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The Role of Southern Actors in Global Governance: The Fight against HIV/AIDS

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Abstract

This paper analyses the role of actors from developing countries in global processes of policy making and governance. To systematically examine the channels of influence of Southern actors and the interactions in global governance it develops the concept of interfaces. It differentiates between organisational, discoursive, legal and resource-transfer interfaces in global governance. This approach is exemplified in the analysis of a specific field of global governance, the global fight against HIV/AIDS. The paper examines the role of Southern governments and non-state actors in the central organisations of global health, their influence in debates and discourses on strategies to fight HIV/AIDS, and the financing mechanisms that were introduced to fight HIV/AIDS in the developing world. It shows that albeit actors from Northern countries dominate global governance in general, in particular areas the current institutional setting of global governance provides significant opportunities for rather weak actors such as civil society organisations and governments from the South to influence strategies and policies.

Key words: North-South relations, global governance, HIV/AIDS, global health, civil society, power relations, interfaces

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Zusammenfassung

Die Rolle südlicher Akteure bei Global Governance: Der Kampf gegen HIV/AIDS

Dieser Beitrag analysiert die Rolle von Akteuren aus den Entwicklungsländern (dem Süden) in der globalen Politik und Governance. Zum Zwecke der systematischen Analyse der Einflusswege der südlichen Akteure und der Interaktionen bei Global Governance wird ein Schnittstellenkonzept entwickelt, das zwischen organisationalen, diskursiven, rechtlichen und Ressourcentransfer-Schnittstellen differenziert. Als Beispiel erfolgt die Untersuchung eines spezifischen Bereiches Global Governance: des globalen Kampfes gegen HIV/AIDS. Der Beitrag analysiert die Rolle südlicher Regierungen und nichtstaatlicher Akteure in den zentralen Organisation der globalen Gesundheitspolitik, deren Einfluss auf die Debatten und Diskurse über die Strategien zur Bekämpfung von HIV/AIDS sowie die Finanzmechanismen, die zur Bekämpfung von HIV/AIDS in den Entwicklungsländern entwickelt wurden. Es wird gezeigt, dass – trotz einer generellen Dominanz von Akteuren aus den Industrieländern bei Global Governance – in bestimmten Bereichen grundsätzlich schwache Akteure wie zivilgesellschaftliche Organisationen und südliche Regierungen aufgrund des spezifischen aktuellen institutionellen Setting die Chance haben, Einfluss auf die Politiken und Handlungsstrategien auszuüben.

The Role of Southern Actors in Global Governance: The Fight against HIV/AIDS

Sonja Bartsch and Lars Kohlmorgen

Article Outline

1. Introduction

In International Relations theory and research only few concepts and activities deal explicitly with the South in global governance. Most works focus on governance and policy making by and in developed countries of the North or the so-called OECD world (for a similar critique see: Thomas/Wilkin 2004; Conzelmann/Faust 2005). Only in the aftermath of the terrorist attacks on 9/11 both in real politics and in political science the situation in developing countries and their relations to global politics attracted more attention.

Besides the bias towards research on Northern topics due to the fact that most of the influential research institutes and universities are based in industrialised countries, there are at least two more reasons for the deficits in research on the role of Southern actors. First, the terms 'South', 'Third World' and 'developing countries' were put into question in the 1990s for several good reasons. It was argued that economic, political and social processes had led to a rapidly increasing differentiation among the developing countries, so that one generalising term would be too imprecise, and that poorer countries do not build a homogenous political bloc or coalition (cf. Menzel 1992; Nohlen/Nuscheler 1992; Hein 1998; Ashcroft 1999;

Thomas/Wilkin 2004). Second, structural changes in international politics made it more and more inappropriate to deal only with governments, states and International Organisations as political actors and fora in the international – or better: global – realm. Non-state actors such as CSOs, transnational corporations (TNCs) and foundations as well as hybrid governance forms (e.g. public-private partnerships) played a more and more important role (cf. Rosenau 1997; Held/McGrew 2002, Wilkinson 2005; Koenig-Archibugi/Zürn 2006). Thus, many researchers focused more on these so-called new types of actors and organisations and less on questions how Southern actors are affected by and integrated in this new governance architecture.

In this paper[1], we argue that it is necessary to open the governance discourse more towards the Non-OECD world and to take into account the relevance of the governance structures which influence the participation of Southern actors, the power relations which are shaping the constellation of actors, and the processes of interaction that are relevant for framing policy ideas, discourses and activities in the global realm. We agree with the argument that 'the South' is not a homogenous group of countries or even a kind of collective actor, but think it is still reasonable to use that category for sociological and political science analyses if it is based on common socio-economic characteristics and on similar experiences such as a peripheral position in the global economy, widespread poverty, human insecurity and a great vulnerability to external processes and forces (cf. Conzelmann/Faust 2005). This socio-economic fragile and peripheral position is intertwined with a peripheral role in global governance or 'with a lack of say in global affairs' as Thomas/Wilkin (2004: 243) put it.

Besides the differentiation between different socio-economic levels (such as e.g. high income, upper middle-income, lower middle income and low income countries) and between different geographic areas, it is important to distinguish between different types of actors in the countries of the South. An analysis of global governance can not just focus on governments, but has to include non-state actors such as CSOs and enterprises as actors of the South. This relates to the fact that there are manifold conflicts both inside the South and inside each country of the South between e.g. governments and CSOs, between national elites and marginalized groups, or between different classes.

We argue that the *polity* and *politics* of global governance become crucial if we want to capture how state and non-state actors from the South influence policies and discourses and

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[1] The paper presents some of the findings of the research project 'Global Health Governance ' at the GIGA German Institute of Global and Area Studies; see www.giga-hamburg.de/ghg/. As our research is characterised by collective work, this paper includes work and thoughts of the colleagues involved in the research team, in particular of Wolfgang Hein. Some parts of this paper were presented at the International Studies Association Annual Meeting 2006, San Diego, March 21-25, 2006 and at the ECPR Joint Sessions of Workshops, Nicosia, April 25-30, 2006.

how they are affected by them. To analyse more systematically these interactions we introduce the concept of interfaces - socio-political spaces of recurrent interaction of actors in the handling of specific problems - and differentiate between organisational, discoursive, legal and resource-transfer interfaces in global governance. We argue that such an approach allows us to capture more in detail the various channels of influence of Southern actors in global governance than conventional approaches that largely neglect the Non-OECD world. In this paper, we will show that despite the dominance of actors from Northern countries in particular areas of global governance basically weak actors like civil society organisations (CSOs) and governments from the South have the chance to influence strategies and policies due to the institutional setting of global governance.

We will focus our empirical analysis of the role of Southern actors in global processes of governance on the policy field of global health. This policy field seems appropriate for our analysis for several reasons: First, essential parts of global health governance – such as the fight against poverty-related infectious diseases (HIV/AIDS, Tuberculosis, Malaria) and the efforts to strengthen health systems at national level – aim at changing the situation in developing countries, so Southern actors are of crucial importance for any kind of goal-attainment. Second, as there is a significant interdependency between poverty and health, increasing parts of official development assistance (ODA) are spent on health issues and three of the eight Millennium Development Goals are explicitly health-related, what shows that health is accepted as an important component for development and poverty-reduction in the Southern hemisphere (cf. Bartsch/Kohlmorgen 2005b). Third, governance processes in global health are characterised by a strong role of non-state actors (e.g. pharmaceutical companies, insurance companies, private physicians and pharmacists, foundations, a large number of CSOs and PPPs) so that this policy field seems well suited to analyse the correlation between so-called new governance modes and participation of Southern actors.

In the following we will first outline our global governance approach, focussing on power relations and interfaces between different actors (section 2). Before applying this concept to the empirical study, in section 3 we will briefly sketch the institutional structure of global health governance. In section 4 we will then analyse the role of both state and non-state actors from the South in a specific area of global health: the fight against HIV/AIDS and the access to medicines. We examine Southern participation in the most relevant International Organisations in health, analyse the role of Southern actors in the discourses on patents, intellectual property rights and access to medicines, and deal with the various financing mechanisms in the field of global health. In the concluding remarks (section 5), the most important lessons for Southern participation in processes of global governance drawn from the empirical study of the global health sector will be summarized.

2. Global Governance: Conceptual Considerations

Our concept of global governance is not a normative one, saying how global governance should be, but an empirical-analytical one, which tries to describe and to understand the origins, the complex characteristics and the dynamics of global politics and regulations. In our understanding, global governance comprises non-hierarchical forms of regulation and cooperation, but also power structures and hierarchical top-down processes. It is selective as far as the problems and issues dealt with are concerned, and also with respect to the inclusion and influence of weaker actors – such as many Southern governments or CSOs.

Political globalisation is not only a process leading to the development of a new spatial order which causes increasing political activities between different levels (global, regional, national, local; cf. Rosenau 1997; Jessop 2004; Hooghe/Marks 2004), but also an expression of a new configuration of actors. Governance is the interplay of different institutional forms ranging from public to private modes of regulation (with specific logics of steering and action) and comprises the interaction of different actors (with specific power resources and interests). Governance includes *regulation by state* (nation states, intergovernmental organisations), *private regulation* (private sector), *civil society regulation* and *hybrid regulation* (cooperation by states/international organisations, private sector and/or civil society). As there is not only an increase of intergovernmental and international activities, but also a significant raise of transnational activities (i.e. transborder activities of civil society and private sector) we can speak of *global* instead of *international* governance. Modifying a definition by Renate Mayntz (2005) we define global governance as the totality of collective regulations to deal with international and transnational interdependence problems (cf. Bartsch/Kohlmorgen 2005a).

Global governance thus can be understood as a process of dealing with problems and – if possible – of problem-solving. However, the acknowledgement of problems and the willingness to tackle them are not self-evident. Problems need to be identified and put on the agenda, and the related discourses have to be framed. This agenda-setting and framing process is a result of the interactions between the different actors and is influenced by the power relations of global governance. Often problems are only tackled if powerful actors have interests in solving them. Moreover, when a problem is acknowledged we have to ask if appropriate structures of governance are in place and which strategies prevail to solve – or shift, or neglect – the problem. The institutional setting in which problems can be addressed does not exist just because of a functional imperative, but is the result of historical traditions and structures as well as deliberate decisions of involved actors based on interests, power and resources (cf. Mayntz 2005). Thus, if we want to capture who influences global policy-

making we can not just focus on the effectiveness of problem-solving, but have to analyse the interactions in global governance in the light of the different types of power and interests that are associated with the actors.

The normative problem-solving bias of some parts of the global governance literature often leads to the implicit assumption that most of the actors have common or similar goals and interests. In particular if we want to understand the role of Southern actors in global governance, however, it is relevant to address the differences and the conflicting characters of interests of the actors involved. Also power relations seem to be forgotten in many global governance approaches and studies (see the critique in Brand et al. 2000). While power always was a central component in (neo-)realistic and (neo-)marxist approaches, it was for a long time largely neglected in the global governance discourse, rooted in liberal institutionalism. Recently the debate was opened again by Barnett/Duvall (2005), who introduce multiple forms of power and stress that power relations influence not only the activities of the participating actors but also the effectiveness and legitimacy of the entire global governance architecture. We refer to their work and that of Bas Arts (2003) and propose to differentiate between different types of power of which actors dispose (cf. Barnett/Duvall 2005; Arts 2003). These types of power derive from the structures of the governance system and the function of each actor in this system. Thus we can differentiate between: *discoursive power* (the ability to frame and influence discourses); *decision-making power* (the ability to be involved in decision making and in formal norm setting); *legal power* (the ability to exert power based on legal structures and laws) and *resource-based power* (refers to the actors' disposal over material resources (e.g. money, staff) and immaterial resources (e.g. knowledge, information) and their ability to provide these resources).

These different types of power, of course, are not always equally important. This becomes clear when we look at the various spaces of interaction in global governance. We can observe that the influence of the different actors varies, depending on whether they interact with each other e.g. in a legal conflict, in an official decision-making body of an International Organization, in the implementation of a bilateral programme, or in discussions/discourses on specific issues. Referring to Norman Long's (2001) concept of social interface, which he developed for global-local interactions in development policy, we propose a concept of interfaces in global governance, which serves as a heuristic instrument to structure interactions of the different actors and to distinguish between the various channels of influence both for state and non-state actors from the South.

Long defines social interfaces 'as a critical point of interaction or linkage between different social systems, fields or levels of social order where structural discontinuities based upon differences of normative value and social interest, are most likely to be found' (Long 1989: 1-

2). Interfaces are not only two-sided forms of articulation but are more complex as they include a variety of different interests, relationships and modes of rationality. Although an interface as defined by Long can link actors with common interests, he stresses the dynamic and conflictive nature of interfaces arising from different interests, resources and power.
We modify Long's approach by concentrating less on cultural practices and sociological aspects (though not denying their importance) but focusing stronger on the political processes and dynamics in global governance, and thus adapt his definition of interfaces in the following way: 'Interfaces in global governance are socio-political spaces of recurrent interactions of collective actors in the handling of transnational and international affairs.' (Bartsch et al. 2007). To analyse more in detail how global governance is influenced by particular actors, it is necessary to specify the types of interface. We propose to distinguish between four types of interfaces:

- *Discoursive interfaces*, which are related to communications about a basic understanding of and strategies to deal with the issues which arise at interactions between different levels of politics and different types of actors. These might imply programmatic aspects if longer-ranging concepts of cooperation and problem-solving are developed.
- *Organizational interfaces* appear if sporadic and unconnected activities lead to a continuity and consolidation or even the foundation of organizations, which typically comprise actors from the international and national levels of politics (partnerships, participation in organizations and/or decision making bodies, operational cooperation, consolidated programmatic cooperation)
- *Legal interfaces* occur if actors aim at influencing legislative processes and negotiations and or the implementation of law at national or international level (legal conflicts, international agreements)).
- *Resource-transfer interfaces* play an important role particularly in the context of development policy, but, of course, also from rich countries to multilateral organizations in various fields of social politics. Transfer of material and immaterial resources occurs between different levels of politics but also between different policy areas and types of actors.

We argue that an analysis of interactions along these different interfaces allows us to capture in detail the various channels of influence of Southern actors in global governance and thus to overcome the conventional approaches to the analysis of global governance which largely neglect regional differences in the dimensions of interests and power and often disregard the non-OECD world.

3. The Policy Field of Global Health

Several developments – such as the increasing transborder spread of infectious diseases – have accelerated the onset of global health governance.[2] The increasing activities in the field of global health also result from one of the characteristics of political globalisation: Due to deficits of global regulation and governance by state actors (nation states and International Organisations) there is a certain governance vacuum at the global level in some policy fields, which gives non-state actors (in particular civil society organisations) and also other relatively weak actors the chance to exert influence on political decision or even to fulfil some of the deficitary state functions.

This was (and to some extent is) definitely the case in certain phases and fields of global health governance, e.g. in the fight against HIV/AIDS. Whereas in the 1990s international and transnational activities to reverse and to fight the growing HIV/AIDS epidemic in developing countries were at a relatively low level, CSOs enhanced their efforts in advocacy and influencing global and national policy discourses as well as in supporting prevention and providing help for people suffering from AIDS (cf. Bartsch/Kohlmorgen 2007). From 2000 on, also the World Bank and the World Health Organisation (WHO) – after having transferred its competences, personnel and resources in handling HIV/AIDS to the Joint United Nations Programme on HIV/AIDS (UNAIDS) in 1996 – started to address more wholeheartedly the fight against HIV/AIDS. Besides these public and private forms of regulation another mechanisms of global health governance gained importance since the mid-1990s: hybrid regulation between state and non-state actors, mostly in the form of global public-private partnerships (GPPPs). Today we can find about 80 of such GPPPs in the health sector, which aim at supporting the development of new medicines and vaccines, easing access to existing ones, advocating for the fight against specific diseases, or financing health interventions (cf. Widdus 2001; Buse/Walt 2002; Bartsch 2003; Richter 2004; Caines et al. 2004).

The important role of CSOs also accounts for the relative importance of human and social rights in global health governance and is one of the driving forces of global health activities. For many years CSO have advocated for a better implementation of human rights both in a broader context and in the field of global health. The increasing prominence of health and the intensifying global health governance, however, can only be partly explained by a greater weight of CSOs. Without the commitments and financial contributions of a number of Northern governments global health governance would not have accelerated. The inter-

[2] For concepts and discussion of global health governance: cf. Dodgson et al. (2002); Lee et al.(2002); Kickbusch (2003); Hein/Kohlmorgen (2003); Thomas/Weber (2004).

ests of these governments are mixed: Of course, Northern governments will not deny human rights objectives, however, the perception that ill-health in developing countries and the transborder spread of infectious diseases like HIV/AIDS, SARS or tuberculosis can be a threat to national and international security, can be considered crucial for the onset and dynamics of global health governance.

The institutional structures of global health governance – consisting of a mixture between state, civil society, private and hybrid modes of regulation – give non-state actors and actors from the South a chance to participate and to influence policies and discourses, especially as Northern actors in the beginning only showed little interest in global health. However, with the growing awareness of the risks of bad health situations in developing countries, governments of industrialised countries have intensified their activities and shaped global health governance correspondingly. In fact, the current structures and policies of global health governance can be interpreted as a compromise between actors which pursue primarily self-interests based on security concerns and actors which focus on human rights interests (Hein/Kohlmorgen 2005).

4. Southern Actors in Global Health Governance

The concept of interfaces, as introduced in section 2, will be applied in the following to analyse the role of Southern actors in global health governance more systematically. It serves as heuristic instrument to structure the field of global health and to differentiate between the various channels of influence both for state and non-state actors from the South.

We will first deal with the organisational interfaces (4.1) and give an overview on Southern participation in the most relevant International Organisations in health: WHO, World Bank, UNAIDS and Global Fund. Then the role of Southern actors in the discourses on the TRIPS agreement (4.2) and the conflicts at the legal interfaces (4.3) around the access to medicines will be analysed. We argue that Southern influence at these two interface types was relatively high, while it is mixed with regard to the decision-making processes at the organisational interfaces and limited at best at the resource-transfer interfaces (4.4) that are largely dominated by the interests and strategies of bi- and multilateral donors.

4.1. Organisational Interfaces: International Organisations

The *World Health Organisation* (WHO) is an intergovernmental organisation which consists of governments that are members of the World Health Assembly (WHA, all member states) and the Executive Board (32 member states, appointed by the WHA). Formally, all countries

have the same influence on WHO's strategies and policies. Governments of developing countries have – compared e.g. with the World Bank – a relatively strong position inside WHO, as the WHA functions according to the principle 'one country, one vote' and decision-making power is distributed evenly among all members. The developing countries thus dispose of a comfortable majority of approximately 2/3 both at the WHA and the Executive Board. Since 1966, more than half of the biennial budget is spent for programmes and operational activities in developing countries (cf. Koivusalo/Ollila 1997: 8). This shows that WHO focuses considerable parts of its work on developing countries and that development issues and the relationship between poverty and health are of great relevance. However, much of these activities in developing countries are financed with extra budgetary funds (2/3 of the WHO funding is extra-budgetary and depends on donor countries); this increases the influence of Northern governments and leads to a shift in the actual power relations. Through their resource-based power governments of industrialised countries often informally affect decisions and policies of WHO both via the WHA and in particular by exerting influence on the secretariat and staff. There is informal impact and pressure by relevant donor countries (mainly the U.S.) in decisions concerning top-level staff (such as the Director General and also Assistant Directors General) and concerning main policies and programmes (cf. Koivusalo/Ollila 1997; Lee 2004; Murray 2005; Ruger/Yach 2005; Kohlmorgen 2007).

The *World Bank* is basically a development bank– of course related to a specific interpretation of development . As organisational interface it brings together nation states, but their decision-making power is not equal, as voting rights are distributed according to the capital contribution, which gives economically strong countries greater influence inside the organisation than weaker countries. The Bank is the greatest single donor in health and one of the greatest single donors in the fight against HIV/AIDS. One of the first large funding initiatives in that field was the Banks' Multi Country HIV/AIDS Program (MAP) that started in 2000 and distributed so far approximately US$ 1,1 billion US$ to 34 African countries. The World Bank can be considered a powerful actor of global health governance mainly due to its resource-based power. But it is not only influential because of its lending and granting activities but also because of its discoursive power in affecting political and operational strategies in the health sector (cf. Buse/Gwin 1998; Abasi 1999; Thomas/Weber 2004; Ruger 2005; Kohlmorgen 2007).

UNAIDS, created in 1996 as successor of the Global Programme on AIDS (GPA) of WHO, is a new kind of entity in the UN system, uniting ten UN organisations and also including non-state actors to some extent. UNAIDS can be seen as an attempt by the UN to react to the institutional developments in global health and to improve the effectiveness of the global fight against HIV/AIDS. Besides the co-sponsoring UN organisations, delegates of 22 gov-

ernments from the North and the South and of five CSOs are members of the Programme Coordinating Board, the highest body of UNAIDS. Although the CSOs are only non-voting members, the participation of non-state actors in a formal decision-making body is a novelty for the UN system (apart from the tripartite ILO). UNAIDS' objectives are to coordinate HIV/AIDS related UN activities, to contribute to the coordination and harmonisation of the efforts of other actors and to advocate a global reaction against HIV/AIDS (cf. Altman 2001: 20f.; Söderholm 1997: 125ff.; Kohlmorgen 2004).

The *Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria* (GF) is a global public-private partnership to finance the fight against the three major poverty-related diseases. It was established in 2002, following an initiative by the G 8 countries and Kofi Annan, The GF is the leading financing mechanism in the case of tuberculosis and malaria, where it contributes to 66% and 45% of all international funding, respectively. In the case of HIV/AIDS the GF strongly interacts with other financing institutions like the World Bank or the bilaterals and makes up approximately 20% of all international funding. So far it approved 5.2 billion US$ to support programmes in 131 countries and received pledges of more then 8.6 billion US$ until 2008. Only 3 % of all contributions come from non-state actors, while the G8 countries alone finance two thirds of the GF. What makes the GF special among the actors of global health is thus not so much its resource base, but its governance structure as public-private partnership: The Executive Board consists of five types of constituencies[3] which are grouped into two voting groups of the same size and one non-voting group.[4] The donor group is composed of eight representatives of governments of industrialized countries and two representatives of the private sector (one company, one foundation). The recipient group consists of seven representatives of governments of developing countries and three representatives of civil society (one North CSO, one South CSO, one CSO of affected communities). WHO, World Bank and UNAIDS together with a Swiss member (as the GF is based in Geneva) belong to the non-voting group. A similar structure exists at country level, where multi-stakeholder entities – so-called Country Coordinating Mechanisms – have to be established in order to apply for GF funding (in a kind of bottom-up approach). Both state and non-state actors from the South thus are not only loosely participating in the GF but are provided with actual decision-making power. They also dispose of a relatively high discoursive power in the GF, as they can successfully claim to represent the interests of those groups who should be at the centre of the activities of the GF: the people living with the diseases in

[3] Donor countries, recipient countries, civil society, private sector, bi- and multilateral agencies.

[4] Most Board decisions are made by consensus; if this is not possible, a double majority both in an between the voting groups is required.

the developing world (cf. Bartsch 2006 + 2007, Radelet 2004, Radelet/Caines 2005, Bezanson 2005).

We conclude that the degree of influence of Southern actors at the organisational interfaces is closely related to the prevailing governance modes. While the GF as a hybrid form of regulation enables both state and non-state actors from the South to formally participate in the political processes and also UNAIDS shows some rudimental involvement of CSOs, the two other organisations are built on the model of state regulation which largely excludes non-state actors. Southern state actors are able to exert influence in these intergovernmental organisations to a varying degree, depending on the prevailing norms, rules and procedures. The mode of governance is thus highly relevant as it influences both the degree of inclusion/exclusion of certain actors and the power relations at the different organisational interfaces.

4.2. Discoursive Interfaces: Campaign for Access to Medicines

While the organisational interfaces in global health governance give a mixed picture in terms of Southern influence, both state and non-state actors from the developing world play an important role at the discoursive interfaces. This could be observed clearly in the context of one of the most salient issues in global health governance: the fight against HIV/AIDS and the treatment of people suffering from AIDS in the developing world, where human rights arguments especially from CSOs and Southern actors had a large influence.

In the 1990s, prevention was the standard norm in the fight against HIV/AIDS in developing countries, and the provision of antiretroviral drugs (ARVs) was restricted to very few AIDS victims. At that time, advocates of a prevention-only approach argued that providing ARV treatment was not cost-effective in poor regions, as prices for ARVs were too high. This changed since the end of the 1990s due to a mixture of processes in which actors from the South played an important role.

First of all treatment became feasible in low-income countries as prices for ARVs declined: From 2000 to 2005 the lowest price for a ARV triple combination of branded drugs fell from nearly US$ 11,000 to US$ 562 (per person/year), for generics the lowest price was US$ 152 by the middle of 2005 (MSF 2005: 10). The price reduction in branded drugs was mainly the result of the increasing competition by generic companies from India and South Africa, which forced the producers to reduce their prices in order to avoid a loss of market shares. Furthermore the TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement from 1994 (and the conflicts around it) influenced the prices of ARVs. The TRIPS agreement codifies obligations to all WTO member states regarding copyrights, trademarks, patents etc., which includes patents for drugs. It came into being under the strong pressure of transna-

tional companies that linked the issues of intellectual property rights with the debate on free trade and lobbied for a stronger protection of their patented products (cf. Sell/Prakash 2004). While all countries are obliged to adapt their patent laws to a level of protection of intellectual property rights established by TRIPS, developing countries were allowed transition periods during which they would have to integrate the changes into their national legislation. Because of the consequences of more rigorous patent laws for the availability of generics, increasing pressure was exerted by CSOs and developing countries governments in WTO negotiations to clarify the relation of TRIPS to public health concerns. It was argued that the TRIPS agreement – after the end of the transition period – would lead to higher prices for drugs and consequently impede treatment in poorer countries.

Since the late 1990s, a large network of CSOs[5] have been advocating and campaigning for access of poor AIDS victims to ARVs in the Essential Drugs Campaign (cf. Sell 2002; 't Hoen 2002; Schultz/Walker 2005). These CSOs – originally only supported by Brazil –argued that intellectual property rights were not only a trade but a also public health issue and thus managed to link these two issues. They scandalised the disaccord between high prices and profits for pharmaceutical companies on the one hand and the suffering and dying of millions of AIDS victims on the other hand. They not only lobbied representatives of International Organisations and Northern governments, but also became increasingly important as advisors to developing country members of WTO and helped them to coordinate their positions in the following re-negotiations of the TRIPS agreement. Governments of developing countries cooperated with CSOs during the negotiations and CSOs brought in their political, legal and technical knowledge and contacts to governments of industrialised countries. CSOs during that process thus were changing their character from basically mobilizing and advocatory actors towards cooperating experts and actors with a negotiating role in the global political process.

The Doha Declaration, which was adopted at the 4th WTO Ministerial Conference in November 2001, can be interpreted as the result of these developments. Governments from the South in coalition with CSOs reached a compromise with respect to patents on drugs which includes at least the possibility for poor countries to produce or import cheap generics in case of a public health emergency. It is reaffirmed that the WTO members have the right to use compulsory licenses and parallel importing 'to protect public health' which gave them a certain safety in using the TRIPS flexibilities. Conflicts prevailed on the interests of the pharmaceutical industry to restrict new regulations on issuing compulsory licenses for production of drugs in a foreign country to a small number of diseases and to demand specific

[5] Including Northern based Médecines Sans Frontières, Oxfam International, Consumer Project on Technology, the Southern based Third World Network and Health Action International.

procedures to make sure that exports to industrial countries could be prevented. Finally in September 2003, however, the pharmaceutical industry and the governments from industrialised countries had to accept the authorization of compulsory licences in the case of health emergencies irrespective of the disease involved (cf. Hein/Kohlmorgen 2005; Hein 2007).

The reasons for this compromise and for the success of developing countries and CSOs are manifold. First, the general agenda of the Doha meeting played a role. The group of Southern countries was acting as one bloc and was well prepared to defend its position on drug patents. The industrialised countries, on the other hand, were interested in opening up a new round of trade negotiations and thus aimed at preventing severe conflicts with important developing countries. The health issue was considered a potential 'deal-breaker' for that round, what explains the openness of the participants for compromises. Second, the pharmaceutical industry got under increasing public pressure to relativise its hard position. The more the right to health and the access to drugs in developing countries became a central political and moral issue, the more the industry was forced to react to the allegations of being only interested in profits and neglecting the devastating situation of patients in the Third World. In order to demonstrate corporate responsibility, the companies thus step by step made concessions on that issue. Its strong resource-based power did not help the pharmaceutical industry in that context – on the contrary: it was the crucial reason for the public and political pressure that finally led to the Doha Declaration. Third, CSO networks were highly efficient in four domains: creating media attention and public interest, mobilizing support both from the public and the private sector, lobbying representatives of International Organisations and governments of industrialised countries, and empowering Southern countries to take a strong position in the negations. They managed to establish a functioning private governance scheme in which the relevant discourses were framed. Both through the strategic use of the media and through personal networking CSOs then achieved to disseminate information and transfer ideas to another governance scheme: the state-based WTO.

The institutional setting thus enabled CSOs to exert considerable influence in one of the most important discourses in global health. Norm- and agenda-setting processes through private governance modes played a crucial role in this context. The discoursive power of the CSO networks combined with the decision-making power of the developing countries in a conventional forum of state regulation account for the relative strong position of both state and non-state actors from the South at the discoursive interfaces. This development was supported by the exercise of legal power by national governments in the conflict on parallel imports and compulsory licensing.

4.3. Legal Interfaces: Legal Disputes on Patents for Medicines

Especially two developments in the legal realm helped to reach these compromises in terms of intellectual property rights in the health sector: the unsuccessful lawsuit of Pharmaceutical Manufacturers' Association against the South African Government in 1999 and the conflict between the US and Brazil at the WTO in 2000/2001. In both cases state and non-state actors from the South together managed to defend their interests against the pharmaceutical industry.

In the first case, the Pharmaceutical Manufacturers' Association of South Africa, backed by 39 pharmaceutical TNCs, filed a lawsuit against the South African Government which had authorized in 1997 the use of parallel imports to lower the costs of AIDS treatment (Medicines and Related Substances Control Amendment Act). Before that there was a threat from the US-congress to cut off all ODA to South Africa. In April 2001, however, the lawsuit was finally dropped by the pharmaceuticals industry, as it proved to be a fiasco for their image. Transnational and South African CSOs in coalition with the South African government ran a campaign for cheap drugs and against the strict intellectual property rights regime which was the objective of TNCs and some Northern governments (cf. Marais 2005; von Soest/Weinel 2007).

The second conflict arose in Brazil in 2000/2001. The Brazilian patent law authorized compulsory licenses in the case of national health emergencies. This legal practice was in line with TRIPS and was mainly used as an instrument of pressure in the negotiations with pharmaceutical companies to reach better terms of licensing to Brazilian companies and to reduce the prices of drugs in Brazil. However, the US initiated a WTO panel dispute against another aspect of this patent law, the so-called local working requirement: If a foreign license-owner does not establish local production within three years, the government is authorized to license local production. The US government withdrew the complaint in June 2001 as Brazil indicated that it would only use the law in the case of pharmaceutical products (cf. Wade 2003: 5 et seq; Wogart/Calcagnotto 2006). This again can be interpreted as a reaction to the increasing public pressure to improve access to ARVs.

This example shows that formal state institutions with legal instruments and juridical structures are important arenas of conflicts between Northern and Southern Actors. Legal institutions can protect and further the interests of weak Southern actors. Generally, the course and the results of legal conflicts are an expression of general social, economical and political power relations so that powerful actors may have some advantages in some cases. However, as shown in these cases, the interactions in legal interfaces are influenced by discourses in which weak actors can deploy their specific power.

4.4. Resource-transfer Interfaces: Funding the Global Fight against HIV/AIDS

Sufficient funding is – together with low drug prices and functioning health systems – a prerequisite for providing AIDS victims in developing countries with drugs. From 1996 to 2007 the money spent for the global fight against HIV/AIDS increased from US$ 250 million to US$ 10 billion p.a. However, additional funding is necessary to meet the rising needs (of for example US$ 18 billion in 2007, estimated by UNAIDS). Bi- and multilateral donors currently account for approximately 61 % of all funding, while national financing (including both public spending by the national governments and out-of-the pocket payments of individual patients) cover 33 % (cf. Kates/Lief 2006). Due to this structure Southern actors are relatively weak at the resource-transfer interfaces in global health, as they depend to a large degree on international transfers. As recipients of aid they are rather objects than subjects of the respective policy-making processes, although their policy options and channels of influence vary, depending on the strategies and politics of the donor organisations.

Before the Global Fund was established in 2002, bilateral agencies and the World Bank were the most important donors in the field of global health. While it was clear from the beginning that this new institution would act independently from the World Bank, its relationship to the UN system in general was contentious. Kofi Annan and many developing countries preferred a fund inside the UN system, but the G8 countries – most decisive the US and Japan – argued for an independent institution. The official rationale for its separate structure given by the donor countries was the lack of flexibility and efficiency of the UN system. However, it can be assumed that political interests in by-passing the UN played an important role. The idea of installing a new institution outside the UN system – and thus more directly under control of the donor countries – seemed appealing to these actors as it could operate more according to their own interests and strategies (branded drugs, prevention methods).

Thus, nation states (like in this case mainly the USA) use hybrid regulation and a network structure (the Global Fund) to circumvent international state-based organisations (WHO, UNAIDS) that are the formal and legitimised public health organisations responsible for dealing with HIV/AIDS. This means that hybrid regulation can be a result of nation state interests and not only an approach of common problem-solving in fields of high interdependence, as often assumed. We observe here a typical example of forum shifting (for the concept see: Braithwaite/Drahos 2000)[6] since the powerful actors (like in this case the USA and other G8 countries) shifted the issue of funding to that newly created hybrid organisation.

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[6] Braithwaite/Drahos (2000) distinguish four strategies of forum shifting: (1) moving a regulatory agenda from one organisation to another; (2) abandoning an organisation; (3) pursuing the same

Analysing the consequences of the establishment of the Global Fund for the entire global health governance structure, we can state a power shift. The donor countries created a new player in the field of global health that – albeit not aiming at being a political organisation – is provided with substantial power at the resource-transfer interfaces. This changed the structure of power relations in the field of global health

However, meanwhile the Global Fund itself is sidestepped and has problems in attracting enough money. Although it is quite normal that donor countries disburse most of their money via bilateral programmes – as this guarantees them best to pursue their interests – it is striking that e.g. the US government established the President's Emergency Plan for AIDS Relief (PEPFAR) after playing a crucial role in creating the Global Fund. PEPFAR was launched in 2004 providing 15 billion US$ until 2009 to fight HIV/AIDS (US$ 9 bn for new bilateral programmes in 14 African and Caribbean countries, 5 bn for existing programmes in 75 countries and 1 bn for the GF). PEPFAR is directed by the US Global AIDS Coordinator and implemented mainly by USAID, but with great involvement of certain US-based CSOs and some mainly faith-based CSOs from the recipient countries. We can assume that the policies of PEPFAR, which do not see condoms as normal method of HIV/AIDS prevention and which mainly utilises branded drugs, are influenced by interests from US American actors such as conservative and religious groups and pharmaceutical companies (cf. Burkhalter 2004; Kohlmorgen 2007).

PEPFAR thus can be interpreted as a reaction of the US government to developments in the Global Fund which did not converge with their original interest. While it was assumed in the beginning that the GF would mainly finance branded drugs (and thus secure markets for the large pharmaceutical companies) and that the influence of donor countries over national policies would be relatively strong, the GF under the explicit leadership of its then Executive Director Richard Feachem managed to develop its own policies, based on the principles of national ownership, partnership and performance-based funding. It leaves politically delicate questions like the use of condoms or the issue of generic drugs to the countries themselves and does not interfere much from the global level with the respective policies. The pharmaceutical industry is only represented at the Executive Board as member of the private sector delegation, but did not manage to obtain a Board seat; and also its desire to contribute to the GF via the provision of (branded) drugs was rejected various times. Furthermore, the Global Fund with its hybrid regulation and its bottom-up approach furthers participation of different types of stakeholders and thus implicates a sharing of power with other actors (among them CSOs and governments of developing countries). These develop-

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agenda in more than one organisation and (4) preventing an international organisation from acting as a forum for regulatory development in the first place.

ments made it obviously less attractive for some Northern governments to support the Global Fund and contributed to the establishment of competing initiatives like PEPFAR which follow a stronger top-down approach, which limits the influence of actors from developing countries significantly.

These processes of forum shifting at the resource-transfer interfaces have an impact on the role of Southern actors in global health. While the Global Fund on the one hand can be interpreted as being directed against the established UN Organisations in health and to a certain degree contributed to a weakening of WHO and UNAIDS – organisations where Southern governments are relatively powerful due to the voting structures –, it contributed on the other hand to a stronger integration and participation of non-state actors, advocating for Southern interests, in processes of global health governance. With the Country Coordinating Mechanisms (CCMs) it pursues a bottom-up approach that gives the ownership on the funded projects to the recipient countries. When it became clear that the GF was acting relatively independent from its donors and that it developed in a different way then originally assumed, substantial resources were channelled through PEPFAR, where the US government was able to shape processes more directly than in the GF. It is also interesting to see how the US strategies where influenced through the respective institutional setting: Whilst the US delegation to the Fund tolerates – in spite of all criticism of conservative groups and politicians in the US – the use of generics and condoms in the fight against HIV/AIDS, PEPFAR – as outlined – mainly gives money for patented drugs and propagates prevention methods like being abstinent instead of using condoms. The institutional context thus has an important effect on the behaviour and strategies of actors, as hybrid forms of regulation – such as networks and partnerships – tend to include a stronger necessity to enter compromises and modify strategies than purely state-based forms of governance, where actors are able to act more autonomously.

5. Conclusion

The constellation of actors in the fight against HIV/AIDS – as in the field of global health governance in general – is very heterogeneous, with actors differing not only with regard to their character (public, non-public), their institutional structure (formalized, informal) or their level of activity (global, national, local), but also with regard to their interests, their logic of action and their power resources. By analysing the institutional structure and its implications for discourses and decision-making processes in global health governance we have shown that Southern actors (governments and CSOs) are able to influence the course of

political activities at the global level considerably – mainly through discoursive and also organizational interfaces. However, the fact that donor countries have much resource-based power and pursue their interests, represent severe constraints.

Northern and Southern CSOs together with few governments from developing countries – both types of actors with mainly human rights interests in this case – opened up and entered the field of access to medicines in HIV/AIDS policies. Governments from the North and accordingly most of the International Organisations that are shaped by them reacted hesitantly to the increasing HIV/AIDS epidemic in developing countries and in particular in Sub-Saharan Africa. There was a window of opportunity for the self-empowerment of weak actors due to the lack of coherent regulation at the global level and the low-level activities of more powerful actors. Consequently this field of global governance was to some extent already 'occupied' by normally weak actors when the more powerful Northern governments entered. As effective global health governance relies on the involvement of Northern governments and their resources, CSOs and Southern governments appealed to them to intensify their engagement and created some pressure on them. Additionally the undissolved question of patent laws and intellectual property rights in the process of globalisation caused more interventions of Northern governments in the field of global health. Furthermore, the growing awareness of the infectious disease threat and of the vicious circle of poverty and diseases and its implications for security matters have led to increasing interests of Northern governments in global health affairs. Thus, self-interests of industrialised countries can be seen as important catalysts of global health governance and of the fight against HIV/AIDS. However, governments and also pharmaceutical companies of industrialised countries were forced to political and institutional compromises, as weaker actors had developed some strengths and some discoursive power already.

The main characteristics of the current architecture of global health governance – or in other words: the institutional expression of the compromises between the actors – are the relatively great importance of non-state actors and forms of hybrid regulation (such as PPPs) and the dominant role of governments of donor countries. This leads to a multiplicity of actors and institutional fragmentation. This structure of global health governance seems to be inconsistent and contradictory as hybrid regulation and the involvement of civil society organisations can put powerful nation states under pressure and cause them to make compromises at least in some cases and consequently can weaken them to some extent. ‚Governments, however, can use networks and hybrid regulation and even CSOs as fora to achieve their goals – e.g. to weaken International Organisations like WHO or to circumvent disliked governments in the South. Thus, the strong role of Northern governments and the increasing relevance of hybrid, private and civil society regulation are intertwined.

The analysis of the field of global health has shown that the role of Southern actors in global governance processes is mixed, as politics at the interfaces are influenced both by the constellation of actors defined by their interests and power resources and by the different modes of governance involved. Our analysis thus leads us to the following conclusions:

- The more the type of *power* an actors disposes of corresponds with the type of interface, the more influence that actor is able to exert.
- The greater the heterogeneity of *interests* the more conflictive the political processes at the interfaces.
- The mode of *governance* and the corresponding logic restricts the autonomy of the actors and structures the interactions at the interfaces.
- Powerful actors tend to choose that mode of governance that seems to be most adequate for reaching their objectives. The current multifaceted structure of global governance provides many different opportunities for strategies of *forum shifting*. At the same time, these strategies have a considerable impact on this differentiation of global governance, as they further the creation of new institutions.

Especially in 'soft' policy fields actors like CSOs and governments of the South, which are normally perceived as weak, have the chance to influence strategies and policies due to their specific power resources and the institutional setting of global governance. This is especially the case when other actors basically ignore – at least for a certain time – a policy field or when interests overlap or converge to a certain degree. Forms of hybrid, private and civil society regulation offer opportunities and chances for an increased participation and weight of Southern actors. At the same time, however, they can contribute to a fragmentation of activities and an ineffectiveness of global governance, and they can also be used by powerful actors to bypass certain institutions and actors that do not function according to their interests and/or are contested in terms of conflict with other actors.

The different types of interfaces in global governance have a double function in that context. On the one hand they serve as points of mediation between the particular interests of actors (e.g. pooling of funds and knowledge at the resource-transfer interfaces; coordinated activities through organizational interfaces), and thus allow a better integration of Southern perspectives in global processes. On the other hand they are also arenas of global conflicts (e.g. conflicts between market- and welfare-oriented interests at the legal interfaces; conflicts on different normative worldviews at the discoursive interfaces), where different norms and interests collide. They thus not only shape specific interactions processes in global governance, but also influence the relationship between economy, state and civil society in the broader context of North-South relations.

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