Corporate Hegemony in Remission:
The Pharmaceutical Industry and the HIV/AIDS crisis

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Introduction

With a few notable exceptions, contemporary international relations analysts have not bothered to examine what globalization means for the relationship between states and multinational corporations. This is odd given that the first wave of globalization studies (then studies of interdependence) which emerged in the 1970s and early 1980s highlighted the considerable power that multinational banks, international conglomerates, and the energy industry possessed. Moreover, the potential power of multinationals remains great. In theory, they still can reshape the composition of an economy and hence the balance of social forces. Furthermore, the rise of intra-firm trade—i.e., international transactions between the parts of a corporation—suggests, in concept, that countries will find themselves more constrained in their ability to control exports and imports. In the business press, at least, writers continue to trumpet multinationals as the driving force of globalization.

In this paper, I return to the neglected topic of multinationals. My purpose is to evaluate the thesis that globalization gives multinationals primacy over states. I also seek to identify some of the variables that shape the balance between states and multinationals. For my case study I analyze the global HIV/AIDS crisis. This case is ideal in several respects. First, pharmaceutical multinationals are “powerful” in tangible terms. Second, many of the states that

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the industry confronted during this period are developing states and hence “weak” in tangible terms. For both of these reasons, this case provides a fertile ground for testing globalist arguments that privilege economic agents and economic flows.\(^5\) Third, both pharmaceuticals and states had intense interests in obtaining their preferred outcomes in the HIV/AIDS issue area. Thus, it is not possible to attribute my findings simply to variation in the intensity of corporate or state interests over outcomes.

Contrary to what the globalists would predict, my case study shows that globalization need not place states at the mercy of multinationals. Indeed, in the HIV/AIDS case, states “won” in the period under question. Pharmaceutical multinationals drastically cut the prices of AIDS treatments, resigned themselves to parallel importation and compulsory licensing (explained below), and dropped several legal challenges. Interestingly, globalization actually enhanced the position of states in certain respects. It did so because it made it necessary for multinationals to acquire bigger markets and because it empowered non-governmental organizations. Regardless, the actual balance of power between states and multinationals in a given case is more than a function of each side’s needs and tangible resources. As well, it depends on the nature of the discourse in which a particular issue is embedded.

The second section of this paper reviews a number of arguments about the effects of globalization. In the third section of this paper, I offer my own framework for understanding the power balance between states and corporations in an era of globalization. In the fourth section, I offer background on the pharmaceutical industry. In the following section, I present my case study. In the last section, I summarize my findings and discuss their implications.

Theories of Globalization and its Effects

In this section, I review two contending schools of thought about the meaning of globalization for the power balance between multinationals and states. One school (“the globalists”) takes the position that globalization, which finds its most visible expression in large international flows of goods, services, and capital, is imposing constraints on states that are so severe they reduce state power and effectiveness. Within this camp, there even are those who contend that multinationals now dominate over states. The second school (“the realists”) takes the position that states remain paramount and have not lost their ability to manage cross-border economic flows or to control multinationals.

One leading globalist argues that that “the impersonal forces of world markets…are now more powerful than the states to whom ultimate political authority over society and economy is supposed to belong.” More specifically, changes in technology and finance mean that states no longer control credit, the production of goods and services, or technological knowledge. Consequently, they determine little that matters politically. Developing states have found themselves particularly helpless in the face of globalization’s onslaught. In contrast, non-state actors have become more consequential.

According to one pundit, the needs of the market have created a “golden straitjacket” that “narrows the political and economic policy choices of those in power to relatively tight parameters.” Not only are states severely limited in their choices, but they face intense pressures to lower their labor and environmental standards so they can offer lower-cost

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production venues that will lure foreign corporations and capital. The Delaware disease—i.e., a race to the bottom—results because the imperative of economic competition forces governments to adopt laws and regulations that will attract foreign capital, technology, and managerial skills.  

An essential component of the globalist argument is that globalization has produced more muscular multinationals that have usurped control over innovation and the production of goods and services. Moreover, it has created mobile multinationals that impose significant limits on the ability of states to raise revenues through measures such as taxation. Some globalists go so far as to argue that multinationals are replacing states, though the vast majority are content to argue that multinationals have assumed a place above or on par with states rather than replaced them. To substantiate their claims, the latter group identifies numerous instances where multinationals have exploited their financial muscle, access to high-powered ex-officials, and business alliances to achieve their desired outcomes. These cases include corporate triumphs in the realms of European Commission policymaking, Codex global food standards setting, and telecommunications sector rule-making.

Per the globalists, multinational strength in a globalizing world derives from the fact that they control access to numerous advanced technologies that states need to remain competitive. In addition, multinationals gain power from the fact that they play vital roles in critical economic sectors, occupy an important place in areas like mineral processing, shipping, marketing, and distribution, and are quite prevalent in sectors with high degrees of concentration (giving them

9 For summaries and critiques, see inter alia Strange, The Retreat of the State, pp. 8-9; and Daniel Drezner, “Bottom Feeders,” Foreign Policy (November/December 2000).

10 Strange, The Retreat of the State, pp. 43, 54-57, 60-65.


control over supplies and pricing). We should not overlook the fact that multinationals have massive financial resources and access to capital markets, too. Another advantage that multinationals have is that they can play states against one another and usually have legions of lawyers, financial experts, and specialists available to generate and disseminate information, write agreements, and lobby.  

Realists dispute globalist arguments along the entire spectrum, ranging from the methodological and theoretical to the empirical. They deny that globalization really exists, that it is as extensive and intensive as the globalists assert, and that it has devalued territory. They also assert that the territorial state remains the preeminent form of political authority in the international system. Further, they point out that states continue to provide key global public goods, facilitate innovation, and establish and enforce rules and institutions that are critical to the functioning of the global economy. As well, they emphasize that states have found ways to control or manage the market through devices such as international organizations, multilateral treaties, and international regimes. Moreover, technological improvements are, in some cases, augmenting state power. In any event, realists observe that the state was never as omnipotent as the globalists assert it was.

Looking at multinationals, a strong statement of the realist perspective comes from Kenneth Waltz:

Though they may choose to interfere little in the affairs of nonstate actors for long periods of time, states nevertheless set the terms of the intercourse, whether by passively permitting informal rules to

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develop or by actively intervening to change rules that no longer suit them. When the crunch comes, states remake the rules by which other actors operate. Indeed, one may be struck by the ability of weak states to impede the operation of strong international corporations and by the attention the latter pay to the wishes of the former.”

Realists point out that states possess their own arsenals of power resources. They can expropriate a multinational’s assets, tax it, regulate its overseas interest and dividend remittances, and require joint ventures, licensing arrangements, and technology transfers. They also can prevent multinationals from investing in certain sectors and can subsidize domestic competitors. Finally, those with natural resource endowments can form producer cartels like OPEC. Realists add that many so-called multinationals are nationally-based firms. In fact, they observe most multinationals are American firms that make decisions, conduct R & D, and station their top executives and managers in the U.S. As well, corporate decisions are made from a national rather than a global perspective.

The globalist and realist schools contain provocative ideas. Ultimately, however, both camps are flawed. A big shortcoming is that both tend to ignore the fact that interactions between states and multinationals take place in a context that involves multiple structures and actors at multiple levels (e.g., the domestic, the regional, and global). In the case of the globalists, this neglect is inexcusable, especially given their claim that observers of world affairs need to look at geopolitics, markets, technology, the environment, culture, and domestic politics to understand the world. Another major problem is that both use data selectively to draw their conclusions. An unbiased look at the empirical data quickly reveals, however, that it is possible

15 Waltz, Theory of International Politics, pp. 94-95.
17 Friedman, The Lexus and the Olive Tree, pp. 12-14, 23.
to find cases that support both globalist and realist arguments. Given this fact, it is more productive for researchers to turn their attention to specifying the conditions under which multinational may dictate to states and vice-versa.

Past research on multinationals is suggestive of such conditions. For instance, one study shows the U.S. government was able to institute unprecedented cigarette marketing and product usage restrictions, despite the opposition of the “rich, well organized, and well connected” tobacco lobby, because of the presence of an epistemic community (i.e., the efforts of public health officials and medical practitioners), autonomous policymakers (i.e., antismoking politicians with secure electoral bases), and a countervailing business elite (i.e., the trial lawyers).18

The work of others indicates that countries that have the ability to grant access (e.g., to raw materials) have more power than those that do not.19 Finally, another group has shown that multinationals are privileged prior to investing because they can withhold their investment. Afterwards, however, the host country gains the upper hand because the bargaining chip disappears and the host country obtains jurisdiction over the investment.20

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18 Sklair, “Democracy and the Transnational Capitalist Class,” pp. 151-153. It should be noted that Sklair’s actual argument is that the tobacco companies (multinationals) remain dominant as shown by the persistence of a smoking culture and increasing Third World cigarette sales. However, the U.S. case undermines his argument. Moreover, increasing cigarette sales in the Third World seem to have little to do with multinational power over states and more to do with higher post-Cold War levels of consumer freedom, rising incomes, a lack of health information, and, in the case of Eastern European states, the discredited nature of state interventionism.

19 Thomas Friedman’s assertion that even multinationals, as opposed to financiers, are moving in and out like a herd with surprising speed implies that the power to grant access no longer is important. The Lexus and the Olive Tree, pp. 112, 129-130. In many cases, however, multinationals lack mobility or must go where the resources are. In short, the power to grant access remains important.

20 This is known as the “obsolescing bargain” argument. Spero and Hart, The Politics of International Economic Relations, 5th ed., pp. 252-254.
An Argument about State versus Corporate Power

A review of the literature and inductive analysis suggests that there are five variables that play an especially important role in shaping the relative position of states and multinationals. The five factors are as follows: (a) the balance of needs; (b) the strength of each party’s state allies; (c) the strength of international civil society (hereinafter international society); (d) discourses enveloping the issue area in which states and multinationals interact; and (e) the relevant country or countries’ degree of stateness.\footnote{It is important to note that the third and fourth variable have some interaction effects. For instance, the strength of international civil society influences the content of discourses as well as their salience.} In this paper, I will consider only the first four factors since the fifth factor is not relevant for this paper’s case study.

It is these variables rather than globalization \textit{per se} that determine the balance between states and multinationals. Globalization may exert an influence, though, on the relative balance, if and when it affects the aforementioned variables. Below I expound upon these variables. I also assess whether globalization skews these variables in favor of multinationals as globalist arguments suggest or has no or a state-empowering effect as realist logics imply.

\textit{The Balance of Need}-The balance of needs influences the power of multinationals vis-à-vis states. Simply put, if one party needs the other more than the other needs it, then it gains a source of leverage. For instance, if a given country needs to embrace a particular multinational’s investment in a previously state-owned economic sector in order to signal to international capital markets that it is reformist then the relevant multinational gains a source of leverage over it. Alternatively, a country that lacks the ability to develop technology indigenously is more dependent on knowledge-based multinationals than those countries having such abilities.\footnote{Spero and Hart, \textit{The Politics of International Economic Relations}, p. 249.}

The balance of needs cuts both ways. For example, if many multinationals covet a particular market, then the relevant country obtains leverage over individual multinationals
because it has a reduced need for any given multinational. This is certainly relevant in China’s case. To paraphrase one author, “despite formidable regulatory hurdles, a blatant disregard for copyright laws, high levels of corruption, and strict requirements for technology transfers, multinational corporations have invested large sums in China. The prospect of 1 billion consumers will cause that kind of behavior...”

In the globalizing world, the balance of need may shift in states’ favor in several ways. For instance, the need to remain competitive often forces companies to find new markets so they can achieve economies of scale in production and sales. Moreover, it forces them to find new markets to recoup the huge costs of R & D and technology associated with cutting-edge products such as semiconductors and pharmaceutical products. Furthermore, in a globalizing world, there simply are more firms competing for the right to gain access to a state’s markets and resources. In addition, genuine globalization means greater access to capital for states and thus less dependence on multinationals. Finally, globalization implies knowledge flows—e.g., managerial, technical, and legal—which, over time, should reduce the dependence of states upon multinationals and empower them to better negotiate with and manage them. In short, globalization does not imply that the balance of needs will favor corporations.

Obviously, the balance of need is not static or unidirectional. Over time, domestic and international demographic, technological, financial, geopolitical, and environmental developments can increase the power of states. Conversely, they can weaken them while simultaneously improving the capabilities of multinationals.

State Allies (and State Adversaries)-As with interstate security relations, the relative position of multinationals and states is affected by the state allies that each party has garnered.

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23 Drezner, “Bottom Feeders.”

24 Friedman, The Lexus and the Olive Tree, p. 230.
and the strength of those allies. Multinationals join with national governments not only to pressure other governments, but also to obtain subsidies and intelligence and to shape the rules of international trade and finance. During the period of colonialism, these alliances were much more nefarious with multinationals non-violently and violently overthrowing leaders and governments deemed unfriendly to national corporations.

For their part, states ally with other states to form producer cartels à la OPEC, to acquire access to funds, information, and expertise that they can use to manage multinationals, to gain a greater voice in policy dialogues, to vote as a bloc in international organizations, and to shape the writing of international rules for trade and finance.

When multinationals have powerful state allies, it is much easier for them to dominate states. It is false to assume, however, that a multinational can always count on its peers or its home government as my case study will show.

Globalization can affect this variable in several ways. First, it may make it easier to find allies and maintain alliances, though it is my view that multinationals and states already have the resources and structures needed to build and maintain alliances. Second, it may nurture a pool of multinationals and states that have a shared interest in obtaining open markets, better judicial systems, and political stability. On the other hand, globalization could create a pool of multinationals and states that want to band together against other groups of multinationals and states. Finally, if globalization diminishes the ability of the state to raise revenues, then it will give home governments strong incentives to band together not with multinationals but against them to cover budget shortfalls. In contrast, if it increases multinational revenues then it will give multinationals additional resources they can use to find state allies.
Overall, then, it is not clear that globalization, at least in terms of alliance patterns, will privilege corporations. Of course, there also is no definitive evidence that it will privilege states with respect to this variable.

*International Society*—Another variable shaping the relative capabilities of multinationals and states is the strength of international society. International society consists of disparate set of non-state and non-corporate actors such as churches, scientific communities, human rights advocacy groups, and international organizations. These actors can influence the relative power of multinationals and states by molding the normative milieu in which states and multinationals interact. Another way is for them to shape the international and domestic politico-economic agenda by highlighting the importance of particular issues and by advancing policy proposals. Yet another route is for them to affect the attitudes that states and multinationals adopt towards these agenda items. We should not overlook the fact too that they can act as a direct and indirect pressure group within national political systems.

Interestingly, globalization, which entails significant changes in telecommunications, can empower international society. For instance, it has made it easier to create an individual NGO, to link large numbers of NGOs across multiple locations, to gather and transmit information (including into countries that previously were unreachable), to generate norms and monitor compliance, and to influence public opinion. Globalization allows NGOs to surmount logistical and financial impediments to organizing, to become information gatherers and providers rather than information takers, and, in the language of constructivism, to become norm entrepreneurs. The ability of NGOs to shape norms is quite significant in global economic affairs, particularly
since people generally care about the conditions under which their products are manufactured—a fact that multinationals well recognize.\textsuperscript{25}

It is possible then that globalization may actually reduce the power of multinationals by empowering societal groups that can monitor them as well as lobby and file lawsuits and protest against them. Yet the effect of globalization is not one sided since civil society also can create constraints on states.

\textit{Issue Area Discourses}-Debates about and struggles over political and economic issues take place within issue area discourses. Some of these discourses emphasize what ought or what ought not to be done by individuals, groups, and meta-groups. To illustrate, normative discourses about tax policy typically contain arguments that tax policy should minimize economic distortions while counterarguments stress that tax policies should facilitate economic justice. Another normative discourse entails what corporations should be—i.e., profit maximizers or good corporate citizens. Other discourses pertain to what will or will not work. Such discourses reflect debates about the quality of data and cause and effect relationships. An example of this type of discourse is the debate about the existence of global warming and the best methods for controlling it.

An especially important set of discourses involve what I term framing discourses. These kinds of discourses try to paint issues as one type of issue versus another and involve inputs from NGOs, IGOs, corporations, and states. For instance, those who oppose limitations on foreign movies imports argue the issue is one of free trade whereas supporters argue that the issue is one of cultural preservation. Proponents of technology sales to China frequently argue that such sales advance U.S. economic interests while opponents argue that such sales threaten U.S.

\textsuperscript{25} Drezner, “Bottom Feeders.”
security interests. Where feasible, elites often try to frame issues as national security issues in order to elevate their favored causes against other ones, to increase the amount of resources that are devoted to them, and to facilitate extraordinary policy measures.

Much as economic development has spurred framing debates across cities, counties, and states in the U.S., globalization has sparked a multitude of framing debates in national capitals, corporate boardrooms, and think-tanks. There is no evidence that globalization affects framing discourses in any particular way, though there is abundant evidence that globalization increases the number of individuals and groups that participate in global framing debates. Besides an increase in the sheer number of voices, it is possible that globalization makes certain voices louder than others. As of yet, however, there are no data showing any trends in this regard.

The preceding discussion focused on four variables that influence the relative power of states and multinationals: the balance of need, the strength of each party’s allies, the strength of international society, and issue area discourses. Contrary to what the globalists assert, the preceding discussion revealed that globalization actually can tip these variables in states’ favor. This does not imply, though, à la the realists that states always triumph. Indeed, by empowering civil society or creating new norms, globalization also may weaken or constrain states.

My specific argument is that states are likely to win only when certain conditions are present. Specifically, they are likely to emerge victorious when they need multinationals less than multinationals need them, when they possess powerful allies while multinationals do not, when they are backed by international society, and when the issue area discourse is supportive. On the other hand, they will find themselves at the mercy of multinationals if they need multinationals more than multinationals need them, they lack allies but multinationals have them, they lack the support of international society, and the issue area discourse is unfavorable.
The Pharmaceutical Industry

Among the multinationals, the pharmaceuticals are some of the biggest. The industry as a whole is immense having a value of almost $300 billion and sales exceeding $300 billion. According to some calculations, industry sales could top $680 billion by 2010. The industry currently is dominated by 20 companies, with most headquartered in the U.S. and Europe and a few in Japan. In the future, the industry is likely to become even more top heavy due to merger and acquisition (M & A) activity. Intense pharmaceutical sector M & A activity initially resulted from the search for increased market coverage followed by the quest for cost savings (through the elimination of redundancies). It now results from the search for new drug technologies and economies of scale in R & D.

According to data recently published by Fortune, five American pharmaceuticals rank in the (American) Fortune 100, ten in the Fortune 500, and nineteen in the Fortune 1000. In 2002, thirteen pharmaceuticals ranked among the world’s 500 largest companies (by sales), though only one ranked in the Global 100. The pharmaceutical industry also has been doing quite well. Fortune reports that out of 48 industrial sectors, the American pharmaceutical industry ranked 12th in revenue growth in 2002, 28th in profit growth, and 16th in 5-year (1997-2002) profit growth. Moreover, it was the most profitable industry whether calculated in terms of return on revenues or assets and was the 2nd most profitable in terms of return on shareholder equity. In fact, in 2002, four of the top twenty most profitable American companies were pharmaceuticals.26

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Pharmaceuticals are not afraid to wield their economic clout. In the 2002 election year in the U.S., the industry contributed more than $30 million to support political parties and individual candidates, primarily Republicans, through direct donations and television advertising. Public Citizen, an advocacy group that Ralph Nader runs, estimates that the industry spent close to $500 million on lobbying since 1996 and that it employs 600 lobbyists. According to the Center for Responsive Politics, the pharmaceutical industry was the 7th largest corporate donor of hard and soft political contributions in the January 2001 to December 2002 period. Since 1990, the Center calculates that the industry has given $82 million of political contributions, making it the thirteenth largest corporate donor over the period. The averages do not reveal the full story, however, since the industry’s political contributions have been increasing every year since 1990.27

The developing world and even many mid-sized developed countries hardly seem like a match for the pharmaceutical industry. Yet, in the next section, I present a case study which reveals, despite the great imbalances in tangible assets, that states triumphed over multinationals.

The HIV/AIDS Crisis28

HIV/AIDS is the most severe infectious disease to attack the world since the bubonic plague. To date, at least 20 million people have died as a result of the disease while more than


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40 million are now infected with it. This pandemic has hit Africa especially hard, with almost 90 percent of the aforementioned deaths occurring on the continent. Moreover, over the balance of the decade, AIDS is expected to create 15 million new orphans there. HIV is not just an African problem, however. It is becoming an increasing grave issue in countries like Brazil, China, and many successor states to the Soviet Union. Indeed, more than 100 million people worldwide may become HIV-infected by the end of this decade. AIDS imposes severe economic costs, too. It strains public finances to the limit, drains countries of tens of thousands of irreplaceable skilled workers, and substantially reduces economic growth. Finally, it affects the security and stability of countries, by *inter alia* undermining their militaries.

Given these consequences, every affected and threatened country has an intense interest in identifying cost-effective ways to prevent the spread of the disease and in finding ways to prolong the lives of those who are suffering from the disease. Unfortunately, aside from political leadership and cultural problems, many of the identified countries lack the resources need to deal with the crisis. They lack the health systems needed to educate their populaces, to support safe sex habits, and to minimize the suffering of those affected by the disease.

Beyond the dearth of adequate health systems, affected countries lack the funds needed to pay for AIDS treatments. Highly active anti-retroviral therapy (HAART), essentially a drug cocktail, can run $10-15,000 a year, an astronomical sum for most developing countries. Moreover, pressures to streamline government budgets and to privatize state-owned businesses, which previously supplied health care, are resulting in the transfer of greater health care burdens to the poor. This is a serious problem in China among other countries.²⁹

To surmount these cost constraints, countries have lobbied for or mandated lower drug prices, authorized the production of generic versions of AIDS treatments (this is known as compulsory licensing), and engaged in parallel importation. These methods have significantly reduced the cost of dealing with the disease and, at least in the cases of Brazil, India, and Thailand, enabled countries to significantly lower public health expenditures, to dramatically reduce the costs of drugs (90 percent in India’s case), and to cut the number of people who are affected by and dying from the disease.

The problem with certain of these tactics, however, is that they seem to violate the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), one of the many agreements that created the World Trade Organization (WTO) in 1994. TRIPS established international norms and legal standards with respect to a variety of intellectual property rights (IPR) such as copyrights, trademarks, and trade secrets. With respect to pharmaceutical products, TRIPS generally provides twenty years of protection from the date of filing of a patent application for a new drug (technically a new chemical entity). Drug patents specifically limit the sale, use, and manufacture of patented products and, in certain cases, drug manufacturing processes.

The pharmaceutical industry routinely challenged the aforementioned initiatives with direct pressure, indirect pressure through home governments, and legal challenges. The industry sought partly to protect its profits. In addition, it wanted to ensure it recouped the costs of developing costly AIDS treatments. Furthermore, it feared generic or low-cost drugs available in the developing world might leak into the developed world and that the developing world’s precedent might inspire the developed world to adopt similar tactics to solve its health care

30 Parallel importation involves the importation of drugs from elsewhere without the patent holders consent where compulsory licensing is the granting of the right to a local firm to produce a patented drug without the patent holder’s consent.
funding and associated problems. Finally, and perhaps most importantly, it wanted to protect the broader system of IPR encapsulated in TRIPS.

The pharmaceutical industry also launched its own public education campaign. In this campaign, industry associations and leading pharmaceutical companies argued that the real problem was not the cost of pharmaceutical products or the patents that protected them, but rather the developing world’s lack of clean food and water, its poor medical infrastructure and health education, high levels of corruption, and political instability. Moreover, they argued that free or low cost drugs would not help in the absence of adequate health systems and cultures.

In the 1980s, the industry employed “traditional methods” to defend its cause. For example, it worked successfully with the U.S. Congress to amend the Trade and Tariff Act of 1984. Changes to the 1984 law empowered the U.S. Trade Representative (USTR) to take retaliatory action against any country believed to be violating the IPR of American companies. After the passage of changes to the law, the USTR began to compile, annually, lists of countries suspected of violating U.S. patent holder rights and threatened sanctions unless these countries complied with U.S. law.31

Despite the industry’s maneuvers, policymakers in the developing world continued to take steps they believed were necessary to address their public health emergencies. To illustrate, in 1997, the Brazilian government launched a “Free Drugs for All” program involving the local production of generic AIDS drugs; that is, a compulsory licensing program. This reduced the cost of annual per patient AIDS treatments to $4,716, versus $10-15,000 in the developed world. Consequently, Brazil was able to reduce infection rates and deaths, and save limited moneys

available for public health. Nevertheless, U.S. government pressure restricted the universe of
drugs for which Brazil permitted generic production to those drugs commercialized before 1997.

The industry largely relied on coercive measures to deal with the expanding threat posed
by the Brazilians and those countries that mimicked them. For instance, the leading
pharmaceutical industry’s association, the Pharmaceutical Researchers and Manufacturers of
America (PhRMA) association, requested that Brazil and China be added to the USTR’s “Special
301” Priority Watch List and recommended a WTO case against the former. It also prepared a
study designed to show the Brazilians how their actions would alienate foreign investors and
damage the pharmaceutical industry. Nevertheless, as the 1990s ended and the new
millennium began, the industry began to adopt a softer tack to deal with the global HIV/AIDS
危机 and the developing world’s response to it.

One instance of this was Bristol-Meyers’s pledge in 1999 to give $100 million for
HIV/AIDS research and community outreach in five African countries. In March 2000, at a
secret meeting with the Director General of the World Health Organization (WHO), Gro Harlem
Brundtland, the Chief Executive Officer (CEO) of Merck revealed a proposal from Merck,
Boehringer-Ingelheim, Bristol-Meyers, Hoffman-La Roche and GlaxoSmithKline to sell AIDS
drugs at a substantial discount in Africa if the WHO participated and helped distribute the drugs.
The group also met with United Nations (UN) and World Bank officials. Under the terms of this
program—the Accelerating Access Initiative or AAI—the relevant companies pledged to provide
certain drugs at reduced prices.

32 Issues Around the World, Priority Watch Country, Brazil,”
http://www.phrma.org/policy/aroundworld/special301/brazil.phtml; and “Issues around the World, Watch Country,

33 Except where otherwise noted, the discussion below about the industry’s shift in tactics towards the HIV/AIDS
crisis and the struggle against it comes from Deborah Spar and Nicholas Bartlett, “Phase Two: The Pharmaceutical
Industry Responds to AIDS,” HBS Case Study, No. 9-703-005 (Boston: Harvard Business School Publishing,
In July 2000, building upon the AAI, a number of companies launched HIV/AIDS initiatives. For example, Merck joined with the Bill & Melinda Gates foundation to launch a $100 million partnership with Botswana that attacked the AIDS problem by focusing on the country’s health infrastructure. Other companies launched their own programs, though these programs shared common features. They offered free or discounted drugs to national governments provided that governments distributed the products through their health care systems and ensured suppliers of an ongoing commitment to adequate and enforced intellectual property rights. Activists argued these conditions were excessively restrictive as shown by the fact that by March 2001 only three countries had negotiated agreements. They demanded exceptions to TRIPS, asserting that patents had to be violated so drugs could be produced en masse for wide distribution. The industry, however, would not accept any derogation from TRIPS.

In February 2001, matters came to a head when Cipla, an Indian drug manufacturer, announced bargain-basement prices for its generic AIDS treatment. It offered to provide certain AIDS cocktails to the NGO Médecins Sans Frontières for only $350 per patient per year and to Africa governments for $600 per patient. The latter price was $400 below what the AAI was offering. In March 2001, Cipla went further and requested a compulsory license from South African government so that it could produce the medicine. Unlike the AAI, Cipla’s initiative required no lengthy bargaining process or pressure to commit to particular IPR understandings. The industry countered Cipla’s challenge by offering its products at 50 percent of the already discounted price. It also agreed to sell drugs outside formal national healthcare systems. Finally,
some companies, such as GlaxoSmithKline, gave developing world drug makers licenses to make and sell AIDS drugs.\textsuperscript{34}

In addition to the challenge posed by Cipla, the industry faced pressure from the Brazilian government. In March 2001, the country threatened to issue compulsory licenses more aggressively and to order its local pharmaceutical manufacturers to manufacture generic HIV/AIDS treatments. Over the next twelve months, three major pharmaceuticals—Merck, Roche, and Abbott—capitulated and dramatically reduced the prices of AIDS treatments between 40-65 percent.\textsuperscript{35}

About the same time as the Brazilians launched yet another challenge to the industry, 39 pharmaceuticals dropped a suit that they had filed in 1998 to challenge the South African Medicines and Related Substances Control Act of 1997. This Act gave the health minister the authority to use compulsory licensing and parallel importation as well as to put in place measures to reduce drug prices. The industry wanted to prevent the South African government from using these powers. It not only filed suit, but closed factories, cancelled investments, and malign South African Health officials. The industry’s coercive campaign provoked huge street protests, actions outside corporate headquarters, and bad media coverage. Not only did industry suffer a public relations debacle, but it ended up paying the South African government’s legal costs!\textsuperscript{36}

In 2002, more and more countries took it upon themselves to use compulsory licensing and parallel importation to address their respective AIDS crises. Like many other developing countries, the Vietnamese Health Ministry authorized (in May) a private company to produce


two antiretroviral drugs with materials imported from India and South Korea. The production of these drugs violated patents on two drugs developed by GlaxoSmithKline. In addition, the government authorized a domestic firm to distribute generic AIDS drugs produced by an Indian company.\textsuperscript{37}

Why did the situation shift from one of unceasing pharmaceutical industry triumphs, an emphasis on coercive measures, and intransigence to one where the industry dropped lawsuits, deemphasized home government sanctions, donated large amounts of money and medical products between 1998 and 2001, radically cut drug prices, and resigned itself to compulsory licensing and parallel importation?\textsuperscript{38} To preview the discussion below, the answer is because the balance of needs favored states, the U.S. government (a long-time industry ally) backed the developing world, international society was supportive of states, and because the normative and framing discourses surrounding the HIV/AIDS crisis were favorable to states.

\textit{The Balance of Needs}-The industry retreated from its confrontational tactics, in part, because it faced, in specific instances, an unfavorable balance of needs. For instance, with respect to Brazil, it was worried about alienating a potentially large market. Brazil not only was the world’s 8\textsuperscript{th} largest economy, but also a major potential pharmaceutical market. Second, Brazil had a reduced need for multinational pharmaceuticals because it had relatively large and advanced domestic pharmaceutical companies that could copy foreign drugs. Finally, Brazil was less vulnerable to U.S. pressure because of the diverse nature of its trade and its relatively limited ties with the U.S. The importance of the balance of needs is shown by Mexico’s adherence to TRIPS. Although it too has its own health care problems and domestic production capabilities,


\textsuperscript{38} On the pharmaceutical industry’s philanthropy with respect to HIV/AIDS, see PhRMA, \textit{2002 Industry Profile} (Washington, DC: PhRMA, 2002), p. 7.
Mexico has shown respect for drug patents because of its reliance on the U.S. market (read: vulnerability to U.S. pressure) and the benefits it derives from foreign investment originating from the U.S.\footnote{Sturm, “Brazil.”}

The balance of need, however, seems insufficient to explain the course of events with respect to other countries, particularly many impoverished sub-Saharan African countries. Generally speaking, pharmaceutical multinationals needed these countries less than these countries needed the multinationals. Although market opportunities were becoming more and more attractive, these countries did not offer huge markets. Moreover, these countries lacked domestic drug production capabilities and the resources to develop such capabilities. Finally, many of these countries, at least in theory, had to maintain good relations with these companies in order to maintain good relations with the U.S. government and foreign investors.

\textit{State Allies (and State Adversaries)}\footnote{Except as noted this draws from Thurman, “Joining Forces to Fight HIV and AIDS,” p. 195; and Morrison, “The African Pandemic Hits Washington,” pp. 199-200.}-During the period under investigation, the U.S., clearly the key (state) player in the politics of the global HIV/AIDS crisis, dramatically shifted its stance towards this horrible pandemic. The discussion below reveals that it became more proactive and more sensitive to the plight of the developing world. It also demonstrates that the U.S. government became more willing to accept derogations from TRIPS. As well, there were changes in the attitudes and policies of European governments. However, since the Europeans generally dealt with the global HIV/AIDS problem through the European Union, an IGO, I detail their responses in a separate section below.

Through the 1990s, the U.S. allocated almost $10 billion per year to treat its almost one million HIV-infected patients. In contrast, it allocated less than $140 million to treat the global
population of HIV-infected individuals, though it was thirty times larger than the affected U.S. population. Moreover, it aggressively backed the pharmaceutical industry’s efforts to fight activities that threatened the latter’s IPR. In 1999, however, the U.S. made an about face. After his administration launched the Leadership and Investment in Fighting an Epidemic (LIFE) initiative, President Bill Clinton became more vocal about the AIDS problem and supported an increase in global U.S. HIV/AIDS spending to around $350 million. The next year, Clinton issued an executive order mandating that African countries facing medical emergencies in which they used parallel importation or compulsory licensing would not be in violation of TRIPS.

In tandem with these efforts, the U.S. Congress authorized a large HIV/AIDS trust fund to be administered by the World Bank. Furthermore, the U.S. Peace Corps began to train individuals as AIDS educators and the Export-Import Bank of the U.S. created a loan-facility to finance the purchase of medicines and supplies used to deal with AIDS. Moreover, in 2001, the U.S. government stated once again that it would not seek sanctions against poor countries ravaged by AIDS.41

By the end of 2002, then, the pharmaceutical industry’s most powerful ally had shifted from a position of unconditional support for the industry and tepid support for global HIV/AIDS initiatives to one of meek support for the industry, as far as the HIV/AIDS crisis was concerned, and active participation in the fight against the world’s worst contemporary pandemic. In the next two sections, I discuss some of the factors that influenced this shift.

*International Society*- As noted above, one of the reasons international society is important is because it molds the normative environment in which multinationals and states confront one another. Moreover, it shapes the prioritization of items on the international agenda,

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as well as the presence of those items on the agenda. It also acts as an indirect and direct lobby. Furthermore, it advances policy options. Finally, it shapes the attitudes of policymakers in both developed and developing countries towards international issues.

The U.N., the World Bank, and numerous other IGOs (e.g., the G-7) exerted the aforementioned influences. They held meetings and generated research, thereby providing valuable information on the extent of the HIV/AIDS crisis and its consequences. In addition, they elevated the importance of AIDS and built an international consensus on the essential elements of a multidimensional approach to combat HIV/AIDS. Finally, they acted to shape the normative environment. Nevertheless, the IGO community generally remained reluctant to sanction major derogations from TRIPS. For instance, at a joint meeting of the secretariats of the WTO and the WHO in April 2002 in Norway the issue was not whether drug patents made sense, but rather how to create favorable conditions for differential pricing.42

Numerous NGOs, such as Médecins Sans Frontières, Oxfam, and the International AIDS Vaccine Initiative (IAVI), were extremely active during the period in question. They highlighted the severity of the AIDS pandemic. They argued that the pharmaceutical industry needed to do more to assist in the fight against AIDS. They asserted the industry’s price cuts were inadequate and that the focus on price was misleading. In their view, the industry also needed to increase the accessibility of drugs and to allow local pharmaceutical companies to sell generic versions of drugs where the industry was unwilling or unable to cut prices or improve drug availability. Last, but not least, they protested and led petition drives to counter multinational initiatives such as the 1998 lawsuit against the South African government.43

42 “Moore: Countries Must Feel Secure that They Can Use TRIPS’ Flexibility,” http://www.wto.org/English/news_e/news01_e/dg_trips_medicines_010620_e.htm.
Beyond these activities, IGOs and NGOs mattered because they shaped the debates over the interpretation of TRIPS and the facts surrounding the HIV/AIDS crisis, both of which are relevant for the ability of states to exploit exceptions to TRIP requirements. TRIPS is vulnerable to disputes about the precise demands that it places on states because its wording is ambiguous. For instance, Article 8 of TRIPS notes, vaguely, that WTO Members “may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital important to their socio-economic and technological development.” Moreover, Article 31 explicitly allows compulsory licensing for government use, or in a “national emergency” or “circumstance of extreme urgency.”

In this vein, the European Union explicitly stated in a position paper presented to the WTO’s Council for TRIPS in late June 2001 that Article 7 of the TRIPS undoubtedly allows countries to employ Article 31 to deal with public health crises. Furthermore, it—as well as Canada, the US, Japan, and Switzerland—have officially recognized the HIV/AIDS crisis as a national emergency or circumstance of extreme urgency in many developing countries.

In November 2001, the situation shifted even more positively in the developed world’s favor when, at the Doha WTO Ministerial Meeting, ministers agreed that “each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted” and that “each member has the right to determine what constitutes a

44 Italics added. TRIPS provisions are detailed in WTO, “Pharmaceutical Patents and the TRIPS Agreement,” July 11, 2000, http://www.wto.org/english/tratop_e/trips_e/pharma_ato186_e.htm; WTO, “TRIPS and Pharmaceutical Patents,” April 2001, http://www.wto.org/English/tratop_e/trips_e/trips_e.htm. The obligations of various WTO members to adhere to TRIPS depends upon their development status, their WTO accession terms, and whether or not they granted patent protections to pharmaceutical products when TRIPS came into force (January 1, 1995). Some contend that the rights granted by Article 8 to infringe upon patents only apply for research requirements.
national emergency or other circumstances of extreme urgency.” The group acknowledged that HIV/AIDS and other epidemics (e.g., malaria and tuberculosis) may represent national emergencies or circumstances of extreme emergency. Moreover, the attending ministers agreed to give the least-developed countries until 2016 to comply with TRIPS. Developed country ministers also committed themselves to provide incentives for technology transfer to least-developed countries.46

To summarize, in instances where distribution of needs was insufficient to tip the balance of power in favor of states, international society stepped into the breach. Indeed, many attribute the pharmaceutical industry’s 2001 defeat in South Africa to an international coalition of NGOs, American AIDS patients, European doctors, African officials, and lawyers. These entities had marched, protested, and highlighted the plight of poor Africans. They gained further strength when the EU, WHO, and France’s National AIDS Council publicly lined up to support South Africa.

*Issue Area Discourses*-There are two discourses pertaining to the HIV/AIDS pandemic that are germane for our analysis. The first discourse, a framing discourse, painted the HIV/AIDS crisis as a national security issue, not just a grave public health problem. The second discourse related to the norms that should guide the behavior of multinationals and their executive officers. There was a shift, though admittedly there was variation across countries and industries, from an emphasis on profit margins, market share, and private property rights to being a good citizen. This normative discourse is known as the Corporate Social Responsibility movement.

As previously described, the U.S. became an ally of other states in the global fight against the HIV/AIDS pandemic. It also served as a leader in a crucial framing discourse; that is, the effort to paint the HIV/AIDS as more than a public health issue; specifically, to characterize it as a problem of national security. One feature of the LIFE initiative noted above is that it involved the more rapid production and release of U.S. intelligence reports on the security implications of AIDS and other infectious diseases. In January 2000, at a special U.N. Security Council session on AIDS, U.S. Vice-President Al Gore cautioned attendees that AIDS was a “threat to global security, the viability of states, and economic development.”

In a piece published in the *Washington Quarterly* the following year, Sandra Thurman, the Director of the White House Office of National AIDS Policy, opined: “it is increasingly clear that AIDS is not just a health issue; it is a fundamental development issue, an economic issue, a trade issue, and a key security and stability issue.”

The tumultuous 2002 WTO meeting in Seattle served as a catalyst for the global debate about corporate social responsibility (CSR). In Seattle, social activists succeeded in bringing heightened attention to the practices of multinationals in issue areas such as the environment, labor, government repression and corruption, and ethnic, religious, and sexual discrimination. These and other activists argued that the myopic focus on profits was leading multinationals to exert adverse influences in the enumerated areas and that executives of leading multinationals needed to undertake changes in their *modus operandi*. Specifically, they called for multinationals to become good corporate citizens.

Heightened expectations for the environment and individual rights, the reduced transparency of multinationals (a function in part of the Internet), and the rhetoric of NGOs made

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it impossible for businesses, particularly multinationals, to ignore the CSR movement. In response, they held numerous meetings. They also embraced the U.N.-sponsored Global Compact which seeks to involve multinationals in the global effort to enhance individual rights, improve labor conditions, and protect the environment. Finally, they adopted ethnical codes and social accounting measures, social projects, and industry-wide ethnical standards. With respect to the pharmaceutical industry, the pressures for multinationals to become good corporate citizens became particularly intense. One of the stronger attacks came from Richard Holbrooke, the then U.S. Ambassador to the United Nations. Holbrooke charged, “Pharmaceutical companies would rather treat a bald American than a dying African.”

Demonstrating the influence of the CSR movement, all the major pharmaceutical multinationals began to produce slick publications demonstrating what they were doing for developing countries, the environment, and their local communities. Pfizer, the world’s largest pharmaceutical, published a booklet called *Pfizer and Africa* in which it detailed its drug donations, its efforts to work with various NGOs to train doctors, and its efforts to improve health education. In a revealing statement, Pfizer showed its awareness of the new normative milieu by stating that “improved access to existing medicines [a central demand of the NGO community] can make important inroads against disease.”

**Summary**—At the end of the 1980s, the large, highly profitable, and well supported pharmaceutical industry initially reacted to the global HIV/AIDS crisis in standard ways. It

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52 Pfizer, *Pfizer and Africa* (New York: Pfizer, n.d.).
denied it was the source of the crisis, refused to consider meaningful drug price cuts, filed lawsuits to protect its IPR, and engaged the U.S. government to pressure other countries, both directly (e.g., through the threat of economic sanctions) and indirectly (in WTO negotiations), to respect its drug patents. By 2002, however, the industry had lost. It accepted massive price discounts on HIV/AIDS treatments, dropped its legal challenges, and resigned itself to compulsory licensing and parallel importation where HIV/AIDS drugs were concerned.

As hypothesized, states triumphed over multinationals in the 1988-2002 HIV/AIDS case because the balance of needs was in their favor. Where this factor was insufficient to explain outcomes, the explanatory power comes from the other variables identified in my model: specifically, allies, international society, and issue area discourses. All of these variables were supportive of the activities of states rather than multinationals. Of course, the cited victory does not mean the end of the fight against HIV/AIDS, which remains a grave problem for many countries and a serious problem for others. It also does not mean pharmaceuticals and states have no other battles. For instance, states want to cut drug reimbursement rates, gain the ability to use confidential drug test data, and force pharmaceutical multinationals to support the development of domestic pharmaceuticals. Not surprisingly, pharmaceutical multinationals do not want to transfer technology, want to protect test data, and want countries to move quickly in establishing strong IPR enforcement regimes.

Conclusion

In her provocative work on the future of the territorial state, Susan Strange concluded: “where states were once the masters of markets, now it is the markets which, on many crucial
issues, are the masters over the governments of states.” My finding, however, is that it is too soon to proclaim the triumph of the multinational in the current era of globalization. In fact, it may never be possible to make such a declaration. However, it would not be appropriate to draw from my argument and case study the conclusion that the realists, once again, have been proven right. Indeed, several of the variables that I emphasize, specifically international society and issue area discourses, are more an integral part of pluralism and constructivism than traditional realism.

The main contribution of my study is to show that states, even ones with relatively limited or no substantive tangible resources, can win over states if the right conditions are present. Specifically, they can triumph if there is a favorably balance of needs, they have the right allies (while multinationals do not), international society is supportive, and issue area discourses are friendly. It is quite plausible that if the content of my variables had been different the outcome of the HIV/AIDS conflict between states and pharmaceuticals might have been different.

Another contribution of my analysis is to support the claim that globalization is Janus-faced. Thomas Friedman colorfully writes “globalization is everything and its opposite. It can be incredibly empowering and incredibly coercive. It can democratize opportunity and democratize panic. It makes the whales bigger and the minnows stronger…While it is homogenizing cultures, it is also enabling people to share their unique individuality farther and wider.” Focusing more directly on the pharmaceutical industry, it is salient to mention that in the absence of globalization there would not be pharmaceutical pirates like Cipla who could peddle low-cost AIDS treatments around the globe.

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53 Strange, The Retreat of the State, p. 4.
54 Friedman, The Lexus and the Olive Tree, p. 389.
A final contribution of my work is to reveal that the U.S. is not always an ally of industry and, in fact, can oppose or undermine industry efforts. This counters an unfortunate bias in the literature on states and multinationals. Specifically, this literature is biased because it tends to focus on the U.S. government, which in my perspective, is more receptive than other governments to business pressures. Second, it tends to neglect cases where the U.S. acted as an opponent or meek supporter rather than an active supporter of business.