

Brazil's Emerging Role in Global Governance

Health, Food Security and Bioenergy

Markus Fraundorfer

Associate Research Fellow, German Institute of Global and Area Studies (GIGA),
Germany

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c) The discursive interface

The WTO Trade Dispute on patent rights between Brazil and the US in early 2001 is fundamental in understanding Brazil's emergence as a leading actor in the global access-to-medicines debate. The discursive interface lays out the role of the different actors involved directly and indirectly in this trade dispute. Apart from Brazil and the US, these actors include the pharmaceutical industry, the global AIDS movement and the US media.

The role of the US and the pharmaceutical industry

On 03 December 1999, the Pharmaceutical Research and Manufacturers of America (PhRMA)⁸ submitted their annual National Trade Estimate Report on Foreign Trade Barriers to the US Trade Representative (USTR), complaining about inconsistencies between Brazil's Industrial Property Law and the TRIPS Agreement (CPTech 1999). The USTR argued that Article 68 of Brazil's Industrial Property Law violated Article 27 of the TRIPS Agreement:

Article 68 [...] requires domestic exploitation of the subject matter of a patent. Importation may only satisfy this requirement if local manufacture is not feasible, inconsistent with the terms of TRIPS Article 27. Our industry is increasingly concerned about this provision, as hopes that it could be resolved quickly at the local level have faded, and the threat becomes more immediate. This is further aggravated by the October 6, 1999 issuance of a Presidential Decree regulating the implementation of Article 71 of the law, which governs the grant of compulsory licenses⁹ in broadly defined situations of national emergency.

(in: CPTech 1999)

The USTR used this legal and technical language to express his concern about Brazil's practice of either locally producing or importing generic versions of patent-protected AIDS drugs to guarantee the sustainability of its National AIDS Programme, which was based on the innovative and original strategy of providing universal and free access to these drugs. In addition, the USTR was also alarmed about Brazil's potential use of a compulsory licence in situations of national emergency, which the country could use to have patent-protected AIDS drugs produced by someone other than the pharmaceutical company in possession of the patent. Nevertheless, Brazil had never used Article 68 to produce

generic versions of its AIDS drugs, and the government had not issued a compulsory licence on an AIDS drug at that time (Hein and Moon 2013: 71).

Only months later, the USTR put Brazil on the watch list in his 2000 Special 301 Report, repeating his concerns with Article 68 of Brazil's Industrial Property Law and preparing the ground for the initiation of a WTO Trade Dispute:

Brazil's patent law imposes a 'local working' requirement¹⁰ as a condition for enjoyment of exclusive patent rights. This requirement can only be satisfied by local production, and not importation, of the patented product. This appears inconsistent with Brazil's obligations under Article 27 of the WTO TRIPS Agreement, which requires that patent rights be 'enjoyable without discrimination as to... whether products are imported or locally produced.' Brazil has stated repeatedly that it disagrees with this interpretation of the TRIPS Agreement. In order to resolve this longstanding difference in views over this issue, as well as to address the concern that other countries may cite the Brazilian 'local working' requirement as a justification for proposing similar legislation, the United States is now requesting WTO consultations with Brazil to pursue this single-issue case.

(Knowledge Ecology International 2000)

The annual Special 301 Reports serve 'as an instrument for pushing foreign and American IP [intellectual property] commitments beyond existing obligations without the inconvenience of a strong public comment process (as required in rulemaking) or a structured adversarial process (as required in formal adjudication)' (Karaganis and Flynn 2011: 91). When it comes to preparing the Special 301 Reports, which serve predominantly the interests of US-based industrial companies, the USTR closely collaborates with US-based industry including PhRMA (Karaganis and Flynn 2011: 90-2). James Love of the US-based NGO CPTech (Consumer Project on Technology) stressed that being put on the Special 301 watch list was essentially a question of power and pressure, indicating the power of the US in the global economy and its leverage to pressurise other countries to abide by international intellectual property laws as far as it suits US interests (Love 1999). In the face of losing 'hundreds of millions of dollars annually to patent piracy around the world' (CPTech 1999), US pharmaceutical companies are very keen on assuring that their patents are protected in Brazil, the largest pharmaceutical market in South America (CPTech 1999).

On 08 January 2001, the US government requested the establishment of a panel at the WTO, arguing that Brazil's local working requirement (Article 68 of its Industrial Property Law) and its possible granting of compulsory licences was inconsistent with the TRIPS Agreement (WTO 2001a). Of course, Brazil was not happy with the decision taken by the US and fought back by challenging the US Patent Code on the grounds that several of its provisions were not consistent with international law, including the TRIPS Agreement (WTO 2001b). The WTO-dispute settlement process was officially initiated on 01 February 2001, when the US refuted Brazil's legal allegations and the US government, backed by the pharmaceutical industry, insisted on its accusation that Brazil had infringed international intellectual property rights (WTO 2001c).

The US government framed its approach as a purely legal matter. The US accused Brazil of not complying with the international TRIPS regulations in two cases – the local working requirement and the possible granting of compulsory licences – which entails the discrimination against US patent-owners and as such the market-oriented interests of US-based companies. In the official US statements there is no specific reference to pharmaceutical patents or the discrimination against US-based pharmaceutical companies, even though the leading pharmaceutical companies in the US, represented by PhRMA, regarded their interests on Brazil's pharmaceutical market most at risk in the face of Brazil's local working requirement.

The role of Brazil

While the US and the pharmaceutical industry had already been active in working against Brazil's HIV/AIDS strategy before January 2001, Brazil had been engaged in first efforts to disseminate its own strategy on the international level (Nunn 2009: 122–3, 126–7): (1) At the WHA session in May 2000, Brazil, for the first time, proposed a resolution on a monitoring system of AIDS-drug prices which in the end failed due to opposition from the US and the pharmaceutical industry. (2) In July 2000, at the Durban AIDS conference, Brazil engaged for the first time in discussions with the media, the international civil society movement and other developing countries on how to reduce the prices of generic AIDS drugs. (3) Throughout the whole year, Brazil had threatened to break the patent (issue a compulsory licence) of two AIDS drugs, namely Efavirenz (produced by the US-based pharmaceutical company Merck⁽¹⁾) and Nelfinavir (produced by the Swiss pharmaceutical company Roche).

As a continuation of these efforts, Brazil's then Minister of Health, José Serra, repeated his threat on 02 February 2001, only one day after the official initiation of the WTO dispute settlement process, that he would break the patents of Efavirenz and Nelfinavir¹² if those companies did not reduce the price of the drugs (Folha Online 2001). At that time, seven of the 12 AIDS drugs,¹³ which the government used for its antiretroviral therapy, were produced by Farmanguinhos, a government-owned laboratory which is part of the Oswaldo Cruz Foundation (Oxfam 2001a: 2, 6, 7; Report of the UN High Commissioner for Human Rights 2001).

Merck's strategy followed the very same lines as the actions of the US government against Brazil in the WTO. At the beginning of March 2001, Merck threatened Brazil to file a lawsuit for the violation of Merck's patent rights for Efavirenz (Darlington 2001). Threatened by Brazil that the country was prepared to break the patent of the drug if Merck did not lower the prices, Merck agreed to reduce the price of two AIDS drugs: the price of the drug Indinavir was reduced by 65 per cent and the price of Efavirenz by 59 per cent, which was estimated to save the country around US\$39 million out of its US\$305 million budget for AIDS drugs (Reuters 2001).¹⁴

Brazil continued its aggressive strategy and started to directly confront the US in several international organisations. On 28 March 2001, Brazil proposed a resolution to the UN Human Rights Commission entitled 'Access to medication in the context of pandemics such as HIV/AIDS' (Duque Estrada Meyer 2001a). In this resolution, Brazil emphasised 'the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, including by reducing vulnerability to pandemics such as HIV/AIDS' and called upon states to considerably improve the access to medicines (UN Commission on Human Rights 2001). The Brazilian Delegation explained that the resolution was supposed to specify the range of the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights by guaranteeing the availability of AIDS drugs in sufficient quantities for affordable prices (Statement of the Delegation from Brazil 2001). The resolution was overwhelmingly approved in the UN Human Rights Commission (52–0 vote) with the US as the only member state abstaining from the vote (Duque Estrada Meyer 2001b). The US defended its abstention by claiming that the resolution threatened the protection of intellectual property rights and that health matters ought to be discussed in the WHO (Pruzin 2001).

And indeed, after this successful move against the US in the UN Human Rights Commission, Brazil turned its attention to the WHO, where, in the context of the 54th WHA session in May 2001, Brazil proposed two resolutions (E-Drug 2001; Weissman 2001). The first of these was on a revised drug strategy and the second was on HIV/AIDS. After compromises with the US and the EU on the original language of Brazil's proposals, the following resolutions were adopted by the WHA: (1) 'The WHO Medicines Strategy' and (2) 'Scaling up the response to HIV/AIDS'. Notwithstanding the weakened and at times more ambiguous language which prevailed due to the interference of the developed countries, both resolutions still favoured Brazil's original intentions of building upon the success achieved in the UN Human Rights Commission and strengthening access to medicines as a human right.

The WHO Medicines Strategy recalled 'that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being' (WHO 2001a). Building on the acknowledgment of the non-discriminatory access to medicines as a human right, the resolution urged member states to engage in efforts to improve the universal access to medicines and requested the WHO director general to implement a voluntary monitoring system for drug prices. Only one year before, Brazil had still failed with this request to establish a monitoring system for drug prices.

The second resolution, 'Scaling Up the Response to HIV/AIDS', complemented the strengthening of the access to essential medicines as a human right by recognising the benefits of (1) antiretroviral therapy – as applied in Brazil as essential part of its National AIDS Programme – and (2) the AIDS-drugs price reductions as a successful means to combating HIV/AIDS (WHO 2001b). The resolution called for reinforced efforts in the fight against the HIV/AIDS epidemic, which, apart from guaranteeing an improved availability of drugs at affordable prices and the production of generic drugs, involved the establishment of a global HIV/AIDS and health fund.¹⁵ After the long-lasting drafting process and the huge compromises on Brazil's original text that led to the two final WHA resolutions, Brazil, as in the UN Human Rights Commission, was successful in maintaining the upper hand in the dispute between human rights and patent rights. And yet, several CSOs accused the US – and the EU member states – of consciously obstructing public health efforts by bullying and pressuring Brazil into accepting their weaker language (Health GAP Coalition 2001; Weissman 2001).

On 30 April 2001, the USTR published the Special 301 Report for the year 2001 (CPTech n.d. a). The report rejected the assertions made by the

Brazilian government that the case against Brazil would threaten Brazil's National AIDS Programme and repeated that the US solely focused on Brazil's local working requirement, which was not related to health or the access to AIDS drugs (Knowledge Ecology International 2001: 10). Brazil's then Minister of Health, José Serra, reacted promptly and accused the USTR of merely protecting the interests of the American economy and its pharmaceutical industry instead of trying to protect international regulations. Serra gave two main reasons which explain the USTR's statement (Ministry of Health 2001): (1) The mere threats announced by Brazil to issue a compulsory licence which were responsible for the considerable price reductions for AIDS drugs offered by pharmaceutical companies; and (2) Brazil's production of generic versions of patent-protected AIDS drugs. Serra made clear that Brazil carried out these efforts without breaking any existing patent laws and stressed that Brazil would not back down against the US.

Some weeks later, the debate on the access to medicines also reached the TRIPS Council, when during its regular meeting from 18 to 22 June a Special Session on intellectual property and access to medicines was held.¹⁶ For that session, Brazil had submitted a document¹⁷ which stressed a clear positioning in favour of human rights and public health as opposed to the protection of patent rights (WTO 2001e). The representatives of *Médecins Sans Frontières* and the Third World Network¹⁸ present in Geneva observed that during the Special Session the US stood alone with its position of upholding the principle of the inviolability of patent rights against the human right to health and the access to essential medicines (Oh 2001a; T Hoen 2001a).

Brazil launched a strong defence of its National AIDS Programme by confronting two powerful pharmaceutical companies and engaging in activities at various important sites of global health governance. By threatening both Merck and Roche to break the patents of the two AIDS drugs Efavirenz and Nelfinavir, Brazil pursued an aggressive strategy to defend its National AIDS Programme. Merck actually conceded to the pressure and reduced the price of Efavirenz and Indinavir. In the UN Human Rights Commission, Brazil was successful in strengthening the human right to health through the resolution 'Access to medication in the context of pandemics like HIV/AIDS'. The adoption of the resolution demonstrated that the whole Commission agreed with Brazil's approach, except for the US.

In the WHA, Brazil repeated this success and pushed for two resolutions which formally recognised significant elements of Brazil's National AIDS Programme. The 'WHO Medicines Strategy' recognised the human

right to health and the human right to access to medicines, while the second resolution 'Scaling Up the Response to HIV/AIDS' formally legitimised Brazil's innovative antiretroviral therapy of prevention and treatment, which included the necessity of seeking price reductions for indispensable AIDS drugs. The adoption of these two resolutions also showed that, as in the case of the UN Human Rights Commission, a huge majority of states supported Brazil's approach. In addition, Brazil was successful in putting the debate on the access to medicines on the agenda of the TRIPS Council with a clear emphasis on the human right to health.

The role of the global AIDS movement

Even before the US had decided to push for a WTO dispute settlement process against Brazil, the global AIDS movement had already been in full swing. One particular reason for this intensive activism referred to a similar threat from the pharmaceutical industry against the government of South Africa. Following the South African government's adoption of the Medicines and Related Substances Control Amendment Act in 1997, which allowed parallel imports¹⁹ and the production of generics to make drugs more affordable, 39 pharmaceutical companies filed a lawsuit against the government arguing that this new law violated the TRIPS Agreement (MSF 2001b).²⁰

In December 1998, the South Africa-based NGO Treatment Action Campaign (TAC) was founded and became one of the most important campaigners for the access to medicines (Treatment Action Campaign n.d.). In 1999, Médecins Sans Frontières launched its global Campaign for Access to Essential Medicines (MSF n.d.). In early 1999, the Global Access Project 'Health GAP', a US-based NGO, came into being to join in the campaigning efforts for the global access to medicines and to oppose the policies advocated by pharmaceutical companies and the US government (Health GAP n.d.).

All these new forces had been joining efforts to campaign against the lawsuit brought against the South African government, in particular in the weeks prior to the expected court hearing in South Africa's High Court on 05 March 2001 (CPTech n.d. b). The investments made in campaigning for the access to affordable medicines bore fruits not only in relation to the case of South Africa. In February 2001, several investors were concerned about the international image of the newly merged British pharmaceutical company GlaxoSmithKline²¹ which was criticised by the social movement for its stance on protecting patent rights of AIDS drugs in Ghana and Uganda and for justifying the lawsuit against

South Africa (*The Financial Times* 2001). The criticism was sparked by an Oxfam Briefing Paper which reviewed the role of GlaxoSmithKline and pointed out 'that pharmaceutical companies face a major reputation risk if they do not do more to promote access to life-saving drugs in the developing world' (Oxfam 2001b: 4). Oxfam, which joined Médecins Sans Frontières, Act-UP (the AIDS Coalition to Unleash Power) and other NGOs in the global access campaign in February 2001, particularly praised Brazil for its efforts in reducing drug prices by relying on locally manufactured generics and imported drugs to fight HIV/AIDS (Oxfam 2001b: 17).

As a result of the social movement's campaigning efforts, several NGOs were quick to react when the US moved to challenge Brazil's Industrial Property Law. On the same day the trade dispute was initiated, Médecins Sans Frontières condemned the steps taken by the US by 'calling upon the United States government to withdraw its request for a WTO dispute settlement procedure on the Brazilian patent law' (MSF 2001d). Médecins Sans Frontières explained that the request represented a threat to the continuing success of Brazil's National AIDS Programme and to people living with HIV/AIDS in other countries, for '[t]he US action will also intimidate countries which would like to take up Brazil's offer to help them produce AIDS medicines' (MSF 2001d). The organisation explicitly stressed that the free distribution of AIDS drugs – and as a prerequisite, the generic production of these drugs – was key to the success of Brazil's National AIDS Programme. Or in other words, Brazil's practice of locally producing its AIDS drugs, which the US indirectly claimed was not consistent with international law, 'has been key to the success of the strategies to offer universal access to HIV/AIDS medication in Brazil' (MSF 2001d). One day later, on 02 February 2001, the NGO Act-UP/Paris condemned the US and requested the key international organisations in global health governance to express their support for the Brazilian position (De Cenival 2001).

Also on 02 February 2001, Gregg Gonsalves, the Director of Treatment Advocacy from the US-based NGO Gay Men's Health Crisis, sent a letter to the then USTR Robert Zoellick in which he sharply criticised the action taken by the US against Brazil at the WTO. Gonsalves urged Zoellick to withdraw the WTO request (Gonsalves 2001). Gonsalves provided the same arguments as Médecins Sans Frontières, referring to Brazil's successful National AIDS Programme, the free distribution of AIDS drugs and their generic production as the key to this success. As Gonsalves made clear, '[t]he price of the patented versions of these drugs would have made their use in Brazil's program unfeasible'

(Gonsalves 2001). Gonsalves further argued that, by proceeding with the WTO dispute settlement process, the US would expose thousands of people living with HIV/AIDS to the risk of death (Gonsalves 2001).

On 09 February 2001, Gonsalves received a response from Joseph Papovich, Assistant USTR for Services, Investment and Intellectual Property Rights, who was eager to deflect attention from the focus on pharmaceutical patents. Papovich argued that the dispute 'is about a measure that discriminates against imported products in favor of locally produced products, regardless of whether these products are health-related or not' (Papovich 2001).

On 05 February 2001, the TAC released a statement no less critical of the US decision. In its statement, TAC 'supports the demand by hundreds of Brazilian organisations that the US government drop its complaint against Brazil at the World Trade Organisation' (Achmat 2001b). TAC accused the US of aiming to 'destroy Brazil's generic pharmaceutical industry', 'intimidate Brazil and other poor countries attempting to break their dependency on multi-national pharmaceutical companies' and threaten 'the lives of millions of people living with HIV/AIDS' (Achmat 2001b). TAC was convinced that '[t]he complaint protects the interests of the multi-national pharmaceutical industry and their exorbitant profits alone' and further concluded that the entire US action 'is not even in the interest of most people in the USA, who pay extremely high prices for pharmaceutical products' (Achmat 2001b).

On 06 February 2001, another influential civil society organisation, the US-based Consumer Project on Technology (CPTech), pointed out three reasons to explain its disagreement with the decision made by the US (CPTech 2001): (1) The success of Brazil's National AIDS Programme; (2) Brazil's ability to manufacture generic versions of AIDS drugs which are cheaper than the patent-protected drugs; and (3) The intention of pharmaceutical companies to undermine the success of Brazil's National AIDS Programme.

The TAC criticised the US by disapproving of its efforts to present the issue 'as a narrow technical challenge to a non-health-related concern' and suggested instead to call the move made by the US 'the continuation of a long history of bullying weaker nations in pursuit of narrowly defined US commercial interests' (Geffen 2001).

In May 2001, Oxfam published a policy paper entitled 'Drug Companies vs. Brazil: The Threat to Public Health', in which Oxfam made clear that Brazil was under assault from the pharmaceutical companies and the US government (Oxfam 2001a: 2). The pharmaceutical companies particularly feared Brazil because 'Brazil has taken a leading role

in the developing world on the issue of access to medicines, and has raised concerns about how WTO patent rules affect AIDS-drug prices' (Oxfam 2001a: 3). Rejecting the technical argument brought forward by the US, Oxfam recommended that the US government drop the lawsuit against Brazil with the argument that '[t]he health needs of the Brazilian people should be the prime determinant [...] and not the commercial interests of international big business' (Oxfam 2001a: 5). Oxfam supported Brazil's position by singling out the country and its efforts in the fight against HIV/AIDS as the prime example in the developing world in resisting the commercial interests of the US government and the pharmaceutical industry. For Oxfam, the trade dispute had become much more than a mere legal issue. As Brazil's internationally praised National AIDS Programme had become a symbol in the fight against HIV/AIDS, a success of Brazil against the US in the trade dispute would prove to be a further symbol both for reinforcing the future fight against HIV/AIDS and the accompanying discourse with a focus on human rights instead of patent rights.

Oxfam also took advantage of the heated debate in the run-up to the TRIPS Council meeting in June by publishing a briefing entitled 'WTO Patent Rules and Access to Medicines: The Pressure Mounts', in which Oxfam was convinced that the TRIPS Special Discussion 'offers the best opportunity yet to shift the balance of global patent rights in the interests of public health' (Oxfam 2001c: 1). By referring particularly to the cases of South Africa and Brazil, Oxfam repeated its calls for 'reducing the length of pharmaceutical patenting in developing countries, or exempting developing countries entirely from the pharmaceutical patenting' (Oxfam 2001c: 5) and thus allow parallel imports and the production of generics, which would significantly contribute to lower prices (Oxfam 2001c: 5-6).

On 21 June 2001, 135 organisations – among them the Third World Network, Médecins Sans Frontières, Oxfam, Act-UP and ActionAid – and 24 individuals signed a Joint NGO Statement on the Special Discussion in the TRIPS Council, which further increased the pressure for WTO member states to finally act in favour of public health (Third World Network 2001).

Meanwhile, the statements and activities of the global AIDS movement were supported by the national NGO movement in Brazil. Significant involvement of local civil society actors was crucial to the success of Brazil's National AIDS Programme so that Brazil's government could also count on a strong and experienced Brazilian social movement in confronting the challenge posed by the US. On 5 March, the day of

the court hearing in the case of South Africa, the Rio de Janeiro State Forum of AIDS NGOs launched an awareness-raising campaign on the issue 'patents vs. public health', while the São Paulo State Forum of AIDS NGOs organised a demonstration with around 60 people in front of the US consulate in São Paulo capital (Santos-Filho 2001a, 2001b). During the 11th National Meeting of AIDS NGOs in May, which took place in Recife, activists organised a demonstration in front of the US Consulate in Recife involving more than 250 organisations (Abong 2001; Galvão 2002: 17). In June, further demonstrations against the US took place in the Brazilian cities of Salvador, Rio de Janeiro and Brasília (Passarelli and Terto Jr 2002: 42).

The immediate reaction of several leading civil society organisations in the global fight against HIV/AIDS was of enormous outrage at the decision taken by the US to request a WTO dispute settlement process against Brazil. The AIDS movement was already highly mobilised and alert because of the South African lawsuit, which also centred on the primacy between human rights or patent rights in the access-to-medicines debate. Many civil society organisations perceived the US strategy of treating the WTO Trade Dispute as a technical violation of patent rights committed by Brazil as an attempt to violate human rights in the particular case of HIV/AIDS. In their statements the most representative organisations of the global AIDS movement, including Médecins Sans Frontières, Oxfam, Global Health GAP, CPTech, Act-UP and the TAC emphasised the risks people living with HIV/AIDS in Brazil and around the world would be exposed to if the US proceeded with its request for a WTO dispute settlement process and were successful in defending US pharmaceutical interests. At the same time, these civil society organisations pointed to the real motive behind the trade dispute, namely commercial interests, and mobilised to exercise considerable pressure on the US government and the pharmaceutical industry. Brazil's National AIDS Programme and its approach of locally producing AIDS drugs, however, was regarded by the AIDS movement as a role model in the fight against HIV/AIDS. On top of that, the AIDS movement even supported Brazil's aggressive strategy of threatening Merck and Roche with breaking the patents of Efavirenz and Nelfinavir.

The role of the US media

Only days before the WTO dispute settlement process was officially initiated, *The New York Times* had published a lengthy editorial on Brazil's National AIDS Programme, entitled 'Look at Brazil' (Rosenberg 2001). The whole article had celebrated Brazil's unique approach to fighting

HIV/AIDS and praised the main pillar of Brazil's National AIDS Programme, the free distribution of AIDS drugs. The article clearly defended Brazil's strategy of challenging the pharmaceutical industry and its sacred cow called patent rights.

The drug companies are wrong [...] on how to make AIDS drugs affordable. Their solution – limited, negotiated price cuts – is slow, grinding and piecemeal. Brazil, by defying the pharmaceutical companies and threatening to break patents, among other actions, has made drugs available to everyone who needs them. Its experience shows that doing this requires something radical: an alteration of the social contract the pharmaceutical companies have enjoyed until now.

By the term of that contract, manufacturers, in return for the risks of developing new drugs, receive a 20-year monopoly to sell them in some nations at whatever prices they choose. The industry has thrived under this contract. And so have we, the rich. The system has conquered an unimaginable range of diseases. But for billions of people the medicines have remained out of reach. Poor countries, it is now clear, must violate this contract if they are to save their people from AIDS.

(Rosenberg 2001)

The article went on to paint the pharmaceutical industry's behaviour in rather bleak colours by stressing that '[c]ountries that have tried to manufacture generic medicine have fallen under debilitating pressure from pharmaceutical companies and from Washington' (Rosenberg 2001). The article concluded by wholeheartedly justifying the use or the threat to use compulsory licences as the only successful way to pressurise pharmaceutical companies into negotiating with developing countries.

This is the larger lesson of Brazil: AIDS can become a manageable disease in the third world, but it takes power, in addition to other things. The ability to pull the price of AIDS drugs within reach of those who need them may someday come from the backing of some international organization [...]. But at the moment, it arises only from the threat to make or buy generic drugs.

(Rosenberg 2001)

On 12 February, *Time* magazine published a similar story which described the difficulty of millions of South Africans in accessing

life-saving AIDS drugs and made the pharmaceutical industry responsible for this situation.

Despite years of evidence of AIDS' genocidal toll on poor countries, no one has brought these drugs within reach of ordinary Africans. In fact, the people who make the drugs – American- and European-owned multinational pharmaceutical corporations – and their home governments, notably Washington, have worked hard to keep prices up by limiting exports to the Third World and vigorously enforcing patent rights.

(McGeary 2001)

Time magazine highlighted the important role of Brazil in manufacturing generics and providing them for free, which negated the longstanding argument of pharmaceutical companies that 'it's not wise to offer cheap AIDS drugs without a proper medical infrastructure – that deadly, drug-resistant strains would emerge' (McGeary 2001).

On the same day, the *Wall Street Journal* identified the commercial interests of pharmaceutical companies and the trade dispute as a threat to the internationally praised success achieved in Brazil's National AIDS Programme. By making an explicit reference to Brazil's threat to break the patent of Etavirenz, the *Wall Street Journal* stressed that '[i]f Brazil does not reduce its reliance on expensive imported drugs, the country's Health Ministry projects spending on AIDS medications will rise fivefold, to \$1.7 billion by 2005' (Jordan 2001).

In March 2001, newspapers in the US and all around the world were reporting extensively on the developments in the lawsuit against South Africa (CPTech n.d. b). On 5 March 2001, for example, the first day of the court hearing in the lawsuit, the *Philadelphia Inquirer* published an article on the global access movement and the main activist organisations in the US, the Health GAP Coalition and Act-UP, and their cooperative efforts with Médecins Sans Frontières, Act-UP/Paris, South Africa's TAC and Oxfam. The article pointed out that the efforts of this global movement changed the perspective on the access-to-affordable-AIDS-medicines debate in Africa 'from an economic issue to a moral one' (Collins 2001).

In the three weeks before the US government withdrew from the trade dispute, US newspapers and weeklies continued to report extensively about the fight of the global AIDS movement for more affordable access to AIDS drugs. On 09 June 2001, the *LA Times* reported

that over the last few weeks, pharmaceutical companies had been confronted with lawsuits filed by consumer groups who accused them of blocking price reductions for generic drugs used in the treatment of non-communicable diseases like cancer or heart disease (Gellene 2001). Notwithstanding the power of the pharmaceutical industry in the US and worldwide, the article argued that these legal actions against drug-makers would damage the image of the industry and called for legal changes mandating price reductions.

Two days later, on 11 June 2001, an editorial in *The New York Times* painted a very bleak picture of the US government's approach to the access-to-medicines debate in Africa. The article sharply criticised the head of the US Agency for International Development, Andrew Natsios, who neglected the significance of AIDS treatment in the form of AIDS drugs in sub-Saharan Africa and preferred to concentrate solely on prevention measures, even though the mere focus on prevention had clearly failed²² (Herbert 2001). This article made it clear that the discourse represented by US government officials and pharmaceutical companies had become more and more disputed, even in their own country.

On 18 June 2001, the *Washington Post* applauded the recent moves of several pharmaceutical companies to offer price reductions on AIDS drugs, and even suggested amending the US patent law to take advantage of the momentum and legally entrench the progress made (Mallaby 2001). In the run-up to the Special Discussion of the TRIPS Council on Intellectual Property and Public Health, the *Financial Times* published an article on 19 June 2001, preparing its readers for a shift in '[t]he battleground between health groups and pharmaceutical giants over the high price of life-saving drugs in poor countries [...] to the World Trade Organisation', where over 100 NGOs pressurised the US and the pharmaceutical industry to back down from their position (Williams 2001).

Influential papers like *The New York Times*, *Time* magazine, the *Wall Street Journal* and the *Washington Post* supported the position of Brazil in the access-to-medicines debate and took a highly critical stance towards the position of the US. As in the case of the global AIDS movement, US newspapers and weeklies regarded Brazil's National AIDS Programme as an impressive response to the HIV/AIDS epidemic in the country. The local production of AIDS drugs along with Brazil's threats to seek price reductions of patent-protected AIDS drugs from pharmaceutical companies was considered the right solution in the fight against HIV.

Heroes and villains in the access-to-medicines debate

On 25 June 2001, the US withdrew the WTO panel against Brazil, leaving Brazil as the moral winner in a dispute about the prevalence of human rights or patent rights in the access-to-medicines debate. It is no surprise that the reactions from civil society organisations – among them Médecins Sans Frontières, Oxfam, the Third World Network and CPTech – were extremely enthusiastic (Amgott and Smith 2001; Love and Weissman 2001; Raghavan 2001; T Hoen 2001b).

The day of the US retreat was also the first day of the UN General Assembly Special Session on HIV/AIDS.²³ The resulting UN Declaration of Commitment on HIV/AIDS, adopted by the UN General Assembly on 27 June 2001, can be seen as a further milestone in the entrenchment of a more rights-based approach in the fight against HIV/AIDS and the recognition of Brazil's position in this matter by the UN General Assembly (UN General Assembly 2001b). It was the first UN Declaration emphasising that the access to medicines was a fundamental human right. In this context, the UN member states recognised 'that there is a need to reduce the cost of these drugs and technologies in close collaboration with the private sector and pharmaceutical companies' (UN General Assembly 2001b: Art. 24). The Declaration also appreciated 'the efforts of countries to promote innovation and the development of domestic industries consistent with international law in order to increase access to medicines' (UN General Assembly 2001b: Art. 26).

Brazil received additional recognition for its approach from the UN High Commissioner for Human Rights, who described the situation of HIV/AIDS treatment in Brazil as an exemplary case of a country to combine its obligations under the TRIPS Agreement with its obligations to guarantee the human right to health and the access to medicines (Report of the UN High Commissioner 2001). In this context, the UN High Commissioner recognised Brazil's strategy of locally producing generic drugs and requesting a compulsory licence for the patent-protected drugs Efavirenz and Nelfinavir if negotiations to reduce the prices were not successful.

By the end of June 2001, Brazil could count among its supporters very influential newspapers and weeklies in the US, the most prominent AIDS NGOs in the US and worldwide, a huge majority of countries in the WHA, the UN Human Rights Commission, the TRIPS Council and last but not least the UN General Assembly. The unintended consequence of Brazil's strategy of defending its own National AIDS Programme was the emergence of a rights-based HIV/AIDS narrative through the intensive

involvement of civil society actors and the US media in defending Brazil's position against the US.

Through its response to the challenge posed by the US, Brazil revealed its character as the hero of a story which gained shape over the course of the trade dispute. By acting at various international organisations in favour of its own rights-based approach to HIV/AIDS, and by aggressively confronting several pharmaceutical companies, Brazil made itself known as an advocate of people living with HIV/AIDS from all over the world.

In this sense, the unfolding story bears the essential elements of a romance. Brazil, as the hero with an 'idealistic' objective, found itself on a long journey which started with its own national experience with HIV/AIDS. In its own national fight with this lethal and devastating epidemic, Brazil discovered a highly innovative and original solution by guaranteeing all Brazilians living with HIV/AIDS the free and universal access to life-saving AIDS drugs. This solution was so overwhelmingly successful that Brazil was able to shake itself free from the monstrous claws of this destructive epidemic. At the same time, those who made this destructive force of HIV/AIDS a highly lucrative business through the sale of highly expensive AIDS drugs were getting increasingly nervous. Brazil's solution was criticised by the US and the pharmaceutical industry for obscure legal reasons. They turned into Brazil's enemies in this battle against HIV/AIDS and defied the hero and its innovative solution by posing a challenge in form of the WTO Trade Dispute. Brazil took on the challenge in the knowledge that the WTO Trade Dispute constituted a grave risk to its National AIDS Programme. Like Odysseus, Brazil wrestled down its enemies on the international stage on various occasions, such as at the UN Human Rights Commission, the WHA and during its negotiations with pharmaceutical companies for price reductions.

In this context, Brazil worked hard to enforce the human right to health, the human right to access to medicines and the importance of ARV therapy through two resolutions in the WHA and one in the UN Human Rights Commission. In the TRIPS Council, Brazil also stressed its rights-based position and an interpretation of intellectual property rights in the light of human rights. And in its aggressive confrontations with the pharmaceutical companies Merck and Roche for the reduction of the prices of their AIDS drugs, Brazil strengthened the human right to health and the human right to access to medicines by (1) using or threatening to use compulsory licences and (2) locally producing generic versions of AIDS drugs.

These activities, along with Brazil's National AIDS Programme, were overwhelmingly supported and praised by most of the influential international civil society organisations in the fight for better access to life-saving drugs and a number of US-based civil society organisations. Both civil society organisations and several influential US newspapers and weeklies helped the romance of the glorious hero in shining armour involved in a monumental fight against the evil and wicked enemy gain shape. They portrayed the US action as a threat to Brazil's National AIDS Programme. Similarly, they defined the role of the US as the representative of commercial interests which threatened the lives of millions of people infected with HIV. Or more bluntly, the global AIDS movement defined the US and the pharmaceutical industry in the role of the arch-enemy to millions of people living with HIV/AIDS. In this context of outrage, criticism and disapproval towards the US (and the pharmaceutical companies), the representatives of the global AIDS movement lifted Brazil up on a pedestal to represent the symbol of hope in the fight for human rights.

And like the heroes in the Greek and medieval romances upon their return from the long and adventurous journey, Brazil was greeted and honoured by the international community for its exemplary fight for better access to life-saving medicines and the prevalence of human rights over patent rights. And yet, Brazil's success in the trade dispute did not mean that the US government and the pharmaceutical industry had accepted its position. Brazil's enemies were only licking their wounds in the shadows. For the romance of Brazil's heroic activities in the fight against HIV/AIDS to further develop, its activities on the organisational and resource-transfer interfaces were crucial.

d) **The organisational interface**

The organisational interface analyses Brazil's activities in the context of various international organisations after the end of the WTO Trade Dispute on patent rights. First, it examines Brazil's role in the adoption of the Doha Declaration on the TRIPS Agreement and Public Health in November 2001. Thereafter, it sheds light on Brazil's further activities and achievements in the WTO, the WHA and the UN Human Rights Council.

The Doha Declaration on the TRIPS Agreement and Public Health²⁴

On 25 July 2001, the TRIPS Council held an informal meeting on intellectual property and public health, a follow-up on the Special Discussion which had taken place on 20 June (Oh 2001b). A majority of developing

countries, including Brazil, recalled the statement made by Brazil and the African Group during the Special Discussion on 20 June and suggested that elements of this statement, which argued in favour of public health, be included in the Doha Ministerial Declaration²⁵ (Oh 2001b). The US was opposed to the request of the developing countries and continued to refuse to interpret intellectual property in a perspective which would benefit public health concerns (Oh 2001b).

During the meeting of the Second TRIPS Special Discussion on 19 September 2001, no real progress could be observed in reaching an agreement between the position advocated by Brazil and other developing countries and the position advocated by the developed countries. The African Group²⁶ actually circulated a lengthy preamble followed by a 14-point declaration as a draft for a possible Ministerial Declaration on Public Health in Doha. This draft, originally proposed by Brazil and India, reiterated the primacy of public health over patent rights by allowing the use of compulsory licences, parallel imports and the production of generic drugs (Teixeira 2003: 55; WTO 2001f). The US, Australia, Canada, Japan and Switzerland proposed a draft of the preamble language of a possible Ministerial Declaration in which they rejected the claims held by the developing countries and continued to support the primacy of patent rights over public health concerns. On the one hand, the developed countries did 'recognize [italics in the original] that access to medicines for treatment of HIV/AIDS and other pandemics, such as malaria and tuberculosis, [...] is one of the major challenges for the global community and for its sustainable development' (WTO 2001g). On the other hand, they were convinced that the existing TRIPS Agreement and its flexibilities provided for the appropriate framework to deal with HIV/AIDS and other pandemics (WTO 2001g). After several weeks of continuing consultations, the US attempted to block any kind of consensus aimed at increasing the flexibilities of the TRIPS Agreement and started to concentrate its efforts on restricting the scope of the declaration (Oh 2001c).

On 27 October 2001, the Chairman of the General Council presented a draft Ministerial Declaration aiming to conceal the two different positions of the developing and developed countries.²⁷ For the fourth paragraph he suggested two different options, paying tribute to two different discourses which had been confronting each other:

Option 1:

[Nothing in the TRIPS Agreement shall prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement

c) **The discursive interface**

The discursive interface provides an overview of the official discourse Lula da Silva created in the global fight against hunger and poverty during his presidency. It concentrates on a handful of Lula da Silva's international speeches between 2003 and 2009 given at important occasions at the UN in New York and Geneva and the FAO in Rome. The multitude of other speeches held by Lula da Silva, which are not part of this analysis, contain similar discursive elements as analysed on the following pages, and were echoed by other important figures in Lula da Silva's government, including his foreign minister Celso Amorim, Brazilian ambassadors at various international organisations and other government officials from the Brazilian ministries.

Lula da Silva's global poverty and hunger campaign

In September 2003, Lula da Silva gave his first speech as Brazilian president in the UN at the 58th UN General Assembly, which laid out key elements of his global hunger and poverty discourse (Lula da Silva 2003). He emphasised that political will constituted the utmost precondition in the successful fight against hunger and poverty and went on to underscore his point by exposing the contradiction that in 'the golden age of science and technology', where world leaders were theoretically equipped with the necessary tools to eradicate hunger and poverty, the opposite was true. Not only was it the case that 'hunger persists', but 'what is worse, it is spreading throughout various regions of the planet'. After exposing this contradiction, Lula da Silva clarified what he actually meant when he spoke about the need for political will. He proposed the launch of 'a campaign of solidarity that unites the planet', a 'Global Fund to Fight Hunger' and a 'World Committee to Fight Hunger', while at the same time he identified 'short-sightedness and greed' as the real enemies to overcoming hunger and poverty. And yet, Lula da Silva warned that new governance mechanisms would only be successful if they were supported by the 'indispensable political will of us all, especially of those countries in a position to contribute most'.

To illustrate the point that political will can really move mountains, Lula da Silva introduced the example of Brazil's Zero Hunger strategy. He underscored the fact that the participation and solidarity of a variety of different actors from the government, civil society and the private sector formed the backbone of the strategy. Notwithstanding the fact that the Zero Hunger strategy had only been officially launched earlier that year, Lula da Silva was proud to underline that 'the results of combined

emergency and structural measures are already benefiting four million individuals who were previously denied the basic right to a daily meal'.

Only a few months later, Lula da Silva put his words into action when on his initiative the then French President Jacques Chirac, Chilean President Ricardo Lagos and UN secretary general Kofi Annan met with Lula da Silva in Geneva on 30 January 2004 to launch the global campaign to eradicate hunger and poverty. In the joint declaration, which resulted from this meeting, the four leaders 'considered it vital to forge a truly global partnership in order to mobilize political will and financial support, engage governments, the UN system and the financial institutions, re-orient development priorities and policies, build capacity, and reach out to partners in civil society and the private sector' (Ministério das Relações Exteriores 2004).

For this global partnership to take shape, the four leaders established a technical working group to come up with concrete proposals by September 2004 which were related to innovative financing mechanisms, the potential establishment of a special fund to fight hunger and poverty and the promotion of best practices by UN specialised agencies to tackle the problem (Ministério das Relações Exteriores 2004). How much the launch of this global partnership against hunger and poverty owed to Lula da Silva became clear in the following press conference. The then French president Chirac emphasised that it was due to Lula da Silva's initiative that poverty and hunger was 'thrust under the spotlight' on the international level (UN 2004). In a statement at the press conference, Lula da Silva himself further elaborated on his vision for the global fight against hunger and poverty (UN 2004). He stressed that a 'change in attitude' and a 'new concept of development' centring on the Zero Hunger strategy's successful tool of income distribution was needed to make progress in the global fight against hunger and poverty. He repeated his call for political will and tried to set a first good example for the international community with the official launch of the global campaign to eradicate hunger and poverty together with Chirac, Lagos and Annan.

Lula da Silva further built on the meeting convened in January 2004 and initiated a meeting for world leaders during the UN General Assembly session in New York in September 2004 to discuss further international action in the global fight against hunger and poverty (New York Declaration 2004). In the resulting 'New York Declaration on Action against Hunger and Poverty', the world leaders recognised that the security and stability of both developing and developed countries depended on the successful fight against poverty and social injustice.

They agreed that 'a free, equitable and development friendly multilateral trading system can play an important role to eradicate the root causes of poverty and hunger by creating jobs, generating and distributing wealth' (New York Declaration 2004). The declaration concluded that it was mostly due to a lack of political will that no substantive achievements had been made in the fight against hunger and poverty.

Both the Geneva and the New York Declaration demonstrated Lula da Silva's first successful efforts in establishing his own perspective in the international arena. This perspective received further support from the report of the Technical Group on Innovative Financing Mechanisms, the technical working group established by the Geneva Declaration, which was presented to the world leaders meeting. The report listed a wide range of alternative financing mechanisms to be explored by the international community and recognised those as a top priority in the fight against hunger and poverty (Report of the Technical Group 2004: 69).

In 2005, building on the New York Declaration of 2004, Brazil along with Algeria, Chile, France, Germany and Spain co-sponsored the New York Declaration on Innovative Sources of Financing for Development, endorsed by 79 countries (Leading Group on Innovative Financing 2009a), in which world leaders echoed Lula da Silva's words by emphasising their political commitment 'to move from words into concrete actions' and attributing a central role to innovative financing mechanisms (Leading Group on Innovative Financing 2009b).

At the celebrations of the 60th anniversary of the FAO in October 2005, Lula da Silva was one of eight heads of state who was invited to address the ceremony (FAO 2005b). It was on this occasion that Lula da Silva was awarded the FAO Agricola Medal, the highest award for exceptional efforts in the areas of food and agriculture, to recognise Lula da Silva's actions in the fight against hunger. According to Jacques Diouf, then FAO director general, Lula da Silva had become an inspiring leader for countries worldwide in the global fight against hunger (Fara Monteiro 2005). In his speech, Lula da Silva reinforced his view by repeating the most crucial points already made in former speeches. In addition, he revealed the whole human dimension of the tragedy hunger and poverty represented to millions of people throughout the developing world by metaphorically describing hunger as 'the greatest weapon of mass destruction of our times' (Ministério das Relações Exteriores 2005) which represented the greatest challenge not to specific organisations or individuals but to mankind as a whole. Lula da Silva even introduced a personal touch which bestowed much more credibility on his whole pro-active attitude. He made clear that he knew what he

talked about based on his own personal experience and the experience collected through the Zero Hunger strategy.

Hunger is synonymous with a lack of employment, income, education, health, decent living conditions for tens or hundreds of millions of Brazilians, millions around the world and food security policies.

In one word: hunger in Brazil is above all a problem of social exclusion. I can testify that because I experienced this harsh reality the hard way: by living it.

(Ministério das Relações Exteriores 2005a)⁶

In the midst of the world food crisis, both at the session of the UN Economic and Social Council on 20 May 2008 and at the FAO High-Level Conference on World Food Security, on 03 June 2008, Lula da Silva had the opportunity to repeat key aspects of his position established so far and demonstrate that Brazil already relied on the right solution to tackle hunger and poverty by emphasising the unfolding success of the Zero Hunger strategy (FAO 2008a).

Lula da Silva as an inspirational figure

With Lula da Silva's first international initiatives and the success story of the Zero Hunger strategy unfolding, the then Brazilian president turned into a key inspirational figure in the global fight against hunger and poverty. The civil society movement 'Global Call to Action Against Poverty (GCAAP)¹⁷' invited Lula da Silva to speak at the World Social Forum in Porto Alegre in January 2005 (Guerreiro 2005). The campaign coordinator and executive director of ActionAid Brazil, Adriano Campolina, stressed that Lula da Silva's support for the GCAAP was very important in two particular points. First, to link the campaign to Lula da Silva's leadership role and, second, to win Lula da Silva as a spokesperson to spread the message of the GCAAP to other global leaders by demanding an increase in humanitarian aid, a more just and balanced international trade system and the cancellation of debts for developing countries (Agência Brasil 2005).

In the context of its HungerFREE campaign, ActionAid called into life a scorecard in 2009 with the intention to rank the performance of developing countries in the fight against hunger.⁸ Brazil ranked first both in 2009 and in 2010, which only testifies to the fact that Brazil found the most successful response to the fight against hunger among developing countries (ActionAid 2009: 35; ActionAid 2010: 37).

Adriano Campolina emphasised the significance of Lula da Silva's inspirational leadership role for civil society actors like ActionAid and his indispensable role in bringing back the fight against hunger on the international agenda. Lula da Silva showed (1) that it was possible to turn the state into a key actor with (2) appropriate public policies and programmes and (3) political leadership. According to Campolina, these three elements contributed to the fact that the Zero Hunger strategy became recognised as a global brand (Campolina 26 September 2012).

Even though ActionAid's global Hunger FREE campaign would have been launched by ActionAid anyway,⁹ Campolina conceded that Lula da Silva's discursive leadership role influenced the organisation of the campaign in so far as the solutions offered by the campaign were based on Brazil's Zero Hunger strategy (Campolina 26 September 2012). In this sense, Lula da Silva's main influence on ActionAid's campaign consisted of the fact that he increased the credibility of the political response offered by ActionAid (Campolina 26 September 2012).

In 2010, Lula da Silva received the WFP's 'Global Champion in the Battle against Hunger Award' for his exceptional efforts on both the national and the international front in the fight against hunger and poverty. The then WFP executive director Josette Sheeran confirmed the validity and legitimacy of Lula da Silva's discourse by identifying those two most essential points which Lula da Silva had repeatedly highlighted in his international speeches, namely the need for political will and innovative financing mechanisms (WFP 2010).

Even after Lula da Silva left office, his discourse remained extremely powerful. In June 2011, Oxfam International launched its global GROW campaign to reinforce the global fight against hunger and poverty (Green 2011). Oxfam started the campaign in more than 40 countries with Brazil as one of the campaign's ten strategic countries due to its model role in this matter (Saragoussi 2012). As part of the campaign, Oxfam published a briefing paper introducing Lula da Silva's Zero Hunger strategy and exploring the reasons for its successful results. As the key factors for success, Oxfam identified high-level political commitment, economic growth and labour reform, managing powerful oppositional interests, external support from international financial institutions and an active civil society (Oxfam 2011: 3–4). Oxfam won Lula da Silva's support as one of the campaign's ambassadors (Saragoussi 12 March 2013).¹⁰ The influence of Brazil and specifically Lula da Silva's activities in the fight against hunger have also influenced

Oxfam's GROW campaign, even more so than in the case of ActionAid's HungerFREE campaign.

According to Muriel Saragoussi, the coordinator of Oxfam's GROW campaign in Brazil, the logic of the campaign is based on the successful logic of the Zero Hunger strategy. It focuses on the promotion of family agriculture by strengthening civil society participation and public policies. In addition, the campaign does not offer a one-size-fits-all solution. On the contrary, it tries to adapt its response to the specific needs and the social context of the respective participating country. Saragoussi also pointed out that Lula da Silva's activities were extremely important in disseminating the message of Brazil's Zero Hunger strategy around the world:

The Zero Hunger strategy has a fantastic poster boy, [...] [ex]president Lula. [...] Oxfam helped to register the lessons learned and share them wherever Oxfam works. Oxfam works with 94 countries, the GROW campaign is taking place in more than 50 countries, the book¹¹ which we wrote about this experience [the Zero Hunger strategy] [...] is available in Portuguese, English and Spanish.

(Saragoussi 12 March 2013)

Brazil's heroic fight against hunger and poverty

Lula da Silva did not invent anything new in the global fight against hunger and poverty. Most of his ideas had already existed before he assumed office in 2003. For instance, the Monterrey Consensus of the International Conference on Financing for Development, adopted by the heads of state and government on 22 March 2002, called for a global alliance for developing government based on new financing mechanisms as a solution to eradicating global poverty (Monterrey Consensus 2002). The Consensus identified the mobilisation of domestic and international financial resources for development, a non-discriminatory and equitable multilateral trading system, increased international and financial technical cooperation, external debt relief and the enhancement of the coherence and consistency of the international monetary, financial and trading systems as the leading actions in the fight against poverty.

Lula da Silva can be credited for putting those vague and non-committal words into decisive action and, by virtue of his own personal determination, taking seriously the fight against hunger and poverty. Renato Maluf, a former president of Brazil's National Council for Food and Nutrition Security, stressed that the politicisation of hunger and

the recovery of the role of the state in this matter along with the participation of Brazil's civil society were of utmost importance to the international success of the Zero Hunger strategy:

What I think attracted the attention of the world to the Brazilian experience was to give political priority to the question of hunger and to demonstrate that it had to be confronted with a set of political instruments, that is, an active role of the state and the participation of civil society.

(Maluf 19 September 2012)

Based on his commitment and activism, Lula da Silva turned into an inspirational and credible voice for other relevant actors in the global fight against hunger and poverty. He became the visionary figure in a moral quest for ending poverty and hunger not only in his own country, but in the whole world. The Brazilian success story of the Zero Hunger strategy served as his core message, which over the years of his presidency turned into a global success story in the fight against hunger and poverty. Lula da Silva sold this success story in his speeches to an international audience consisting of representatives from state actors, civil society organisations and international organisations. He repeatedly emphasised that a successful fight against hunger and poverty was possible with visionary political leadership, innovative financing mechanisms, the strong role of the government and the joint participation of a variety of different actors from government, civil society and the private sector in the elaboration and implementation of public policies. He also introduced a moral dimension, making the fight against hunger and poverty a moral concern for the whole world, in particular in the face of the worldwide tragedy of millions of people still dying from hunger at the beginning of the 21st century. Through the success of the Zero Hunger strategy and Lula da Silva's launch of the global campaign to eradicate hunger and poverty, the story he told to the world became credible and overwhelmingly appealing.

The recognition of his activities and vision through international organisations and civil society actors turned Lula da Silva into the worldwide hero in a moral fight against hunger. And the Zero Hunger strategy represented the hero's shining sword in his personal crusade against the monstrous villains which make hunger and poverty thrive in the world. These villains, however, remained vague and abstract. Rather than clearly pointing at distinct actors, such as, for example, the US government or big industry (as in the case of the access-to-medicines

debate), the real villains are invisible forces such as 'short-sightedness and greed', which reinforce an unbalanced international trade system or represent the unwillingness to act in the fight against hunger. Essentially, the villains can be anyone who fails to distinguish themselves through political will and the political ambition to end the misery of hunger and poverty.

The fight against hunger and poverty is in many respects a much more complex phenomenon than the fight against HIV/AIDS, a virus which can be tackled with specific (affordable) drugs. Instead, the misery of hunger and poverty is caused by a variety of different social and political factors, including the epidemic of HIV/AIDS and the consequences of climate change.

In the unfolding interactive process involving Lula da Silva's proactive stance and the reactions from state actors, international organisations and civil society, the local success story of Brazil's national fight against hunger and poverty became a global success story. In the emerging romance, Lula da Silva clearly put Brazil in the position of a hero who had finally found a solution to one of the greatest challenges haunting mankind, or in Lula da Silva's own words 'the biggest weapon of mass destruction at the beginning of the 21st century'. And Lula da Silva made clear that he knew how to dispose of this weapon of mass destruction.

d) The organisational interface

The global food crisis in 2007/2008 sparked a variety of strong reactions from the international community which resulted in four main responses: the High-Level Task Force on the Global Food Security Crisis, the FAO High-Level Conference on Food Security, the Food Security Initiative of the G8 countries and the reform of the FAO Committee on World Food Security.

The High-Level Task Force on the Global Food Security Crisis (HLTF) was established in April 2008, bringing together the agencies, funds and programmes of the UN system, and other international organisations to find answers to the challenges of the crisis (HLTF 2008). This effort resulted in the publication of the Comprehensive Framework for Action, updated in 2010, which set out the comprehensive response of all HLTF members to meet Millennium Development Goal 1: eradicating extreme hunger and poverty (HLTF 2010). The HLTF set out as its key actions the enhancement and improvement of the access to emergency food assistance, the promotion of smallholder food production, the expansion of

c) The discursive interface

The discursive interface analyses Lula da Silva's most significant speeches held at international fora which defended the production and use of biofuels, in particular ethanol. Lula da Silva's main arguments presented here were supported throughout his presidency by his Minister of Foreign Affairs, Celso Amorim, his Minister of Agriculture from 2003 to 2006, Roberto Rodrigues, and the majority of representatives both from the Brazilian government⁸ and Brazil's sugarcane industry (Arraes 16 May 2013; High-ranking diplomat of the Energy Department of the Ministry of Foreign Affairs 30 April 2013; Job 03 June 2013; JornalCana 2008). This interface also examines the international criticism launched against Brazil's biofuel production during the global food crisis in 2007/2008 and identifies the most prominent arguments brought forward by civil society organisations and representatives of international organisations.

Defending Brazil's ethanol production

At the launch of the International Biofuels Forum on 28 February 2007 at the UN in New York, Lula da Silva laid out all the benefits and advantages of biofuels both for developing and developed countries (Ministério das Relações Exteriores 2007a: 249). According to his speech, biofuels proved to be an economically viable alternative for the partial substitution of fossil fuels and the diversification of the global energy mix. Developing countries would have the chance to reduce their dependency on petroleum imports and promote income generation. For the developed countries, the use of biofuels would reduce their dependency on fossil fuels, contribute to the reduction of greenhouse gas emissions and increase energy security. In sum, biofuels had the potential to change the paradigm of energy use on the global level and benefit the whole world without any negative consequences.

At the International Biofuels Conference in Brussels in July 2007, organised by the European Union, Lula da Silva praised the benefits of biofuels, particularly for developing countries, which could help them to fight hunger and poverty by creating the conditions for sustainable economic growth (Lula da Silva 2007). In this context, he referred to the potential of biofuels to democratise the access to energy. Since the production of ethanol would allow much more countries to produce energy, in particular developing countries, this production would reduce the existing asymmetries and inequalities between energy producers and consumers. He cited Brazil as the best example for the benefits

and advantages of biofuels, emphasising that during his presidency the hunger rates decreased while at the same time the production of biofuels increased. In the same vein, he made clear that the production of sugarcane neither compromised the production of food nor endangered the Amazon rainforest. Lula da Silva also pointed out that sugarcane production only occupied 10 per cent of Brazil's cultivated area or 0.4 per cent of Brazil's national territory, located far away from the Amazon rainforest. To further strengthen his argument he particularly stressed Brazil's vast experience of 30 years in the production of biofuels. Lula da Silva pointed out that '[w]e have managed to reduce our consumption of, and dependence on, imported fossil fuels by 40%' accompanied by the creation of 'more than 6 million direct and indirect jobs, including jobs for small farmers in economically depressed areas' (Lula da Silva 2007). In the same vein, Lula da Silva mentioned the introduction of the flex-fuel programme in 2003, which led to the impressive fact that '[m]ore than 85% of the cars currently being manufactured in Brazil are flex-fuel, meaning they can run on petrol, ethanol, or any mix of the two' (Lula da Silva 2007). To highlight the positive impact on the environment, Lula da Silva underlined that '[s]ince the start of the programme in Brazil, the use of carburant alcohol has cut carbon emissions into the atmosphere by 640 million tonnes' (Lula da Silva 2007).

On these two occasions in 2007, Lula da Silva presented Brazil's model of producing ethanol as a remedy to the challenges of climate change and the situation of food and energy insecurity in many countries of the developing world. As in the case of the National AIDS Programme and the Zero Hunger strategy, Brazil's ethanol experience could provide the answer to many development challenges in the developing world. And Lula da Silva highlighted that his words were backed by clear facts, since Brazil was able to reduce its dependency on fossil fuels and at the same time increase its own energy security without undermining the situation of food insecurity. On the contrary, Lula da Silva's Brazil achieved a significant reduction in its hunger and poverty rates. In his eyes, Brazil's example could serve as an inspiration for the developing world in general, since Brazil, also a developing country, showed that it was possible to contribute to tackling three key challenges of the developing world, namely climate change, energy security and food security, with the production of ethanol.

On 20 May 2008 at the UN Economic and Social Council on the World Food Crisis, responding to the huge criticism that had showered on biofuel producers in the context of the global food crisis, Lula da Silva emphasised that Brazil's production of ethanol had not had any negative

effects on food production and that '[o]n the contrary, over the same period, agricultural production in Brazil has risen exponentially due to gains in productivity, including in the production of sugarcane' (Lula da Silva 2008a). Lula da Silva stressed that a similar success was possible in other developing countries with the help of Brazil's experience and knowledge, while making clear at the same time that Brazil did not have any intention to impose its ideas on other countries and preferred that 'the potential of biofuels [...] be assessed according to the reality of each country' (Lula da Silva 2008a).

A few weeks later at the FAO High-Level Conference on World Food Security on 03 June 2008, when the criticism from research institutes and civil society actors had reached unprecedented heights, Lula da Silva launched an outright attack on its critics. He pointed to the impact of oil prices on the rising food prices, underscoring that '[i]t is curious that many speak about rising food prices but are silent about the impact of oil prices on the cost of food production' (Lula da Silva 2008b). He added that 'oil prices in recent years have leaped from 30 to over 130 dollars per barrel' and presented Brazil as an example where oil constituted only 37 per cent of the country's energy blend compared to more than 46 per cent of energy which was derived from renewable sources such as sugarcane (Lula da Silva 2008b). Rather than constituting a factor in the rise of global food prices, Lula da Silva presented the production of ethanol as a solution with 'tremendous potential' to fight climate change and promote the economic and social development of the poorest countries in the developing world (Lula da Silva 2008b). In his view, '[b]iofuels generate income and jobs, especially in rural areas, while producing clean, renewable energy' (Lula da Silva 2008b).

The government under the new Brazilian president Dilma Rousseff has followed Lula da Silva's path. Even though Rousseff is not as outspoken as Lula da Silva and has embraced a more reserved discourse, she is no less committed to Lula da Silva's vision (High-ranking diplomat of the Energy Department of the Ministry of Foreign Affairs 30 April 2013). One high-ranking diplomat explained that the current line of the Ministry of Foreign Affairs represented a continuation of Lula da Silva's established discourse:

Our vision is focused on development. We see bioenergy as a possibility to organise agricultural production in countries which still lack an agricultural production for the production of food. This can be a way of rural development in a variety of developing countries. You create an agricultural system with all the infrastructure, [...] create

jobs and [...] produce food as well. Our motto is 'food and fuel', not 'food vs. fuel'.

(High-ranking diplomat of the Energy Department of the Ministry of Foreign Affairs 30 April 2013)

Lula da Silva referred to the consequences of climate change, the state of underdevelopment in many African, Latin-American and Asian countries and the North-South divide in the energy question, particularly as far as the consumption of fossil fuels is concerned. As a solution to these existing challenges he suggested the expansion of the production of biofuels, and above all, the Brazilian version. According to his argument, Brazilian biofuels represent a viable economic alternative to fossil fuels because they are supposed to be environmentally friendly, hold tremendous development potential for developed and developing countries alike and might therefore revolutionise the production of energy worldwide. To demonstrate that the solution Lula da Silva offered was credible, he presented his own country as a real role model in the production of sugarcane-based ethanol. Not only did he refer to Brazil's pioneering role in the production of biofuel worldwide and its position as a leading ethanol producer, he also put emphasis on the recent developments during his own presidency, such as the introduction of the flex-fuel engine and his achievement in further increasing the production of ethanol while at the same time successfully fighting extreme hunger and poverty in Brazil and reducing the deforestation rates in the Amazon rainforest.

No global consensus on the benefits of biofuels

Other actors in global governance were far less convinced of Lula da Silva's optimistic position on the benefits of biofuels. In particular during the 2007/2008 global food crisis many actors in Global Environmental Governance viewed the production of biofuels as a principal factor for the rise of the global food prices. Below I present a variety of different statements from civil society organisations, UN representatives and international organisations issued between 2007 and 2013 which will give an overview of the opinions and standpoints of other important actors in Global Environmental Governance and provide a more nuanced picture of the global dialogue on the benefits of biofuels production.

In July 2007, Eric Holt-Giménez, executive director of FoodFirst/Institute for Food and Development Policy,⁹ published an article in *The New York Times* exposing the optimistic discourse on biofuels as a

myth which 'directs our attention away from economic interests that would benefit from the transition, while avoiding discussion of the growing North-South food and energy imbalance' (Holt-Giménez 2007). As far as deforestation in Brazil is concerned, Holt-Giménez argued that biofuel plantations in the ecosystems of the Atlantic Forest, the Cerrado and the Pantanal would push the communities living there – indigenous people, subsistence farmers and extensive cattle ranches – closer to the Amazon rainforest and thereby indirectly threaten the Amazon (Holt-Giménez 2007). Holt-Giménez refuted the argument that the production of biofuels would hold huge development potential if the production were overtaken by big industrial companies and huge monoculture plantations. He also argued that the production of biofuels would indeed increase food insecurity. Given the increased competition over land triggered by the new food–fuel divide, the rise in prices for food crops would aggravate the access to food.

On 22 August 2007, the then Special Rapporteur on the Right to Food, Jean Ziegler, published a report which drew on Holt-Giménez's article by heavily criticising the benefits of biofuels and emphasising their devastating impact on the situation of global food security (Ziegler 2007: 2). Ziegler was particularly concerned about rising food prices triggered by the production of biofuels – or agro-fuels, as Ziegler deliberately called them to highlight 'how the interests of the agro-industrial monopolies will dominate over the interests of the world's poor and hungry' (Ziegler 2007: 9) – which may lead to an increased competition over land and forests (Ziegler 2007: 13). Ziegler also called into question the employment opportunities praised by the biofuels industry by directing attention to the slavery-like conditions of workers on sugarcane plantations in Brazil and the fact that industrial farming requires less workforce than family farming (Ziegler 2007: 13–14).¹⁰

In 2008, several scientific articles published in the journal *Science* supported the existing outrage with scientific data. One of these articles held that the production of biofuels based on food crops such as corn, sugarcane, soybeans and palms led to effects quite contrary to those embraced by biofuel enthusiasts:

Converting rainforests, peatlands, savannas, or grasslands to produce food crop-based biofuels in Brazil, Southeast Asia, and the United States creates a 'biofuel carbon debt' by releasing 17 to 420 times more CO₂ than the annual greenhouse gas [...] reductions that these biofuels would provide by displacing fossil fuels. In contrast, biofuels made from waste biomass or from biomass grown on

degraded and abandoned agricultural lands planted with perennials incur little or no carbon debt and can offer immediate and sustained [...] [greenhouse gas] advantages.

(Fargione et al. 2008: 1235)

The World Bank Development Report released in 2008 joined in the widespread criticism by claiming that biofuels were responsible for the jump in global food prices. In this context, the World Bank saw the US ethanol programme as the main culprit for the extreme rise in the prices of maize in 2007 and 2008 (World Bank 2008: 70). Nor did the World Bank see any significant environmental benefits originating from the production of biofuels. Even though the Report, in common with other studies, regarded Brazil's sugarcane-based ethanol as the most efficient type, with a potential to reduce gasoline emissions by about 90 per cent, it also cautioned that the same potential could be lost through the emissions generated in land conversion processes (World Bank 2008: 71).

The 2008 FAO report on the state of food and agriculture, however, corroborated the evidence that Brazil's sugarcane-based ethanol was far superior in production costs to all other biofuels and most competitive to fossil fuels, while other major biofuel producers were not competitive at all without relying on heavy subsidies (FAO 2008c: 23–40). Nevertheless, the report warned of the possible biodiversity loss as a result from land-use change prior to the production of ethanol, particularly in the case of Brazil (FAO 2008c: 55–71).

In the same year, Oxfam paid particular attention to Brazil's ethanol production. On the one hand, Oxfam admitted that Brazil's sugarcane-based ethanol was the most efficient and environmentally friendly type of ethanol based on food crops as far as the production process was concerned (Oxfam 2008: 11). On the other hand, Oxfam cautioned that sugarcane plantations, albeit far away from the Amazon rainforest, may push other agricultures such as cattle and soy closer to the Amazon, which would then lead to indirect emissions (Oxfam 2008: 11). Also, as reported by Jean Ziegler, Oxfam denounced the slavery-like working conditions for many workers on sugarcane plantations and referred to Amnesty International's Human Rights Report of 2008 which described grave human rights violations on sugarcane plantations all over Brazil (Oxfam 2008: 11, 46).

ActionAid released a study which questioned the gold rush-like enthusiasm about biofuels. The evidence presented by ActionAid confirmed most of the arguments of other critics. ActionAid was able to

observe an impressive increase in the production of sugarcane-based ethanol in Brazil¹¹ accompanied by a clear trend towards an industrial mechanisation of the whole production cycle dominated by agro-fuel companies (ActionAid 2008: 13). The consequences of this rapid industrialisation process are manifold. Not only are they detrimental to the existing ecosystems where sugarcane plantations are introduced, but they also exacerbate the competition for land and food crops, which deprives workers of employment options (ActionAid 2008: 13). ActionAid also concentrated on Mozambique, one of the countries in which Brazil heavily invested to reinforce technical cooperation efforts on ethanol production. ActionAid found that initial plans to rely on family agriculture had been displaced by private investment projects which ignored the interests of local communities and did not pay proper attention to the preservation of local ecosystems (ActionAid 2008: 17–18).

In 2008, the new UN Special Rapporteur on the Right to Food, Olivier de Schuetter, distanced himself from Jean Ziegler's harsh criticism of biofuels and provided a more nuanced view on the issue (Gallas 2008): Schuetter did emphasise the role of biofuels as one of the key factors in the global food crisis, but distinguished between the different types of biofuels. He stressed that Brazil's sugarcane-based production of ethanol could not be lumped together with those types produced by the US or the EU. Furthermore, he cautioned that, even though Brazil's ethanol production was not as environmentally damaging as other types of ethanol, the environmental benefits of biofuels – or agro-fuels – were vastly exaggerated and ignored their impact on deforestation, use of water and energy.

In the aftermath of the global food crisis, most of the relevant international organisations in the sector of bioenergy, namely UNEP, FAO and IEA Bioenergy, slightly softened their position and increasingly stressed the positive potential of biofuels. IEA Bioenergy, for instance, emphasised that bioenergy could considerably contribute to energy security and the social and economic development in developing countries (Bauen et al. 2009: 2).

The FAO suggested that '[a] safe integration of food and energy production may be one of the best ways to improve national food and energy security and simultaneously reduce poverty' (FAO 2011c: iii). The FAO regards the challenge of promoting and supporting the simultaneous production of food and bioenergy as one of its key tasks for the immediate future (FAO 2011c: viii–x).

UNEP came to the neat conclusion that 'bioenergy is neither a "silver bullet" nor a human tragedy' and concluded that '[i]f produced and used under the right conditions, bioenergy is one of several energy options that can deliver sustainable energy for a range of applications to a growing human population' (UNEP n.d.: 1). In examining the risks and benefits of biofuels in connection with energy security, food security and climate change, UNEP saw huge potential in biofuels as long as its production is accompanied by the necessary safeguards (UNEP 2011: 49).

In a follow-up study on the global food crisis released in 2010, the World Bank mitigated its claims made in the 2008 Development Report that biofuels were one of the main factors in the rise of world food prices in 2007 and 2008. The World Bank found that 'biofuels account for only about 1.5 per cent of the area under grains/oilseeds [...] [which] raises serious doubts about claims that biofuels account for a big shift in global demand' (Baffes and Haniotis 2010: 12). However, due to the important contribution of a variety of factors to the food crisis, the World Bank cautioned that uncertainties remained about the actual weight of these factors but made clear that the contribution of biofuels to the crisis was less significant than had been claimed before (Baffes and Haniotis 2010: 18).

Compared with the other two discursive interfaces in global health governance and the global system of food security, it is striking to observe that Brazil's (and Lula da Silva's) key message was only partly shared by the other relevant actors in the global governance of bioenergy. Lula da Silva did link his key message to Brazil's heroic qualities in the fight against hunger and poverty and once again attributed to Brazil the quality of a hero in the fight against several development challenges haunting the developing world. This time, however, it was not the case that the huge majority of other actors in this sector embraced Brazil's key message as wholeheartedly as in the global fight against HIV/AIDS and the alleviation of hunger and poverty. According to Adriano Campolina, the executive director of ActionAid Brazil, Lula da Silva's position became contradictory when on the one hand he (rightly) promoted Brazil's successful model in the fight against hunger and poverty (the Zero Hunger strategy) and at the same time defended the production of biofuels and the illusion that agro-industry could contribute to solving the problem of hunger and poverty in the world (Campolina 26 September 2012).

While during the global food crisis, some actors, including the former UN Special Rapporteur on the Right to Food, Jean Ziegler, painted a very grim picture of the benefits of biofuels, civil society organisations like Food First, Oxfam and ActionAid, and international organisations including UNEP, FAO and the World Bank had a more moderate but no less critical stance on biofuels production. When looking at the Brazilian model, the main criticism referred to those environmental and social risks which have always accompanied the Brazilian ethanol programme. The principal and most serious environmental risk emphasised by most of the critics referred to land-use change and the resulting greenhouse gas emissions. The main social risks referred to the existence of slavery-like conditions, the exploitation of workers on sugarcane plantations throughout Brazil and the involvement of big industry.

With regard to the impact of biofuels on food prices, even among international critics, no general consensus exists. While some critics saw a clear link between biofuels and the rising food prices in 2007 and 2008, others doubted that biofuels were the key responsible factor for the global food crisis. And yet, when considering all the different types of biofuels based on food crops, most critics conceded that Brazil's sugarcane-based ethanol could be seen as the most efficient and environmentally friendly.

The view of the High-Level Panel of the FAO Committee on World Food Security may be most appropriate when summarising the general opinion (and the current state of the international debate) on biofuels. On the recommendation of the FAO Committee on World Food Security in 2011, its High-Level Panel issued a report in January 2013 on the impact of bioenergy production on food security and confirmed the mixed picture which has emerged from the statements of the relevant actors involved. Even though social and environmental risks exist, the report highlighted the potential of biofuels in bioenergy issues.

Biofuels can affect food security negatively through prices, through land and water use and by public policy and private strategy responses to the perceived effects of biofuels in the form of trade and investment. They can also be seen to have a positive effect on food security to the extent that they open up the possibility for new sources of income and employment, and provide alternative sources of energy for rural communities and for rural and urban food preparation. At this point biofuels become components of broader bioenergy policies and strategies.

(CFS 2013: 16)

d) The organisational interface

The organisational interface analyses Brazil's most significant efforts in developing global sustainability standards for the production of ethanol. It examines Brazil's multilateral activities by focusing on the GBEP and the International Biofuels Forum. In Brazil's bilateral activities, the focus lies on the development of its partnership with the US, Brazil's main competitor in the production of ethanol.

The Global Bioenergy Partnership

On 11 May 2006, during the 14th session of the UN Commission on Sustainable Development in New York, the GBEP was launched as a result of a consultation process among the G8+5 (Brazil, China, India, Mexico and South Africa), international organisations and the private sector, which had started with the 2005 Gleneagles Plan of Action at the 2005 G8 Summit in Gleneagles (GBEP 2011a; GBEP 2011b).

The GBEP is responsible for promoting global high-level policy dialogue on all issues concerning bioenergy, supporting national and regional bioenergy policy-making, engaging in the exchange of information, skills and technologies and collaborating in its activities with other bioenergy initiatives and partnerships (GBEP 2011c). The Partnership comprises all relevant state actors, international organisations and agencies in the production of biofuels worldwide either as actual partners or as observers which turns the GBEP into the principal mechanism for the promotion of global sustainability standards.¹²

In October 2006, Brazil was invited by the GBEP's Steering Committee to share information on Brazil's biofuels experience, which resulted in its official membership in the second half of 2007 (GBEP 2006; GBEP 2007). In June 2008, at the 5th Steering Committee meeting which took place in Rio de Janeiro, Brazil was nominated as co-chair of the GBEP (along with Italy) until 2010, which was extended firstly in November 2010 to the year 2011, and a second time in November 2011 to the year 2012¹³ (GBEP 2008; GBEP 2010a; GBEP 2011e).

It is hard to find out which reasons led the founding members to the decision to nominate Brazil as co-chair. One high-ranking diplomat of the Energy Department of the Ministry of Foreign Affairs, however, explained that one of the reasons for the decision of GBEP's members to select Brazil as co-chair along with Italy might have been Brazil's role as a big bioenergy producer (High-ranking diplomat 30 April 2013). Given Brazil's unique role in the production of ethanol, this explanation seems reasonable enough.