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The World Trade Organization’s Bureaucrats: Runaway Agents or Masters’ Servants?

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ABSTRACT

The paper starts with a discussion on how agency is treated in contemporary IR. Secondly, it reviews existing PA-based analyses, points to a number of caveats and suggests a “new twist” within existing conceptual frameworks. Thirdly, the paper briefly addresses the various roles of the Secretariat and assesses autonomy over time. Fourthly, the question of why delegation is so difficult is discussed and fifthly, the paper concludes with a cautionary note on IOs’ pathologies.

KEY WORDS

WTO, Decision-Making, International Organization, Principal-Agent, Agency

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Introduction

The infamous ministerial meeting in Seattle in 1999 helped shape the image of the World Trade Organization (WTO) as an important and powerful inter-governmental organisation. The WTO has developed to finally take the position originally envisaged at Bretton Woods and embodied in the Havana Charter.\(^1\) The Geneva-based institution has complemented the Washington-based financial institutions, the International Monetary Fund (IMF) and the World Bank. But with the creation of the WTO in 1995 the critical voices have also multiplied. Neo-liberals and social-democrats usually decry the overall orientation of the institution. For neo-liberals the organisation has departed from its original mission of tearing down obstacles to trade. They deplore an apparent trend towards transforming the WTO into a development agency that does not overcome mercantilist prerogatives. Meanwhile, social-democrats decry the limits to taking up non-trade concerns, the increasing inequality embodied in the trading system and lament an overtly liberal agenda. In addition, protectionist and conservative forces denounce what they perceive as increasing pressure from Geneva to reform domestic policies that are culturally and socially accepted within the national polities. This new degree of intrusiveness into national regulatory domains, the perceived loss of sovereignty and the struggle over orientation has led to many calls to do away with Geneva judges and bureaucrats. Yet, does the WTO Secretariat wield sufficient power to be a prime target of protest? Anecdotal evidence of WTO staffers exploiting bluntly their autonomy, however, is hard to find. And if so, the contracting parties’ reactions have been remarkably vocal.

Some studies have addressed the inner lives of the institutions and have provided insights on the role of the Secretariat (Croome 1995, Blackhurst 1998, Xu and Weller 2004).\(^2\) But there is lack of empirical research on how civil servants’ influence the politics within the

\(^1\) Applying a historical institutionalist reading, there is a contrafactual argument to be made that the design of today’s WTO looks different from what it would have been had the ITO been ratified by the US Congress. While general principles still reflect ideas embodied in the Havana process leading to the Havana charter and reflecting a subtle US trade policy turn in the 1940s (e.g. MFN, non-discrimination), today’s institutional setting (decision-making rules), the degree of legalization and the content of the rules and regulations can only be understood through the constitutional moment witnessed in the conclusion of the Uruguay Round agreements (see Goldstein and Gowa 2002).

\(^2\) An exception is the study of the role of a chairperson in the system (Odell 2005), or the international organization as a regime manager (Thompson and Snidal 2005).
organisation. Particularly in comparison with its sister organisations, the IMF and the World Bank, the WTO has been less the target of international relations (IR) scholars attempting to assess the role of international civil servants, their autonomy and some of the evolving pathologies. The question remains whether this is simply due to the constrained autonomy of the organisation and its international civil servants in particular. WTO contracting parties are usually eager to emphasise that the global trade institution is a member-driven organisation, a message often echoed by WTO staff members in public and in private. Yet, if one is given a certain message too often, questions about the validity of such a claim start to arise. If the WTO is member-driven, why do states’ representatives need to emphasise this so vigorously? Two overarching research interests underlie this paper. First, what is the role of the Secretariat in a member-dominated organisation? Where do we analytically place the WTO staff? Are they all servants of the masters, or what Blackhurst (1998) described as the “pencil-sharpener” institution? Thus, they organise meeting rooms and order coffee, take notes of the meetings and write minutes. Or, is the Secretariat running the show in the background or what Blackhurst coined the “cutting-edge” approach. In this reading the claim of being a member-driven institution simply serves as a facade that conceals the real power relations in decision-making and rule-implementation within the WTO. The paper aims to contribute to gaining a better understanding of what type of organisation the WTO constitutes. Conceptually, working within a principal-agent (PA) framework, this paper addresses issues so far neglected by the PA literature. Empirically, the paper strives to assess the degree of discretion the different agents within the Secretariat hold and to offer a more nuanced picture of where the international secretariat might be situated between above extreme poles. Is there a pendulum movement visible over time and across issues?

Second, the paper tackles the puzzle of why further delegation to the Secretariat is difficult. While in dispute settlement the organisation (and in particular its judges) have received substantial autonomy, in negotiations the civil servants are kept on a short leash. While the legalisation literature offers a possible explanation by focusing on the autonomy in dispute resolution and unintended consequences leading to contracting parties’ being reluctant to engage in future negotiations (including delegating to other actors) (Goldstein and Martin 2000), many functional approaches to explaining delegation would predict that further
tasks would be delegated to the Secretariat. Yet, on this matter, the overwhelming majority of contracting parties hold a strong opinion against such a step. In this respect, the paper wishes to contribute to the overall debate on designing institutions and discusses a number of (hitherto neglected) obstacles to delegation. I will back my arguments with selected evidence based on (ongoing) field research within the institution. It should be noted that these are preliminary findings.

The paper starts with a discussion on how agency is treated in contemporary IR. Secondly, it reviews existing PA-based analyses, points to a number of caveats and suggests a “new twist” within existing conceptual frameworks. Thirdly, the paper briefly addresses the various roles of the Secretariat and assesses autonomy over time. Fourthly, the question of why delegation is so difficult is discussed and fifthly, the paper concludes with a cautionary note on IOs’ pathologies.

Agency: what is to be expected?

IR has only recently rediscovered international institutions (Simmons and Martin 2001, Koremenos et al. 2001, Barnett and Finnemore 2004, Hawkins et al. 2006). While realists have largely been indifferent regarding the role of international institutions and international bureaucrats, functionalists have attributed to international institutions a facilitator role in co-operation. Early functionalist work focusing on regimes (but often meaning institutions) saw the primary contribution of these platforms in overcoming collaboration problems (the classical prisoner’s dilemma (PD) situation). International institutions (embodying agreements) were singled out as providing information, committing participants and contributing to reputation constraints that discourage actors from reneging on commitments (Keohane 1984). Realists and functionalist working with a situation-structural or problem-structural approach (Hasenclever et al. 1996, Levy et al. 1995) have observed that co-operation could be less likely when the context resembles game-theoretical situations distinct from PD. These approaches questioned whether co-operation moves the outcome automatically in the direction of the

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3 For realists, institutions largely reflect power distribution among their participants. Institutions and thus IO civil servants serve those interests.
Pareto frontier. Depending on the situation, institutions play different roles. Yet with few exceptions, these structural approaches didn’t attribute real agency to international organisations. Later research endeavours moved towards the questions of resolving distribution problems. Some scholars applying power-based explanations observed that choosing among multiple equilibriums requires a more power-based reading of co-operation (Krasner 1991). Others attributed to institutions the role of helping to overcome endless cycling and finding sustainable solutions by constructing “focal points, identifying one possible equilibrium as the default of ‘obvious’ one, thus reducing state-to-state bargaining about the choice of a particular pattern of outcomes” (Martin and Simmons 1998:745). This in turn led realists to ask why powerful nations would want to delegate the role of choosing policy outcomes to an international institution (Martin and Simmons 1998:746). Later functionalist contributions, such as the rational design literature (Koremenos et al. 2001) concentrated on the creation of international organisations in search of an explanation of variance across IOs. The unfolding legalisation debate (Goldstein and Martin 2000) investigated the power of delegated bodies (e.g. courts) and drew attention to unintended consequences that inhibit further co-operation. Yet, neither the rational design literature nor the legalisation literature is directly interested in agency.

Conceptual work on the role of bureaucrats has been largely left to constructivist scholars (Barnett and Finnemore 2004) applying sociological and organisational approaches. As Barnett and Finnemore argue, international civil servants enjoy special types of authority going beyond their rational-legal authority. Many sources have been identified that contribute to their expanding role as an authority, including alleged neutrality; moral stands on championing the global interests and their special expertise in a field (Barnett and Finnemore 2004:21-24). International bureaucrats apply authority in influential ways, such as by classifying and defining overall discourse in a given policy area, fixing meaning in the social world and actively guiding norm diffusion (Barnett and Finnemore 2004:31). Barnett and Finnemore contribute to the general wisdom of run-away agents and pathological agency behaviour.

Oran Young’s work conceptualises the role of leadership in negotiations.
However, international organisations vary strongly along a number of dimensions; including the autonomy to carry out their tasks (see also Thompson and Snidal 2005). Some institutions are more eager to exhibit agency leadership than others. Some agents use the discretion offered to them more actively than others. The evolving PA literature is increasingly focusing on agency and its effects on domestic politics. The research programme has slowly expanded from its original focus on the reason for delegation and the control mechanisms at principals’ disposal to looking in more detail at the role and nature of the agent. All too often, in PA frameworks (similar to constructivist contributions) civil servants have been described as run-away agents unless they are being closely controlled. The next section takes up some conceptual issues related to using PA in explaining the autonomy of international organisations and international civil servants more specifically.

**Principal-Agent frameworks: moving towards agency?**

Principal-agent approaches have only recently started to cross-fertilise the study of international organisations (Pollack 1997, Nielson and Tierney 2003, Hawkins et al. 2006). Early work concentrated on the question of why states delegate and how to devise control mechanisms to keep the agent in check. Most such work has exhibited a bias towards emphasising the principal side and has downplayed the role of the agents. In addition, early contributions on PA applied a stereotype of agency behaviour directed at maximising benefits in terms of budget and influence (Niskanen 1971). For this reason, keeping a potential run-away agent in check seemed an important feature for making delegation work.

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5 PA developed within business studies on the role of firms, was later applied to US Congressional politics and EU studies, and recently has been more used in studies on IOs (McCubbins et al. 1987, Kiewiet and McCubbins 1991, Epstein and O’Halloran 1999).

6 The basic PA framework allows for research on agency. Nevertheless, by starting with interests on the principal side, we neglect the interests of agents. By observing how agents’ behaviour overlaps with principals’ interests, many studies conclude that this is because of the principals’ power and control mechanisms. Yet, such an argument masks the possibility that agents might share the principals’ interests in the first place (e.g. an agent working within the WTO is in favour of gradually opening up trade). Other beliefs regarding the conduct of trade policy (e.g. mercantilism, strategic trade policy) are limited through the screening process in recruiting. In addition, principals’ interests are not carved in stone and agency behaviour under certain conditions can change positions.
As a result of neglecting the different roles played by agents and their complex motivations, most contributions conceive of the agent as engaging in a technocratic “shirking” or “slippage” exercise to maximise his or her own benefits.7 Agents are expected to pursue their own interests that are largely influenced by the bureaucratic mandate (Dunleavy 1991). In addition, many researchers assume that pathological behaviour evolves by default when agents use the discretion at their disposal (Barnett and Finnemore 2004). Yet, most studies analytically disregard the mechanisms through which the agent uses the autonomy granted in very subtle ways. Recently, the task of filling this lacuna has been taken up (Hawkins and Jacoby 2006, Cortell and Peterson 2006, Elsig 2007).8 Conceptually one can think of many different tasks that are delegated by a principal (the principals) to an agent. Hawkins et al. (2006: 13ff) present different agency conceptions based on the delegation logic. If certain motivations (e.g. benefits) create the need for delegating tasks from a number of principals to an agent then this affects what we expect the agent to do, e.g. managing policy externalities (whether as a co-ordinating or collaboration agent), facilitate collective decision-making (focal point agent), overcoming endless cycling (agenda-setting agent), working as honest broker (regime management agent), resolving disputes (arbitrating agent), carrying out third-party conflict resolution (trustee agent), controlling cheating (enforcing agent) or helping lock-in reforms (policy-biased agent) (Pollack 1997, Majone 2001, Thompson and Snidal 2005, Hawkins et al. 2006).9

The mandate largely influences the control mechanisms which are a defining characteristic of delegation. Thus the mandate largely explains the autonomy granted (Gould 2006). A certain minimal autonomy is a natural product of delegation. A trustee is believed to receive much more discretion and autonomy than a regime management agent due to the

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7 On definitions of autonomy, discretion, shirking and slippage, see Hawkins et al. 2006.
8 A certain degree of motivation to work for a common concern (be it at the local level or at the international level) makes civil servants less selfish than often assumed in rational models. Drawing from many interviews with IO officials, my hunch is that while civil servants are strategic and satisficing actors, there is also a belief that they can contribute to a more Pareto-efficient solution in providing certain public goods (stability of the financial system, clear and fair rules for the trading system, helping countries out of poverty, etc.) due to their specialized expertise.
9 Blame-shifting (responsibility transfer when outcome is risky) is an additional strategy discussed in the literature (Fiorina 1982).
nature of task. Yet, additional factors explain the control mechanisms, such as trust vis-à-vis the agent,\textsuperscript{10} preference diversion among countries and the role of the dominant players. Mechanisms are usually applied ex ante (e.g. through screening, precision of mandate), at locus (e.g. by influencing decision-making through oversight committees) or ex post (reporting, re-contracting, sanctioning) (Hawkins et al. 2006). These mechanisms, however, can at times be quite costly. The least costly are probably ex ante mechanisms which define a clear mandate and choose the agent to carry out the task. More costly instruments rely on one’s own “policy patrols” (e.g. large missions representing the country); ex post mechanisms are the most costly.\textsuperscript{11}

When autonomy is assessed, the key question remains, what factors explain the agent’s use of the autonomy granted and the type of action pursued. By transferring a mandate to carry out certain tasks and designing some control tools, it is also important to assess how the agent reads the mandate and defines his or her role. The latter is important in order to understand the different approaches chosen by agents to use their autonomy. In addition, this might help in anticipating the various reactions by agents to signals emanating from the principals.\textsuperscript{12} Agents often have quite complicated incentive structures that need to be traced.\textsuperscript{13} There are different ways that agents use the autonomy granted to them, some stick to the mandate (work-to-rule), others apply discretion actively at times encouraged by flawed mandates (gap-filling) or loose control (asymmetry-exploiting); and still others build buffer zones in case principals might react negatively in the near future (buffering).\textsuperscript{14} Although newer contributions have attempted to tackle the complex issue of having collective and

\textsuperscript{10} In the WTO context, some members are hesitant to delegate to the WTO Secretariat due to experiences with the IMF and the WB’s role in structural adjustment lending (interview # 2).

\textsuperscript{11} Yet, when ex post control instruments can be credibly signalled throughout the process, costs can be controlled.

\textsuperscript{12} Judges usually enjoy discretion as control mechanisms (especially the ‘nuclear option’ such as firing) are seldom credible. The literature on judges as agents pinpoints a number of driving forces going beyond pure control mechanisms, such as wanting to see their work appreciated by peers, contributing to a cohesive legal system, a high level of acceptance among parties, commitments to professional norms, not giving an impression of deciding on political grounds (see also Alter 2006). In addition, many judges see reactions through legislation as an accepted element of the division of powers in a polity.

\textsuperscript{13} There is also a strong tradition within institutions regarding how they interpret their tasks. The mandate defines the boundaries, but perceptions and traditions strongly influence how they mandate is received.

\textsuperscript{14} See also Hawkins and Jacoby (2006) on interpretation, reinterpretation, building permeability and buffering.
multiple principals (Nielson and Tierney 2003, Lyne et al. 2006), the existence of multiple agents within an international organisation has been largely overlooked. An IO usually combines different agency roles into one (as the costs of creating a new IO for each task would be too great). This paper would like to contribute in this direction focusing on the various facets of agency within an organisation and the special role played by the proximate principals, who at the same time are part of the IO as a complex agent.

A new twist: the (hidden) power of the proximate principals (PP)

Usually principal-agent frameworks picture delegation from a group of principals to an agent. The reality, however, is more complex as not only do many principals (multiple or collective principals) exist, but also many agents. In the context of an international organisation, the agent can be the Director-General, the various departments mandated to carry out different tasks and the delegates of contracting parties that are actively engaged in rule-making and rule-implementation within these organisations. In addition, there are many intermediate actors between the ultimate principal within nation-states and the agent at the end of the delegation chain to carry out certain tasks. Nielson and Tierney have addressed the issues of nested P-A relationships and acknowledged the difficulties for agency theory in dealing with these (2003:249). In this respect, the conventional wisdom holds that agency losses increase with the number of delegation chains. An often-used device to control the ultimate agent is the creation of strong proximate principals (PPs) which largely act as filters and transmit societal interests. The PP plays a key role in an IO, especially when the power of state actors and bureaucrats within an IO is strongly biased in favour of the former. In Nielson and Tierney’s analysis the PP represents the key principal controlling the agents’ action. Yet, one can go further and investigate their pivotal role within the institutions as they are also an important element of agency. Thus, we need to broaden our understanding of what constitutes the agent.

The agent is not just the IO staff, but the IO’s work is carried out by state actors and bureaucrats jointly in symbiosis and in conflict. When states delegate power to IOs, they usually install different control mechanisms (placing member states’ representatives in the various regulatory stages of decision-making). As a result the institutional design varies across
IOs and strongly influences the autonomy held by the IO staffers (which is the agent in the narrow sense). Thus, representatives are at the same time part of the complex agent as well as PPs that exert control over the IO staff. If IO civil servants have a lot of discretion then PPs are equated with the sovereign principals.\textsuperscript{15} Yet, in cases where the autonomy of the staffers is low and thus the PPs have much more power and influence, we need to pay more attention to this type of actor within the delegation chain and we also need to allow for pathologies to emerge here. Figure 1 pictures the various delegation chains and places the PP at the centre of analysis.

We can think of three chains of delegation. The first contractual relationship exists between what I call the “sovereign principals” and the IO as a complex actor (\textsuperscript{16}). The sovereign principal usually installs ex ante, at locus and ex post control mechanisms. In the context of the WTO, the sovereign principals design and control the IO directly via Ministerial meetings and negotiations rounds (which one can think of as constitutional and policy negotiations). In the at-locus control, the PPs play an important role for the sovereign principals. The sovereign principals send messages directly to the IO or the Secretariat, but mostly work via the PP.

The second contractual relationship exists between the sovereign principals and their proximate principals (\textsuperscript{2}). In the context of the WTO, these are the countries’ missions of the contracting parties to the WTO. Thus, the PPs can be thought of agents serving their principals. There is large variance in sovereign principals’ use of control mechanisms to keep these agents in check.\textsuperscript{17} In many contracts, efficient control mechanisms are absent. Whereas lack of communication between missions and their capitals is not unusual for smaller players, bigger parties’ PPs (e.g. the US and EU missions) are tightly controlled by their sovereign principals assisted by high transparency, interest group politics, institutionalised co-ordination and reporting activities.\textsuperscript{18}

\textsuperscript{15} As studies on the IMF, WB, etc. suggest.
\textsuperscript{16} I discount at this stage the delegation losses from the ultimate principal to the principal contracting to an IO.
\textsuperscript{17} In the WTO, some countries have no proximate principal present in Geneva.
\textsuperscript{18} The US trade negotiators (USTR) are institutionally controlled by Congress, the President’s office and other ministries, the EU trade negotiator (Commission/DG Trade) is controlled via Member States (Comitology system) and to lesser degree by parliament. (profit and non-profit) NGOs serve as police patrols and function as fire alarms.
The third contractual relationship touches on the daily work within the IOs. Here, agents of the sovereign principals play the role of the powerful proximate principals. The staff (including the Director-General of an IO) is the agent in a narrow sense (③). While the questions about the grand design are ultimately decided by sovereign principals (but pre-cooked by PP) and offer the broad boundaries of division of labour and control, the PPs dominate the day-to-day work of international organisations, often ad hoc enlarging and limiting the agent’s autonomy. While they have to overcome collective action problems as multiple principals in micro-managing the institution and the IO staff, they are often hesitant to delegate and opt for ad hoc delegation models. This type of delegation allows for easy re-contracting as it is usually limited in coverage and time to make sure that the agent sticks to the mandate given. This paper argues that this third contractual relationship has received insufficient attention in past analyses of IOs.
WTO bureaucrats’ many faces and the power of the proximate principals

The literature on the WTO staff as agents is small but growing. Most studies, however, fail to describe the multiple faces of the Secretariat. While some writings concentrate on particular roles of the Secretariat in negotiations or dispute settlement, at times they struggle with a case-selection bias as they either consider issues that have received public attention (e.g. amicus curiae briefs), or that might be not be representative of cases across the Secretariat (Yu and Weller 2004). This paper does not fill this lacuna, but strives to describe briefly the various tasks the WTO as a narrow agent carries out and presents some selected evidence to assess how variance of autonomy of the Secretariat has developed over time.

Researchers have begun recently to look at the WTO through the PA prism (Cortell and Peterson 2006, Thompson and Snidal 2005). Most agree that the Secretariat enjoys limited authority and a dominant role is reserved for contracting parties’ delegations within the system. The use of authority in constructivist terms, such as classifying the world, fixing meaning and articulating and diffusing are limited as the Secretariat is one actor among many. The Secretariat comes closer to what Thompson and Snidal describe as a regime manager. In negotiations it assists in overcoming the participants PD-dilemma posed by international collaboration in some areas and in helping find sustainable solutions in games characterised by multiple equilibriums and various distributional challenges. The Secretariat helps to lower transaction costs by providing a negotiation platform, increasing information on the state of the problem and distributional effects and can serve as a neutral broker. On compliance, it locks in commitments credibly by providing for one of the most legalised dispute settlement systems within international organisations and in providing more

19 Other contributions working within an organization theory perspective do not sufficiently address theoretical specification (Trondal et al. 2004).
20 Thompson and Snidal (2005) distinguish their concept of regime management from a PA and credible commitment model.
21 While “moral authority” presenting “themselves as champions of the shared values of the community against pluralistic interests” Barnett and Finnemore 2004: 23) is also an important source of identity among WTO Secretariat officials, domestic actors, transnational civil society and business groups are no less influential in norm creation and norm diffusion (see also Wolfe 2005).
transparency to decision-makers as regards national policies that go against the philosophy of the GATT/WTO system by managing a peer-pressure exercise. Finally, the Secretariat increasingly engages in empowering weaker contracting parties through technical assistance and training activities.

The Secretariat has steadily grown over the years, but still is small compared to that of other global economic multilateral. The GATT/WTO system was from the very beginning a member-driven organisation and the role of Secretariat had never been explicitly defined (see Footer 2006:68).22 “The GATT Secretariat (...) was not allowed to have a formal Office of Legal Affairs (or a formal legal adviser) until 1983 (Blackhurst 1998:42). Until the end of the Uruguay Round, Secretariat officials “were nominally employed by a phantom agency, the Interim Commission for the International Trade Organization, which had lost its purpose nearly 40 years earlier and now existed solely as a channel for the payment of salaries and other budgetary expenses” (Croome 1995:145-146). Few proposals for strengthening the Secretariat have seen the light of the day. In the Uruguay Round a number of Nordic States proposed additional delegation of power to the Director-General (DG), yet delegations didn’t take up this issue. Even the Swiss delegation, despite being favourably inclined to empowering the DG, abstained from supporting such a proposal, because they feared that if contracting parties took up the question of delegation, the DG would end up with less rather than more power (Croome 1995:156).

The Secretariat as an actor consists of the regular staff (the international civil servants working in the divisions), the DG and his entourage (e.g. Cabinet and deputy DGs) and the Appellate Body.23 Anecdotal evidence suggests that the relationship between the regular staff and the DG has not been free of friction.24 The DG receives a mandate from the Members. Tasks include the chairing of the Trade Negotiating Committee during negotiations, providing,

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22 The WTO agreement does not mention the Secretariat but states that the Ministerial Conference “shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and terms of office” (Article VI:2).

23 The Appellate Body is a hybrid institution as it is paid not through the regular Secretariat budget. This does not apply to the AB Secretariat. Yet, I conceptualize the AB as part of the Secretariat.

24 Many long-serving officials argue that the DGs in the GATT era were much more part of the Secretariat. This changed with the appointment of DG Sutherland at the end of the Uruguay Round, when political figures were replacing international civil servants as heads of the Secretariat (interviews # 1, # 4).
if necessary, “good offices” in dispute resolution, and deciding on the election of panellists should disagreement occur. The DG further manages the Secretariat. In the Sutherland report, the DG is pictured as losing influence becoming more a spokesperson or marketing executive than an influential player (see Chapter IX of the Sutherland Report (Sutherland et al. 2004), Shaffer 2005).

The Secretariat has many different tasks. As for any civil servant, important legitimising characteristics are expert authority and neutrality (Barnett and Finnemore 2004). In addition, important in the context of the WTO is the staff’s institutional memory. Yet, the above characteristics do not render the Secretariat influential, they need to be delegated certain tasks providing for autonomy and discretion. Depending on the tasks one could think of several agents.

**The roles in negotiations**

In negotiations the Secretariat has mostly assisting functions. The DG holds a special position by chairing the Trade Negotiation Committee (TNC) and during a Ministerial he usually jointly runs the negotiation process with the host government’s responsible Minister. In his function of chairing the TNC, he convenes meetings with heads of delegations and holds informal meetings and participates as an observer in small group negotiations (e.g. in G6) de facto representing the entire membership. A DG has to earn the trust of the principals over time and he takes the risk of becoming more active only when he sees positions slowly starting to overlap and receives signals to put a negotiation text forward. Staffers “participate” in negotiations predominantly via the various Committees they assist. Generally, the Secretariat organises the meetings jointly with the chairs. The Secretariat assists the chair in compiling information and agenda-setting as an important element of steering (e.g. the ordering of topics to be discussed can at times be strategically applied). It’s not unusual that Secretariat officials

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25. Article III of the WTO agreement spells out five functions (see Blackhurst 1998:46).

26. It’s not unusual for staff members to carry out more than one task, e.g. someone in the Rules Division can be called to teach on a training programme, assist the legal office in panel proceedings, assist a chair in negotiations, etc.

27. The current DG has not yet received signals from parties to engage more actively (interview # 11)
draft language for the chair to summarize meetings’ outcomes (Odell 2005). Generally, the chair works in symbiosis with the Secretariat or as one Secretariat official puts it: “There is overlap of interests. The chairman wants to have success which is good for his career; we want to move things forward for the system to work.”28 Its influence is largely dependent upon the resources of the chair or as Odell puts it “chairs from most states, which have small or tiny missions in Geneva, rely heavily on the Secretariat” (Odell 2005:429). In addition, overall trust and personal characteristics are additional factors influencing the working relationship.29 Yet, chairs have also come under increasing scrutiny.30 Contracting parties are not only controlling the Secretariat, but also signal strongly to the chair how much they expect her or him to table chairman proposals.31 These texts (that rely heavily on proposals from contracting parties) have become rare in this round.32

There is some evidence to suggest that in the past the Secretariat was more influential in the negotiations, e.g. as Secretariat officials were more often selected for chairing negotiation groups than today (especially during the Tokyo Round) and that chairs were given more discretion.33 One staff member compared the role of Secretariat over time by drawing on his own experience. “As a young professional during the Tokyo Round I could do more against the will of members that today as a Director.”34 Currently, the Secretariat seems to less

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28 Interview # 4.

29 The current chair in agriculture is often pictured as dominant in this relationship (interview # 4).

30 Some evidence suggests that chairmen functions during the Uruguay Round went to highly skilled personalities with knowledge and expertise (Croome 1995:147). There were fewer chairman posts to be occupied and these went in general to long-serving trade diplomats. Weak chairs are described as symbolic actors merely giving the floor to contracting parties and collecting information (interview # 1).

31 Special types of documents – often used in the UR - are informal papers called “non-papers” listing various groups of proposals (Croome 1995: 151). They serve to guide the discussions and highlight overlap and divergence of positions.

32 One of the few exceptions seems to be the Rules negotiations, where the contracting parties empowered the chair to develop a chair’s text in the Hong Kong Ministerial in December 2005. For reasons of linkage, it hasn’t yet been officially tabled (interview # 2).

33 During the Uruguay Round, a number of Secretariat officials were chairing negotiation groups, e.g. one senior official chaired a negotiation group on non-tariff measures and another a group tackling specific aspects of trade policy review. The so-called Surveillance Body was chaired by DDG Madan Mathur and DDG Carlisle chaired an informal negotiation group on clarifying positions on anti-dumping. Yet, the chairing by DDG Carlisle backfired (Croome 1995:156, 191, 210, 262).

34 Interview # 2.
influence in negotiations; some divisions (e.g. services) are even bypassed by negotiators mainly due to the negotiation modes via plurilateral (critical mass) and bilateral negotiations.\textsuperscript{35}

However, the Secretariat was always tightly controlled by the proximate principals. Countries were always reluctant to allow the Secretariat to engage in interpretation or exhaustive reports. Reports from the Uruguay Round could also broadly reflect the PA relationship in the current stage of negotiations.\textsuperscript{36} DG Dunkel’s position in the Uruguay Round was not substantially different from DG Lamy’s position today, working under the guidance of the contracting parties and working gradually towards finding common ground.\textsuperscript{37} While DGs in the Uruguay Round attempted to gain leverage through informal green room processes inviting the most active delegations leading to text proposals and keeping the Round on track, current DGs have to pay more attention to inclusive processes.

\textbf{The roles in dispute settlement}

The influence of the Secretariat in dispute settlement is more pronounced, yet difficult to track in detail. Three players stand out: the Appellate Body (AB), the Legal Division staff advising panellists, and the Appellate Body Secretariat advising the AB.

For the so-called AB members who have been delegated power to adjudicate, their main task is to review panel decisions. They enjoy substantial autonomy as trustee agents. In addition, autonomy is bolstered due to a high threshold for overturning AB rulings (consensus, three-quarters majority for authoritative interpretation). The international economic law and IR literature have prominently analysed the Members’ critical observation of AB decisions, such as the contracting parties’ calling foul when the AB allegedly overstepped its mandate over the amicus curiae brief issue (see Mavroidis 2001). Yet, it is part of the blame-game and risk management by Members to pre-emptively signal discontent and accuse courts of

\textsuperscript{35} Interview \# 9.

\textsuperscript{36} Many countries were reluctant, in the early stages of the Uruguay Round, to authorize the Secretariat to produce any documentation other than (exhaustive) reports on the meetings of the GNS (Group of Negotiations of Services) (Croome 1995:124-5).

\textsuperscript{37} Croome 1995:29-30.
overstepping their mandates. Often it is much ado about nothing. In addition, many courts see
not per se defeat in the legislative pillar (here the Ministerial Conference or the General
Council) rewriting law as a reaction to legal interpretation by the AB.38

Less has been written on the second type of agents who assist panels and AB. The
conventional wisdom, not substantially challenged, holds that legal officers have ample
influence as they finally write the reports. Weiler further notes that “the legal deliberation will
often have taken place between legal secretary and other members of the Secretariat and not,
in any meaningful sense within the Panel” (Weiler 2001:197). The Secretariat dominates the
process by default as in most panel cases it benefits from the legal expertise, the time and
resources devoted to the process and at times benefits from competing positions among
panellists.39 “De facto, inevitably and importantly, they are the repository of institutional
memory, of horizontal and temporal coherence, of long term hermeneutic strategy (Weiler
2001:205).40 The panellists can only dedicate a limited amount of time to the case. In panel
proceedings, the legal division strongly influences the choice of panellists and it is hardly
conceivable that the Secretariat would choose panellists with whom working relations are
strained. Key characteristics to be considered during selection are availability, a solid
knowledge of the issues involved, perceived neutrality and a past record of a constructive role
in panels.41 Even less is known about the “assistance” of the AB Secretariat working with AB
members. There seems to be no clear evidence that influence of the trustee agent (AB) and the
courts’ assistants has changed significantly over time. Yet, what has changed is the impact of
rulings in general which in turn strengthens the Secretariat’s position overall.

38 On the incentives of courts as agents, see Alter 2006. In the context of the WTO, see also Steinberg 2004.
39 Interview # 3.
40 Weiler further argues “the result is schizophrenia in the self-understanding of the Secretariat as regards its
role in the DSU process, and all too often conscious and subconscious subterfuge. Like in Freud’s dream
theory certain things just have to come out. The views of the Secretariat as to the proper outcome of a dispute
will, thus, come out and more invidiously will be consciously and subconsciously pushed upon the Panel”
41 Only in rare cases do disputing parties propose jointly agreed panellists. The number of cases where the DG
has had to be involved in the selection process, as parties do not accept proposed panellists, has increased over
time (interviews #4, #6, #10).
The roles in regime management (implementation, surveillance, training)

A large part of the daily work of the Secretariat involves regime management functions. These involve the implementation of WTO commitments, the surveillance of national trade policies and growing activities in supporting developing countries (especially least developed countries) via technical assistance and training. Implementation of the agreements is the daily business of various Committees (see Footer 2006:48-68), where the Secretariat assists the chairs. Again, the assistance is auxiliary and depends largely on the demand of the chairperson in charge of the Committee. Part of the process of implementation is the obligation of the contracting parties to notify a defined number of trade policy measures (e.g. related to national regulations, preferential trade agreements, etc.). The Secretariat compiles this type of information and transmits it to the contracting parties.

In addition, the Secretariat engages in surveillance of the system by co-ordinating and running a review mechanism of national trade policies.42 This type of peer-pressure process is aimed to detect good and bad practices. While not de jure linked to dispute settlement (thus not affecting the rights and obligations of contracting parties), it helps frame issues and reduce information asymmetries. In 1977, the Secretariat started reporting on a regular basis (Blackhurst 1998:42). During the Uruguay Round negotiations, contracting parties were in favour of a more institutionalised process, but were trying to control the Secretariat. Some countries envisaged the Secretariat compiling information with assessment reserved only for the countries under review and didn’t want the Secretariat to be allowed to visit capitals to collect information (Croome 1995). Although these positions were not reflected in the final mandate, other control mechanisms were installed (e.g. the drafting of two reports, one by the Secretariat and one by the country under assessment). Over time, the Secretariat has incrementally increased its discretion within the assessment period, by designing the outline for the assessments and by slowly incorporating trade-related matters. Finally, the country reports discussed by the Trade Policy Review Body are nowadays predominantly based on the Secretariat report. The self-reports by countries have declined in scope and length. Thus, the Secretariat has (a development not foreseen in the mandate) gained influence and autonomy in

42 Other information tools are research and development or public affairs.
the process or as Thompson and Snidal put it “autonomy exercised through regime management functions can be extended into unanticipated areas and present control problems for states” (2005:2).\(^4^3\)

*Table 1 Autonomy over time*

<table>
<thead>
<tr>
<th>Change over time</th>
<th>Autonomy</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Negotiations:</strong></td>
<td>Assistance (decreased)</td>
<td>Less</td>
</tr>
<tr>
<td><strong>Dispute Settlement</strong></td>
<td>AB (increased)</td>
<td>More</td>
</tr>
<tr>
<td></td>
<td>Assistance (similar)</td>
<td>More</td>
</tr>
<tr>
<td><strong>Regime Management:</strong></td>
<td>Surveillance (similar)</td>
<td>Similar</td>
</tr>
<tr>
<td></td>
<td>TPR (increased)</td>
<td>More</td>
</tr>
<tr>
<td></td>
<td>TACB (increased)</td>
<td>More</td>
</tr>
</tbody>
</table>

Finally, technical assistance and capacity building (TACB) has gained importance since the 2\(^{nd}\) half of the 1990s. This trend has been strengthened by the Hong Kong Ministerial declaration on Aid for Trade. Although many members regularly mention that the WTO is not a development institution, the external funds provided for technical assistance and training have substantially increased (on the origins see Blackhurst 1998). The main goals are to help developing countries (and especially least-developed countries) to become accustomed to the

\(^4^3\) Interview # 5.
rules of the system helping them to participate in negotiations, while also attempting to “educate” them on the guiding rules and principles. A current report by three civil society organisations evaluating trade-related technical assistance didn’t explicitly note areas where the agent might have used discretion in a way not intended by the principals. While Members like to earmark some of the activities, the Secretariat still has wide discretion in responding to demand.

A summary of preliminary evidence from interviews and literature reviews displays the following trends of autonomy and overall impact within the system over time (Table 1).

**The puzzle of “missing” delegation**

The regulatory politics of the global trading system have suffered a number of crises in the past decade. At the time of writing, the negotiations are slowly resuming after DG Pascal Lamy called for a “suspension” of the current round in summer 2006. While some trade experts argue that crises are a normal feature of the GATT/WTO system, others reason that the frequency of crises has intensified and call for a rethink of the decision-making procedures within the institution. In times of stalemate, the questions on reforming the system receive more attention. One of the many proposals is to increase the role of the Secretariat. Chapter IX of the Sutherland Report (Sutherland et al. 2004) suggests the remedy of giving the Secretariat more standing. The authors of the report lament that the Secretariat has become more timid and passive (see also Shaffer 2005). Yet, members are critical about delegating new powers to the Secretariat.

The overview of the different tasks given in the preceding section directs attention to the substantial autonomy of the Appellate Body and the indirect influence of Secretariat staff in AB and panel proceeding. Other tasks (trade policy review and technical assistance) have also been gradually strengthened, yet in negotiations the agents are not sufficiently “utilised”,

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44 WT/COMTD/W/152.
45 Interview # 7.
46 While earlier attempts by DGs to appoint groups of eminent persons were successful, as “the high quality of this people made sure that their reports were considered” (Croome 1995); today such reports spark discussions outside the system, but ambassadors are turning a half blind eye on them.
in other words, the proximate principals are hesitant to delegate more power to the Secretariat (e.g. chairing sessions, producing texts, assisting more actively as neutral brokers, creating focal points, engaging in linkage, etc.). In some areas, the Secretariat is left out of the key negotiations (e.g. in services negotiations in the plurilateral and bilateral approaches that dominate the modes of negotiations). In addition, the proximate principals maintain control through various micro-management tools and ad hoc delegation. Illustrations of micro-management are the lengthy debates in the Budget Committee, or delegations screening speeches by the DG and calling up the DG Cabinet to criticise certain passages of these speeches.47 What could more delegation to the Secretariat produce? This question can only be addressed by drawing on contrafactual arguments. In light of the current deadlock and the system of endless cycling (tabling country proposals), a third party perceived as brokering agreements could engage in moving towards finding common ground, e.g. producing chairmen texts in a more transparent fashion.

It is interesting to observe that participating countries de facto accept a decision-making system within concentric negotiation circles where the breakthrough is expected within small groups (e.g. G6) (Elsig 2006).48 Some developing countries (including those without an official representation in Geneva) might fare better with a Secretariat at their side helping to tackle existing asymmetries (e.g. lack of expertise and resources) that cannot be overcome by coalitions. We should observe that “states that lack international influence will typically favour delegation” (Hawkins et al. 2006:22).

This PA relationship becomes more puzzling when considering dominant explanations for why delegation should occur. While the rational design literature does not offer a convincing explanation for the design of the WTO, many functionalist approaches to delegation could envisage explanations for why we should see an empowered agent. Scholars working within a PA framework have theorised the obstacles or reasons for delegation (see Martin 2006:162-3). States delegate more authority when dissatisfied with the status quo, when state preferences among principals diverge (which goes hand in hand with stricter control

47 Interview # 8.
48 In the current G6 setting, the DG is usually invited. He attempts to play the role of facilitator (interview # 8).
mechanisms), when staff and member states have similar preferences, and we should also see those close the staff to be the most willing to delegate. A functional analysis of current affairs within the WTO would lead us to expect to see additional delegation.

In addition, one could ask whether the costs of “participation” (in controlling the IO) are not too high (growing number of standing missions to the WTO) and whether strong influence could not be maintained through a less costly control system ex ante (screening of the agents, clearer mandates, variable geometry) and at locum (e.g. more deputies representing the key coalitions, fewer and more concentrated meetings in which experts from capitals participate). In addition outsourcing could be encouraged (through coalitions or through additional police patrol groups (e.g. NGOs) and ex post control sustained (e.g. sticking to consensus).

While constructivists assume agencies to have autonomy and are thus not particularly interested in the question of why delegation should occur, realists assume principals to be reluctant to delegate to international organisations. Realists are sceptical about delegation which is often summarised with the term “sovereignty costs”. In relation to the WTO, Thompson and Snidal argue that “states have a ‘love-hate’ relationship with this IO capacity because they value the IO’s role in promoting the smooth working of the regime and in adapting it to changing circumstances but are reluctant to accept overarching authority with the associated sovereignty costs” (2005:3). Also sceptical, albeit for different reasons, are authors who contribute to the legalisation literature. They see concerns of the sovereign principals committing to new liberalisation concessions in light of an ever-increasing bindingness of international trade law.

While sceptical approaches merit close scrutiny, they do not test for an alternative explanation: that the proximate principals are a primary obstacle to delegation. This argument

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49 NGOs and intergovernmental groups (e.g. South Centre, Commonwealth Secretariat, African group, etc) can play this role. In addition, many retired trade diplomats who stay in the Geneva region can offer their services (even at a price below the market price).

50 This literature focuses on whether legalization has gone too far. It is argued that legalization empowers protectionist forces and takes away decision-makers’ appetite for engaging in negotiations with the view of liberalising markets. While, this might explain the US position (and the translation to the US mission) to some degree, it cannot capture the interests of the great majority of contracting parties.
applies to both levels, a) grand bargains over institutional design and b) micro-management of the system. In grand bargains, proximate principals are the key drivers of the negotiations; they are engaged in a two-level game dominating the negotiation process between Ministerial Conferences, and prepare the ground for the ministers to strike the ultimate deals. Selected examples of micro-management have been highlighted above. In other words, we need to refocus on the role played by the proximate principals. Based on interviews with involved participants from the Secretariat and existing case studies, two issues seem to be important in explaining the high degree of reluctance of PPs to delegate in recent years (that goes beyond member states’ reluctance to delegate power to IO Secretariats due to increased bindingness of international trade law). The first could be described as the “turkeys don’t vote for Christmas” effect; the second is a tale of risks attached to reverse leap-frogging.

First, active participation within the system is an important activity for member states’ representatives. In a member-driven organisation they can shape and influence processes and can report to the capitals on their contributions in the form of negotiation proposals, important statements and coalition endeavours. Active involvement helps to legitimise their stay in Geneva. This also helps them in their internal positioning in their respective careers, as colleagues in other IOs might be in a less favourable position to sharpen their profile as able diplomats. In addition, ambassadors can enhance their reputation through chairing one of the many Committees. Thus, delegating to the Secretariat means losing influence and deprives the delegations of opportunities to participate in activities within the organisation.

Second, ambassadors representing different national interests have engaged in an implicit coalition to keep the agent under control. While interview partners acknowledged that the institution was always member-driven, they blamed visible tightening of PP control as a reaction of reverse leap-frogging. Many interview partners have mentioned the names of

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51 Anectodal evidence suggest that increased bindingness has made many principals nervous and suspicious about Secretariat’s work. Since around 2001 WTO documents (even minutes) have a disclaimer that the content is without prejudice of the members’ rights and obligations. (interview # 9).

52 Interview # 6.

53 In addition, there is jealousy not wanting civil servants to run the show (interview # 10).

54 Leap-frogging as described by Nielson and Tierney (2003). In the case of the World Bank, Nielson and Tiersey trace the leap-frogging from the sovereign to the staff-dominated IO. Reverse leap-frogging is the
Renato Ruggiero and Mike Moore hinting at the change in the nature of DGs from civil servants to political figures with ambitions. There is considerable anecdotal evidence (hard to dismiss) that incoming political DGs were threatening the position of PPs. This was done by taking too much of the limelight and by threatening the position of PPs by selectively doing reverse leap-frogging. DGs Ruggiero and Moore publicly humiliated ambassadors by threatening to call the ambassadors’ superiors (e.g. trade or foreign ministers) if ambassadors were reluctant to play a constructive role. This left some ambassadors out in the rain. This type of reverse leap-frogging was not at all appreciated by the ambassadors who reacted by overcoming collective action problems and starting gradually to curtail the Secretariat’s power in a number of areas.

**Conclusion**

This paper attempts to contribute to the evolving conceptual work on agency and international organizations. It focuses on the WTO as a complex agent using a PA framework. It is argued that in international organisations that are “member-driven”, we need to closely assess the interests and behaviour of the proximate principals. They are not only part of the complex IO as an agent, but they are the key principal for day-to-day management and ad hoc delegation necessary for regime management activities of the international civil servants.

Finally, while some constructivist contributions pinpoint pathological behaviour of civil servants within international organisation, this paper presents implicitly a cautionary note on the location of pathology. As the case of the WTO suggests, the proximate principals attempt by the Secretariat to circumvent the PP and engage directly with the superiors of the ambassadors (Ministers).

55 Peter Sutherland was important for his role in banging heads together at the end of the UR to achieve agreement, but most interview partners thought that he had not stayed long enough to shake the DG-PP relationship (interview # 4, # 9).

56 Politicians appointed to the job of DG were used to giving orders to their ambassadors and suddenly they found themselves in the position of receiving orders from the ambassadors

57 Interview # 9.

58 Especially in negotiations, but also in activities of great interest to the DG (interview # 8).
seem sometimes detached from the sovereign principals creating delegation costs and keeping substantial power in day-to-day management of the system. In the end, agency costs from delegating to a proximate principal need to be compared with agency costs emanating from empowering international organisations’ secretariats. While civil servants can be easily blamed on the intruding role of global trade law, the question remains whether this is not part of the delegation motive.

References


