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An International Organization's Identity Crisis

*By Sungjoon Cho**

Abstract: The ontological status of international organizations remains largely nebulous despite their contemporary prominence. Traditional international relations theories regard international organizations (IOs) as instruments primarily created to serve powerful states' interests (neorealism) or to facilitate interstate cooperation on certain regulatory areas (neoliberal institutionalism). These theories hardly offer a satisfactory explanation of a distinctive mode of IOs' identity forming process, in which a particular IO, as a separate and autonomous organic entity, grows, evolves and eventually makes sense of its own existence. This Article offers a novel perspective that attempts to overcome the aforementioned theoretical deficiency. Drawing on the identity theory in psychology, this new perspective captures an IO's internal normative development in which one can witness a dynamic process of identity formation. The Article argues that based on its autonomy sine qua non organization, and not merely as an instrument of states, an IO forms its unique legal identity as it experiences a normative crisis in a similar way that a human individual would. An IO discovers its genuine identity only after it achieves a necessary level of institutional maturity as a result of incessant legal interactions and communications with its environment. The Article tests this new framework by applying it to the World Trade Organization.

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I. INTRODUCTION: A PARADIGM SHIFT IN AN
INTERNATIONAL ORGANIZATION

International organizations (IOs) are ubiquitous. More than two hundred IOs¹ touch our everyday lives. Their missions vary. The United Nations (UN) plays a significant role in securing global peace and order as

¹ See, e.g., UNION OF INT'L ASS'NS, YEARBOOK OF INTERNATIONAL ORGANIZATIONS, App. 3: Table 1 (2005/2006), available at <http://www.uia.org/statistics/organizations/types-2004.pdf>. When I use "international organizations" in this article, I mean "intergovernmental organizations."

it addresses international conflicts and fights terrorism.² The World Bank is the world's largest external funder of education.³ Other IOs also impact numerous diurnal issues, such as air travel (International Civil Aviation Organization),⁴ banking (Bank for International Settlements),⁵ mail (Universal Postal Union),⁶ flu shots (World Health Organization),⁷ and mobile phones (International Telecommunication Union),⁸ to name a few.⁹ IOs now pertain to nearly every aspect of practical human enterprise.¹⁰

Notwithstanding their contemporary prominence, IOs' real nature remains contentious. What *is* an IO? Is it simply an instrument of powerful states? If so, would it be worthwhile to study an IO on its own terms? How on do we perceive and investigate an IO?

Conventional international relations (IR) theories, such as neorealism¹¹ or neoliberal institutionalism,¹² often collectively labeled "rationalism,"¹³ consider IOs passive machines.¹⁴ According to these

² See, e.g., S.C. Res. 1822, U.N. Doc S/RES/1822 (June 20, 2008), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1822 (resolving to freeze financial assets used for terrorist activities).

³ *Ten Things That You Never Knew About the World Bank*, WORLD BANK, <http://digitalmedia.worldbank.org/tenthings/> (last visited Aug. 26, 2014).

⁴ INT'L CIVIL AVIATION ORG., <http://www.icao.int/> (last visited Aug. 26, 2014).

⁵ BANK FOR INT'L SETTLEMENTS, <http://www.bis.org/> (last visited Aug. 26, 2014); see also *Global Partnership for Education and the World Bank*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0,,contentMDK:20278663~menuPK:617564~pagePK:148956~piPK:216618~theSitePK:282386,00.html> (last visited Aug. 26, 2014).

⁶ UNIVERSAL POSTAL UNION, <http://www.upu.int/> (last visited Aug. 26, 2014).

⁷ WORLD HEALTH ORG., <http://www.who.int/en/> (last visited Aug. 26, 2014).

⁸ INT'L TELECOMMUNICATION UNION, <http://www.itu.int/en/pages/default.aspx> (last visited Aug. 26, 2014).

⁹ See generally AM. SOC'Y OF INT'L LAW, INTERNATIONAL LAW: 100 WAYS IT SHAPES OUR LIVES (2006), available at http://www.asil.org/sites/default/files/100%20Ways%20Booklet_2011.pdf.

¹⁰ See FREDERIC L. KIRGIS, JR., INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING (2d ed. 1993).

¹¹ My use of "realism" in this Article means "structural realism" or "neorealism," which employs a Hobbesian view of an anarchic state system and a submissive role of international law which structural realists or neorealists contend is a mere "epiphenomenon of underlying power" or a "coincidence of state interests or coercion by powerful states." See Richard H. Steinberg & Jonathan M. Zasloff, *Power and International Law*, 100 AM. J. INT'L L. 64, 73-76 (2006); KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 105 (2010); Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in INTERNATIONAL REGIMES 185 (Stephen D. Krasner ed., 1983); JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 36-37, 118, 225 (2005). It might be fair to say that most contemporary realists, both legal scholars and political scientists, are "structural realists" or "neorealists" in essence because, despite their nuanced acknowledgement of institutional influence of international law and international organizations, they still refuse to endorse a genuine "endogenous" impact of international law to state behaviors. See Robert Knowles, *American Hegemony and the Foreign Affairs Constitution*, 41 ARIZ. ST. L.J. 87, 112 (2009) (equating "structural realism" to "neorealism" as a "recent incarnation" of the classical realism).

¹² In this Article, I use "neoliberalism" and "neoliberal institutionalism" interchangeably.

¹³ According to Robert Keohane, the common thesis of rationalism is substantive rationality represented by such factors as power, interest, and efficiency. Robert O. Keohane, *International Institutions: Two Approaches*, 32 INT'L STUD. Q. 379, 386-87 (1988).

¹⁴ See Bertjan Verbeek, *International Organizations: The Ugly Duckling of International Relations*

theories, IOs are built to serve powerful states' interests (neorealism) or meet certain functional needs among like-minded states (neoliberal institutionalism). Under this rationalist position, while an IO may help preserve the extant power equilibrium (neorealism) or reduce transaction costs (neoliberal institutionalism), it seldom has a life of its own.¹⁵ Unsurprisingly, conventional IR theories tend to limit their analytical focus to IOs' creation and the interstate dynamics that lead up to their creation. Thus, IOs' institutional development is an underexplored issue in a rationalist world.¹⁶ To rationalists, an IO is a "great yawn."¹⁷

Nonetheless, rationalism could not capture a complete picture of an IO, particularly an IO's operation. If seen as a mere tool for states, one might not be able to explain how an IO evolves on its own terms as an autonomous entity as it incessantly interacts with its surroundings.¹⁸ An IO also *emerges* on its own terms,¹⁹ rather than being simply created by states. Considering an IO's various autonomous roles, such as an arbiter and a manager of enforcement,²⁰ this theoretical deficit is problematic: it fails to render an adequate explanation on the IO's institutional life cycle.

This Article proposes a novel perspective to plug the theoretical gap

Theory?, in AUTONOMOUS POLICY MAKING BY INTERNATIONAL ORGANIZATIONS 11 (Bob Reinalda & Bertjan Verbeek eds., 1998) (critically observing that IR scholars treat IOs as a "residual" subject which is "only marginally important" to the explanation of international affairs). Regarding some notable exceptions, see JAMES G. MARCH, DECISIONS AND ORGANIZATIONS (1991) (addressing an internal organizational culture and its decision-making process); Kenneth W. Abbott & Duncan Snidal, *Why States Act through Formal International Organizations*, 42 J. CONFLICT RES. 3 (1998) (focusing on "centralization" and "independence" of a formal international organization). Abbott and Snidal observed that "states have taken IOs more seriously than have scholars." *Id.* at 29.

¹⁵ See Gayl D. Ness & Steven R. Brechin, *Bridging the Gap: International Organizations as Organizations*, 42 INT'L ORG. 245, 246 (1988); see also Harold K. Jacobson et al., *National Entanglements and International Government Organizations*, 80 AM. POL. SCI. REV. 141 (1986).

¹⁶ See Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649, 655 (2006); see also Michael Tierney & Catherine Weaver, *Principles and Principals? The Possibilities for Theoretical Synthesis and Scientific Progress in the Study of International Organizations* (Mar. 2005) (unpublished conference paper for the International Studies Association meeting in Honolulu, Hawaii) (on file with author) (observing that statist theories, such as realism, cannot fully capture IOs as "actors in their own right, making decisions and exercising power and influence within their normative and material environments"); see also ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* 315 (1999) (observing that realism would "not preclude changes of identity and interest, as long as this occurs in the first 'step,' before or outside the interaction being analyzed") (emphasis added).

¹⁷ MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATION IN GLOBAL POLITICS* vii–viii (2004) (quoting Susan Strange, *Why Do IOs Never Die?*, in AUTONOMOUS POLICY MAKING BY INTERNATIONAL ORGANIZATIONS 213–20 (B. Reinalda & B. Verbeek eds., 1998)).

¹⁸ Michael Barnett & Liv Coleman, *Designing Police: Interpol and the Study of Change in International Organizations*, 49 INT'L STUD. Q. 593, 593 (2005) (critically observing that IR scholars have seldom focused on the "fundamental issue of organizational change").

¹⁹ Keohane, *supra* note 13, at 389.

²⁰ Abbott & Snidal, *supra* note 14, at 22, 26.

precipitated by a rationalist understanding of IOs. Blending a new trend of IR theories (constructivism)²¹ with the identity theory in developmental psychology, the Article probes an IO's internal development in which one can witness a dynamic legal process of identity formation. This interdisciplinary approach proffers a theoretical framework that demonstrates how an IO, as a socio-legal actor, develops, transforms, and becomes more sophisticated.

The Article argues that based on its autonomy²² as an independent organization—and not merely as an instrument of states—an IO forms its organizational identity as it experiences an identity crisis similar to the way in which a person does. Initially, states create IOs to serve a specific function. Thus, IOs may have default purposes that their creators (states) have programmed into them. However, an IO's retention of this programmed purpose results from a mere identification with its creators, not from the genuine identity that the IO has formed at subsequent stages during the course of its legal-institutional evolution. An IO acquires its organizational identity only after it achieves a necessary level of institutional maturity through legal interactions and communications with its environment.

This process is certainly no less daunting to an IO than to a person because an IO also suffers strains and pressures from its role expectation in the international society. Just as an adolescent experiences an identity crisis in interactions with peers and with society in general, an IO is exposed to a similar ordeal in adjusting its normative goals to various external pressures. In particular, IOs often undergo a testing situation where their old structures grow increasingly incapable of coping with new demands from their altered environment. Confronted with this crisis, IOs may attempt to reconfigure their legal-institutional setting by fine-tuning their original teleology to a call from their new environment. Only then will the IOs' organizational existence remain relevant, therefore, creating a socio-legal reality²³ by forming a genuine identity.

Against this backdrop, the Article attempts to theorize IOs' legal-institutional development as independent organizations from the standpoint of identity formation, and tests this proposed theory by applying it to the WTO. Part II of this Article discusses a theoretical foundation for the

²¹ See discussion *infra* Part II.B.

²² An IO's autonomy may be weak or strong. A "weak autonomy" is a *de jure* autonomy existing only in the book rendered by an IO's legal personality. Yet a "strong autonomy" is a *de facto* autonomy substantiated by such criteria as the size of membership, the size of bureaucracy, the frequency and density of operation (activities), and the organizational output (norms and other behavioral guidelines). In those institutions having a strong autonomy the process of identity-formation is an observable phenomenon enabled by a sufficient period of organizational duration and a rich amount of institutional experiences.

²³ See MICHAEL BARNETT & MARTHA FINNEMORE, RULES FOR THE WORLD: INTERNATIONAL ORGANIZATION IN GLOBAL POLITICS 6–7 (2004).

analysis (i.e., the autonomy of an IO). One cannot construct an IO's identity without first identifying its autonomy vis-à-vis its member states. Specifically, Part II contrasts social theories, which recognize an IO's autonomy, with traditional IR theories, which regard an IO as an instrument of states. Part II also highlights identity formation as a norm-based process engineered by rules and legal discourse.

Part III constructs a theory regarding IOs' identity formation. Part III first raises a case of anthropomorphism. In probing an IO's identity formation, one may apply an analogy of a person to an IO—both entities are social actors that interact with their environment for survival.²⁴ Anthropomorphism lays a foundation for an interdisciplinary methodology informed by social science. After sketching Erik Erikson's celebrated identity theory,²⁵ Part III applies this theory to IOs, in addition to outlining various parameters of identity formation—history, environment, goals, and technology.

Part IV tests the theory of an IO's identity formation by applying it to the General Agreement on Tariffs and Trade (GATT) and its successor, the WTO. Part IV demonstrates how the WTO experienced an identity crisis as the original pro-trade bias embedded in its old self (GATT) embraced new challenges involving nontrade values, such as protection of the environment and human health. Part IV also proposes an optimal path for the WTO's development, which embodies an institutional balance between traditional trade values and these nontrade values.

Finally, a disclaimer is in order. This Article does not intend to debunk traditional IR theories generally. Granted, their parsimony may explain state behaviors with regards to an IO more clearly than what is proposed in the Article. In particular, to the extent that states constitute a critical environment to an IO, powerful members' interests may still constrain the scope of an IO's autonomy.²⁶ Rather, this Article aims to fill in some of the blind spots of traditional IR theories, such as social theories on IOs. It purports to provide an overview on IOs' endogenous-normative dynamics and serve as a preliminary yet useful avenue for further discussions in this nascent field.

II. ARE INTERNATIONAL ORGANIZATIONS AUTONOMOUS?

Are IOs Autonomous? This part attempts to answer this question by first analyzing the functional view that denies IOs' autonomy. It then turns to blind spots that the functional view leaves behind, such as the

²⁴ See, e.g., Barnett & Coleman, *supra* note 18, at 594 (regarding IOs as actors which adopt various strategies to cope with environmental pressures and arguing that these strategies lead to “change in their tasks, design, and mandate”) (emphasis added).

²⁵ See *infra* Part III.A.

²⁶ Abbott & Snidal, *supra* note 14, at 8, 19.

incapability of adequately explaining IOs' institutional evolution. Finally, this part embraces the IOs' autonomy by probing organizational norms and identity.

A. Functionalism and Its Discontents

Conventional IR theories tend to regard an IO as a machinery of interstate cooperation. These theories posit that sovereign states create and operate IOs to achieve a better world system by enmeshing them in mutually beneficial transactions.²⁷ This rationalistic approach highlights an IO's functional merits, which include reducing uncertainty and transaction costs in the absence of any specific institutional context.²⁸ This is an economistic approach that assumes that states prioritize their interests to maximize efficiency and therefore use IOs as rational instruments to achieve such goals.²⁹

This inorganic view of IOs may be a logical conclusion with regards to traditional IR theories, including neorealism, which are theories about states.³⁰ These theories aim to analyze and understand why and how states interact and cooperate among themselves, which is evident in their appellation, *international* relations. This state centered view rejects an IO's ontological autonomy³¹ as a self-governing, purposive actor. Under this framework, even if an IO may facilitate or constrain certain state behaviors by creating and controlling the flow of information between states, that causality still does not give the IO autonomy.³² For example, to neorealists, any meaningful contributions by IOs are made through and by states. In sum, IOs exert no independent impact on state behavior.³³

Absent autonomy, the actual operation or evolution of an IO in its post-creation stages remains underexplored.³⁴ Neorealists may infer certain hypotheses about changes in an IO since its creation.³⁵ But those hypotheses are unsatisfactory because an institutional change, itself, tends

²⁷ Ness & Brechin, *supra* note 15, at 246; Jacobson et al., *supra* note 15, at 142.

²⁸ Keohane, *supra* note 13, at 390.

²⁹ Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699, 702 (1999); see also THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 3-4 (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 61 (S. Lindenberg & H. Shreuder eds., 1993).

³⁰ Barnett & Finnemore, *supra* note 29, at 706.

³¹ See *id.* at 704.

³² *Id.*

³³ See John J. Mearsheimer, *The False Promise of International Institutions*, 19 INT'L SEC. 5 (1995).

³⁴ Helfer, *supra* note 16, at 658.

³⁵ *Id.*

to be at odds with neorealism. Change is either bracketed³⁶ or thrust upon an IO by its state creators by changes in the state's national interests or preferences.³⁷ Therefore, change is a *recreation* of an IO by states due to asymmetrical external shocks, such as disasters,³⁸ rather than an evolutionary or adaptive process resulting from continuous, incremental institutional development. In sum, any institutional changes within an IO are reduced back to international cooperation among states.³⁹

Moreover, because neorealists regard an IO as a mere tool, they often fail to heed the unique attributes and contexts deeply associated with a particular organization. Therefore, neorealists tend to even treat effective IOs in the same way as ineffective ones,⁴⁰ seldom taking into account IOs' variances in performance and legitimacy.

Notably, some adaptations of neorealism, such as the regime theory,⁴¹ recognize the possibility of IOs' direct impact on states' behaviors.⁴² Regimes can be broadly defined as issue specific arrangements that facilitate states' cooperation by coordinating their behaviors and stabilizing their expectations.⁴³ Regime theory focuses on institutions' functional aspects where states routinely cooperate over specific issues to reduce uncertainty and transaction costs, provide information, and stabilize expectations, even in the absence of centralized authority.⁴⁴

Nonetheless, even this adapted position cannot fully escape from the core realist tenet. A regime may facilitate interstate cooperation only to the extent that such cooperation serves powerful states.⁴⁵ But regime theorists still refuse to recognize IOs' endogenous impact on states' behavior.⁴⁶

³⁶ See *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).

³⁷ Helfer, *supra* note 16, at 661.

³⁸ *Id.* at 662.

³⁹ Keohane, *supra* note 13, at 379.

⁴⁰ Ness & Brechin, *supra* note 15, at 247–48 (“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.”).

⁴¹ In the 1970s, an intellectual thirst for a systematic explanation of “international governance” amid an “anomaly” of developments, such as the relative decline of U.S. hegemony and the rise of OPEC, gravitated many scholars toward the “international regime” theory. Friedrich Kratochwil & John Gerard Ruggie, *International Organization: A State of the Art on an Art of the State*, 40 INT’L ORG. 753, 759–60 (1986).

⁴² Steinberg & Zasloff, *supra* note 11, at 75.

⁴³ Kratochwil & Ruggie, *supra* note 41, at 759–60.

⁴⁴ Keohane, *supra* note 13, at 386.

⁴⁵ See Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 INT’L ORG. 339 (2002); Richard H. Steinberg, *Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints*, 98 AM. J. INT’L L. 247 (2004).

⁴⁶ Regime theorists still regard regimes as “outcomes,” failing to ask such questions as “to what extent has the existence of regimes significantly affected the behavior of actors?” Verbeek, *supra* note 14, at 13. In some occasions, states accord an IO a false autonomy simply to deflect any direct criticism

According to them, even the strongest cooperation facilitated by a regime could not make it an independent organization.⁴⁷ Thus, it is no wonder that, to regime theorists, a regime is quite fragile; it exists against the backdrop of anarchy, which constrains interstate cooperation and is hard to achieve even when states share common interests.⁴⁸ As a corollary, regime theory fails to address two important organizational issues. First, it cannot fully explain an organic interaction between IOs and their environment. Second, regime theory cannot evaluate whether each regime is as legitimate or effective as an independent organization since all of the regime's performance is attributable logically to states.

Neoliberal institutionalists appear to offer a more advanced explanation of IOs' autonomy than earlier institutionalists, such as regime theorists. Neoliberal institutionalists acknowledge that IOs may be an independent variable since they can condition and regulate states' behavior.⁴⁹ Nonetheless, even under neoliberalism, an IO's role in international politics does not go deep enough to constitute states' interests and identities.⁵⁰ Thus, even neoliberal institutionalists might be tempted to circumvent global norms once they conclude that those norms are inconsistent with their liberal agenda. To that extent, neoliberal institutionalists also regard regimes, and by extension IOs, as tools for states to advance domestic values and preferences.⁵¹ According to neoliberal institutionalism, states would cease to support an IO if it does not meet their demands.⁵²

Furthermore, neoliberal institutionalism still encounters certain difficulties in developing a genuine macro theory on IOs that fully explains and predicts an IO's evolution on its own terms, not due to member states' interests or preferences.⁵³ To neoliberal institutionalists, an IO's disciplinary (supranational) authority may be delegated from the member states

toward them in pursuing certain goals. Yet this is a variation of the instrumental view, not a genuine organizational autonomy that this Article addresses. See Abbott & Snidal, *supra* note 14, at 18–19 (describing this variation of instrumentalism as “laundering”).

⁴⁷ In this context, the regime literatures did not surpass those of general international relations even in its heyday (1980s). See Kratochwil & Ruggie, *supra* note 41, at 761.

⁴⁸ See Joseph M. Grieco, *Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism*, 42 INT'L ORG. 485, 485 (1988); Claire R. Kelly, *Realist Theory and Real Constraints*, 44 VA. J. INT'L L. 545, 554–55 (2004).

⁴⁹ Robert O. Keohane & Lisa L. Martin, *The Promise of Institutional Theory*, 20 INT'L SEC. 39, 46 (1995).

⁵⁰ Jeffrey T. Checkel, *The Constructivist Turn in International Relations Theory*, 50 WORLD POL. 324, 327–28 (1998).

⁵¹ Christian Reus-Smit, *The Constitutional Structure of International Society and the Nature of Fundamental Institutions*, 51 INT'L ORG. 555, 555 (1997).

⁵² Barnett & Coleman, *supra* note , at 594.

⁵³ Institutionalists observe that “international institutions are created in response to state interests, and that their character is structured by the prevailing distribution of capabilities.” See Keohane & Martin, *supra* note 49, at 47.

themselves⁵⁴ rather than emerging from within over time.

In sum, the rationalist primacy attributed to states and the consequent, instrumental role of IOs does not embrace IOs' autonomy even with theoretical finessing.

B. Embracing the Organizational Autonomy

The Westphalian tradition of public international law, built on the notion of state sovereignty, might not fully embrace the constructivist logic of an IO's ontological independence because it would undermine states' monopoly of power. Under the traditional view, the only restriction on a state's sovereign power was self-restriction.⁵⁵ In other words, treaties created by sovereign states' consent could only regulate the concerned states because the sovereign states had given their word, not because those treaties constituted an autonomous organization of elevated hierarchy. However, the traditional notion of sovereignty was vulnerable to the Hobbesian struggle, eventually leading to two world wars. Thus, it was no coincidence that the postwar reconstruction of international order was conducted through independent IOs that would govern states' behaviors. Interestingly, postwar IOs play unique regulatory roles in certain sector specific areas, such as collective security—the United Nations (UN)—and international financial regulation—the International Monetary Fund (IMF).

The postwar prominence of IOs engendered new international law that put the IOs' legal personality and organizational autonomy under the spotlight.⁵⁶ First, Charters of IOs declared their legal personalities. Article 104 of the UN provides 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 fulfilment [sic] of its purposes.”⁵⁷ 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.”⁵⁸

Likewise, the International Court of Justice (ICJ), in its *Reparation* case, ruled that an IO is a “subject of international law and capable of

⁵⁴ ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 144–45 (2005).

⁵⁵ The classical concept of sovereignty of nation states, which was deeply territorial, emerged in Europe at the end of the Thirty Years' War in 1648 (the Peace of Westphalia). It meant an absolute control of a national state within its own border. According to this historical concept, a sovereign state answers to no higher authority, including an IO. See Leo Gross, *The Peace of Westphalia, 1648–1948*, 42 AM. J. INT'L L. 20 (1948).

⁵⁶ Before the Second World War, the notion of international personalities was debatable. See Giuseppe Marchegiano, *The Juristic Character of the International Commission of Cape Spartel Lighthouse*, 25 AM. J. INT'L L. 339, 339 (1931).

⁵⁷ U.N. Charter art. 104, available at <http://www.un.org/en/documents/charter/index.shtml>.

⁵⁸ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.

possessing international rights and duties.”⁵⁹ Based on this legal capability, an IO holds the capacity to sue a state, regardless of the state’s membership to the organization, for damage caused by a violation by the state of its obligation toward the organization.⁶⁰ It is based on this line that the International Law Commission (ILC) is working to create a draft article governing IOs’ legal responsibility to seek damages from the offending state or other IOs.⁶¹

Furthermore, modern international law also recognizes the IOs’ professional identity, accentuating their distinctive functional mandate and competence. For example, the ICJ rejected the World Health Organization’s (WHO) request to deliver an advisory opinion addressing whether states’ use of nuclear weapons violates international law because this issue did not fall within the rubric of the WHO’s activities.⁶² This decision acknowledges that each IOs’ distinguishable mission warrants organizational autonomy.

Nonetheless, the existence of an IO’s legal personality should not necessarily be equated with the IO’s independent status separate from its creator-states.⁶³ Legal capacity may not be a sufficient condition for genuine autonomy. Varying institutional arrangements of IOs determine different patterns of governance and degrees of autonomy. Although the UN has its own legal personality, the UN is incapable of making any autonomous decisions over critical subjects, such as security, against the will of powerful members with veto powers. Furthermore, even if an IO enjoys a certain level of autonomy, sovereign states, which transfer part of their autonomy to the IO, may want to retract such a transfer.⁶⁴

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

⁵⁹ *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 179 (Apr. 11, 1949).

⁶⁰ *Id.* at 179–80.

⁶¹ *Analytical Guide: Responsibility of International Organizations*, INT’L LAW COMM’N, http://legal.un.org/ilc/guide/9_11.htm (last updated July 10, 2014); *Draft Articles on the Responsibility of International Organizations*, INT’L LAW COMM’N, http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf (last visited Aug. 26, 2014).

⁶² *Legality of the Threat and Use of Nuclear Weapons in Armed Conflict*, Advisory Opinion, 1996 I.C.J. 226 (July 8).

⁶³ David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT’L L. 275, 277 (1996).

⁶⁴ ANNA MELJKNECHT, *TOWARDS INTERNATIONAL PERSONALITY: THE POSITION OF MINORITIES AND INDIGENOUS* 38 (2001).

and the budget. For example, an IO may demand that its members pay dues.⁶⁵

Importantly, an IO's legal personhood enables us to employ legal rhetoric with which we investigate and study an IO's operation.⁶⁶ Those legal narratives offer unique perspectives in understanding an IO's autonomy in terms of establishing consistent precedent and providing reasoned arguments conditioned on rules and principles, rather than particular states' interest.⁶⁷ As discussed above, however, this normative dynamic has blind spots under conventional IR theories.

Here, "constructivism" provides a social framework of organization building because it highlights how the shared norms emerge in an IO, become internalized, and eventually transform the behaviors of state actors.⁶⁸ While rationalism views that only exogenous (material) factors, such as power and interest, determine state behaviors, constructivism highlights that endogenous (ideational) factors, such as culture and values, can also guide such behaviors.⁶⁹ This endogenous social dynamic glues member states together with or without material incentives. Under constructivism, an IO's ontological autonomy results from its social norms composed of shared culture, knowledge, and discourse. First, social norms provide member states with a medium through which to communicate among, and thus understand, one another, much like a shared language.⁷⁰ Second, as these norm-governed interactions proliferate the original terms of individual identities gradually transform into a collective identity based on the "we" notion.⁷¹

These legal discourses inform, *inter alia*, two paramount issues which concern IOs' autonomy: (1) what IOs produce, and (2) how they develop. First, some legal scholars have highlighted noticeable norm-generating ("jurisgenerative")⁷² phenomena in certain areas within sector specific

⁶⁵ See, e.g., UN Charter art. 19 ("A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.").

⁶⁶ KIRGIS, *supra* note 10, at vii–viii.

⁶⁷ *Id.* at viii.

⁶⁸ Verbeek, *supra* note 14, at 13.

⁶⁹ WENDT, *supra* note 16, at 215.

⁷⁰ See Kenneth Abbott, *Economic Issues and Political Participation: The Evolving Boundaries of International Federalism*, 18 CARDOZO L. REV. 971, 974 (1996); Andrew T. F. Lang, *Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of the International Trade Regime*, 9 J. INT'L ECON. L. 81, 84–85, 95, 105–06 (2006) (employing a "constructivist" perspective on the WTO system). Regarding the communicative action in a society in general, see JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 11 (William Rehg trans., MIT Press 1998).

⁷¹ Alexander Wendt, *Collective Identity Formation and the International State*, 88 AM. POL. SCI. REV. 384, 388–91 (1994) [hereinafter *International State*].

⁷² Robert M. Cover, *Nomos and Narrative*, in *NARRATIVE, VIOLENCE, AND THE LAW: THE*

regulatory IOs. These scholars focus on vibrant government regulatory networks harbored by IOs in which epistemic socialization among like-minded government officials and other professionals crystallize into tangible normative products, such as guidelines and recommendations.⁷³ Markedly, legally defined mandates and membership flowing from, and anchored by, an IO's 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, whose common set of belief transcends national boundaries.⁷⁴ An IO's legal personality tends to promote this *mentalités collectives* by providing professional forums that enjoy a certain level of detachment from a culture of direct delegation.⁷⁵

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”).⁷⁶ 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.”⁷⁷ Despite its nonbinding nature, firms in each jurisdiction

ARTICLES OF ROBERT COVER 110 (Martha Minow et al. eds., 1992).

⁷³ See 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); SLAUGHTER, *supra* note 54; Sungjoon Cho, *Transgovernmentalism: A New Jurisgenerative Mechanism* (forthcoming) (on file with author). This idea of transgovernmental government networks dates back to the 1970s. 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 more or less give it 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, *DEVSING INTERNATIONAL BANK SUPERVISORY STANDARDS* 176–77, 261–62 (1995).

⁷⁴ John E. Shockey, *Bank Regulatory Examination and Enforcement After Barings and Daiwa*, 935 *PLI/CORP.* 681, 708 (1996).

⁷⁵ John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, 47 *INT’L ORG.* 139, 157 (1993).

⁷⁶ *General Information on IOSCO*, INT’L ORG. OF SEC. COMM’NS (IOSCO), <http://www.iosco.org/about/> (last visited Aug. 26, 2014).

⁷⁷ IOSCO, *RISK MANAGEMENT AND CONTROL GUIDANCE FOR SECURITIES FIRMS AND THEIR SUPERVISORS: A REPORT BY THE TECHNICAL COMMITTEE OF THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS 1* (May 1998), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD78.pdf>.

expect to implement these regulatory prototypes.⁷⁸ This normative authority, as it is repeated and reinforced, equips these IOs with an aura of professional legitimacy, which in turn leads to a level of self-governance.

Second, an IO's legal personality is also inductive of a dynamic understanding of its authentic institutional self. Since the juridical personhood warrants a certain level of permanence in its institutional existence, in particular vis-à-vis agreements (treaties), one can engage in a serious exploration of an IO's unique pathway from creation through 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).

Finally, an IO's autonomy should not translate into its disconnection from the environment. The natural or open system perspective views IOs as social groups desiring to survive by adapting to their particular environment.⁷⁹ Therefore, organizations are even capable of modifying their original goals to survive in the changing environment. Philip Selznick's celebrated institutional approach perfects this theory of organizational autonomy from the standpoint of this natural or open system.⁸⁰ According to Selznick, institutionalization enables social integration within an organization by converting randomly scattered technical activities into regularized and meaningful patterns.⁸¹ Crucially, this institutionalization presupposes an open system that is distinguishable from a closed system, such as a cybernetic machine, which passively channels states' inputs. By actively interacting with the environment, an organization obtains both special capacity and character,⁸² while also establishing its value.⁸³

C. Summary

To sum up the argument presented above, conventional IR theories, often dubbed as rationalism, treat IOs as mere instruments to aid states achieve various functional needs. An instrument does not have its own autonomy—a logical conclusion from intrinsic theoretical assumptions of

⁷⁸ *Id.*

⁷⁹ See RICHARD W. SCOTT, ORGANIZATIONS: RATIONAL, NATURAL, AND OPEN SYSTEMS 57 (3d ed. 1992); Alvin W. Gouldner, *Organizational Analysis*, in SOCIOLOGY TODAY 404–05 (1959).

⁸⁰ See generally PHILIP SELZNICK, LEADERSHIP IN ADMINISTRATION 17 (1957).

⁸¹ LEONARD BROOM & PHILIP SELZNICK, SOCIOLOGY 238 (1955).

⁸² Philip Selznick, *Institutionalism "Old" and "New,"* 41 ADMIN. SCI. Q. 270 (1996).

⁸³ SELZNICK, *supra* note 80, at 17.

rationalism. Under rationalism, material incentives are sole determinants for state behaviors while states' interests are prefixed.

However, the social approach proposed in this Article focuses on the rich socio-legal dynamic within an IO. Legal discourses among states within an IO, if regularized and institutionalized, transform states' perception of interest and identity. The emergence of an IO's autonomy parallels a gradual shift from the original individual identities of states to an IO's collective identity. The next part explores the formation of this collective identity.

III. THEORIZING AN IDENTITY FORMATION OF INTERNATIONAL ORGANIZATIONS

Having demonstrated that instrumentalism is misguided and should be replaced by autonomism, this part attempts to theorize the dynamic process of an IO's identity formation by drawing on human psychology. This theoretical borrowing or analogy may be controversial. Nonetheless, a common operational structure exists between an IO and a human being, particularly the way that each entity responds to and interacts with its environment for survival and development. This common structure eventually warrants the interdisciplinary approach. The identity theory in developmental psychology can be a useful theoretical avenue to illustrate an IO's dynamic transformation in its life cycle, which remains largely unexplained by the traditional IR theories.

A. The Identity Theory: Borrowing Insights from Psychology

A person's identity impacts every aspect of her life, such as habit formation and interaction with others.⁸⁴ A preeminent developmental psychologist, Erik Erikson, suggested that a human being develops her identity by combining her understanding of the environment (group identity) and her own personal characters (personal identity).⁸⁵ Erikson's approach is often dubbed psychosocial; he posited that the individual and society are closely interrelated in their dynamic changes.⁸⁶ His theory generally interlocks societal demands with individual development forces

⁸⁴ See Amélie O. Rorty & David Wong, *Aspects of Identity and Agency*, in *IDENTITY, CHARACTER, AND MORALITY: ARTICLES IN MORAL PSYCHOLOGY* 19 (1990).

⁸⁵ See ERIK H. ERIKSON, *IDENTITY, YOUTH AND CRISIS* (1968) [hereinafter *CRISIS*]; see also Willem L. Wardekker, *Identity, Plurality, and Education*, in *THE YEARBOOK OF PHILOSOPHY OF EDUCATION* (1995).

⁸⁶ *CRISIS*, *supra* note 85, 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 (2d ed. 2007).

in discussing identity and its formation.⁸⁷

In particular, Erikson's theory of identity formation focuses on 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. Erikson posited an epigenic development model of identity formation in which every individual human being traverses through various stages in a life cycle, with each stage having its own set of circumstances of particular sensitivity, identity crisis, and potential.⁸⁸ The individual becomes a different person in each stage with different cognitive capacities and increasingly develops an ability to interact with a wider range of people.

1. Identity Formation: An Early Stage

Infants identify themselves entirely with their parents.⁸⁹ 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.⁹⁰ Erikson characterized adolescence as a transition period from childhood into adulthood where an adolescent is engaged in the process of defining his own existence.⁹¹ In adolescence, the former function of identification and attachment to values and roles, based on those of individuals one admires, is replaced by identity formation.⁹²

The adolescent declares a moratorium on adulthood while experimenting with different roles.⁹³ Erikson wrote that, during this stage, adolescents focus on defining themselves in terms of what they believe, what their goals are, and where they fit in society.⁹⁴ Adolescence, as the last stage of childhood, ends only when an individual replaces her childhood identifications with a new type of identification resulting from

⁸⁷ See KROGER, *supra* note 86, at 25.

⁸⁸ See CRISIS, *supra* note 85, at 91–141 (describing the different stages of the human life cycle).

⁸⁹ *Id.* at 115.

⁹⁰ *Id.* at 122.

⁹¹ *Id.* at 156–65.

⁹² *Id.* at 22–23 (“Identity formation employs a process of simultaneous reflection and observation, a process taking place on all levels of mental functioning, by which the individual judges himself in the light of what he perceived to be the way in which others judge him in comparison to themselves and to a typology significant to them; while he judges their way of judging him in the light of how he perceived himself in comparison to them and to types that have become relevant to him.”).

⁹³ See *id.* at 128 (explaining the developmental challenges of adolescents as they develop a sense of identity).

⁹⁴ ERIK H. ERIKSON, CHILDHOOD AND SOCIETY 261–63 (1950).

socialization and competition among its peers, which reveals the individual's own integrated values and preferences.⁹⁵ An individual will be formed only after the careful denial and assimilation of childhood identifications are attuned to a new configuration recognized by society.

2. *Identity Formation: An Identity Crisis*

The final identity, although it includes all significant identifications with key figures of the past, processes them in a way that builds a distinctive yet sensibly coherent whole.⁹⁶ During the final stage of identity formation, adolescents tend to suffer greatly from role confusion.⁹⁷ Past multiple identifications, and the roles that they prescribe, often conflict with one other. This disturbance is tantamount to a crisis or "a war within themselves."⁹⁸

Adolescents acquire a sense of direction only after weathering this *Strum und Drang*.⁹⁹ Then, they finally discover their suitability in society.¹⁰⁰ In this sense, the identity crisis is more of a rite of passage, rather than a calamity.¹⁰¹ Erikson argued that the successful resolution of the identity crisis had a long lasting impact on the future stability and security of the individual and their ability to uphold commitments, deal with future hardships, and sustain relationships.¹⁰²

3. *The Failure of Identity Formation*

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 tension in their engagement with others, which leads to a state of disorientation.¹⁰³ 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 do not experience an identity crisis.¹⁰⁴ They may also act baby-like ("diffusion of time perspective"), become unable to work or

⁹⁵ *Id.* at 155.

⁹⁶ *Id.* at 161.

⁹⁷ *Id.* at 163–64.

⁹⁸ CRISIS, *supra* note 85, at 17.

⁹⁹ *Id.* at 165.

¹⁰⁰ *Id.* at 161.

¹⁰¹ *Id.* at 16.

¹⁰² *Id.* at 165.

¹⁰³ *Id.* at 212.

¹⁰⁴ See James E. Marcia, *Development and Validation of Ego Identity Statuses*, 3 J. PERSONALITY & SOC. PSY. 551–58 (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).

concentrate (“diffusion of industry”), or choose to be antisocial and hostile (“negative identity”).¹⁰⁵

Other problematic identity statuses include “foreclosure” and “moratorium.” Foreclosure refers to a state in which adolescents have already made commitments to a certain identity without seriously exploring various identities available. Moratorium means that adolescents merely engage in such exploration without making any commitments.¹⁰⁶ In both situations, adolescents fail to form a genuine identity by the lack of either the search itself or accompanied commitments.

B. Is an International Organization a Person?

1. *A Case for Anthropomorphism*

Applying a psychological theory, such as Erikson’s identity theory, to an IO’s operation necessitates a certain degree of anthropomorphism, which has its limits. Simply, one might not equate an IO’s identity with that of a person. After all, an IO’s identity may not be as coherent as that of a person since biology tends to accord her a more unitary identity than that of a corporate agency such as an IO.¹⁰⁷ It is also conceivable that a tension exists within an IO’s identity, more precisely between an IO’s collective identity and some states’ individual identities.¹⁰⁸ Under certain circumstances, the short term interest of some powerful member states may undermine the unitary nature of the IO’s holistic institutional structure represented by the collective identity.

Nonetheless, it is still true that both a person’s behavior and an IO’s operation can be observed as an outcome of each entity’s own intentionality. An IO’s action is no more reducible to its individual member states than a human action is reducible to chemical reactions in the brain.¹⁰⁹ In so far as both a person’s behavior and an IO’s action can be observed as real on its own terms, one can explain and predict such behavior and action.¹¹⁰ To this extent, one could draw on psychology, such as Erikson’s identity theory, to better understand the identity dynamics of an IO, bearing in mind the aforementioned caveat on anthropomorphism.

Again, sociologist narratives tend to make unique contributions in accommodating anthropomorphism to understand IOs’ operational autonomy in their organizational lifetimes (i.e., how they evolve and what they generate), which eventually supply the foundation for the formation of

¹⁰⁵ ERIKSON, *supra* note 94, at 167–73.

¹⁰⁶ *Id.*

¹⁰⁷ WENDT, *supra* note 16, at 221.

¹⁰⁸ *Id.* at 337.

¹⁰⁹ *Id.* at 221.

¹¹⁰ *Id.* at 223.

their identities. One way of advancing an IO's identity formation is to project this dynamic process into a well-established paradigm of human developmental psychology. Carefully reflecting on an IO's operational nature tends to warrant this anthropomorphism.

As a juridical person, an IO is an autonomous, organic entity that owes its existence to its own incessant adaptations to its ever-changing environment, much like a human being. 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 that can self-sustain by adjusting to the environment.¹¹¹ The environment provides an organization with necessary material resources, such as hardware (physical infrastructure), software (technology), and "humanware" (staff), as well as symbolic resources, such as reputation.¹¹² This shift in the analytical focus from a closed to open system highlights the critical significance that the environment exerts on organizational identity,¹¹³ 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.¹¹⁴

2. A Corporate Identity as a Supporting Analogy

In fact, some organization theorists have already devoted their attention to certain self-conceptions collectively held by members of an organization such as a corporation. This "corporate identity" can be defined as a consistent and durable set of values that each organization uniquely holds.¹¹⁵ The corporate identity offers yet more support for using an identity theory analogy in studying the dynamic transformation of IOs.¹¹⁶

Indeed, many scholars of business administration have focused on a corporate identity, drawing on lessons from psychology. Their common observation is that a corporation, like a human being, develops its identity through an unremitting process of interaction with its environment for its own survival.¹¹⁷ At the same time, a corporation's identity formation process is also normative in that human beings and corporations pursue

¹¹¹ See SCOTT, *supra* note 79, at 89; WALTER BUCKLEY, *SOCIOLOGY AND MODERN SYSTEMS THEORY* 50 (1967).

¹¹² See Barnett & Coleman, *supra* note 18, at 597, 599.

¹¹³ See Ness & Brechin, *supra* note 15, at 249.

¹¹⁴ See SCOTT, *supra* note 79, at 60.

¹¹⁵ See Stuart Albert & David A. Whetten, *Organizational Identity*, in 6 *RESEARCH IN ORGANIZATIONAL BEHAVIOR* 265 (L. L. Cummings & B. M. Staw eds., 1985).

¹¹⁶ See Dennis Bromley, *Relationships Between Personal and Corporate Reputation*, 35 *EUR. J. OF MARKETING* 316, 318 (2001) (observing the tendency to "personify" an organization).

¹¹⁷ See Peter Gorb, *The Psychology of Corporate Identity*, 10 *EUR. MGMT. J.* 310, 312 (1992).

individual and corporate ideals, respectively, as they decide how they should respond to challenges from their environment.¹¹⁸

Shortly after its creation, a corporation tends to be highly utilitarian and is identified with its leader's ideology.¹¹⁹ A corporation, like a human being, desires to preserve its self-esteem and avoids any psychological pain and discomfort by mobilizing various defense mechanisms.¹²⁰ However, to survive the challenging environment through capacity building, a "learning" corporation embraces evolving identities through critical self-reflection and discourse about future identities.¹²¹ Since an identity is of an enduring and conservative nature, its development process may be unstable, as in the case of an adolescent.¹²²

A corporation adjusts its original identity to the need of its environment as it internally reflects on its external perception (images) received from the environment, including the media, regulators, competitors, and customers.¹²³ As a corporation responds to external challenges, its members form an internal normative belief through socialization which defies the original identity identified with its founder's ideology.¹²⁴

C. Toward a Theory of an International Organization's Identity

Against the background discussed above, the first point of analogy from Erikson's identity theory to an IO's identity theory is an actor's transformative interaction with its environment. Similar to adolescents' identity formation process, both corporations and IOs also experience certain socialization pressures from their environment. As a result, these organizations are often forced to diversify their institutional selves into multiple roles that should eventually be integrated into an internally coherent identity.¹²⁵ Naturally, identity formation is not a smooth process for either a human being or an organization. It may be accompanied by confusion, fatigue, and stress. In short, it is a crisis.

¹¹⁸ See Bromley, *supra* note 116, at 330.

¹¹⁹ See Henry Mintzberg, *Power and Organizational Life Cycles*, 9 ACAD. OF MGMT. REV. 207, 210 (1984).

¹²⁰ See Andrew D. Brown & Ken Starkey, *Organizational Identity and Learning: A Psychodynamic Perspective*, 25 ACAD. OF MGMT. REV. 102, 104 (2000).

¹²¹ See *id.* at 108. Brown and Starkey call a learning organization a "wise" organization. *Id.* at 113.

¹²² See Dennis A. Gioia et al., *Organizational Identity, Image, and Adaptive Instability*, 25 ACAD. OF MGMT. REV. 63, 65 (2000).

¹²³ See *id.* at 65, 70.

¹²⁴ See Mintzberg, *supra* note 119, at 210, 211.

¹²⁵ See Susan Harter, *Self and Identity Development*, in *AT THE THRESHOLD: THE DEVELOPING ADOLESCENT* 358 (S. Shirley Feldman & Glen R. Elliott eds., 1990).

1. Identity Formation: An Early Stage

Under Erikson's identity theory, children identify themselves with their parents, and to be more precise, with their parents' culture and value system. This domestic dimension of historical legacy is thrust upon children as the first factor that provides a foundation for their identity formation. In case of a corporation, its founders often leave enduring impacts, both positive and negative, on its subsequent development of corporate identity.¹²⁶

Likewise, the founding history of an IO renders an initial influence on their identities. As an internalized past, this history tends to determine, or at least correlate with, present and future behaviors of IOs by frontloading founding states' rationale and character. Like DNA in the human body, the organizational history bestows upon IOs a certain institutional heredity, thereby marking a unique path dependence for each organization. The organizational history is often used as an interpretive criterion for determining whether organizations' or their participants' behavior is permitted or prohibited under their charters or constitutions.¹²⁷

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 costly. In this sense, all institutional changes tend to be path dependent. More often than not, sunk costs make old patterns survive a long time before new ones prove the former obsolete.¹²⁸ Old habits die hard and relics of the former structure or culture remain even though they might be cocooned beneath a new institutional coating.

2. Identity Formation: An Identity Crisis

As is the case in human identity formation, the environment is a critical parameter to the formation of an organizational identity. An organizational identity is shaped by an IO's conscious interactions with the environment and guided by an organization's role expectation, as well as the expectations that the organization perceives from its environment (society). Organizational sociologists have long adhered to an open system where varying environments exert critical impact on how organizations

¹²⁶ See Henry Mintzberg, *Power and Organizational Life Cycles*, 9 ACAD. OF MGMT. REV. 207, 209–10 (1984).

¹²⁷ See, e.g., Vienna Convention on the Law of Treaties pmbl., art. 32, May 23, 1969, 1155 U.N.T.S. 331, 332 (“Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the *circumstances* of its conclusion . . .”) (emphasis added).

¹²⁸ See ARTHUR L. STINCHCOMBE, CONSTRUCTING SOCIAL THEORIES 120–21 (1968).

behave and perform.¹²⁹ This unremitting process of challenge and response between an IO and the environment can be viewed as an IO's identity crisis. An IO processes complex information provided by the environment and forms its identity in accordance with the messages contained in those challenges.¹³⁰ In this sense, an IO's identity crisis emerges amid an assiduous dialogue with the environment.¹³¹

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 teleological¹³² and constitutive since these changes define and redefine its organizational goals, and thus regulate the behavior of members and the organization itself.¹³³ This teleological and constitutive process is best captured by norms and legal discourse within an IO. Legal principles and legal arguments mediate intersubjective discourse and interaction among members, as well as between members and the IO itself.¹³⁴

Organizational goals are a leitmotif of an IO's norm driven identity crisis. They are the rationale of its existence. Initially, they are given by an IO's creators (states) and often engraved in its charter. Organizational goals provide essential interpretive guidance when IOs' determine whether a certain action is acceptable.¹³⁵ In this regard, as Selznick noted, an organizational goal can be an "ideological weapon" with which to defy opposition and mobilize support from the environment.¹³⁶

Yet as an IO achieves its identity through dynamic (historical) development, it also alters, or at least fine tunes, the original objective and purpose, as adolescents depart from the earlier deep identifications with their parents. In other words, organizational goals must be adjustable for

¹²⁹ See HOWARD ALDRICH, ORGANIZATIONS AND ENVIRONMENTS 254 (1979); see also Matthias Finger & Bérangère Ruchat, *The Transformation of International Public Organizations: The Case of UNCTAD 3* (IDHEAP, Working Paper No. 14, 2000) (discussing "organizational transformation" which an IO experiences in order to "bring organizational structure, culture, and purpose in line with perceived environmental requirements").

¹³⁰ See Yash P. Gupta & David C.W. Chin, *Organizational Life Cycle: A Review and Proposed Directions for Research*, 30 MID-ATLANTIC J. BUS. 15 (1994).

¹³¹ Cf. Joel P. Trachtman, *The Constitutions of the WTO*, 17 EUR. J. INT'L L. 623, 625 (2006) (stating that "due to its dependence on and interaction with the broader international legal system, it is not possible to analyze the WTO constitution fully without analyzing the broader structure").

¹³² See Ness & Brechin, *supra* note 15, at 246.

¹³³ See Keohane, *supra* note 13, at 382 (observing that "institutions do not merely reflect the preferences and power of the units constituting them; the institutions themselves shape those preferences and that power" and that "institutions are therefore *constitutive* of actors as well as vice versa") (emphasis added).

¹³⁴ See generally Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 INT'L ORG. 391 (1992).

¹³⁵ See Vienna Convention on the Law of Treaties, *supra* note 127, art. 31.

¹³⁶ PHILIP SELZNICK, *TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION* (1949); SCOTT, *supra* note 79, at 292.

organizations to survive.¹³⁷ 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.¹³⁸ 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 that now addresses comprehensive sociocultural issues, such as women’s rights, the environment, education, and health.¹³⁹

If organizational goals are a subjective dimension of recurring theme in an IO’s identity crisis, its technology is an objective one. An IO’s technology refers to its functional capability to perform in order to achieve its goals.¹⁴⁰ It delineates its domain, and eventually its identity, by determining what kinds of products or services it may provide for whom.¹⁴¹ For example, 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.

Yet as an open system, an organization can also import technology from its environment.¹⁴² Experiencing the identity crisis as it interacts with the environment, an organization can change the core technology by modifying its software (skills and other social knowledge), “humanware” (personnel and bureaucrats), and hardware (infrastructure and sub-organizations).¹⁴³ Organizational theories characterize this transformative

¹³⁷ See Ness & Brechin, *supra* note 15, at 264; Gouldner, *supra* note 79, at 404–05.

¹³⁸ See, e.g., Jessica Einhorn, *The World Bank’s Mission Creep*, 80 FOREIGN AFF. (Sept./Oct. 2001) (arguing that World Bank member countries should control the currently unwieldy status of mission creep by devolving some of the World Bank’s derivative missions to other institutions and focus more on its original, basic mission); Sarah Babb & Ariel Buira, *Mission Creep, Mission Push and Discretion in Sociological Perspective: The Case of IMF Conditionality* (2004) (discussing the IMF’s expanded mandate over the years).

¹³⁹ See 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); Georg Ress, *The Interpretation of the Charter, THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 28 (Bruno Simma et al. eds., 1994) (discussing “evolutionary dynamic interpretation”).

¹⁴⁰ See SCOTT, *supra* note 79.

¹⁴¹ See *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 15, at 256.

¹⁴² See SCOTT, *supra* note 79, at 23.

¹⁴³ See Ness & Brechin, *supra* note 15, at 256.

process of acquiring and embracing new technologies as “organizational learning.”¹⁴⁴ Organizational learning is a purposeful behavior to increase IOs’ problem solving (functional) capacities in order to achieve certain institutional goals and therefore plays a critical role in shaping organizational identities.

3. *The Failure of Identity Formation*

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 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.”¹⁴⁵

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, like foreclosure, is a pathological symptom. It gravely reduces the output level of an IO. IOs may even cease to exist due to these pathologies.¹⁴⁶

D. Summary

This part first introduces Erik Erikson’s identity theory that explains a human being’s identity formation from a psycho-social perspective. To the extent that an organic entity, be it a corporation or an IO, develops as it continuously interacts with its environment, we could draw on Erikson’s identity theory. This part draws on the recent literature on the corporate identity to demonstrate that scholars of business administration have already employed such a psychological approach in the studies of a corporation’s life cycle.

Against this backdrop, the part theorizes an IO’s identity formation. At an early stage, an IO, as does an infant, identifies its goal with its founders (states). Subsequently, however, an IO faces a moment of crisis as its original goal proves to be inadequate given new challenges from the environment. In response, norm oriented, teleological discourses within an IO adjust or modify its original goal in a way that addresses those

¹⁴⁴ See Bernd Siebenhüner, *International Organisations as Learning Agents in the Emerging System of Global Governance. A Conceptual Framework*, at 16–17 (Global Governance Project, Working Paper No. 8, 2003), available at <http://www.glogov.org/images/doc/WP8.pdf>.

¹⁴⁵ Barnett & Finnemore, *supra* note 29, at 722–24 (discussing “insulation” as one of IOs’ pathologies).

¹⁴⁶ 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”).

environmental challenges. Through this turbulent process (identity crisis) emerges an IO's collective identity, which is distinguishable from its members' individual identities.

The next part applies this IO identity formation theory to the WTO to better understand its historical development as an organization.

IV. A CASE STUDY: THE WORLD TRADE ORGANIZATION

The previous part presents a theory of identity formation of an IO drawing from Erik Erikson's identity theory. This part applies it to the World Trade Organization (WTO). In its inception, the GATT, the WTO's predecessor, was created to fight against protectionism that had wreaked havoc on the world economy in the interwar period. It had started as a contract among a handful of states, with a strong leadership from the United States. Its framers had wanted the GATT to remain basically as a vehicle to coordinate tariff reduction negotiations and monitor protectionist policies. Thus, in early days the GATT could be identified with this rather functional arrangement under which state-oriented diplomacy prevailed over legal discourse. Trade liberalization characterized its identity.

However, the GATT's original pro-trade bias began to encounter enormous pressure from its environment as concerns for social hygiene increased all across the world in the Eighties. Outside criticisms of the GATT's original goal, and its identity, prompted the GATT to embrace a more mature teleology that can reconcile trade and nontrade (regulatory) value. In other words, the GATT underwent an identity crisis as it was forced to rethink its original pro-trade goal and transform itself into a new organization with a more balanced, integrationist identity, i.e., the WTO.

This part envisions an optimal path for the WTO's development, which embodies a normatively ideal manifestation of the WTO's identity. It might be analogous to a psychologically sound state of identity formation in a human being. To the WTO, it represents an institutional balance between traditional trade values and these nontrade values.

A. Identity Formation: An Early Stage

As one of the many chapters of a much more ambitious yet eventually aborted project of the International Trade Organization (ITO), GATT was originally more of a contractual document than an organization. In fact, GATT participants were named *contracting* parties, not 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.¹⁴⁷ Drawing on this bitter historical lesson, contracting parties aimed to dismantle trade barriers, mostly tariffs, by holding regular trade talks in a series of negotiation rounds provided by GATT.

Therefore, GATT's early identity as a tariff reduction arrangement can be said to have been identified with its creators, as children often identify their life goals with those of their parents. On the other hand, GATT's early identification with a strong pro-trade bias was a logical conclusion from the relative lack of its organizational autonomy. After all, the GATT was an instrument (contract) created by a handful of states (contracting parties).

Notably, GATT's functional nature, in its early days, is evidenced by the relics of private contract law embedded in old GATT jurisprudence. Since trade negotiation was basically a reciprocal exercise, contracting parties had to preserve the hard won delicate balance of concessions that each negotiation had produced. They had to maintain the values of those concessions by prohibiting parties from introducing any measures that might neutralize them later. Such cheating had to be condemned, and remedies instituted to restore the balance of concessions. As a contractarian tool, GATT was identified with its creators' intention to preserve original terms of reciprocal bargains.

Given this history, GATT's earlier, remedial prototype was "nullification or impairment," which is close to the notion of injuries in contract law. Regardless of whether the measure in question is consistent with GATT norms, any injuries to a contracting party, namely the dilution of benefits of its concession should be remedied to preserve the balance of concessions made in the previous negotiation.¹⁴⁸ In practice, these injuries meant actual adverse commercial effects to the complainant exporting country, such as the loss of exports, which the defendant importing country's measure caused.¹⁴⁹

B. Identity Formation: An Identity Crisis

As the environment surrounding GATT began to change dramatically in the 1980s, the GATT's early identity of a pro-trade bias came under attack. The rising ethos of the welfare state urged governments to improve social

¹⁴⁷ 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 former U.S. Trade Representative Charlene Barshefsky on U.S. trade policy and the WTO on March 2, 2000).

¹⁴⁸ See Sungjoon Cho, *The Nature of Remedies in International Trade Law*, 65 U. PITT. L. REV. 763, 766–67 (2004) (discussing the GATT/WTO multilateral trading system's institutional evolution from a negotiated contract to a legalized regime).

¹⁴⁹ See, e.g., *Italian Discrimination against Imported Agricultural Machinery*, ¶ 17, 20 (Oct. 23, 1958), GATT B.I.S.D. (7th Supp.) at 60 (1959).

hygiene in the areas of environment and human health. The problem, however, was that the proliferation of these social regulations tended to potentially undermine the GATT's early goal of trade liberalization. Diverging domestic regulations in different countries became increasingly trade restrictive in times of growing interdependence.¹⁵⁰ Under certain circumstances, these new domestic regulations, such as nontariff barriers (NTBs), could be abused as a disguised form of protectionism.¹⁵¹

GATT first resisted the rising tide of reregulation by striking down these regulations as simply 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.¹⁵² For example, in 1990, a GATT panel struck down the Thai ban on foreign cigarettes as an unnecessary trade restriction.¹⁵³ In that 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 endorsed the ban. However, the panel ruled that the ban was an unjustifiable violation of the GATT rules because the Thai government could have found less trade-restrictive means than the ban, such as the "strict, nondiscriminatory labeling and ingredient disclosure

¹⁵⁰ A number of scholars have already paid attention to this phenomenon. For instance, Sol Picciotto observed that "[r]egulatory 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, Working Paper No. TISD-96-01, 1996), available at http://www.wto.org/english/res_e/reser_e/tisd9601_e.htm.

¹⁵¹ See Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 5 CHI. J. INT'L L. 625, 643-44 (2005).

¹⁵² 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 BARRIERS AND THE PRINCIPLE OF NON-DISCRIMINATION IN WORLD TRADE LAW 142 (Thomas Cottier & Petros C. Mavroidis eds., 2000).

¹⁵³ *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, WORLD TRADE ORG. (Oct. 5, 1990), available at http://www.wto.org/english/tratop_e/dispu_e/90cigart.pdf.

regulations.”¹⁵⁴ 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.¹⁵⁵

Therefore, while a pro-trade bias was faithful to GATT’s identification as a trade agreement, this bias continuously invited criticism from its environment, in particular civil society and environmental organizations. These conflicts between GATT’s adherence to the old pro-trade bias and pro-regulation pressure from the environment provided GATT with a perfect moment of identity crisis.

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, contained in the preamble of its charter, spotlights “sustainable development.” It has become obvious that due consideration and investment for nontrade values, such as the environment and human health, should be made within the WTO to achieve any development that is sustainable. One can understand the creation of the Trade and Environment Committee, as well as special side agreements like 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.¹⁵⁶

The aforementioned identity formation through the GATT era and the launch of the WTO corresponded with the establishment of the WTO’s organizational autonomy. Importantly, its autonomy was not simply thrust upon the WTO with its creation. The seed for autonomy had already been sown even under the GATT era in its institutional evolution. In its later days, 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. The GATT slowly evolved into “something greater than a contract” that its contracting parties would not easily terminate even if its obligations become too burdensome.¹⁵⁷

In the same vein, the once critical notion of nullification or impairment was weakened because it was assumed away whenever a panel found a

¹⁵⁴ *Id.* ¶ 77.

¹⁵⁵ 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, 200–01 (1999) (criticizing the *Thai Cigarette* panel’s interpretation of “necessary to protect human health”).

¹⁵⁶ 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).

¹⁵⁷ Debra P. Steger, *Afterword: The “Trade and . . .” Conundrum—A Commentary*, 96 *AM. J. INT’L L.* 135, 137 (2002).

violation.¹⁵⁸ In fact, any violation would *ipso facto* constitute a nullification or impairment.¹⁵⁹ This paradigm shift, from a power-oriented structure focusing on the outcome of negotiation to a rule-oriented structure valuing the legal system within GATT, paved the ground for a critical transformation from a mere contract to an independent organization.¹⁶⁰

C. The Failure of Identity Formation

As with human development, the WTO may also encounter a failed moment of identity formation, such as identity diffusion and foreclosure. In the former situation, the WTO's core identity, namely trade, is lost, while in the latter situation, the WTO becomes irrelevant and unsustainable due to its pro-trade bias.

Those who advocate a formal or hard linkage between trade and social values tend to argue that certain "social clauses," which include fundamental workers' rights or minimum international labor standards, should be normatively incorporated into the WTO system.¹⁶¹ Under this position, rich WTO members may restrict imports from other poorer 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 WTO, particularly in regards to its dispute settlement mechanism, tends to make many social issues gravitate towards this trade organization.¹⁶² This gravitational force presses the WTO

¹⁵⁸ *Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance*, L/4907 (Nov. 28, 1979), GATT B.I.S.D. (26th Supp.) at 210 (1980).

¹⁵⁹ See Panel Report, *United States-Taxes on Petroleum and Certain Imported Substances*, L/6175 (June 5, 1987) (adopted June 17, 1987), GATT B.I.S.D. (34th Supp.) at 136, §§ 5.1.3–5.1.12 (1988).

¹⁶⁰ See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM* 109–11 (2d ed. 1997); see also Anne O. Krueger, *Introduction*, in *THE WTO AS AN INTERNATIONAL ORGANIZATION* 2 (1998). But see Lisa L. Martin & Judith Goldstein, *Legalization, Trade Liberalization and Domestic Politics: A Cautionary Note*, 54 INT'L ORG. 603 (2000).

¹⁶¹ See, e.g., Virginia A. Leary, *Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, U.S. Laws)*, in 2 FAIR TRADE AND HARMONIZATION 177, 223 (Jagdish Bhagwati & Robert E. Hudec eds., 1996); Dani Rodrik, *Developing Countries After the Uruguay Round* (Ctr. for Econ. Pol'y Res., Working Paper No. 1084, 1994) (proposing a "social safeguards" clause based on core labor rights in the WTO).

¹⁶² See Steve Charnovitz, *Triangulating the World Trade Organization*, 96 AM. J. INT'L L. 28, 30 (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 & 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).

to agonize over diverse role expectations.¹⁶³

Critically, however, such hard linkage risks undermining one of the WTO's core values—free trade.¹⁶⁴ If the WTO authorizes members to freely restrict imports from other members that 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. As discussed above,¹⁶⁵ this symptom accounts for identity diffusion.

In general, social standards are lower for developing countries than developed countries because the former countries are poorer than the latter.¹⁶⁶ Without addressing this inherent developmental disparity, merely exerting sanctions on poor countries would never achieve a satisfactory level of protection for putative societal concerns. Contrarily, 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.¹⁶⁷ 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.¹⁶⁸ Then, the WTO will perform neither a trade nor a nontrade function, and its identity would therefore be lost.

This risk of identity diffusion might also be found in yet another linkage of “trade and development.” During its first decade, the WTO 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.¹⁶⁹ This development deficiency¹⁷⁰ drove the WTO toward yet another identification as it launched the Doha Development Agenda (DDA) in 2001. Yet the rhetoric of a development

¹⁶³ 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).

¹⁶⁴ 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).

¹⁶⁵ See *supra* Parts III.A.3, III.C.3.

¹⁶⁶ Anderson, *supra* note 164, at 244.

¹⁶⁷ *Id.*

¹⁶⁸ See Reginald Dale, *No 'Blue-Green' Protectionism, Please*, N.Y. TIMES, Mar. 29, 1994, http://www.nytimes.com/1994/03/29/business/worldbusiness/29iht-think_5.html; 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 INT'L 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).

¹⁶⁹ See generally Sungjoon Cho, *The WTO's Gemeinschaft*, 56 ALA. L. REV. 483 (2004).

¹⁷⁰ 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).

round might not fully match the technology or capacity of the WTO.¹⁷¹ 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 hindering developing countries’ effort to get access to the world market.¹⁷²

In confronting the risk of identity diffusion, some might argue that the WTO should never be involved in these nontrade regulatory issues, and should instead focus on traditionally narrow trade issues.¹⁷³ But this impulsive reaction tends to usher in yet another risk of failed identity formation—foreclosure. In other words, the WTO may be preoccupied by its own “ritualized behavior,” such as its pro-trade bias, which is completely unresponsive and unaccountable to larger social environment.¹⁷⁴ This 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.¹⁷⁵

D. Towards a Balanced Identity of the WTO

As is the case of 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.¹⁷⁶ The WTO interacts with, responds to, and is even influenced by its environment. Importantly, however, the WTO’s openness

¹⁷¹ Broude, *supra* note 163. *But see* Asif H. Qureshi, *International Trade for Development: The WTO as a Development Institution?*, 43 J. WORLD TRADE, 173, 187 (2009) (arguing that “the WTO has a function as a development institution”).

¹⁷² 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).

¹⁷³ Anderson, *supra* note 164, at 245.

¹⁷⁴ Barnett & Finnemore, *supra* note 29, 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”).

¹⁷⁵ Barnett & Finnemore, *supra* note 29, at 722; *cf.* Peter M. Gerhart, *The Two Constitutional Visions of the World Trade Organization*, 24 U. PA. J. INT’L ECON. L. 1, 2 (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).

¹⁷⁶ *See* Lamy, *supra* note 174, at 969 (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”).

does not deprive itself of an “autopoietic” nature as an organization that preserves its operative integrity.¹⁷⁷ The status quo of the WTO in terms of its capacity (technology) and resources, which are the very product of its 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 nontrade values in various ways by voluntarily adjusting its own internal legal and institutional choices in the course of its evolution.¹⁷⁸ Yet these nontrade values must not be imposed on the WTO externally, as they force the WTO to accept norms and consequences inconsistent with its current identity.¹⁷⁹

Therefore, a desirable form of identity formation for the WTO will be to attain an institutional balance between trade and nontrade, or social, regulatory values without losing its character as a trade organization. This balance 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.

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)¹⁸⁰ and *Shrimp-Turtle* (1998),¹⁸¹ 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.¹⁸² Under this case law, WTO members can freely pursue their non-trade or 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 GATT’s narrow identification with a pro-trade bias, which, if left unchecked, would

¹⁷⁷ Richard Nobles & David Schiff, *Introduction* to NIKLAS LUHMANN, *LAW AS A SOCIAL SYSTEM* 8 (Fatima Kastner et al. eds., 2004).

¹⁷⁸ *Id.*

¹⁷⁹ See generally Sungjoon Cho, *WTO’s Identity Crisis*, 5 *WORLD TRADE REV.* 298 (2006).

¹⁸⁰ Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R (Apr. 29, 1996).

¹⁸¹ Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter *Shrimp-Turtle*].

¹⁸² *Id.* ¶¶ 146–86 (regarding the so-called “chapeau test”); see also CHO, *supra* note 156, at 45–62.

have led to foreclosure as a failure of identity formation. In these cases, the WTO no longer dismissed social values in a blind pursuit of trade values, as it did in *Thai Cigarette*. For example, 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 common ground between the WTO and those environmental treaties.¹⁸³

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.¹⁸⁴ A more realistic way is to utilize the WTO's pre-existing hardware, such as the Trade and Environment Committee and the SPS Committee, to encourage WTO members to tap into relevant international regulatory standards.¹⁸⁵ 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, this 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.¹⁸⁶ 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.¹⁸⁷ 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 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.

¹⁸³ *Shrimp-Turtle*, *supra* note 181, ¶¶ 130, 132.

¹⁸⁴ *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).

¹⁸⁵ *See* Cho, *supra* note 151.

¹⁸⁶ *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).

¹⁸⁷ WTO & ILO, *TRADE AND EMPLOYMENT: CHALLENGES FOR POLICY RESEARCH* (2007).

E. Summary

This part applies the theory of an IO's identity formation developed in the previous part to the WTO. In the early days, the GATT identified with its founding nations that were preoccupied with the elimination of trade barriers, mostly tariffs. Its organizational autonomy was nearly nonexistent as the GATT was a mere tool for those founding nations to achieve a functional need—trade liberalization.

However, as the regulatory environment changed, GATT's pro-trade identity was under attack and it was forced to rethink its original identity. GATT, and subsequently the WTO, underwent this identity crisis as it came to terms with its environment, in particular the regulatory world.

From a normative perspective, the WTO's ideal manifestation of its identity formation is an ongoing process. It should continuously maintain a balanced identity between trade and non-trade values in its diurnal operation. Many avenues within the WTO system, ranging from adjudication to peer review, can help attain this normative goal.

V. CONCLUSION

This Article argues that an IO, like a human being, is prone to the process of identity formation in establishing its autonomy from its member states. As an IO 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 regarding its true identity (identity crisis). But an IO can achieve a coherent institutional self by striking a balance between these multiple identifications under the constraints that various parameters, such as its environment and its 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 major empirical confirmation. As an organic institution that 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 nontrade (societal) values, such as protection of the environment and human health. From a normative perspective, the WTO's identity formation is to strike an institutional balance between traditional trade values and these nontrade values. It is an ongoing process that reveals itself in the WTO's daily operation—adjudication or peer review.

Finally, this Article addresses the external or macro social dynamics of an autonomous entity itself. It explores how a self-organizing entity

forms its organizational identity by incessantly interacting with its environment. It also anthropomorphizes such an entity by analogizing its organizational development to that of a human. Yet, this Article leaves the social dynamics within an organization largely unexplained. Other scholars may explore how individual members of an organization, such as a state or a company, form a collective identity among them. They may focus on internal, micro dynamics among individual actors leading eventually to the formation of a corporate identity.¹⁸⁸

¹⁸⁸ See *International State*, *supra* note 71.