

Article

# Countering Norm Creation: Tug-of-War between Norm Entrepreneurs and Norm Protectors on Access to Essential Medicines

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## Introduction

Attention to norms in international relations has been intensifying in recent decades. Researchers have been looking into how new norms spread internationally. One of the most influential arguments on this topic is the “norm life-cycle” model presented by Martha Finnemore and Kathryn Sikkink.<sup>1)</sup> According to their model, when a norm proposed by a norm entrepreneur attracts a critical mass of support, a “norm cascade” occurs. When a majority of actors stop questioning the validity of a norm, it then becomes internalized. However, while not all the newly presented norms spread internationally, the study on norms in international relations has focused excessively on the successful spread of new norms.

The “gatekeeper”<sup>2)</sup> theory is one of the few explanations offered for why a newly presented norm does not spread. Clifford Bob insists that a new norm cannot easily spread unless “gatekeepers” in the issue area adopt the norm as part of their agendas.<sup>3)</sup> R. Charli Carpenter’s work on non-emergence is another example of such research. She sheds light on the intra-network politics in NGO networks to explain why some of the newly presented norms are not adopted by the NGO networks.<sup>4)</sup>

However, even when a newly presented norm survives intra-network politics and is adopted by a gatekeeper, it does not necessarily spread internationally. What are the differences between a norm that diffuses internationally and a norm that does not? In this paper, I will conduct a case study on the issue of access to essential medicines. This case is an example in which a newly presented norm failed to become dominant internationally, even though gatekeepers adopted it and conducted a large-scale campaign for it.

In the late 1990s, the number of patients with infectious diseases increased dramatically. High prices of the medicines for these diseases were portrayed as the villain for the spread of infectious diseases. And some started to insist that the patents on medicines pushed up the medicine prices and thus kept the poor from accessing essential medicine. A new norm asserting that “International rules on patents on medicines should be revised” was set forth. Adopting this issue onto their agendas, gatekeepers such as Doctors Without Borders (Médecins Sans Frontières: MSF) and Oxfam led international

campaigns calling for the revision of international rules regarding the patents on medicines. This issue was taken up and actively discussed at various international organizations.

In spite of these developments, the international rules on medicine patents have not changed much. To the contrary, the protection of medicine patents has been strengthened recently.<sup>5)</sup> Even though gatekeepers adopted the issue onto their agendas and led international campaigns, this newly presented norm has not succeeded in becoming dominant internationally. I will try to address this puzzle focusing on the interaction between the norm entrepreneurs' and norm protectors' campaigns.

### **Analytical Framework**

The "norm life-cycle" model is the analytical framework used most often to grasp the diffusion of a newly created norm. When norm entrepreneurs present a new norm, they often re-frame the issue and re-define the problem. Sometimes, they engage in so-called "norm grafting" to show the relevance of the new norm to already established norms and try to enhance the legitimacy of the new norm.<sup>6)</sup> Some degree of research has been conducted on norm entrepreneurs' strategies, including framing, norm grafting, and shaming, among others. Research on "gatekeepers" or on unsuccessful norm campaigns focuses on NGO networks to address the question of why some of the newly presented norms do not diffuse. Once a newly presented norm starts to spread, it may be accepted from a strategic point of view, and then it may be internalized as time passes.<sup>7)</sup> Even if the new norm is misrepresented, such misrepresentation could help develop the new norm to diffuse.<sup>8)</sup>

All of these arguments seem to assume that when a new norm presented by norm entrepreneurs is adopted by gatekeepers and attracts a certain level of support, the norm will diffuse internationally sooner or later. However, when a new norm emerges and gains a certain amount of support, those who adhere to the existing norm and thus oppose the newly presented norm often challenge it. This article focuses on the strategies of the norm protectors, which has not been investigated extensively, and examines the interaction between the norm entrepreneurs and norm protectors.

In order to counter the norm entrepreneurs' framing, norm protectors frequently engage in crashing or countering the frame. Crashing the frame is a strategy to delegitimize the new framing proposed by the norm entrepreneurs by showing the inappropriateness of it. Countering the framing is a strategy to re-frame the issue from a different perspective. To counter "norm grafting," norm protectors attempt to "counter-graft" or "sever" the grafted norm. "Counter-grafting" is a strategy to cancel out the effect of norm grafting by grafting the existing norm onto the same widely accepted norm which the new norm is grafted onto. Severing is literally a strategy to cut off the new norm from the widely accepted existing norm it is grafted onto.

For example, norm entrepreneurs showed the inhumane scourge caused by anti-personnel landmines and attempted to graft the landmine ban norm onto the widely accepted norm "Inhumane weapons should be banned." Norm protectors tried to sever the

graft by showing that landmines did not cause inhumane deaths if they were equipped with a self-destructing mechanism. Moreover, they asserted that landmines were actually humane weapons. They emphasized that once landmines were buried, soldiers did not need to guard the border 24/7. Thus using landmines could decrease casualties among soldiers. By presenting the humane characteristics of landmines, norm protectors tried to counter-graft the norm “Landmines should be used” onto the same norm to which the landmine ban norm was grafted.

Of course, norm entrepreneurs did not remain silent in the face of these norm protectors’ strategies. Regarding the above mentioned example, norm entrepreneurs attempted to sever the counter-grafted norm by showing evidence that landmines that were supposed to save soldiers’ lives actually killed or injured those who buried them. The process of norm diffusion is not straightforward. Rather, it should be viewed as the interaction between norm entrepreneurs and norm protectors.

Norm protectors frequently, but not always, establish counter-campaigns. When the norm entrepreneurs’ campaign is not very successful, norm protectors do not need to devote their resources to establish a counter-campaign. Establishment of a counter-campaign is seriously considered only after the probability of success by the norm entrepreneurs’ campaign increases. It is important for a certain level of human and financial resources to be available for norm protectors in order to establish a counter-campaign. It is also critical to have a symbol to unite them. It is hard to counter the norm entrepreneurs if norm protectors are not united.<sup>9)</sup> Once a counter-campaign is established, fierce competition gets underway between norm entrepreneurs’ and norm protectors’ campaigns.

Norm protectors’ campaign strategies are similar to those of norm entrepreneurs. They try to persuade, pressure, and penalize actors not to support the new norm. While norm entrepreneurs’ campaigns emphasize the advantages of supporting the new norm, norm protectors’ campaigns tend to underscore the disadvantages of supporting the new norm. And norm protectors attempt to persuade actors by honoring those who do not support the new norm, not by shaming as norm entrepreneurs do. This kind of close contest between the norm entrepreneurs’ and norm protectors’ campaigns determines whether the newly presented norm will diffuse or not.<sup>10)</sup>

**Strategies of Norm Entrepreneurs and Norm Protectors**

	Norm Entrepreneurs		Norm Protectors
Agenda-setting	Framing		Crashing the Frame Counter-framing
Strategies	Norm grafting		Severing, Counter-grafting
	Shaming		Honoring
	Pressuring		Pressuring
	Presenting Advantages		Presenting Disadvantages

In the following sections, I will turn to the interaction between the norm entrepreneurs' and norm protectors' campaigns on the access to essential medicines case.

### **Emergence of the New Framing and the New Norm**

*“Some of the reasons that people die from diseases like AIDS, TB, Sleeping Sickness and other tropical diseases is that life saving essential medicines are too expensive…” -- Dr. James Orbinski, president of MSF's International Council 1999, acceptance speech for Nobel Peace Prize.*

Patents on medicines had never been viewed as a problem until the 1990s. As patients with infectious diseases increased,<sup>11)</sup> the difficulty of gaining access to medicines due to their expensive prices came to be regarded as one of the problems. And a discourse that pointed out the correlation between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the expensive prices of medicines began to spread. This was triggered by the World Health Organization (WHO), which began publicizing the paper Carlos Correa presented at the international meeting on “Medicines and the new economic environment” in March 1995.<sup>12)</sup> In his paper, Correa insisted that the only likely effect of the introduction of pharmaceutical patents in order to comply with the TRIPS Agreement would be higher drug prices unless an effective system of compulsory licenses<sup>13)</sup> and international exhaustion of rights<sup>14)</sup> was established.<sup>15)</sup> In May 1996, the Forty-Ninth World Health Assembly adopted a resolution requesting the Director-General to “report on the impact of the work of the World Trade Organization (WTO) with respect to national drug policies and essential drugs.”<sup>16)</sup> Responding to this request, the Action Programme on Essential Drugs produced a document titled “Globalization and Access to Drugs: Implications of the WTO/TRIPS Agreement”<sup>17)</sup> to identify the possible effects of the TRIPS Agreement and other trade agreements on access to essential drugs.

As a result of these WHO initiatives, the discourse emphasizing the correlation between the TRIPS Agreement and the prices of medicines became diffused. South Africa was one of the countries whose public health policy was influenced by the WHO's initiatives.<sup>18)</sup> Frustrated by the high prices of medicines, the Minister of Health proposed legislation that authorized parallel imports of patented pharmaceuticals. When this proposal was signed into law in December 1997, the pharmaceutical companies took the matter to court and challenged the constitutionality of the law before the High Court of South Africa, arguing it was against the TRIPS Agreement.<sup>19)</sup> This lawsuit attracted international attention, especially because AIDS activists such as the South Africa Treatment Access Campaign (TAC) called for international protest, framing this issue as “drug profiteering” that cost the lives of the poor.

Convinced by the Pharmaceutical Research and Manufacturers of America (PhRMA), the US government started to pressure South Africa to repeal the legislation, hinting at economic sanctions.<sup>20)</sup> This fueled the debate and resulted in the start-up of a large-scale campaign named Access to Essential Medicines by Médecins Sans Frontières (MSF). In

their brochure, MSF identified the high prices of medicines due to the patent rules on medicine enshrined in the TRIPS Agreement as one of the barriers to access to medicines that could save or extend lives. Using eye-catching headlines like “Too poor to be treated?” or “Doctors without medicines,” MSF stressed the need for more political will at the national and international level to put lives before profits.<sup>21)</sup> Since one of the gatekeeper NGOs adopted the issue onto their agenda, the discourse emphasizing the correlation between the spread of infectious diseases and the high prices of medicines due to their patents started to diffuse. And especially after MSF adopted the issue, this issue came to be framed as a dichotomy between lives and profits.

### **Contesting Framings**

As the attention to infectious diseases increased, the United Nations Security Council took up the issue of the spread of AIDS patients in Africa in January 2000.<sup>22)</sup> The fact that this issue was discussed at the UN Security Council showed that it came to be regarded as a security issue.<sup>23)</sup> The issue was also discussed at the G8 Summit meeting in Okinawa in July 2000. In addition, as a follow-up to the G8 Summit meeting, the Okinawa International Conference on Infectious Diseases was held in December of the same year. It is important to note that the spread of infectious diseases was not framed as a problem caused by the TRIPS Agreement in these meetings.

Indeed, the spread of infectious diseases could not be accredited only to the high prices of medicines. A shortage of medicines, a lack of medical infrastructure, a lack of knowledge about infectious diseases, and the absence of new drug development, to mention a few, needed to be addressed. Hence, in the Okinawa International Conference, the G8 members agreed to develop a “New Partnership” among countries, the UN, NGOs, civil society, and the private sector to coordinate and optimize the impact of their individual efforts to tackle infectious diseases effectively.<sup>24)</sup> G8 members attempted to re-frame the spread of infectious diseases issue as a broader problem rather than reducing it to the problem of the TRIPS Agreement and the patents on medicines.

In the meantime, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and five major pharmaceutical companies<sup>25)</sup> launched the Accelerating Access Initiative in May 2000. This was an initiative to improve access to medicines for HIV/AIDS not by exempting the patents on them but by providing them at preferential prices to developing countries under individual agreements.<sup>26)</sup> Antiretroviral therapy proved to reduce AIDS morbidity and mortality significantly. However, it was not accessible to most HIV/AIDS positive patients as it cost around \$10,000 per year per person on average in 2000. Pharmaceutical companies feared that the movement to change the international rule regarding the patents on medicines would pick up steam under such a situation. By providing cheaper medicines, they tried to crash the frame that the TRIPS Agreement caused the high prices of medicines and in turn the spread of infectious diseases. After the Accelerating Access Initiative was launched, the cost of antiretroviral therapy in developing countries fell dramatically.<sup>27)</sup>

Nevertheless, most of the NGOs engaged in the infectious diseases issue did not

believe that the Accelerating Access Initiative solved the problem fundamentally. For example, Oxfam emphasized that the waiving of patent rights on life-saving drugs would be a far more effective way of bringing down prices. Oxfam criticized pharmaceutical companies as offering “islands of philanthropy.” Oxfam claimed that they were offering a limited quantity of medicines with preferential prices through individual agreements, while promoting a global patents system that would enhance their profitability, but that could also consign millions to unnecessary suffering.<sup>28)</sup> It takes time to agree on the prices of the HIV/AIDS medicines for each country with individual agreements under the Accelerating Access Initiative. And such initiatives tend to be limited only to the major infectious diseases such as HIV/AIDS, tuberculosis, and malaria.

As Oxfam, one of the gatekeepers on human rights issues, joined MSF's campaign, the access to medicines issue started to attract more attention among many human rights NGOs.<sup>29)</sup> One of the important aspects of Oxfam's participation in the campaign was that Oxfam grafted this issue onto the universally accepted norm “Basic human rights should be respected.” Oxfam insisted that the health crisis in many poor countries should be considered a national emergency and that WTO members should be allowed to waive the requirement to seek voluntary licenses *from a human rights point of view*. In addition, Oxfam described the poor as the immediate victims of the international trade rules on medicines. Oxfam made clear that the international rule on medicine patents should be revised, as the lack of access to medicines threatened a basic human right.<sup>30)</sup>

Supporters of the norm entrepreneurs were not limited to NGO members. Pharmaceutical companies that produced generic medicines started to cooperate with the norm entrepreneurs. Cipla, one of the generic pharmaceutical giants in India, announced that it would sell its triple-combination therapy for AIDS to MSF for \$350 per year per patient in February 2001.<sup>31)</sup> Other generic drug manufactures in India followed suit. Irritated by these moves, the major pharmaceutical companies that held the patents on antiretrovirals also decreased their prices. This was an attempt to sever the graft between the new norm “International trade rules should be revised” and the human rights norm by showing that the international trade rules had nothing to do with access to medicines. As a result of fierce competition between the norm entrepreneurs and norm protectors, the price of antiretrovirals dramatically decreased.<sup>32)</sup>

### **Increasing Support for the New Norm**

As grafted onto the human rights norm, the access to medicines issue started to attract more public attention. The decreased prices of antiretroviral treatment alleviated the access to medicines problem somewhat. However, the access to medicines other than antiretrovirals had not improved much. The government of Zimbabwe, at the request of Germán Velasquez of the WHO and acting as a representative of the African group, proposed to the TRIPS Council that it establish a special session on intellectual property and access to medicines.<sup>33)</sup>

In the meantime, the lawsuit between the government of South Africa and pharmaceutical companies was resumed on March 5, 2001. Reacting sharply to this lawsuit, Oxfam, MSF,

and other human rights NGOs poured into South Africa and orchestrated massive protests against pharmaceutical companies. Grafting the access to medicines issue onto the human rights norm, these protesters shouted, "Put life before profit!" They emphasized the fact that more than 30,000 people died from HIV/AIDS daily and over 90% of them were from developing countries. Points such as these won a lot of favorable coverage in the mass media. In no time, more than 250,000 signatures calling for the pharmaceutical companies to drop the case flooded in. Facing strong criticism, the companies dropped the case.

In April 2001 at the UN Commission on Human Rights, a resolution was adopted that "recognizes that access to medication in the context of pandemics such as HIV/AIDS is one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." This resolution was adopted by all countries but the United States.<sup>34)</sup> In June, the United States dropped its suit against Brazil which had claimed that Brazil's patent law violated the TRIPS Agreement.<sup>35)</sup> In Kenya, a domestic patent law similar to that of South Africa's was enacted. The norm "International rules on patents should be revised" grew stronger.

### **Counter-campaign and Regaining Lost Ground**

As the newly created norm "International rules on patents should be revised" grew stronger, a sense of urgency welled up among major pharmaceutical companies. They started to campaign against norm entrepreneurs' claim vigorously. First, they emphasized the importance of the Accelerating Access Initiative and insisted that it was not the patents on medicines that were causing the lack of access to medicines in developing countries. This was an attempt to crash the framing created by norm entrepreneurs. At the same time, they claimed that intellectual property rights must be protected in order to continue the pace of innovation necessary to develop new cures to help patients worldwide.<sup>36)</sup> They emphasized that protection of the patents on medicines was necessary to develop "life-saving" medicines and thus to secure basic human rights. They tried to graft the norm "Patents on medicines must be protected" onto the human rights norm, too. Both the norm entrepreneurs and norm protectors claimed the legitimacy of their respective norms, stressing the connection with the human rights norm.

In June 2001, the issue of intellectual property and access to medicines was discussed at the TRIPS Council. The delegations from developed countries argued that patent protection was only one of the issues among many such as public health infrastructure and pricing policies. They tried to re-frame the issue. However, such remarks met with strong criticism from the delegates of the developing countries. The US reiterated that patent protection for pharmaceuticals served public health policies because it created new medicines. Switzerland also said that if there were no patents, there would be no new medicines, and there would therefore be no discussion on affordable medicines.<sup>37)</sup>

At the TRIPS Council in September, an intense tug-of-war continued between norm entrepreneurs and norm protectors. A group of developing countries submitted a draft for a ministerial declaration in Doha. The draft declaration stated "Nothing in the TRIPS

Agreement shall prevent Members from taking measures to protect public health.”<sup>38)</sup> On the other hand, the United States, Japan, Switzerland, Australia, and Canada also submitted a draft declaration. In their draft, they insisted an effective response to this challenge required a mix of complementary social, economic, and health policies and practices, including education and prevention programs. This was again an attempt to crash the framing to view the access to medicines issue as a problem limited to the TRIPS Agreement. They emphasized that “Strong, effective and balanced protection for intellectual property is a necessary incentive for research and development of life-saving drugs,” and they also mentioned that “Intellectual property contributes to public health objectives globally.”<sup>39)</sup>

In fact, if the phrase “Nothing in the TRIPS Agreement shall prevent Members from taking measures to protect public health” were adopted, all the issue areas related to public health could be exempted from the TRIPS Agreement. Developed countries regarded this phrase as one that would fundamentally change the rule of the TRIPS Agreement, and as such, they opposed it stridently.<sup>40)</sup> As a result, participants could not reach any agreement and the discussion was deferred until negotiation began in November in Doha.<sup>41)</sup>

In the Doha ministerial meeting, extensive discussion was conducted on the access to medicines issue. Regarding the above-mentioned point, the final text they agreed upon was:

We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.<sup>42)</sup>

This text recognized that public health should be placed before intellectual property protection. However, the wording was weakened compared to the draft proposed by the group of developing countries. In addition, the text reiterated the member states’ commitment to the TRIPS Agreement. In paragraph 5 (b), the phrase “each member’s right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted” was stipulated. And in paragraph 5 (c), it was clearly stated that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria, and other epidemics could represent a national emergency, reflecting the group of developing countries’ allegation. However, here too, the phrase “while maintaining our commitments in the TRIPS Agreement” was added at the beginning of paragraph 5. In paragraph 3, the importance of intellectual property protection was also mentioned to reflect developed countries’ concern.

The Doha declaration was a great achievement for developing countries, as it recognized the gravity of public health problems (paragraph 1) and public health crises, including those relating to HIV/AIDS, tuberculosis, malaria, and other epidemics, and acknowledged that they could represent a national emergency upon which compulsory licenses could be

granted (paragraph 5). But as noted above, the declaration also reflected the concern of the developed countries, mentioning the importance of intellectual property protection and the commitment to the TRIPS Agreement repeatedly.

### **Concluding Remarks**

Human rights NGOs repeatedly trumpeted that the Doha ministerial declaration was a “victory of humanitarianism,” as it stipulated that public health came before patents. It is true that Doha ministerial declaration attracted international attention to the access to medicines issue. However, this declaration was an accomplishment for pharmaceutical companies, too. The access to medicines issue was grafted onto the human rights norm before the TRIPS Council meetings and the support for the new norm “International rules on patents on medicines should be revised” became stronger. But in the Doha declaration, “Paragraph 3 and 5 (a) avoided making the TRIPS Agreement meaningless and made clear the importance of the protection of the intellectual property.”<sup>43)</sup> In this regard, we should not brush aside the pharmaceutical companies’ comments welcoming the Doha declaration as only rhetoric.

To review, norm entrepreneurs started by framing the spread of infectious diseases as a problem caused by the patents on medicines. Generic pharmaceutical companies and developing countries supported such a framing and called for revising the TRIPS Agreement. They insisted that the lack of access to medicines constituted an unacceptable human rights issue. Their claim that patents on medicines should be exempted was grafted onto the human rights norm. When support for their view started to mount, a counter-campaign was formed. Developed countries, where the pharmaceutical giants are located, tried to reframe the spread of infectious diseases as a more comprehensive problem rather than focusing only on the problem of patents on medicines. International NGOs with close ties to pharmaceutical companies, such as IFPMA, repeated the discourse that “Protection of intellectual property on medicines can promote the development of the medicines and thus save lives.” This was an attempt to counter-graft the existing norm “Patents should be protected” onto the human rights norm.

Norm entrepreneurs and norm protectors grafted their norm onto the same human rights norm. But neither side could demonstrate its relevance to the human rights norm more persuasively than the other. In fact, it was a little unreasonable to dichotomize “intellectual property protection” and “public health.” These two do not contradict each other but rather complement each other. Only when medicines for diseases are successfully developed and become accessible for patients can public health improve. After an intense clash between norm entrepreneurs and norm protectors, the two camps met halfway and agreed on the text of the Doha declaration. The revised text of the TRIPS Agreement was adopted in December 2005 in accordance with the Doha Declaration without fundamentally changing the rules of the patents on medicines.

However, norm protectors have been working to suppress the use of flexibilities of the TRIPS Agreement by developing countries. The United States, for example, has concluded Free Trade Agreements with developing countries which included so-called TRIPS-plus

clauses setting up stricter intellectual property protection than the TRIPS Agreement. Due to norm protectors' pressure backed by US power, the norm "Patents on medicines should be protected" seems to be getting stronger despite the norm entrepreneurs' campaign.

Norm entrepreneurs produce a new frame for a certain issue and advocate a new norm. If gatekeepers in the field do not adopt the issue onto their agendas, the new norm cannot be easily spread. But it has not been discussed much why a new norm sometimes does not diffuse even when gatekeepers adopt the issue onto their agendas. In order to understand this puzzle, it is vital to pay attention to the norm protectors' campaign as well as the norm entrepreneurs' campaign. As a result of an intense tug-of-war between the two sides, sometimes existing norms get even stronger after the norm entrepreneurs present new norms.

## NOTES

- 1) Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization*, 52 (4), 1998.
- 2) Gatekeepers are central to network formation. They have reputations for credibility and clout earned through years of work in a field. Thus their decisions to back a movement activate other organizations and individuals across the world. Clifford Bob, *The Marketing of Rebellion: Insurgents, Media, and International Activism*, Cambridge University Press, 2005, p.18.
- 3) Clifford Bob, *ibid.*, pp.18-20; Clifford Bob ed., *The International Struggle for New Human Rights*, University of Pennsylvania Press, 2009.
- 4) R. Charli Carpenter, "Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Translational Advocacy Network," *International Studies Quarterly*, 51 (1), 2007; R. Charli Carpenter, "Orphaned Again? Children Born of Wartime Rapes a Non-Issue for the Human Rights Movement," in Clifford Bob ed., *The International Struggle for New Human Rights*, *ibid.*; R. Charli Carpenter, "Vetting the Advocacy Agenda: Network Centrality and the Paradox of Weapons Norms," *International Organization*, 65 (1), 2011.
- 5) Developed countries have launched many initiatives and measures to tighten the enforcement of intellectual property, including patents on medicines. Especially the US's Free Trade Agreements with developing countries require them to take on obligations that go beyond the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Such an obligation is called TRIPs-Plus.
- 6) The term grafting refers to the mix of genealogical heritage and conscious manipulation involved in such normative rooting and branching. With regard to norm grafting, see Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization*, 52 (3), 1998.
- 7) Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in Thomas Risse, Stephen Ropp, and Kathryn Sikkink eds., *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, 1999, pp.1-38.
- 8) Cristina G. Badescu and Thomas G. Weiss, "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?" *International Studies Perspectives*, 11 (4), 2010.
- 9) Mayer N. Zald and John D. McCarthy, *Social Movements: In an Organizational Society*, Transaction Books, 1987, pp. 253-255.

- 10) This part draws heavily from Clifford Bob's presentation at the ISA Annual Meeting in 2011 and conversation with him. Clifford Bob, "International Norm Contestation and Political Change," International Studies Association Annual Meeting, March 19, 2011. See also, Clifford Bob, *The Global Right Wing and the Clash of World Politics*, Cambridge University Press, 2012.
- 11) According to the report by the UNAIDS/WHO, the number of AIDS/HIV patients increased from 10 million in 1990 to 30 million in 1997. Particularly, in sub-Saharan Africa, the number quadrupled from 5 million in 1990 to 20 million in 1997. UNAIDS, *2004 Report on the global AIDS epidemic*, pp.22-38.
- 12) Carlos M. Correa, "The Uruguay Round and Drugs," WHO Task Force on Health Economics, February 1997, WHO/TFHE/97.1, p.iiv. One of the organizers of the meeting, Germán Velasquez from the WHO Action Programme on Essential Drugs, approved this paper, and the WHO Task Force on Health Economics and the Action Programme on Essential Drugs started to publicize it.
- 13) Compulsory license means a license granted without permission from the holder by the judicial or administrative authority on various grounds of general interest (absence of working, public health, economic development, and national defense).
- 14) This is a partial extinction of the right of the patentee - holder of the patent - consisting of the termination of certain of his prerogatives, due to exhaustion of rights. According to this theory, the patentee's right is exhausted when the product covered by it is put into circulation for the first time, if this has been done with the consent of that right holder. It follows that once the product has been put on the market, the patentee may no longer exercise control over the subsequent circulation of that product.
- 15) Carlos M. Correa, *op.cit.*, p. 26.
- 16) WHO, Revised Drug Strategy, WHA49.14.
- 17) World Health Organization Action Programme on Essential Drugs, "Globalization and Access to Drugs: Implications of the WTO/TRIPS Agreement," *Health Economics and Drugs DAP Series No. 7*, November 1997.
- 18) Jorge A.Z. Bermudez and Maria Auxiliadora Oliveira eds., *Intellectual Property in the Context of the WTO TRIPS Agreement: Challenges for Public Health*, ENSP, 2004, pp. 90-91.
- 19) The plaintiffs argued that it would enable the Minister of Health to deprive intellectual property owners of their property without compensation in violation of Article 25 of the South African Constitution, and that it was a violation of Article 27 of the TRIPS Agreement, and because the TRIPS Agreement binds South Africa, also a violation of Articles 44(4) and 231(2)-(3) of the South African Constitution. William W. Fisher III and Cyril P. Rigamonti, "The South Africa AIDS Controversy: A Case Study in Patent Law and Policy," *The Law and Business of Patents*, available at <<http://cyber.law.harvard.edu/people/tfisher/South%20Africa.pdf>>.
- 20) South Africa was put on the Special 301 "watch list" both in 1998 and 1999 upon a determination by the U.S. Trade Representative that South Africa lacked adequate intellectual property protection. Regarding US pressure on South Africa, see *ibid.*, pp.7-8.
- 21) Médecins San Frontières Campaign for Access to Essential Medicines, *Millions Have A Drug Problem. They Can't Get Any*.
- 22) United Nations, *Press Release SC/6781*.
- 23) Regarding the securitization of infectious diseases, see Caroline Thomas and Martin Weber,

- "The Politics of Global Health Governance: Whatever Happened to 'Health for All by the Year 2000,'" *Global Governance*, 10 (2), 2004, pp. 187-205.
- 24) The Ministry of Foreign Affairs of Japan, *The Okinawa International Conference on Infectious Diseases Chair's Summary*, December 2000.
  - 25) These five companies were Boehringer Ingelheim GmbH, Bristol-Myers Squibb, GlaxoSmithKline, Merck & Co., Inc., and F. Hoffmann-La Roche Ltd.
  - 26) Regarding the Accelerating Access Initiative, see World Health Organization and UNAIDS, *Accelerating Access Initiative: Widening access to care and support for people living with HIV/AIDS, Progress Report*, June 2002.
  - 27) *Ibid.*, pp. 7-8.
  - 28) Oxfam, "Cutting the Cost of Global Health," *Oxfam Parliamentary Briefing No. 16*, February 2001.
  - 29) Oxfam launched its "Cut the Cost" campaign in February 2001 and officially joined MSF and others. Oxfam was actually studying this issue from around 1999. For example, see Oxfam, *World Trade Rules and Poor People's Access to Essential Drugs*, November 1999.
  - 30) Oxfam, *Cut the Cost: Patent Injustice: How World Trade Rules Threaten the Health of Poor People*, February 2001, pp. 35-36.
  - 31) Médecins San Frontières Campaign for Access to Essential Medicines, "AIDS Triple-Therapy for Less than \$1/Day," *Press Release*, February 7, 2001.
  - 32) Regarding the decline in antiretroviral prices, see UNAIDS, *2004 Report on the Global AIDS epidemic*, pp. 103-104.
  - 33) Author's interview with Germán Velasquez, conducted on March 24, 2005, Geneva.
  - 34) Commission on Human Rights, *Resolution 2001/33*.
  - 35) For detail regarding this case, see Ellen 'tHoen, "TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: A Long Way from Seattle to Doha," *Chicago Journal of International Law*, 3 (1), 2002; Oxfam, *Drug Companies vs. Brazil: The Threat to Public Health*, May 2001.
  - 36) PhRMA, "Statement by PhRMA President and CEO Alan F. Holmer on the Importance of Intellectual Property for Patients Worldwide," *Press Release*, November 20, 2002.
  - 37) WTO NEWS, "Governments share interpretations on TRIPS and public health," 2001 NEWS Item, available at <[http://www.wto.org/english/news\\_e/news01\\_e/trips\\_drugs\\_010620\\_e.htm](http://www.wto.org/english/news_e/news01_e/trips_drugs_010620_e.htm)>.
  - 38) WTO Document, No. IP/W/312.
  - 39) WTO Document, No. IP/C/W/313.
  - 40) Ellen 'tHoen, *op. cit.*, pp. 39-41.
  - 41) *Ibid.*
  - 42) Declaration on the TRIPS Agreement and Public Health, WT/MIN (01)/Dec/2, paragraph 4.
  - 43) Author's interview with Eric Noehrenberg, International Federation of Pharmaceutical Manufacturers Associations (IFPMA), conducted on March 29, 2005, Geneva.

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## 規範拡散失敗の研究 —— 医薬品アクセス問題をめぐる規範起業家と 規範守護者の相互作用を事例として ——

近年、国際関係における規範に対する関心が高まりつつある。とりわけ、新たな規範がいかに国際的に広まっていくのかという点に注目する実証研究は着実に積み重ねられてきている。一方、ある規範がなぜ国際的に広まらなかったのかという点には、これまであまり関心が払われてこなかった。しかし、規範拡散に成功した事例のみに過度に偏った研究状況は、国際関係における規範の理解をゆがんだものにしかねない。

規範がなぜ拡散しなかったのかを論じる研究が皆無なわけではない。わずかながら存在する先行研究には、新たな規範が NGO ネットワーク内の政治過程で消滅する場合があると指摘するもの、あるいは当該分野の権威ある団体である「ゲートキーパー」の承認が得られないとき、その規範は国際的には広まらないと指摘するものなどがある。しかし、新たに唱えられるようになった規範が、NGO 内政治を生き抜き、「ゲートキーパー」の承認を得たとしても、常に国際的に広まるわけではない。

本稿では、これまでほとんど注目されてこなかった、旧来の規範を護持しようとする勢力 (Norm Protector) の活動戦略に焦点を当てる。その上で、新たな規範を広めようとする勢力 (Norm Entrepreneur) と Norm Protector の駆け引きという観点から、医薬品特許に関する新たな規範をめぐる国際政治過程を取り上げる。本稿は、医薬品特許をめぐる新たな規範が、国際的に広まらなかったのはなぜかという問いに答えることを通して、これまであまり研究されてこなかった規範の拡散失敗という論点に新たな知見を付け加えようとするものである。

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