## AC

### Framework

#### Ethics begin a priori –

#### Thus, ethics are derived from practical reason –

#### Moral law must be universal –

#### Prefer –

#### [1] Performativity –

#### [2] Humanity Principle –

#### [3] TJFs –

### Offense

#### I affirm Resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

#### [1] An exclusive and unconditional right to property is not entailed by the categorical imperative – only conditional use is universalizable.

Westphal 97 [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

The compatibility of possession with the freedom of everyone according to universal laws is not a trivial assumption even for the case of detention or “empirical” possession. Under conditions of extreme scarcity, anyone’s use of some vital thing precludes someone else’s equally vital use of that thing or of anything of its kind (given the condition of extreme relative scarcity). This is not quite to agree with Hume, that conditions of justice exclude both extreme scarcity and superabundance.32 But it is to recognize that he came close to an important insight: legitimate action requires sufficient abundance so that one person’s use (benefit) is not (at least not directly) someone else’s vital injury (deprivation). This is not merely to say that property is psychologically impossible in extreme scarcity because no one could respect it (per Hume); the point is that possession and perhaps even use are not, at least not obviously, legitimate under such conditions. (How Kant would propose to resolve the conflicting grounds of obligation in such circumstances, the duty to self-preservation versus the duty not to harm others’ life or liberty, I do not understand.)

The assumption that possession is compatible with the freedom of everyone according to universal laws [5] is even less trivial for the case of “intelligible” or “noumenal” possession, that is, possession without physical detention. The compatibility of intelligible possession with the freedom of everyone according to universal laws requires both sufficient resources so that the free use of something by one person is not as such the infringement of like freedom of another, and it requires that mere empirical or physical possession does not suffice to secure the innate right to freedom of overt (äußere) action. If physical possession did suffice to secure the innate right to overt action, Kant’s main ground of proof would entail no conclusion stronger than that rights of physical possession (detention) are legitimate. Furthermore, by assuming that noumenal possession is compatible with the freedom of everyone according to universal laws [5], Kant assumes rather than proves that possession without detention is permissible. However, this is precisely the point that needs to be proven! This issue remains central throughout the remainder of §2 and is addressed again in §3 below.

2.2.6 The previous section raises a very serious question about Kant’s justification of intelligible rights to possess and use (possessio). The questions about Kant’s supposed justification of property rights, the possibility of having things as one’s own (Eigentum, dominium), are even more acute. To derive such strong rights from Kant’s argument requires at least one of three assumptions. The first assumption would be that the sole relevant condition of use is proprietary ownership of things (cf. RL §1 ¶1); this assumption requires interpreting “Besitz” broadly. The second assumption would involve conflating the ownership of a right – viz., a right to use – with a right to property ownership. However, the legitimacy of neither of these assumptions is demonstrated by Kant’s argument in RL §2. Or it may be assumed, third, that Kant’s argument in §2 aims to prove, not merely rights to possession, but rights to property, insofar as it aims to prove a right to “arbitrary” (beliebigen) use, that is, the right to do whatever one pleases with something ([10]; cf. RL §7, 253.25–27), where this can include any of the rights involved in the further incidents of proprietary ownership. Reading Kant’s text in this way assimilates possessio to dominium by stressing Kant’s term “beliebigen”. So far as Kant’s literal statement is concerned, it is equally plausible to stress Kant’s term “Gebrauch” (use), which would restrict Kant’s argument to justifying possessio. Kant’s reductio ad absurdum argument assumes the contrapositive thesis that [it is not] altogether ... rightly in my power, i.e. it [is] not ... compatible with the freedom of everyone according to a universal law ([it is] wrong), to make use of [something which is physically within my power to use]. ([2], [1])

His argument then purports to derive a contradiction from this assumption. From this contradiction follows the negation of this assumption by disjunctive syllogism. Strictly speaking, what Kant’s argument (at best) proves is that it is indeed rightful to make use of things which in principle are within one’s power, provided (“obgleich ...”) that one ’s use is compatible with the freedom of everyone in accord with a universal law [5]. As mentioned, Kant’s argument assumes rather than proves that this assumption is correct. Kant must prove that this assumption is correct in order to prove his conclusion. This requires showing that possession and use of things (in their narrow, strict senses) is consistent with the freedom of everyone in accord with universal laws. That would justify rights to possessio. To justify the stronger rights to dominium requires showing that holding things in accord with the rights involved in the further incidents of property ownership is also consistent with the freedom of everyone in accord with universal laws. Because the rights involved in property ownership are not analytically, indeed are not necessarily, related, justifying dominium requires separate justification of each component right. But it also requires more than this. Insofar as these rights are supposed to be proven as a matter of natural right, these further rights cannot be instituted solely by convention. However, there are alternative packages of rights, both for kinds of property as well as for various weaker sets of rights to use, any of which can be formulated in ways that are consistent with the like freedom of everyone according to universal laws. Consequently, merely demonstrating the consistency of one or another of these sets of rights with the freedom of everyone according to universal laws suffices only to justify the permissibility of that set of rights.

It does not suffice to justify the obligation to respect that set of rights instead of any other such set of rights. This is to say, once alternative sets of rights are possible or permissible because they meet the sine qua non of consistency with the like freedom of everyone according to universal laws [5], Kant’s natural law grounds of proof do not suffice to justify an obligation to respect one particular set of rights among the range of possible, permissible alternatives. Consequently, interpreting Kant’s statement [10] by stressing “beliebigen”, using it to specify the scope of “Gebrauch”, can only lead to fallacious, question-begging interpretations of Kant’s argument. Consequently, it is strongly preferable to interpret Kant’s statement by stressing “Gebrauch”, and using it in its strict, narrow sense to specify the scope of “beliebigen”. (This parallels the case for interpreting “Besitz” narrowly instead of broadly.)

In sum, to use something legitimately it suffices to have a right to use it. That, in brief, is “possession” strictly speaking; in the narrow sense of the term, “possession” involves only the right of a qualified chose in possession. Since this condition suffices to fulfill the condition specified by Kant’s reductio argument, no stronger condition follows from Kant’s argument. One can have or “own” a right to use something without, of course, having property in that thing. Recall Honoré’s point that possession involves two claims: being in exclusive control and remaining in control by being free of unpermitted interference of others. Insofar as possession persists despite subsequent and continuing disuse, Kant’s proof does not demonstrate even a narrow right to possession. (This is why I speak of qualified choses in possession; one key qualification justified by Kant’s argument is that one’s right to use persists only so long as one’s legitimate need to use and regular use continue.) Moreover, aside from the prohibition on harmful use, Kant’s argument does not even address the other incidents of property ownership. If Kant’s primary assumption [5] can be justified, then Kant’s proof demonstrates at most three important conclusions: one has the right to use things one currently detains, one has the right to use any usable thing not previously (and hence currently) detained by others (provided one’s use does not infringe the like freedom of others), and one has the right to continue to use things so long as one’s need to use them and actions of using them continue. These are not trivial theses! However, because it does not prove the indefinite duration of possession, in the narrow sense, Kant’s proof of the (first version of the) Postulate of Practical Reason regarding Right is unsound. Kant’s further considerations in RL §6 suffer analogous weaknesses (see §§2.4f.).

#### That implies that intellectual property is unjust.

Westphal 97 [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

6.2 One right that is not justified by the Kantian defense of rights to use developed above is the exclusion of others from the use of something to which one has a right on those occasions when one does not need and is not likely to need to use the item in question. Property rights involve such an exclusion. To the extent that I have shown that qualified choses in possession suffice to fulfill the desiderata established by Kant’s own principles and strategy for justifying possession (in the narrow sense), I have shown that property rights cannot be justified by Kant’s metaphysical principles. This is because there are alternative sets of rights to things which meet both Kant’s sine qua non of being consistent with the freedom of all in accord with universal laws [5] and Kant’s metaphysical grounds of proof concerning freedom of overt action. Neither Kant’s own argument nor my reconstruction of it address most of the incidents of property ownership. (Though I have suggested that Kant’s principles can justify the prohibition on harmful use and very likely some version of the liability to execution.) Indeed, Kant’s sole Innate Right to Freedom, Universal Law of Right, and Permissive Law of Practical Reason appear to entail that it is illegitimate to exclude others’ use of something to which one has a qualified chose in possession provided that their use does not interfere with one’s own regular and reliable use of the item in question. Moreover, Kant’s principles give priority to use over first acquisition, and indeed they justify first acquisition only in view of legitimate and needful use. To this extent, Kant’ s principles undermine and repudiate one of the cherished hallmarks of the liberal conception of private property, namely, that first acquisition as such secures a right over the disposition of a thing, regardless of subsequent disuse (cf. §3.10).

#### [2] Patents attempt to assert ownership over nature and impede individuals’ abilities to pursue their own ends.

Long 95 [(Roderick T., professor of philosophy at Auburn University, editor of the Journal of Ayn Rand Studies, director and president of the Molinari Institute and a Senior Fellow at the Center for a Stateless Society) “The Libertarian Case Against Intellectual Property Rights,” Free Nation Foundation, 1995] JL recut Lex VM

The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered?

Defenders of patents claim that patent laws protect ownership only of inventions, not of discoveries. (Likewise, defenders of copyright claim that copyright laws protect only *implementations* of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on.

Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine.

But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well.

This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right?

Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention.

#### [3] IPR is nonuniversalizable and interferes with the freedom of people who need medicine.

Merges 11 [(Robert, Wilson Sonsini Goodrich & Rosati Professor of Law and Technology, University of California, Berkeley, School of Law) “Justifying Intellectual Property,” Harvard University Press, 2011] JL recut Lex VM

Under Kant’s Universal Principle of Right (UPR), “laws secure our right to external freedom of choice to the extent that this freedom is compatible with everyone else’s freedom of choice under a universal law.”8 As I explained in Chapter 3, Kant’s theory of property rights expresses a special instance of this general principle: property is widely available, yet denied when individual appropriation interferes with the freedom of others. Kant says that although the need for robust property drives the formation of civil society, property rights are nonetheless subject to this “universalizing” principle. Under the operation of the UPR, property rights are constrained: they must not be so broad that they interfere with the freedom of fellow citizens. In a Kantian state, individual property is both necessary— to promote autonomy and self- development; see Chapter 3— and necessarily restricted under the UPR.9

Death is the ultimate restraint on autonomy; there is no more “self” to guide after a person dies. So when a claim to property by person A leads to the death of person B, Kant’s Universal Principle would seem to rebut that claim. As with other issues, however, Kant’s views in this regard are not so simple. In par tic u lar, he expressed complex views on the legal defense of “necessity,” which bears a close resemblance to the property- limiting principle I am attributing to him here.10 Kant says, in effect, that in at least one important example of necessity— where A kills B, or at least puts B in immediate grave danger, to save A’s own life— one who commits a necessary act is culpable but not punishable.11 As with so much in the Kantian canon, there is a great deal of debate over just what Kant was trying to say about necessity. One view— at least as plausible as most others, and more plausible than some— holds that Kant thought of necessity as something like an excuse or defense: a wrong act is not made right by necessity, but it is insulated from formal legal liability.12 This view, well described by among others the Kant scholar Arthur Ripstein, depends on the distinction between formal, positive law (“external,” in Kant’s terminology; see Chapter 3) and “internal” morality. Property for Kant is an absolute right, and taking it without permission is always objectively wrong. But at the same time, some takings are not punishable by the state because they fall outside the proper bounds of legitimate lawmaking.

Because Kant did not explicitly discuss the necessity defense as it pertains to property rights, any application of his thinking to the case of pharmaceutical patents can only be speculation. Even so, there is one point to make. As I explained in some detail in Chapter 3, there is generally a high degree of symmetry between Kant’s thinking on law and3 his theory of property. The UPR is a good example; as I explained in Chapter 3, the idea that property can extend only up to the point that it interferes with the freedom of others is simply one specific application of the general Kantian take on law and freedom. Thus, the analysis of the pharmaceutical patents problem would turn on the issue of property’s effect on the freedom of those suffering from treatable diseases. To put it simply, it is difficult to be sure of the exact conclusion Kant would reach with regard to the issue, but I am sure that the analysis would turn on the freedom- restricting qualities of pharmaceutical patents. It is hard to know the right answer, but not hard to pose the right question: should property extend so far as to cut off or restrain the freedom of those who might be treated?

### Shell

#### Interpretation: Debaters must have a page on the NDCA 2021-2022 Highschool LD wiki with their contact info.

#### Violation: They don’t have a wiki for their school – screenshots in the doc.

Graphical user interface, text, application

Description automatically generated

Graphical user interface

Description automatically generated with medium confidence

(the second screenshot just shows Unionville isn’t their school – they go to Union)

#### Standards:

#### 1. Accommodations –

#### 2. Prep –

#### Drop the debater –

#### No RVI on 1AC theory –

#### Use competing interps –

#### Comes first –

### Advantage

#### Vaccine inequality threatens the whole world.

**Fink 7-30**-21

(Jenni, <https://www.newsweek.com/who-warns-world-blind-understanding-covid-spread-hurting-ability-end-pandemic-1614722>)

A lack of testing for COVID-19 in parts of the world is preventing countries from having a clear picture of how the virus is spreading and therefore hurting the world's chances at **fighting the virus and ending the pandemic**, according to the World Health Organization. **Health inequities** throughout the world have plagued the global response to COVID-19 from the outset and WHO has pushed higher income countries to help lower income countries in the interest of ending the pandemic. Along with restricted access to vaccines, lower income countries have struggled to have sufficient testing, meaning the virus is likely going undetected in certain areas, further enabling its ability to spread. Low testing rates is "leaving the world blind to understanding where the disease is and how it's changing," Dr. Tedros Adhanom Ghebreyesus, director general of the WHO said on Friday during a press briefing. Without improving global testing rates, Ghebreyesus said the world can't "fight the disease" or mitigate the risk it poses to people around the globe. who blind covid spread cases On Friday, the World Health Organization warned the world is "blind" to how COVID-19 is spreading because of a lack of testing in certain places. WHO Director-General Tedros Adhanom Ghebreyesus attends a daily press briefing on the new coronavirus dubbed COVID-19, at the WHO headquaters on March 2, 2020, in Geneva. FABRICE COFFRINI//AFP/GETTY IMAGES NEWSWEEK NEWSLETTER SIGN-UP > One of Ghebreyesus' biggest frustrations with the pandemic response is the failure to **evenly distribute the vaccine** around the world. In some countries, like the United States and other higher-income nations, significant portions of the population have been vaccinated. While those large vaccinated populations help reduce the spread of the virus in some areas, other countries, especially those in Africa, haven't been able to vaccinate even 10 percent of their population. This puts the entire world at risk because when the virus is able to spread throughout communities it **has the ability to mutate**, thereby increasing the possibility that a mutation could **evade the vaccines**. It's a scenario public health officials have been warning about for months and Ghebreyesus said on Friday that "hard won **gains are in jeopardy**" or have already been lost because the virus has been able to spread. Nearly 30 countries have high or rising oxygen needs and the shortage of life-saving oxygen could lead to increased deaths. More than 196 million cases of COVID-19 have been reported around the world, according to a Johns Hopkins University tracker, and more than 4.2 million people have died. Ghebreyesus suspected the number of cases would top 200 million within the next two weeks and warned that health systems in many countries **are being overwhelmed.** Preventing hospitals from exceeding capacity was a massive concern when the pandemic first broke out and a year later, parts of the U.S. are having their health systems strained as the more transmissible Delta variant spreads. On Thursday, Arkansas Governor Asa Hutchinson declared a public health emergency that allows the state to bring in health care workers from outside Arkansas and makes it easier for retired health care workers and medical students to become licensed. The goal is to help alleviate stress on health care systems and Hutchinson said they've had people waiting in ambulances because there wasn't an open spot in a hospital. That strain will only become more exacerbated if a mutation occurs that evades the vaccine, as inoculations have proven effective at helping to keep people out of the hospital. Ghebreyesus warned that more variants will emerge if global access to vaccines and testing doesn't improve. "The pandemic will end when the world chooses to end it. It is in our hands. We have all the tools we need. We can prevent this disease. We can test for it and we can treat it," Ghebreyesus said.

#### Boosting manufacturing capacity is critical to a timely response to COVID AND ensures preparedness for future pandemics.

Jecker & Atuire 21, Dr Nancy S Jecker, Department of Bioethics & Humanities, University of Washington School of Medicine. Department of Philosophy, University of Johannesburg, Auckland Park, Gauteng, South Africa. Caesar A Atuire, Department of Philosophy and Classics, University of Ghana, Accra, Accra, Ghana. All Souls College, University of Oxford, Oxford, Oxfordshire, UK. Journal of Medical Ethics 2021;47:595-598. “What’s yours is ours: waiving intellectual property protections for COVID-19 vaccines.” <https://jme.bmj.com/content/47/9/595> brett

Since consequentialist justifications treat the value of IP as purely instrumental, they are also vulnerable to counterarguments showing that a sought-after goal is not the sole or most important end. During the COVID-19 pandemic, we submit that the vaccinating the world is an overriding goal. With existing IP protections intact, the world has fallen well short of this goal. Current forecasts show that at the current pace, there will not be enough vaccines to cover the world’s population until 2023 or 2024.15 IP protections further frustrate the goal of universal access to vaccines by limiting who can manufacturer them. The WHO reports that 80% of global sales for COVID-19 vaccines come from five large multinational corporations.16 Increasing the number of manufacturers globally would not only increase supply, but reduce prices, making vaccines more affordable to LMICs. It would stabilise supply, minimising disruptions of the kind that occurred when India halted vaccine exports amidst a surge of COVID-19 cases.

It might be objected that waiving IP protections will not increase supply, because it takes years to establish manufacturing capacity. However, since the pandemic began, we have learnt it takes less time. Repurposing facilities and vetting them for safety and quality can often happen in 6 or 7 months, about half the time previously thought.17 Since COVID-19 will not be the last pandemic humanity faces, expanding manufacturing capacity is also necessary preparation for future pandemics. Nkengasong, Director of the African Centres for Disease Control and Prevention, put the point bluntly, ‘Can a continent of 1.2 billion people—projected to be 2.4 billion in 30 years, where one in four people in the world will be African—continue to import 99% of its vaccine?’18

#### Mutations and future pandemics escalates security threats that cause extinction – cooperation thesis is wrong.

* Miscalc Incapacitated commanders
* Social political order collapse
* First strike to take advantage of weaker nations

Recna 21 [Research Center for Nuclear Weapon Abolition; Nagasaki, Japan; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report,” Journal for Peace and Nuclear Disarmament; 5/28/21; <https://www.tandfonline.com/doi/full/10.1080/25751654.2021.1890867>] Justin

The Challenge: Multiple Existential Threats The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come. The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5 Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order. In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions – most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems

#### IP protections are the vital internal link to reduce vaccine inequality. Empirics disprove all pro patent arguments

**Kumar, PhD, 7-12**-21

(Rajeesh, Associate Fellow Manohar Parrikar Institute for Defence Studies and Analysis, https://www.idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721)

In October 2020, India and South Africa had submitted a proposal to the World Trade Organization (WTO), suggesting a waiver of certain provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement for the “prevention, containment and treatment of COVID-19”. The proposal seeks the waiver of “the implementation, application, and enforcement of sections 1, 4, 5 and 7 of part II of the TRIPS agreement”, which are stipulations referring to copyright, industrial design, patents, and undisclosed information (trade secrets).1 The proponents of the proposal argue that a waiver will **enable timely and equitable access** to affordable health products and technologies, including vaccines. Though many member countries had supported and co-sponsored the proposal, a small but influential group of countries, mainly Australia, Canada, the European Union (EU), Japan, the United Kingdom (UK) and the United States (US), opposed it. They argued that existing exceptions under the TRIPS Agreement are sufficient to address the concerns mentioned in the proposal. This resulted in sidelining of the waiver proposal for months. However, on 5 May 2021, the Joseph Biden administration announced its support for waiving intellectual property protections for COVID-19 vaccines.2 It was a significant step towards breaking the seven-month gridlock, and led to many more countries modifying their position on the waiver proposal. On 25 May 2021, the co-sponsors of the waiver proposal submitted a revised proposal that specified the scope of the waiver as applying to “health products and technologies” and also added a section on the proposed duration of the waiver, i.e., three years.3 At present, more than 100 countries, including the US and China support this proposal. The principal opponent of the waiver is the EU and in June 2021, it submitted an alternative proposal to the TRIPS Council, which requested to keep TRIPS’ provisions intact and focused on compulsory licensing and removing vaccine export restrictions to address the concerns raised by India and South Africa.4 The EU proposal also stated that the TRIPS Agreement does not prevent countries from taking measures to protect public health.5 At the meeting of the TRIPS Council on 8–9 June 2021, the member states agreed to text-based negotiations focusing on two proposals tabled by members. The members also decided to hold a series of meetings till the end of July 2021 to take stock of the text-based negotiations. However, the latest developments show that the waiver discussions hit a hurdle due to a split between the developed and developing countries over the negotiation text. This brief discusses how TRIPS becomes a barrier to the equitable access of COVID-19 vaccines. It also examines how a waiver will help India in its fight against COVID-19 at home and abroad. TRIPS and its Exceptions TRIPS, a comprehensive multilateral agreement on Intellectual Property (IP), was an outcome of the Uruguay Round (1986–94) of negotiations of the General Agreement on Tariffs and Trade (GATT). The Agreement came into force on 1 January 1995 and offers a minimum standard of protection for Intellectual Property Rights (IPR).6 In WTO, IPR are divided into two main categories. First, copyright and related rights (Articles 9 to 14, Part II of the TRIPS Agreement). Second, industrial property that includes trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information (Articles 15 to 38, Part II of the TRIPS Agreement).7 Article IX.3 and IX.4 of the Marrakesh Agreement Establishing the WTO deals with TRIPS waivers. Article IX.3 says that in “exceptional circumstances” the Ministerial Conference may waive off an obligation imposed on WTO member countries.8 Such a decision requires the support of three-fourths of the WTO membership. According to Article IX.4, any waiver granted for more than one year will be reviewed by the Ministerial Conference. Based on the annual review, the Conference may extend, modify, or terminate the waiver. The TRIPS Agreement provides some flexibility primarily in the form of compulsory licensing and research exceptions through Articles 30 and 31. While Article 30 permits WTO members to make limited exceptions to patent rights, Article 31 provides a detailed exception, provided certain conditions are met. Compulsory licensing is the process of granting a license by a government to use a patent without the patent holder's consent. Article 31 permits granting compulsory license under circumstances such as “national emergencies”, “other circumstances of extreme urgency”, “public noncommercial use”, or against “anti-competitive” practices.9 In addition to these original waivers, the Declaration on the TRIPS Agreement and Public Health, adopted at the 2001 Doha Ministerial Meeting, also recognises some exceptions, for instance, in situations of a public health emergency, member countries have the freedom to determine the grounds upon which compulsory licenses are granted. Similarly, under Article 66.1, the least developed countries (LDCs) are given waivers for implementing TRIPS on pharmaceuticals till 1 January 2033. COVID-19 and TRIPS Waiver Two significant factors rekindled the debate on TRIPS waiver for essential medical products—first, vaccine inequity, and second, the insufficiency of existing waiver provisions in fighting the COVID-19 pandemic. COVID-19 is an **exceptional circumstance**, and **equitable global access** to the vaccine is necessary to **bring the pandemic under control**. However, the world is witnessing quite the reverse, i.e., **vaccine nationalism**. Vaccine nationalism is “my nation first” approach to securing and stockpiling vaccines before making them available in other countries. A TRIPS waiver would be instrumental in addressing the **growing inequality in the production**, distribution, and pricing of the COVID-19 vaccines. Vaccine Inequity According to Duke Global Health Innovation Center, which monitors COVID-19 vaccine purchases, rich nations representing just 14 per cent of the world population have bought up to 53 per cent of the most promising vaccines so far. As of 4 July 2021, the high-income countries (HICs) purchased more than half (6.16 billion) vaccine doses sold globally. At the same time, the low-income countries (LICs) received only 0.3 per cent of the vaccines produced. The low and middle-income countries (LMICs), which account for 81 per cent of the global adult population, purchased 33 per cent, and COVAX (COVID-19 Vaccines Global Access) has received 13 per cent.10 Many HICs bought enough doses to vaccinate their populations several times over. For instance, Canada procured 10.45 doses per person, while the UK, EU and the US procured 8.18, 6.89, and 4.60 doses per inhabitant, respectively.11 Source:“Tracking COVID-19 Vaccine Purchases Across the Globe”, Duke Global Health Innovation Center, Updated 9 July 2021. Consequently, there is a significant disparity between HICs and LICs in vaccine administration as well. As of 8 July 2021, 3.32 billion vaccine doses had been administered globally.12 Nonetheless, **only one per cent** of people in LICs have been given at least one dose. While in HICs almost one in four people have received the vaccine, in LICs, it is one in more than 500. The World Health Organization (WHO) notes that about 90 per cent of African countries will miss the September target to vaccinate at least 10 per cent of their populations as a third wave looms on the continent.13 South Africa, the most affected African country, for instance, has vaccinated less than two per cent of its population of about 59 million. This is in contrast with the US where almost 47.5 per cent of the population of more than 330 million has been fully vaccinated. In Sub-Saharan Africa, vaccine rollout remains the slowest in the world. According to the International Monetary Fund (IMF), at current rates, by the end of 2021, a massive global inequity will continue to exist, with Africa still experiencing meagre vaccination rates while other parts of the world move much closer to complete vaccination.14 This vaccine inequity is not only morally indefensible but also **clinically counter-productive**. If this situation prevails, LICs could be waiting until 2025 for vaccinating half of their people. Allowing most of the world’s population to go unvaccinated will also **spawn new virus mutations, more contagious viruses** leading to a steep rise in COVID-19 cases. Such a scenario could cause **twice as many deaths** as against distributing them globally, on a priority basis. Preventing this humanitarian catastrophe requires **removing all barriers** to the production and distribution of vaccines. TRIPS is one such barrier that prevents vaccine production in LMICs and hence its equitable distribution. TRIPS: Barrier to Equitable Health Care Access The opponents of the waiver proposal argue that IPR are not a significant barrier to equitable access to health care, and existing TRIPS flexibilities are sufficient to address the COVID-19 pandemic. **However, history suggests the contrary.** For instance, when South Africa passed the Medicines and Related Substances Act of 1997 to address the HIV/AIDS public health crisis, nearly 40 of world’s largest and influential pharma companies took the South African government to court over the violation of TRIPS. The Act, which invoked the compulsory licensing provision, allowed South Africa to produce affordable generic drugs.15 The Big Pharma also lobbied developed countries, particularly the US, to put bilateral trade sanctions against South Africa.16 Similarly, when Indian company Cipla decided to provide generic antiretrovirals (ARVs) to the African market at a lower cost, Big Pharma retaliated through patent litigations in Indian and international trade courts and branded Indian drug companies as thieves.17 Another instance was when Swiss company Roche initiated patent infringement proceedings against Cipla’s decision to launch a generic version of cancer drug, “erlotinib”. Though the Delhi High Court initially dismissed Roche's appeal by citing “public interest” and “affordability of medicines,” the continued to pressure the generic pharma companies over IPR. 18 Likewise, Pfizer’s aggressive patenting strategy prevented South Korea in developing pneumonia vaccines for children.19 A recent document by Médecins Sans Frontières (MSF), or Doctors Without Borders, highlights various instances of how **IP hinders manufacturing and supply of diagnostics,** medical equipment, treatments and vaccines during the COVID-19 pandemic. For instance, during the peak of the COVID-19 first wave in Europe, Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed to increase the production of diagnostic kits. Another example was patent holders threatening producers of 3D printing ventilators with patent infringement lawsuits in Italy.20 The MSF also found that patents pose a severe threat to access to affordable versions of newer vaccines

## Accessibility

### Offense

#### An exclusive and unconditional right to property is not entailed by the categorical imperative – only conditional use is universalizable.

Westphal 97

anyone’s use of some thing precludes someone else’s use of that given the condition of scarcity legitimate action requires sufficient abundance so that one person’s use is not someone else’s (deprivation) it is rightful to make use of things within one’s power possession” involves only the right of a qualified chose in possession

#### That implies that intellectual property is unjust.

Westphal 97

exclusion of others from a right when one does not need the item Property rights involve such an exclusion principles undermine and repudiate the cherished liberal conception of property

#### Patents attempt to assert ownership over nature and impede individuals’ abilities to pursue their own ends.

Long 95

A patent is, a claim over a law of nature. it is nature that copper in this configuration makes a battery Suppose Sabre-tooth tigers are approaching Your only hope is a device I've patented my device Thus, you can't construct without my property you are not permitted to use your own knowledge to further your ends two people come up with the same invention patent law will grant exclusive rights to the inventor who reaches the office first

#### IPR is nonuniversalizable and interferes with the freedom of people who need medicine.

Merges 11

property must not interfere with the freedom of fellow citizens Death is the ultimate restraint on autonomy; there is no more “self” to guide when a claim to property by person A leads to the death of person B, Kant pharmaceutical patents would effect the freedom of those suffering from treatable diseases

### Advantage

#### Vaccine inequality threatens the whole world.

Fink 7-30

Health inequities have plagued global response to COVID failure to evenly distribute the vaccine puts the entire world at risk when the virus is able to spread it has the ability to mutate increasing the possibility a mutation could evade the vaccines gains are in jeopardy" or have already been lost health systems are being overwhelmed the Delta variant will only become more exacerbated if a mutation occurs

#### Boosting manufacturing capacity is critical to a timely response to COVID AND ensures preparedness for future pandemics.

Jecker & Atuire 21

IP protections frustrate access by limiting who can manufacturer Increasing manufacturers increase supply reduce prices minimising disruptions that occurred when India halted exports since the pandemic began we have learnt it takes less time Repurposing facilities can happen in 6 months Since COVID will not be the last pandemic humanity faces expanding manufacturing capacity is also necessary for future pandemics

#### Mutations and future pandemics escalates security threats that cause extinction – cooperation thesis is wrong.

Recna 21

Existential Threats pandemics weaken societies exacerbating conflict nuclear weapons annihilate the species the pandemic may overcome resilience to point of collapse of political order w m d under pandemic crisis prompt aggressive counterintuitive actions destabilize balanced threat systems

#### IP protections are the vital internal link to reduce vaccine inequality. Empirics disprove all pro patent arguments.

Kumar, PhD, 7-12

a waiver enable access to affordable health products including vaccines COVID- is exceptional circumstance 14 per cent of world have bought 53 per cent of the vaccines low-income countries received only 0.3 per cent inequity is counter-productive mutations, could cause twice as many deaths patents pose a threat to affordable versions of vaccines