

# Knowledge Worker Retention in a Transient International Governmental Organization



Human Resource Management for Legal  
Professionals in Temporary Tribunals

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# Knowledge Worker Retention in a Transient International Governmental Organization: Human Resource Management for Legal Professionals in Temporary Tribunals

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## Abstract

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When temporary international tribunals reach the end of their existence they implement a 'Completion Strategy' that describes their path to full closure. The pressures that result from this intentional termination of operations have led to an increase in voluntary turnover among their legal professionals. Since legal professionals are directly involved in the proceedings of a tribunal, tribunals devise a retention strategy to reduce voluntary turnover. This research studies the retention issue from the perspective of Strategic Human Resource Management (SHMR) to support the retention strategy of the tribunals.

The retention issue is inextricably connected to the context of the tribunals and cannot be studied apart from it. The research makes a preliminary analysis of this organizational context using an adjusted version of the *Contextually Based Human Resource Theory* (Paauwe, 2004). The analysis shows that the context of the tribunals places constraints on their possibilities for HRM. The governing body of the tribunal is influential in all administrative decisions and the temporary nature of the institution and competition on the labor market make long-term planning nearly impossible. The analysis also illustrates how the retention issue originates from a) the transient nature of the institution that results in job-insecurity b) competition on the labor market that results in other attractive employment opportunities c) the professional commitment (Wallace, 1993) of the legal professionals that results in simplified termination of the employment relationship.

Research has shown that organizational commitment has a significant negative correlation with voluntary turnover (Buck & Watson, 2002; Cotton & Tuttle, 1986; Chang, 1999). The research uses theory and prior empirical research to construct a model that describes the impact of HR-practices (Wright & Nishii, 2008) on the psychological contract of an individual employee (Rousseau, 1989), to illustrate how the tribunals can retain legal professionals by strengthening organizational commitment (Meyer and Allen, 1991) through a commitment-based HR-configuration (Lepak & Snell, 1999). The model illustrates that if the HR-configuration of the tribunals fails to meet the expectation of the legal professionals this will damage organizational commitment. The model also illustrates that if a tribunal adopts the commitment-based HR-configuration it can better manage the retention issue.

The tribunals currently apply a market-based HR-configuration with a focus on recruitment, using high wages and performance pay as incentives (Lepak & Snell, 1999). The legal professionals expect the tribunals to support them and invest in their development. This research argues for high-commitment HRM, changing the focus from recruitment to retention, using investments in the employees' career development and future employment as incentives (Lepak & Snell, 1999). This commitment-based HR-configuration will require a change in organizational philosophy that needs to be embraced by the entire institution (Tsui, Pearce, Porter & Tripoli, 1997) and supported by strategic counterparts and the United Nations.

**Keywords:** human resource management; project-based organization; professional commitment; retention

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<sup>i</sup> The author conducted the research independently as a student of the university. This paper reflects the personal views of the author and does not represent the views of Utrecht University.

<sup>ii</sup> The author acknowledges the support of the Special Tribunal for Lebanon (STL) for allowing him to collect the data, yet conducted the research independent from the STL. This paper reflects the personal views of the author and does not represent the views of the STL.



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This research was conducted in relation to my master thesis at the University of Utrecht. The thesis is written to support transient international tribunals in managing the staff retention issue they encounter after implementation of their 'Completion Strategy'. The document holds practical value for the tribunal's legal professionals, management and principals.

I began my studies on the subject of social sciences because of an interest in the dynamics of both intrapersonal and interpersonal human demeanor. During my bachelor I came to find that I was missing the link to real world situations; application of the knowledge in practical situations. I therefore decided to follow a minor in the area of business administration, aiming to link my knowledge to the substance of people management.

The subject of my thesis stems from a personal interest in International Governmental Organizations (IGO's). IGO's have always drawn my attention because of their indispensable influence in international relations. In my opinion these institutions can really make a difference in the world, which is all the more reason to support them through research. I was well aware of the fact that research in these organizations would be a major challenge and require the utmost patience and determination on my part. Although there were some obstacles that I had to overcome, I am glad to say that I have never for a moment regretted my decision. Over the past six months I have been given the chance to conduct research in organizations that I admire for the mission they are on and the work they deliver. I would like to express my gratitude to Antonie Vermeulen, Koffi Afande, Gregory Townsend and Danijela Milić, who made it possible for me to collect critical information. I am especially grateful for the support of Antonie Vermeulen in the initial stages and final stages of my research. I would also like to single out the Special Tribunal for Lebanon, that provided me with the unique opportunity to interview its staff members. Here I acknowledge the efforts of Danijela Milić, who provided me a way into the tribunal and Jelena Cernigina, who helped arrange and plan the interviews (and was always there to pick me up at the front entrance).

The research could not have been conducted without the master program *Strategic Human Resource Management* offered by the *Utrecht University School of Governance*. I received great supervision from Paul Boselie, a professor and expert on the subject of HRM. I want to thank Paul for his support and constructive analysis over the past few months. I would also like to thank him for the room he gave me to follow my own path. Lastly I would also like to thank: Ellen van Wijk, Jiske de Goede and several fellow master students who provided my with some useful critical notes that helped me refocus.

I see this master thesis as the pinnacle of my academic career so far and am happy to say that I wouldn't have done it any other way. I hope this research is able to assist the tribunals in managing their retention issue, or at least provide the institutions with the opportunity to rethink their current HR-configuration/start thinking about future policy.

*Simeon de Goede  
Soest, August, 2010*



## 1. INTRODUCTION

*"I therefore renew my plea for the international community to exercise foresight and assist the Tribunal with incentive measures to retain its staff and reduce the burden on the institution of constant staff recruitment. The longer this problem is ignored, the longer the work of the Tribunal will be extended, and the more money it will cost the international community in the long run."* (ICTY: Completion Strategy, 2010)

Patrick Robinson  
President of the International Tribunal for the Former Yugoslavia

The United Nations (UN) is known for its influence in international relations. Through the development of rules, standards, laws and institutions the UN tries to make orderly life possible on the international level. The core of these activities is the protection of states from aggression and determination (Weiss & Daws, 2007). At times when a national government is unable to handle a conflict by own force, it can request support from the UN who will then take over the responsibility to protect its citizens. When it concerns the trial of people responsible for committing crimes on international territory the UN Member States have often been the ones initiating the support. Over the last two decades this has led to the establishment of various international tribunals with a temporary mandate. These tribunals have received critique concerning their efficiency due to the length and slow pace of their trials (Wierda et al., 2008). Because of the substance they deal with it is vital to monitor their developments regularly and support organizational performance.

The performance of a tribunal is determined in relation to a successful and timely completion of the mandate. A timely completion of the mandate can only be achieved if the tribunal carries out its proceedings expeditiously. The legal professionals employed by the tribunals are the people who work directly on these proceedings and play a crucial role in the performance of the institution. When a tribunal nears the end of the mandate, its governing body will issue a 'completion strategy' that describes the path to full closure (Weiss & Daws, 2007). The unique pressures that result from this intentional termination of operations have proven to be difficult to manage in various tribunals that were established over the last two decades (ICTR: Completion Strategy, 2009; ICTY: Completion Strategy, 2010; SC-SL: Revised Personnel Policy, 2009). In all cases this has led to an increase in voluntary turnover among the legal professionals, which can damage the continuity of the tribunal's proceedings and impact the momentum of trials<sup>3</sup>.

Operating in a challenging diplomatic environment it is vital that the tribunals monitor and correctly address people management issues when they arise. Addressing their retention issue will benefit both the employer (tribunal) and employee (legal professional). In this respect it is imperative that the tribunals devise a staff retention strategy *before* implementation of the completion strategy.

This research studies the retention issue from the perspective of *Strategic Human Resource Management* (SHRM) to aid the tribunals in the development of an appropriate staff retention strategy. From the perspective of SHRM it is essential that the research carefully considers the context of the organizations it studies. Without an understanding of a tribunal's context it is not possible to understand a) the workings of a tribunal, b) the retention issue it encounters c) the possibilities it has for HRM. The specific aims and questions pertaining to the research are described in Chapter 2.

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<sup>3</sup> The tribunals are composed of staff in many occupations. Central to the core of the function of a court is the legal profession (i.e. judges, prosecutors, defense attorneys, court management specialists, general legal officers etc.). For the purpose of this research project the legal professional is the occupation of focus, in the full realization that retention in all professions is critical.

To provide the research with ample room to include organizational context the research is divided in two stages. In the *first stage* of the research the focus is on exploring the organizational context. *Chapter 3* discusses the theoretical background of contextually based research in organizations and describes the model that is used to analyze the context. The tribunals are influenced by various internal- and external forces that shape the institution as a whole. The model is applied to explore these forces and determine how they affect the institution. The research methods used to collect the data needed to make this analysis are described in *Chapter 4*. The actual findings of the analysis can be found in *Chapter 5*; providing a thorough description of the context in which the tribunals operate. These findings shed light on the origin of the retention issue and the possibilities a tribunal has for HRM. The *second stage* of the research builds on these findings to determine the requirements of an appropriate configuration of HRM. *Chapter 6* describes the retention issue from the perspective of both the employer and employee to draw conclusions on how to manage the retention issue. These conclusions are built on assumptions directly detracted from academic literature that have to be validated by practice before being accepted. *Chapter 7* describes the research methods that were used to validate these conclusions. The findings of the validation process are described in *Chapter 8*, discussing their implications for the appropriate configuration of a tribunal's HRM. With both stages fully explored *Chapter 9* recapitulates on the main findings of the research, presenting measures that can assist the tribunals in their retention strategy. The findings are further explored in the discussion of *Chapter 10*, which also discusses the limitations of the research and several venues for future research.

## 2. RESEARCH OBJECTIVE AND QUESTION

When international tribunals implement their completion strategy they encounter a unique retention issue that has to be attended correctly. The *aim of the research* is to support transient international tribunals in managing the staff retention issue they encounter after implementation of their completion strategy. The main *research question* that has to be answered to achieve this objective is:

- How can a transient international tribunal retain legal professionals through Strategic Human Resource Management?

The characteristics of a tribunal's context define the organization as a whole and the retention issue this research discusses. Answering the main research question is impossible without a solid understanding of this context. The *first stage* of the research makes a preliminary analysis of this context to answer the following sub-questions:

- What constitutes the context of a transient international tribunal?
- How does the context of a transient international tribunal affect HRM within the institution?

With a clear view of a tribunal's context and the possibilities for HRM the *second stage* of this research uses this information to focus solely on the retention issue. It studies the retention issue from the perspective of both the tribunal and the legal professional to answer the final two sub-questions:

- How can a transient international tribunal retain employees?
- How can an organization retain public service legal professionals?

### *Scientific Relevance*

Although the legal literature has covered much ground when it comes to the processes, norms and institutions that are involved in post-conflict justice, it has forsaken the people involved and the roles they play (Baylis, 2008). This research is a novel endeavor as it is the first to study the post-conflict justice institutions from a people management perspective. In the academic literature there has been a longstanding debate between people who claim that the context of an organization needs to be considered when researching organizations (contingency- and best-fit theory) and people who claim that the organizational context is of no importance (universalism- and best-practice theory). This research builds on the contingency- and best-fit view as it endorses the importance of the context in organizational research: all people management is embedded in an organizational context, thus cannot be meaningfully examined apart from this context (Boxall & Purcell, 2008). The research makes use of organizational theory about the impact of HR-practices (Wright & Nishii, 2008) on the psychological contract of an individual employee (Rousseau, 1989) to illustrate how the tribunals can retain legal professionals by strengthening organizational commitment (Meyer and Allen, 1991) through a different HR-configuration (Lepak & Snell, 1999) that fits this context.

### *Societal Relevance*

A tribunal is established to serve as a platform for the prosecution of persons charged with serious crimes and can help build and maintain efficient and transparent international justice within the country it represents. The legacy of the tribunal may be found in the areas of legal developments, strengthening local judicial capacities and raising awareness of accountability and the rule of law. These activities have a broad impact and carry symbolic significance for the international community<sup>4</sup> (Rainey, 2003). The inability to manage the retention issue can severely damage the continuity of the tribunal's proceedings and impact the momentum of its trials.

*"Inadequate and inexperienced staffing for the Tribunal has already begun to slow trial and appellate proceedings, which places a much heavier financial burden on the international community in the long run."* (ICTY: Completion Strategy, 2010)

The latest estimates of completion strategies show that all international tribunals are expected to close down in the following four years (ie. 2011-2014 as described by the International Center for Transitional Justice, 2010). Accordingly, it can be assumed that the magnitude of the retention issue will increase during the following years, as will the need for proper management of the issue. This research supports the tribunals in maintaining a high standard of performance so they can assure a timely completion of their mandates and eliminate unnecessary costs for the international community.

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<sup>4</sup> See Appendix I for a more extensive description of the public dimension of a tribunal



## STAGE 1

*The retention issue of the tribunals is inextricably connected to the context in which they operate, thus cannot be meaningfully studied apart from this context. Because this context has not been studied by Human Resource Management (HRM) academics in a rigorous manner, the first part of this research aims to explore it through analysis.*

### 3. THEORETICAL BACKGROUND

This chapter describes the theoretical background of contextually based HRM to support the research by means of deriving a model to analyze the context of a tribunal. *Section 3.1* is an introduction to the study of HRM and a description of how HRM academics integrated organizational context into their academic field. *Section 3.2* presents the analytic model derived by Paauwe (2004) that is used in this research to analyze organizational context. *Section 3.3* concludes the chapter with a summary of the main findings and a discussion of their implications for the remainder of the research.

#### 3.1 A Contextual Approach to Human Resource Management

According to Boxall & Purcell (2008) "*HRM refers to all those activities associated with the management of work and people in firms and in other formal organizations.*" HRM is built on the premise that positive results can be achieved through the effective utilization of human resources, as opposed to their exploitation like in people management practices of the past (Guest, 1997). An organization is made up of individuals who have different stakes in the existence of the organization. These differences can become a reason for tension between them, as is too often illustrated in the exchange relationship between employer and employee. An organization can reduce the tension and gain control over an organization by designing a HR-architecture that meets the needs of all these parties (Beardwell & Claydon, 2008; Lepak & Snell, 1999). The term HR-architecture describes the framework of practices and activities that, once established, support the management of work and people. Lepak en Snell (1999) argue "... it may be inappropriate to simplify the nature of human capital investments and suggest that there exists a single optimal HR architecture for managing all employees". Considering different groupings within the organization possess skills that vary in importance to the organization's performance, the HR-practices used to manage the employees are also likely to differ (Lepak & Snell, 2002). This is why within a HR-architecture there may be different HR-configurations, designed specifically for subgroupings within the organization (Lepak & Snell, 1999)

Strategic contingency approaches (Porter, 1980; Schuler & Jackson, 1987) have dominated the HRM research agenda for the past two decades (Boselie, 2005). These approaches have shown there are many contextual factors that can affect the shaping of an organization and its activities. The strategic contingency approaches are based on more general organizational theories. *Section 3.1.1* describes the work of various academics that discussed the relationship between an organization and its context. *Section 3.1.2* describes how HRM academics came to integrate these approaches into their academic field. Lastly, *Section 3.1.3* defines HRM as it is applied in this research.

### 3.1.1 Organizations in Context

Organizations used to be presented as systems shaped by their own technologies, transactions and power-dependency relations. At that time organizational context was considered a fixed task environment, solely of practical use as a source of information to support the managerial imperative. *Open systems theory* changed this as it explained how organizations are input, transformation and output systems that engage in transactions with their context (Paauwe, 2004). The input of an organization mainly consists of human capacities that have been nurtured by citizens and the state. Through a transformation process organizations turn these capacities into outcomes that are of relevance to the organization and its wider environment. *Coevolution theory* describes how organizations, through the outcomes of this process, can also change the environment itself (Aldrich, 1999). Stakeholder theory elaborates on this by discussing that organizations are subject to interactions between different parties inside and outside the organization (Ferrary, 2009). The *stakeholders* of the organization are the people who can affect or can be affected by the organization. Because the organization is part of a larger political-, economic- and social system many stakeholders are present. The stakeholders will hold the organization accountable for its actions and try to optimize and protect individual interest in the organization.

DiMaggio & Powell (1983) use the concept of *isomorphism* to explain how the context in which an organization operates can impact the organization. Isomorphism describes how *institutional mechanisms* in the environment of the organization - may they be formal or informal - constitute elements that account for the existence of organizational structure (Scott, 1987). The organizational structure may be the result of *coercive*-, *mimetic*- and *normative isomorphism*:

- *Coercive isomorphism* is the process of adaptation that stems from political influences, legislation and an organization's legitimacy issues. An organization conforms to certain political forces to gain legitimacy for its actions.
- *Mimetic isomorphism* is the process of adaptation that results from an organization's struggle with internal and external uncertainty. When an organization is uncertain of how a particular situation should be handled, it will often imitate other organizations in the same market to avoid both reinventing the wheel and making mistakes.
- *Normative isomorphism* is the process of adaptation that stems from professionalization. As organizations that operate in the same market often employ similar workers, they tend to adopt similar professional services.

Organizations adapt to their environment because it makes it easier for them to interact/transact with other organizations, to be acknowledged as legitimate and reputable, to attract career-minded staff and to fit in the administrative categories that define eligibility for public grants. Next to these *institutional mechanisms* DiMaggio & Powell (1983) also describe *competitive mechanisms*. The competitive mechanisms are best illustrated by private sector companies who have to stay on top of each other's developments to make sure that they do not miss significant developments in the market.

HRM concerns the organizational activities associated with the management of work and people. Considering organizations take resources out of their environment to produce a product that affects this environment, they do not operate in a vacuum. All organizational processes – including HRM – are influenced by both internal and external forces. To be effective the HR-configuration is expected to fit the organizational context, as explained in the following section.

### 3.1.2 Human Resource Management in Context

As people increasingly started to point out the importance of organizational context HRM academics started arguing to link HRM to organizational context for better performance. Accordingly, the last decade of the twentieth century has been a fertile breeding ground for academic literature on this subject (Arthur, 1994; Becker and Gerhard, 1996; Huselid, 1995; Katz, Kochan & Weber, 1985; MacDuffie, 1995). This is where the long-standing debate in academic HRM literature among the adherents of the model of 'best practice' and the adherents of the model of 'best fit' originates (Beardwell & Claydon, 2007), also described as the universalism versus contingency theory debate (Wood, 1999; Delery & Doty, 1996).

The *best practice* model (universalism) stems from the time when organizations were presented as independent entities. The model is based on the assumption that it is possible to identify a specific set of best practices that will improve the performance of every organization that it is applied to (Beardwell & Claydon, 2007). When researchers produced results in support of this perspective it was assumed that it was possible to identify these practices (Huselid, 1995). Although there was still a significant lack of research on these practices, many people started to view them as a 'panacea': a drug that will cure all ills found in contemporary organizations. Critics of the best practice model downplay the model for ignoring the pluralist values and tensions that are present in organizations as a result of their diverging contexts (Beardwell & Claydon, 2007; Boselie, 2010; Boxall & Purcell, 2008; Guest, 1997). According to the adherents of the *best fit* model (contingency theory) organizations must adapt their HR-configuration to the context of their organization (Becker and Gerhard, 1996; Porter, 1980; Schuler & Jackson, 1987). Wood (1999) identifies four types of fit that have been advocated by these theorists: a) *internal fit* describes how the HR-configuration should consist of practices that are coherent and consistent, b) *strategic fit* describes the need for a fit between the HR-configuration and the strategic objectives of the organization, c) *organizational fit* describes the fit between the HR-configuration and other systems of the organization (e.g. the production system, the communication and information system, the technological systems, the financial system and the legal system of the organization) and d) *environmental fit* describes the fit between the HR-configuration and the wider environment of the organization, because an organization cannot function properly without acknowledged legitimacy.

This research adopts a contextual approach to research in organizations and is thus expected to built on best fit and contingency theory. Although this is true, the Strategic Human Resource Management (SHRM) perspective of this research originated in a slightly different way.

### 3.1.3 Strategic Human Resource Management

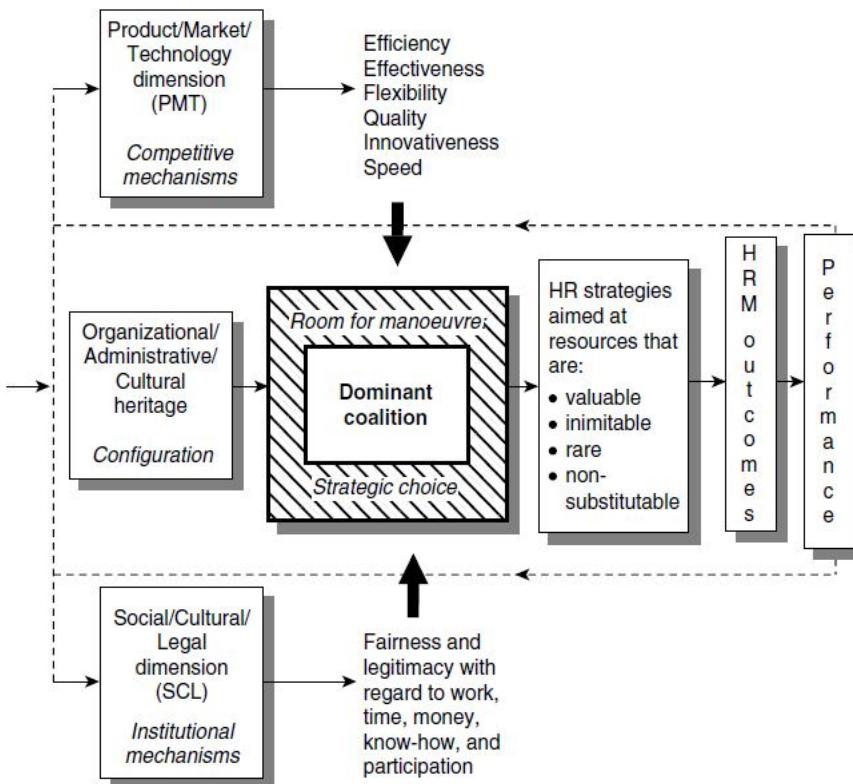
As the name indicates, *Strategic Human Resource Management* is concerned with strategy: the problems organizations face and the strategies they adopt to cope with these problems (Boxall & Purcell, 2008). As organizations initially showed little interest in adopting HRM (Hatch & Cunliffe, 2006; Buller, 1988), academics started to point out the importance of strategic integration. According to supporters of strategic integration superior performance is achieved when the HR-configuration of the organization matches its strategy. This is why HRM now is often referred to as Strategic HRM (SHRM). Wood (1999) describes strategic fit as one of the four fits needed from the perspective of contingency theory, which would suggest that SHRM does not by far embrace organizational context as it should. This is not the case as SHRM originated from a definition of strategy from Mintzberg (1998), a famous academic in the field of organizational strategy. Mintzberg (1998) implies that every organizational context requires a different configuration of the organization's strategy. SHRM builds on this approach as it endorses the HR-configuration to fit the contextually derived strategy. So although SHRM is originally built on configuration theory rather

than contingency theory, the eventual outcomes in relation to this research remain unchanged: organizations must adapt their HRM to the context of their organization for it to be truly effective.

The context of an organization impacts the organization as a whole and should be taken into account when conducting research in organizations. HRM, being an organizational process, also has to fit the context in various ways (Wood, 1999). The contextual approach has brought attention to a concept known as the 'tripple bottom line' (Garriga & Melé, 2004; Vuontisjärvi, 2006). Where past research mainly concentrated on the 'bottom line' – the economic dimension of organizational performance - (Huselid, 1995; MacDuffie, 1995), contemporary research also pays attention to the social- and environmental dimension of organizational performance. Paauwe (2004) follows this line of thought as he presents a multidimensional view on organizational performance, making a distinction between the societal-, strategic- and professional- dimension of performance. The *societal dimension* describes the importance of the relationship between the organization and society at large as it stresses fairness in practices to gain legitimacy for its existence. The *strategic dimension* of organizational performance stresses the importance of efficiency, effectiveness and quality, presenting the needs of the economic stakeholders. Lastly, the *professional dimension* represents the concerns of professionals located inside the organization and describes the social performance of the organization. Now organizations are confronted with high demands considering quality, flexibility and innovation, the societal- and professional dimension have become increasingly important. To successfully contribute to these various forms of performance, a HR-configuration should be designed to fit the society, strategy and profession of its employees. The following section describes the model that will be used to analyze these dimensions in relation to the tribunals.

### 3.2 A Contextually-Based Model of HRM

With the increasing importance organizational context, there came also an increasing need for the development of conceptual tools that grasp the complexity and dynamics of this context (Beardwell & Claydon, 2007). Based on his *Contextually Based Human Resource* (CBHRT), Paauwe (2004) designed a model of HRM that takes the context of an organization into account (*Figure 1*). His model contains elements of contingency theory (Porter, 1980; Schuler & Jackson, 1987; Delery & Doty, 1996), configurational theory (Mintzberg 1998; Delery & Doty, 1996) and institutional theory (DiMaggio & Powell, 1983).



**Figure 1.** The CBHRT as displayed in Paauwe (2004)

The model can be divided into a descriptive (left) and prescriptive (right) part. The *descriptive* part of the model explains how HRM is influenced by internal and external elements of the organizational context. The *prescriptive* part of the model explains how this should lead to unique HR-strategies that can strengthen the performance of the organization as a result of HRM outcomes. In this research the model will function solely as an analytic tool for the context of the tribunals; using only the descriptive part of the model. Section 3.2.1 describes the constituents of the descriptive part of the model and explains their meaning. Section 3.2.2 presents the model as it is applied in this research. Although hardly anyone deems organizational context to be irrelevant, there has been some criticism of the contextual approach of HRM. Section 3.2.3 discusses the criticism that is often aimed at analytic models.

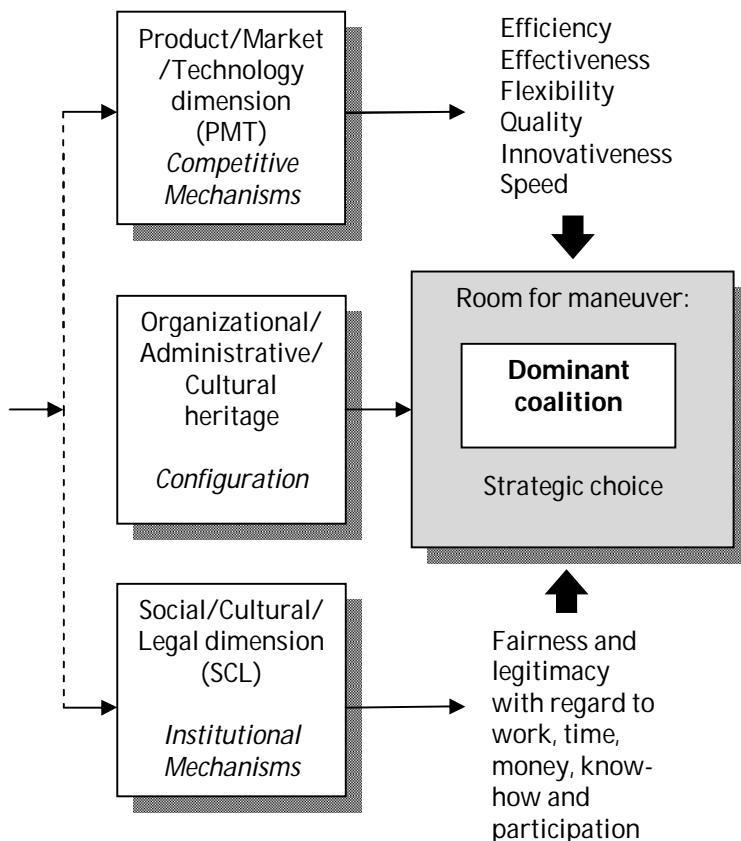
### 3.2.1 Explaining the Model

The descriptive part of the CBHRT (Paauwe, 2004) illustrates how HRM is influenced by organizational context using three different constructs. The influence of the *internal context* is illustrated through the *configuration* of the organization; the administrative and cultural heritage. The initial blueprint of an organization and issues it has encountered can have a serious effect on the HR-architecture. The *external context* of the organization is divided in two separate constructs. The first external construct is the *Product/Market/Technology dimension*, which expresses demands in terms of efficiency, effectiveness, flexibility, quality and innovativeness. These demands result from competitive mechanisms (DiMaggio & Powell, 1983) and mainly concern the strategic dimension of performance. The second external construct is the *Social/Cultural/Legal dimension*, best explained as the prevailing values and norms and their institutionalization. This construct concerns the fairness and legitimacy of the organization, pressed by institutional mechanisms

(DiMaggio and Powell, 1983); how the organization performs on the societal and professional dimension. Paauwe (2004) explains how the two external constructs illustrate the tension between the economic rationality (PMT dimension) and relational rationality (SCL dimension) of the organization when shaping HRM. The actor perspective (stakeholders) is introduced through the *dominant coalition*. As HRM is never completely dependent on systems in the context of the organization, the dominant coalition represents the stakeholders that can steer HRM within the organization. With this Paauwe (2004) implies that although the context influences the possibilities for HRM, there is always room for strategic choice.

### 3.2.2 Adjusting the Model

In this research the descriptive part of the model is used as a tool for analysis of organizational context. Because the model will not be used as a prescriptive tool, the prescriptive part of the model is left out of this research (*Figure 2*). Paauwe (2004) explains how the descriptive part of the model can be used in studies to generate insight in the forces and actors that have an impact on HRM and the conditions that define strategic choice. In this research the model will be used accordingly: it will outline the forces and actors that have an impact on HRM in the tribunal to determine the room for maneuver of HRM.



**Figure 2.** Model derived from the CBHRT by Paauwe (2004)

### 3.2.3 Justifying the Model

Critics of a contextual approach to HRM are troubled by the reliance on classical rational-planning and underlying determinism (Beardwell & Claydon, 2007). They rightfully point out that the model used in this research is neither capable of analyzing organizational context completely, nor present its implications to their full extend. It is therefore important to note that the model is based on theoretical constructs rather than empirically observable phenomena. This does not imply that we should refrain from analytic activities, as research without an understanding of this context can have devastating implications for its merit. To avoid a deterministic view of the possibilities for HRM in organizations Paauwe (2004) incorporated the dominant coalition. So although this research argues that contextual factors have to be taken into account when designing and applying people management practices, this does not imply there is no room for strategic choice.

This section presented the model that will be used to analyze the context of the tribunal. The model is derived from the CBHRT by Paauwe (2004) and adjusted to fit the context of this research. *Section 3.3* concludes this literature study, recapitulating on the main findings and their implications for the remainder of the research.

## 3.3 Conclusion

When academics in the field of organizational studies started discussing the relationship between an organization and its context, they rightfully came to the conclusion that organizations are not independent entities but inextricably interwoven with their context. Since organizations influence their environment, different stakeholders in this environment will reciprocate with equal interference. Over the years this has led to an increase in the importance of the responsibilities that an organization has towards its employees. HRM is the subject that came to study these obligations, making itself a way into organizational practice. It is now widely acknowledged that the HR-configuration should fit the context of an organization to be truly effective. Organizational context is often very complex, which is why Paauwe (2004) designed a model that can be used to analyze this context. Although such models have been criticized in the past for their reliance on both classical rational-planning and underlying determinism, the model can be rightfully used to analyze the context of the tribunals included in this research.

## 4. RESEARCH METHODS

This chapter describes the research methods that were used to make the preliminary analysis of the tribunal's context. Since there are few people who can provide the knowledge needed to make such an analysis, the selection of respondents was done with utmost care.

### *Respondent selection*

Throughout the world there are currently six international tribunals<sup>5</sup>. Because of geographical considerations this research only approached the five tribunals that have an office in

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<sup>5</sup> The Extraordinary Chambers in the Courts of Cambodia (<http://www.eccc.gov.kh/>), The International Criminal Tribunal for the Former Yugoslavia (<http://www.icty.org/>), The International Criminal Tribunal for Rwanda (<http://www.ictr.org/>), The Iran-United States Claims Tribunal (<http://www.iusct.org/>), The Special Court for Sierra Leone (<http://www.sc-sl.org/>) and The Special Tribunal for Lebanon (<http://www.stl-tsl.org/>)

The Netherlands. Four tribunals agreed to take part in the preliminary analysis as one tribunal (the Iran-United States Claims Tribunal) did not consider itself fit to participate. In all four tribunals one person was selected who a) had been part of the organization since the early days and b) was the most accessible source of information on the subject of HRM<sup>6</sup>. The following presents a list of the tribunals that have been included in this research and the people that have represented them throughout the preliminary analysis:

- **The International Criminal Tribunal for Rwanda (ICTR):** Established by the UN Security Council in 1994, following Resolution 955. The ICTR is located in Arusha, United Republic of Tanzania, and has a sub-office in The Hague.

**Represented by:** *Koffi Afande*, Head of Office for the ICTR in The Hague, who worked at the main office in Arusha for four years before he was stationed in The Hague.

- **The International Criminal Tribunal for the Former Yugoslavia (ICTY):** Established by the UN Security Council in 1993, following Resolution 827. The ICTY is located it in The Hague, The Netherlands.

**Represented by:** *Antonie Vermeulen*, former Chief of Human Resources for the ICTY, who worked at the ICTY for ten years, a function from which he retired last year.

- **The Special Court for Sierra Leone (SCSL)<sup>7</sup>:** Established by the UN Security Council in 2002, following Resolution 1315. The SCSL is located in Freetown, Sierra Leone, and has a sub-office in The Hague.

**Represented by:** *Gregory Townsend*, Head of Office for the SCSL in The Hague, who previously worked for the ICTR and the ICTY.

- **The Special Tribunal for Lebanon (STL):** Established by the UN Security Council in 2007, following Resolution 1757. The STL is located it in The Hague.

**Represented by:** *Danijela Milić*, Chief of Human Resources for the STL, who has worked for the STL since the first opening day of its administration.

#### *Data-collection and analysis*

To get a basic understanding of the tribunal's positioning and organizational processes, relevant documentation was analyzed before entering the interviews. This documentation consisted of information brochures and - where possible - completion strategy reports, annual reports and personnel policy files, summarized in *Table 1*.

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<sup>6</sup> International tribunals deal with sensitive information that is relevant to a large group of people and not available to the public. The tribunals apply a high level of integrity and confidentiality in their work to protect this information. This research applied a similar code of conduct to assure that both parties in this research would approve of its content.

<sup>7</sup> Over the last few months the SCSL has been in the news relatively often because of the trial at The Hague involving Liberian ex-leader Charles Taylor.

Table 1: *Relevant documentation used throughout the research*

Tribunal	Document
ICTR	<b>Annual Report 2008</b> <a href="http://www.unictr.org/Portals/0/English%5CAnnualReports%5Cs-2008-514.pdf">http://www.unictr.org/Portals/0/English%5CAnnualReports%5Cs-2008-514.pdf</a> <b>Completion Strategy Report 2009</b> <a href="http://liveunictr.altmansolutions.com/Portals/0/English%5CFactSheets%5CCompletion_St%5CS-2009-587e.pdf">http://liveunictr.altmansolutions.com/Portals/0/English%5CFactSheets%5CCompletion_St%5CS-2009-587e.pdf</a> <b>Completion Strategy Report 2010</b> <a href="http://liveunictr.altmansolutions.com/Portals/0/English%5CFactSheets%5CCompletion_St%5CS-2010-259e.pdf">http://liveunictr.altmansolutions.com/Portals/0/English%5CFactSheets%5CCompletion_St%5CS-2010-259e.pdf</a>
ICTY	<b>Annual Report 2009</b> <a href="http://www ICTY.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2009_en.pdf">http://www ICTY.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2009_en.pdf</a> <b>Completion Strategy Report 2009</b> <a href="http://www ICTY.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_13nov2009_en.pdf">http://www ICTY.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_13nov2009_en.pdf</a> <b>Completion Strategy Report 2010</b> <a href="http://www ICTY.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_01june2010_en.pdf">http://www ICTY.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_01june2010_en.pdf</a> <b>Manual on Developed Practices</b> <a href="http://www ICTY.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf">http://www ICTY.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf</a>
SCSL	<b>Annual Report 2009</b> <a href="http://www.sc-sl.org/LinkClick.aspx?fileticket=%2fuI3lqaO5D0%3d&amp;tabid=176">http://www.sc-sl.org/LinkClick.aspx?fileticket=%2fuI3lqaO5D0%3d&amp;tabid=176</a> <b>Completion Strategy Report 2009</b> <a href="http://www.sc-sl.org/LinkClick.aspx?fileticket=yiUyKIdb3OY%3d&amp;tabid=176">http://www.sc-sl.org/LinkClick.aspx?fileticket=yiUyKIdb3OY%3d&amp;tabid=176</a> <b>Revised Personnel Policy 2008</b> *confidential* <b>Statute</b> <a href="http://www.sc-sl.org/LinkClick.aspx?fileticket=uCInd1MjeEw%3d&amp;tabid=176">http://www.sc-sl.org/LinkClick.aspx?fileticket=uCInd1MjeEw%3d&amp;tabid=176</a>
STL	<b>Factsheet: About the Tribunal</b> <a href="http://www.stl-tsl.org/x/file/Press/Publications/Fact_Sheets/About%20the%20Tribunal_EN.pdf">http://www.stl-tsl.org/x/file/Press/Publications/Fact_Sheets/About%20the%20Tribunal_EN.pdf</a> <b>Handbook on the Special Tribunal for Lebanon</b> <a href="http://www.ictj.org/images/content/9/1/914.pdf">http://www.ictj.org/images/content/9/1/914.pdf</a> <b>Statute</b> <a href="http://www.stl-tsl.org/x/file/TheRegistry/Library/BackgroundDocuments/Statutes/Resolution%201757-Agreement-Statute-EN.pdf">http://www.stl-tsl.org/x/file/TheRegistry/Library/BackgroundDocuments/Statutes/Resolution%201757-Agreement-Statute-EN.pdf</a>

Since the research mainly concerns the knowledge, facts and opinions of the tribunal-representatives, the oral interview was deemed most suitable for further data-collection (Van der Velde, Jansen, & Anderson, 2004). To make sure that the analysis covered all aspects of the tribunal's context the CBHRT was used to structure the topics of the interviews<sup>8</sup>. The semi-structured design limited the amount of information that was irrelevant to the study and provided the freedom to deviate from the structure when necessary. The interviews were recorded and transcribed to assure a minimal loss of data and all data was structured using the CBHRT and analyzed in relation to the sub-questions of this research. To validate and support the information collected during the interviews constant comparisons were made with the documentation.

<sup>8</sup> See Appendix II for the topic list used in this preliminary analysis

## 5. RESULTS

This chapter discusses the results of the preliminary context analysis to assess the possibilities tribunals have for HRM and determine the origin of the retention issue. *Section 5.1* describes the internal context of a tribunal, also known as its *configuration*. *Section 5.2* discusses the external context of a tribunal; the *competitive- and institutional mechanisms* that influence the organization. Consistent with the theoretical model *section 5.3* analyses the impact this context has for the room for maneuver for HRM. *Section 5.4* concludes the chapter with a recapitulation of the main findings of the chapter and an introduction to the second stage of this research.

### 5.1 Internal Context: Configuration

Tribunals have a very specific configuration that makes them different from other organizations and influences their possibilities for HRM. This section describes the singularities of the four tribunals that have been included in this research. In addition the section also illustrates how the pressures that stem from this dimension affect the organization through the process of *isomorphism*.

*"The Hague and Arusha were the first criminal tribunals for the UN, which quite frankly was not quite sure how to handle this type of operation."* (Antonie Vermeulen: ICTY)

The ICTY and ICTR are the more senior tribunals among the four; both established as temporary tribunals at the end of the cold war (respectively 1993 and 1994) and often referred to as *ad hoc tribunals*. They were the first to embark on the path of post-conflict justice since the Second World War. Both tribunals had to overcome challenges that are unique for the context in which they operate. The eventual expenses made by these tribunals as well as their "modest judicial output" led many to question the benefit of such institutions (Weiss & Daws, 2007). As the tribunals were funded by UN Member States contributions, the Member States became wary of setting up comparable tribunals in the future. The UN therefore began developing a model for a tribunal that was based and owned by local state (Weiss & Daws, 2007). This model became the blueprint for the more recent temporary tribunals like the SCSL and the STL often referred to as *hybrid tribunals*. These carry the name 'hybrid' because their jurisdictions, administrations, and compositions are partially locally and partially internationally derived (Weiss & Daws, 2007). They use a combination of domestic and international law using domestic and international judges so that the judicial accountability is divided between the state in which it functions and the UN. Administratively speaking, where the ad hoc tribunals have always been able to rely on a regular budget of over a hundred million dollars a year, paid for by Member State assessments, the hybrid tribunals rely on the voluntary contributions of donors.

*"I think we're most notably living within the balance of budgets versus judges having complete unfettered independence and discretion to work as long or as slow as they want. So that's a very hard balance to strike."* (Gregory Townsend: SCSL)

The hybrid tribunals learned the lessons from their predecessors in the sense that they carefully defined and confined the group of people they wished to prosecute. As a result they have succeeded in limiting the number of indictments, simultaneously limiting the man-power needed to process the indictments. Where the ad hoc tribunals employed over one thousand people at full capacity, their hybrid counterparts had more than five hundred employees.

Despite some differences the tribunals also have many characteristics in common. All four tribunals are composed of separate organs with their own function. In the legal division of the tribunal there can be the Chambers, Prosecution and Defense. The *Chambers* are composed out of judges, organized to conduct trials and other hearings. The *Office of the Prosecutor* investigates the crimes and, if necessary, presents cases at trial and on appeal. The *Defense Office* advises the accused persons and presents their case to the court with the aim of ensuring that the accused person receives a fair trial (this organ is independent in the exercise of its duty). The *Registry* is responsible for all functions which support the Court process as a whole, including the management and administration of the court<sup>9</sup>.

The legal professionals discussed in this research are allocated to the legal division of the tribunal. They are brought together from all places in the world because of their specific knowledge pertaining to their capacity. They have built up interpersonal relationships by working in multiple post-conflict settings, forming an expat community through which they are all connected<sup>10</sup> (Baylis, 2008). Even in cases where they have not previously acquainted with one another, they will probably know each other's friends and acquaintances. Because the same people move between the different tribunals, there is a lot of *normative isomorphism* (DiMaggio & Powell, 1983). The tribunals provide similar services to their professionals because they have to adapt to the needs of the people they employ. It is noteworthy that the legal professionals often left their previous employer for new and better opportunities in a different tribunal. The tribunals have to be wary of their commitment to the organization: when a new opportunity arises the legal professionals will leave the tribunal relatively easy<sup>11</sup>.

The tribunals are established by the UN to address a certain situation for a predetermined period of time. Their *transient nature* stems from the international system for intervening in post-conflict areas, which is tied to political authorization for involvement and funding sources and limitations (Baylis, 2008).

*"STL is a non-career organization in light of its mission and mandate being three years. This is a unique characteristic. Policies and frameworks that have been set, including the HRM function, have been set with that in mind."* (Danijela Milić: STL)

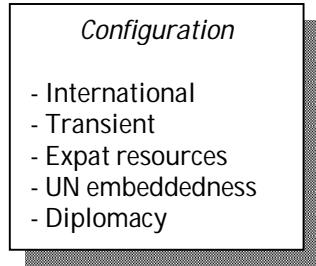
A tribunal is provided with a mandate to complete its activities within a certain period of time. When the mandate has been completed there is no further reason for the tribunal to continue its existence. The tribunal will then be closed down within a certain timeframe, described in the 'completion strategy' issued by its governing body. The ICTY, ICTR and SCSL have already implemented their completion strategy and have begun to wind down some of their operations. The SCSL is the furthest along of these three, almost reaching its liquidation phase in which it will close its doors permanently. These shared characteristics, that make tribunals different from many other organizations, have been summarized in *Figure 3*.

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<sup>9</sup> In some tribunals (ICTR, ICTY) the Defense is part of the Judicial and Legal Services Divisions of the Registry. The distinction between the Registry and a "legal division" is therefore not always as clearcut in these ad-hoc tribunals.

<sup>10</sup> Baylis (2008) wrote the article "*Tribunal-Hopping with the Post-Conflict Justice Junkies*" in which she describes legal professionals who maintain an itinerant lifestyle in pursuit of new employment opportunities, moving from one postconflict justice hot spot to the next as the previous spot cools down. Her article, which I suggest for further reading, can be found at the following location: <http://www.law.uoregon.edu/org/oril/docs/10-2/Baylis.pdf>

<sup>11</sup> This does not indicate that the legal officers are not committed to working in the tribunal, but rather a sign of their commitment to conflict-solving in a broad meaning. The UN itself encourages this movement as part of its mobility policy for staff members.



**Figure 3.** The configuration of a tribunal

## 5.2 External Context: Competitive- and Institutional Mechanisms

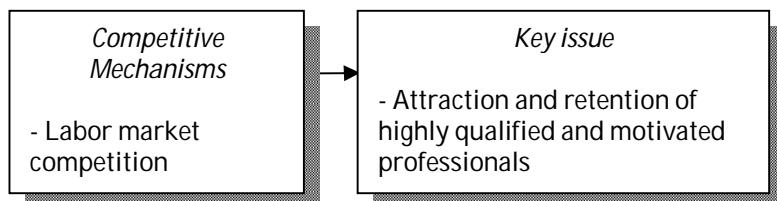
Rather than just independent entities, the tribunals are products of their environment. This environment influences the tribunals as a whole and determines the possibilities they have for HRM. *Section 5.2.1* describes the *competitive mechanisms* that influence the tribunals. *Section 5.2.2* describes the *institutional mechanisms* that influence the tribunals..

### 5.2.1 Competitive Mechanisms

After the cold war, when there were only the ICTY and the ICTR, staff movement was not really an issue. This changed with the progressive proliferation of other tribunals like the SCSL and the STL. The hybrid tribunals came to operate in the same area as the ad hoc tribunals and often had great interest in the experienced staff members of the more senior tribunals. As a tribunal cannot make its employees refrain from leaving the organization, some tribunals have suffered considerable losses. The SCSL and ICTR have the biggest problems with the retention of their staff because they are located in a region where it is hard to provide employees with the safety and security they desire.

*"I think there is to some extent some perception that staff, let's say some supervisors or court principles, do get proprietary with their staff and they would be disappointed if people were approached by other courts. But I think it's a unique skill set, so I think they understand there's not many places where people can work and people are looking for promotions."* (Gregory Townsend: SCSL)

The legal professionals constitute an elite group of experienced employees that is very limited in its number. Although the tribunals are not competing in any way when it comes to their field of work (i.e. ICTY deals with the former Yugoslavia, ICTR with Rwanda) they are struggling on the same tight labor market. Furthermore there is also competition with other governmental institutions and commercial companies that could use the expertise of legal professionals. To attract staff, the tribunals try to tout their accomplishments as being the most significant of the selection of these organizations. These competitive mechanisms have been summarized in *Figure 4*.



**Figure 4.** The competitive mechanisms of a tribunal and the issue resulting from these mechanisms

### 5.2.2 Institutional Mechanisms

Next to other organizations, tribunals also come in contact with *institutional mechanisms*: different forces in the environment of the organization with their own beliefs that try to influence the organization. This section describes the forces that result from the *socio-political-, cultural- and legal dimension* of their environment. In addition it also illustrates how the pressures that stem from these dimensions affect the organization through the process of *isomorphism*.

#### *The socio-political dimension*

With the establishment of every tribunal it becomes clear that they do not operate in a vacuum and have a great impact on the country in which the conflict presented itself. Since the tribunals are often created as a result of international agreements, they have not always been discussed extensively by local stakeholders (Wierda et al., 2008). Support of the national- and international government is often lacking for the tribunals as they continuously struggle with legitimacy issues. In the two ad hoc tribunals this has been a problem since their inception, which has troubled their proceedings.

*"Oh... I think people from the region who have invested interest have always tried to make their views clear in different degrees. Of course in the case of Serbia we've had strong demonstrations, typically not in favor of the tribunal."* (Antonie Vermeulen: ICTY)

Besides governmental politics, a tribunal also encounters pressures from NGO communities and the media. Both provide the tribunals with criticism, support and feedback on their work. Lastly there are also the people in the country who often express concerns regarding their legitimacy. A good example of this is the STL where pro-government forces regarded its establishment as a victory and others denounced it for violating the Lebanese sovereignty (Wierda et al. 2008). One of the aims of a tribunal's administration is therefore outreach: providing the general public with information about the tribunal and its activities. The aim of outreach is to improve the awareness of the tribunals work and achievements, as well as gathering views and opinions about the institution. Struggling with legitimacy issues, it is important that the local stakeholders are aware of the proceedings of the tribunal. The ad hoc tribunals have been said not to have invested enough in reaching out to their society. The SCSL uses this knowledge to perform better in that field, which is a clear example of *coercive isomorphism*, initiated by political forces to support the legitimacy of the organization's work (DiMaggio & Powell, 1983).

#### *The cultural dimension*

The cultural dimension of tribunals is best embodied by the cultural diversity of the workforce. Tribunals encourage diversity and express the need for equal representation of different nationalities. On average the tribunals employ people from over fifty different nationalities. Despite the various cultural backgrounds there are little conflicting values and principles. This is best illustrated in the ICTY, where people of opposite sides of the conflict (Serbs and Bosnians) have been working together. This does not mean that the diversity of the staff never goes without any challenges. For a lot of people English is not a native language, which takes patience when it comes to cross-cultural communication. Furthermore, different cultures are bound to use different ways to communicate (i.e. direct or indirect, formal or informal), which can also be reason for confusion. Cultural differences may well be found between the different organs of the institution. Chambers

staff tends to be detached neutral and fair, interested in a transparent and fair process. Prosecution staff can be characterized by a strong sense of retribution, wanting to see the perpetrators punished in an effective manner. Finally, Defense staff wants to make sure that there has been a fair trial, without any violation of people's rights.

*"I think it is an organization where we bring together what I can call that energy of being so many but working as one body, with the internal synergy which is coming from all corners of the world." (Koffi Afande: ICTR)*

Overall it can still be said that all employees find each other in their motivation to end further impunity in the world. The cultural diversity of the organization is therefore often posited as the main contributor to its successes.

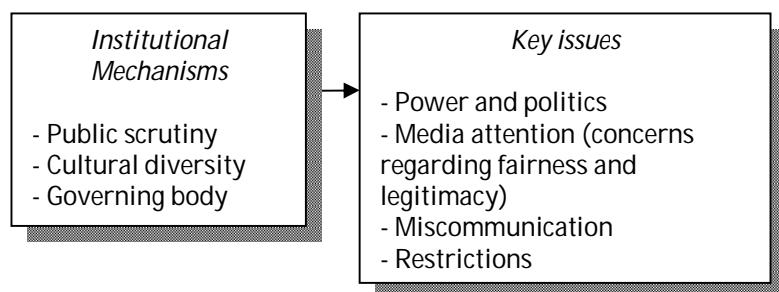
### *The legal dimension*

The ad hoc tribunals have the UN as their governing body and are legally bound by its formal staff rules and regulations. Any major changes in the policy of these tribunals will have to be approved by the UN. Making changes to the regulations might have gross implications for staff in comparable UN organizations, which makes the UN wary of all policy changes.

*"You will not be surprised there is no vacuum within the UN in terms of regulation of human resources management." (Koffi Afande: ICTR)*

This does not mean that the HRM is strictly limited to following pre-rendered rules and regulations. Since the hybrid tribunals are the result of tendentious negotiation between states, the UN, concerned third-party governments and NGOs (Weiss & Daws, 2007), they are not obliged to follow UN rules and regulations. Despite this the hybrid tribunals have mirrored their rules and regulations on those of the ad hoc tribunals. As the tribunals use the knowledge of the other tribunals to deal with the uncertainties of their context, this can be labeled *mimetic isomorphism* (DiMaggio & Powell, 1983). The hybrid tribunals are governed by a management committee that is comprised of the representatives of the donor community. They are dependent on this management committee when it concerns approving the budget, changes to the rules and regulations, and any other major initiatives.

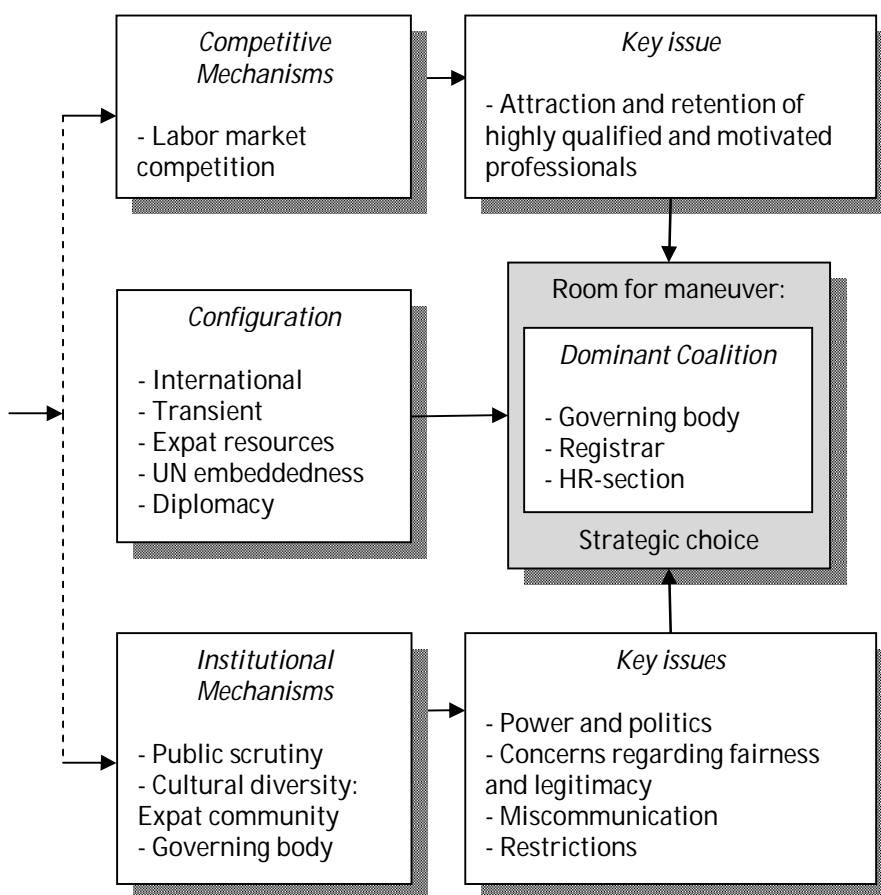
This section explained how the environment of a tribunal constitutes elements that account for the existence of its organizational structure. These mechanisms have been summarized in *Figure 5.*



**Figure 5.** The institutional mechanisms of a tribunal and the issues that result from these mechanisms

### **5.3 Room for Maneuver**

The previous two sections have discussed the different forces that present themselves in the context of a tribunal. These forces impact the room for maneuver of a tribunal's HRM. First, the *configuration* of the tribunal limits the possibilities for long-term HR-planning because of the transient nature of the institution. Second, the *competitive mechanisms* also weaken long-term HR-planning as people leave the tribunal for other opportunities. Third, the *institutional mechanisms* limit the possibilities for HRM because the tribunal is dependent on the governing body that places restrictions on what they can do. *Figure 6* is a summary of the context analysis, completed with a description of its dominant coalition.



**Figure 6.** The force field analysis of a tribunal's context

Although the context in which organizations operate can limit the possibilities for HRM, Paauwe (2004) explains there is always room for strategic choice. Every organization has a dominant coalition that will eventually determine how the HR-configuration is applied in practice. The summary in *Figure 6* shows that in case of the tribunal the dominant coalition is composed of multiple parties. Next to the governing body there is the Registrar, who is the head of administration. While the Registrar makes the major administrative decisions within the tribunal, the HR-section is given the responsibility for the right implementation of the HR-configuration. Because tribunals operate in such a complex context they have to utilize the room for strategic choice wisely.

## 5.4 Conclusion

This chapter discussed the results of the first stage of the research concerning the context in which tribunals operate. The first research question this chapter aimed to answer was "*What constitutes the context of a transient international tribunal?*". The results are summarized in Figure 6, indicating tribunals operate in a versatile context with very defining characteristics. The second research question this chapter aimed to answer was "*How does the context of a transient international tribunal affect HRM within the institution?*". The results described how the room for maneuver of HRM is determined by the *configuration* of the tribunal which limits the possibilities for long-term HR-planning, the *competitive mechanisms* which also limit the possibilities for long-term HR-planning and the *institutional mechanisms* stemming from the governing body that places restrictions on all activities within the institution. The Registrar and HR-section are currently assigned the task to make sure that the administrative aspects of the tribunal do not interfere with its proceeding. Because both are largely dependent on their context, they have to make the most of their room for strategic choice.

The origin of the retention issue can be logically derived from the preliminary analysis presented in this chapter. The transient nature of a tribunal creates uncertainty with the legal professionals about their future employment. Other attractive employment opportunities make leaving the tribunal a very sensible option. With both motive and opportunity, the legal professionals - who have little attachments to the organization - cannot be expected to stay until the end of the mandate. These three factors fortify each other and cause the retention issue as it is encountered by the tribunals. When the tribunals lose legal professionals, they will also lose firm specific knowledge skills and abilities. Inadequate management of the issue endangers the *continuity* of the institution as the needed expertise and experience is not replaceable on short notice. Furthermore, the recruitment of new legal professionals diverts the attention from the core function of the tribunal:

*"For example, the preparation of a roster of candidates for any one vacancy in Chambers involves two senior staff members, one Tribunal Judge and one Human Resources Section representative conducting interviews for about two full days. While not every vacancy requires this process because a roster containing a sufficient number of candidates may already be in place, if we consider the loss of one staff member per day, this is a significant divergence of resources from the core business of the Tribunal."* (ICTY: Completion Strategy, 2009)

Voluntary turnover also impacts the moral of remaining staff that will have to take on an even higher workload until new staff is recruited. All in all this will create a *vicious circle*, raising the work-pressure and damaging organizational commitment. It is vital for the tribunal to keep meeting the operational needs of future activities. A timely completion of the mandate will be regarded by the international community as an efficient victory, strengthening the *societal performance* of the tribunal. It will also heed the *strategic performance* of the organization as it makes the process more efficient. Lastly it will strengthen *professional performance* as the issues that people deal with are correctly addressed. The findings of the first stage thereby endorse that appropriate management of the retention issue will benefit both the tribunal and the legal professional. The second stage of the research therefore concentrates on determining the qualifications of a HR-configuration that can successfully attend the needs of both tribunals and legal professionals.

## STAGE 2

*The preliminary analysis has created a clear image of the context in which tribunals operate and the origin of the retention issue. Since the retention issue is currently damaging the continuity of proceedings in various tribunals it is imperative that an appropriate retention strategy is devised that supports the tribunals in retaining the legal professionals. This second stage makes use of theory, prior empirical research and new empirical material to draw conclusions on how the retention issue can be managed.*

## 6. THEORY AND PRIOR EMPIRICAL RESEARCH

Considering the legal professionals are of great importance to a tribunals proceedings, the tribunals are expected to create a HR-configuration focused solely on their retention (Lepak & Snell, 2002). This chapter discusses theory and prior empirical research to determine the theoretical requirements of this HR-configuration. Before discussing the theory, it is important to define the retention issue as it presents itself in this research.

### Defining the retention issue:

Following Shaw et al. (1998) employees leave an organization as the result of either *voluntary turnover*: an employee's decision to leave an organization, or *involuntary turnover*: the employer's decision to terminate the employment relationship. The retention issue of the tribunals is caused by legal professionals who leave the organization on their own initiative, thus *voluntary turnover*. The legal professionals are the people who are most intimately involved with the service that the tribunals provide, which makes them the *core operating workers* of the organization (Boxall & Purcell, 2008). Losing core operating workers endangers the service that the organization provides, which means the retention issue in the current context can be defined as *disruptive voluntary turnover*.

Unsuccessful employment usually occurs when the employment relationship does not match organizational or individual needs (Boxall & Purcell, 2008). This chapter analyzes the retention from the perspective of the both employer (tribunal) and the employee (legal professional) to determine how to satisfy the needs of both parties through HRM. Section 6.1 provides a theoretical explanation for the retention issue from the perspective of a tribunal. Section 6.2 provides a theoretical explanation for the retention issue from the perspective of a legal professional. Section 6.3 discusses how theory and prior research suggests how to manage voluntary turnover within organizations. This is again explained from the perspective of both the tribunal and the legal professional. Section 6.4 concludes the chapter with a summary of its main findings to reiterate the implications they have for the appropriate HR-configuration.

### 6.1 The Transient International Tribunal

A tribunal has a unique mandate that is tied to political authorization for involvement and funding sources and limitations. This transient nature is a characteristic that the tribunal shares with the *project organization* (Turner & Müller, 2003). Despite the fact that the academic literature on the subject of HRM in project organizations is rather limited and new, it can help broaden the view on the retention issue within the tribunals.

Just like tribunals, project organizations have a unique shaping of their policies, practices, culture and strategy as a result of their complex context (Modig, 2007). A project organization is often established by a parent organization to achieve predetermined objectives (Turner & Müller, 2003). In contrary to the 'child', the parent organization can be considered stable and structured.

The parent organization will appoint the people that work together on the project and assign a project manager. This project manager has the task of linking the objectives and strategy of the project to those employed by the parent organization (Turner & Müller, 2003). When compared to a tribunal, the UN can be considered the stable and structured parent organization. The Registrar, appointed by the UN, acts as a project manager and is responsible for linking the objectives and strategy of the tribunal to those employed by the UN.

Like any normal organization, the project organization has the challenges of managing time, cost and quality. In addition to these challenges project organizations also encounter unique challenges that result from uncertainty, a constant sense of urgency and a constant need for integration (Turner & Müller, 2003). These challenges do not only affect the organization, but also create pressures for employees (Turner, Huemann & Keegan, 2008). *The first of these pressures* is the trouble to achieve a right work-life balance as a result of an inconsistent workload. The workload of the employee is dependent on (a) the project itself and (b) the stage of the project, which can be cause for role overload and role conflict. *The second pressure* is the uncertainty of future work assignments. The employee is constantly aware that the project eventually will come to an end and has to reflect on future developments. *The third pressure* is the challenge to link project-participation to career development. Dynamism and flexibility are intrinsically related to the transient nature of the project organization and leave no room for proper career development.

Most project organizations often fail to grasp and address the challenging situation in which the employees find themselves (Huemann, Keegan & Turner, 2007).

*"From an HRM perspective, becoming an attractive employer would thus be a matter of winning the battle of individual support and development, to be able to arrange for systems and processes that help the individual to assume the responsibilities for keeping her/him "employable and updated." (Söderlund & Bredin, 2006)*

Failure to address these issues in these transient organizations leads to job dissatisfaction and in extreme cases physical, psychological and behavioral withdrawal (Turner et al. 2008). Eventually this will lead to an increase in voluntary turnover among the employees. The retention issue that the tribunals encounter can be compared to the issues of the project organization. If tribunals fail to address the pressures their employees experience this most likely will increase voluntary turnover. *This conclusion is based on the assumption that the employees of a tribunal also experience pressures connected to their work-life balance, future work assignments and career development.*

## 6.2 The Legal Professional

The legal profession originated from a process in which members of the legal occupation aimed to establish a cognitive base and legitimization for their occupational autonomy (DiMaggio & Powell, 1983). Legal professionals occupy similar positions across a range of organizations, guided by an orientation and disposition that overrides organizational tradition and control. They are in a constant search for organizations that can assist them in their career development, working towards the end goal; occupational autonomy.

The legal professionals employed by the tribunals are employees of an international public service organization. According to Rainey (2003) people who in public service organizations have a lower valuation of monetary incentives and higher levels of *public service motivation*. Public service motivation is "the belief, values and attitudes that go beyond self-interest and organizational interest, that concern the interest of a larger political entity and that motivate individuals to act accordingly whenever appropriate" (Vandenabeele, 2007). In other words, the public sector employee carries out tasks, not to gain rewards or pleasure, but because it is of meaning to the

individual. This indicates that their motivation is mainly constituted of affective- and normative elements (Perry, 2000). According to theory legal professionals can also be labeled as *knowledge workers*; individuals who carry knowledge as their most powerful resource (Drucker, 2003 p. 88).

*"These workers may have both a traditional knowledge type linking science and rational analytical problem solving and requisite knowledge, as well as a particular subjectivity requiring an ability to deal with complexity and uncertainty."* (Horwitz, Heng & Quazi, 2003)

Knowledge workers have often gained their knowledge and abilities in a very specific community through frequent interaction with people who have a similar identity and motivation and overlapping skills and expertise (Arthur, DeFillippi & Lindsay, 2008). Because knowledge workers are trained in a particular profession they can sell their services to a variety of organizations. Horwitz et al. (2003) explain that because they can occupy similar positions across a range of organizations they are said to lack organizational identification.

The theory describes that the *public service professional* is motivated by elements that surpass the organization, which explains their lack of connection with the organization. This implies that the legal professionals working in the tribunals will also lack a connection with the institution. *This conclusion is based on the assumption that legal professionals are guided by an orientation and disposition that overrides organizational tradition and control*

### 6.3 Retention Management

Research suggests that *organizational commitment* has a significant negative correlation with voluntary turnover (Buck & Watson, 2002; Cotton & Tuttle, 1986; Chang, 1999). In other words, if an organization stimulates the organizational commitment of an employee, this individual will be less likely to terminate the employment relationship. Meyer and Allen (1991) explain this more clearly by describing organizational commitment as a variable with three distinctive constructs:

- *Affective commitment* refers to the emotional ties that an employee builds up with the organization. When an employee has strong emotional ties he/she will be less likely to leave the organization.
- *Continuance commitment* refers to the expenses that an employee associates with losing the current position in an organization. When expenses are higher than possible revenues, an employee will less likely switch jobs.
- *Normative commitment* refers to an employee's feelings of obligation towards the organization. When an employee feels obliged to continue to help the organization perform, he/she will be less likely to leave the organization.

Prior empirical research suggests that if an organization succeeds in simulating organizational commitment it can succeed in reducing voluntary turnover. *Section 6.3.1* discusses the theory on stimulating organizational commitment from the perspective of a tribunal. *Section 6.3.2* discusses the theory on stimulating organizational commitment from the perspective of the legal professional.

### 6.3.1 A Tribunal's Perspective on Organizational Commitment

Although the academic literature on transient organizations described that if they fail to address the issues that accompany their context they will lose their employees (Turner et al. 2008), research on how to manage these issues is often falling short (Turner & Müller, 2003). Past research has shown that organizational commitment plays a key role in the reduction of voluntary turnover (Buck & Watson, 2002; Cotton & Tuttle, 1986; Chang, 1999), which can be significantly influenced by organizational activities (Lee & Mowday, 1987). This section describes the theory on organizational commitment from the perspective of the tribunal.

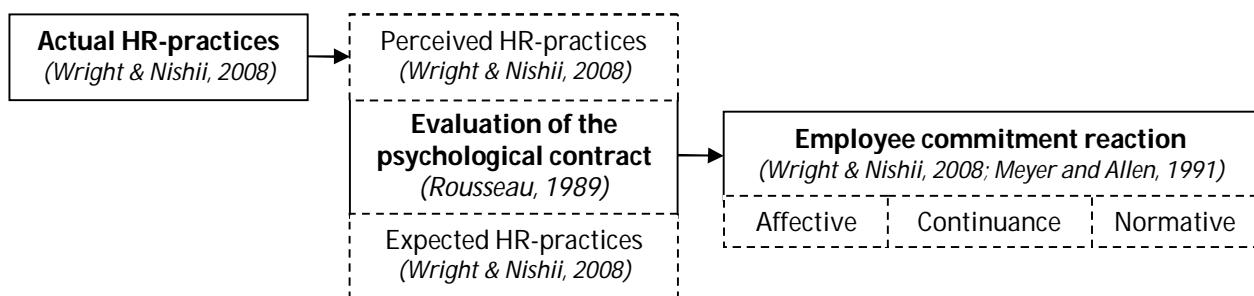
The way organizational commitment can be strengthened is context-dependent and therefore differs across organizations. *Commitment-based HR-configurations* are probably the most extensively applied within organizations (Uen, Chien & Yen, 2009). Using these configurations, organizations aim to develop employees who identify with the goals of the organization and will work hard to accomplish these goals. Many stable organizations use employment security as a means of stimulating organizational commitment (Chang, 2005), which can stimulate the performance and attitudes of the employee (Tsui, Pearce, Porter & Tripoli, 1997). Baron & Kreps (1999) explain how an *Internal Labor Market* (ILM) can guarantee employment security as a result of internal promotion. Internal promotion systems will form attachments between the organization and the employee, through a process that is also referred to as *escalating commitment*. Unfortunately for a transient organization it is impossible to offer employees *life time employment*. Furthermore, introducing an ILM produces employees with high levels of *firm-specific knowledge*: general knowledge about the organization itself that has been developed slowly on the job, while transient organizations employ people with *job-specific knowledge*: knowledge that pertains to executing a particular job, already present when joining the organization (Baron & Kreps, 1999). Because they attract people 'from other places' for a short period of time, transient organizations are incompatible with an ILM as described in theory. Baron & Kreps present *high-commitment HRM* as the alternative for organizations that are not fit to adopt an ILM. With a *commitment-based HR-configuration* organizations assemble HR-practices that aim getting more from employees by investing in them (Baron & Kreps, 1999; Lepak & Snell, 1999), offering them support in their *life time career*. Transient organizations attract people that already possess the skills needed to function in the tribunal and have no need to develop them any further (Lepak & Snell, 2002). Since they work with this *acquired human capital* theory suggests they are unlikely willing to invest in their employees (Lepak & Snell, 1999). Lepak & Snell (1999) describe how organizations that acquire human capital rely on a *market-based HR-configuration*, meaning their focus is on recruitment, pay and job performance, while they prepare for the possibility that people might leave.

Because tribunals work with acquired human capital they do not invest in their employees. *This conclusion is based on the assumption that tribunals use a market-based HR configuration to acquire human capital*. Still, Section 6.1 described that becoming an attractive employer is a matter of winning the battle of individual support and development by arranging systems that keep the individual employable and updated. Although tribunals may have theoretical justified reasons for refraining from any form of employee investments, this will offer them no practical relief with regard to the retention issue they experience. To further illustrate the importance of managing this commitment the next section describes commitment from the individual perspective of the legal professional.

### 6.3.2 A Legal professional's Perspective on Organizational Commitment

The characterization of a legal professional suggested that these employees do not feel connected with the organization. Rainey (2003) explains that because of a connection with the work itself instead of the institution, the organizational commitment of the public service employee is comparably low. Prior empirical research suggests that there is a connection between organizational commitment and voluntary turnover (Buck & Watson, 2002; Cotton & Tuttle, 1986; Chang, 1999). This section therefore describes organizational commitment from the perspective of the legal professional.

Rousseau (1989) explains there is a *psychological contract* between an employee and employer, which he defines as an individual's beliefs with regard to the terms and conditions of a reciprocal exchange agreement. As the HR-configuration support these terms and conditions, the psychological contracts can be treated as the employees' beliefs stemming from the HR-configuration (Uen et al., 2009). If the HR-configuration fails to respond to the employee in ways the individual believes it is obliged to, the employee will regard this as a violation of the psychological contract. According to Uen et al. (2009) and Wang, Zhu and Cong (2008) this contract is positively related with organizational commitment. In other words, psychological contracts can be viewed as the linking mechanism between the HR-configuration and organizational commitment (illustrated in *Figure 6*). Following Wright & Nishii (2008), an organization implements practices to elicit a desired response of an employee. As not all practices are implemented and often differ from their intent after implementation these *intended practices* are not the same as the *actual practices*. The actual practices exist objectively, but still have to be perceived and interpreted subjectively by the employee. The *perceived practices* are the most crucial because an employee compares these with his/her psychological expectations. On basis of this comparison, the employee will evaluate on the state of the *psychological contract*. The evaluation will illicit an employee reaction that determines the *employee outcomes*. In this research this reaction concerns organizational commitment, which consists of affective-, continuance- and normative elements (Meyer and Allen, 1991).



**Figure 7.** The link between HR-practices and employee commitment

This theoretical model has *two major implications for HRM within the tribunals*. *Firstly* it suggests that if the HR-practices of the institution do not meet the expectations of a legal professional, this will damage the individual's organizational commitment (note that this indirectly implies that to savor the psychological contract it is necessary to understand the expectations that the legal professionals have of HRM). *Secondly* the model suggests that if a tribunal adopts HR-practices that stimulate organizational commitment it can reduce voluntary turnover.

In this context it would be easy to say that from the perspective of the legal professionals tribunals 'should adopt practices that stimulate organizational commitment'. The theory already indicated that legal professionals are expected to have few connections with organizations. Instead of organizational commitment, a legal professional is expected to have *professional commitment* (Wallace, 1993) which means the individual does not built many emotional ties to the organization itself (affective commitment), nor savor any feelings of obligation to stay with the organization (normative commitment). This implies that the only way to reduce voluntary turnover within a tribunal is through continuance commitment. *This conclusion is based on the assumption that legal professionals have little affective and normative commitment.* If the tribunals increase their investments (e.g. training, participation and rewards) this will heighten the transaction costs (costs of transferring to a different employer), which will stimulate the organizational commitment of the individual employee.

Prior empirical research points out that strengthening organizational commitment is the key to solving a retention issue (Buck & Watson, 2002; Cotton & Tuttle, 1986; Chang, 1999). The way organizations strengthen organizational commitment depends on the context in which they operate. Theory indicates that the organizational commitment of legal professionals can only be stimulated by heightening the transaction costs (the expenses that an employee associates with losing the current position). However, tribunals are unlikely to invest in their employees because the legal professionals are acquired human capital. Although it seems theoretically justified that tribunals do not invest in their employees, this will violate expectations and certainly not stimulate organizational commitment.

#### 6.4 Conclusion

This chapter used both academic theory and prior empirical research to make suggestions about the requirements of an appropriate HR-configuration that supports the tribunals in managing their retention issue. To reduce voluntary turnover prior empirical research suggests that organizations have to stimulate organizational commitment through organizational activities. When it concerns the management of legal professionals the theory indicates that these activities should be connected to employee investments (note that these investments do not equal higher wages). The theory suggests that transient organizations like tribunals do not invest in their employees because they work with acquired human. As organizational commitment is the prelude to employee retention, refraining from investments can have devastating effects on employee outcomes of the organization. To match both organizational and individual needs this indicates it is imperative that the tribunals adopt a *commitment-based HR-configuration*. The theoretical model (*Figure 7*) illustrates how HR-practices aimed at strengthening commitment can determine the evaluation of the psychological contract. For the HR-practices to stimulate organizational commitment they have to raise transaction costs and meet the expectations of the legal professional.

The findings of this chapter built on four distinctive assumptions about transient organizations and legal professionals. Before accepting these conclusions it is imperative to validate the theory in practice, using empirical data collected in the tribunals. The following chapter describes the methods that were used to validate the four assumptions made in this chapter.

## 7. RESEARCH METHODS

This chapter describes the research methods that were used to validate the conclusions of the previous chapter. Up till now this research only incorporated the views of senior HR-management. According to Gould-Williams (2003) studies often put too much emphasis on the opinions of senior management. Senior management is likely to have little knowledge of workplace HR-practice and may provide exaggerated views of such. To avoid this one-sided view of reality; the second stage adopted a multiple level analysis approach that also incorporated the views of legal professionals.

### *Respondent selection*

In the *first stage* the retention issue was already discussed with the representatives of HR-management<sup>12</sup> (for the selection process of these individuals see *Chapter 3*). The legal professionals that have participated in this research are all employed by the STL. Of the four tribunals that were approached in this research, only the STL was willing to its staff members be interviewed within the timeframe of this research. Because of the subject matter dealt with in these institutions it is very unique that an independent researcher gets the opportunity to collect such data. The respondents are constantly exposed to the pressures of a transient organization and have little time to spend on things that are not directly related to the proceedings of the tribunal. The selection of respondents was left to a member of the HR-section, who took a purposive sample from the people that represent the right characteristics. The eventual group of respondents is described in *Table 2*<sup>13</sup>.

Table 2: *Respondents participating in the second stage of the research*

Respondent Capacity	Respondent Organ
Head of Office	Registry
Head of Office	Registry
Chief of Human Resources	Registry
Chief of Human Resources	Registry
Legal Officer	Chambers
Legal Officer	Defense
Legal Officer	Registry
Legal Officer	Registry
Supervisory position	Prosecution
Supervisory position	Prosecution
Supervisory position	Defense
Supervisory position	*confidential*

The four legal officers had all been active in different post-conflict contexts, which means they were familiar with the existence of the retention issue. On the supervisory level only three people had previous experience in different post-conflict contexts and knowledge of the retention issue.

<sup>12</sup> See *Appendix III* for the content of the topic list

<sup>13</sup> Legal professionals deal with very sensitive information that is not available to the public. These people will therefore rightfully apply a high level of integrity and confidentiality in their work. To assure them of this integrity the recordings and transcriptions of the interviews were used solely for academic purposes and their anonymity guaranteed. Despite these precautions one respondent still refused to the recording of the conversation, due to possible misuse of the recording by opponents of the tribunal.

### *Data-collection and analysis*

Since the research mainly concerned the knowledge and opinions of individuals the oral interview was deemed most suitable for the collection of the data (Van der Velde et al. 2004). The interview was semi-structured using the academic literature presented in the previous chapter<sup>14</sup>. The semi-structured design offered the freedom to deviate from the structure when necessary, while at the same time limiting the amount of irrelevant information. The interviews were recorded and transcribed to minimize the loss of information. The data-sets of the three groups were compared as a mode of triangulation to validate the value of collected information. The data aimed to validate the literature study presented in *Chapter 6* and apply the theoretical model of *Figure 7* to the tribunals.

The greatest methodological considerations of this entire study can be distilled with respect to the generalization of the results. Are generalization claims of this second stage justified on basis of one case study and twelve interviews? Statistically the results of this study can already hardly be generalized to the STL and its staff members. On the other hand the study does leave room for analytical generalization. The effect of HRM in organizations and theories that endorse this effect can be generalized to all organizations in comparable circumstances.

## **8. RESULTS**

The conclusions generated in *Chapter 6* are based on four distinctive assumptions about tribunals and legal professionals. The following four sections (8.1-8.4) discuss how the empirical data collected in the tribunals validates these assumptions. Each section will first describe the theoretical assumption, to consequently discuss the research results and compare the both in a conclusion. When the assumptions have all been validated the conclusions can be accepted and the theoretical model applied to the retention issue of the tribunals

### **8.1 The Pressures in an International Transient Tribunal**

*Assumption 1: the employees of a tribunal experience pressures connected to their work-life balance, future work assignments and career development.* Turner et al. (2008) describe that working in a transient institution like a tribunal can create pressures for its employees. This section explains how people from within the tribunals view these pressures.

*"We're a temporary institution so we need to invest more, it's not a permanent company where you can just give... you give quite a lot of yourself because you're all trying to achieve a goal and the goal shouldn't be delaying the process, it should be speeding up the process."* (Respondent 2)

All respondents agree that legal professionals have trouble to achieve a right *work-life balance* because they always work under short and though deadlines. The exact impact this has on their lives is dependent on the position they occupy and their present caseload. Some positions in the tribunal are more demanding in terms of time and accompanying responsibilities and some organs of the tribunal are not yet fully operational. The legal professionals who work in a fully operational organ of the institution are known to work long hours during weekdays and often also during weekends. They accept this as part of the job and are willing to do whatever it takes to get the job done. This changes when people have children and a family to provide for. In these cases they often experience a lot of trouble to spend sufficient time with their families.

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<sup>14</sup> See *Appendix III* for the topic list used to study the retention issue from within the organization

The respondents are aware that they occupy a function in a transient institution which means that it is just a matter of time before they have to start looking for *future work assignments*. Legal professionals are prone to box themselves in a certain area of expertise that is too difficult to transfer to future employment. When unemployed, they can try to apply for a job in a similar institution or decide to go back to their respective home country and apply their expertise in the local judicial system. While the latter will not be a problem for people who work in countries that apply common law (i.e. The Netherlands), it is much harder for people who come from countries that don't (i.e. France, Germany and Italy) as an exam is then needed to get back into the judiciary.

The respondents indicated that *career development* is one of the most important aspects for legal professionals. In stable organizations you will often see that people start off as generalists, becoming more specialized whilst going through their careers. People in tribunals will often do the reverse, starting off as specialists, becoming more employable generalists near the end.

*"It started off vertically, because it was most interesting; working on the [NAME]-case was magnificent opportunity. It is hard for a young professional to say no to it, so I started very focused."* (Respondent 2)

The respondents describe career development as one of the reasons why the legal professionals join the tribunals. As the legal professionals are the ones who move in-between tribunals they are often held responsible for their own career development. When a tribunal is closing down new positions often open up that could be seen as promotion opportunities for the remaining staff. Tragically the tribunals often bring people in from the outside to fill these positions, leaving many employees disillusioned with unmet expectations, looking for external promotion opportunities.

This section described the pressures that the legal professionals experience while working in the tribunals. Turner et al. (2008) described that the dynamism and flexibility of a transient organization leave no room for proper career development. In the context of a tribunal, moving from one project to another equals career-development. Although this finding slightly diverges from theory, on the whole the pressures as described by Turner et al. (2008) have been confirmed. When reviewing these pressures it becomes clear that the legal professionals make a deliberate choice as they join the tribunal to accept these pressures, exemplary for their motivation as discussed in the following section.

## 8.2 The Motivation of a Legal Professional

*Assumption 2: Legal professionals are guided by an orientation and disposition that overrides organizational tradition and control.* According to theory the employees of a tribunals have a *public service motivation*, which implies these individuals do not work for the organization to gain rewards or pleasure, but because it is of meaning to the individual. Their motivation therefore mainly consists of affective- and normative elements (Perry, 2000). This section describes how people from within the tribunals view the motivation of a legal professional to determine if practice supports theory.

*"They're empathetic towards what happened there, so you have sort of an outwardly gregarious sort of person in terms of sort of a social profile. They are people that are motivated to work for these courts based out of a sense of, I would say, outrage of the atrocities that took place."* (Gregory Townsend: SCSL)

The respondents indicated that the legal professionals work in the tribunals because they want to end further impunity in the countries the tribunals represent. They join the tribunal because they support its mandate and believe in what the institution is trying to achieve. The legal professionals are driven by status and reputation, received through promotion. In tribunals there is

often a lack of regulations in many of the work areas, especially in their start up phase. The legal professionals are therefore challenged to improvise and make on the spot decisions. In this setting the interaction between different levels of employment is rather open. Young professionals thrive on this as they are offered a wide range of opportunities for quick advancements in the system. The motivation of legal professionals also contains an irrational element: it is not without reason that Baylis (2008) referred to them as 'post-conflict junkies'. Especially for the young professionals, who have little to lose, part of the charm of working in the tribunals is the pressure they experience. The hectic environment in which they have to work provides them with a thrill and challenges them to work even harder.

The results confirm that the legal professionals are motivated through affective- and normative elements when it concerns the substance of the work. Although theory suggested that legal professionals would have less interest in a rational connection (Perry, 2000), the results show that the legal professionals are also driven by promotion opportunities and career advancement. Tribunals purposely attract employees that have experienced other post-conflict settings for their ability to take the lessons learned at other tribunals with them.

*"We knew about the mistakes of the [TRIBUNAL] and we will make mistakes, but at least we hope to make new mistakes, not the old mistakes." (Respondent 8)*

Although the tribunals attract exactly the people that are fit to function in these institutions, they cannot be unaware of the consequences of hiring this kind of employees. They have to manage these employees carefully, using a very specific HR-configuration, discussed in the next section.

### 8.3 The HR-configuration of a Tribunal

*Assumption 3: Tribunals use a market-based HR configuration to acquire human capital.* The theory indicated that organizations that acquire their employees focus on recruitment, pay and job performance. Although the objectives of the HR-policy of some of the tribunals have shifted during the past few years, the initial blueprint of the HR-policy was largely the same for all four institutions. Table 3 is a summary of the HR-configuration as applied in a tribunal for the larger part of its existence<sup>15</sup>, assembled using the data collected from the four tribunal representatives and relevant documentation (Table 1).

Table 3: Pfeffer's 'best practices' (1994, as displayed in Paauwe, 2004) applied to HRM in the tribunals

Best practices that can be found in organizations	HRM practices that are commonly found in the transient international tribunals
1. Employment security	No
2. Selectivity in recruiting	Yes
3. High Wages	Yes
4. Incentive pay	Yes
5. Employee ownership	No
6. Information sharing	Yes
7. Participation and empowerment	No
8. Self-managed teams	Yes
9. Training and skill development	No

<sup>15</sup> This table should be viewed as a summary of the practices that are commonly applied in a transient international tribunal. Its contents do not account for any singularities found in the individual tribunals and are not indicative for opinions of the individual tribunals.

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10. Cross-utilization and cross-training	No
11. Symbolic egalitarianism	No
12. Wage compression	No
13. Promotion from within	No
14. Long-term perspectives	No
15. Monitoring of practices	Yes
16. All embracing philosophy	No

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Tribunals make little use of the practices that have been successfully applied in other organizations. The prevalence or lack of some of these practices characterizes the HR-configuration for legal professionals. The tribunals carefully select the legal professional using a competency framework (based on that) of the UN to evaluate the candidate's personality, skills and motivation to match the ones needed for the job. Compared to many national institutions, the international tribunals often pay relatively high salaries and hold their employees to a high performance standard. The reason why there are so many elements on the list that the tribunals are not doing, can be explained by two factors. The *first factor* is that the tribunals – from their inception – are not regarded as organizations that offer long term employment: they offer little to no employment security because of the transient nature of the institution and the short-term contracts that accompany this nature. This explains why the tribunals refrain from HR-practices that would stimulate continuance commitment (i.e. employee ownership, training and skill development, cross-utilization and cross-training, and promotion from within).

*"We are not given any formal training budget because again we are not a career organization, you're supposed to come fully equipped for your job and then you're supposed to go away." (Danijela Milić)*

The *second factor* is that the hectic environment makes it almost impossible to keep an overview of the situation. This explains why the tribunals are more concerned with current needs and operational practice instead of taking the time to rethink HRM (i.e. no all embracing philosophy or long-term perspectives).

These findings are congruent with what the theory suggested; tribunals apply a *market-based HR-configuration* in which they focus their attention on recruitment, high wages and incentive pay. They refrain from any activities that require making investments in the legal professionals. The theory suggested that these investments are the only way to reduce voluntary turnover among the legal professionals, based on the assumption that continuance commitment is the only commitment of the legal professional as discussed in the next section.

## 8.4 The Commitment of a Legal Professional

*Assumption 4: Legal professionals have little affective and normative commitment.* Theory indicated that legal professionals have *professional commitment* instead of organizational commitment (Wallace, 1993). Rainey (2003) implied this means they are not affectively- and normatively committed to the organization in which they work. This section describes how people from within the tribunals view the organizational commitment of the legal professionals to validate these assumptions.

### 8.4.1 The Affective Commitment of a Legal Professional

The legal professionals join the institution because they want to help it reach its purpose. With their contribution to the organization they believe they can make a difference for the people that suffer(ed) from the crimes. This can be seen as the main strength of the tribunals; they can

offer their employees a challenge and a mission to cling on to. The only thing that this leaves to question is whether the legal professionals are truly committed to the organization, or if they view it as a vehicle for their own aspirations.

*"I would prefer working at the [TRIBUNAL]. This is not only because I enjoy my work there, but because I have a lot of good colleagues and friends."* (Respondent 1)

The legal professionals work long hours with people that have the same interests and similar aspirations. Although they might not be particularly connected to the institution, they still experience the same human affections as other employees. What is a striking is that most of the legal professionals identify themselves more with the organ they are working in (i.e. Chambers, Prosecution or Defense) instead of the institution as a whole. This is the consequence of the sometimes contradictory functions that get allocated to the different organs of the institution. This is positive in the sense that it is needed for an objective handling of the cases, but will not encourage a feeling of commitment to the organization as a whole.

#### *8.4.2 The Continuance Commitment of a Legal Professional*

Legal professionals can benefit quite a lot when they choose to continue their career within a tribunal. They usually have a pension plan, benefits and six weeks of leave that can be very unique in relation to other employment options and possibly not present in their respective home countries. Furthermore the individual is also offered a flexible work environment, multiculturalism and the opportunity to be part of a mission. As discussed there can still be ample reason to leave the organization. The reason many of the legal professionals chose the legal profession is because it is not restricted. The uncertainty of the tribunal context and the risks are accompanied are not worth taking for some people. What is important to note here is that they are fully aware of the fact that the institution has a transient nature and therefore do not see themselves as life time employees.

*"And if you find something else, no matter what they do, there is not much that can really stop you from taking the new job."* (Respondent 6)

They choose to work in the particular tribunal because they can identify with the substance of the work. If there would be a different tribunal, with a greater challenge they would most likely still terminate the employment relationship.

#### *8.4.3 The Normative Commitment of a Legal Professional*

Because the legal professionals join the organization as a result of a well considered choice, they do often feel some sort of obligation to stay with the organization. Furthermore the employees often feel that they have an obligation to the people that have fallen victim to the crimes, which indirectly obliges them to stay with the organization. This feeling of obligation is not unconditional...

*"I feel obliged to... but still to the extend that's in my best interest. I think that's probably the same with everyone I know."* (Respondent 6)

The legal professional will determine the best interest in relation to the individuals own career development. If the tribunal fails to meet the expectation of the individual, or if there are other attractive employment opportunities, this will indicate that it is in the best interest of the employee to leave.

Although the legal professionals of the tribunals do show signs of low organizational commitment, this section has proven it to be less clear-cut than the academic literature might have suggested. However, it remains true that legal professionals are likely to be more committed to their own ideals than those of the organization. It also remains true that when the revenues of leaving the tribunal exceed those of staying, a legal professional will be inclined to leave the organization.

In conclusion of the past four sections it can be stated that the theoretical assumptions of *Chapter 6* have been validated. The pressures of a tribunal are indeed very intense and create problems for the employees in which the tribunals do little to assist them. Furthermore, the legal professionals are intrinsically motivated to get professional autonomy, which means they develop little commitment to the organization. Since the assumptions that underlie the theoretical model have now been validated, the model can be rightfully applied to support the tribunals in managing the retention issue. Following this theoretical model (*Figure 7*), *Section 8.5* discusses how the legal professionals *perceive* the HR-practices to make a comparison with their *expectations* of the HR-practices. On basis of this comparison *Section 8.6* reiterates how tribunals can strengthen the organizational commitment of the legal officers.

## 8.5 Applying the Theoretical Model

According to the theoretical model (*Figure 7*) a legal professional will compare his/her perceptions of the HR-configuration with his/her expectations. If the perceptions fail to meet the expectations, this will damage the individual's commitment to the organization. This section explores the current expectations and perceptions to make a comparison between the both.

*"I have the impression that their focus is mainly on recruitment. I think for example they should also - I don't think they even have a person doing that - training."* (Respondent 8)

The legal professionals point out that they expect the tribunal to support them in managing the pressures they experience while working there (i.e. work-life balance, future employment opportunities and career development). They acknowledge that these pressures could be addressed better if the tribunals would design a fitting HR-configuration. The legal professionals also expect strategic thinking; looking forward to future developments, especially when it concerns HRM. Both the legal officers and their supervisors acknowledge the gravity and complexity of this task and do not expect any form of perfection.

*"One of the reasons I left the ICTY was because I felt that I was not treated fairly in many cases ... I think that is very typical for the kind of organizations we work in, because you bond a lot with the mission of the organization it's easy to become disillusioned."* (Respondent 8)

The legal professionals currently perceive a HR-configuration that does not support them in the pressures they experiences and often lacks strategic thinking. According to the people in higher management the core function of the HR-configuration is to heed the current operational needs. The legal professionals regard this as 'dwelling in the present' instead of looking for future developments. Accordingly, they endorse that one of the flaws of current HRM is the lack of responsiveness when it comes to the retention issue. The HR-policy directed at the retention issue is often not implemented until (or after) implementation of the 'Completion Strategy', which leads to unnecessary insecurity and stress among employees.

The legal professionals expect the tribunals to treat them fairly and to be assisted in the pressures they experience while working there. When a tribunal unexpectedly implements a completion strategy, without implementing a proper retention strategy this undermines the expectations of the employees, who can reciprocate by terminating the employment relationship. The ICTY, ICTR and SC-SL are the living witnesses of the detrimental effect this can have on the organization.

## 8.6 Conclusion

This chapter discussed the results of the second stage of this research in which the retention issue was analyzed to determine an appropriate HR-configuration for the retention of legal professionals. The first research question this chapter aimed to answer was "*How can a transient international tribunal retain employees?*". The research results indicate that a transient tribunal can retain employees by adopting a commitment-based HR-configuration, more specifically high-commitment HRM. The second research question this chapter aimed to answer was "*How can an organization retain public service legal professionals?*". The research results indicate that the employees can be retained if their expectations are met and their continuance commitment is stimulated. To stimulate continuance commitment the tribunals have to invest in their employees, again pointing towards a commitment-based HR-configuration.

*"In 2004 when it was first announced that a completion strategy would be put in action, which meant that the first cuts if you will would take place in 2008, that created such a stir that a number of people fled the - what they considered - sinking ship, even though it was four years ahead of any type of closure. That seemed to be an indication that if we wouldn't do anything to try and motivate people to stay on, we would lose large numbers of staff."* (Antonie Vermeulen: ICTY)

The current HR-configuration applied in transient international tribunals is a market-based configuration with a focus on recruitment and pay. The legal professionals expect HRM to support their needs on all possible levels, also when it concerns the pressures they experience. This clearly indicates that the market-based HR-configuration is insufficient to support the tribunals in managing the retention issue. The tribunals can only stimulate organizational commitment if they meet the expectations of the legal professionals in a way that stimulates continuance commitment. Although hitherto the tribunals have refrained from making any investments, a *high-commitment HR-configuration* seems to be their only option to correctly address the retention issue.

## 9. CONCLUSIONS

When transient international tribunals near the end of their existence they implement a completion strategy that describes their path to full closure. Past experiences have shown that after implementation of this completion strategy many of their legal professionals leave voluntarily in search for employment security in a comparable organization. Up to date no 'out of the box' model has been devised that can support the tribunals in managing this retention issue. This research discussed the retention issue from the perspective of SHRM to support the tribunals in their current retention strategies. This chapter recapitulates on the results of the research to answer the main research question "*How can a transient international tribunal retain legal professionals through Strategic Human Resource Management?*".

From their outset tribunals adopt a market-based HR-configuration, with a focus on recruitment, pay and job performance. This is a very understandable choice, since they have to concentrate on making the institution operational. The knowledge they need in this phase is common and the contracts they can offer lucrative, which makes it easy to recruit people. The tribunals recruit legal professionals from other institutions who already possess the skills needed to function in the tribunal. They do not have the need to develop the legal professionals any further, thus refrain from any type of long-term investments. The legal professionals want to end impunity in the world and are committed to conflict-solving in a broad meaning. Because they can apply their knowledge and skills in multiple settings, they are not restricted to one specific post-conflict institution and constantly search for new opportunities. In other words, the legal professionals join a tribunal because they identify with its mission, but will not hesitate to quit when promotion opportunities arise. After implementation of the completion strategy the tribunal becomes a less attractive place to work, which means that many legal professionals leave what they consider 'the sinking ship'. In this phase recruitment becomes a challenging endeavor, as the knowledge a legal professional needs to assist in the proceedings has become firm specific and the contracts the tribunals can offer less attractive. The tribunals then acknowledge that the focus should be on retention instead of recruitment, simultaneously admitting a shift in the HR-configuration for legal professionals.

Although tribunals have justified reasons for refraining from any form of employee investments (and concentrating on staffing) in their initial stages, a HR-configuration aimed at recruitment will offer them no practical relief when they have implemented their completion strategy. The legal professionals leave the tribunals because the expenses of staying are higher than possible revenues. A commitment-based HR configuration can provide the legal professionals the support they need to manage their work-life balance, future employment and career development. This will lessen the expenses associated with staying with the tribunal and make the legal professionals less likely to leave the tribunal. The tribunals have to decide if they are going to keep muddling through or adapt a new HR-configuration. Although the design of the exact HR-configuration is context specific and too big a task for the scope of this research, the research did render measures that may be of immediate practical use to all tribunals<sup>16</sup>.

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<sup>16</sup> See Appendix IV for an extensive description of the retention measures. The measures were rendered using the documentation displayed in Table 1 and the data of the interviews.

## 10. DISCUSSION

In general, this research was able to achieve the aim with which the research was initiated; support transient international tribunals in managing the staff retention issue they encounter after implementation of the completion strategy. The research posited a change in the current HR-configuration so it will heed the future needs of both employer and employee. Prior to discussing these findings more thoroughly it is important to address the notion that these findings could not have been produced without extending the scope of this research to include organizational context. During the research it became apparent in various ways how important it is to incorporate the context when conducting research in organizations. *Firstly, the preliminary analysis indicated that the retention issue encountered in the tribunals is inextricably connected to organizational context.* The transient nature of the tribunal creates motive to leave the institution, fueled by competitive mechanisms that create opportunity and low organizational commitment of the employees. *Secondly, the preliminary analysis illustrated how HRM within the tribunals is restricted because of organizational context.* The transient nature of the institution and competition of the labor market limits long-term planning, and the governing body places restrictions on its practices. *Thirdly, the outcomes of this research showed how the current HR-configuration is not effective because it does not fit the organizational context.* The current HR-configuration of the tribunals focuses on recruitment, while changes in the organizational context have shifted the focus to retention.

This research builds on the notion that successful employment only occurs when the employment relationship matches organizational and individual needs (Boxall & Purcell, 2008). Tsui et al. (1997) described different employee-organization-relationship strategies from the perspective of the employer to analyze the degree of balance that can exist in an employment relationship. The current situation in the tribunals is a typical case of *underinvestment* from the perspective of the tribunals. Although this might sound judgmental, this does not necessarily have to be the case. The tribunals sincerely initiate the employee-organization-relationship as a *quasi spot contract* in which they offer short-term economic inducements in exchange for well-defined contributions of the employee. They built this strategy on the premise that neither party expects any contributions that go beyond those specified, suggesting a balance in the employment relationship. The results of this research have made clear that the legal professionals are faced with certain pressures that require bigger contributions than those directly specified in their contract. In other words the tribunals expect broad and open-ended obligations of the employee, while they themselves show no commitment to a long term career or any investments. Underinvestment can damage the performance of an employee, as the individual will try to restore equity to the employment relationship through poor performance. In conclusion, the tribunals cannot expect the full commitment of their employees if there is no mutual exchange agreement guiding the employment relationship. The commitment-based HR-configuration this research advocates can create an employment relationship of *mutual gains* meaning the employment relationship matches organizational and individual needs (Tsui et al., 1997). To realize this there needs to be a shift in the people management philosophy of these institutions, which can only be realized if the commitment-based HR-configuration becomes an integrated part of the institution.

In the current situation the management of work and people is trusted to the Registrar, who makes all administrative decisions within the tribunal, and the HR-section, which offers support. The new people management philosophy should not only be embraced by these two parties, but be extended to the organization's principals and all people in supervisory positions. This implies that the people management perspective should be included in all strategic decision-making of the organization. The possible ramifications of neglecting HRM in strategic decision making have been widely demonstrated with the implementation of completion strategies. When designing the completion strategy the tribunals forgot to add the 'people factor' to the equation. This research

argues that all major strategic decisions should consider the people factor, consequently pleading for an integrative linkage between Strategic Planning and HRM (Buller, 1988).

These points can be extended to UN-involvement in the tribunals. The principle purpose of the UN is to better protect existing sovereigns from aggression and determination (Weiss & Daws, 2007). One way of realizing this is through the establishment of the tribunals. Although the tribunals have had many successes in the development and application of international criminal law and have proven that impunity for war criminals is no longer the order of the day (Weiss & Daws, 2007), it seems the UN has distanced itself from their employees. During the research it was widely advocated that the UN should set up an internal recruitment system, as this would solve the larger part of the retention issue. The tribunals are already using a competency framework based on that of the UN for the selection of their staff. Nevertheless, the UN, that acknowledges staff constitutes its most important asset<sup>17</sup>, does not fully acknowledge the value of the staff of the tribunals.

"For the UN to be competitive in this environment, several components are important: a targeted system of outreach and recruitment, rapid contracting and deployment capacity, the ability to adjust staff structures quickly to reflect changing on-ground conditions, and the possibility for career development and advancement." (Carlson, 2006)<sup>18</sup>

If the UN would engage in finding synergies among the various UN actors this could bring out the best that the UN has to offer. On the contrary, if the UN continues to apply inconsistent approaches that result in competitive structures this will bring out the worst. The tribunals are currently sending people away who could have been of great value in other parts of the UN system. Many private sector international organizations use a forecasting bureau for their staffing needs, which helps them to recruit and deploy people expeditiously. The UN might also profit from such a system, considering it will provide the organization with the opportunity to recycle valuable knowledge and save the time and money needed for recruitment. If the UN wants to help constitute the very fabric of world politics and international order (Weiss & Daws, 2007) it will have to start by straightening the fabric of its own constituents. In line with Carlson (2006), I therefore advise the UN to "develop a 'one UN approach' to address judicial and legal reform in peacekeeping".

### *Research limitations*

As the research results are meant to be generalized to different tribunals the qualitative nature of the research brings about some serious methodological considerations. Firstly, the sample of legal professionals that was used for this research (eight people) cannot be statistically generalized to the other tribunals. Secondly, the legal professionals working at the STL may exhibit different characteristics than legal professionals working in other tribunals (i.e. in contradiction to many people many people working in the more senior tribunals, the STL employs people who have

<sup>17</sup> From a statement made by UK Representative in the Fifth Committee, 20 October 2005, on Agenda Item 130. Source: Weiss & Daws, 2007.

<sup>18</sup> Scott N. Carlson has been involved in international legal and judicial reformation since 1993, including a number of post-conflict environments. He studied the integration of judicial and legal reform programming into peacekeeping missions of the UN to conclude that there are still some steps that have to be made. His study "*Legal and judicial rule of law work in multi-dimensional peacekeeping operations: lessons-learned study*", which I suggest for further reading, is available at the following location:

<http://pbpu.unlb.org/pbps/Library/ROL%20Lessons%20Learned%20Report%20%20March%202006%20FINAL.pdf>

already left other tribunals). Thirdly the research did not include legal professionals that did not make the transition to a different tribunal, as they are currently employed in other organizations. The view of the respondents regarding future employment opportunities in this research might therefore be more optimistic than the view on average. The research does however leave room for analytical generalization. The described effect of high-commitment HRM in organizations and the theories that endorse this effect remain equally valid over the different contexts.

### *Future research*

The research has shown that the retention issue can be viewed from the perspective of the employer (tribunals) and the employee (legal professional). From the perspective of the tribunals knowledge management is a very interesting topic. The tribunals have to find ways to retain the firm specific knowledge and abilities despite employee departure. Furthermore, with respect to the legacy of the tribunals, they also need to find ways to preserve the knowledge of the institution after it has closed down. Although this research described staff retention as the most effective way of handling the retention issue, it could be that some tribunals will hold on to the thought of constant staff recruitment. This leaves some interesting questions which might be further explored through future research:

- How can transient international tribunals preserve the knowledge of employees after their departure?
- How can transient international tribunals preserve their knowledge after they have ceased all operations?
- How can transient organizations attract legal professionals?
- Why do legal professionals prefer job insecurity over a stable job environment?

The research showed that from the perspective of the legal professionals the retention issue basically stems from a career development or employment issue. The legal professionals experience trouble with their career development and are in a constant search for new opportunities. This lifestyle 'of the beaten path' can have negative consequences for their private lives. In light of these findings there are some interesting venues for future research:

- How can a legal professional build a lifelong career in a transient organization?
- How can tribunals assist their legal professionals in building a life-long career?

If the tribunals continue to fail in managing the retention issue this might lead to a situation in which there just isn't enough manpower to support the proceedings. It is time to realize that without employees the tribunals cannot be expected to finish their trials expeditiously. Although the research provides an oversight of the situation in which tribunals find themselves and several measures that might assist them in their retention objectives, these alone are not enough to decrease voluntary turnover. There is still the need to design an 'out of the box' HR-configuration that can assist people management within contemporary and future tribunals. Designing this system will require a lot of expertise and cooperation between the tribunals and the UN.

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## APPENDIX I: THE PUBLIC DIMENSION OF TRIBUNALS

Tribunals are international governmental organizations that support a local state in its search for justice in international criminal affairs. Without this kind of support, responsibility would be left in the hands of citizens, not capable of solving these problems on their own. The public nature is a defining characteristic of the organization and will be described more thoroughly in *section 1.1*. Tribunals serve a public purpose that basically makes all practices contributing to the performance of the organization socially legitimate. *Section 1.2* will illustrate how HRM practices aimed at staff retention contribute to organizational performance and consequently to the social legitimacy of the organization. *Section 1.3* is a short representation of my own view on the organization as a public entity and current HRM-policy. The conclusions of this short description of the public dimension of a tribunal are discussed in *section 1.4*.

### 1.1 A Transient International Tribunal: a Public Organization

A tribunal is an international governmental agency, and therefore a public organization (Rainey, 2003). The public nature of the organization can be deduced from the formal and informal characteristics that shape the organization. They pursue diverse and intangible objectives directed at public wellbeing (informal characteristic) and are faced with rules and protocols stemming from its environment (formal characteristic). According to Rainey (2003) the role of governmental organizations should consist of maintaining individual rights and freedoms; providing national security and stability; promoting general prosperity; and providing direction for the nation and its communities (Rainey, 2003). These higher order goals reflect the public nature of these organizations (Noordgraaf & Teeuw, 2003). The prosecution of persons responsible for a crime maintains individual rights and freedoms of the citizens of the state, while at the same time maintaining those of the attackers. Tribunals can prevent future violation of law and lend the country a helping hand in the reestablishment of its rule of law. Through these activities they also supports national security and stability, providing a clear direction for the future.

The UN, who plays an important role in peace keeping, global cooperation and social development throughout the world, plays a key role in the creation of the tribunals. As a result, they operate in an international and challenging diplomatic environment. This environment creates certain freedoms for these organizations, as well as many constraints. Powell (1998, in Paauwe, 2004) illustrates through institutional theory how organizations are deeply embedded in their environment. The rules and structures built into this environment leave a mark on organizational practices. Government agencies are often tightly controlled by external authorities, especially in case of personnel procedures (Pigh, Hickson and Hinings 1969 in Rainey, 2003). In addition government agencies face expectations concerning fairness, openness, accountability and honesty, that have internal rules and reporting requirements as a result (Rainey, 2003). The tribunals also face the challenges of strong unionization within the public sector, which lead to extra work rules in the internal labor market (Boxall & Purcell, 2008). Dahl & Lindblom (1953, in Rainey, 2003) describe how these constraints lead to rigidity and timidity within governmental agencies. Rigidity refers here to their internal rules and reporting requirements and timidity is the result of strong external pressures and might direct the organization towards risk avoiding behavior in its policy and practices.

This description shows that tribunals can be depicted as typical public service organizations. Rainey (2003) describes how studies that tried to find evidence in favor of a clear demarcation between private- and public sector organizations have come up with little result. The fact that the tribunals can be depicted as public organizations therefore does not encompass strict

abstention from private sector practices. This leaves them with a window of opportunity that will be discussed further in section 1.3.

## 1.2 Social Legitimacy in a Transient International Tribunal

Institutional theory (Powell, 1998, in Paauwe, 2004) has shown how organizational policy can be shaped by institutional pressures, social expectations and other organizations. Organizations operate in societies, while making use of human capacities that have been nurtured by citizens and the state (Boxall & Purcell, 2003). *Social legitimacy* is of great importance in societies where labor laws are enforced through unions, as is the case in The Netherlands (Boxall & Purcell, 2003). The tribunals have to prove the social legitimacy of their actions within this environment. Because of the mandate of the tribunals, all HR-activities contributing to continuing performance of the organization could be explained socially legitimate. This is not to say they have no further responsibilities towards their stakeholders. Given the role in the environment, the organization encounters great public scrutiny and accordingly takes on responsibilities towards various stakeholders.

The tribunals are international organizations, addressing a troublesome situation within the states they represent. They are working towards a 'completion strategy' which will describe their full closure when trials have ended. The biggest stakeholder in this process is the staff that will have to be let go in the process. In effect, the tribunals faces challenges that arise with preserving legal professionals for current affairs. Three tribunals that have are working towards completion have experienced problems with regard to staff retention throughout the final phase of existence (ICTR: Completion Strategy, 2009; ICTY: Completion Strategy, 2010; SC-SL: Revised Personnel Policy, 2009). Hence, within the tribunals the subject of staff retention will play a significant role in future performance. The Registry, one of the four organs of the tribunal, has been appointed the responsibility for staff retention. The Registry is responsible for the provision of administrative support to staff of all three other organs (the Chambers, the Prosecution and the Defense) and can be described as the engine room of a tribunal (STL: STL Fact Sheet: The Registry, 2009). Located within the Registry is the Human Resources Section. The HR-Section has been given the task to assure all employees a safe present and future. The HR-Section is able to assist other members of senior management by giving advice on a full range of HR related policies, undertaking research, consulting with HR counterparts and rendering comprehensive advice and recommendations (ICTY: Job description Chief of Human Resources Section, 2010). Further responsibility towards stakeholders is also taken on by the Registry. The Registry provides a channel of communication to society and also facilitates international dialogue and discussion about the tribunal (STL: STL Fact Sheet: The Registry, 2009). The HR - Section carries out an important diplomatic function as well, that is: maintaining an effective and constructive relationship with staff union. Although the organization's mandate makes it easy to dismiss any further social responsibilities, the above shows a tribunal has to take on a proactive role towards stakeholder needs to assure continuation of its affairs.

## 1.3 Verdict on the Public Dimension

The description of the public dimension portrayed the higher order goals the tribunals define. The path towards these goals is influenced by numerous stakeholders with very specific demands. This has led to rigidity and timidity in the organization, typical characteristics of governmental agencies. Paauwe (2004) warns for a too deterministic perspective on organizational free will and advocates that there is always leeway for strategic choice. In this light, although the tribunals are constricted by their environment, they still have room for maneuver.

New Public Management (NPM) is a movement that has spread globally and taken various forms (Rainey, 2003; Noordegraaf & Teeuw, 2003). The movement is based on the assumption that, through time, government and business organizations have become increasingly similar. NPM advocates a private sector approach of the public sector by applying similar techniques in both settings. Noordegraaf & Teeuw (2003) coin the term '*institutional adaptation*' as possible blockade for NPM. Institutional adaptation describes how practices reshape when they are incorporated in a different sector. Two tendencies have sprouted from institutional adaptation (Noordegraaf & Teeuw, 2003). The normative tendency directs governmental agencies towards performance and away from their rigidity by bluntly copying the practices used in the private sector (as advocated by NPM). The politicizing tendency conversely emphasizes the public nature of these organizations and directs them towards practices which fit the environment of the public sector.

In case of the STL it would be neither possible, nor desirable, to bluntly take over private sector practices. The tribunals does however still have the responsibility to undertake research and render recommendations on the subject of staff retention (ICTY: Job description Chief of Human Resources Section, 2010). The tribunals currently bases their standards of justice, including principles of due process of law on the highest international standards of criminal justice as applied in other international tribunals. Accordingly, they should also base their HRM-policy on the highest international standards as applied in similar organizations. First of all, this information can be gathered in other international tribunals, dealing with similar problems and operating in a similar context. Secondly, learning possibilities could also be diverted from private sector organizations. As described above, bluntly taking over private sector practices is neither possible nor desirable for the STL. Alternatively, a coordinated study of public- and private HR-practices of organizations that operate in a similar context could lead to new insights.

## 1.4 Conclusion

This paper has aimed to describe and discuss the public dimension of staff retention in transient international tribunals. The public nature of the tribunals can be deduced from the many formal and informal characteristics that shape the organization. The higher order goals that the organization aspires give social meaning to all HRM-activities that contribute to continuing organizational performance. Although the mandate of the organization makes it easy to dismiss further social responsibilities, the tribunal still has to attend stakeholder needs. Special attention has to be paid to staff retention and the diplomatic function of the Registry. The tribunals are not the only organizations facing the challenges that arise when preserving employees in a transient context, nor are they the sole organizations with a complex environment that places constraints on its practices. Consequently, existing environmental constraints on the tribunals are no compelling argument to dismiss the insight HRM-policy in other organizations can give. Research on public- and private HR-practices aimed at staff retention can lead to new insights for the tribunal, securing future performance.

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## APPENDIX II: TOPICLIST PRELIMINARY ANALYSIS

### 1. Introduction

- My research
- The interview

### 2. Respondent Acquaintance

- Function
- Other tribunals

### 3. Analysis of Organizational Context

#### 3.1 Configuration

- Characteristics organization
- History

#### 3.2 Environment

- Social forces
- Cultural forces
- Legal forces

#### 3.3 Room for maneuver

- Dominant coalition
- Key implications context
- Strategic choice

### 4. Retention Issue

#### 4.1 Legal professionals: description

- Subject
- Issues

#### 4.2 Legal professionals: HR-policy

- Objectives
- Practices
- Successes

### 5. Additional Information

- Biggest flaws of current HRM
- Missing information HRM

### 6. Closure

- Missing elements in the interview

## APPENDIX III: TOPICLIST RETENTION ISSUE

### 1. Introduction

- My research
- The interview

### 2. Respondent Acquaintance

- Function
- Other tribunals
- Reason for joining tribunal

### 3. Working in a Tribunal

- Work-life balance
- Future work assignments
- Career development

### 4. Current HRM

- Expectations regarding HR-practices
- Perceived HR-practices
- Evaluation of psychological contract

### 5. Turnover Intention

#### 5.1 Commitment

- Affective
- Continuance
- Normative

#### 5.2 Departure

- Competition
- Voluntary

### 6. Future HRM

### 7. Closure

- Missing elements in the interview

## APPENDIX IV: RECOMMENDED RETENTION MEASURES

Before discussing the measures that can help the tribunals to manage the retention issue, it is important to note that some of these measures are dependent on the support from other tribunals and similar institutions. Too often in missions, as those of post-conflict justice, coordination between related units is ad hoc and informal, depending on personal relationships and convenience (Carlson, 2006). Considering all tribunals will experience the same effects of the completion strategy, it is wise to form a strategic alliance. The tribunals have to realize that they operate in an area in which they have to rely on each other to accomplish sound people management. By regarding each other as partners, rather than competitors, they may be able to assist each other in their struggle for resources. It is duly noted that for the implementation of some of these practices the tribunals are also dependent on their governing body. This is all the more reason for the tribunals to join together and convince their governing body of the dire need of support.

### *a. Development opportunities*

*"...and when qualified personnel are recruited and hired, considerable attention should be devoted to their development and retention. At a minimum, there should be a commitment to ongoing ROL skills training, and consideration should be given to the development of rule of law career paths."* (Carlson, 2006)

The transient nature of the tribunal leads many people to think that it is not needed to offer its employees any form of education or training. Shortly after their creation, the ICTY and the ICTR also considered education and training to be an unnecessary asset of a tribunal. If you were searching for the luxury of training you should go and search somewhere else. Over time their view has changed and they have by now acknowledged what training has to offer them. The first lesson that should thus be learned is that despite that the tribunals are temporary institutions they still have the obligation to take care of the development of their employees. This has proven to be true in the ICTY, ICTR and SC-SL and should be taken on from the start by more junior tribunals. Development can be defined in this context as training- and career development opportunities that help legal professionals deal with the pressures of future work assignments and career development<sup>19</sup>.

- Training opportunities benefit both the organization and its employees as they gain new knowledge and skills. The training activities have to be present from the start of the employment relationship to be significantly effective. The training should concern making employees more competitive on the market through career planning and skills enhancing. In the ICTY there is a practice of cross-training in which people switch between sections in the organization to train them in different field and assist them in becoming more attractive for other employers. Furthermore, in the tribunals there are often lawyers who work their way up to a management function, not quite having learned the basics of management. In this respect management training might also be a useful asset for the employee as well as the tribunal. Lastly, in relation to the retention issue it is important to note that employees with proper training have greater employability and are less desperate to 'jump ship'.

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<sup>19</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) organizes the United Nations Annual Career Development Roundtable in which a variety of international organizations can participate. During this roundtable career practitioners can learn about HR developments in the UN system and establish contact with counterparts in other organizations. More information can be found at:  
<http://www.unesco.org/moscow-new/fileadmin/UNESCO/INTRANET/HRM/PDF/tcd/CDeng.pdf>

- Career development is a very important determinant in a legal professionals choice to either stay with or leave a tribunal. Individually tribunals can best offer career development through internal promotion opportunities. As said, management often chooses to bring people in from the outside rather than letting people promote internally. Missing a promotion and bringing in people from the outside can be devastating for the morale of the other employees and feel as an insult. Baron & Kreps (1999) described that an organization can use internal promotion as a way to form attachments between the organization and the employee, through a process that is also referred to as *escalating commitment*. If the tribunals do not offer the legal professionals the internal promotion opportunities they will miss a shot at stimulating organizational commitment.

Although offering development opportunities is a way to stimulate the commitment of employees, the cost of staying with the tribunal can be expected to be too big for many employees on short term. Since the tribunals cannot solve this internally, they will have to resort to external resources.

#### *b. Redeployment opportunities*

Since legal professionals are always looking for security there will always be people leaving no matter what you try to offer as an organization. Instead of looking at this from a pessimistic point of view, this can also be seen as an opportunity to assist them in their future career planning. A tribunal can choose to facilitate new jobs in similar institutions to provide people with the security of future work assignment and possible career development options. The first step would be to make the insecurities with regard to future work assignments discussable. This will provide *the tribunal* with a clear view of future developments and possibly the room to discuss possibilities with the future employer. It will also provide *the legal professional* sufficient notice of separation, which leaves the employee with the room to make better plans for alternative employment. Since the employment needs of legal professionals changes along with their life-stages, the tribunal will have to make a distinction between different profiles to assist them in the correct way.

The following three redeployment options seemed the most satisfying:

- a. Transfer people to other tribunals on loans. This kind of cooperation is already present and should continue on a regularly basis (especially if new tribunals emerge). A loan-system provides the tribunal with the opportunity to transfer staff without completely losing them and the possibility to reclaim staff when needed.
- b. Organize a job fair to help their staff come in contact with future employers (already present in the ICTY and ICRT). This is a good way to make the issue public and open to discussion. Moreover, it will show the employees that the organization is committed to assist them in their search for employment and career-development.
- c. Integrate the staff of the tribunal into the UN. This is happening on a mild basis in the ICTY where people can apply for UN jobs with a preferred status. It is something that is beyond the reach of the individual tribunals, but still noteworthy with regard to future developments.

#### *c. Retention bonus*

A retention bonus can provide employees an incentive to stay with the tribunal until it has completed the final trial. It ensures employees of financial security, which will allow them to look for a new job after they've completed their task at hand instead of prior to their departure.

*"So it's in everyone's interest to offer them something to stay till the end. Recognizing that it will take a few months to find another job, but we want them to do that search for the new job after they've completed the task at hand and not have to jump ship at the critical moment." (Gregory Townsend: SCSL)*

This measure should be seen as a last resort, aimed at only the most critical staff as means of repaying them for any losses. The ad-hoc ICTY and ICTR have been overwhelmed by the high-turnover rate and have had to plea for this bonus request with the UN as a last resort to stop the tide. Unfortunately the UN denied this request, leaving them with little retention options. In this research two legal professionals acknowledged that if they would have been offered a retention bonus, they would have stayed with the ICTY. The hybrid SC-SL did have the room to implement a bonus system, which can be seen as promising for other hybrid tribunals. It is too early to say if these reward arrangements will be enough to retain the targeted employees. On top of that, there is also the question if the current group of 'critical staff members' are the only ones critical to the tribunals proceedings. There are many clogs in the machine and the numbers might need to be greater than the SCSL's current budget allows.

The retention bonus should only be seen as a last resort, applied by less fortunate tribunals that were the first to implement a completion strategy. Junior tribunals should see this measure as a motivation to do everything within their power to avoid this situation. The bonus system has yet to be proven effective in the SC-SL and costs the institution a lot of money. Furthermore there is a chance that a bonus system only retains staff that is less popular with other employers, leaving the tribunal with what they themselves often refer to as 'dead wood'.

In the academic literature it has been argued that when HR-practices are bundled together they are more effective (Chang, 2005; Huselid, 1995; MacDuffie, 1995). Although the measures described above already stimulate organizational commitment independently, a package of these measures will have a stronger effect than the sum of its parts. The suggested package would incorporate development opportunities for the employees to heighten the transaction costs and make them more employable and less insecure about their future. Reaching the end of the mandate the tribunals can then facilitate redeployment options that would lessen their insecurity even more and make it possible to negotiate the terms of departure. If situations are presented to the tribunal in which a legal professional who is crucial to its proceedings still considers leaving then the retention bonus can be applied as leverage for finishing the final term of employment.