2012

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Publication Details
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Disciplines
Arts and Humanities | Law

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The Law and Development Review

Volume 5, *Number* 1 2012 *Article* 6

SPECIAL ISSUE (2012): MICROTRADE - A NEW SYSTEM OF INTERNATIONAL TRADE FOR POVERTY ALLEVIATION

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Recommended Citation:
Picker, Colin B. (2012) "A Legal Cultural Analysis of Microtrade," *The Law and Development Review*: Vol. 5: No. 1, Article 6.

DOI: 10.1515/1943-3867.1152

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Abstract

As a new international economic policy, microtrade will face a whole host of issues, including potential legal cultural obstacles. Those legal cultural issues will arise as a result of the different and sometimes conflicting legal cultures of the varied participants within the different fora and communities involved in microtrade from the LDCs to the NGOs to the artisans within the exporting entities. This paper identifies many of the legal cultural issues involved in microtrade, with such identification ideally then permitting the amelioration of the negative impact on microtrade of those legal cultural issues. Many legal cultural issues will be explored, including the legal cultures associated with rural communities, women, international trade law, the microtrade organization, and the legal culture associated with small entities.

KEYWORDS: trade law, comparative law, microtrade, international economic law, legal culture

I. INTRODUCTION

Microtrade is essentially a mechanism to support development in the least developed states ("LDCs") through the creation of a mechanism, structure, and organization that will facilitate small scale international trade from the LDCs into more developed markets.[1] Microtrade seeks to make this work through leveraging the lower labor costs in the LDCs, demand in more developed markets, and through collaborative and voluntary efforts to minimize the costs of shipping and other barriers to such small scale trading ventures.[2]

In so doing, there will be a whole host of legal cultural issues that may stand in the way of effective implementation of microtrade policies. Those legal cultural issues will arise as a result of the different legal cultures of the varied participants within the LDCs, within the international organizations and fields that would be involved, and even within the developed states that will be the ultimate destination for microtrade products. While those legal cultural issues will often serve as obstacles, in contrast, and as will be briefly discussed below, they may sometimes serve to enhance microtrade initiatives. This article will seek to identify many of the legal cultural issues throughout the different fora and communities involved in microtrade, with such identification ideally then permitting the amelioration of their negative impact, or their enhancement if they have a positive impact on microtrade. Though this article will not, for the most part, present mechanisms that could be employed to offset any negative consequences from the clash or disconnects between the different legal cultures. Rather, this article will merely identify some examples of the legal cultural issues that will be relevant to microtrade, with such identifications being the significant first steps in eventually resolving them so that microtrade may work to best effect.

It should be noted that this article is not an indictment or negative critique of the idea of microtrade. Rather, this article seeks to support the idea of microtrade by noting the potential legal cultural problems that could undermine microtrade and thus must be handled to ensure the success of this innovative idea. But before embarking on the legal cultural analysis of microtrade, the concept of legal culture and legal cultural analyses must first be explained.

[1] Yong Shik-Lee, *Theoretical Basis and Regulatory framework for Microtrade: Combining Volunteerism with International Trade Towards Volunteerism*, 2 Law and Development Review, no.1 (2009), 367-399, at 368.
[2] *Ibid.*.

II. LEGAL CULTURE

Legal Culture covers a broad range of issues, with many of those issues also considered within comparative, socio-legal or legal anthropology works.[3] The associated methodology, legal cultural analysis, is one not typically encountered within the world of international economic law. While one of many methodologies and approaches within comparative law,[4] ones that often consider specific substantive laws or institutions, within legal systems, it is not one that automatically comes to the fore, for it is often misunderstood or confused with other related parts of legal systems and methodologies, namely the analyses of legal systems and traditions. Thus, as an initial matter, those terms must first be fleshed out in comparison to each other. Previous legal cultural analyses have discussed this issue before and so rather than start afresh that explication is laid out below.

> The term "legal culture" is not a term commonly employed or understood within the law. While other fields, such as social science, may have considered cultural issues in great depth, in law it is relatively rare. In part this may because it is viewed as too "soft". So, in order to give it greater strength I define legal culture to consist of those [cultural] characteristics present in [and tied to] a legal system, reflecting the common history, traditions, outlook and approach of that system. Those characteristics may be reflected in the [legally related] actions or behaviors of the actors, organizations, and even of the substance of the system. [Crucially, legal] culture exists not because of regulation of substantive law, but as a result of the collective response and actions of those participants in the legal system. As a result, legal culture can vary dramatically from country to country, even when the countries share a common legal tradition. Critically, legal culture is also to be found within international organizations and fields—for they too are legal systems. Those different legal cultures are [vital] for understanding the legal systems, for different legal cultures tell different stories, see the world differently, and project different visions. It should be emphasized that legal culture is not anthropology or sociology. For sure, culture is part of and studied by those two other fields—often in ways of importance to the law. But, here, rather, everything that is a part of "legal

[3] *See*, *e.g.*, M. Hirsch, *The Sociology Of International Economic Law*, 19 The European Journal of International Law, no. 2 (2008), 277.

[4] *See generally*, *Methodological Approaches to Comparative Law Symposium Issue*, 16 Roger Williams University Law Review, no. 1 (2011) *et seq*, 86 (comprising the papers from the 2009 Annual Meeting of the American Society of Comparative Law).

culture" should be a cultural issue of legal consequence. Too often one can drift into non-law. . . By way of example, to highlight the "legal" component of legal culture, the American or Anglo-American legal culture may be easily contrasted with that of the French or Japanese or Iranian. Thus, the differences in legal culture are clearly apparent when considering the expected role/behavior/activities of Anglo-American judges versus those in civil law systems (passive versus active judicial behavior); the role/behavior/activities of American attorneys in business negotiations versus those in Japan (the significantly greater use of lawyers in the former versus the latter); and the role/character of legal sources in Anglo-American systems versus those in religious law systems (pluralistic and dynamic versus monolithic and difficult to change). Those specific legal cultural characteristics, simplified for sure in these examples, exist largely independently of statute, regulation or other positive law. They exist as part of the legal culture.

Typically, however, comparative law focuses on legal systems and legal traditions, and not on legal cultures. Legal systems are "the composite of the legal organizations, rules, laws, regulations, and legal actors of specific political units--usually states or sub-state entities[- - and] have largely the same characteristics[,] the same rules and organizations." Legal traditions, in contrast, are:

> families of legal systems, sometimes . . . legal models or patterns . . [but] a legal tradition is not a synonym for the history or development of law in a given country[, r]ather, it is the aggregate of development of legal organizations (in the broadest sense of the term) in a number of countries sharing some fundamental similarities in the law.[5]

One can see that while similar, and often confused and at times interchangeable in some comparative analyses, the critical issue that differentiates a legal cultural analysis is that legal culture is more informal, subconscious, and typically tied to just one system's legal actors. In contrast, legal systems are more formal and their characteristics are consciously created and applied, while legal traditions normally describe broad groupings and more typically reflect formal sources of law. Consequently, [and using examination of international organizations to prove the point,] a comparative legal systems analysis of international organizations would focus on the formal rules within and across the

[5] U. Mattei, *The Art and Science of Critical Scholarship: Postmodernism and International Style in the Legal Architecture of Europe*, 75 Tulane Law Review, no. 3 (2001), 1071 (citations omitted).

> organizations. Whereas a comparative analysis of the legal traditions of international organizations, while its methodology in many respects would employ similar devices as those suggested in this paper, would focus more closely on groups of organizations and on the formal sources of their rules and regulations. In contrast, a legal cultural analysis of an international organization would usually analyze just one organization and would focus quite heavily on, among other factors, the human actors involved in the organization. All three of these methods of comparative analyses to some extent, often a large extent, overlap, [but differ in sufficiently critical ways as to justify the more narrow application in different analyses of one over the other two methods].[6]

Institutions, legal fields, and policies that operate at the "micro" level are easily impacted by legal culture, for the role of individuals and their attitudes towards them will correspondingly be greater than it would be on those institutions, fields and policies that operate at the macro or state level and where legal culture is aggregated and more easily subsumed by those institutions, fields and policies. Thus, microtrade, indeed all international economic law ("IEL") that operates at the micro level, from microfinance to microinsurance, will be substantially impacted by the legal cultures of the communities and fields involved. Each of those micro-IEL policies are, after all, implemented at the individual level—with those individuals' legal behavior and attitudes directly relevant and not submerged under layers of institutional bureaucracy. Similarly, because individuals working within micro-IEL will be involved in matters of direct personal consequence to them, one can expect their passion and emotional attachment to be considerably higher than would be the case for participants involved in macro-IEL policies.[7] How that emotion and associated passion expressed will depend to a great extent on the culture and in particular on the legal culture of the communities within which the individuals reside and work.

The legal culture of relevance to microtrade will of course vary with the communities within which the participants are located or affiliated. Those communities will have a wide variety of legal cultures. One concern may be whether given such a large number of different communities that will be involved

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[6] C. B. Picker, "An Introduction to Comparative Analyses of International Organizations" in L. Heckendorn and C. B. Picker, (eds.), *Comparative Law & International Organizations* (Swiss Institute of Comparative Law, forthcoming 2012) (hereinafter "Picker (IOs)") (most citations omitted).

[7] *But see* C. B. Picker, "International Trade as a Tool for Peace: Empiricism, Change, Passion, and the Israeli-Palestinian Conflict, appearing" in Tomer Broude & Arie Kacowicz, (eds.) *Trade as a Promoter of Regional Peace* (Jerusalem, Davis Institute for International Relations, 2006); C. B. Picker, "Trade & Security: Empiricism, Change, Emotion & Relevancy," in P. Alai, T. Broude, and C. B. Picker, (eds.) *Trade as the Guarantor of Peace, Liberty, and Security? Critical, Historical, and Empirical Persepectives* (American Society of International Law Press, Studies in Transnational Legal Policy: A Series of Books, 2006).

with microtrade across the globe, and indeed even within one country, how anything useful can be discussed in relation to microtrade and legal culture. In fact, there are two immediate approaches of value. The first approach is to identify legal cultural characteristics that will generally be found throughout the more typical communities involved, so that problems that may arise from legal cultural disconnects with the microtrade policy can be anticipated and ameliorated. The other approach is to identify if there are any legal cultural issues that will be present within the microtrade or micro-IEL policies and institutions themselves, and hence should be identified to ensure they do not hinder the implementation of those policies among the many different legal cultures of the world. This article will consider both of these approaches. Though, confined to just those two approaches necessarily leaves out the detailed identification of legal cultural issues in specific microtrade initiatives, but those analyses should be part of the background work for those specific future projects—the legal cultural equivalent of environmental impact statements/assessments prior to construction projects.

It must be noted that many of the issues identified as being a part of legal culture also have substantive characteristics as well, be they found in formal legislation, treaties, regulations or even in the less formal customary law found both within international law and within domestic or even tribal legal systems. Of course, they too should be considered, though here the focus is more on the somewhat inchoate and intangible legal cultural of the different fora and communities. For example, this article will consider the way that the relevant legal cultures treat the role of women in legal transactions, though there will also be more formal and customary rules in many of those systems that specifically focus on those roles as well.[8] Similarly, this article will consider the legal cultural aspect of the way that developed countries treat former colonies, though clearly it is always worth considering any IEL substantive aspects of those enduring relationships.

Finally, it should be pointed out that this article does not suggest that legal cultural analyses are themselves sufficient to ensure an effective consideration of the context within which microtrade policies will operate. Indeed, other issues, some of which are related to legal culture, must also be considered, such as, the political, sociological, socio-political, historical, anthropological, and economic context. This article, however, will simply focus on legal cultural considerations, leaving those other contextual analyses for other examinations of microtrade.

[8] *See*, *e.g.*, S.Hofstetter, *The Interaction Of Customary Law and Microfinance: Women's Entry into the World Economy*, 14 William & Mary Journal of Women and the Law, no.2 (2008), 337.

III. LEGAL CULTURES OF RELEVANCE TO MICROTRADE

Even though microtrade is conceived as operating for the benefit of LDCs, it will nonetheless operate across many different fora: from the LDC states to the developed state markets for the products; from the centrally planned to laissez-faire states that exist across all levels of economic development; and from western to non-western states. Microtrade will furthermore apply to a wide range of communities and participants within these different states: from women in developing countries to small businesses in developed countries; from rural indigenous communities to impoverished urban communities; and from artisans in developing countries to NGOs in developed countries. In each of these and other groups there will be specific legal cultural issues relevant to microtrade policies that should be considered and handled if microtrade is to have its best chance for success. The length of this article precludes an exhaustive consideration of all the communities and participants involved and all of the legal cultural issues that are relevant. Nonetheless, this article will provide a few examples to highlight the applicability of the methodology to microtrade.

A. Legal cultural issues related to LDCs

The idea of microtrade is that it seeks specifically to assist in the development of LDCs, though it should be briefly noted here that there is no conceptual reason why the model could not be applied in the non-LDC developing countries, or perhaps even in impoverished communities in developed countries.[9] Of course, there is no shortage of political and other reasons why the idea is not likely to be applied outside LDCs, but that is not an issue for this article.[10] Nonetheless, the concept may achieve its greatest impact in the LDCs, a group of states that have otherwise failed to reap much of the benefits of the development movement of the last half century.[11] Thus, to the extent there is limited resources or enthusiasm and

[9] Though the microtrade model proposed by Lee seems to rely upon the very low labor costs in the LDCs, *see* Lee, *supra* note 1, pp. 6-8, the fundamental idea being proposed should still be applicable outside the LDCs in the right circumstances.

[10] *See*, *e.g.*, C. B. Picker, *Neither Here Nor There—Countries that Fall Between the Developed and the Developing World in the WTO*, 36 George Washington International Law Review (2004), 147, 160-167. ; C. B. Picker, "Islands of Prosperity and Poverty: A Rational Trade Development Policy for Economically Heterogeneous States" in Yong-Shik Lee, Won-Mog Choi, T. Broude and G. Horlick, (eds.), *Law and Development Perspectives on International Trade Law* (Cambridge University Press, Cambridge, 2011),p. 327.

[11] Lee, *supra* note 1, pp. 3-4.

energy for creation of microtrade, it should then be focused on applying it within the LDCs.[12]

There are clearly a whole host of legal cultural issues that are likely to be present within LDCs that are relevant when creating or implementing microtrade. Of course, many of those legal cultural issues will be present in other developing or even in developed states, but the impact of these legal cultural characteristics is likely to be greater within the LDCs, where IEL policies may already be struggling to acquire traction. Nonetheless, the examples of the analysis provided here could also be applied within other developing and developed states.

1. The presence of non-western legal cultural characteristics

As has been previously shown in earlier legal cultural analyses, IEL, and hence microtrade which exists within IEL, is a legal system that substantially fits within the western legal tradition.[13] Furthermore, it is the case that the western legal systems have "colonized" most of the world, with most legal systems outside the "west" incorporating significant parts of one of the two major families of the western legal system, the common or civil law families. [14] Whether those systems have in place civil or common law systems is typically a product of the colonial or neo-colonial history of the system.[15] Thus, we can expect the LDCs to have substantial western aspects to their legal systems. Those western parts of LDCs' legal systems will not then typically be a source for any legal cultural disconnects with IEL and microtrade. Though it should be noted here that despite the western heritage, the significant degree of mixing with the original and later legal traditions, systems, and cultures that may have taken place could result in those original western elements no longer fitting so well with more classically western legal systems and cultures, such as is found within IEL and trade. Furthermore, if the system is heavily civil or heavily common law, then it may, as is also the case for many legal systems in the developed world, encounter disconnects with international law and IEL, which are themselves mixed systems, reflecting civil or

[12] Indeed, some of the developing and developed states already have in place schemes to assist small businesses. *See*, *e.g.*, the United States' Small Business Adminsitration, available at: <www.sba.gov>; South Africa's SEDA (small enterprise development agency), available at: <www.seda.org.za>.

[13] C. B. Picker, *International Law's Mixed Heritage: A Common/Civil Law Jurisdiction*, 41 Vanderbilt Journal Of Transnational Law, no. 4 (2008), 1093, 1094-1101 (hereinafter "Picker (International)").

[14] *See* M. Glendon, P. G. Carozza, G., & C. B. Picker, *Comparative Legal Traditions: Texts, Materials and Cases on Western Law,* (3rd ed., Thomson West Publishing, 2007), pp. 42, 68-72, 320-24. There are 51 common law system states and there are 115 civil law system states, which together cover 94% of the world's population. *See* W. R. Barnes, *Contemplating a Civil Law Paradigm for a Future International Commercial Code*, 65 Louisiana Law Review, no. 2 (2005), 677, 685. Though it should be noted most systems are "mixed" to some extent, including with non-western systems. *See* E. Örücü, "General Introduction" in Esin Örücü (ed.), *Mixed Legal Systems at New Frontiers* (Wildy Simmonds and Hill, 2010), pp. 1-2.

[15] *See* Glendon, *supra* note 14, pp. 68-72, 320-24.

common law legal cultural characteristics at different points,[16] which may then clash with the opposite legal culture of the domestic system.

To the extent microtrade interacts with legal cultures that include within them non-western legal cultural characteristics, one may anticipate a legal cultural disconnect with western legal systems, including much of IEL and international trade. Of relevance here is that there will be sufficient non-western legal cultural characteristics within many of the LDCs. A significant number of LDCs have typically retained pre-colonial legal customs or traditions, often in the areas of family law or inheritance.[17] Furthermore, to the extent there are strong tribal or indigenous communities or cultures within the LDC, it is likely that their traditional legal culture has survived in one form or another, in one part of the legal system or another, or has influenced the incorporation of the western law. As such, there will be legal cultural disconnects that arise when the non-western domestic legal cultural characteristics interact with the western legal cultural characteristics of microtrade.

Because the interaction of non-western legal cultures and IEL has been discussed before in other recent legal cultural analyses,[18] this article will simply provide a few different but brief examples to highlight the issue. For example, among the suggestions to make microtrade work is employment of microfinance,[19] but the use of microfinance may raise concerns in some systems where non-western approaches to finance may be present, such as among communities where Islamic law permeates the legal culture and where there may be restrictions, formal or otherwise, on such typical economic transaction tools as interest charges.[20] Of course, there are mechanisms and approaches that have been employed to permit these sorts of projects in places or among communities where Islamic law has an influence.[21] But, critically, these and other such issues need to be identified so that they can then be managed in a way that does not lead to a direct conflict between the local communities and the other microtrade participants.

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[16] *See* Picker (IOs), *supra* note 6.
[17] *See* Glendon, *supra* note 14, pp. 968-70.
[18] C. B. Picker, *International Trade & Development Law: A Legal Cultural Critique*, 3 Law and Development Review, no. 2 (2011) ; C. B. Picker, "Anti-Poverty v. The International Economic Legal Order? A Legal Cultural Critique" in K. Shefer (ed.), *Poverty & the International Economic Law System* (forthcoming) (hereinafter "Picker (Poverty)").
[19] *See*, *e.g.*, Lee, *supra* note 1, p. 13.
[20] B. L. Seniawski, *Riba Today: Social Equity, the Economy, and Doing Business Under Islamic Law*, 39 Columbia Journal of Transnational Law, no. 3 (2001), 701.
[21] Though note that Islamic finance has developed satisfactory mechanisms and approaches to finance that cover the roles played by interest charges. *See*, *e.g.*, N. Mersadi Tabari, *Islamic Finance and the Modern World: The Legal Principles Governing Islamic Finance in International Trade*, 31 The Company Lawyer, no. 8 (2011), 249.

There may also be legal cultural issues associated with the non-western lack of individual liability, and the employment of communal/family/tribal liabilities.[22] Another issue likely to be encountered is in group/communal property legal cultures.[23] Those different notions of land ownership can also lead to the inability to prove title under western models,[24] which can itself then undermine microtrade projects. For example Neef notes, in the context of fair trade transactions, the land ownership obstacles that Hmong farmers faced,

> Legal constraints have rendered it impossible for the litchi processing cooperative to apply for a Good Manufacturing Practice (GMP) certificate which is a prerequisite for marketing their products in local supermarkets. Being members of an ethnic minority group settling in a national park, they do not have officially documented land ownership rights. Hence, the processing facility could not be legally registered to date.[25]

The many and different legal cultural impediments arising out of the clash between western and non-western legal cultures is a subject that deserves a multi-volume study. But, it is sufficient here to note that those involved in microtrade need to be sensitive to the potential existence of such non-western approaches, and to try to identify them from the start so they can be handled at the inception of the microtrade transaction and not later when it will be much harder to resolve, potentially putting the entire microtrade transaction in jeopardy.

2. Rural/agricultural legal cultures

Much of the issues already identified above tend also to be associated with rural and agricultural societies. After all, non-western legal cultures are more likely to have survived outside urban or industrial environments which would more likely have been brought under the dominant western legal cultures. But, the legal cultural issues associated with rural and agricultural communities are much more than just a greater likelihood of encountering non-western legal cultural characteristics. Indeed, rural and agricultural societies will necessarily have a different approach to the law than will be found in urban and industrial societies.[26]

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[22] H. Patrick Glenn, *Legal Traditions of the World,* (4th ed., Oxford, 2010), p. 72.
[23] *Ibid*., p. 70.
[24] A. Erueti, *The Demarcation of Indigenous Peoples' Traditional Lands: Comparing Domestic Principles of Demarcation with Emerging Principles of International Law*, 23 Arizona Journal of International and Comparative Law, no. 3 (2006), 543.
[25] A. Neef, K. Mizuno, I. Shad, P. M. Williams, and F. Rwezimula, *Community-Based Microtrade in Support of Small-Scale Farmers in Thailand and Tanzania*, 4 Law and Development Review, no. 1 (forthcoming 2012).
[26] In this work, rural and agricultural communities are conflated, though clearly they will differ on a great many issues with respect to legal culture and otherwise. Similarly, urban and industrial communities, and

Furthermore, urban and industrial regions will typically be in greater harmony with the IEL system and as such one should not expect the mere fact that microtrade is applied in an urban or industrial setting to lead to legal cultural disconnects with microtrade. Though, if the microtrade were located in severely depressed parts of an urban environment, such as the favelas in Brazilian cities, then we very well should expect there to be legal cultural issues that need to be taken into account.

As recently noted in a legal cultural analysis of poverty and IEL:

> Urban/industrial/service legal cultural characteristics may be said to include the following:
>
> > Greater legal innovation;
> > More professional judiciaries;
> > May be more closely regulated, supervised and connected to the government;
> > Greater connection with foreign and international legal culture; and
> > Access to law is more evident and plays a greater role in daily lives.
>
> In contrast rural/agricultural legal culture may be said to include, among other things:
>
> > Greater roles for traditional and indigenous legal traditions;
> > More reliance on mediation;
> > More use of informal "social control" mechanisms;
> > A "shortage of [formal and official] non-adversarial services (counseling, mediation and contact services)"
> > "[E]motional and financial strain of having to travel long distances to access services".
> > Greater flexibility within the law, both as a matter of expectation and as a matter of operation, though that flexibility may itself undermine certainty and predictability. [27]

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sometimes service and commercial communities, are conflated here, though without question they too would differ on a great deal, be it legal culture or otherwise. But, for purposes of this short work, use of the conflated pairs is defensible, for agriculture does tend to be in rural communities, and rural communities do tend to be significantly involved in agriculutre, while urban communities are more likely to have industrial than agricultural economies, and industrial entities are themselves more likely to be found in urban regions.

[27] Picker (Poverty), *supra* note 18, p. __ (quoting B. Yngvesson, *Inventing Law in Local Settings: Rethinking Popular Legal Culture*, 98 Yale Law Journal, no. 8 (1989),1689, 1694; and F. Gibson and F. Rochford, *Dispute resolution in rural and regional Victoria,* 21 Alternative Dispute Resolution Journal, no.2 (2010), 111, 115., but other citations ommitted).

Just as those legal cultural issues were relevant to IEL anti-poverty policies, so too they are relevant when considering microtrade. The few differences noted above suggest that microtrade that is to be applied within the rural or agricultural sector may need to be adjusted in order to ensure that rural communities' more informal approach to the law is reflected, or else when there are disputes, as must inevitably be the case, microtrade participants from rural or agricultural communities may be more vulnerable in a system that may employ a more formal dispute resolution mechanism. But, the differences may also work to the benefit of microtrade's application within agricultural and rural communities. For microtrade, because of the small and personal nature of the transactions, may need to rely on the informal and personal more than is typical in long-distance transactions, reflecting a greater need for trust and understanding between the parties. In ordinary international commercial transactions, trust is also critical, but is often substituted by such sophisticated devices as documentary sale transactions involving letters of credit.[28] We should assume that given the small volumes, the low profit margins, and the support already being provided to the small entities involved in microfinance that there will be less employment of the traditional trust substitutes and greater reliance on old-fashioned personal trust. Thus, the greater reliance on personal relationships within rural and agricultural communities will actually support the application of microtrade. This is an example of a legal cultural characteristic that can, depending on the specific circumstances, play either a supportive or destructive role.

In any event, recognition of the potential for different legal cultural approaches between participants from rural/agricultural and urban/industrial communities may be important in ensuring microtrade is effective.

3. Other LDC factors

While not solely confined to LDCs, as Lee notes, within LDCs there is often:

> poor social and industrial infrastructure, insufficient capital and low levels of technology, low literacy rate and education level, lack of entrepreneurship and management expertise, insufficient political leadership for economic development coupled with political instability, corruption and weak government institutions with absence of effective administrative support, and even some cultural issues deterrent to economic development[29]

[28] *See* R. H. Folsom, M. W. Gordon, and J. A. Spanogle (eds.), *International Business Transaction Hornbook* (2nd ed., Westlaw, 2001) chapters 1-8.
[29] Lee, *supra* note 1, p. 4.

Each of these will necessarily have a legal cultural consequence or characteristic associated with it. Thus, it may be that "insufficient political leadership" and the presence of "political instability" can lead to a legal culture where the law is unable to develop, and may instead stagnate. Such a legal environment is not one conducive to the implementation of such novel devices as microtrade. Similarly, the "lack of entrepreneurship and management expertise" will mean that the legal culture of those involved in microtrade will likely be deficient in those parts relevant to commercial, labor and business law—critical fields for the success of microtrade. Instead, as has already been observed in the fair trade context, there will be a need for "learning by doing" with concomitant "trial and error".[30] In any event, below, for the purpose of highlighting potential avenues of examination, just two of the above criteria will be considered in greater legal cultural detail.

a. Endemic corruption

While corruption may not be legal in any society,[31] it is nonetheless a part of the general culture of many of the regions in which poverty is endemic, including among a significant number of LDCs.[32] Leaving aside the causal question of legal culture permitting or leading to endemic corruption,[33] there is no question that the presence of endemic corruption within the legal system has an impact on the legal culture, and hence on the legal culture's receptivity to microtrade.

Corruption's impact on legal culture can be considered at the specific or system level. At the systemic level, Patrick Glenn, in his excellent book on legal traditions, discusses the destructive impact corruption—pecuniary, institutional and intellectual—has on legal traditions.[34] He notes that corruption "may destroy larger traditions from within."[35] That observation will be equally the case for legal cultures, for the same forces that permit corruption to destroy a legal tradition will also have an impact on legal culture, perhaps even more forcefully for legal culture will have no institutional or substantive law to serve as a bulwark against the negative forces of corruption.

Furthermore, the negative role of corruption may be accentuated in LDCs by the all too common inadequate or faulty importation of western legal cultures and

[30] *See*, *e.g.*, at a more basic level in Neef, *supra* note 25.
[31] *See* Transparency International "*Frequently Asked Questions about Corrpuption*" No. 9, available at: <http://www.transparency.org/news_room/faq/corruption_faq#faqcorr9>.
[32] *See* Transparency International "*Corruption Perceptions Index*", available at: <http://www.transparency.org/policy_research/surveys_indices/cpi>.
[33] *See*, *e.g.*, M. Kurkchiyan, "Judicial Corruption in the Context of Legal Culture," in D. Rodriguez and L. Ehrichs (eds.), *Global Corruption Report, Transparency Int'l, Global Corruption Report 2007: Corruption in Judicial Systems*, p. 99, available at: <http://www.transparency.org/publications/gcr/gcr_2007>.
[34] Glenn, *supra* note 22, pp. 28-30.
[35] *Id*. p. 28.

traditions into the LDCs, where the protections against corruption failed to be imported or to take hold. As Glenn notes, specifically in the development law context:

> Western development work has thus far been unable to overcome the problem of widespread corruption of western institutions and western law when it has been transplanted abroad, since there is no immediate way of reconstructing western ethical and intellectual support for such type of law abroad. [36]

Thus, the legal traditions, and legal cultures within the LDCs are at even greater threat from corruption than is the case in the developed world. Despite the obstacles LDC legal cultures may lay in the path of microtrade, corruption's destruction of that every same LDC legal culture may be much more harmful for microtrade. After all, as an inherently legal organism, microtrade needs to be planted in a legal cultural environment for it to flourish.

In addition to its systemic negative effects, corruption may also impact legal culture at more specific and concrete levels. At the most basic level, the rule of law, itself a legal cultural characteristic,[37] as well as so much more, is eroded by endemic corruption. The attrition of the rule of law within a legal culture is clearly problematic for the success of a rules-based policy such as microtrade. More concretely, "in legal cultures exhibiting widespread corruption . . . levels of trust are low."[38] Clearly the loss of trust within the legal and general culture of a community will be a very serious concern for microtrade which, as noted earlier,[39] will necessarily require higher levels of trust than might otherwise be expected in the usual international transaction.

Corruption is a discrete issue, but one that has such significant impact on development policies, it should not be left out of any analysis, even of a legal cultural analysis. As Glenn has shown, corruption plays a role in the life of legal traditions, and as argued here—in legal cultures as well. Keeping corruption squarely in the sights of microtrade policy development, at all levels, including at the legal cultural level is critical to the success of any microtrade policies.

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[36] *Id*. p. 284.
[37] *See, e.g.*, R. Ehrenreich Brooks, *The New Imperialism: Violence, Norms, and the "Rule of Law,"* 101 Michigan Law Review, no. 7 (2003), 2275, 2285.
[38] H. E. Chodosh, *The Eighteenth Camel: Mediating Mediation Reform in India*, 9 German Law Journal, no. 3 (2008), 251, 280.
[39] *See* infra Part III A 2.

b. Low literacy and education

Lee also identifies "low literacy rate and education levels" as one of the central factors undermining development in the LDCs.[40] Literacy is, of course, directly related to legal literacy, which in one sense can mean ability to interact in an increasingly legal world.[41] Literacy and associated legal literacy are considered by some to be integral to the existence of a legal culture,[42] and clearly have a large impact on the legal culture. A few examples are provided here to highlight some of the legal cultural consequences that may arise.

As an initial matter, lower literacy and education will invariably marginalize those without the tools to take an active or sophisticated part in the development of the legal system and its culture. Thus, even more so than is usually the case, this will lead to capture of the "official" or "formal" [43] legal culture by elites. One can then expect the legal culture to fail to reflect those lacking legal literacy. Indeed, lack of education and literacy may lead to a legal culture with insufficient transparency and rule of law, which will itself be an issue for the success of microtrade policies, and indeed successful IEL policies in general.[44]

A more prosaic effect may be a "dumbing down" of the legal culture. While some dumbing down is inevitable when complex legal concepts and procedures are employed by non-legally trained members of society, it is likely that the constitutional, political, sociological and historic background necessary to understand the legal system is even less present in an illiterate society that lacks formal education. In some case the vacuum of knowledge may even lead to a legal culture divorced in significant respects from the actual legal system—a "fallacious legal culture."[45] This may happen when popular culture is derived in part from foreign cultures with different legal systems and it replaces the image of the local legal system in the minds of the public with that of a foreign legal system. For example, American or British television programs with strong legal components may lead a foreign public to believe that all legal systems, including their own, operate in the same manner as that seen in those programs.[46] This may

[40] *See* Lee, *supra* note 1, p. 4.
[41] J. Boyd White, *The Invisible Discourse of The Law: Reflections on Legal Literacy and General Education*, 54 University of Colorado Law Review, no. 2 (1983), 143.
[42] C. Osakwe, *Anatomy of the 1994 Civil Codes of Russia And Kazakstan: A Biopsy of the Economic Constitutions of Two Post-Soviet Republics*, 73 Notre Dame Law Review (1998), 1413, at Part VII A.
[43] It could be said that the official or formal legal culture will be the legal culture in the aggregate, the "one" most likely to interact with and reflect the formal organs of government and of the judiciary. Whereas the unofficial or informal legal culture will then be that present within specific subsets of the state, such as individual communities or among the ordinary people, and that rarely interacts with the official or formal legal organs of the state or the formal or official participants of the legal order.
[44] *See*, *e.g.*, M. Beutz, *Functional Democracy: Responding To Failures Of Accountability*, 44 Harvard International Law Journal, no. 2 (2003), 387-432, 428.
[45] I hereby coin this phrase!
[46] *See* Picker (IOs), *supra* note 6, p. 91.

happen when an LDC participant misunderstands their own legal system and indeed even that of the developed country market for their goods—for most developed markets will not be Britain or America, and hence will themselves have different approaches to the law than that conveyed through American and British media and popular culture. Clearly, if such beliefs are a part of the legal culture of an LDC one can expect microtrade to encounter obstacles related to misunderstandings of their law

Needless to say there are many other legal cultural consequences of low literacy and education levels,[47] but the above are sufficient to show that where those conditions apply, thought needs to be given to associated legal cultural obstacles. Thus, at a practical level, those legal cultural consequences can interfere with successful microtrade through: participants' erroneous understandings of their own legal systems and lawyers; their inability to monitor their lawyers or to take part fully in legal issues; diminished ability to effectively participate in formal contract negotiations, contract enforcement and implementation' and eventually undermining their participation in dispute resolution. Microtrade will be sorely tested if it is to coexist with these negative conditions.

B. Other legal cultures and characteristics relevant to microtrade

In addition to consideration of those legal cultural characteristics that are directly associated with LDCs, there are legal cultures and legal characteristics that are associated with the mechanism or operation of microtrade itself that must also be examined. Those characteristics include, among others, that:

> The LDC entities be small, micro after all;
> There will be significant involvement of participants outside the LDC—from NGOs to the governments and purchasers in the developed state markets;
> Microtrade takes place within the international law and IEL framework;
> It is likely that microtrade will have a proportionately larger involvement of women; and
> Because the present proposal for microtrade includes the idea of an organization to facilitate microtrade, the legal cultural aspects of such an organization must also be considered.

[47] *See, e.g.*, P. Michell, *Illiteracy, Sophistication and Contract Law*, 31 Queen's Law Journal, no. 1 (2005), 311.

The legal cultural characteristics or consequences of each of these are briefly considered below.

1. Smallness

Microtrade is a devise to facilitate development through small trading entities. Lee defines it as "international trade on a small scale, based primarily on manually produced products using small amounts of capital and low levels of technology available at a local level in LDCs."[48] There are, of course, legal cultural consequences of "smallness." As an initial matter, small production facilities and businesses, especially if they are new or new to even this small scale of operation, will be less connected to the dominant commercial legal culture, as their typical and historic transactions will likely not have required the full services of that system. Indeed, a related issue to smallness that is accentuated in the LDCs is a general lack of interaction, at an organized level, between the private and public sector. As Lee notes: "[t]he working institutional arrangement between the private sector and the public sector . . . is not found in many LDCs, and it is not likely to be seen in the foreseeable future."[49] This relative legal cultural isolation from the larger legal culture is a less than ideal setting in which to set up microtrade, though once aware of these limitations, the microtrade policy put in place can make adjustments to ameliorate any potential problems, and perhaps even take advantage of the isolation to ensure negative traits within the dominant legal culture are kept at bay.

At a more concrete level, small entities will typically employ lawyers much less often[50] and one would therefore expect that they would more often resort to informal networks and relationships.[51] As a matter of efficiency it may not make sense to employ lawyers as frequently or deeply as it would in larger or more sophisticated entities.[52] The role of law is thus likely reduced when entities are small. This diminished role for law will clearly have an impact on the legal culture. Most notably, the legal culture will reflect less formal use of the law and

[48] Lee, *supra* note 1, p. 1.
[49] *Ibid*., p. 5 (note internal citation omitted).
[50] L. M. LeSage, *Sticky Thickets: Local Regulatory Challenges For Small And Emerging Sustainable Businesses*, 31 Western New England Law Review, no. 3 (2009), 673 ("small businesses cannot afford the luxury of in-house counsel or large-firm business lawyers specializing in regulatory compliance. Many cannot even afford dues for trade organizations that may be able to represent their interests in regulatory or legislative proceedings. Unlike large corporations, with in-house lawyers and regulatory compliance staffs, the owners of small businesses must either take their personal time to wade through the complex regulations or spend scarce resources on attorneys to help them do so" (internal citations omitted)).
[51] *See*, *e.g.*, J. Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 Law and Society Review, no. 2 (1994), 193.
[52] This may be so even if small firms may feel the impact of regulations more than bigger firms where economies of scale spread regulatory compliance costs out over a correspondingly larger business.

its actors and institutions. This is not to say this does not work effectively or most efficiently for these small entities – especially in the domestic and local setting. Rather, so long as it is understood that the legal culture operates this way, then it can be taken into account, either through explicitly making the microtrade legal relations more formal or by co-opting the informal mechanisms and approaches into the relationship.

Small entities may also adopt a different risk analysis than larger entities. This may be the case where the assets of the small entities constitute the total or majority of the assets of the participants/owners or where there is less limited liability or where management are also the owners and not employees of the entities. All those factors, ones much more likely in small entities and more likely in LDCs, suggests greater risk aversion which will influence their attitude to the law and disputes, in other words, will shape their legal culture.[53] These characteristics will be accentuated by interactions with the global market, where they may be especially susceptible, more so than larger and diversified entities, to global and domestic market fluctuations. Their legal cultural attitude towards international economic law regulation and hence microtrade may thus be less favorable than larger companies, as they may be more suspicious and less trusting of the formal IEL system.

Another issue associated with "smallness" is that small entities that manufacture goods in small quantities may often employ artisans and craftsmen, which then raises a whole series of related questions. For example, might artisans have their own legal culture? Are there legal cultural issues associated with the "low levels of technology" they will likely employ? Is the relationship to intellectual property stronger in an artisan community than would have been expected in a business community within an LDC? Would the risk analysis discussed above be accentuated within artisan legal culture? While not dealt with here, the issue of artisan legal culture should be explored further.

Finally, the legal cultural issues associated with "smallness" may also be relevant to the purchasers of microtrade transactions in the target markets in developed countries. This is because it is not unlikely that the bulk of those willing and able to support microtrade will be smaller purchasers, not the Walmarts of the world. Thus, the legal cultural consequences of smallness are visible even in developed countries and must be considered at all points of microtrade transactions.

[53] *See* Neef, *supra* note 25 (noting the risk aversion of the Hmong lichi growers).

2. Developed country participants

The target markets of microtrade are typically going to be developed countries, though there is nothing within the microtrade concept that would preclude any market, developing, LDC or otherwise serving as a market for microtrade products.[54] But, given the likely centrality of developed country markets for microtrade, it is probable that much of the support for setting up and maintaining microtrade initiatives will be driven by participants from developed countries, be they NGOs,[55] developed state governments, or even corporations.[56] Identifying the relevant legal cultural issues of those participants is important for mitigating any potential legal cultural clashes between their legal cultures and that of the LDC communities and even with that of microtrade or any microtrade organization itself (see below). For example, to the extent a developed state government is required to be involved in facilitating microtrade, for example by reducing the barriers to microtrade goods, such as through amendments or extensions of GSP[57] or through more relaxed application of rules of origin,[58] then the legal culture of the country and, for example, its views on exceptions or on discretion granted to officials may be important. Similarly, to the extent historic post-colonial relationships and their role within the legal culture are relevant and hence support LDCs that are former colonies or undermine those that were not former colonies,[59] then that too it is relevant.

The legal culture of the target states with respect to private and commercial law may also be relevant. For example, when it comes to contract creation, interpretation and enforcement, does the legal culture of the target developed state market support the more relaxed attitude that may be necessary for microtrade transactions – particularly in the early stages of the microtrade relationship? Those target corporations, as well as the NGOs that are likely to be involved, have in the fair trade context tended to increase bureaucratization and apply increasingly hard standards, ones that have been increasingly unattainable to the developing country beneficiaries.[60] In addition, there is a question whether the

[54] Indeed, Lee refers to "participating developing countries" as being potential target markets for microtrade. *See* Lee, *supra* note 1, p. 16.
[55] It is likely that the NGOs involved will be located in developed countries, if the Fair Trade Movement is any indication. *See* P. Khumon, *Microtrade and the Fair Trade Movement*, 5 Law and Development Review, no. 1 (forthcoming 2012), (noting that all the fair trade certifucation agencies are in developed countries).
[56] *See* Lee, *supra* note 1, p. 16.
[57] *Ibid*.. pp. 18-20.
[58] *Ibid*. p. 23.
[59] *See*, *e.g.*, Partnership Agreement between Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States (Cotonou Agreement) OJ 2000 L 317/3; *but see*, L. Bartels, *The Trade And Development Policy Of The European Union*, 18 European Journal of International Law, no. 4 (2007), 715 (discussing the gradual shift of the EE away from colonial preference).
[60] *See*, *e.g.*, Khumon, *supra* note 55.

fundamental legal culture of the supportive corporations will fit over the long term with microtrade, especially when their legal culture may be driven by their too-often short term duty to shareholders.

Perhaps the biggest issue will be the direct cultural clash or disconnect between the legal cultures of the LDC participants and those of the target markets. For example, it has been noted that the developed country participants may have a greater interest in the human rights and protection of the environment aspects of microtrade policies than on its development aspects – in contrast to the LDC participants who will more likely be concerned with the development aspects of microtrade.[61] While that in and of itself is not a legal cultural clash, for the different objectives can coexist, it is that the legal cultural attitudes towards many of the human rights and environment concerns could be different—from different views of gender and children's roles, to different attitudes to the uses and managements of the environment. For example, in the context of fair trade, Neef noted that the "German-based fair-trade organization expects to work with farmer groups that adhere to certain social standards rather than with individual producers."[62] Also, "additional benefit for the community has to be clearly evident to the fair-trader."[63] The ultimate purchaser may thus impose their own determination as to what constitutes "community benefits", perhaps even under a western viewpoint that is not in sync with local legal and general culture. Finally, there might also be an urban-rural legal cultural conflict, given the LDC suppliers may likely be rural and the developed country purchasers urban.

It is hoped that the disconnect likely to arise between the legal cultures of the LDC suppliers and the developed country purchasers/end users will generally be anticipated at the microtrade project formation. Though it may be that the specifics will not be subject of the level of analysis which is necessary if the disconnects are to be handled. While this article has briefly engaged in such a specific analysis, the few examples clearly show the applicability of the methodology and the need for such detailed analyses.

3. The legal culture of international law and international trade law

Two other related legal cultures that are also worth considering are the legal cultures of international law and that of international trade law. Those legal have been explored in detail before,[64] or mentioned above[65] and thus do not need to be

[61] One such clash may concern the use of child labor. *See ibid*., pp. 17-18.
[62] Neef, *supra* note 25.
[63] *Ibid*.
[64] *See* Picker (International), *supra* note 13; C. B. Picker, "A Framework for Comparative Analyses of International Law and its Institutions: Using the Example of the World Trade Organization" in E. Cashin Ritaine, S. Patrick Donlan, and M. Sychold (eds.), *Comparative Law and Hybrid Legal Systems* (Swiss Institute of Comparative Law, 2010) (hereinafter "Picker (WTO)").

reproduced in detail here. But, two specific legal cultural issues associated with international law and international trade that will likely play a specific role in the effective implementation of microtrade policies will be noted here.

As an initial matter, the legal culture of international law is heavily based on states as the legal actors as opposed to private parties.[66] Given the role that individuals and private parties will have in microtrade, this may be an issue. While international trade and other parts of IEL are increasingly accepting of the role of individuals and private parties,[67] the fields are still structured within the state-centered world of international law. Thus, even when individuals and private parties are explicitly covered by IEL policies, including future microtrade policies, there will be an undercurrent opposed to their involvement that must be handled to ensure that microtrade will operate as intended with respect to individuals and private parties.

Another major concern is that the legal culture of international trade law is typically focused on hard law.[68] If the fair trade movement is an indication,[69] then it is likely that much of microtrade will operate as soft law. Soft law, however, is not viewed so favorably in the hard-law dominated world of international trade where hard law, in the form of treaties in particular, is

> "viewed as especially well positioned to address what can be considered the distributive challenges inherent to international trade . . Trade liberalization is, as a result, an inherently fragile activity, and is difficult to achieve on a sustained level . . . Treaties help respond to these domestic pressures both by making commitments to liberalization more credible and by developing institutions that make defections from commitments more costly. . . Because of the costs involved in establishing hard legal orders, participants want to make sure signatories live up to their commitments."[70]

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[65] Part III A 1 infra.
[66] *See* Picker (IOs), *supra* note 6, p. __.
[67] Two clear examples are the role of individuals in investor-state dispute settlement and in unfair trade remedies.
[68] C. Brummer, *Why Soft Law Dominates International Finance - and Not Trade*, 13 Journal of International Economic Law, no. 3 (2010), 623, 624-27. Those parts of international trade law that are soft, such as most of Part IV of the GATT concerning developing countries, have largely proven to be ineffective. *See*, *e.g.*, Yong-Shik Lee, "Development and the World Trade Organization: Proposal for the Agreement on Development Facilitation and the Council for Trade & Development in the WTO" in Yong-shik Lee (ed.), *Economic Development Through World Trade: A Developing World Perspective* (Kluwer Law International, 2008), p. 9.
[69] Khumon, *supra* note 55.
[70] Brummer, *supra* note 68, pp. 624-25.

While soft law has a venerable heritage within international law,[71] in particular playing a vital role in the slow acceptance of invasive international obligations, such as in human rights,[72] within the dollars and cents world of international trade law it tends to get short shrift.[73] As such, to the extent microtrade is soft law, the legal culture of the international trade law field will tend to view it quite negatively.

Overall, the legal culture of international law and international trade in particular cannot be ignored when constructing microtrade, especially as so much of microtrade will need to be implemented by individuals and within domestic legal systems, both of which are not normally the direct subjects of international law or international trade law.

4. Legal cultural issues associated with gender

The role of women in microfinance has been well established.[74] It may very well be the case that we will see a similar gender impact when microtrade policies are implemented. If so, there seems to be little question that such a large role for women in microtrade will raise challenges for many of the legal cultures at issue in microtrade. Indeed, as has been found in many of the regions where microfinance has been launched,[75] there is some concern that some of those legal cultures will stand in the way of women's effective participation in microtrade, thereby undermining the implementation of microtrade in those instances.

Specifically, given the patriarchal and gendered nature of a great many of the legal cultures within the LDCs, it is likely that their legal culture is not set up to allow a large role for women in such economic enterprises. Indeed, in some of the legal cultures, there may be explicit legal cultural and substantive obstacles to the role of women in any microtrade policies.[76] This may be particularly the case where religious law intrudes into the commercial arena. Though, because microtrade may permit enterprises to operate out of the home, microtrade may be a vehicle to permit women to have access to economic opportunities in countries where women may historically have encountered cultural barriers to their work outside the home.[77]

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[71] *See*, *e.g.*, G. C. Shaffer, and M. A. Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 Minnesota Law Review, no. 3 (2010), 706.
[72] *See*, *e.g.*, P. Schiff Berman, *A Pluralist Approach to International Law,* 32 Yale Journal of International Law, no. 2 (2007), 301, 304.
[73] Brummer, *supra* note 68.
[74] *See generally*, Hofstetter, *supra* note 8.
[75] *Ibid*.
[76] *Ibid*.
[77] A. K. Wing, and P. P. Nadimi, *Women's Rights in the Muslim World and the Age of Obama*, 20 Transnational Law & Contemporary Problems, no. 2 (2011), 431, 456 (noting the issue with respect to microfinance).

Of course, the legal cultural issues involved are sensitive ones that run deep within many of those communities, and, like so much in the cultural and legal cultural arena, may not be well understood by external observers. Furthermore, this article cannot begin to touch on this complex issue, so much as raise it for others more expert with these issues to pursue. So, just as with most of the issues raised in this article, those involved in creating and implementing a microtrade policy need to be aware of this issue and seek ways to resolve it that are respectful of the deep-seated local cultural and legal cultural attitudes.

5. Legal cultural issues of a microtrade organization

The early work on microtrade has included within it the proposal for the creation of an international organization whose responsibility would be to foster microtrade. As Lee suggests:

> The proposed microtrade organization will not only be expected to perform logistical functions to promote microtrade worldwide, but also to cooperate with sovereign states on regulatory issues for importation . . . . The microtrade organization will also be expected to cooperate with relevant international bodies on international trade, including the [WTO and UNCTAD]. . . One possible form of the microtrade organization will be a non-profit, a [NGO] . . . operating on a global scale . . . Another possible form . . . will be an intergovernmental organization . . . that has a recognized international legal status as an intergovernmental agency, such as various agencies of the United Nations and the WTO.[78]

It has recently been argued that international organizations have their own legal culture, and that their legal culture can be a factor in their effective operations.[79] As such, it is imperative to identify and understand the legal culture of an international organization.

An international organization's legal culture is derived from numerous sources. As an initial matter, the international organization officials and civil servants will themselves contribute to the legal culture through their conscious and subconscious use of their own original home legal culture. This is true even for non-lawyers, for all members of society retain within themselves a reflection of their home country legal culture. This is important for even non-lawyers within international organizations are called on to act in legal ways or in ways with legal effect as part of their jobs—from negotiating to implementing international legal obligations and relationships. Reflecting the state power

[78] *See* Lee, *supra* note 1, p. 14.
[79] *See* Picker (IO), *supra* note 6.

structures of the world and western legal imperialism, it is probably safe to assume that the vast majority of international organization officials and civil servants will have a legal culture that is western, or more specifically that is continental or common law in style and that they will impart aspects of that legal culture within the organization.

Furthermore, to the extent the international organization recruits from certain regions more than others, even within the western legal environment, that will mean the legal culture of that region has a greater presence in the international organization. Similarly, if the organization's recruitment process tends to favor a certain approach, say through an entrance exam that favors one legal culture over another or through a demand for specific credentials associated with a region or system, then there will be a shift within that organization towards specific legal cultures. An example that has been suggested of this issue is that the WTO's recruitment process may be resulting in a Secretariat more common law than civil law in style.[80] Indeed, the issue is not just the presence of the legal culture, but the concomitant lesser presence of other supposedly equal legal cultures in international organizations that should reflect their entire membership.

In addition, to the extent the international organization has a specific headquarters then we can expect that legal culture to somehow permeate the organization, even through such innocuous mechanisms as the organization's local and necessarily often legal relationships with domestic vendors. Of course, although it is typical to try to insulate international organizations from host state's influences, that isolation will not be total, and will over time infiltrate the international organization. This will especially be the case to when the organization's officials live for extended periods of time in the host state, as they will necessarily absorb some aspects of that legal culture.

Another factor that may influence the development of an international organization's legal culture is the language of the organization itself. As noted in a recent legal cultural analysis of international organizations:

> Language and legal tradition are closely tied together, with, for example, English associated with the common law and French, German, Spanish and Italian tied to the civil law tradition. Furthermore, Chinese and Arabic are also typically associated with non-common law legal systems—be they civilian, socialist, or Islamic legal systems. Indeed, any major western language employed other than English will tend to end up reflecting more civilian, or rather, less Anglo-American and hence common law legal culture within the institution. Whereas the use of English will tend to strengthen the emergence and perhaps dominance of a common law legal

[80] See Picker (WTO), *surpa* note 64, pp. 133-34.

> culture. . . Thus, language is visibly a very strong factor in predicting the trend and eventual legal culture and tradition of an [international organization]. [81]

The legal culture of a future microtrade organization will be critical as it will need to work across very different legal cultures and create and assist in the implementation of policies at the micro level. Failure of the microtrade organization to either walk that fine line between the different legal cultures or to appropriately handle the differences between its own legal culture and that of the LDCs or target developed markets will necessarily undermine the organization's mission and skew the even application of microtrade policies. Thus, the above and other factors, such as the role of the substantive law at the heart of the mission of the organization or the role of significant states in the organization, all discussed at length in the earlier legal cultural analysis of international organizations, needs to be considered in order to ensure any future microtrade organization works as effectively as possible.

IV. CONCLUSIONS

The above examination was necessarily brief and introductory, seeking to convey a few simple points directly and through brief examples. One goal of this work is to show that microtrade-related legal cultural issues can be identified and that legal cultural factors and characteristics will exist among all constituents, fora and regions that would be involved in any microtrade policies. Another critical point is that those legal cultural characteristics can be important factors in the effective *implementation* of microtrade policies. Furthermore, if identified early enough they can then be taken into account in the *creation* of microtrade policies, hopefully ameliorating any negative impact of potential clashes or disconnects between the different legal cultures. Or, best of all, identified legal cultural characteristics may in some circumstance be harnessed to enhance the effectiveness of microtrade policies.

This examination was also the latest in a series of legal cultural analyses designed to highlight the legal cultural methodology through application across the many different areas of IEL, from existing fields and institutions[82] within IEL to ones merely at the design stage, as is the case with microtrade. Though, in

[81] Picker (IOs), *supra* note 6, p. __.
[82] *See*, *e.g.*, C. B. Picker, "International Investment Law: Some Legal Cultural Insights" in L. Trakman and N. Ranieri (eds.), *International Trade and Investment Law: Development and Directions* (Oxford Univ. Press, forthcoming 2012); Picker (WTO), *supra* note 64.

addition to its wider utility within and without international trade and IEL, this brief application of legal culture to microtrade may also be specifically relevant to microfinance, as well as any of the other nascent micro-IEL fields, such as micro-investment[83] and micro-insurance.[84] These micro-fields, like microtrade, are especially susceptible to legal cultural issues for they work most directly with communities and individuals, all of whom will more likely "wear their legal culture on their sleeves" than would the usual cast of characters in IEL, such as governments, international organizations, industry associations or large multinationals. Accordingly, in these early years of its development, microtrade would benefit greatly from a more detailed consideration of the many different legal cultures that will envelope its future operations. It would further function most effectively were it to include legal cultural analyses prior to the creation and implementation of specific microtrade projects.

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[83] *See*, *e.g.*, P. Bechky, *Microinvestment Disputes*, presented at the 2011 Law and Development Institute Conference: Law and Development at the Microlevel: From Microtrade to Current Issues in Law and Development, available at: <http://www.lawanddevelopment.net/2011Conference.php>.

[84] *See* International Labor Organization's Microinsurance Innovation Facility, available at: <http://www.ilo.org/public/english/employment/mifacility/>.

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