while repressing the development of local knowledge amongst post-conflict justice junkies.

(4) Post-conflict justice junkies convey knowledge rapidly from one post-conflict setting to another and make some use of that knowledge in their new milieu, to good effect and bad.

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133. Baylis, *supra* note 12.

The study also extended beyond the concepts introduced in the original essay, as I encouraged participants to express their own ideas about their work during the interviews and then explored recurring themes with other participants as the research progressed. Throughout the study, I continued to focus on four aspects of PCJ work closely related to my original ideas: (a) movement between jobs and post-conflict settings, (b) networks and communities, (c) knowledge, skills, and legal norms, and (d) how these factors impact effectiveness. This Article focuses on the question of the development and transfer of PCJ knowledge, how this is affected by internationals' movement, and the relevant structural factors. The role of networks and communities is discussed in another law review article.<sup>134</sup>

## II. METHODS AND SCOPE

In this study, I chose to compare multiple PCJ contexts for several reasons: to identify systemic patterns that are common across PCJ settings; to explore changes in those patterns across different contexts and thereby to identify relevant factors that may be affecting those patterns; and in particular, to compare how those patterns emerge in the ICL and ROL contexts. A holistic approach also fits the nature of the subject. The studied behavior takes place across the entire field: individuals move from one organization and post-conflict setting to another over the course of their careers. Part of what I examine is the direction and nature of that movement and whether and how it connects disparate post-conflict settings and initiatives. Finally, while there have been numerous case studies and analyses of work in particular post-conflict contexts, like those cited in the introduction, these topics have not previously been explored across post-conflict contexts.

The study consisted of 50 interviews and an on-line questionnaire, which received 181 validated responses. The interviews and questionnaire were open to internationals who had worked in post-conflict justice. This Article focuses on some of the concepts discussed with interviewees.

The purpose of conducting interviews was to investigate the several complex and subjective questions raised by the study: interviewees' experiences of network and community, their sense of their skills and knowledge and how those changed over time, the reasons for their job movements, and the relationship of all these factors to the effectiveness of PCJ work, as they conceived of it. Interviews provided the opportunity to explore these issues with people who had a variety of experiences in PCJ

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134. *Function*, *supra* note 55.

work and thus to gain different perspectives on the same issues. The interview format also enabled me to discuss these issues with interviewees in some detail, and thereby to attain a nuanced understanding of each interviewee's views.

The interviews were conducted via phone, Skype, and in person. All were conducted in English. Interviews lasted between thirty minutes and three hours. Most interviewees requested anonymity, and so I identify interviewees here only by an anonymous code and have redacted identifying details. I use a second set of anonymous codes for analysis that focuses on interviewees' job movement patterns, so as to be able to provide information about those patterns that cannot be connected to the content of their interviews. I also requested permission from interviewees to publish the information provided in their interviews and to quote them in any publications. Most interviewees gave these permissions; those who did not are treated as background, or cited but not quoted, according to their preferences. More information about the interviewees is provided in Appendix B.

The opportunity to participate in an interview was publicized in several ways. Respondents to the on-line questionnaire were given the opportunity to volunteer for an interview after completing the questionnaire. The study was publicized through blogs and message boards concerning international law and post-conflict justice. I also requested names of possible interviewees from contacts who had worked for a variety of institutions, including international and hybrid criminal tribunals, the United Nations and other international organizations, the U.S. government, and NGOs. I then used the snowball technique to identify further interviewees. Eventually, most of the information I gathered in each interview on the main questions of the study served primarily to corroborate or elaborate upon the information given by others, rather than generating new themes. At this point, I identified several trends in the data on which I wished to follow up and conducted a handful of interviews aimed at gaining information on those particular issues. These interviewees were identified by requesting suggestions from contacts and from prior interviewees who worked in the relevant areas.

I used a list of standard topics for the interviews, which were intended to get at the major questions of the study. However, while interested in testing my theories, I also wished to garner interviewees' own concepts of their experiences, and therefore, I endeavored to keep my questions open-ended and to follow up on themes introduced by interviewees, both within the interview and in interviews with others.

When given permission by the interviewee, I recorded the interviews and had them transcribed; most interviews gave permission for recording. When interviewees did not give permission for recording, I took notes. I then coded and analyzed the transcripts and notes for relevant themes using NVivo. In analyzing the interviews, I focused on identifying those themes that arose repeatedly across a range of different institutions and countries and examining how they emerged in those different contexts. I also noted themes that appeared to be limited to particular institutions or settings.

I attempted to counter the risks of self-selection and bias amongst the interviewees in several ways at different stages of the process. First, interviewees were identified through several different means of publicity and through people who had worked in a range of institutions in a variety of countries over different periods of time. The interviewees themselves worked in a wide variety of institutions and post-conflict settings, as set forth in the indexes in Appendix B. During the interviews, interviewees were also asked about their prior work experience, education, and reasons for getting involved in PCJ work, so as to ensure that I had interviewees from a diversity of backgrounds and to provide insight into the starting point for their PCJ experiences. I also invited interviewees to speak at length in response to my questions and to raise their own observations and concerns; this allowed for a more complete understanding of the interviewees' views and thus for a better assessment of the factors influencing their perspectives. Finally, in analyzing the interviews, I first coded the interviews for the topics under discussion and then reviewed the comments of different interviewees on each of those topics directly against each other, allowing for immediate comparison of the views of people from different contexts and for exploration and testing of the patterns that seemed to emerge. In developing my ideas, I focused on those themes that emerged repeatedly across different settings from people with different perspectives.

Finally, as mentioned at the outset of the Article, there are several important characteristics of the study's scope and limits. It is qualitative, based on analysis of the interview transcripts. Also, it has a limited set of participants. Appendix B provides additional detail about the interviewees and their relevant PCJ experience. As for the interviewees' demographics, I spoke with 31 men and 19 women. Of the 50 interviewees, 26 were U.S. citizens, 21 came from European or Commonwealth countries, 2 from South America, and 1 from the Middle East. Accordingly, as noted at the outset of this Article, the study's results and my analysis represent the perspectives and experiences of people from those regions.

## APPENDIX B: INTERVIEW INDEXES

TABLE 1: INTERVIEWEES

INTERVIEWEE	INTERVIEW DATE	FIELD
A	7/16/11	ROL
Alpha	5/12/11	Both
B	6/22/11	ROL
Beta	7/12/11	ICL
C	6/19/11	ROL
Chi	6/14/11	ROL
D	5/31/11	Both
Delta	8/22/11	Both
E	6/2/11	Both
Epsilon	8/23/11	Both
Eta	9/6/11	ICL
F	4/14/11	Both
G	4/15/11	Both
Gamma	8/23/11	ROL
H	5/15/11	ICL
I	5/12/11	Both
Iota	9/12/11	ICL
J	4/29/11	ICL
K	4/20/11	ICL
Kappa	12/2/10	ROL
L	4/15/11	ICL
Lambda	2/10/11	ROL
M	6/29/11	ROL
Mu	12/6/10	ROL
N	4/14/11	ICL
Nu	6/22/11	ROL
O	9/19/11	ICL
Omega	12/15/10	ROL
Omicron	11/30/10	ROL
P	4/5/11	ICL
Phi	2/9/11	ROL
Pi	12/7/10	ICL
Psi	4/16/11	ICL
Q	3/24/11	Other
R	3/20/11	ROL
Rho	3/29/11	ICL
S	3/9/11	ICL
Sigma	4/6/11	ICL
T	2/7/11	ROL
Tau	6/15/11	ICL
Theta	9/8/11	ICL
U	1/5/11	ROL

INTERVIEWEE	INTERVIEW DATE	FIELD
Upsilon	3/29/11	Both
V	12/14/10	ROL
W	12/8/10	ROL
X	11/29/10	Both
Xi	11/30/10	Both
Y	11/6/10	ROL
Z	11/29/10	ICL
Zeta	8/25/11	ROL

## TABLE 1 NOTES

(1) Dates are in Month/Day/Year format.

(2) ROL = Rule of Law

ICL = International Criminal Law (includes domestic accountability mechanisms)

Both = ROL and ICL

Other = Non-ICL accountability mechanism

TABLE 2: AGGREGATE NUMBERS OF INTERVIEWEES BY INSTITUTIONAL CATEGORIES

INSTITUTIONAL CATEGORY	INTERVIEWEES
ICL tribunals	27
International organizations	21
Foreign governments	14
NGOs	11
Private contracting companies	6
National post-conflict governments	4
Academic institutions	4
Independent consultants	4

## TABLE 2 NOTES

- (1) "ICL Tribunals" includes international and hybrid tribunals as well as hybrid panels in national courts. This category includes defense attorneys.
- (2) "NGOs" includes both international and national post-conflict state NGOs.
- (3) Because I included hybrid panels in national courts in the "ICL tribunals" category, I did not include such panels in the "National post-conflict governments" category.
- (4) "Academic institutions" includes only people working in non-research/publication capacities, e.g. for academic institutions as contractors for other entities. People who were solely teaching, researching or publishing about post-conflict justice were not included.
- (5) Independent consultants have their own consulting companies. They may contract directly with funders and/or with private contracting companies.
- (6) Interviewees may be included in multiple institutional categories.
- (7) These categories includes people working directly for these institutions and indirectly through contractors.
- (8) The number of contractors ("Private contracting companies" and "NGOs") is undercounted, because people sometimes listed on their CVs and/or mentioned in their interviews only their funding organization. In addition, some ROL contractors with long careers did not list many of their projects, producing an undercount of both funders and contractors.

TABLE 3: AGGREGATE NUMBERS OF INTERVIEWEES BY INSTITUTIONS

INSTITUTION	INTERVIEWEES
UN	14
ICTY	11
US government	10
ICTR	9
SCSL	7 (+2 off-site)
ECCC	6 (+2 off-site)
ICC	6 (+1 off-site)
OSCE	6
EU	5
STL	4
UK government	4
Bosnia State Court	3
PAE/PAE-HSC	3
ABA-CEELI/ABA-ROLI	2
COE	2
ICTJ	2
A national NGO	2
A national post-conflict government	2
Italian government	2
RAMSI	1
Special Panel for Serious Crimes, Timor-Leste	1
World Bank	1
16 private contracting companies	1 person each
15 international NGOs	1 person each
4 academic institutions (in non-research capacities)	1 person each
4 independent consultants	1 person each
3 foreign (non-post-conflict) governments	1 person each
3 national NGOs	1 person each
3 national post-conflict governments	1 person each

## TABLE 3 NOTES

- (1) This table follows the same guidelines as Table 2, as applied to institutions rather than institutional categories.
- (2) For tribunals, this table designates separately people who worked solely off-site.
- (3) Not all institutions are listed by name. I did not list the institution by name when I felt withholding the name was necessary to protect the identity of interviewees. Also, if there was only one person working for an institution, I consolidated institutions of the same type into a single category for the sake of space, and on the understanding that it would be more useful to the reader to get a sense of the number of institutions in each category that were represented, rather than the name of each individual institution.

TABLE 4: AGGREGATE NUMBERS OF INTERVIEWEES BY REGION

REGION	TOTAL	IN-COUNTRY	OUT-OF-COUNTRY
Balkans	28	17	11
Africa	25	13	12
Middle East	17	12	5
Asia	15	13	2
Non-Balkans Europe	4	4	0
Americas	3	3	0
Oceania	1	1	0
Unknown	6	NA	NA

## TABLE 4 NOTES

- (1) The “unknown” category represents interviewees who did not list all the countries in which they had worked.
- (2) Even if a person worked in multiple countries in a region, I only counted them once for that region. Similarly, if a person worked in a region more than once, I only counted them once.
- (3) If someone worked both in-country and out-of-country on the same region, I only counted them in the in-country category for that state.
- (4) Individual interviewees may have worked in more than one region.

TABLE 5: AGGREGATE NUMBERS OF INTERVIEWEES BY COUNTRY

COUNTRY/REGION	TOTAL	IN-COUNTRY	OUT-OF-COUNTRY
Former Yugoslavia	13	0	13
Kosovo	13	13	0
Sierra Leone	10	6	4
Bosnia-Herzegovina	9	9	0
Cambodia	9	6	3
Afghanistan	8	8	0
Rwanda	8	0	8
Other Africa	7	0	7
Iraq	6	5	1
Liberia	5	4	1
Lebanon	4	0	4
Timor-Leste	4	4	0
Georgia	2	2	0
The Philippines	2	2	0
Serbia	2	2	0
Somalia	2	1	1
Sudan	2	2	0
South Sudan	2	2	0
Uganda	2	1	1
Ukraine	2	2	0
Bolivia	1	1	0
Chile	1	1	0
Colombia	1	1	0
Congo	1	1	0



COUNTRY/REGION	TOTAL	IN-COUNTRY	OUT-OF-COUNTRY
Costa Rica	1	1	0
Croatia	1	1	0
Cyprus	1	1	0
Dominican Republic	1	1	0
Ecuador	1	1	0
Guatemala	1	1	0
Haiti	1	1	0
Honduras	1	1	0
Indonesia	1	1	0
Ivory Coast	1	1	0
Kenya	1	1	0
Malawi	1	1	0
Mozambique	1	1	0
Namibia	1	1	0
Nepal	1	1	0
Pakistan	1	1	0
Panama	1	1	0
Paraguay	1	1	0
Peru	1	1	0
Solomon Islands	1	1	0
Turkey	1	1	0
Venezuela	1	1	0
Zimbabwe	1	1	0
Unknown	6	NA	NA

## TABLE 5 NOTES

- (1) This table follows the same guidelines as Table 4, as applied to states rather than regions.
- (2) The “Former Yugoslavia” category primarily represents people who have worked at the ICTY. People who also worked specifically on a particular Balkan country were not included in the general “Former Yugoslavia” category; only those who had only worked generally on the region without working in a particular country were included.
- (3) The “Other Africa” category represents people who have worked at the ICC. As with the “Former Yugoslavia” category, people who had also identified a particular country in which they had worked were not included in the general “Africa” category.