The Life-Cycle of Transnational Issues:
Lessons from the Access to Medicines Controversy[1]

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Why and how do issues expire? This paper applies the concept of path dependency to issue-life cycle and argues that the manner in which an issue dies is closely associated with how it comes to life. This paper argues that, on the access to medicines issue, the first actors (1) to have called attention to a legal problem, (2) to have capitalised on the HIV/AIDs crisis, and (3) to have used the example of Africa, were also the first to have felt constrained by their own frame in their attempt to (1) look for economical rather than legal solutions, (2) expand the list of medicines covered beyond anti-AIDs drugs, and (3) allow large emerging economies to benefit from a scheme designed by countries without manufacturing capacities. In order to escape an issue in which they felt entrapped, issue-entrepreneurs worked strategically to close the debate in order to better reframe it in other forums.

Access to patented medicines in developing countries is one of the most important transnational issues facing us today. It is a prototypical example of how a small but dedicated advocacy network was able to foster a dramatic shift in international norms[2]. In the 1980s, the public sphere in the West was dominated by concerns that the most advanced economies were losing their competitive advantages to emerging countries that were pirating their technologies. Twenty years later, activists successfully shifted the focus of the discussion to the detrimental effects reinforced patent regimes have on the world's poor, especially with respect to the cost of medicine. The Access to Medicine campaign shaped and capitalised on this fundamental shift in public attitudes.

Research on this transnational advocacy network focuses heavily on the mechanisms used by advocates to successfully mobilise media, policymakers and trade negotiators[3]. However, there has

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[2] "A transnational advocacy network includes that relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services". Margaret Keck and Kathryn Sikkink, *Activist Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998) p. 2.

[3] Susan K. Sell & Aseem Prakash, "Using Ideas Strategically: The Contest between Business and NGO Networks in Intellectual Property Rights", *International Studies Quarterly, vol.* 48, no. 1 (2004), pp. 143-175; Ruth Mayne, "The Global Campaign on Patents and Access to Medicines: An Oxfam Perspective", in eds. Peter Drahos and Ruth Mayne *(eds.), Global Intellectual Property Rights: Knowledge, Access and Development* (New York: Palgrave Macmillan, 2002), pp. 244-258; Ellen 't Hoen, "Public Health and International Law: TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: A Long Way From Seattle to Doha", *Chicago Journal of International Law*, vol. 3, no. 27 (2002),

been a significant decline in the public nature of the fight in recent years. For example, as shown in Table 1, there is a clear reduction of media interest in issues related to public health and patents compared to the peak in 2001. Even at the World Trade Organization's (WTO) Council on intellectual property (TRIPS Council), the issue of access to medicines is no longer on the negotiating table.

This decline was not precipitated by a decrease in the problem's salience. While some patents are expired, patented drugs are not more accessible than they were in the 1980s. People in developing countries are still dying from preventable diseases. The interest of political organisations and media evaporated before the problem was sufficiently addressed. This gap between public debates and empirical facts illustrates an intriguing and often overlooked question in issue lifecycle literature - why and how do issues evaporate?

Graph 1 Incidence of "Patent" AND "Public Health" in fifteen major international newspapers.[4]
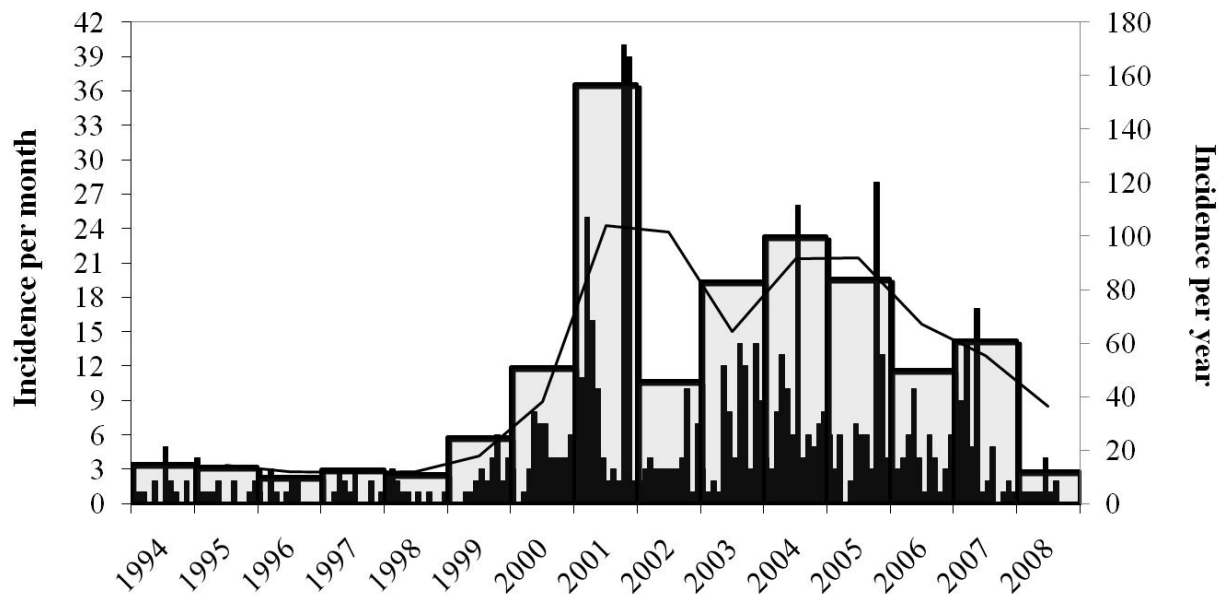
The issue lifecycle literature distinguishes *issues* from *problems*[5]. Problems belong to the realm of objectivity, and issues to the world of inter-subjectivity. Agents ignore a majority of the

pp. 27-46; Steven Friedmanand Shauna Mottiar, "A Rewarding Engagement? The Treatment Action Campaign and the Political of HIV/AIDS", *Politics & Society, vol.* 33, no. 4, (2005), pp. 511-566.

[4] This graph duplicated a media analysis originally conducted by Susan Sell & Aseem Prakash (*ibid.*) when the issue was still actively debated. This quantitative analysis is indicative of the level of awareness of the issue in the general public. Utilizing the Lexis search engine, we used the operative search value "Patent" AND "Public Health" AND NOT "obituary" to fifteen major international and domestic newspapers. Due to irregular reporting, and a concern of artificially skewing the results by domestic debates, we limited the parameters to a single major newspaper per country with searchable content from January 1st 1994 to June 30th 2008. The search returned 1137 results which were subsequently manually filtered to 732. Certain categories of stories were excluded, including ones that did not deal with pharmaceuticals, those involving the tobacco industry, the debate over the discovery of the HIV virus, cloning, and buy/sell recommendations for specific publically traded stocks.

[5] Robert Craig and Karen Tracy, "The Issue in Argumentation Practice and Theory", in Frans van Eemeren and Peter Houtlosser (eds.), *Argumentation in P*ractice (Amsterdam: John Benjamins Publishing, 2005), p. 13; Mark Miller and

overwhelming problems affecting them, their neighbours, and their collectively. They do not have the capacity to absorb, or contend with, the enormity of the information available on underlying conditions and pre-existing grievances. By framing a problem, agents select an organised set of information that makes the problem intelligible and potentially contestable. Once the constructed frame is socially internalised, at least in part, the issue can be debated and the frame contested. As Ernst Haas observed, an international issue arises when "the weaker party succeeds in persuading the stronger to pay attention[6]".

Analysing issues as inter-subjective constructions permits the longitudinal exploration of the dynamics between agents and structures. On the one hand, issues can be conceived of as dependant variables when they are framed by agents. The emergence of issues from the pool of problems is not a function of the objective needs or urgency, but of the strategic framing undertaken by agents[7]. On the other hand, as independent variables, issues are the products of bias defining agents' interests, power, and behaviour. Few political actors – if any – have a sole, permanent, all-encompassing interest and power status. Rather, interests and power vary according to the socially constructed issue at hand. The issue constrains the agent by structuring whom and what are relevant to the debate.

Considering that several transnational actors are engaged in issue framing and that international politics is largely constrained by issues, several scholars have called for an issue-based approach to the study of world politics[8]. Nevertheless, issues have so far attracted little attention from international relations scholars, especially compared with other social constructions, like norms, national identities, and world-views. Given this gap, we have to import and adapt developments in parallel literature, especially on social movement and media. In this literature, the passage of an issue from the target of framing efforts to the source of structural constraints is captured in the concept of *issue life cycle*. Issue life cycle was first conceptualised by Anthony Downs who studied how environmental issues are "discovered" and how they fade away[9]. His work parallels other theoretical developments on "cycles", notably on norm life cycle[10], media life cycle[11], regime cycle[12], and protest cycle[13]. There are three broad stages of the life cycle identified in the literature: expansionist, transformative, and contractive[14]. The first includes initial framing efforts, agenda-setting, and

Bonnie Parnell Riechert, "The Spiral of Opportunity and Frame Resonance: Mapping the Issue Cycle in News and Public Discourse" in Stephen Reese, Oscar Gandy and August Grant (eds.), *Framing Public Life* (Mawhaw, N.J.: Lawrence Erlbaum Associates, 2001), p. 110; Edward Carmines and James Stimson, "On the Structure and Sequence of Issue Evolution", *The American Political Science Review*, vol. 80, no. 3 (1986), p. 901.

[6] Ersnt B. Haas, "Why Collaborate? Issue-Linkage and International Regimes", *World Politics*, 32 (1980), p. 362

[7] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change", *International Organization*, vol. 52 (1998), pp. 887-917.

[8] Robert Keohane and Joseph Nye, *Power and Interdependence* (3rd ed.) (New York: Longman, 1977); Paul F Diehl, "What are they fighting for? The Importance of Issues in International Conflict Research", *Journal of Peace Research*, vol. 29 (1992), pp. 333-344.

[9] Anthony Downs, "Up and Down With Ecology: The Issue-Attention Cycle", *The Public Interest,* vol. 28 (1972), pp. 38-50.

[10] Finnemore and Sikkink, *op cit.*; Ethan Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society", *International Organization*, vol. 44, no. 4 (1990), pp. 479-526.

[11] Matthew C. Nisbet and Mike Huge, "Attention Cycles and Frames in the Plant Biotechnology Debate: Managing Power and Participation Through the Press/Policy Connection", *Harvard International Journal of Press/Politics*, vol. 11, no. 2 (2006), pp. 3-40.

[12] Oran Young, "Regime Dynamics: The Rise and Fall of International Regimes", *International Organization,* vol. 36, no. 2 (1982), pp. 277-297.

[13] Sydney Tarrow, *Struggle, Politics, and Reform: Collective Action, Social Movements, and Cycles of Protest* (Ithaca: Cornell University Press, 1989).

[14] Finnemore and Sikkink, *op cit.*

regime creation. The second depicts the uptake or rejection of an issue by policymakers, as well as the internalisation of newly created norms. The final stage, or the dissipation of the issue, follows this internalisation.

Although the cycle metaphor is widespread, most authors recognise that it would be more appropriate to talk about waves or spirals, since the arguing process is transformative and no issue ends up exactly where it began[15]. For the purpose of this study, the metaphor does not refer to a periodically recurring sequence of phenomena. The life cycle metaphor is used to demonstrate how an issue, originating in the agent's construction, becomes the same agent's constraint. The approach facilitates a study of the relative importance of each element at specific stages in the cycle. As this study makes clear, different actors may have different levels of success at different stages. The most influential actor at the agenda-setting stage may end up being the least satisfied, once the policy decision is being implemented.

While each stage of a life cycle presents particular intricacies, most research focuses on an issue's early or upswing period. Cyclical highs offer ample data for researchers. The death of issues, conversely, has been largely overlooked and handled as an academic afterthought. Sophisticated theories on agenda creation end the cycle with a poorly defined stage known as "loss of interest" or "loss of appeal" in the public realm[16]. A second group of theories highlight the effects of external forces on the issue, such as counter mobilisation, closure of political opportunities or state involvement[17]. A final group points to changes within the proponent group itself, through exhaustion or factionalism[18]. Most of these explanations, however, inadvertently mix symptoms with causes[19].

When the causes leading to the decline of an issue are addressed directly, few authors rely on a more convincing explanation than the success of the campaign, the implementation of the decision or the resolution of the problem[20]. In his original article, Downs hypothesises that issues fade when agents realise that solving the problem would require major sacrifices, and therefore recalculate their interests. If one accepts this hypothesis, it can be assumed that parallel issues could be strategically mobilised to intervene in the cost and benefit analysis of the solution. For example, the issue of unemployment could be strategically used by the oil industry to increase perceived costs of pollution control to solve environmental problems. However, Downs and most of other authors interested by issue life-cycle, fail to consider the *strategic* ending of an issue. While they recognise that an issue can arise as a result of strategic framing by agents, they tend to conceive of it as an encompassing and unmanageable structure that cannot be altered by agents once its peak is reached.

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[15] Ruud Koopmans, "Protest in Time and Space: The Evolution of Waves of Contention" in David Snow, Sarah Soule and Hanspeter Kriesi (eds.), *The Blackwell Companion to Social Movements* (Malden, MA: Blackwell Pub, 2004), p. 21.

[16] Finnemore and Sikkink, *op cit.*, p. 904; David A. Snow and Robert D. Benford, "Master Frames and Cycles of Protest." in A. D. Morris and C. M. Mueller (eds.), *Frontiers in Social Movement Theory* (New Haven: Yale University Press, 1992), pp. 133-155.

[17] Kim Voss, "The Collapse of a Social Movement: The Interplay of Mobilizing Structures, Framing, and Political Opportunities in the Knights of Labor", in Doug McAdam, John McCarthy and Mayer Zald (eds.), *Comparative Perspectives on Social Movements* (New York: Cambridge University Press, 1996), pp. 226-258; Sidney Tarrow, *Power in Movement: Collective Action, Social Movements and Politics* (Cambridge: University Press, 1994), p.155.

[18] Peter Drahos, "Four Lessons for Developing Countries from the Trade Negotiations over Access to Medicines", *Liverpool Law Review*, vol. 28, no.1 (2008), p. 28.

[19] Koopmans, *op. cit.*, p. 37.

[20] Susanne C. Moser, "In the Long Shadows of Inaction: The Quiet Building of a Climate Protection Movement in the United States", *Global Environmental Politics*, vol. 7, no. 2, (2007), pp. 124-144; John W. Kingdon, *Agendas, Alternatives and Public Policies* (Boston: Little Brown, 1984).

This article argues that issues, as they mobilise actors and generate social and legal norms, tend to follow a discourse-based path dependency process with positive feed-back reinforcing earlier arguments. Therefore, issues do not have a built-in life expectancy and could hypothetically be supported indefinitely. To break with this path dependency and end the public debate, stakeholders must conclude that material and reputational costs associated with a public controversy exceed risks or benefits associated with a consensual decision. Having made the decision to end the debate, these stakeholders capitulate to strategically close the issue.

The issue of access to patented medicines illustrates such a strategic ending. The policy debate was interrupted by the concerted effort of the NGO network, the pharmaceutical industry, and WTO members. For each stakeholder, the decision to commit 'issucide' was supported by a rational calculus based on overall objectives. For NGOs, their initial framing efforts created a discursive path dependency which eventually became cumbersome and inescapable. The pharmaceutical industry, faced with a public relations disaster, turned their objective toward the mitigation of reputational losses and the creation of a predictable legislative framework. Finally, for governments, the issue was linked with WTO talks and thus seriously risked undermining trade liberalisation efforts. The weapon of choice for their issucide was the consensual adoption of a legal instrument with few practical implications. This illusory solution closed the debate and freed the stakeholders from their discursive path dependency. They were then able to reframe the same problem into a new issue in order to restart the cycle on a fresh basis.

The argument brought forth in this paper is based on 54 semi-structured interviews with politicians, bureaucrats, lobbyists, and activists who participated at various stages of the issue life cycle[21]. It is impossible to guarantee that interviewees provided an accurate recount of their true standpoints, especially since they benefited from hindsight. However, to mitigate against this, the structure of the interview – its confidential nature, face to face discussion, and the opportunity for follow-up questions to probe statements more deeply – increases the likelihood that actual beliefs would be revealed compared with public statements or questionnaires.

The paper is organised in three sections, covering three broad stages of the issue life cycle: the expansionist, the transformative and the contractive phases. Although, the aim of this paper is to explain the last stage of the public debate, it argues that the manner in which an issue dies is closely associated with the manner in which it came to life. To understand to contractive phase, it is thus necessary to begin with the expansionist phase.

1. From Problem to Campaign

The state of the sufferer is often much worse in the pre-issue stage compared to when the issue has already emerged from the problem[22]. This pre-issue stage can, and often does, last indefinitely without engaging public attention. Such problems either exist in perpetuity or resolve themselves without the intervention of policymakers.

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[21] see Annex 1 for the list of interviewees.
[22] Downs, *op.cit*. Stephen Hilgartner and Charles Bosk, "The Rise and Fall of Social Problems: A Public Arenas Model", *The American Journal of Sociology*, vol. 94, no 1 (1988) pp. 53-78.

With respect to access to patented medicines in developing countries, the pre-issue stage existed for a long period with only a handful of experts expressing concern. Debates within this closed epistemic community were not transmitted to the broader public, or even to high-level decision-makers. As an interviewee noted, "it's been a technical issue for a long time dealt with by technical people." Thus, when the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) was negotiated between 1987 and 1994, access to patented medicines in developing countries "hadn't yet become an issue." The adoption of Article 27 of the TRIPS Agreement, which provides that all technology fields, including pharmaceutical products, must be eligible for patentability, did not raise major public controversies. Experts and negotiators knew it would have major implications for developing countries, but as noted by one bureaucrat, "no one paid any attention to what they were doing back then." According to an interviewee working for industry, CEOs of pharmaceutical companies, who would eventually be targeted by the NGO campaign, "wouldn't even know what you're talking about" if you were to ask them about intellectual property. "There was nobody around" concluded a third interviewee.

The ease with which the patentability of pharmaceutical products was imposed upon every WTO member may have made pharmaceutical companies overconfident. In their attempt to crystallise their gains, they paradoxically created the *political opportunity structure* for the emergence of the access to medicines issue.[23] In 1998, 39 transnational pharmaceutical companies brought a lawsuit against the government of South Africa over its bill amending the *Patent Act* for public health motives. According to two interviewees close to the pharmaceutical industry, the goal of the litigation was not a strengthening of patent laws in South Africa, but to control perception of patents and pharmaceutical products in Western countries. At risk was the perception that intellectual property rights could be justifiably weakened when balanced against access to medicine concerns. This proved to be, as an interviewee characterised it, a "pyrrhic victor[y]."

Most of our interviewees cite this South African lawsuit as the main catalyst for their own interest and involvement in the access to medicines issue, rather than the AIDS crisis, the entry of the first HIV/AIDS treatment into the market, the end of transitional periods for TRIPS application in developing countries, or even the WTO ministerial conference in Seattle. It was the South African lawsuit that created a forum for the debate and broke the inertia in elevating patented drugs from problem to the initial expansive phase of the issue life cycle. Representatives of the pharmaceutical industry interviewed for this study admit that, in seeking to control the normative discourse over patents, they "poison[ed] the well" and opened themselves to attacks "as kind of the tar baby for all the healthcare ills of the world." Ten years later, NGOs and generic producers continue to refer to this "classic example" and "ground-breaking case" as a key event delegitimizing pharmaceutical corporations. As Oxfam Policy Adviser Ruth Mayne acknowledged, "the South African court case … did more than other previous events to raise public awareness about the impact of global patent rules."[24]. This case illustrates how the NGO Network, who at the time was perceived by some as a

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[23] Political opportunity structure "capture the institutional context which imposes obstacle on and provides opportunities for actors engaged in framing processes". Jutta Joachim, "Framing Issues and Seizing Opportunities: The UN, NGOs and Women's Rights", *International Studies Quarterly* 47, no.2 (2003), p. 251.

[24] Mayne, *op. cit.,* p. 249.

relatively weak actor, successfully created a controversy by exploiting an opportunity (the South African litigation) in order to foster change[25].

Carli Carpentier's work on issue emergence and non-emergence illustrates that political opportunity structure is not enough to ensure issue formation[26]. A second key variable is the agency of *issue entrepreneurs* in seizing the opportunity to draw attention to the matter. The concept of issue entrepreneur is similar to Rochon's "critical thinker", Finnemore and Sikkink's "norm entrepreneur", Lessig's "meaning architect", Nadelmann's "transnational moral entrepreneur", Joachim's "organisational entrepreneur", Sell and Prakash's "policy entrepreneur" and Noakes and Johnston's "frame's promoter" [27]. Issue entrepreneurs define an issue by naming, interpreting and dramatizing the problem. Beyond being the central conduit for dissemination of information, they serve more practical roles such as absorbing the initial cost of mobilisation and bringing organisational experience to the movement. Moreover, successful issue entrepreneurs can mobilise individuals from a diverse political and international background.

Issue entrepreneurs working on access to medicines were initially composed of small organisations in developing countries seeking to join major transnational NGOs and garner greater media exposure. As one interviewee from a developing country noted, the first course of action was to "create voices within the United States…that could understand the issues, and could learn the issues…but that would be speaking without an accent." In South Africa, the Treatment Action Campaign was successful in obtaining the support of transnational and Western NGOs such as CPTech, MSF, Health Action International, and Oxfam. These NGOs were successful at internationalising the issue. They organised demonstrations in the streets of Washington, Paris, Bangkok, infamously interrupting the Al Gore Presidential-announcement[28].

In order to establish their foothold in the public discourse, to expand the scope of participation, and to elevate the underlying problem into an issue, issue entrepreneurs must insert the problem into a dramatic and non-technical frame[29]. Frames are "organizing principles that are socially shared and persistent over time, that work symbolically to meaningfully structure the social world"[30]. Effective frames contain a diagnostic element (that defines the problem), a prognostic element (that sets the appropriate strategy to rectify the problem), and a mobilizing element (that rallies people and

[25] William A. Gamson and David S. Meyer, "Framing Political Opportunity", in Doug McAdam, John McCarthy and Mayer Zald (eds.), *Comparative Perspectives on Social Movements* (New York: Cambridge University Press, 1996), p. 288; Joachim, *op. cit.*, p. 251; Finnemore and Sikkink, *op cit.*, p. 909.
[26] Charli Carpenter, "Setting the Advocacy Agenda: Theorizing issue Emergence and Nonemergence in Transnational Advocacy Networks", International Studies Quarterly, vol. 51 (2007), pp. 99-120
[27] Thomas R. Rochon, *Culture Moves: Ideas, Activism, and Changing Values* (Princeton: Princeton University Press, 1998); Lawrence Lessig, "The Regulation of Social Meaning", *University of Chicago Law Review* 62, no. 3 (1995), pp. 944-1045; John A. Noakes and Hank Johnston, "Frames of Protest: A Road Map to a Perspective" in Hank Johnston and John A. Noakes (eds.), *Frames of Protest: Social Movements and the Framing Perspective* (Lanham: Rowman & Littlefield Publishers, Inc., 2005), pp. 1-27; Finnemore and Sikkink, *op cit.*; Nadelmann, *op. cit.*; Joachim, *op. cit.*; Sell and Prakash, *op. cit.*
[28] Sell and Prakash, *op. cit*; Mayne, *op. cit.,* Hoen, *op. cit.*
[29] Roger Cobb and Charles Elder, *Participation in American Politics: The Dynamics of Agenda-Building* (Baltimore: John Hopkins University Press, 1983), p. 120; Nisbet and Huge, *op.cit.* p. 11.
[30] Stephen Reese, "Prologue- Framing Public Life: A Bridging Model for Media Research", in Stephen Resse, Oscar Gandy and August Grant (eds.), *Framing Public Life: Perspectives on Media and Our Understanding of the Social World* (Mahwah, N.J: Lawrence Erlbaum Associates, 2001), p. 11.

resources)[31]. These three elements emerge easily when the issue is framed as clear moral conflict, such as a manichean antagonism opposing good and evil forces. In such cases, media uptake is facilitated, and this "allows journalists to construct a news saga that they can cover for more than a day or week"[32]. Media resonance expands the size of the audience, which increases "the likelihood that it will attain systemic agenda standing"[33]. While the ultimate target of issue entrepreneurs might be a narrow circle of policymakers, framing a dramatic narrative through the mass media is an effective way to access their formal agenda[34].

On the issue of access to medicines, patents were an easy target to frame. Of the underlying problems associated with the health crisis in the developing world, including infrastructure, development aid, and good governance, patents were, as an interviewee observed, the only area subject to a major international treaty. Framing patents as the main obstacle to access to medicines implicitly points to the appropriate international forum to discuss the issue and the legal instrument to be amended. Further, blaming insufficient development assistance or inadequate governance would indirectly put the responsibility on the governments who act as gatekeepers for the inscription of a new issue on the intergovernmental agenda. Thus the issue was framed in a simple, and highly successful formula, equating patents with high prices, and therefore with the narrative of premature death[35]. The public's perspective was influenced by strategic vilification that cast pharmaceutical companies as greedy multinationals, juxtaposed against images of dying poor people.[36] Advocates portrayed the South African litigation as a battle between powerful transnational corporations on one side, defending excessive profit margins, and a weak state on the other side, defending human life. The latter was supported by two Nobel Peace Prize Laureates, Nelson Mandela and Médecins sans frontiers (MSF). As indicated by an NGO representative, framed in this manner, the problem of access to medicines became "an issue that's really very simple for people to understand."

The NGO frame was highly persuasive. According to Finnemore and Sikkink, persuasion is "the process by which agent action becomes social structure, ideas become norms, and the subjective becomes intersubjective"[37]. The NGO's frame entered into the inter-subjectivity realm as it was internalised, amplified, and further dramatised by media. *The Guardian*, *The Nation*, and *Le Monde*, among others, compared the South African lawsuit to Apartheid.[38] Interviewees from the NGO community considered that they "were really winning public opinion" and that they "won the first round." According to a bureaucrat, "public opinion was important in getting the key players to come to the realisation that it was something that they should take on and become an advocate for." As the problem evolved toward an issue, it became ubiquitous. A bureaucrat admitted that, "it was from that point … when this issue kind of hit newspapers … that I had to start paying attention to it." Another

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[31] David A. Snow and Robert D. Benford, "Ideology, Frame Resonance, and Participant Mobilization", *International Social Movement Research,* vol. 1 (1998), 197-217.

[32] Nisbet and Huge, *op.cit*. p. 3.

[33] Cobb and Elder, *op. cit.* p. 110.

[34] John McCarthy, Jackie Smith, and Mayer Zald "Access Public, Media, Electoral, and Governmental Agendas" in Doug McAdam, John McCarthy and Mayer Zald, (eds.), *Comparative Perspectives on Social Movements* (New York: Cambridge University Press, 1996), p. 291.

[35] Sell and Prakash, *op. cit*.

[36] Mark Weisbrot, "A Prescription for Scandal" *Baltimore Sun*, 21 March 2001, p. A17.

[37] Finnemore and Sikkink, *op cit*., p. 914.

[38] "South Africa's New Apartheid". *The Guardian,* 30 November 2000; "Apartheid of Pharmacology", *Monde Diplomatique*, January 2000; "Global Apartheid", *The Nation*, 9 July 2001.

bureaucrat, sceptical about advocate claims, explained that his country "took the view that whatever the merits of the issue, this was a politically very hot subject we could not avoid."

Interviewees from the pharmaceutical industry acknowledged that they were placed "on the defensive in the public's mind" and were "being portrayed as the villain." They cast the debate as a "political exercise" and a "symbolic issue" and themselves as the "easiest scapegoat" and the "media-visible solution." Interviewees identified three factors that gave rise to the emergence of an issue from the access to medicines problem. First, one group of interviewees recognised their responsibility in creating a political opportunity structure by their "huge PR mistake" in South Africa. As one interviewee noted, "it's gone from that period to demonizing the industry." Second, other interviewees attributed the NGO success to the fact that their issue entrepreneurs "were the ones who started using the media first." A third group of interviewees highlighted the effectiveness of the NGO frame by saying that "it's always nice and media-catchy to say that the patent system and the evil pharmaceutical companies are the ones that prevent small orphans in less developed countries and weak populations to get their medicine." In fact, the ability of the transnational advocacy network to create an issue from the problem of access to medicine is likely the result of a combination of these three factors: a political opportunity resulting from a crisis, committed issue entrepreneurs, and an effective frame.

The frame selected by issue entrepreneurs during the initial stage of the issue-cycle is determinative of the long-term direction of the issue. The frame establishes which actors should be considered relevant and what kinds of events will constitute future opportunities[39]. Analyzing initial frames can thus foreshadow future constraints on advocates. In the case of access to medicines, decisions made about the frame created a discourse-based path dependency that oriented the future context of the debate towards a legalistic solution. If the issue lies in legal rights rather than financial mechanisms or governance structures, then the solution must come out of a legal forum by legal persons.

2. From Campaign to Cubicles

Setting a new issue on a governmental or intergovernmental agenda is a tipping point[40]. Once set, issues become rapidly institutionalised[41]. A defined group of conflicting stakeholders is identified, a formal or informal forum for debate is selected, other organisations introduce the issue in their own agendas, studies are ordered and conducted, and decision-makers are pressed to take positions.

This institutionalisation calls for an adaptation of the advocacy network's strategies. While agenda-setting may need radical action to attract attention, upstream stages of policy formation, especially the legislative process, require "more conventional protests with more instrumental goals[42]". Confrontation and extremism are replaced by predictability and moderation, which are more desired

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[39] Joachim, *op. cit*., p. 249; Snow and Benford, "Ideology, Frame Resonance and Participant Mobilization", *op. cit*., p. 212-213
[40] Finnemore and Sikkink, *op cit*., p. 902.
[41] Downs, *op. cit.;* Frances Fox Piven and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Vintage, 1979).
[42] Tarrow, op. cit., p. 53

by the political establishment[43]. Progressive and mobilised lawyers, academics, consultants and bureaucrats substitute the original issue-entrepreneur as the driving forces of the issue cycle[44].

The transformative phase of the access to medicines issue was marked by three culminating events. First, in November 2001, the WTO Ministerial Council agreed on the Doha Declaration which called for international negotiations to address the need of some countries to import generic medicines produced under compulsory licensing. Then, in August 2003, a WTO Decision defined the conditions under which one country could export generic pharmaceutical products to another. Finally, in May 2004, Canada became the first country to amend its Patent Act to authorise the export of generic drugs. Between the 2001 Doha Declaration and the 2004 Canadian Bill, the debate was marked, as observed by Peter Drahos, by a high degree of rule complexity[45].

Table 1 Lexical clusters used more frequently than expected in the implementation stage [46]

Stakeholder	Terms	Z value
NGO	Law (*amendment*, *legislation*, *act*, *provision*, *rules*, *treaty*, *regulation*,...)	9.3
	Honour (*legacy*, *commitment*, *betrayal*, *honouring*, *pledge*, *promise*,)	3.0
	Reputation (*leadership*, *first*, *precedent*, *model*, *proud*,)	5.6
Medias	AIDS (*HIV*, *AIDS*, *antiretroviral*,)	8.3
	African countries (*Africa*, *Sub-Saharan*, *Ghana*,)	7.0
	Politics (*political*, *politics*, *politicisation*, *politicians*,)	2.8
Brand Name	Health infrastructure (*facilities*, *clinic*, *doctor*, *hospital*, *nurse*, …)	4.6
	Aid (*help*, *humanitarian*, and *assistance*,)	5.8
	Cooperation (*collaboration*, *consensus*, *coordination*, *joint*, *partnership*, *together*,)	2.7

As the issue matured, the strategies of the transnational advocacy network were modified. Having secured their frames in public discourse, as well as a tangible victory at Doha, advocates changed their focus to concentrate on what one interviewee called "direct lobbying", i.e., trying to influence political decisions by participating in formal political arenas and seeking direct contact with policymakers. Their testimonies, reports, and submissions to governments and intergovernmental organisations reveal a legal, technical, and sober discourse. As Table 2 indicates, their documents were characterised by an extensive use of legal concepts such as *amendment*, *legislation*, *act*, *provision*, *compliance*, *rules*, *treaty*, or *regulation*. This strategy was likely developed to gain legitimacy with an institutional audience and pragmatically address the legalistic nature of the debate, which in the political arena would be perceived more positively than the initial discourse put forth by NGOs. Another discourse-based strategy used by NGOs is what Keck and Sikkink call *accountability politics*, that is, "the effort to hold powerful actors to their previously stated policies or principles"[47]. More than any other actors, they used terms associated with accountability politics,

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[43] Gamson and Meyer, *op. cit*., p. 288.

[44] Finnemore and Sikkink, *op cit*.

[45] Drahos, *op. cit*.

[46] We performed a computer-based lexicometric analysis of 73 press releases, 29 open letters, and 87 newspaper articles published in Canada from August 2003 to November 2007. The corpus had 7535 different lexeme (number of different words) and 161 338 occurrences (total number of words). We used SATO Software to measure discursive variations among five groups of actors: governments, NGOs, generic drug manufacturers, patent-holders, and media. We combined 579 different words (7.68% of the total) into 54 categories, resulting in the categorization of 23 576 occurrences (14.61% of total). A Z value of greater than 2.0 or less than -2.0 was considered significant, that is the word (or the category) was used more (positive Z) or less (negative Z) frequently than expected in a set of documents.

[47] Keck and Sikkink, *op. cit*., p. 16.

such as "legacy", "commitment", "betrayal", "honoring", "pledge", and "promise", and international reputation, such as "leadership", "first", "precedent", "model", and "proud". The use of accountability politics, based on pre-existing norms, pledges and commitments, is a strong indicator of conventional discourse aimed at an institutional audience.

Gamson and Meyer rightly note that strategies needed to win political standing within established issues are the inverse of those required to win media attention: "The media rewards novelty, polemic, and confrontation, but institutional politics prizes predictability, moderation, and compromise"[48]. However, this institutionalisation does not necessarily cause a decline in public attention. In fact, institutionalised issues punctually remerge as points of contentious public debate with greater ease than problems "that might have been left behind in the primeval soup of pre-discovery"[49]. This is the case because political opportunities are created with the institutionalisation process. A number of opportunities can make the issue newsworthy and thus propel it back onto the front pages, such as legislative votes, implementation, anniversary of a decision, international conferences, revision of the mechanism, amendments[50].

Graph 2. Newspapers coverage of the access to patented medicines issue in Canada[51]

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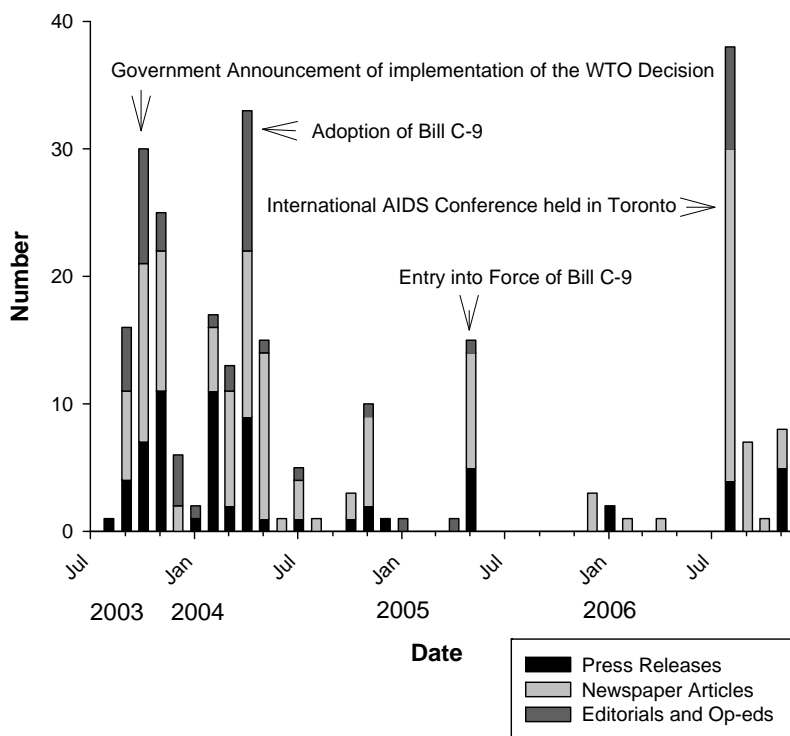
[48] Gamson and Meyer, *op. cit.,* p. 288.
[49] Matthew C. Nisbet and Mike Huge, "Where Do Science Policy Debates Come From? Understanding Attention Cycles and Framing", in D. Brossard, J. Shanahan, and M.C. Nesbitt (eds.), *The Public, The Media, and Agricultural Biotechnology* (Cambridge, MA: CABI Publishing Inc. 2007), p. 196; B.W. Hogwood and B.G. Peters, "In Search of the Issue Attention Cycle", *The Journal of Politics*, vol. 47, no. 1 (1985), pp. 238-253; ; Frank Baumgartner and Bryan Jones, "Agenda Dynamics and Policy Subsystems", *Journal of Politics*, vol. 53, no. 4, (1991), pp. 1044-1074.
[50] Cobb and Elder, *op. cit.,* p. 158; Miller and Riechert, op. cit.
[51] Newspaper articles, press releases, op eds, and editorials whose main theme (>50% content) was the Canadian Access the Medicines Regime were collected using the search terms "Bill C-9" or "Jean Chretien Pledge to Africa" and other synonyms in the Factiva database from August 31, 2003 to November 25, 2006.

Most interviewees readily recognised that it was challenging to sustain public attention on the access to medicines issue. This issue was described as "technical," "difficult to explain to a broad audience," "difficult to understand if you don't have a law background," and "too subtle for most reporters." Nevertheless, they continued sending regular press releases and open letters to mainstream newspapers. According to one interviewee, the institutional process created global momentum, raised awareness, and opened "space for debate that wasn't necessarily there before." Two examples of opportunity structures occurred in the implementation phase. First, as Graph 2 illustrates, the international AIDS Conference held in Toronto in 2006 constituted an opportunity to assess the effectiveness of the legislation and led to a greater amount of media coverage in Canada on this issue compared with the implementation of the WTO decision two years earlier. Another example is the mandated review of the Canadian mechanism in 2007, which drew considerable attention and prompted the participation of stakeholders worldwide, such as UNICEF and the Irish Pharmaceutical Healthcare Association.

As the issue progressively evolved with the rhythm of punctual institutionalised events, it became *path-dependent*. The notion of path dependency denotes the idea that once a certain option, selected as a result of a contingent or idiosyncratic event, gains an initial advantage, it becomes locked in through a positive feedback loop[52]. It is traditionally used within the paradigm of rational choice, where feedback is seen as a material gain or loss that alters interest calculations. It can also be applied to issue life cycle, if one assumes that positive and negative feedback could be found in the realm of communication[53]. Thus, once issue-entrepreneurs have ventured down a particular path, they are likely to find it very difficult to reverse their course. Certain arguments are automatically ruled out while others are generated for those who address the issue. Stakeholders must rely on the initial frame established by issue-entrepreneurs to feed their rhetorical emulation and move the debate forward. They may contribute to the master frame, but "rarely in ways that are inconsistent with its core elements, unless events have discredited it and undermined its mobilizing potency"[54]. As a result, alternative diagnoses and prognostics, that were once quite plausible, are discarded before being carefully examined. Refusing the constructed master frame, can result in non-responsiveness, outlier status, or accusations of bad faith.

Such a path dependency was apparent in the implementation phase, when the debate moved from Geneva to Ottawa. As Table 2 illustrates, claims made by stakeholders that were related to the initial framing received wider echoes in media. Since the issue was initially framed after the patent dispute in South Africa, it is not surprising that pharmaceutical companies were unable to divert attention to poverty, corruption, inadequate health infrastructures and other serious obstacles to access to medicine. Similarly, since issue-entrepreneurs initially capitalised on the HIV/AIDS crisis in Africa and named their campaign "Access to Essential Medicines", it is not surprising that NGOs found it difficult to expand their initial framing to include medicines that are not on the WHO essential medicines list, and to expand the proposed export system to large emerging countries. This case

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[52] Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics", *American Political Science Review,* vol. 94, no.2 (2000), 251-267; James Mahoney, "Path Dependence in Historical Sociology", *Theory and Society*, vol. 29, no.4 (2000), pp. 507-548; Kathleen Thelen, "Historical Institutionalism in Comparative Politics", *American Review of Political Science,* vol. 2 (1999), pp. 369-404.
[53] Thomas Banchoff, "Path Dependence and Value-Driven Issues: The Comparative Politics of Stem Cell Research", *World Politics* 57 (2005), pp. 200-230.
[54] Snow and Benford, *op. cit.*

illustrates that positive feedback loops apply to all stakeholders and do not necessarily advance the cause of the initial issue-entrepreneurs.

Table 2 Occurrences in newspaper of NGO and industry claims during the implementation stage[55]

Industry Claims		NGO Claims	
Pharmaceutical companies as part of the solution	8	NGOs as part of the solution	1
Patents are not the main obstacle	8	Patent are a major obstacle	55
Mechanism should include anti-diversion measures	13	The mechanism should be as simple as a possible	42
The mechanism should be humanitarian in nature	42	The mechanism should be commercial in nature	20
Balance of interests should be an objective	14	Developing countries interests should prevail	4

One positive feedback loop that reinforces a discursive path dependency and locks issue entrepreneurs in their initial rhetoric is the contagion effect. The contagion effect refers to a phenomenon pursuant to which the issue is spread out across both geographical and social boundaries. Spin-off movements grow and latecomers enter the fray, attracted by positive feedbacks such as media exposure, public visibility, and donor funding[56]. These latecomers often favour different strategies than the original issue-entrepreneurs. As Tarrow observes, groups that join a movement at the peak of the cycle "are not generally known for their insurgent tendencies"[57]. Instead, they free-ride on existing frames rather than create new frames that are radically different. Their involvement thus reinforces the institutionalisation of the issue.

The issue of access to medicines indeed cascaded across movements and organisations. As one interviewee, involved early in the process, recalled, "the entire global public health and NGO community and academic community became obsessed with this [issue]: it's all you can talk about for a couple of years." One interviewee from a small NGO admitted that "when it became a very salient issue, it was time to do something, to take a position." Another interviewee readily recognised that "we felt we had something to say [when] there was a wide recognition that this legislation had potential to have an important impact." One of the latecomer interviewees explained that they had "limited human resources, certainly limited financial resources" and it is important "to choose priorities for our advocacy and we choose them based on opportunities." Once institutionalised, the issue of access to medicines, described as "the low hanging fruit," offered clear opportunities for latecomers. More specifically, according to one of these latecomers, "There's nothing like a success to galvanise people's interest [and] it was an area where success – or the taste of success, the possibility of success – was in the air."

These latecomer NGOs were, within the transnational advocacy network, the most enthusiastic supporters of the 2003 WTO decision and the most satisfied with the evolution of the debate. As well, small NGOs without the capacity to initiate a global debate were similarly satisfied. They did not try to alter the course of the issue and were "really going with the flow in terms of the expertise

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[55] 87 newspaper articles whose main theme (>50% content) was the Canadian Access the Medicines Regime were manually coded to identify the influence of non-state actors. Two coders used a standardized coding frame, working together for two weeks and then reconvening periodically to discuss issues that had arisen during coding. If discrepancies arose, the coders reached a common interpretation and kept a log of decisions.

[56] Clifford Bob, *The Marketing of Rebellion: Insurgents, the Media and International Activism* (Cambridge: Cambridge University Press, 2005).

[57] Tarrow, *op. cit.* p. 47.

that was there." In this context, they were pleased to have an impact on the process. As one interviewee noted, "this was one case where we could put in our report to [our funders], hey, policy changed." Indeed, latecomers tended to measure their success by their influence on policymakers rather than by improved conditions of access to medicines. According to one of them, "the fact that we won on the political level is already a great step forward."

Issue entrepreneurs, who were large transnational NGOs with headquarters in Paris, London or Washington, had much greater ambitions. They were more comfortable in the agenda-setting stage than working within an institutional setting. Not content with simply having access to policymakers, they felt taken advantage of by the other latecomer NGOs. What Peterson calls an "asymmetry of understanding"[58] started dividing these issue entrepreneurs from latecomers. According to an interviewee from a transnational NGO with field operations, "it's different when you've worked in the field ... you've had people dying in your arms... your instincts about it are different." As the issue became technical, the gap with latecomers became "so vast that you [couldn't] anymore make a link between them." As smaller organisations joined the bandwagon, issue entrepreneurs lost the ability to control the direction of the debate and found themselves entrapped by their own framing. They successfully deconstructed the earlier frame but, in doing so, reconstructed a frame that did not serve their long-term interests. Confronted with a runaway version of their own conception, the issue's creators sought its demise.

3. From Cubicles Back to the Field

The question arises as to why and how an issue fades out? As mentioned above, current explanations focusing on closure of political opportunities, external pressure, or internal exhaustion are insufficient. This case study explores a fourth possibility. Namely, problems arising from an issue's path dependency may entrap key stakeholders, causing them to lose control, and prompting them to kill the debate to better reframe it elsewhere. This strategic behaviour is coined "issucide".

The constraint of the discourse-based path dependency was noted by stakeholders from all sides of the debate and was manifested in three symptoms. First, some very influential actors felt that the issue they brought forth was taken from them once the technicalities of the legal mechanism became the focus of the debate. Interviewees considered that it got "technical very quickly," that "lawyers have taken over after 2000," and that the mechanism became just "an instrument to train lawyers."

This entrapment into technicalities led to the second symptom of the discourse-based path dependency. As an interviewee noted "it's easier to say something is unacceptable when all of the technical details of it are not necessarily specifically known." Indeed, several interviewees felt that they lost their critical judgment once they embarked into the technical discussion. They "[bought] in a bit to the system," they realised "things take time and people are doing their best," they "started to downgrade" their principles, they "moved much closer to the establishment," and they lost "perspective of what is to be done." A bureaucrat explained that he "worked insane hours back then" and that he "became blinded by the virtue of what [he/she] felt [he/she] was doing, without giving proper consideration to the reality of the situation." Similarly, an activist considered that they "were

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[58] Karen Petersen, "Expanding Downs's Issue-Attention Cycle: International Terrorism and U.S. Public Opinion", paper presented at the International Studies Association Conference 2008, p. 10.

so invested" that it was hard to say afterwards that their "baby isn't quite as beautiful as I would like it to be." "We thought it was a neat thing," concluded an interviewee, "because we got very caught up in the detail."

The third symptom emerged from this enthusiasm. Transcending industry/NGO divisions, a strong fear was expressed of being ostracised, considered a "fringe element," positioned "outside of the debate," or "on the other side of global consensus." Perhaps speaking with the benefit of hindsight, some interviewees noted that they had serious reservations at the time. However, the institutionalisation of the debate made criticism "much, much harder" and alternative solutions were a "tough sell." One activist "worked very hard to try to make a more gentle position and more soft and help people to understand why and to excuse." However, the need to remain part of the herd was a strong motivating factor to not deviate from the path.

Within the NGO network, issue entrepreneurs were especially conscious of these three symptoms and, more than any other actors, resisted their effects. Indeed, large transnational NGOs who participated in the initial framing when the South African lawsuit was brought forth were among the most sever critics of the issue evolution. One qualified the debate as "a disgraceful mess" and another hoped for a "big pullback." For example, during the implementation phase in Canada, while most small Canadian-based NGOs congratulated the Canadian government for its initiative, MSF was the only major NGO to express strong criticisms, to refuse to sign the joint NGO press release, and to issue their own release entitled "How Canada Failed the International Community"[59].

Most of the issue entrepreneurs participated in the last stages of the debate simply to prove that the suggested solution would be a failure and to be in a better position to reframe the debate globally in a more radical fashion. "We don't think it's going to work," they said, "but we have to test it." An interviewee from a leading NGO explained that the strategy was "to accelerate attempts to use the procedure …, to show whether or not it works … and then to move on." They thought that if they could successfully demonstrate its failure after having advocated its implementation, they would have, as one interviewee put it, "such a strong case to make for this decision to either be reversed or that it's all a waste of time and we should be looking for completely different models."

Pharmaceutical companies joined issue-entrepreneurs in their belief that the WTO decision would not significantly improve access to medicines, and therefore would not threaten their patents. But since their ill-fated South African lawsuit, they feared that "mass media would really turn against" them. They were particularly susceptible to shaming strategies as their business model depended on a regulatory framework set by decision-makers, themselves influenced by public opinion. Some companies, including GlaxoSmithKline and Merck, were more risk averse than others. They were concerned, as an interviewee recalled, about activists "throwing paint on their doors or protesting" at their shareholder meetings. This aversion to risk actually made some companies reconsider their more high profile AIDS research. It became imperative to have the issue resolved in a manner that would "be perceived as beneficial to least developed countries."[60]

To reverse the public criticism, pharmaceutical companies did, as their lobbyists boast, "something very, very intelligent" and "much more sophisticated," revealing "a greater level of understanding of

[59] MSF « How Canada Failed the International Community », press release, April 29th, 2004.
[60] Pugatch, Meir Perez, "Political Economy of Intellectual Property Policy-Making – An Observation from a Realistic (and Slightly Cynical) Perspective", *The Journal of World Investment & Trade, vol.* 7, no 2 (2006), p. 270.

how better to communicate." Indeed, they realised that their material interests could be spared and their reputation improved if they cooperated and supported the suggested mechanism. They decided to "[concede] on some demands in a way which makes it difficult … to be challenged." They wrote letters, press releases and submissions that "expressed strong support for new world trade rules that would help get needed medicines to people in the poorest nations[61]". As Table 2 indicates, industry press releases used inclusive terms to describe interactions with other actors, such as *partnership*, *cooperation*, *coordination*, *jointly*, *together*, *agree*, and *shared*. The few aggressive nouns and adjectives employed referred to the common "*fight* against diseases" and "the *battle* against public health threats." As a lobbyist summarised, they decided to compromise on a mechanism that had highly symbolical value but little commercial risk " to get them off our backs."

Some governments were also hoping the debate on access to medicines would end. It was undermining the legitimacy of the WTO, slowing the momentum for trade liberalisation, and causing governments to bow to protectionist pressures. In a 2002 press release, the WTO noted that the issue was "of great importance not only to developing countries but to the organisation itself and to the broader trade negotiations that are part of the Doha Development Agenda." According to an interviewee, there was a risk that the issue might "blow up and affect other sectors, and affect the whole system generally." "From Seattle onward," the interviewee explained, "the WTO and its member states have come to be seen almost as an enemy of progress and progressive people." For a trade negotiator, "the priority...was to demonstrate that the international trade system could accommodate the very vulnerable situation of developing countries."

The issucide was thus a collective murder[62]. Leading NGOs, pharmaceutical companies and governments wanted, each for their own reasons, to "[cross] this sensitive issue off the agenda." At a time when the legalisation of world politics was in fashion,[63] their weapon was the consensual adoption of a legal instrument. Interestingly, the country with the highest interest in seeing the issue die, the United States, was the first to accept the amendment of the TRIPS agreement authorizing the export of generic drugs. Since then, the issue of access to patented medicines has not been actively discussed at the WTO. It was described by interviewees as "diminished", a "dead end", as having "run its course", "resolved," "not a big deal", "not a priority" and "forgotten". Further, one interviewee stated that the issue was "off the agenda because we let it slip off the agenda."

With access to patented medicines on the wane, stakeholders have shifted their individual efforts to reframing the problem and are involved in new battles. According to one interviewee, the pharmaceutical industry now considers itself to be "in a much more comfortable negotiating position" given that they signed an agreement with developing countries "essentially declared that the TRIPs Agreement no longer obstructs efforts to promote public health."[64] In fact, pharmaceutical companies were confident that the issue would not rekindle in a way that would be to their detriment, and thus felt more comfortable to challenge the laws or policies of several countries, including

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[61] Pfizer, "Pfizer Expresses Strong Support for planned Drug-Access Rules", press release of August 28th, 2003.
[62] Jean-Frédéric Morin and Richard Gold, "Consensus-Seeking, Distrust and Rhetorical Entrapment: The WTO Decision on Access to Medicines", *European Journal of International Relations*, to be published.
[63] Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal, "The Concept of Legalization", *International Organization*, 54(2000), pp. 401-419.
[64] Pugatch, *op. cit*., p. 271.

Thailand, India, and Kenya. With the issue of access to medicines now being off the table, they began promoting the issue of intellectual property enforcement[65].

From the point of view of trade negotiators from developed countries, the WTO decision crossed a sensitive issue off the agenda. Access to medicines is no longer actively discussed at the WTO TRIPS Council, nor even at WTO public symposia for civil society. A trade negotiator congratulated himself for this success: "Of course I know that the problem on the ground – HIV/AIDS – is still a major issue, but as a political issue I think we manoeuvred in such a way that indeed the confrontational and emotional debates have really almost died out." The WTO and its members are now in a better position to move on to address agricultural subsidies and trade liberalisation.

NGOs and governmental officers from developing countries were also pleased that the WTO debate ended. The mechanism's poor results, for which they expressed scepticism even before its adoption, is evidence that other solutions must be found. According to them, "it should be a wakeup call," "it's very clear now you have to find something different," they have "such a strong case for completely different models," "we just need to start from scratch," and 'we need to go back to the drawing board."

For NGOs "a new chapter is starting." The end of the debate offers unique opportunities to reframe the issue elsewhere. Interviewees no longer feel trapped in what they described as a "fake debate opposing trade and health," but are instead "talking access to health in a different level." Indeed, the end of the WTO debate coincided with the opening of the WHO debate on access to medicines. This forum shift toward the WHO is seen as a positive development by activists and governmental officials working on public health. Discussions still include patent related issues, but locate them within a broader framework. Options being considered are not limited to compulsory licensing for countries with insufficient manufacturing capacity, but include prize funds, and technology transfer to help increase manufacturing capacity in developing countries.

It is important to note that the death of this issue does not imply that the conditions that fostered its emergence are resolved. The underlying problem persists, namely, that essential medicines are unavailable to those in need. Being unresolved, issue entrepreneurs wait for a new political opportunity to generate a related issue from the ashes of its predecessor. There is a high probability that the problem and actions pick up again sooner rather than later, but the issue will certainly be framed differently.

The issue, once re-framed, may even be discussed at the WTO once again. Interestingly, transforming the current waiver into a permanent amendment of the TRIPs agreement requires the acceptance of two thirds of the WTO members to take effect. The 2005 Decision was originally open for acceptance until 1 December 2007, a deadline later extended to 31 December 2009. On that date, less than one third of WTO members accepted the amendment. In fact, most intended beneficiaries of the amendment, i.e. developing countries without manufacturing capacity in the pharmaceutical sector, have not formally accepted it. This can be interpreted as an attempt to create a political opportunity for a re-framed issue.

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[65] Susan Sell, "The Global IP Upward Ratchet, anti-counterfeiting and Piracy enforcement efforts: the state of Play", Institute for Global and International Studies, George Washington University, 2008, available: http://www.keionline.org/misc-docs/Sell_IP_Enforcement_State_of_Play-OPs_1_June_2008.pdf

4. Conclusion

The issue of access to patented medicines was born in South Africa, lived in Geneva, and died in Ottawa. This paper argues that the manner in which an issue expires is closely associated with how it comes to life. In this casem it emerged from a legal dispute between pharmaceutical companies and the South African government, and evaporated with the adoption of a legal agreement consensually supported by most stakeholders. It started with one of the most serious public relations blunders in the history of pharmaceutical companies, and it ended with what might well be an ingenious communication strategy.

To date, international studies have paid little attention to issues as social constructions, and even less at the last stages of the issue life cycle. To capture the process by which issues become the source of structural constraints, rather than the target of framing efforts, this paper applied the concept of path dependency. Once a discourse-based path is selected by issue-entrepreneurs, it has a structuring effect on all stakeholders, including on the issue-entrepreneurs themselves. It constrains agents by determining whom and what are relevant to the debate. Those who try to escape are marginalised, while those in compliance are positively sanctioned by media and decision-makers. However, the path of an issue does not automatically lead to its evaporation at some point down the road. To reduce the public controversy, one actor, or all actors, must strategically break with their earlier statements and reach a consensual agreement.

On the access to medicines issue, the first actors that called attention to a legal problem, that capitalised on the HIV/AIDs crisis, and that used the example of Africa, were also the first to have felt constrained by their own frame in their attempt to look for economical rather than legal solutions, to expand the list of medicines covered beyond anti-retrovirals, and to allow large emerging economies to benefit from a scheme designed by countries without manufacturing capacities. In order to escape an issue in which they felt entrapped, issue-entrepreneurs and other stakeholders worked strategically to kill the issue in order to better reframe it in other forums.

Developing countries would probably have secured more gains if, instead of entering into a path dependant debate, they had quietly changed their practices. They could have unilaterally changed their domestic legislation to include additional exceptions and waited for the US to create the controversy by litigating at the WTO. As Peter Drahos observed, "[b]earing in mind the public relations disaster of the litigation by pharmaceutical multinationals against South Africa and the fact that the US would have been globally seen to be undermining the Doha Declaration as a moral canon, one suspects that the costs to the US of a WTO litigation strategy would have been simply too high"[66]. Therefore, instead of sustaining a discursive path dependency with their arguments, developing countries' legal practices would have created a legal path, reinforcing their own integration of TRIPS obligations: "[t]he more widespread and longer the practices of developing countries became the more weight as a matter of international law those practices would have gained"[67]. Unfortunately, some delegations at the WTO suffer from having too much rhetorical ability and too little legal creativity.

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[66] Drahos, *op. cit*., p. 24
[67] Ibid.

Appendix: List of interviewees

INTERVIEWEE	AFFILIATION	DATE OF INTERVIEW
Abbott, Frederick M.	*Florida State University*	January 16, 2007
Addor, Felix	*Swiss Federal Institute of Intellectual Property*	February 14, 2007
Armstrong, Christopher	*Canadian International Development Agency*	January 17, 2007
Austin, Sara	World Vision	August 23, 2006
Bennett, Catherine	*Formerly with Pfizer*	October 6, 2006
Berger, Jonathan	*AIDS Law Project (South Africa)*	April 2, 2007
Blouin, Chantal	*North South Institute*	June 21, 2006
Bonin, Marie-Hélène	*Formerly with Médecins Sans Frontières*	November 8, 2006
Charles, Furaya	*Government of Rwanda*	November 20, 2007
Clark, Bruce and Hems, John	*Apotex*	January 30, 2007
Clark, Douglass	*Industry Canada*	November 17, 2006
Connell, Jeff	*Canadian Generic Pharmaceutical Association*	January 30, 2007
Drummond, John	*Department of Foreign Affairs (Canada)*	October 31, 2006
Elliott, Richard	*Canadian HIV/AIDS Legal Network*	January 31, 2007
Elouardighi, Khalil	*Act Up Paris*	October 30, 2006
Finston, Susan	*Formerly with PhRMA*	October 5, 2006
Foster, John	*North South Institute*	September 8, 2006
Fried, Mark	*Oxfam*	September 8, 2006
George, Douglas and Boisvert, Julie	*International Trade Canada*	September 7, 2006
Gerhardsen, Tove Iren	*IP Watch*	November 1, 2006
Gorlin, Jacques	*Gorlin Group*	October 5, 2006
Jennings, Marlene	*Member of the Canadian Parliament*	October 10, 2006
Jorge, Fabiana and Cullen, Dolores	*MFJ International*	October 6, 2006
Kiddell-Monroe, Rachel	*Médecins Sans Frontières*	November 10, 2006
Kurji, Feyrouz	*Formerly at the Private Council Office (Canada)*	January 10, 2007
Lee, David K.	*Health Canada*	September 8, 2006
Lewis-Lettington, Robert	*Genetic Resources Policy Initiative (Kenya)*	April 4, 2007
Lexchin, Joel	*York University*	January 31, 2007
Love, James	*Knowledge Ecology International*	September 23, 2006
Matthews, Merrill	*Institute for Policy Innovation*	November 2, 2006
McCool, Terry	*Eli Lilly*	February 8, 2007
McCoy, Stanford	*United State Trade Representative Office*	October 6, 2006
Musungu, Sisule	*South Center*	November 10, 2006
Noehrenberg, Eric	*IFPMA*	November 1, 2006
O'Connor, Michael	*Interagency Coalition on AIDS and Development*	November 8, 2006
Otten, Adrian and Watal, Jayashree	*World Trade Organization*	October 31, 2006
Passarelli, Carlos	*Government of Brazil*	December 13, 2007
Patry, Bernard	*Member of the Canadian Parliament*	November 8, 2006
Pettigrew, Pierre	*Former Canadian Minister of International Trade*	December 14, 2006
Pitts, Peter	*Center for Medicines in the Public Interest*	January 25, 2007
Pugatch, Meir	*The Stockholm Network*	December 20, 2006
Smith, Eric	*International Intellectual Property Alliance*	October 6, 2006
Smith, Patrick	*Intellectual Property Institute of Canada*	January 22, 2007
Spennemann, Christoph	*UNCTAD*	November 1, 2006
Sreenivasan, Gauri	*Canadian Council for International Cooperation*	September 7, 2006
Tamakloe, Joseph	*Ghanaian Patent Office*	November 16, 2007
Taubman, Antony	*WIPO*	January 17, 2007
Twiss, Caroline	*Canadian Activist*	March 7, 2007
Vandoren, Paul and Ravillard, Patrick	*European Commission*	December 13, 2006
Van-Eeckhaute, Jean Charles	*European Commission*	December 19, 2006
Velasquez, German	*World Health Organization*	October 31, 2006
Weissman, Robert	*Essential Action*	October 5, 2006
Williams, Russell	*Rx&D*	December 20, 2006
Yong-d'Hervé, Daphné	*International Chamber of Commerce*	December 5, 2006