

# ESSAY

## An Identity Crisis of International Organizations

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## **I. Introduction: Rethinking International Organizations**

International organizations (IOs) are ubiquitous. More than two hundred IOs<sup>1</sup> touch our everyday lives. Their missions vary. The United Nations (UN) plays a significant role in securing global peace and order as it address international conflicts and fights terrorism.<sup>2</sup> The World Bank is the world's largest external funder of education.<sup>3</sup> Other IOs also impact numerous daily issues, such as air travel (The International Civil Aviation Organization), banking (The Bank for International Settlements), mail (The Universal Postal Union), flu-shots (The World Health Organization), and mobile phones (The International Telecommunications Union), to name a few.<sup>4</sup> It would be only a "modest exaggeration" to claim that IOs now cover every practical aspect of human enterprise.<sup>5</sup>

However, conventional political scientists seldom pay IOs sufficient attention that, given their contemporary prominence, they thoroughly deserve. Conventional international relations (IR) scholars tend to consider IOs as mere passive machineries which states create and maneuver according to their functional needs. Under this position, while IOs may facilitate inter-state cooperation and reduce transaction costs, they never have a life of their own.<sup>6</sup> Conventional IR theories hardly offer a satisfactory explanation for the distinctive phenomenon of IOs' institutional dynamics in which a specific IO, as a separate and autonomous organic entity, grows, evolves and eventually makes sense of its own existence.

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<sup>1</sup> See e.g., The Union of International Associations, *Yearbook of International Organizations*, Appendix 3: Table 1 (Number of International Organizations in This Edition by Type (2005/2006), available at <http://www.uia.org/statistics/organizations/types-2004.pdf>. In this Essay, I mean by international organizations "intergovernmental" organizations.

<sup>2</sup> See e.g., United Nations Security Council, Resolution 1822, adopted on Jun. 20, 2008 (S/RES/1822 (2008)), available at <http://daccessdds.un.org/doc/UNDOC/GEN/No8/404/90/PDF/No840490.pdf?OpenElement> (resolving to freeze financial assets used for terrorist activities).

<sup>3</sup> World Bank, *Ten Things That You Never Knew about the World Bank*, available at <http://digitalmedia.worldbank.org/tenthings/en/1.php>.

<sup>4</sup> See generally THE AMERICAN SOCIETY OF INTERNATIONAL LAW, INTERNATIONAL LAW: 100 WAYS IT SHAPES OUR LIVES (2006).

<sup>5</sup> FREDERIC L. KIRGIS, JR., INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING v (2<sup>nd</sup> ed. 1993).

<sup>6</sup> See Gayl D. Ness & Steven R. Brechin, *Bridging the Gap: International Organizations as Organizations*, 42 INT'L ORG. 245, 246 (1988); Harold K. Jacobson et al., *National Entanglements and International Government Organizations*, 80 AM. POL. SCI. REV. 141-59 (1986).

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Accordingly, conventional IR theories largely fail to deliver adequate narratives on how a *particular* IO, such as the World Trade Organization (WTO), molds its institutional *self* as it interacts with the environment in which it is situated. Unsurprisingly, conventional IR scholars tend to limit their analytical focus to the creation of an IO and the inter-state dynamics leading up to its creation. Accordingly, an IO's institutional *change* remains an "under-studied" and "under-theorized" issue of the conventional IR framework.<sup>7</sup> This is an unfortunate deficiency in light of ever-increasing significance of IOs in the contemporary world.

This Essay offers a novel perspective which attempts to overcome the aforementioned deficiency in conventional IR theories. Drawing on the "identity theory" established by Erik Erikson, this Essay captures an IO's institutional development in which one can witness a dynamic process of its identity crisis and identity formation. The Essay argues that based on its autonomy *qua* organization, not merely as an instrument of states, an IO forms its organizational identity as it experiences an "identity crisis" in a similar way in which a human-being does. Initially, states create an IO to serve a specific function. Thus, an IO may hold a default purpose which its creators (states) have programmed into it. However, an IO's retention of such programmed purpose results from a mere identification with its creators, not from the genuine identity which it has formed at subsequent stages during the course of its institutional evolution. An IO acquires its organizational identity only after it achieves a necessary level of institutional maturity as a result of incessant interactions and communications with its environment (society).

Certainly, it is a process no less daunting to an IO than to a human-being because an IO also suffers strains and pressures over its role expectation in the international society. Just as an adolescent experiences an identity crisis in his or her interaction with peers and society in general, an IO is exposed to a similar ordeal in adjusting its goals to various external pressures. In particular, an IO often undergoes a testing situation under which its old structure has become increasingly incapable of coping with new demands from the altered environment. Confronted with this crisis, an IO may attempt to reconfigure its institutional setting by fine-tuning its original teleology to a call from the new environment. Only then will its institutional existence continue to hold relevance and therefore enable it to achieve its genuine institutional identity.

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<sup>7</sup> Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649, 655 (2006).

Markedly, law and legal discourse provide an important platform in which one can investigate, comprehend and elucidate the formation of an IO's organizational identity. As a product of legal documents (charters or conventions) and a holder of legal personality, an IO bases its everyday operations on legal principles and legal reasoning. Its routinized and regularized operations, such as "making consistent decisions on similar facts" and "giving reasoned arguments based on principles other than mere promotion of [a state]'s self-interest," furnish an IO with rich normative foundations essential in shaping its unique identity.<sup>8</sup> This identity, once achieved, is self-referential in that it functions as a normative standard which regulates an IO's future behaviors. In this sense, an IO's policies are a teleological realization of its identity. Such a teleological identity-formation may even help launch various reform agendas as it can locate particular conditions under which an individual IO can perform effectively in certain stages of its institutional development.<sup>9</sup>

Against this background, this Essay attempts to theorize an IO's institutional development *qua* organization from the standpoint of identity formation. This Essay also tests the theory it proposes by applying it to the WTO. At this juncture, an important disclaimer is in order. The Essay does *not* venture to analyze every aspect of an IO's identity formation. Admittedly, such process may connote many other deeper and broader issues which exceed the scope of the Essay. In particular, it leaves unanswered a delicate interplay between an IO and its members in the course of the former's identity formation process. Rather, the Essay aims to offer a panoramic view on this critical process and serve as a preliminary yet useful avenue for further discussions in this largely nascent field of IO theories.

The Essay unfolds in the following sequence. Part II discusses a theoretical foundation of the whole analysis, i.e., the autonomy of an IO. One cannot construct an IO's genuine identity without certain autonomy from its members (states). Specifically, Part II draws on the views of constructivism and organizational sociology, which focus on the autonomy of organizations in contrast with conventional IR theories which regard IOs as mere instruments of states. Part II also highlights that the identity formation is a normative process which rules and legal discourse operate.

Part III then constructs a theory of identity formation of IOs. Part III introduces anthropomorphism in the IO's identity formation, which lays a firm ground for a cross-disciplinary investigation informed by developmental psychology. After sketching Erik Erikson's celebrated

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<sup>8</sup> FREDERIC L. KIRGIS, *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* viii (2d ed. 1993).

<sup>9</sup> See Ness & Brechin, *supra* note \_\_, at 271.

identity theory, Part III applies the theory to the IOs' context. It also delineates various parameters of identity formation, such as history, environment, goals and technology. Finally, Part IV applies the theory of IOs' identity formation to the WTO. Part IV demonstrates how the WTO has experienced an identity crisis as the General Agreement on Tariffs and Trade (GATT)'s original pro-trade bias embraced new challenges involving non-trade values, such as protection of the environment and human health. Part IV contends that the WTO's identity formation (achievement) is to strike an institutional equilibrium between traditional trade values and these non-trade values. Part V concludes.

## **II. Autonomy and Identity of International Organizations**

### *A. A Political Perspective*

Conventional international relations (IR) theories, particularly realism and regime theories, regard IOs as passive machinery, or “empty shells,” of interstate cooperation. From a narrow functionalist standpoint, these theories pose that sovereign states create and operate IOs for a better world system by “enmeshing” them in mutually beneficial economic transactions.<sup>10</sup> As Robert Keohane aptly observed, this “rationalistic” approach highlights IOs' functional merits, such as reducing uncertainty and transaction costs, in the absence of any specific institutional context.<sup>11</sup> This is basically an “economistic” approach based on the assumption that states prioritize their interests in order to maximize efficiency and thus use IOs as a rational instrument to achieve such goals.<sup>12</sup>

Perhaps this rather inorganic view of IOs may be a logical conclusion to most IR theories which are *state-oriented*: they are basically “theories about states.”<sup>13</sup> They aim to analyze and understand why and how states interact and cooperate among themselves, which is aptly encapsulated in their appellation itself, “inter-national relations.”

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<sup>10</sup> Ness & Brechin, *supra* note \_\_, at 246; Harold K. Jacobson et al., *supra* note \_\_, at \_\_.

<sup>11</sup> Robert O. Keohane, *International Institutions: Two Approaches*, 32 INT'L STUD. Q. 379, 390 (1988).

<sup>12</sup> Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699, 702 (1999); THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS \_\_ (1991) (Paul J. DiMaggio & Walter W. Powell eds. 1991); Anna Grandori, *Notes on the Use of Power and Efficiency Constructs in the Economics and Sociology of International Organizations*, in INTERDISCIPLINARY PERSPECTIVES ON ORGANIZATIONAL STUDIES \_\_ (S. Lindenberg & H. Shreuder eds. 1993).

<sup>13</sup> Barnett & Finnemore, *supra* note \_\_, at 706.

Therefore, such “statist ontology”<sup>14</sup> embedded in conventional IR theories treat IOs as instruments, not as self-governing, purposive actors enjoying “ontological independence.”<sup>15</sup> Under this framework, even if IOs may facilitate or constrain certain state behaviors by creating and controlling the flow of information between states, such “causal status” still does not grant IOs autonomy.<sup>16</sup> To conventional IR theorists, any meaningful contributions by IOs are made, after all, *through* and *by* states. In an attempt to deepen their understanding the dynamics of IOs, some IR scholars employ the rational choice theory. Their framework, which defines IOs as “agents” of states (“principals”), conceptually enables IOs to become autonomous actors in the first place.<sup>17</sup> However, this approach is soon confronted by a dilemma in that conventional IR theories are unable to provide a theoretical foundation for the very independence of agents (IOs). Without this foundation the whole agent-principal relationship framework collapses.<sup>18</sup>

Absent autonomy, actual operation (evolution) of IOs in its post-creation stages “remains under-examined and under-theorized.”<sup>19</sup> While “identify[ing] hypotheses about IO change” may be inferred from the conventional IR theories centering on why and how states create IOs,<sup>20</sup> those hypotheses nonetheless remain unsatisfactory since an institutional *change* itself tends to be at odds with conventional IR theories. Change is either “assumed away”<sup>21</sup> or thrust upon IOs by their creators, i.e., states, in accordance with changes in national interests or state preferences.<sup>22</sup> Therefore, change is nothing but a *re-creation* of IOs by states due to asymmetrical external shocks, such as disasters,<sup>23</sup> rather than an evolutionary or adaptive process resulting from continuous, incremental institutional development. In sum, any institutional

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<sup>14</sup> *Id.*, at 700.

<sup>15</sup> *Id.*, at 704.

<sup>16</sup> *Id.*

<sup>17</sup> Roland Vaubel, *A Public Choice View of International Organization*, in *THE POLITICAL ECONOMY OF INTERNATIONAL ORGANIZATION* \_ (Roland Vaubel & Thomas Willett eds. 1991); Patricia Dillon et al., *Approaches to the Study of International Organizations: Major Paradigms in Economics and Political Science*, in *THE POLITICAL ECONOMY OF INTERNATIONAL ORGANIZATION* \_ (Roland Vaubel & Thomas Willett eds. 1991).

<sup>18</sup> *Id.*

<sup>19</sup> Helfer, *supra* note \_ , at 658.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, at 661; Ira Katznelson & Barry R. Weingast, *Intersections between Historical and Rational Choice Institutionalism*, in *PREFERENCES AND SITUATIONS: POINTS OF INTERSECTION BETWEEN HISTORICAL AND RATIONAL CHOICE INSTITUTIONALISM* 1, 7 (Ira Katznelson & Barry R. Weingast eds., 2005).

<sup>22</sup> Helfer, *supra* note \_ , at 661.

<sup>23</sup> *Id.*, at 662.

changes of IOs are reduced back to international cooperation among states.<sup>24</sup>

Moreover, since conventional IR theories regard IOs as mere instruments, like nuts and bolts, they often fail to heed the unique attributes and contexts which are deeply associated with each organization's autonomy and identity. Therefore, they tend to treat even effective IOs in the same way as "those that are near moribund."<sup>25</sup> "Few have noted that organizations differ over time, or that they perform differently from one another, or that they achieve their ends with varying effectiveness or efficiency."<sup>26</sup>

In contrast with an inorganic approach to IOs by conventional IR theorists, which leaves little room for organizational autonomy-cum-identity, an *organic*, sociological approach enables a theoretical emancipation of IOs from their creators (states). IOs are "live collectivities" interrelating with the environment.<sup>27</sup> This approach focuses on the "social content" of the organization, i.e., "its culture, its legitimacy concerns, dominant norms that govern behavior and shape interests, and the relationship of these to a larger normative and cultural environment."<sup>28</sup> According to the Weberian bureaucracy theory and sociological institutionalist approaches, the "rational-legal" authority which the bureaucracy of IOs generates endogenously attains an independent status separate from their actors (states).<sup>29</sup> Here, bureaucracy is defined as an internal mechanism of IOs which creates norms and social knowledge.<sup>30</sup> The existence of an independent bureaucracy in IOs (such as "Eurocrats" in the European Union<sup>31</sup>) or an independent organizational culture (such as the World Bank<sup>32</sup>) tends to debunk the conventional view that IOs are a mere passive machinery of states.<sup>33</sup>

Yet, IOs' autonomy gains more theoretical salience in the "natural" (open) system perspective than the Weberian "rational" system perspective. While Max Weber highlights the rational-legal authority of bureaucracy, this authority may still be translated as a tool to states in that it is "blue-printed" to achieve rationally pre-deliberated

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<sup>24</sup> Keohane, *supra* note \_\_, at 379.

<sup>25</sup> Ness & Brechin, *supra* note \_\_, at 247.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Barnett & Finnemore, *supra* note \_\_, at 706.

<sup>29</sup> *Id.*, at 699.

<sup>30</sup> *Id.*

<sup>31</sup> See Mark Pollack, *Delegation, Agency, and Agenda-Setting in the European Community*, 51 INT'L ORG. 99, \_\_ (1997).

<sup>32</sup> See Robert Wade, *Japan, the World Bank, and the Art of Paradigm Maintenance: The East Asian Miracle in Political Perspective*, 217 NEW LEFT REV. 3, \_\_ (1996).

<sup>33</sup> Barnett & Finnemore, *supra* note \_\_, at 705.

and pre-programmed goals.<sup>34</sup> In contrast, the “natural” system perspective views an IO as “social groups attempting to adapt and survive in their particular circumstances.”<sup>35</sup> Therefore, organizations are capable of modifying their original goals to survive in the changing environment. They become “ends in themselves.”<sup>36</sup> Philip Selznick’s celebrated “institutional” approach perfects this theory of organizational autonomy from the standpoint of this natural (open) system. Institutionalization distinguishes organizations from mere cybernetic machinery that passively channels states’ inputs. Selznick defines institutionalization as “the emergence of orderly, stable, socially integrating patterns out of unstable, loosely organized, or narrowly technical activities.”<sup>37</sup> Through the process of institutionalization, an organization obtains both special capacity and character,<sup>38</sup> while also establishing its value.<sup>39</sup>

Focusing on the autonomy of an individual organization means taking “variance” among IOs seriously, including variance in their performance (such as effectiveness or efficiency) as well as variables influencing such performance (such as environments).<sup>40</sup> In particular, the “environmental changes [that] produced changes in organizational structure and behavior.”<sup>41</sup> Admittedly, the “regime theory,” an adaptation from realism, also focuses on “specific” institutions in which states routinely cooperate over certain issues in order to reduce uncertainty and transaction costs, provide information, and stabilize expectations, even in the absence of “hierarchical authority.”<sup>42</sup> Critically, however, this sector-specific regime still remains a cooperative relationship among sovereign states – no matter how strong their cooperation may be – and not an independent organization. As a corollary, the regime theory fails to address two important organizational issues. First, it cannot fully explain an organic interaction between IOs and the environment. Second, it cannot evaluate whether

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<sup>34</sup> RICAHRD W. SCOTT, ORGANIZATIONS: RATIONAL, NATURAL, AND OPEN SYSTEMS 53 (3d ed. 1992); Alvin W. Gouldner, *Organizational Analysis*, in ROBERT MERTON ET AL., SOCIOLOGY TODAY 404-05 (1959).

<sup>35</sup> SCOTT, *supra* note \_\_, at 57.

<sup>36</sup> *Id.*

<sup>37</sup> LOONARD BROOM & PHILIP SELZNICK, SOCIOLOGY 238 (1955).

<sup>38</sup> Philip Selznick, *Institutionalism “Old” and “New,”* 41 ADMIN. SCI. Q. 270, \_\_ (1996).

<sup>39</sup> PHILIP SELZNICK, LEADERSHIP IN ADMINISTRATION 17 (1957).

<sup>40</sup> Ness & Brechin, *supra* note \_\_, at 248.

<sup>41</sup> *Id.*, at 254. *See also* Matthias Finger & Béragère Ruchat, *The Transformation of International Public Organizations: The Case of UNCTAD*, Working Paper de l’IDHEAP 14/2000, Nov. 2000, at 3. (discussing “organizational transformation” which an IO experiences in order to “bring organizational structure, culture, and purpose in line with perceived environmental requirements”).

<sup>42</sup> Keohane, *supra* note \_\_, at 386.

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each regime is legitimate and/or effective *qua* organization since all the performance of the regime is attributable logically to states.

In fact, the notion of organizational autonomy parallels the way in which ordinary people perceive IOs. While people may criticize the WTO for its various deficiencies as an organization, they seldom criticize its members, especially big ones, such as the United States and the European Union for those deficiencies. This is why organizational autonomy may offer a deeper theoretical underpinning for a constitutional analysis of IOs than the positivistic framework asserted by the regime theory .

### *B. A Legal Perspective*

The Westphalian tradition of public international law, built on the notion of state sovereignty, could not conceive the existence of any separate polity or organization which would affect states' monopoly of power. The only restriction to the sovereign power was self-restriction: treaties created by sovereign states' consent could only regulate states concerned not because those treaties constituted an autonomous organization of higher hierarchy but because sovereign states had given their word. However, after states had witnessed the fatal flaw of this Hobbesian view of the international community and international law, especially through two world wars, states decided to create independent international entities which would coordinate and govern states' behaviors in certain sector-specific areas, such as collective security (the United Nations (UN)) and international financial regulation (the International Monetary Fund (IMF)).

Therefore, the modern tenets of public international law, in particular those related to IOs' legal personality, tend to provide useful insights on IOs' organizational autonomy.<sup>43</sup> The ICJ, in its *Reparation* case, ruled that an IO is "a subject of international law and capable of possessing international rights and duties."<sup>44</sup> Based on this legal capability, an IO holds the capacity to sue a state, regardless of its membership to the organization, for damage caused by a violation by the state of its obligation toward the organization.<sup>45</sup> It is in this line that the International Law Commission (ILC) is working to create a draft governing legal responsibility for damage that an IO may cause to states

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<sup>43</sup> *But see* Giuseppe Marchegiano, *The Juristic Character of the International Commission of the Cape Spartel Lighthouse*, 25 AM. J. INT'L L. 339, 339 (1931) (finding the notion of international personalities as debatable).

<sup>44</sup> *Reparation for Injuries Suffered in the Service of the United Nations* [1949], ICJ Rep 174, at 179.

<sup>45</sup> *Id.*

or other IOs.<sup>46</sup> Charters of most IOs confirm this position. For example, Article 104 of the UN stipulates that “the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.”<sup>47</sup> Article 8:1 of the WTO Agreement also provides that “the WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.”<sup>48</sup>

Public international law also recognizes yet another important attribute derived from the notion of autonomy, i.e., an “identity” of IOs, by accentuating IOs’ distinctive functional mandate or competence. For example, the ICJ rejected the World Health Organization (WHO)’s request to the court to deliver an advisory opinion as to whether states’ use of nuclear weapons violates international law on the ground that such an issue did not fall within the rubric of the WHO’s activities.<sup>49</sup> This decision acknowledges a distinguishable mission of each IO which tends to merit organizational autonomy based on regulatory professionalism to the extent that an *empty* shell, as conventional IR theorists view IOs, cannot fully capture in exclusive reliance upon inter-state cooperation.

Admittedly, the mere existence of an IO’s legal personality should not necessarily be equated with “a life apart from the will of the individual states which formed the membership of the organization.”<sup>50</sup> Legal capacity may not be a sufficient condition for genuine autonomy. Varying institutional arrangements of IOs determine different patterns of governance and different degrees of autonomy. Although the UN holds its own legal personality, it is incapable of making any autonomous decisions over critical subjects, such as security, against wills of a handful of powerful members who retain veto powers. Furthermore, even if an IO does enjoy a certain level of autonomy,

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<sup>46</sup> International Law Commission (ILC), *Analytical Guide: Responsibility of International Organizations*, available at [http://untreaty.un.org/ilc/guide/9\\_11.htm](http://untreaty.un.org/ilc/guide/9_11.htm).

<sup>47</sup> Charter of United Nations, art. 104, available at <http://www.un.org/aboutun/charter/>.

<sup>48</sup> Marrakech Agreement Establishing the World Trade Organization, April 15, 1994, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, art. VIII:1 [hereinafter WTO Agreement], LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND, 6, 6-18; 33 I.L.M. 1140, 1144-1153 (1994).

<sup>49</sup> The Legality of the Threat or Use of Nuclear Weapons in Armed Conflict, 1 ICJ Rep. 226 [1996].

<sup>50</sup> David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT’L L. 275, 277 (1995-1996).

sovereign states, which “transfer” part of their own autonomy to the IO, may want to retract such a transfer.<sup>51</sup>

Nonetheless, an IO’s legal-institutional detachment from its members is still an important avenue for its socio-political autonomy in action. In line with Weberian legal-rational authority in bureaucracy, legal personality tends to benefit an IO in claiming its decisional authority upon various issues and challenges falling within the rubric of its mandate. In addition, along with this legal capacity follows other institutional software and hardware with which to maintain its operational autonomy, such as operational rules, secretariat and the budget.

Approaching IOs’ autonomy through a legal lens has a number of benefits. First, it certainly corroborates the aforementioned constructivist, sociological IR theories which recognize the autonomy of IOs. In fact, as discussed above, it is legal personality which mobilizes and institutes an indispensable set of bureaucratic resources and appliances necessary to sustain IOs’ autonomous operation. As a legal entity, an IO can retain legal rights and obligations. For example, an IO may demand its members to pay their dues. More importantly, an IO’s legal personhood enables us to employ “legal principles and legal arguments” with which we investigate and study “the ways in which international organizations conduct their affairs.”<sup>52</sup> Those legal narratives offer unique perspectives in understanding IOs’ autonomy, such as “making consistent decisions on similar facts” and “giving reasoned arguments based on principles other than mere promotion of [a state]’s self-interest,” which conventional IR theories may not fully capture in their own languages.<sup>53</sup>

These legal discourses inform, *inter alia*, two paramount issues which concern and shape the autonomy of IOs: *what* IOs produce and *how* they develop. First, some legal scholars have already highlighted various noticeable “jurisgenerative”<sup>54</sup> phenomena in certain areas within sector-specific regulatory IOs. These scholars often focus on vibrant government regulatory networks harbored by those IOs in which epistemic socialization among likely-minded government officials and other professionals crystallize into tangible normative products, such as guidelines and recommendations.<sup>55</sup> Markedly, *legally* defined mandates

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<sup>51</sup> ANNA MELJKNECHT, TOWARDS INTERNATIONAL PERSONALITY: THE POSITION OF MINORITIES AND INDIGENOUS 38 (2001).

<sup>52</sup> KIRGIS, *supra* note \_\_, at vii-viii.

<sup>53</sup> *Id.*, at viii.

<sup>54</sup> See Robert M. Cover, *Nomos and Narrative in NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER* 110 (Martha Minow et al eds., 1992).

<sup>55</sup> See notably Anne-Marie Slaughter, *Governing the Global Economy through Government Networks*, in *THE ROLE OF LAW IN INTERNATIONAL POLITICS: ESSAYS IN INTERNATIONAL RELATIONS AND INTERNATIONAL LAW* 178 (Michael Byers ed. 2000);

and membership flowing from, and anchored by, its legal personality tend to secure specialization and professional authority for these IOs. These regulatory IOs are represented not by government officials from the Department of State or the Ministry of Foreign Affairs but by transgovernmental regulators from sector-specific departments, such as the Department of Treasury or the Ministry of Finance, who “share a common concern that spans geographical boundaries and transcends cultural barriers.”<sup>56</sup> An IO’s legal personality tends to promote this “*mentalités collectives*” by providing professional forums which enjoy a certain level of detachment from a culture of direct delegation from the headquarters.<sup>57</sup>

For example, the International Organization of Securities Commissions (IOSCO) harbors a transgovernmental network of securities regulators whose collective goals are articulated in a professional, not ambassadorial, fashion, i.e., to “establish standards and an effective surveillance of international securities transactions.”<sup>58</sup> The IOSCO has issued a number of professional standards within its mandate, such as the “Risk Management and Control Guidance for Securities Firms and their Supervisors.”<sup>59</sup> Despite its non-binding nature, firms in each jurisdiction expect to implement these regulatory prototypes.<sup>60</sup> This normative authority, as it is repeated and reinforced, tends to equip these IOs with an aura of professional legitimacy which in turn leads to a certain level of self-rule.

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ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004); Sungjoon Cho, *Transgovernmentalism: A New Jurisgenerative Mechanism* (unpublished manuscript, on file with the author). This idea of government (transgovernmental) networks dates back to the 1970’s. See Robert O. Keohane & Joseph S. Nye, *Transgovernmental Relations and International Organizations*, 27 *WORLD POL.* 39, 44 (1974); Raymond F. Hopkins, *Global Management Networks: The Internationalization of Domestic Bureaucracies*, 30 *INT. SOC. SCI. J.* 31, 31 (1978). Some scholars describe this term differently, but for more or less the same meaning. For instance, One scholar named the Basel Accord as a “gentlemen’s agreement among central banks”. Hal Scott, *The Competitive Implications of the Basel Capital Accord*, 39 *ST. LOUIS U. L. J.* 885, 885 (1995). Another scholar termed the same work as “international soft law”. JOSEPH JUDE NORTON, *DEVISING INTERNATIONAL BANK SUPERVISORY STANDARDS* 176-77 261-262 (1995).

<sup>56</sup> John E. Shockey, *Bank Regulatory Examination and Enforcement after Barings and Daiwa*, 935 *PLI / CORP.* 681, 708 (1996).

<sup>57</sup> John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, 47 *INT’L ORG.* 139, 157 (1993).

<sup>58</sup> The International Organization of Securities Commissions (IOSCO), *General Information on IOSCO*, available at <http://www.iosco.org/about/>.

<sup>59</sup> IOSCO, *Risk Management and Control Guidance for Securities Firms and their Supervisors: A Report of the Technical Committee of IOSCO* (May 1998), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD78.pdf>.

<sup>60</sup> *Id.*, at 1.

Second, the legal personality of an IO is also inductive to a *dynamic* understanding of its authentic institutional self, i.e., its identity. Since the juridical personhood warrants a certain level of permanence in its institutional existence, in particular vis-à-vis mere agreements (treaties), one can engage in a serious exploration of its unique pathway from creation through the subsequent institutional evolution as a legally distinct entity (person). This facilitates a panoramic comprehension of the IO's operational autonomy. From a normative perspective, forming an IO's identity means establishing institutional criteria for behaviors or policies acceptable to the IO. Throughout its institutional lifetime, an IO embraces a different set of policies determined by its own understanding of its rationale (object and purpose). Importantly, this understanding is neither inalterable nor self-containing. An IO continuously defines and redefines such teleological realizations as it incessantly interacts with its environment. Yet just as an adolescent experiences an identity crisis in his or her interaction with peers, an IO may be exposed to confusion and stresses in adjusting its goals to external demands.

IOs' norms and legal discourses are crystallized into the "technology" which represents IOs' varying operational apparatuses, such as software (e.g., rules and guidelines),<sup>61</sup> hardware (e.g., committees) and humanware (e.g., staff). In the identity-forming process, it is this technology which guides and regulates IOs' behaviors (policies). For example, an internal "teleological interpretation" has modified the identity of World Bank from a narrow development organization as stipulated in Article 1 of its charter (Articles of Agreement), which would more or less tackle members' *economic* well-being calculated by per capita income, to a more broadly mandated organization which now addresses comprehensive *socio-cultural* issues, such as women's rights, the environment, education, and health.<sup>62</sup>

### **III. Theorizing an Identity Crisis of International Organizations**

#### *A. Anthropomorphism: IOs as Identity-Bearers*

As discussed above, legal narratives tend to make unique contributions in understanding the operational autonomy of IOs in their

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<sup>61</sup> See e.g., Georg Ress, *The Interpretation of the Charter*, in *THE CHARTER OF THE UNITED NATIONS – A COMMENTARY* 28 (Bruno Simma ed., 1994) (discussing "evolutionary dynamic interpretation").

<sup>62</sup> Ibrahim F.I. Shihata, *The Dynamic Evolution of International Organizations: The Case of the World Bank*, 2 J. HIS. INT'L L. 217, 249 (2000).

organizational lifetimes, i.e., how they evolve and what they generate, which eventually supply the foundation for the formation of their identities. One possible way of advancing the IOs' identity formation is to project this normative process to a well-established paradigm of human developmental psychology. A careful reflection on an IO's nature tends to warrant this anthropomorphism.

As a juridical *person*, an IO is an autonomous, organic entity which owes its existence to its own incessant adaptations to the ever-changing environment in a similar way in which a human being does. Unlike a closed system, such as a cybernetic system, in which inputs from the environment can never change internal elements of an organization, both humans and organizations are "open systems" which are "capable of self-maintenance on the basis of throughput of resources from the environment."<sup>63</sup> The shift from closed to open systems highlights the critical significance which the environment exerts on organizational identity,<sup>64</sup> as it does on the human identity. Like a human being, an organization pursues a homeostatic equilibrium vis-à-vis the external environment as it builds and adapts its individuality in its institutional development.<sup>65</sup>

In fact, some organization theorists have already devoted their attention to certain self-conceptions collectively held by members of an organization in the name of "organizational identity," which is defined as a "central, enduring, and distinctive" set of values "that distinguishes the organization from others with which it might be compared."<sup>66</sup> This notion of organizational identity offers yet more support for using an identity theory analogy in studying the dynamic transformation of IOs.

### *B. Insights from Developmental Psychology: The Identity Theory*

A pre-eminent developmental psychologist, Erik Erikson, suggests that a human being develops her (ego) identity by combining her understanding of the environment (group identity) and her own personal characters (personal identity).<sup>67</sup> A person's identity is

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<sup>63</sup> SCOTT, *supra* note \_\_, at 89; WALTER BUCKLEY, *SOCIOLOGY AND MODERN SYSTEMS THEORY* 50 (1967).

<sup>64</sup> Ness & Brechin, *supra* note \_\_, at 249.

<sup>65</sup> SCOTT, *supra* note \_\_, at 60.

<sup>66</sup> Stuart Albert & David A. Whetten, *Organizational Identity*, in *RESEARCH IN ORGANIZATIONAL BEHAVIOR* (vol. 6) 265 (L. L. Cummings & B. M. Staw eds. 1985).

<sup>67</sup> See notably ERIK H. ERIKSON, *IDENTITY, YOUTH AND CRISIS* (1968). See also Willem L. Wardekker, *Identity, Plurality, and Education*, in *THE YEARBOOK OF PHILOSOPHY OF EDUCATION* (1995), available at [http://www.ed.uiuc.edu/EPS/PES-Yearbook/95\\_docs/wardekker.html](http://www.ed.uiuc.edu/EPS/PES-Yearbook/95_docs/wardekker.html).

“constituted by a configuration of central traits ... that typically make a systematic difference to the course of a person’s life, to the habit-forming and action-guiding social categories in which she is placed, to the way that she acts, reacts, and interacts.”<sup>68</sup> Erikson’s approach is often dubbed “psychosocial”: he basically posits that the “individual and society are intricately woven, dynamically related in continual change.”<sup>69</sup> His theory “interrelate[d] societal demands and individual internal forces of development” in discussing the identity and its formation.<sup>70</sup>

Erikson’s theory of identity-formation focuses on, *inter alia*, a dynamic pathway of human psychology in which an individual human being searches for, and eventually establishes, her genuine identity. This dynamic pathway is based on a human being’s need to cope incessantly with the inevitable conflicts between prior and subsequent identifications with the environment as well as between the different social roles that these identifications may carry with them. At first, a child is “deeply and exclusively ‘identified’ with his parents.”<sup>71</sup> Subsequently, children also tend to “attach” themselves to other particular adults around them, such as their teachers and parents of their friends, and often imitate these adults’ occupations.<sup>72</sup> Adolescence, as the last stage of childhood, ends only when an individual replaces her childhood identifications with a new type of identification resulting from socialization and competition among its peers.<sup>73</sup> Only after the “selective repudiation and mutual assimilation of childhood identifications” are attuned to a new configuration which the society recognizes will the true identity of an individual is to be formed.

The final identity, although it includes all significant identifications with key figures of the past, processes them in a way which builds a “unique and reasonably coherent whole.”<sup>74</sup> During the final stage of identity formation, adolescents tend to suffer greatly from role confusion.<sup>75</sup> Past multiple identifications, and the roles which they prescribe, often conflict with each other. This disturbance is tantamount

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<sup>68</sup> A.O. Rorty & D. Wong, *Aspects of Identity and Agency*, in *IDENTITY, CHARACTER, AND MORALITY: ESSAYS IN MORAL PSYCHOLOGY* 19 (O. Flanagan & A.O. Rorty ed. 1990).

<sup>69</sup> ERIKSON, *supra* note \_\_, at 114. See also Jane Kroger, *Identity Formation*, in *THE FUTURE OF IDENTITY: CENTENNIAL REFLECTIONS ON THE LEGACY OF ERIK ERIKSON* 61-63 (Kenneth Hoover ed. 2004); JANE KROGER, *IDENTITY DEVELOPMENT: ADOLESCENCE THROUGH ADULTHOOD* 25 (2<sup>nd</sup> ed. 2007).

<sup>70</sup> KROGER, *supra* note \_\_, at 25.

<sup>71</sup> ERIKSON, *supra* note \_\_, at 115.

<sup>72</sup> *Id.*, at 122.

<sup>73</sup> *Id.*, at 155.

<sup>74</sup> *Id.*, at 161.

<sup>75</sup> *Id.*, at 163-64.

to a crisis or “a war within themselves.”<sup>76</sup> Only after adolescents weather this *Strum und Drang* do they acquire a sense of “knowing where [they are] going.”<sup>77</sup> Then, they finally discover their “fittedness” in the society.<sup>78</sup> In this sense, the identity crisis is more of a “necessary turning point,” rather than an “impending catastrophe.”<sup>79</sup>

However, identity formation is not always successful. Adolescents often demonstrate a variety of pathological symptoms in the course of identity formation. They may fail to resolve “strains” in their engagement with others, which leads to a state of “a loss of center and a dispersion.”<sup>80</sup> Erikson has labeled these pathologies as “identity confusion” or “identity diffusion.” For example, they may make no commitments, or show no fidelity, to their genuine identity as they experience no identity crisis.<sup>81</sup> They may also act baby-like (“diffusion of time perspective”), become unable to work or concentrate (“diffusion of industry”), or choose to be anti-social and hostile (“negative identity”).<sup>82</sup> Other problematic identity statuses are “foreclosure,” in which adolescents have already made commitments to a certain identity without exploring various identities, and “moratorium,” in which adolescents merely engage in such exploration without making any commitments.<sup>83</sup>

### *C. Applying the Identity Theory to IOs*

Similar to adolescents’ identity formation process, IOs also experience certain socialization pressures from their environment and are often forced to diversify their institutional selves into multiple roles which should eventually be integrated into an internally coherent identity.<sup>84</sup> Naturally, the identity formation is not a smooth process for either a human being or an IO. It may be accompanied by confusion, fatigue and stress. In short, it is a *crisis*.

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<sup>76</sup> *Id.*, at 17.

<sup>77</sup> *Id.*, at 165.

<sup>78</sup> *Id.*, at 161.

<sup>79</sup> *Id.*, at 16.

<sup>80</sup> *Id.*, at 212.

<sup>81</sup> James E. Marcia, *Development and Validation of Ego Identity Statuses*, 3 J. PERSONALITY & SOC. PSY. 551-558 (1966). To some scholars identity diffusion may be characterized as “identity deficit” or “motivation crisis” which denotes a lack of commitments and precise self-definition. Roy F. Baumeister et al., *Two Kinds of Identity Crisis*, 53 J. PERSONALITY, 407, 409-11 (1985).

<sup>82</sup> *Id.*, at 167-73.

<sup>83</sup> *Id.*

<sup>84</sup> Susan Harter, *Self and Identity Development*, in *AT THE THRESHOLD: THE DEVELOPING ADOLESCENT* 358 (S. Shirley Feldman & Glen R. Elliott eds. 1990).

As a *legal* person an IO's identity crisis can be translated into a normative process. As discussed above, identity-forming organizational changes, which are inevitable for an IO's institutional survival, are basically teleological<sup>85</sup> and constitutive since these changes define and redefine its organizational goals, and thus regulate the behavior of members and the organization itself.<sup>86</sup> This teleological and constitutive process is best captured by norms and legal discourse within an IO. Legal principles and legal arguments mediate "intersubjective" or "reflective" discourse and interaction among members, as well as between members and the IO itself.<sup>87</sup> In sum, norms provide, and alter, the syntax and grammar of an IO's institutional operation both in the short-term, and in the long-term.

If an IO cannot survive its identity crisis, it fails to achieve its true identity. First, in the face of challenges by the changing environment, it may still remain attached to an old identification which has been prescribed by its creators, i.e., states. This unresponsiveness to the environment, which may be equivalent to "foreclosure" in human psychology, eventually leads to "inefficient, self-defeating behavior."<sup>88</sup> Second, if an IO is confused by multiple identifications and fails to commit itself to one coherent identity, its identity is diffused ("identity diffusion"). Identity diffusion, as in foreclosure, is a pathological symptom. It gravely reduces the output level of an IO. IOs may even cease to exist due to these pathologies.<sup>89</sup>

*D. Four Parameters of Identity Formation: History, Environment, Purpose and Technology*

The history of IOs renders an initial influence on their identities. As an internalized past, the history tends to determine, or at least correlates with, present and future behaviors of IOs by frontloading their rationale and character. Like DNAs in the human body, the organizational history bestows upon IOs a certain institutional heredity, which marks a unique path-dependence for each organization. The organizational history is often used as an interpretive criterion for

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<sup>85</sup> Ness & Brechin, *supra* note \_\_, at 246.

<sup>86</sup> Keohane, *supra* note \_\_, at 382.

<sup>87</sup> See generally Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 INT'L ORG. 391 (1992).

<sup>88</sup> Barnett & Finnemore, *supra* note \_\_, at 722-24. (discussing "insulation" as one of IOs' pathologies).

<sup>89</sup> See Cheryl Shanks et al., *Inertia and Change in the Constellation of International Governmental Organizations, 1981-1992*, 50 INT'L ORG. 593, 594 (1996) (observing that IOs "do have a mortality rate, and it can be surprisingly high").

determining whether organizations' or their participants' behaviors are permitted or prohibited under their charters or constitutions.<sup>90</sup> Interestingly, the tenacious impact of history on each IO's identity formation stems from the fact that it cannot be simply discarded or disposed of even if it subsequently becomes obsolete or ineffective. Purging an old organization and restarting afresh would be quite costly. In this sense, all institutional changes tend to be path-dependent. "If sunk costs make a traditional pattern of action cheaper, and if new patterns are not more profitable enough to justify throwing away the resource, the sunk costs tend to preserve a pattern of action from one year to the next."<sup>91</sup> Old habits die hard. Relics of the old structure or culture remain, even though they may be cocooned beneath a new institutional coating.

However, this perspective on the organizational history need not be static. To conventional IR theorists who emphasize the genesis, rather than the subsequent change, of IOs, the organizational history is nothing but a reflection, or a repository, of interests and preferences of states at the time of creation. As a tool of these states used to achieve certain goals, an IO is supposed to implement institutional blueprints which were programmed into its history. At this stage, an IO is mostly subordinate to states, and hence has little autonomy. (Figure 1) In contrast, organizational sociologists and/or historical institutionalists view organizational history as a *dynamic* factor which embodies "critical junctures" in organizational development.<sup>92</sup> These critical historical moments can trigger an irreversible path-dependence that is quite different from the one that was pre-ordained by states.<sup>93</sup> In this situation, an IO may gradually begin to exert its (new) identity upon states (Figure 2). At a subsequent stage as this process deepens, and an IO's transformed identity prevails upon even the interests and preferences of the powerful states who previously determined its old identity. (Figure 3)

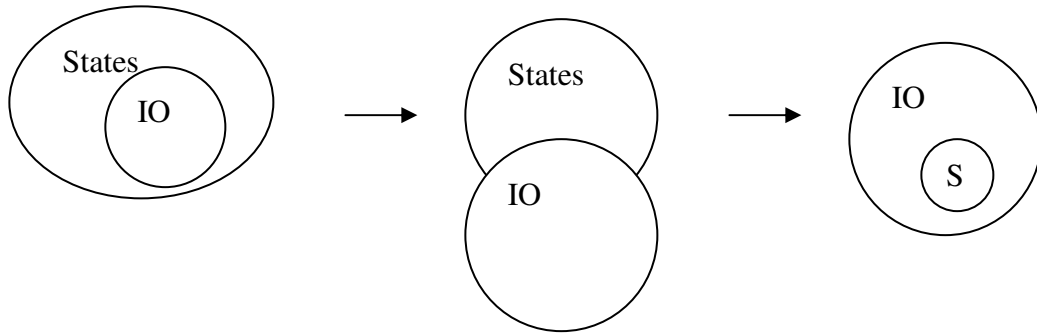
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<sup>90</sup> See e.g., Vienna Convention on the Law of Treaties pmb., May 23, 1969, 1155 U.N.T.S. 331, 332, art. 32 ("Recourse may be had to supplementary means of interpretation, including the *preparatory work* of the treaty and the *circumstances of its conclusion*, ...") (emphasis added).

<sup>91</sup> ARTHUR. L. STINCHCOMBE, CONSTRUCTING SOCIAL THEORIES 120-21 (1968).

<sup>92</sup> PAUL PIERSON, POLITICS IN TIME: HISTORY, INSTITUTIONS, AND SOCIAL ANALYSIS (2004); Kathleen Thelen, *Historical Institutionalism in Comparative Politics*, 2 ANN. REV. POL. SCI. 369 (1999).

<sup>93</sup> Paul Pierson & Theda Skocpol, *Historical Institutionalism in Contemporary Political Science*, in POLITICAL SCIENCE: STATE OF THE DISCIPLINE 693 (Ira Katznelson & Helen V. Milner eds. 2002).



[Figure 1]

[Figure 2]

[Figure 3]

In sum, advocates for an IO's autonomy/identity envisage a seamless continuum in the IO's evolution that is characterized by certain critical junctures, or in a more normative sense, "constitutional moments."<sup>94</sup> The unique culture, structure and path-dependency of each IO also begets a unique institutional arrangement, such as inter-governmental or supranational organization, which tends to mark and define an IO's identity. Therefore, from this standpoint, the process of identity formation is a new history-making process.

The environment is a critical parameter to an organizational identity. If one regards an IO as a closed system, a mere tool for states, as conventional IR theorists do, then the environment may not matter since an IO is only supposed to take what states provide (input) and produce pre-programmed results (output). However, organizational sociologists have long adhered to an open system where varying environments exert critical impact on how organizations behave and perform.<sup>95</sup> This unremitting process of challenge and response between an IO and the environment builds up its unique identity. An IO processes complex information provided by the environment and forms its identity in accordance with the messages contained in those challenges.<sup>96</sup> In this sense, the identity-formation process of an IO is an assiduous dialogue with the environment.<sup>97</sup>

<sup>94</sup> Helfer, *supra* note \_\_, at 662, n. 45.

<sup>95</sup> HOWARD ALDRICH, ORGANIZATIONS AND ENVIRONMENTS \_\_ (1979).

<sup>96</sup> Yash P. Gupta & David C.W. Chin, *Organizational Life Cycle: A Review and Proposed Directions for Research*, 30 MID-ATLANTIC J. BUS. 15 (1994).

<sup>97</sup> See Joel P. Trachtman, *The Constitutions of the WTO*, 17 EUR. J. INT'L L. 623, 625 (2006) (viewing that "due to its dependence on and interaction with the broader international legal system, it is not possible to analyse the WTO constitution fully without analysing the broader structure")

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Yet the environment provides IOs with not only opportunities but also challenges. It forces IOs to change their identifications with the old self embedded in the charter.<sup>98</sup> It redefines the old self, which has lost practicality and effectiveness due to obsolescence and desuetude.<sup>99</sup> From an economic perspective, this identity-formation process is a function of altered opportunity costs in response to environmental changes.<sup>100</sup>

An IO's objective and purpose is the rationale of its existence. Initially, it is *given* by an IO's creators (states) and engraved in its charter, as discussed above. Yet as an IO achieves its identity through dynamic (historical) development, it also alters, or at least fine-tunes, the original objective and purpose. In other words, organizational goals must be adjustable for organizations to survive.<sup>101</sup> Empirical confirmations for this goal dynamism are seen in the phenomena of "mission creep" of major international organizations, such as the IMF and the World Bank.<sup>102</sup>

An organizational identity shares the same developmental pathway with an organizational goal. An organizational identity is shaped by an IO's conscious interactions with the environment, and guided by an organization's own role expectation as well as the expectations the organization perceives from the environment (society). This whole process of identity formation is driven by an organization's evolving notion of purpose that continuously builds throughout its institutional lifetime. In this context, both goals and identities are "cultural-cognitive and normative."<sup>103</sup> Therefore, both goals and identities steer, regulate and control IOs' activities. Goals also provide essential interpretive guidance when IOs' determine whether a certain action is acceptable.<sup>104</sup> In this regard, as Selznick noted, an

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<sup>98</sup> Shihata, *supra* note \_\_, at 218.

<sup>99</sup> *Id.*

<sup>100</sup> Keohane, *supra* note \_\_, at 390; DOUGLAS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* (1981).

<sup>101</sup> Ness & Brechin, *supra* note \_\_, at 264; Gouldner, *supra* note \_\_, at 404-05.

<sup>102</sup> See e.g., Jessica Einhorn, *The World Bank's Mission Creep*, 80 FOREIGN AFF. (Sep./Oct. 2001) (arguing that member countries of the World Bank should control the currently unwieldy status of mission creep by devolving some of its derivative missions to other institutions and focus more on original, basic mission of the Bank); Sarah Babb & Ariel Buira, *Mission Creep, Mission Push and Discretion in Sociological Perspective: The Case of IMF Conditionality*, Paper presented at the XVIII G24 Technical Group Meeting, March 8-9, 2004, Geneva, Switzerland, *available at* <http://www.g24.org/O12gva04.pdf> (discussing the IMF's expanded mandate over the years).

<sup>103</sup> SCOTT, *supra* note \_\_, at 22.

<sup>104</sup> Vienna Convention on the Law of Treaties, *supra* note \_\_, art. 31.

organizational goal can be an “ideological weapon” with which to defy opposition and mobilize support from the environment.<sup>105</sup>

Finally, an IO’s “core technology”<sup>106</sup> refers to its functional capability to perform in order to achieve its goals. It delineates its domain, and eventually its identity, by determining the “range of products or services it provides and the types of clients or consumers served.”<sup>107</sup> The IMF’s identity as a *financial* organization is inextricably linked to the fact that it is capable of monitoring and regulating international financial flows. The identity of the World Health Organization (WHO) as a *health* organization is also connected inseparably to the fact that it can monitor and regulate health-related matters, such as the distribution of flu vaccines. The International Atomic Energy Agency (IAEA)’s identity as a *nuclear energy* organization hinges on the fact that it can monitor and regulate nuclear energy issues, such as peaceful use of atomic energy.

As an open system, an organization can import technology from its environment.<sup>108</sup> When interacting with its environment, it can change the core technology by modifying its software (skills and other social knowledge), humanware (personnel and bureaucrats) and hardware (infrastructure and sub-organizations).<sup>109</sup> Organizational theories characterize this transformative process of acquiring and embracing new technologies as “organizational learning”.<sup>110</sup> Organizational learning is a purposeful behavior to increase IOs’ problem-solving (functional) capacities to achieve certain institutional goals, and therefore plays a critical role in shaping organizational identities.

#### **IV. An Application of the Identity Theory: A Case of the World Trade Organization (WTO)**

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<sup>105</sup> PHILIP SELZNICK, *TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION* (1949); SCOTT, *supra* note \_\_, at 292.

<sup>106</sup> SCOTT, *supra* note \_\_, at \_\_.

<sup>107</sup> *Id.*, at 126; Sol Levine & Paul White, *Exchange as a Conceptual Framework for the Study of Interorganizational Relationships*, 5 ADMIN. SCI. Q. 583 (1961); Ness & Brechin, *supra* note \_\_, at 256.

<sup>108</sup> SCOTT, *supra* note \_\_, at 23.

<sup>109</sup> Ness & Brechin, *supra* note \_\_, at 256.

<sup>110</sup> See Bernd Siebenhüner: *International Organisations as Learning Agents in the Emerging System of Global Governance. A Conceptual Framework*, at 16-17, GLOBAL GOVERNANCE WORKING PAPER No 8, Potsdam, Berlin, Oldenburg: The Global Governance Project, available at [www.glogov.org](http://www.glogov.org).

## *An Identity Crisis of International Organizations*

### *A. From a Contractual Tool (GATT) to an Autonomous Organization (WTO)*

As one of the many chapters of a much more ambitious yet eventually aborted project of the International Trade Organization (ITO), the GATT was originally more of a contractual document than an organization. The GATT participants were named *contracting* parties, rather than members. They created the GATT against the background of mutually destructive protectionist trade policies in the interwar period, which had diminished world trade by seventy percent and thus contributed to the outbreak of World War II.<sup>111</sup> Drawing on this bitter historical lesson, contracting parties aimed to dismantle trade barriers and achieve free trade by regularly holding tariff reduction talks in a series of negotiation rounds provided by the GATT.

While trade negotiation was basically a reciprocal, diplomatic and political exercise, contracting parties had to preserve the hard-won delicate balance of concessions that each negotiation had produced. In other words, they had to maintain the values of those concessions by prohibiting parties from introducing any measures which might neutralize them later. Such cheating had to be condemned, and remedies instituted to restore the balance of concessions. Therefore, the GATT, albeit a legal document, was basically a tool for contracting parties that were pre-occupied by bargains' original terms. This instrumental, contractual structure of the GATT is evidenced by the relics of private (contract) law embedded in the old GATT jurisprudence. The remedial prototype of the GATT was "nullification or impairment," which is close to the notion of injuries or damages in contract law. Regardless of whether the measure in question is consistent with GATT norms, any injuries to a contracting party, i.e., the dilution of benefits of its concession, should be remedied to preserve the balance of concessions made in the previous negotiation.<sup>112</sup> In this context, GATT dispute resolution panels often explored whether and how much a defendant's measure brought actual adverse commercial effects to the complainant.<sup>113</sup>

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<sup>111</sup> See Edward C. Luck, *American Exceptionalism and International Organization: Lessons from the 1990s*, in U.S. HEGEMONY AND INTERNATIONAL ORGANIZATIONS: THE UNITED STATES AND MULTILATERAL INSTITUTIONS 25, 39 (Rosemary Foot et al eds. 2003) (quoting remarks by the former U.S. Trade Representative Charlene Barshefsky on the U.S. trade policy and the WTO on Mar. 2, 2000).

<sup>112</sup> See Sungjoon Cho, *The Nature of Remedies in International Trade Law*, 65 U. PITT. L. REV. 763, 766-67 (2004) (discussing the multilateral trading system (GATT/WTO)'s institutional evolution from a negotiated contract to a legalized regime).

<sup>113</sup> See e.g., *Italian Discrimination against Imported Agricultural Machinery*, Oct. 23, 1958, GATT B.I.S.D. (7th Supp.) at 60, ¶ 17, 20 (1959) [WTO Doc. Symbol BISD/75/60].

However, this instrumental (contractual) structure of the GATT changed as it became more institutionalized and more equipped with software (norms and practices), hardware (divisions and offices), and humanware (personnel). The GATT began to focus more on the public law aspect of its member states, such as the stability and predictability of the rule of law.. As the former Director of the WTO Appellate Body Secretariat Debra Steger aptly described, the GATT slowly evolved into “something greater than a contract that could be withdrawn from by any contracting party whenever it found the obligations too onerous.”<sup>114</sup> In the same line, the once critical notion of “nullification or impairment” was weakened as it was assumed away whenever a panel found a “violation.”<sup>115</sup> In fact, any violation would ipso facto constitute a nullification or impairment.<sup>116</sup> This paradigm shift, from a *power*-oriented structure focusing on the outcome of negotiation to a *rule*-oriented structure valuing the legal system within the GATT, paved the ground for a critical transformation from a contract to an organization.<sup>117</sup> As Anne Krueger aptly observed, the WTO’s organizational autonomy, i.e., its legal personality, tends to justify an institutional evolution from the old GATT, which had been deemed an instrument of contracting parties, to an independent organization.<sup>118</sup>

### *B. The WTO’s Identity Crisis*

The legalization, or judicialization, of the GATT through its dispute settlement system contributed greatly to its institutionalization. Its panel system functioned quite effectively in resolving trade disputes between contracting parties. Critically, the GATT not only resolved trade disputes but also generated a rich set of jurisprudence in the area of international trade law. The rule of law which the GATT established was the most valuable product produced by the GATT as an organization. This legalization, or rule of law, in the trade area enabled the GATT to

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<sup>114</sup> Debra P. Steger, *Afterword: The "Trade and . . ." Conundrum-A Commentary*, 96 AM. J. INT’L L. 135, 137 (2002).

<sup>115</sup> Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, Nov. 28, 1979, GATT B.I.S.D. (26th Supp.) at 210 (1980) [WTO Doc. Symbol L/4907].

<sup>116</sup> See United States-Taxes on Petroleum and Certain Imported Substances, Jan. 17, 1987, GATT B.I.S.D. (34th Supp.) at 136, §§ 5.1.3-5.1.12 (1988) [WTO Doc. Symbol L/6175].

<sup>117</sup> JOHN H. JACKSON, *THE WORLD TRADING SYSTEM* 109-11 (2d ed. 1997).

<sup>118</sup> Anne O. Krueger, *Introduction*, in *THE WTO AS AN INTERNATIONAL ORGANIZATION 2* (Anne O. Krueger ed. 1998). *But see* Lisa L. Martin & Judith Goldstein, *Legalization, Trade Liberalization and Domestic Politics: a Cautionary Note*, 53 INT’L ORG. 603 (2000).

process information and further build up its unique technology, i.e., trade governance or trade management. Contracting parties increasingly relied on the GATT in acquiring information and addressing various problems concerning trade. In sum, the GATT consolidated its identification with what it was meant to be, i.e., a *trade agreement*.

However, the environment surrounding the GATT was changing dramatically in the 1980's as the pro-trade bias of the GATT came under attack. The rising ethos of the "welfare state" urged governments to improve social hygiene in the areas of environment and human health. The problem is that the proliferation of these social regulations might have potentially undermined free trade goals since trade restriction due to regulatory heterogeneity tends to become increasingly painful in times of growing interdependence.<sup>119</sup> Under certain circumstances, these new domestic regulations, as non-tariff barriers (NTBs), can be abused as a disguised form of protectionism.<sup>120</sup>

The GATT first defied the rising tide of (re-) regulation by striking down these regulations as trade-restrictive. Although there existed the general exception clause (GATT Article XX) under which these regulations might be justified, not a single measure was ever actually saved under the clause in the GATT's history.<sup>121</sup> For example, in 1990 a

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<sup>119</sup> A number of scholars have already paid attention to this phenomenon. For instance, Sol Picciotto observed that:

"Regulatory regimes have been brought into greater interaction as the removal of direct barriers to the flows of goods and money between states (tariffs, quotas and exchange controls) has shifted attention towards regulatory difference as a barrier to entry of commodities or capital."

Sol Picciotto, *The Regulatory Criss-Cross: Interaction between Jurisdictions and the Construction of Global Regulatory Networks*, in INTERNATIONAL REGULATORY COMPETITION AND COORDINATION: PERSPECTIVES ON ECONOMIC REGULATION IN EUROPE AND THE UNITED STATES 89 (William Bratton et al eds. 1996). Likewise, some economists have also noted that:

"As globalization proceeds, however, it has become increasingly evident that one nation's economic policies can affect other countries. When nations were separated by high trade barriers and trade flows were limited, one country could ignore another nation's domestic economic policies. As barriers have come down, other countries' domestic policies have become much more important."

GLOBAPHOBIA: CONFRONTING FEARS ABOUT OPEN TRADE 89 (Gary Burtless et al eds. 1998). See also Aaditya Mattoo, *Discriminatory Consequences of Non-Discriminatory Standards*, WTO, WTO STAFF WORKING PAPERS, TISD-96-01, Dec. 1997, available at [http://www.wto.org/english/res\\_e/reser\\_e/wpaps\\_e.htm](http://www.wto.org/english/res_e/reser_e/wpaps_e.htm) (last visited on April 19, 2001).

<sup>120</sup> See Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 6 CHI. J. INT'L L. 625, 643 (2005).

<sup>121</sup> See Robert Howse, *Managing the Interface between International Trade Law and the Regulatory State: What Lessons Should (and Should Not) Be Drawn from the Jurisprudence of the United States Dormant Commerce Clause*, in REGULATORY

GATT panel struck down the Thai ban on foreign cigarettes as unnecessary trade restriction.<sup>122</sup> In this case, the Thai government tried to protect its people from a number of identifiable harms from chemicals and toxins contained in foreign cigarettes by banning those products. In fact, the WHO also endorsed such ban. However, the panel ruled that the ban was an unjustifiable violation of the GATT rules since the Thai government could have found less trade restrictive means than the ban, such as the “strict, non-discriminatory labeling and ingredient disclosure regulations.”<sup>123</sup> This ruling was severely criticized not only because it ignored the WHO’s opinion but also because its prescription to the Thai government, i.e., labeling and disclosure regulations, was both unaffordable and ineffective for developing countries like Thailand at that time.<sup>124</sup>

Therefore, while a pro-trade bias was faithful to the GATT’s identification as a trade agreement, such a bias continuously invited criticism from its environment, in particular the civil society and environmental organizations. The GATT’s efforts to fix this bias and achieve a more mature identity gathered critical momentum in the launch of the WTO. The WTO’s mission statement in the preamble of its charter spotlights “sustainable development.” It has become obvious that due consideration and investment for non-trade values, such as the environment and human health, should be made *within* the WTO in order to achieve any development which is sustainable. One can understand the creation of the Trade and Environment Committee and special side agreements, such as the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS), as the WTO’s effort to grow out of the pro-trade bias and form a more mature and responsive identity.<sup>125</sup>

Those who advocate a formal (hard) linkage between trade and social values tend to argue that certain “social clauses,” which include fundamental workers’ rights or minimum international labor standards,

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BARRIERS AND THE PRINCIPLE OF NON-DISCRIMINATION IN WORLD TRADE LAW 142  
(Thomas Cottier & Petros C. Mavroidis eds. 2000).

<sup>122</sup> Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes, adopted on Nov. 7, 1990, B.I.S.D. 37S/200.

<sup>123</sup> *Id.*, para. 77.

<sup>124</sup> See e.g., David P. Fidler, *Neither Science Nor Shamans: Globalization of Markets and Health in the Developing World*, 7 IND. J. GLOBAL LEGAL STUD. 191, 200-1 (1999) (criticizing the *Thai Cigarette* panel’s interpretation of “necessary to protect human health”).

<sup>125</sup> See generally SUNGJOON CHO, *FREE MARKETS AND SOCIAL REGULATION: A REFORM AGENDA OF THE GLOBAL TRADING SYSTEM* (2003). See also Veijo Heiskanen, *The Regulatory Philosophy of International Trade*, 38 J. WORLD TRADE 1 (2004).

## *An Identity Crisis of International Organizations*

should be normatively incorporated into the WTO system.<sup>126</sup> Under this position, (rich) WTO members may restrict imports from other (poor) members if the latter's social conditions or practices violate these social standards. Despite their ostensible moralistic streaks, these debates on hard linkage are in fact testimonial to the WTO's identity crisis. The WTO is continuously receiving demands for these regulatory roles and is thus exposed to different role identifications (with labor or environmental organizations) beyond its base trade organization identity. Perhaps the WTO might be a victim of its own success. The unprecedented success of the GATT/WTO, in particular its dispute settlement mechanism, tends to make many social issues gravitate towards this trade organization.<sup>127</sup> This gravitational force presses the WTO to agonize over diverse role expectations.<sup>128</sup>

Critically, however, such hard linkage risks undermining the WTO's core values, i.e., free trade.<sup>129</sup> In other words, the WTO risks suffering from a form of "identity diffusion." If the WTO authorizes members to freely restrict imports from other members which allegedly violate those social standards, the WTO's old identity as a trade organization would be severely undermined since it would fail to uphold trade values. At the same time, however, the WTO would not be identified as a different regulatory (labor or environmental) organization since the WTO's contribution via hard linkage to those social causes would nonetheless be questionable for the following reasons.

In general, social standards are lower for developing countries than developed countries simply because the former countries are poorer than the latter.<sup>130</sup> Without addressing this inherent

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<sup>126</sup> See e.g., Virginia A. Leary, *Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, U.S. Laws)*, in *Fair Trade and Harmonization* (vol. 2) 177, 223 (Jagdish Bhagwati & Robert E. Hudec eds. 1996); Dani Rodrik, *Developing Countries after the Uruguay Round*, CENTER FOR ECONOMIC POLICY RESEARCH WORKING PAPER NO. 1084 (1994) (proposing a "social safeguards" clause based on core labor rights in the WTO).

<sup>127</sup> See Steve Charnovitz, *Triangulating the World Trade Organization*, 96 AM J INTL L 28, 29 (2002); Sylvia Ostry, *The WTO and International Governance*, in *THE WORLD TRADE ORGANIZATION MILLENNIUM ROUND: FREER TRADE IN THE TWENTY-FIRST CENTURY* 285, 290, 293 (Klaus Günter Deutsch and Bernhard Speyer, eds. 2001); José E. Alvarez, *How Not To Link: Institutional Conundrums of an Expanded Trade Regime*, 7 WIDENER L SYMP J 1, 15 (2001).

<sup>128</sup> Tomer Broude analyzed this problem in the area of trade and development. See Tomer Broude, *The Rule(s) of Trade and Rhetos of Development: Reflections on the Functional and Aspirational Legitimacy of the WTO*, 45 COLUM. J. TRANS. L. 221 (2006).

<sup>129</sup> See Kym Anderson, *Environmental and Labor Standards: What Role for the WTO?*, in *THE WTO AS AN INTERNATIONAL ORGANIZATION* 243-45 (Anne O. Krueger ed. 1998).

<sup>130</sup> *Id.*, at 244.

developmental disparity, merely exerting sanctions on poor countries would never achieve a satisfactory level of protection for putative societal concerns. On the contrary, such ventures (hard linkage) will only encroach on poor countries' comparative advantages, such as cheap labor, and thus generate serious tensions between rich and poor countries without affecting the root cause of the problem.<sup>131</sup> Rich countries may even be tempted to use these regulatory concerns as convenient excuses for raising trade barriers, as seen in green or blue protectionism.<sup>132</sup> Then, the WTO will perform neither a trade nor a non-trade function, and its identity would therefore be lost. This would be tantamount to identity diffusion for the WTO.

This risk of identity diffusion might also be found in yet another linkage of "trade and development." During its first decade, the WTO has failed to narrow the income gap between the rich and the poor. The least-developed countries' marginalization from the mainstream global trading system and the subsequent abject poverty in these countries seriously questioned the rationale of the WTO.<sup>133</sup> This development deficiency<sup>134</sup> drove the WTO towards yet another identification as it launched the Doha Development Agenda (DDA) in 2001. Yet, as Tomer Broude observed, the rhetoric of a "development" round might not fully match the technology (capacity) of the WTO.<sup>135</sup> Nonetheless, if the WTO attempts to achieve development goals by affording developing countries rule exemptions in the name of "special and differential treatment," it might be counterproductive because it would eventually hurt development by "discouraging effective efforts to integrate into the world economy."<sup>136</sup>

In confronting the risk of identity diffusion, some might argue that the WTO should never be involved in these non-trade regulatory issues, and instead focus on traditional narrow trade issues.<sup>137</sup> Yet, this impulsive reaction tends to usher in yet another risk of failed identity

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<sup>131</sup> *Id.*

<sup>132</sup> See Reginald Dale, *No 'Blue-Green' Protectionism, Please*, INT'L HERALD TRIBUNE, Mar. 29, 1994. Cf. Gregory Shaffer, *WTO Blue-Green Blues: The Impact of U.S. Domestic Politics on Trade-Labor, Trade-Environment Linkages for the WTO's Future*, 24 FORDHAM INTL L J 608, 647-48 (2000) (critically observing that in the absence of financial assistance to poor countries any radical linkage of labor or environment to trade would be futile).

<sup>133</sup> See generally, Sungjoon Cho, *The WTO's Gemeinschaft*, 56 ALA. L. REV. 483 (2004).

<sup>134</sup> Celso L. N. Amorim, *The WTO from the Perspective of a Developing Country*, 24 FORDHAM INT'L L.J. 95, 96-99 (2000) (discussing "development deficit" under the WTO in the areas of agriculture and textiles).

<sup>135</sup> Broude, *supra* note \_\_, at \_\_.

<sup>136</sup> J. Michael Finger & L. Alan Winters, *What Can the WTO Do for Developing Countries?*, in THE WTO AS AN INTERNATIONAL ORGANIZATION 365, 390 (Anne O. Krueger ed. 1998).

<sup>137</sup> Anderson, *supra* note \_\_, at 245.

formation, i.e., “foreclosure.” In other words, the WTO may be preoccupied by its own “ritualized behavior,” i.e., its pro-trade bias, which is totally unresponsive and unaccountable to the larger social environment.<sup>138</sup> Such “insulation” from its environment and refusal to process the meaningful information provided by its environment tend to undermine its legitimacy, and is thus detrimental to the organization’s survival.<sup>139</sup>

### *C. Toward the WTO’s Identity Achievement*

As is the case in a human individual, the WTO’s identity formation or identity achievement is inseparable from its recognition of its inevitable connectedness to its environment. The WTO is an open, not a self-contained, system.<sup>140</sup> The WTO interacts with, responds to, and is even influenced by its environment. Importantly, however, the WTO’s openness does not deprive itself of an “autopoietic” nature as an organization which preserves its “operative closure.”<sup>141</sup> The status quo of the WTO in terms of its capacity (technology) and resources, which are the very product of its hitherto institutional development, stipulates its central identity as a *trade* organization. As of now, the WTO cannot, and should not, become a *human rights* organization or an *environmental* organization. The WTO may accommodate these non-trade values in

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<sup>138</sup> Barnett & Finnemore, *supra* note \_\_, at 718. See Robert Howse, *From Politics to Technocracy-and Back Again: The Fate of the Multilateral Trading System*, 96 AM. J. INT’L L. 94 (2002) (criticizing the “insider network” under the GATT/WTO system); Joseph H. H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of Dispute Settlement*, in EFFICIENCY, EQUITY, AND LEGITIMACY: THE MULTILATERAL TRADING SYSTEM AT THE MILLENNIUM 334 (Roger B. Porter et al. eds., 2001) (critically observing that *internal* legitimation within the trade bureaucracy based on the diplomatic ethos tends to undermine the *external* legitimation of the multilateral trading system); Pascal Lamy, *The Place of the WTO and Its Law in the International Legal Order*, 17 EUR. J. INT’L L. 969, \_\_ (2006) (contending that “the effectiveness and legitimacy of the WTO depend on how it relates to norms of other legal systems and on the nature and quality of its relationships with other international organizations”).

<sup>139</sup> Barnett & Finnemore, *supra* note \_\_, at 722. Cf. Peter M. Gerhart, *The Two Constitutional Visions of the World Trade Organization*, 24 U. PA. J. INT’L ECON. L. 1, 3 (2003) (critically observing that the “inward-looking, economic” vision of the WTO could not gain broad support and thus should be replaced by the “external, participatory” vision aligned with pluralistic, democratic decision-making).

<sup>140</sup> See Pascal Lamy, *The Place of the WTO and Its Law in the International Legal Order*, 17 EUR. J. INT’L L. 969 (2006)(observing that “the WTO is well aware of the existence of other systems of norms and of the fact that it is not acting alone in the international sphere.”).

<sup>141</sup> Richard Nobles & David Schiff, *Introduction*, in NIKLAS LUHMANN, LAW AS A SOCIAL SYSTEM 8 (Fatima Kastner et al. eds 2004).

various ways by voluntarily adjusting its own internal legal and institutional choices in the course of its evolution.<sup>142</sup> Yet these non-trade values must not be “imposed” on the WTO externally as they force the WTO to accept norms and consequences which are inconsistent with its current identity.<sup>143</sup>

Therefore, a desirable form of identity formation for the WTO will be to attain an institutional equilibrium between trade and non-trade (social) regulatory values without losing its character as a *trade* organization. This equilibrium means reconciliation between trade and social values from the WTO’s perspective as a *trade* organization. This reconciliation should be based on the WTO’s institutional capacity, its core technology and its own path-dependency. In symbolic rhetoric, the agenda should be “trade and labor or environment” not “labor or environment and trade.” The WTO’s core technology, such as its software (jurisprudence) and hardware (committees), is capable of performing such reconciliation.

First of all, via its constructive (teleological) interpretation, the WTO tribunal can harmonize trade and social values without losing the WTO’s main character. In paradigmatic cases such as *Gasoline* (1996)<sup>144</sup> and *Shrimp-Turtle* (1998),<sup>145</sup> the WTO tribunal bestowed on domestic regulators broad discretion in establishing the *content* of domestic regulations, while it focused only on the *manner* in which they were applied.<sup>146</sup> Under this case law, WTO members can freely pursue their non-trade (social) policy objectives as long as they adhere to certain basic (procedural) disciplines, such as good faith and due process. This hermeneutics is teleological in the sense that it was driven by the WTO’s new *telos*, “sustainable development,” which is nothing but the WTO’s new commitment to a more balanced organizational identity than the old GATT.

Therefore, these rulings represent a mature departure from the GATT’s narrow identification with a pro-trade bias, which, if left unchecked, would have led to “foreclosure” as a failure of identity

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<sup>142</sup> *Id.*

<sup>143</sup> See generally Sungjoon Cho, *WTO’s Identity Crisis*, GLOBAL LAW BOOKS, <http://www.globallawbooks.org/reviews/detail.asp?id=53> (Jan. 31, 2006), reprinted in 5 *WORLD TRADE REV.* 298 (2006).

<sup>144</sup> WTO, Report of the Appellate Body, United States--Standards for Reformulated and Conventional Gasoline, WTO Doc No WT/DS2/AB/R (Apr 29, 1996) [hereinafter *Gasoline*].

<sup>145</sup> WTO, Report of the Appellate Body, United States--Import Prohibition of Certain Shrimp and Shrimp Products, WTO Doc No WT/DS58/AB/R (Oct 12, 1998) [hereinafter *Shrimp-Turtle*].

<sup>146</sup> *Id.*, paras. 146-86 (regarding the so-called “chapeau test”). See SUNGJOON CHO, *FREE MARKETS AND SOCIAL REGULATION: A REFORM AGENDA OF THE GLOBAL TRADING SYSTEM* 45-62 (2003).

formation. In these cases, the WTO no longer dismissed social (human health) values in a blind pursuit of trade values as it did in *Thai Cigarette*. In *Shrimp-Turtle*, the WTO tribunal referred to non-trade (environmental) conventions, such as the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in a serious effort to locate a common ground between the WTO and those environmental treaties.<sup>147</sup>

Another way of embracing social values within the WTO without diffusing its identity is to pursue quasi-harmonization through international regulatory standards. Any hard regulatory bargaining within the WTO that aims for a single undertaking would be infeasible simply due to the WTO's lack of core technology in these regulatory areas as well as the politically combustible nature of those target regulations.<sup>148</sup> A more realistic way is to utilize the WTO's pre-existing hardware, such as the Trade and Environment Committee and the SPS Committee, is to encourage WTO members to tap relevant international regulatory standards.<sup>149</sup> These committees, if well operated, can contribute greatly to regulatory dialogue among WTO members and effectively address the subtle interface between trade and regulatory issues. At the same time, in these committee activities the WTO can co-opt relevant international regulatory organizations, such as the International Organization for Standardization ("ISO"), the International Electrotechnical Commission ("IEC"), and the "Codex Alimentarius Commission."

Finally, such reconciliation may also be manifested as "coherence" in policy-making between the WTO and other relevant IOs. For example, the World Bank can help the WTO finance "technical assistance" projects, such as the training of government officials, to build the regulatory capacity of developing countries.<sup>150</sup> The WTO and other IOs can also perform a joint study that identifies areas of common concerns and interests. The recent WTO-ILO joint study, "Trade and Employment: Challenges for Policy Research," offers a good example in this regard.<sup>151</sup> By identifying common interests and concerns of both organizations as well as defining a relationship between trade and employment, this type of joint study provides a fertile ground for policy

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<sup>147</sup> *Shrimp-Turtle*, *supra* note \_\_, paras. 130, 132.

<sup>148</sup> *But see* Andrew T. Guzman, *Global Governance and the WTO*, 45 HARV. INT'L L J 303, 307-08 (2004) (arguing for a grand regulatory bargaining within the WTO).

<sup>149</sup> *See* Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 6 CHI. J. INT'L L. 625 (2005).

<sup>150</sup> *See* Gary P. Sampson, *Greater Coherence in Global Economic Policymaking: A WTO Perspective*, in *THE WTO AS AN INTERNATIONAL ORGANIZATION* 257, 265 (Anne O. Krueger ed. 1998).

<sup>151</sup> WTO & ILO, *TRADE AND EMPLOYMENT: CHALLENGES FOR POLICY RESEARCH* (2007).

coherence between trade and non-trade values. Under this nuanced approach, the WTO can maintain fidelity to its identity as a *trade* organization while still responding to its increasingly demanding environment.

## **V. Conclusion**

This Essay argues that an IO, like a human being, is prone to the process of identity formation in establishing its autonomy from its members (states). As it undergoes various institutional changes, its old identification with an original goal may encounter a new identification with another purpose, and thus it may experience confusion as to its true identity (identity crisis). An IO can achieve a coherent institutional self by striking a balance between these multiple identifications under the constraints which various parameters, such as its environment and technology, impose. Yet an IO may also fail to achieve its identity by insulating itself from its environment (foreclosure) or being adrift in the middle of these multiple identifications without making any commitment to a final identity (identity diffusion).

This identity theory of IOs may find in the WTO its empirical confirmation. As an organic institution which incessantly interacts with its environment, the WTO has evolved from the early GATT which was defined largely by a pro-trade character to the WTO whose identity formation has been influenced by a strong external demand for a new identification with non-trade (societal) values, such as protection of the environment and human health. The WTO's identity formation is to strike an institutional equilibrium between traditional trade values and these non-trade values.

Admittedly, this Essay offers little explanation on a microscopic, internal dynamics as to how social actors (states) of an IO affect or contribute to its identity formation process. This question should be answered by future research which will re-discover conventional IR theories in an attempt to build a more comprehensive, and universal, theory of IOs' institutional changes.

## **Annex**

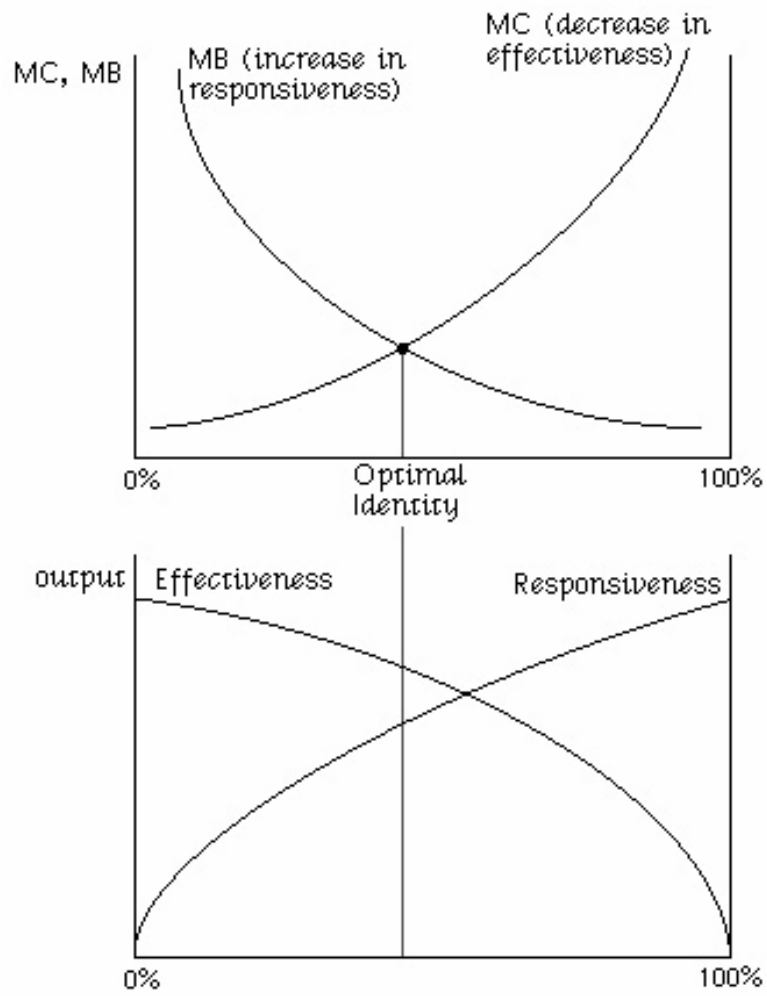
The identity achievement as an institutional equilibrium is determined by a confluence of two forces, i.e., the extent to which trade values are realized as a trade organization (“effectiveness”) and the extent to which certain non-trade values are pursued to respond to external demands (“responsiveness”). Given a limited amount of institutional resources, an optimal level of identity is a function of the marginal benefit (MB) of responsiveness and marginal cost (MC) of effectiveness. (Figure 4) Other things being equal, if the WTO’s general level of responsiveness increases, e.g., if the WTO devotes more time and energy to enhance non-trade values, the WTO’s trade-oriented output tends to decrease, and thus the WTO becomes less effective as a trade organization, even if its identity may be formed at an increased degree of linkage. (Figure 5)<sup>152</sup> This decreased level of effectiveness may be translated as the price the WTO pays to be more responsive.

Therefore, WTO members should beef up the WTO’s institutional capacity with additional resources, such as money and personnel, in order to increase both levels of responsiveness and effectiveness without necessarily compromising each other. (Figure 6) This conclusion may apply both to non-trade, societal concerns, such as labor and environment, and to new areas added in the Uruguay Round, such as the intellectual property rights (TRIPS). In other words, with more investment in these areas within the WTO, it may maintain a decent output level as a trade organization, while it can contribute to the better protection of labor, environment, and intellectual property rights.

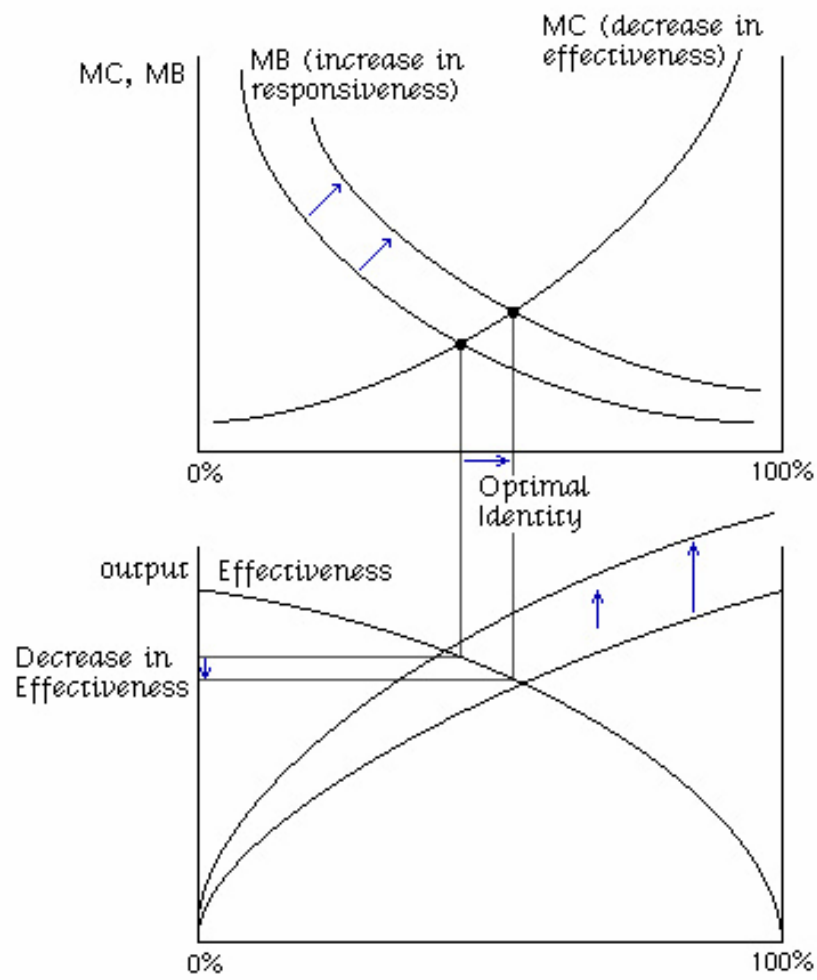
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<sup>152</sup> Cf. Manfred Elsig, *The World Trade Organization’s Legitimacy Crisis: What Does the Beast Look Like?*, 41 J. WORLD TRADE 75, 79-80 (2007)(warning that the WTO’s institutional redesign to meet concerns of legitimate governance could lead to hampered output efficiency).

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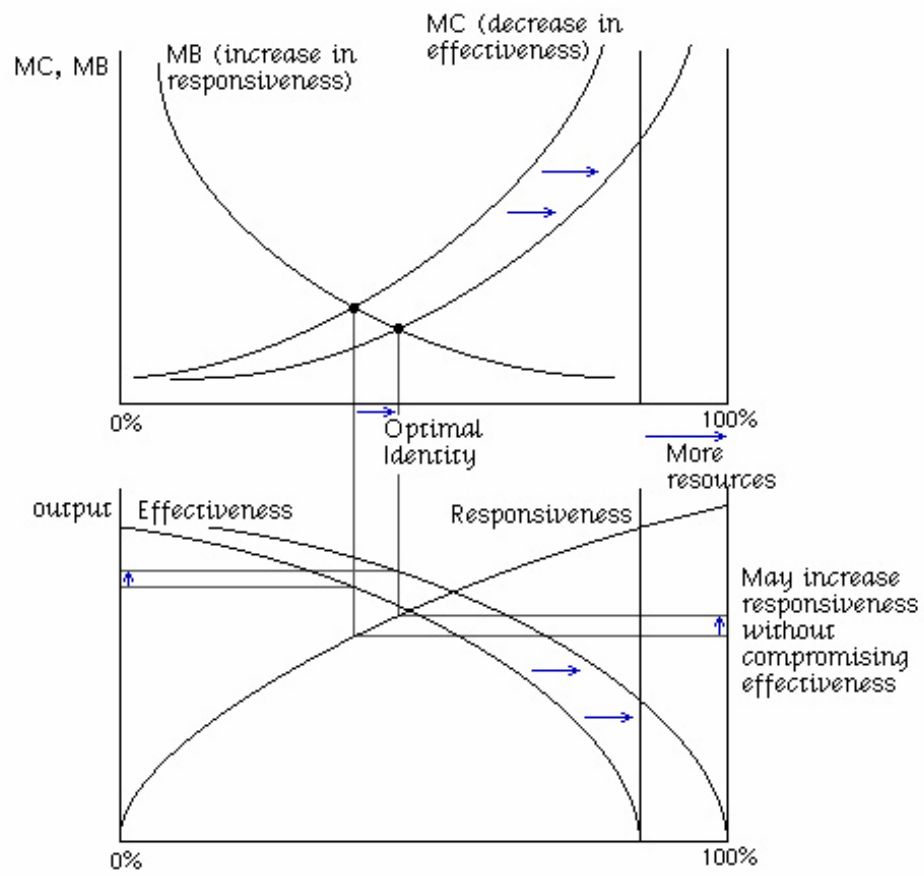


[Figure 4]



[Figure 5]

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[Figure 6]