

## **COVID and the Broken Global Order\***

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When the COVID pandemic affected every one of the world's nations, the way forward seemed obvious, even if difficult to traverse. Given the rapid spread of the disease and its severity that overwhelmed long neglected health systems, and the cost to lives and livelihoods that shutdowns of economic and social activity implied, quick access to drugs and vaccines to manage the pandemic were crucial. Fortunately, government support for biotech research, in general, and research on new generation vaccines, in particular, had advanced science to some degree. Many developed country governments and some developing country governments were willing to outlay large sums to accelerate further research on and pre-order potential production of any promising drugs and vaccines, ignoring the risks of possible failure.

As a result, laboratories and companies were able to design, test and launch vaccines and drugs in record time, to reduce the spread and severity of the disease, even if not to prevent it. That done, the task was one of ramping up production and deploying the vaccines and drugs to manage the disease. This should have been seen as urgent, because the persistence of the disease led to mutation of the virus, allowing for breakthrough infections and new waves of the pandemic. In such circumstances, any restriction of access to the technology underlying the drugs would limit production, make distribution unequal and prolong the pandemic.

Unfortunately, despite the essential contribution of public funds to research and development and marketing support, the prevalent global intellectual property regime that gives the patent holder control over the technology did indeed restrict access to it and limit global production. These intellectual property rights (IPRs) had been written into the global Trade Related Intellectual Property Rights (TRIPS) regime of 1995 overseen by the World Trade Organisation (WTO), following pressure from multinational companies that successfully lobbied developed country governments.

As long as patents remain valid, no similar product can be produced without a licence, which can only be granted by the patent holder. Relying solely on production from the limited facilities that individual companies could invest in and manage resulted in shortages of drug and vaccine supplies for considerable periods of time. The rapid proliferation of production facilities across the globe for vaccines, diagnostics, drugs and other treatments is also foreclosed by the assertion of IPR by companies that "own" the technology.

Effectively, this meant the TRIPS regime reduced the access of poor populations in developing countries to medicines at reasonable prices and affected the ability of their governments to address public health emergencies. There were flexibilities in the TRIPS agreement that allowed countries to bring in compulsory licensing for domestic producers when the IPR regime was seen to be enabling anti-competitive practices, and to allow parallel imports from cheaper producers by countries that did not have their own production capacities. The Doha Declaration on TRIPS and Public Health and the subsequent Agreement on Parallel Imports were heralded as major concessions to developing countries, but in fact they restricted the available policy space by specifying very particular conditions under which these flexibilities could be used.

Many developing countries were not able to or chose not to exercise the option of production or import of cheaper generic versions affecting access to affordable treatments, because of fears of retaliatory action by governments that were home to Big Pharma companies. That such fears were justified was made clear by the inclusion of “TRIPs-plus” provisions in bilateral or plurilateral free trade agreements or investment treaties that countries signed into outside of the WTO.

The severity of the COVID pandemic affected all countries and has been prolonged by the shortage of vaccines. The longer the pandemic lasts, the greater the possibilities of new variants originating in countries with lower rates of vaccination, resulting in renewed waves of infection. This clearly pointed to the need to completely rethink these IPR provisions, especially in areas of public health. Instead, the discussion was restricted to waivers of TRIPs provisions for tests, vaccines and treatments related only to COVID infections.

In October 2020, months after the severity of the COVID pandemic was obvious to all, India and South Africa advanced a proposal for the waiver of intellectual property barriers that were limiting the production of COVID-19 vaccines, tests and treatments. However, under pressure from big pharma and developed country governments supporting them, the substance of the proposal was diluted substantially in subsequent discussions that were non-transparent. In a leaked text that emerged in the middle of March 2022, which became the basis for the official draft introduced by the WTO Director General in May that year, the European Union and the United States led a backlash aimed at forcing a compromise that would keep in place the post-Doha status quo. For example, the draft required specification of all patents related to the drugs that would be covered by any new waiver, which in the complex and manipulated world of intellectual property with intersecting patents is bound to reduce the effectiveness of the waiver. The draft also ignored medicines needed for COVID tests and treatments, being restricted to vaccines. Moreover, it left out categories of intellectual property included in the original proposals such as undisclosed data, copyright and industrial design, all of which were bound to have a role in the new technologies embodied in mRNA vaccines. Finally, the waiver was to be effective only for developing countries that export less than 10 per cent of the world’s vaccines in 2021. That effectively ruled out countries like India.

Following the June 17th agreement, a press release from OXFAM, quoting Max Lawson, Co-Chair of the People’s Vaccine Alliance that has been closely tracking the discussions, said: “This so-called compromise largely reiterates developing countries’ existing rights to override patents in certain circumstances. And it tries to restrict even that limited right to countries which do not already have the capacity to produce COVID-19 vaccines. Put simply, it is a technocratic fudge aimed at saving reputations, not lives.”

What is even more disconcerting is the role of the developed countries. They have been constantly exhorting poor nations to cooperate globally and cede concessions to secure global public goods in areas like climate change, even though the contribution of the latter to carbon emissions is minimal. The OXFAM release noted, “The conduct of rich countries at the WTO has been utterly shameful. The EU has blocked anything that resembles a meaningful intellectual property waiver. The UK and Switzerland have used negotiations to twist the knife and make any text even worse.

And the US has sat silently in negotiations with red lines designed to limit the impact of any agreement.”

There is much evidence of the conspiratorial role of developed country representatives aimed at furthering the interests of big pharma, and the ‘community’ of multinational predators in general. Civil society organisations like the Third World Network report that the final agreement at the 12th Ministerial Conference, which included the compromise on the TRIPS waiver, was shaped in small group negotiations from which most member countries were excluded. Such small group negotiations continued through an additional day (June 16) for which the conference was extended and an informal heads of delegation meeting at which all countries had access to the draft text was convened at only 4 am on the 17th. That clearly was meant to exclude all but the “favoured” from the negotiations.

With hindsight, in the course of the pandemic till now, the developed countries have revealed their cynical willingness to discard the critical international cooperation needed to address global crises, and promote only what they see as the best interests of their transnational companies and elites. Developed country governments advanced-purchased doses in volumes that were often many multiples of the needs of their own populations. This delayed access in the rest of the world to much-needed vaccines, prolonging waves of infections and providing the basis for mutations that triggered new waves of the pandemic in the developed countries as well. They also stalled discussions and derailed any effort at liberalising the TRIPs regime. It took more than two years after the onset of the pandemic for a supposed new “agreement” on a TRIPs waiver. But this has introduced little change and even implied a reversal in favour of big pharma.

Clearly, for all the talk of the urgency of realising targets related to Sustainable Development Goals and ensuring universal access to global public goods, rational thought does not govern developed country decision making. If a crisis as severe as the COVID pandemic that was truly global is being addressed in this fashion, with economic interest and short-term concerns derailing appropriate policy options, then there is little hope of progress in areas where the crisis is imminent but more distant such as climate change. History suggests that it took two world wars for governments to think about reining in the most predatory tendencies under capitalism. But the efforts that followed were reversed after the 1980s, and crises like the COVID pandemic do not seem to be enough to revive old memories and policies.

In short, the multilateralism much needed in today’s world is unlikely to emerge. In the circumstances it would not be surprising if some developing countries choose to pursue their self-interest and do what the developed do, which is to override or circumvent international rules. That, however, is an option not open to the most vulnerable.

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