Patterns of Counter-Contestation in Global Health:

The WHO's new strategies to respond to national Contestation activities

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1. Starting point, criticism and the emergence of actor-centered counter-contestation

Contestation of International Organizations by member states often arises at that starting point in which "[States] contest the international institutions they have themselves created at the very moment these institutions produce decisions and interpretations they dislike" (Zürn 2018: 142). There are several reasons for this: For international organizations, performing tasks in accordance with their mandate is difficult for several reasons, because they are simultaneously confronted with a multitude of heterogeneous nation-state interests that can rarely be served simultaneously (cf. Hawkins et al 2006b). Also, it can often fulfill its assigned tasks only if member states cooperate, as demonstrated by the 2002/ 03 SARS pandemic. These points inevitably lead to contestation by nation-state governments - it arises from structural/systemic ruptures or tensions inherent in the system (cf. Zürn 2018: 138 f.). As a result, Zürn argues, states and civil societies resort to a range of strategies. The strands of theory focus heavily on a direction of impact that strongly emphasizes states contesting the function of international organizations.

At the same time, these recent political science analyses do not address how International Organizations deal with national contestation strategies and the extent to which they find responses to them in order to secure their authority. I do not consider this structurally conditioned contestation as an end point, but rather as a starting point of a contestation dynamic characterized by an escalation in which contestation takes on new forms.

This paper will primarily discuss theoretically, along the lines of global health governance, that the contestation process is not one-sided, but that the international health order (continues to) develop along an interplay between contestation and counter-contestation. More precise reasons for their counter-contestation strategies will be discussed below.

2 Theoretical considerations

2.1 Development of the first important argument: mandate legitimacy versus outcome legitimacy.

As a central concept to describe and explain that International Organizations (IGOs) can exercise authority, i.e. are endowed with power and resources, are the considerations of legitimacy. "International institutions are seen not only by political, but also by societal actors as political institutions exercising public authority requiring legitimacy" (Zürn 2018a: 1).

International organizations basically obtain their legitimacy through a mandate from their member states. In the case of WHO, its scope and limits of action are regulated in the International Health Regulations (IHR, last updated in 2005). Following Scharpf 1999, I will refer to this legitimacy as input

legitimacy or, more precisely, as legitimacy by mandate, namely that the WHO was founded to represent nation states in pursuing their goals in the policy field of health.

However, international organizations may have recognized that performing tasks in accordance with their mandate is difficult for several reasons, because they are simultaneously confronted with a multitude of heterogeneous nation-state interests that can rarely be served simultaneously (cf. Hawkins et al 2006b). Also, it can often fulfill the tasks assigned to it only if member states cooperate, as demonstrated by SARS pandemic 2002/ 03.

Mandate legitimacy is generally contrasted with the goal of International Organizations to contribute to the construction and development of global governance, a state that replaces the longstanding anarchic state of the international system by exercising authority across national borders justified with reference to common goods (e.g. health) (cf. Zürn 2018: 138). I argue that International Organizations can thus be understood as actors that have meanwhile/ in more recent times set themselves the goal of further expanding/integrating global governance. The reason why WHO wants to advance a global health governance is that in a global health governance they see their existence rather secured and are more independent from nation states. For this purpose, it uses outcome-oriented goals, i.e. "good governance" along recognized public health or medical criteria. WHO thus wants to make itself indispensable and follows the strategy of outcome orientation in order to gradually detach itself from input legitimacy.

These two types of legitimacy and the strategies associated with them can be systematized using the principal-agent approach. While along the first dimension international organizations pursue their founding purpose within the framework of a principal-contractor relationship, the second dimension indicates an independence dynamic/ aspiration of international organizations vis-à-vis nation states and the development of their own interests. These two tasks are in tension. Within the framework of a principal-agent approach, both target dimensions and the resulting tension can be summarized to the most essential core points: "The central concern of this approach lies in whether the benefits accrued by principals through delegation are outweighed by losses in control" (Graham 2013: 3).

Based on this principal-agent approach, it will be shown below that WHO can reconcile the authority delegated to it on the one hand with its goal of outcome legitimacy. However, there may be divergences along international health events between its delegated authority and the associated democratic/input legitimacy and its goals/your outcome legitimacy. In order to maintain its outcome legitimacy, WHO resorts to strategies that are summarized as counter-contestation in the context of this thesis.

2.2 Further development of the contestation model

The argument that international institutions (here: WHO) are capable of becoming independent, thus deepening global health governance and ultimately (partially) decoupling their raison d'être from the "goodwill" of the member states, makes it clear that the WHO must have a high degree of actor quality for this. In common contestation considerations, this actor quality of the WHO and its ability to conduct counter-contestation is underrepresented. Therefore, the model will be extended by the assumption of a higher actor competence and supplemented in a second theory step along Zürn's (2018a) model. Zürn describes in a process-like manner that authority of International Organizations is accompanied by legitimacy problems (1-2). The contestation of IO authority then begins via politicization processes, which is primarily driven via organized national (and international) civil society (NGOs) or expressed via criticism and attacks by nation-state governments (3) (cf. here also Zürn and the other). Different contestation strategies eventually emerge more and more (4): on the one hand, states may pursue the

strategy of establishing alternative IOs that are closer to their interests and that they can better influence, which is called counter-institutionalization in the context of this model. Second, Zürn identifies the strategy of gridlock (Zürn (2018a). On the one hand, this contestation-driven process can lead to a "fragmentation and decline" of the international system, in which the role of global governance and the role of IOs diminish. On the other hand, the process may lead to a "deepening" of global governance (5).

I argue that it is not only conditions subsumed under "historical institutionalism" that define "outcomes" to the process of deligitimization and consequent nation-state driven responses. It turns out that nation-state responses are followed by organizational responses that help shape the process into Outcomes. The model of Zürn 2018a on which the contestation is based will be extended/ supplemented in the future with empirical evidence to include the actor-centered dimension.

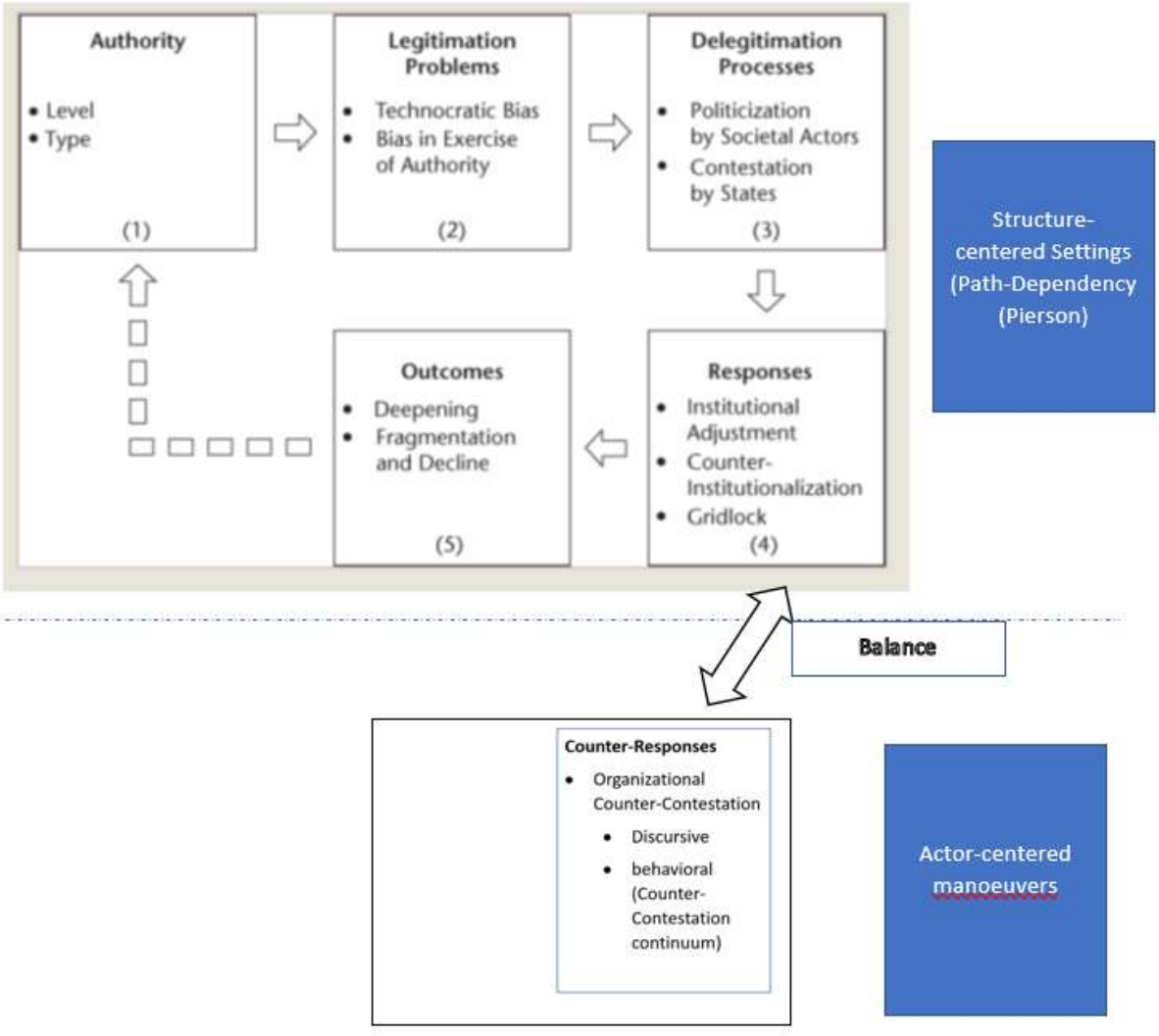

Figure 1: Actor-centered extension of the contestation model (Source: Zürn 2018a, extended with actor-centered manoeuvers)

3. Results: Health Crises as Windows of Opportunity and Amplifiers of Output Legitimacy: The "WHO as Emergency Power"

3.1 Levels of Legitimacy and Their Triggering of Organizational Counter-Contestation

I will approximate actor-centeredness, and its underrepresented importance in this model from the perspective, through two dimensions of legitimacy (of IOs). In doing so, the aim is to provide a nuanced picture of actor-centeredness: WHO has varying degrees of actor-centeredness in each of the two legitimacy dimensions. The legitimacy dimensions each entail different counter-contestation strategies.

As shown above, the first legitimacy dimension can be called input legitimacy. Following Scharpf 1999, I will refer to this legitimacy as input legitimacy or, more precisely, as legitimacy by mandate, namely that the WHO was founded to represent nation states in pursuing their goals in the policy field of health. It can be seen that within the framework of this first legitimacy dimension, the moment of actor-centeredness is the smallest.

Due to the limited choice of means (by the member states), the WHO adopts strategies to achieve its goals apart from the willingness to cooperate. They follow from a dysfunctionality of the first dimension of legitimacy: "As long as international institutions can be captured by special interests, they will fail to effectively address the tragedy of global commons and existential risks to peace and wealth in the world" (Zürn 2018: 143). In the second dimension of legitimacy, WHO aims to justify its actions on the basis of capability and "good performance." As a rule, WHO aims to achieve this output legitimacy with strategies of independence in the sense of a principal-agent logic. This includes on the one hand an independence strategy towards the World Health Assembly (WHA) (internal) characterized by an independence striving towards its member states (external). With these actions/strategies, it often exceeds its input legitimacy, which means that input legitimacy and output legitimacy can be in tension with each other. In this dimension, the degree of actor-centeredness is much higher. The legitimacy dimension/ stage and the WHO making it independent is not permanently possible, but arises, for example, in Windows of Opportunity (Kingdon 2013). If one follows the principal-agent approach, the agent is able to break away from the interests of the principal and thus their original mandate. International health crises become "windows of opportunity" (Kingdon 2013) and allow WHO to significantly increase its competencies or fills new roles in multiple ways. These windows of opportunity expand WHO's (substantive) sphere of competence, resulting in a permanent empowerment of WHO: "the expansion of executive discretion in both the horizontal (lowering of checks and balances) and the vertical (reduction of legal protection of subjects) dimension, justified by reference to political necessity" (Kreuder-Sonnen 2019: 182).

Part of the counter-contestation strategy can be seen in the fact that WHO has so far been able to use health crises to expand its competencies and undertake organizational "empowerment". In doing so, WHO has not only been able to increase its competencies and power for a short period of time, but there has been a permanent level shift to more power and competencies (Kreuder-Sonnen 2019).

3.2 The dynamics of legitimacy levels

It remains to be emphasized that WHO primarily pursues a strategy of outcome legitimacy in its actions, which, depending on the degree of cooperation (of other states), the conditions of the environment and principles/convictions of the staff, allows for moderate behavior aligned with the interests of the member states (high cooperation) or leads to behavior along which WHO deviates from the interests of the nation states. It can be seen that three escalation levels of legitimacy are thus unfolding, resulting in increasingly strong counter-contestation strategies in the face of increasingly adverse conditions to achieve outcome legitimacy. First and foremost, WHO's behavior is aligned with the (contestation behavior) of states. The counter-contestation strategies that are pursued thus become a means of always being able to guarantee the goal of outcome legitimacy.

In terms of democratic/representative legitimacy (input legitimacy), the WHO operates within the radius of the interests of all 194 member states. For smaller events, WHO has the least effort to equally protect the interests of the member states and to perform "good governance". In this first stage, the intersection between the interests of the member states and the interests of the WHO is greatest (Table 1: green field).

If health crises arise, shifts occur. WHO cooperates with the central states in the health crisis. WHO adapts its instruments to maintain its goal of outcome legitimacy - an initial soft counter-contestation behavior emerges (soft discursive counter-contestation; soft behavioral counter-contestation). This instrument leads to a cooperative counter-contesting behavior towards the member states (Table 1: yellow field).

If the states do not behave cooperatively (such as China in the SARS crisis) (or if other states pursue initial delegitimization behavior => contestation), WHO pursues harder instruments of counter-contestation in order to maintain the goal of outcome legitimacy (hard discursive and hard behavioral counter-contestation as well as decoupling). Also, the first decoupling strategies are beginning to appear, which are intended to create the appearance of religitimization. I suspect that they are used as a means to an end to secure outcome legitimacy. This third level of legitimacy is promoted by health crises, which can be seen as a "window of opportunity" and allow for certain strategies (Table 1 - red box).

Input legitimacy and outcome legitimacy in balance

Cooperative outcome legitimacy			
WHO instruments	Concrete action	Environmental conditions	Event
Soft behavioural Counter-Contestation		crises + cooperation	
Soft discoursive Counter-Contestation			

Mandate-exceeding/ crisis-driven outcome legitimacy			
WHO instruments	Concrete action	Environmental conditions	Event
Hard behavioural Counter-Contestation			

Hard discoursive Counter-Contestation		Absence of cooperation + Severe crises become windows of opportunity	
Feigned relegitimization			
Achieving Authority Loops (long-term condition to ensure outcome legitimacy)			

Table 1

3.3 Results with regard to their transfer to previous model research

If the findings are transferred to Zürn's model presented above, two points of the model can be highlighted that can be changed by the WHO: If WHO wants to avoid the risk of Decline (5) or intervene in this process towards decline (2-5), it must/will develop instruments to oppose system-driven Contestation. WHO's goal to become more independent (and part of an integrated Global Order and less part of nation-state mandates) can be described as a "flight forward", which in turn leads to nation-state driven Contestation initiated by it. The initial Contestation process is extended to include Counter-Contestation. According to Zürn's (2018a), the system/structure-driven contestation leads either to a "deepening" of a global (health) governance or to its "fragmentation and decline" (see Figure 1). Through the actor-centered perspective, I have brought the actor quality of WHO into focus in this article and shown that it is not only channeled through this process, but actively contributes to both scenarios of "deepening" or "fragmentation and decline" to a visible extent.

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