A perception of institutional crisis is pervading international organizations. One ever more fashionable response by the administration of an affected organization is to entrust a group of eminent persons to consider its future. Perhaps not surprisingly the resulting report calls for a politically feasible strengthening of that organization for which it provides good grounds. The most important recent example is the United Nations report entitled “A more secure world: Our shared responsibility”. A similar approach has been taken by WTO DG Supachai Panitchpakdi who called Peter Sutherland, Jagdish Bhagwati, Kwesi Botchwey, Niall FitzGerald, Koichi Hamada, John H. Jackson, Celso Lafer and Thierry de Montbrial into a Consultative Board whose task was to think about the “Future of the WTO” by “Addressing institutional challenges in the new millennium”. The group selected is particularly close to the current institution; it includes no scholar, intellectual or politician, who has voiced substantial and serious criticism.

The Report is divided into nine chapters which rely heavily on academic writings by some of the Board’s members. Since these are eminent scholars or practitioners with a thorough understanding of the workings of the WTO the report provides for a rewarding read.

Chapter I restates “[...] the case for liberalizing trade” (paras. 1-57) and contains, apart from an introduction and defense of the WTO as an organization, an economic analysis mostly based on Bhagwati’s writings. In substance, only adjustment problems are considered to be rational. Critical issues are avoided, such as the impact of the TRIPs Agreement on developing countries or safeguarding general public services such as water supply.

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* Director at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Judge at the OECD Nuclear Energy Tribunal, Paris.
** Research Fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg.

Chapter II discusses “The erosion of non-discrimination” (paras. 58-107). The focus here is not Art. III GATT, but the discussion deals exclusively with Art. I GATT. The core statement of this chapter is that “MFN is no longer the rule; it is almost the exception” (para. 60). The report is particularly critical with respect to the main reasons for the perceived erosion of non-discrimination: on the one hand preferential trade agreements (PTAs) and, on the other, special and deferential treatment for developing countries since they do not provide the economic benefits expected (paras. 88 et seq.). Combined with other mechanisms they are termed a “spaghetti bowl” which leaves virtually no room for the MFN principle. The report’s recommendations are the clarification of Article XXIV GATT, a better organized means of administering its provisions, as well as a stronger role for the secretariat by giving its own factual presentations on PTAs in the Committee on Regional Trade Agreements, something that could eventually lead to a “form of Trade Policy Review Mechanism of individual PTAs” (para. 105).

Chapter III is on “Sovereignty” (paras. 108-143) and not surprisingly puts this frequently “used and […] misused” and “vague” concept into question, although the report employs the term in another chapter affirmatively (para. 279). Again, it does not come as a surprise when the report opines that states cannot achieve important governance goals without relying on the processes of treaty-based cooperative action – especially where mobile factors (e.g. investment, monetary payments, free movement of persons) are concerned. This chapter ends in rather interesting, but also puzzling conclusions. It considers the WTO as “becoming essentially an international economic regulatory level of government” (para. 139). Here, it might have taken inspiration from integration projects such as the early European Economic Community. At the same time, the report opines that this prospect is not feasible. Nevertheless, it argues that “in committing to the WTO and its procedures and disciplines, governments are returning to themselves a degree of ‘sovereignty’ lost throughout the process of globalization. If governments are losing the capacity to regulate meaningfully at the domestic level, they are reclaiming some control of their economic destinies at the multilateral level” (para. 140). This is a surprising conclusion. The regulatory function of current WTO law is mostly limited to trade restrictive domestic rules. Harmonizing such rules does not increase in any significant way the national power over economic actors who operate on a global scale. For the balance, the effect of WTO law is rather deregulatory. The sweeping conclusion that the WTO improves sovereign control, thus, is unconvincing.