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#### Pandemics discourse is good---key to national and international responses to disease---AND, when combined with our public health response advocacy, is demilitarizing

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For the last two decades a strategy employed by health professionals, scientists, and diplomats has been to play the ‘health security card’ to achieve particular trade, diplomatic, strategic, and development goals (Elbe 2011). The presumption has been that the securitisation of health will harness global political leadership and resources. This marriage of health issues to security logic has been met with a mix of applause, caution, and critique (Feldbaumet al. 2010; McInnes and Rushton 2013; Hanrieder and Kreuder-Sonnen 2014). But the presumption has remained that, for the most part, the marriage of health issues to security will ‘harness political leadership and resources for various international health issues’ (Elbe 2011: 220). In the last 15 years, there have been three United Nations Security Council (UNSC) resolutions that have specifically referred to health matters – S/Res/1308 (2000), S/Res/1983 (2011), both concerning HIV/AIDs, and S/Res/2177 (2014) in response to the Ebola viral disease outbreak in West Africa. In December 2012, the United Nations General Assembly (UNGA) passed resolution A/67/L.36, Global Health and Foreign Policy, the fifth resolution on global health and foreign policy resolution to pass in the UNGA since the adoption of the first resolution on Global Health and Foreign Policy in 2008 (A/63/33). The UNGA also adopted resolution A/69/1 giving support to the measures recommended by UN Secretary-General to contain the Ebola outbreak (A/69/389 2014). The decision of the UNSC to adopt three resolutions on health matters in 15 years and the UNGA sessions on global health and foreign policy have received mixed views. Some point to these events as illustration of the weakness of the global health security narrative (Youde 2014). In particular, it has been noted that the Ebola outbreak in 2014 was initially met with no international capacity outside of the World Health Organization (WHO) to respond to this crisis. The creation of the UN Mission on Ebola Emergency Response (UNMEER) in September (2014) was the first, and some argue should be the last, effort to respond to a viral outbreak (Panel of independent experts 2015). Others contend that, given that there is no procedure under the UN Charter for the General Assembly or Security Council to examine health matters – let alone develop a mission like UNMEER – broader UN engagement in health beyond the WHO could point to the success of the global health diplomacy (McInnes 2015). The question is what does successful global health diplomacy look like? Do we see in practice the securitisation of health as essential to pursue international diplomatic engagement in global health? There have been recent claims that the successful international engagement in health initiatives such as the Global Fund for AIDS, TB, and Malaria (Global Fund) and Millennium Development Goals (MDGs) have been achieved without asserting their necessity ‘primarily on security considerations’ (McInnes and Rushton 2013: 16; see also Sridhar 2012; Gagnon and Labonte 2011). However, the assumption remains that linking health issues, specifically health emergencies and infectious disease outbreaks to security discourse will create more opportunities for diplomatic cooperation and engagement (see Feldbaum et al. 2010; Hafner and Shiffman 2013). This chapter explores this argument beginning with the period where the phrase ‘global health diplomacy’ and ‘global health governance’ began to gain usage in international relations in the 1990s. In the first part of the chapter I briefly present the conceptual history of health security and its relationship to ‘global health diplomacy’. I explore the argument that the success of global health diplomacy has come from the preponderant use of security language, referents, and discourse (cf. Elbe 2011; Feldbaum et al. 2010; Kickbusch et al. 2007; McInnes and Rushton 2013). In the second part of the chapter I examine two cases, one where a type of security logic was deliberately employed to frame the ‘health emergency’ (Framework Convention on Tobacco Control or FCTC) and one where human rights logic was initially deployed when advocating for its creation (the Global Alliance for Vaccine Immunization or GAVI). I evaluate what ‘health security’ looks like in these global health initiatives and explore the presumption that ‘security discourse’ must be present in comparing these two major, successful global health initiatives. HEALTH SECURITY States have a history of formal international agreements addressing health matters and health threats, particularly infectious diseases, from the Decree of Quarantine in Ragusa-Dubrovnik in 1377 (Mackowiak and Sehdev 2002) to the International Sanitary Conference in 1851 (Fidler 2003) and the revised International Health Regulations in 2007 (Davies et al. 2015). However, the treatment of health as a ‘low politics’ priority at the international level remained the case through most of the formative years of nation-building in the nineteenth and twentieth centuries (Fidler 1999). This was in spite of its great strategic benefit for colonial era expansion, winning wars and rapid industrialisation (Diamond 1997). In contemporary politics, a range of actors – such as foreign governments, non-governmental organisations (NGOs), pharmaceutical companies, private donors, and international organisations – drive a variety of different health agendas that influence priorities within individual states and affect the resources that are available to individual health workers and opportunities for patients (Youde 2012). Likewise, the post–Second World War Bretton Woods system had a profound influence upon health-care policy and practice around the world, with key lending institutions like the World Bank promoting particular health-care systems and policies in their lending programmes (Sridhar 2012). In this period, key discourses such as ‘Health for All’, the Essential Medicines List, and Right to Health emerged in the absence of linkage to security. These discourses brought in a range of actors including international organisations,NGOs and transnational corporations with the power to shape health opportunities and outcomes within and amongst states (Gagnon and Labonté 2011). In the 1990s, however, foreign and defence ministries became increasingly interested in global health policy – particularly infectious diseases – which would be referred to as having a ‘securitising’ effect on health (McInnes and Lee 2006). 14 ADVOCATING GLOBAL HEALTH SECURITY 255 During the 1990s, key events combined with a paradigm shift in International Relations (IR) and security studies (particularly in Western developed countries with the end of the Cold War) (Paris 2001) to connect security to health (Enemark 2007; Collier and Lakoff 2008). Acute awareness was growing amongst Western states that they were not immune to health events such as infectious disease outbreaks. The outbreak and spread of HIV across developing and developed countries during the 1980s; fear of biosecurity attacks with the breakdown of security in laboratories across the former Soviet Union (Koblentz 2010); sudden outbreak of the plague in India in 1995 and the arrival of West Nile virus near New York City in 1999; and the return of ‘slow-burn’ diseases thought eradicated such as Tuberculosis (TB), measles and meningitis in the United States, United Kingdom, and Australia (Price- Smith 2002). As well, new strains of disease, such as haemorrhagic dengue fever and drug-resistant malaria were on the rise due to significant climate change impact in South Asia, Southeast Asia, and Pacific (Kim and Schneider 2013). Andrew Price-Smith argues that prior to President Clinton’s appointment of the National Science Council on Emerging and Re-Emerging Infectious Diseases in 1995, developed states had grown complacent to the fact that ‘despite their enormous technological and economic power, it is extremely unlikely that developed countries will be able to remain an island of health in a global sea of disease’ (2002: 122). Clinton’s move created a wave of interest in other developed countries, particularly the United Kingdom, Australia, and Canada, all shifting to appreciate and contextualise health threats in foreign policy terms (McInnes and Lee 2012: 32). Until then, on the rare occasion that health policy was discussed at the international level it was in relation to (mostly) infectious disease outbreaks such as plague and cholera, or large-scale efforts such as the mass immunisation programme led by WHO to eradicate smallpox. During infectious disease outbreaks, emphasis had been squarely placed on the responsibility of the host state and regardless of the capacity of its public health system to effectively respond (Fidler 1999). Meanwhile, the spread and scale of HIV/AIDS raised fears about its potential to threaten state cohesion and national economies. There was a particular focus on military forces being at risk of HIV infection, and the political insecurity these infectious could bring in societies (Singer 2002; Elbe 2006). The apparent potential for HIV/AIDS to cause state collapse or serious disruption that could ricochet throughout neighbouring states 256 S.E. DAVIES was considered a realistic scenario in sub-Saharan Africa, as well as some parts of South and East Asia and the Pacific (Shisana et al. 2003; Ramiah 2006; Price-Smith et al. 2007). It was specific reference to the threat of HIV/AIDs on peacekeepers that led to the first resolution on health, Resolution 1308, being passed in the UN Security Council in 2000 (UNSC 2000). In response to these developments, a host of analysts, including Solomon Benatar (1998, 2002), Peter W. Singer (2002), Robert Ostergard (2002), called for IR to engage with the economic, humanitarian, political, and security ramifications of the AIDS epidemic. At the same time, David Fidler and Andrew Price-Smith called for equal attention to the economic, political, and social insecurity that stems from a range of infectious diseases already prevalent in countries (Fidler 2003; Price-Smith 2002). Using quantitative analysis of the relationship between infectious diseases and state capacity, Price-Smith claimed that ‘infectious disease [already] constitutes a verifiable threat to national security and state power’ (Price-Smith 2002: 19). Health security, Price-Smith (2002: 9) argued, referred to the threat of the disease on particular populations as well as the country’s economic and political stability becoming unsustainable as a result of a pathogen wiping out the core population base. While a disease may have a different impact in different states: [I]ncreasing levels of disease correlate with a decline in state capacity. As state capacity declines and as pathogen-induced deprivation and increasing demands upon the state increase, we may see an attendant increase in the incidence of chronic sub-state violence and state failure. State failure frequently produces chaos in affected regions as neighbouring states seal their borders to prevent the massive influx of disease-infected refugee populations. Adjacent states may also seek to fill the power vacuum and may seize valued territory from the collapsing state, prompting other proximate states to do the same and so exacerbating regional security dilemmas. (Price-Smith 2002: 15) In a similar vein, David Fidler’s seminal 1999 book International Law and Infectious Diseases argued that with the increased risk of drug-resistant microbes in the twenty first century, as identified by public health officials (Institute of Medicine 1992; Heymann 1996), it will become important to ‘understand the international politics of infectious disease control, or microbialpolitik’ (Fidler 1999: 19). Microbialpolitik, argued Fidler, was ‘wrapped up not only in traditional concerns such as sovereignty and power but also in the implementation of scientifically sound infectious disease policies at the national and international levels’ (ibid.). Both Fidler and Price-Smith argued that the risk of newly emerged infectious diseases and drug-resistant infectious diseases required that all governments engage with the problem as if they were threats to national security. Likewise, Laurie Garrett argued in 2001 that ‘a sound public health system, it seems, is vital to societal stability and, conversely, may topple in the face of political or social stability or whim. Each affects the other: widespread political disorder or anti-governmentalism may weaken a public health system, and a crisis in the health of the citizens can bring down a government’ (Garrett 2001: 5). These ideas continued to influence the global politics of health into the twenty-first century (Fidler 2009; Davies 2012). In a 2010 study on the influence of global health on foreign policy, Feldbaum and his colleagues found that most discussion and policy from diplomatic engagement focused on the interplay of national interests and security, which meant that most diplomacy focus and discussion was on the containment of infectious diseases (Feldbaum et al. 2010: 87). At the time, WHO also immersed itself in the health security argument: Collaboration between Member States, especially between developed and developing countries, to ensure the availability of technical and other resources is a crucial factor not only in implementing the [International Health] Regulations, but also in building and strengthening public health capacity and the networks and systems that strengthen global public health security will. (WHO 2007: 13) Of course, health diplomacy refers to the pursuit of international health cooperation on matters of concern to states (Kickbusch et al. 2007). It is the amalgam of cooperation in areas where there is the possibility of genuine technical cooperation for a diverse range of diseases (Youde 2012: 25). However, because health diplomacy involves the interplay of national interests, power and diplomatic compromise, ‘state interests have been critical to either the success or obstruction of such agreements . . . and issues of national security remain atop the foreign-policy hierarchy’ (Feldbaum et al. 2010: 87). The counter-narrative to the health security discourse described above is that the securitisation of health promotes an instrumental pursuit of health. To capture foreign policy interest and engagement, global health discussions produce a ‘hierarchy of illnesses’ whereby some health issues receive interest and resources whilst other equally deadly health matters do not (Youde 2012: 160). Jeremy Shiffman’s (2006: 411–420) work on the peaks and troughs of investment in global health initiatives has revealed that despite disease burden to a population, some infectious diseases (i.e. HIV/AIDS) consistently attract stronger short-term investment from donor states – primarily those that are contagious or linked to the national security interests of donor states. However, it would be a mistake to assume that the threat of infectious disease alone encapsulated all diplomatic engagement with health issues at the turn of the twenty-first century. The rise of non-traditional security has also been attributed to the increased influence of the introduction of different social science methods and theories to International Security Studies (Buzan and Hansen 2009: 188). This has influenced research into the subject matter of security studies and IR. If insecurity and grievances amongst the population played a large part in the civil wars that gripped the 1990s (Fearon and Laitin 2003), engagement with health is not just a security concern for developed states but also for developing states. In other words, appreciations of health security were not one-dimensional. It was possible to advocate for a vision of health security that sought to protect individuals as much as states. Indeed, a human centred appreciation of security – coined ‘human security’ by the 1994 United Nations Development Programme (UNDP) Human Development Report (see MacFarlane and Khong 2006) – sought to redefine the ‘traditional’ security with issues and concepts under the umbrella term ‘non-traditional’ security, including health (Chalk 2006). Thus, there does appear to be a significant relationship between international health events and the direction of research and policy engagement (Davies 2012). In the last decade, events such as the United Nations Security Resolution on HIV/AIDS (S/Res/1308) and SARS create an explosion of IR engagement with global health governance, particularly in the area of health security. This ‘phenomenon’ has been witnessed again with the Ebola outbreak (Youde 2014). Amongst all these engagements, two key approaches have emerged. First, those who accept the inevitability of a ‘narrow’ approach to health and IR, focused on infectious diseases and bioterrorism as security threats (Koblentz 2012). Alternatively, there are those who articulate a broader vision related to development, state capacity, and cross-national health issues (Shiffman 2006; Nunes 2014; Rushton and Williams 2012). One of the central claims of the former approach is that health securitisation is an effective way of galvanising diplomatic engagement amongst states and other actors, resulting in the allocation of political will and material resources (Collier and Lakoff 2008; Elbe 2011; Hafner and Shiffman 2013). In the next part of the chapter I examine this core assumption. In particular, I explore whether the effectiveness of health initiatives is tied to their securitisation, focusing on the examples of two major health initiatives. I examine the Tobacco Free Initiative (TFI) and the GAVI. Interest in these two cases comes from exploring the above presumption that security and health, particularly concerning infectious diseases, drives, and delivers policy momentum. While there is debate about whether that momentum translates into ‘real’ policy progress or whether it is mere rhetoric deployed at particular crises/events with no lasting impact, there is no debate that health security has dominated global health and foreign policy discourse (Feldbaum et al. 2010; McInnes and Rushton 2013). Below, I briefly examine the dominance of health security in successful global health initiatives – one where you would expect it to be deliberately deployed (GAVI) and one where it was not (TFI). TFI and GAVI, I contend, are interesting cases precisely because they confound the issueframing conventions about the relationship between health and security. CONFOUNDING EXPECTATIONS A global health initiative is defined in this chapter as ‘an emerging and global trend in health. They are usually focused on state, international organisation and public–private partnerships. Global initiatives typically target specific diseases and are supposed to bring additional resources to health efforts’ (WHO 2015). Case Selection and Discourse Analysis This section briefly compares two international health initiatives: the TFI and GAVI. The TFI sought to reach an international agreement under international law that countries would adopt to regulate the sale and production of tobacco. This global health initiative was in aid of preventing the unchecked rise of tobacco related illnesses – non-communicable diseases – including cancer (various), emphysema, heart disease, stroke, and diabetes (to name a few). In the case of the TFI, and in light of the 260 S.E. DAVIES literature discussion concerning health security above, it would be expected that there was little to no presence of security discourse in the early days of this initiative. It was (and is) about introducing tobacco control legislation, addressing unregulated sale and distribution of tobacco to address preventable tobacco-related diseases in young populations in already over-burdened public health-care systems (Roemer et al. 2005). In contrast, the GAVI is a public and private partnership between states, international organisations, pharmaceutical companies, and philanthropic donors that sought cooperation amongst this diverse group of actors to manufacture, purchase and deliver life-saving vaccines against deadly infectious diseases in the most remote, dangerous and impoverished locations around the world. GAVI is, ostensibly, the initiative where it would be expected to see initial employment of ‘security’ rhetoric given it is addressing the health insecurity of under five children in need of vaccination from, mostly, contagious infectious diseases. In fact, the immediate previous iteration of GAVI – the Child Vaccination Initiative – used security type discourse such as ‘mission’, ‘operation’, and ‘threat’’ under the steerage of a former US defence army medic (see Muraskin 2002). These cases were also selected because they shared some important features. Both the TFI and the GAVI are concerned with one specific health concern – tobacco and immunisation; both were launched within a similar time where health security discourse was gaining policy attention; both initiatives required the involvement of multiple stakeholders, including national governments, to enjoy success. The main difference, of interest to this chapter, is that the association of security with the health issue confound the type of cases analysed to date in the IR literature on global health security. I reveal below that the non-communicable, ‘slow moving’ health threat engaged more securitised discourse than the high morbidity communicable health threat. The comparison of the two cases was organised around a common framework involving three steps. 14 ADVOCATING GLOBAL HEALTH SECURITY 261 First, understanding the rhetoric and concepts used to frame the initiative. Each initiative has produced a significant volume of material outlining its purpose, scope and mandate. For the purposes of this chapter, I focused on the ‘founding’ document for each initiative. In the case of TFI, the Framework Convention on Tobacco Control, adopted by the World Health Assembly in 2003, 8 years after the Convention was first proposed in the 1995 World Health Assembly. The Framework Convention was the outcome of the TFI and details ‘a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO Framework Convention asserts the importance of demand reduction strategies as well as supply issues’ (WHO 2003). Included in the Framework Convention document analysed is an Annex 2, which details the history of drafting the Framework from 1995 to 2003. For GAVI, the document analysed is the GAVI Meeting of the Proto-Board in Seattle, July 1999. This document details GAVI’s terms of reference, mission, objectives, functions, structure, milestones, and budget priorities. An interest in the discourse used in the founding document of each initiative is informed by the premise outlined in the above literature – to what extent security frames were employed to justify, conceptualise, and operationalise these two global health initiatives which remain, successfully, in place today. Second, once accepting the premise that securitisation is deliberately engaged the two documents were analysed to identify a set of ‘benchmarks’ to guide its assessment of the extent to which a health initiative has aligned with security. Both documents were examined in detail for the presence of ‘speech acts’ (Hansen 2012) – the initiative itself or actors associated with the initiative identified an existential threat or risk and speech acts that called for the adoption of extraordinary measures. Was the initiative itself referred to as ‘security’, ‘threat’, or ‘risk’. Who was the ‘referent object’ identified – the group threatened; who was the functional actor capable of protecting the referent object from the identified threat (Buzan et al. 1998: 26–39); and what was the ‘scale’ of securitisation utitlised to emphasise the need for extraordinary measures (Buzan and Weaver 2009). Third, discourse analysis (Hansen 2012). In this case, the discourse within the two documents were analysed using NVivo Software. For the purposes of this chapter, I refer to three query searches conducted to analyse the perspectives being presented in the two documents concerning the threat the initiative is addressing, who the initiative is ‘protecting’ and 262 S.E. DAVIES who is responsible for such protection. To facilitate answering these three levels of inquiry, three query searches within NVivo of each document were conducted: (1) word frequency analysis, (2) text search of ‘security’ terms and, and (3) text search of ‘other’ normative terms (development, rights, economy). A word tree was then developed for the second and third text searches with a ‘in context’ search up to ten surrounding words (on either side) to enable understanding of the context and usage of the key words, i.e. ‘threat’ or ‘poor’ being searched in the document. The word frequency search assisted with identifying the primary actors discussed in the documents – i.e. who was identified as the referent actor intended for that initiative versus the functional actor necessary to give effect to the initiative. Findings Discourse analysis of the TFI and GAVI documents produced three key findings. The first, unexpected, find was that the TFI initiative was framed just as much in security terms as was GAVI. The number of securitisation ‘speech acts’ (Hansen 2012) searched and located in the Framework Convention was practically the same at GAVI – 0.08% and 0.07%, respectively (speech act terms: secure, threat, risk, mission, extraordinary, urgent). In both cases, the presence of security language was less than 1% of each document. What was significant was that in the search for ‘other’ normative terms (terms: responsible, rights, develop, needs, poor) – the Framework Convention was comparatively high at 1.05%, and a similar search for GAVI came at 0.4% references. However, given the Framework Convention is a legal document the presence of ‘right/rights’ partly accounts for high percentage compared to GAVI. Contextual analysis of these terms reveals further detail in how the documents framed the problem, the referent actor and the functional actor (see Table 14.1). In the Framework Convention – despite higher use of ‘other’ (nonsecurity) normative language than GAVI – there is a clear disposition towards identifying the state as the ‘functional’ actor responsible for taking measures necessary to protect the population from tobacco sale, use, and morbidity. The Convention directly refers to populations at risk (women and minors) and the need for member states to support civil society capacity to inform and educate tobacco awareness in these populations. Again, this is a legal instrument so the emphasis on member states is not surprising as they are the only signatories. However, even in ‘other normative’ references to rights, responsibilities and need – primary emphasis remains on the state as the functional actor protects the population at risk of addiction rather than alternative dominant frames such as the right to health, the right to information. The Framework Convention leans towards more ‘traditional’ security language in conceptualising the state–individual relationship concerning tobacco control: risk and risk mitigation; threat and protection. In the case of GAVI, the 0.07% security references in contrast with its 0.4% ‘other’ references hints at a different frame being brought to this initiative. However, it is not particularly clear until, again, the broader context of these terms is analysed. In the case of GAVI the focus is overwhelming on the ‘mission’ of the alliance and ensuring institutional clarity to support the primary focus – the right of the child to immunisation. This is clearly stated as seen above, particularly in the mission and responsibility statements (Table 14.1). The only time the roles of functional actors are associated with either security or other terms are in the context of securing commitment from actors (broad range of board membership from states to international organisations, pharmaceutical companies, and civil society), and development of health sector capacity. Despite GAVI addressing the containment of infectious disease, there is no threat language present. Securitised speech acts are practically absent – even when ‘security’ terms are located. The emphasis is overwhelming on rights and alleviating deprivation. Both initiatives confound the expectations prior to analysis – the infectious disease focused initiative is ‘under-securitised’ in comparison to the non-communicable focused initiative. Finally, hinted at above, the emphasis on primary actors in these two documents revealed key similarities – both focus on the institutional arrangements and the actors most closely associated with these arrangements. In the case of GAVI the board (comprised of international organisation, civil society, member states, pharmaceutical, and philanthropic members) is the primary functional actor; in the case of the TFI, the actor that looms largest is the organisation (namely, WHO) followed by signatory states to the Convention. Discussion about the population who are to benefit and arguably be empowered from these initiatives, is not discussed as much as the organisation and accordingly the implementation arrangements around the initiative itself. To some extent, given the nature of these two documents, this is not surprising. However, its presence in two documents for two very different initiatives may reveal that the pathology of organisations rather than the framing of an initiative requires further study when engaging with the comparative success and failure of global health diplomacy (Barnett and Finnemore 2003; Hanrieder 2015). 14 ADVOCATING GLOBAL HEALTH SECURITY 265 CONCLUSION What is the value of securitisation when it comes to building and sustaining global political interest in health issues? Some contend that global health security has not run its course and continues to have utility in building state interest, particularly the resources of foreign affairs and defence departments, to secure global health diplomacy objectives (Kickbusch et al. 2007; Feldbaum et al. 2010; Elbe 2011). Others contend it is a ‘smokescreen’ that captures short bursts of attention that are episodic and may have immediate impact but no essential ‘follow through’ (McInnes and Rushton 2013). In this chapter, I explored how global health initiatives securitise and what becomes of them. I deliberately chose two successful initiatives with the expectation that one had securitised a conventional health issue – vaccine preventable infectious diseases – and one had not – tobacco regulation. In examining the cases of TFI and GAVI, I looked at their core document: their mission and value statements reflected in, respectively, the Framework Convention on Tobacco Control and the first meeting documents of GAVI. Speech acts, identified as the hallmark of securitising moves, were analysed in both documents and contrasted with ‘non-securitisation’ or ‘other normative’ language. The Framework Convention engaged in more securitising language or ‘speech acts’ compared to GAVI but both contained more references to human rights and responsibilities discourse. In neither case did it appear as if actors had taken a conscious decision to securitise the issue any more than they chose to articulate the issue in terms of human rights obligations. In the case of the Framework Convention where a focus on security was expected and to a greater extent seen here was an equally strong presence of human rights and ‘sovereignty as responsibility’ language. The security discourse may have helped capture attention but it was not the only discursive tool at play and neither did it obviously displace other discourses. In the case of GAVI, the initiative identified its primary mission as fulfilling the rights of the child; whereas for TFI, emphasis was member states fulfilling their responsibility to address the threat of tobacco related illness from tobacco usage. GAVI appears to have a single referent – the right of the child to health via immunisation; while TFI related to a multitude of actors. The operationalisation of the initiative(s) and their embeddedness in global health architecture dominated the discussion far more than the framing language. Framing language constituted a relatively small part of the discourse compared to the consuming discussion of institutional design. What this comparison of two global health initiatives reveals is that whilst security discourse might help capture the attention of states, it has not necessarily overtaken other policy frames such as human rights and ‘sovereignty as responsibility language’. Indeed, the key priority seems to be not whether the international community should be engaged with these issues, but the appropriate institutional design for initiatives to achieve these health goals.

#### COVID causes state collapse and civil wars---that’s Recna. Litany of scenraios can go global---extinction

Kampf 20, David Kampf is a senior PhD fellow at the Center for Strategic Studies at The Fletcher School. WPR June 16, 2020. “How COVID-19 Could Increase the Risk of War” <https://www.worldpoliticsreview.com/insights/28843/how-covid-19-could-increase-the-risk-of-war> brett

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars. The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle. Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders. Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

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#### The time to expand vaccination on a global level is now – highly contagious mutations facilitate continued spread which renders current vaccines ineffective.

Kumar 7-12 Rajeesh Kumar, Rajeesh Kumar is Associate Fellow at Manohar Parrikar Institute for Defence Studies and Analyses, New Delhi., 7-12-2021, "WTO TRIPS Waiver and COVID-19 Vaccine Equity," Manohar Paprikar Institute for Defence Studies and Analyses, <https://idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721>, EH and brett

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 fou**r 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.

#### Waving IP protections is essential to expand manufacturing and global exports. A litany of countries possess capacity but lack know-how – the plan is key.

Kumar 7-12 Rajeesh Kumar, Rajeesh Kumar is Associate Fellow at Manohar Parrikar Institute for Defence Studies and Analyses, New Delhi., 7-12-2021, "WTO TRIPS Waiver and COVID-19 Vaccine Equity," Manohar Paprikar Institute for Defence Studies and Analyses, <https://idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721>,  brett

Another argument against the proposed TRIPS waiver is that a waiver would not increase the manufacturing of COVID-19 vaccines. Indeed, one of the significant factors contributing to vaccine inequity is the lack of manufacturing capacity in the global south. Further, a TRIPS waiver will not automatically translate into improved manufacturing capacity. However, a waiver would be the first but essential step to **increase manufacturing** capacity worldwide. For instance, to export COVID-19 vaccine-related products, countries need to ensure that there are **no IP restrictions at both ends** – exporting and importing. The market for vaccine materials includes consumables, single-use reactors bags, filters, culture media, and vaccine ingredients. Export blockages on raw materials, equipment and finished products harm the overall output of the vaccine supply chain. If there is no TRIPS restriction, more **governments and companies** will invest in repurposing their facilities. Similarly, the arguments such as that no other manufacturers can carry out the complex manufacturing process of COVID-19 vaccines and generic manufacturing as that would jeopardise quality, have also **been proven wrong** in the past. For instance, in the early 1990s, when Indian company Shantha Biotechnics approached a Western firm for a technology transfer of Hepatitis B vaccine, the firm responded that “**India cannot afford such** high technology vaccines… And even if you can afford to buy the technology, your scientists cannot understand recombinant technology in the least.”25 Later, Shantha Biotechnics developed its own vaccine at $1 per dose, and the UNICEF (United Nations Children’s Emergency Fund) mass inoculation programme uses this vaccine against Hepatitis B. In 2009, Shantha sold over 120 million doses of vaccines globally. **India** also produces high-quality generic drugs for HIV/AIDS and cancer treatment and markets them across the globe. Now, a couple of Indian companies are in the last stage of producing mRNA (Messenger RNA) vaccines.26 Similarly, **Bangladesh** and **Indonesia** claimed that they could manufacture millions of COVID-19 vaccine doses a year if pharmaceutical companies share the know-how.27 Recently, **Vietnam** also said that the country could satisfy COVID-19 vaccine production requirements once it obtains vaccine patents.28 Countries like the United Arab Emirates (**UAE**), **Turkey, Cuba, Brazil, Argentina and** **So**uth **Ko**rea have the capacity to produce high-quality vaccines but lack technologies and **know-how**. However, Africa, **Egypt, Morocco, Senegal, South Africa and Tunisia** have limited manufacturing capacities, which could also produce COVID-19 vaccines after repurposing. Moreover, COVID-19 vaccine **IPR runs across the entire value chain** – vaccine development, production, use, etc. A mere patent waiver may not be enough to address the issues related to its production and distribution. What is more important here is to share the technical know-how and information such as trade secrets. Therefore, the existing TRIPS flexibilities, such as compulsory and voluntary licensing, are insufficient to address this crisis. Further, compulsory licensing and the domestic legal procedures it requires is cumbersome and not expedient in a public health crisis like the COVID-19 pandemic.

#### 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

#### COVID causes extinction.

RECNA et al. 21, Research Center for Nuclear Weapons Abolition, Nagasaki University (RECNA), Asia Pacific Leadership Network (APLN), and the Nautilus Institute. Journal for Peace and Nuclear Disarmament Volume 4, 2021. “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report” <https://www.tandfonline.com/doi/full/10.1080/25751654.2021.1890867> brett

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, underpinned by conventional and **nuclear weapons**, as well as the threat of weaponized chemical and **biological** technologies. Consequently, the **risk of the use of** weapons of mass destruction (**WMD**), especially nuclear weapons, increases at such times, possibly sharply. The **COVID-19** pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons – as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the existential risks posed by retaining these capabilities – are all up for redefinition. A pandemic has potential to **destabilize a nuclear-prone conflict** by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or **military provocations** in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the **isolation and sanctions** against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies. In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon. To date, however, the COVID-19 pandemic has increased the **isolation** of some **nuclear-armed states** and provided a **textbook case** of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. **Foreign policies have become markedly more nationalistic**. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization6 of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with **cascading effects** on the risk of nuclear war.

## 2

#### The WTO is on the brink – the TRIPS waiver is the critical factor determining the survival of multilateral trade AND creates momentum for structural reforms

**Meyer 6-18** David Meyer, 6-18-2021, "The WTO’s survival hinges on the COVID-19 vaccine patent debate, waiver advocates warn – Fortune," Fortune, https://fortune.com/2021/06/18/wto-covid-vaccines-patents-waiver-south-africa-trips/amp/, EH and brett

The World Trade Organization knows all about crises. Former U.S. President Donald Trump threw a wrench into its core function of resolving trade disputes—a blocker that President Joe Biden has not yet removed—and there is widespread dissatisfaction over the fairness of the global trade rulebook. The 164-country organization, under the fresh leadership of Nigeria’s Ngozi Okonjo-Iweala, has a lot to fix. However, **one crisis is more pressing than the others**: the battle over COVID-19 vaccines, and whether the protection of their patents and other**i**ntellectual**p**ropertyshould be temporarily lifted to boost production and end the pandemic sooner rather than later. According to some of those pushing for the waiver—which was originally proposed last year by India and South Africa—the WTO’s future rests on what happens next. “The credibility of the WTO will depend on its ability to find a meaningful outcome on this issue that truly ramps-up and diversifies production,” says Xolelwa Mlumbi-Peter, South Africa’s ambassador to the WTO. “Final nail in the coffin” The Geneva-based WTO isn’t an organization with power, as such—it’s a framework within which countries make big decisions about trade, generally by consensus. It’s supposed to be the forum where disputes get settled, because all its members have signed up to the same rules. And one of its most important rulebooks is the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, which sprang to life alongside the WTO in 1995. The WTO’s founding agreement allows for rules to be waived in exceptional circumstances, and indeed this has happened before: its members agreed in 2003 to waive TRIPS obligations that were blocking the importation of cheap, generic drugs into developing countries that lack manufacturing capacity. (That waiver was effectively made permanent in 2017.) **Consensus is the key here**. Although the failure to reach consensus on a waiver could be overcome with a 75% supermajority vote by the WTO’s membership, this would be an unprecedented and seismic event. In the case of the COVID-19 vaccine IP waiver, it would mean standing up to the European Union, and Germany in particular, as well as countries such as Canada and the U.K.—the U.S. recently flipped from opposing the idea of a waiver to supporting it, as did France. It’s a dispute between countries, but the result will be on the WTO as a whole, say waiver advocates. “If, in the face of one of humanity’s greatest challenges in a century, the WTO functionally becomes an obstacle as in contrast to part of the solution, I think it could be the **final nail in the coffin**” for the organization, says Lori Wallach, the founder of Public Citizen’s Global Trade Watch, a U.S. campaigning group that focuses on the WTO and trade agreements. “If the TRIPS waiver is successful**,** and people see the WTO as being part of the solution—saving lives and livelihoods—it could **create goodwill and momentum** to address what are still **daunting structural problems**.” Those problems are legion.

#### HIV/AIDS prove legitimacy damage from patent controversy – every bit of delay saps credibility – now is key

Bacchus 20 James Bacchus [member of the Herbert A. Stiefel Center for Trade Policy Studies, the Distinguished University Professor of Global Affairs and director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida. He was a founding judge and was twice the chairman—the chief judge—of the highest court of world trade, the Appellate Body of the World Trade Organization in Geneva, Switzerland. ], 12-16-2020, "An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines," Cato Institute, https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines accessed 7/20/2021 EH

Balancing IP Rights and Access to Medicines Not New to WTO. This waiver controversy comes nearly two decades after the end of the long battle in the multilateral trading system over access to HIV/AIDS drugs. **At the height of the HIV/AIDS crisis** at the turn of the century, numerous countries, including especially those from sub‐​Saharan Africa, could not afford the high‐​priced HIV/AIDS drugs patented by pharmaceutical companies in developed countries. Having spent billions of dollars on developing the drugs, the patent holders resisted lowering their prices. The credibility of the companies, the countries that supported them, and the **WTO itself**were all damaged byanextended controversy over whether patent rightsshould take precedence over providing affordable medicines for people afflicted by a lethal disease.

#### Perception alone solves, regardless of success, issuing the waiver is a sign of goodwill that shores up legitimacy

Winslett 5-27, Gary Winslett is an associate fellow for finance and trade at the R Street Institute. He is also an assistant professor of political science at Middlebury College. May 27, 2021. National Interest, “The Political Significance of the TRIPS Waiver” <https://nationalinterest.org/feature/political-significance-trips-waiver-186246> brett

Fourth, the U.S. government supporting a limited TRIPS waiver is a **massive step** toward rebuilding the **perceived legitimacy** of the WTO. The perception that the WTO was slowing the global response to the coronavirus, however oversimplified and unfair, would have been a potentially **devastating blow** to an institution that has already been under attack. A TRIPS waiver buys **considerable goodwill** from developing countries. It also buys goodwill from Democrats. That could help the whole party take a more trade-friendly stance on everything from an Environmental Goods Agreement to an e-commerce trade deal, to say nothing of the broader benefit of convincing Democrats to like trade even more than they already do—79 percent of Democrats view trade as more of an opportunity than a threat versus only 44 percent of Republicans who say the same.

#### Restoring credibility de-escalates every conflict.

Hamann 9, associate in Lewis, Roca, Rothberger’s Litigation Practice Group, J.D. from Vanderbilt University Law School. May 2009, “Replacing Slingshots with Swords: Implications of the Antigua-Gambling 22.6 Panel Report for Developing Countries and the World Trading System”, <http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/hamann-cr_final_final.pdf> brett

Voluntary compliance with WTO rules and procedures is of the utmost importance to the international trading system.100 Given the **increasingly globalized market**, the coming years will see an increase in the importance of the WTO as a cohesive force and arbiter of disputes that likely will become more frequent and injurious.101 The work of the WTO cannot be overstated in a **nuclear-armed world**, as the body continues to promote respect and even amity among nations with opposing philosophical goals or modes of governance.102 Demagogues in the **U**nites **S**tates may decry the rise of **China** as a geopolitical threat,103 and extremists in **Russia** may play dangerous games of brinksmanship with other great powers, but trade keeps politicians’ **fingers off “the button.”**104 The WTO offers an astounding rate of compliance for an organization with no standing army and no real power to enforce its decisions, suggesting that governments recognize the value of maintaining the international construct of the WTO.105 In order to promote voluntary compliance, the WTO must maintain a **high** level of **credibility**.106 \*\*\*start footnote 6\*\*\* See Rufus Yerxa, supra note 100, at 4 ("The WTO System works only to the extent Members want it to work, and only if they decide that compliance is in their overall economic interest. It therefore rests on the **credibility** of the rules, and also on the credibility of the dispute settlement decisions."); see also Debra P. Steger, Peace Through Trade: Building the WTO 290-91 (2004) (linking issues of the WTO's "external legitimacy" to the effectiveness of the institutional decision). \*\*\*end footnote 106\*\*\* **Nations must perceive the WTO as the most reasonable option for dispute resolution** or fear that the WTO wields enough influence to enforce sanctions. \*\*\*Start footnote 107\*\*\* **The goal of the WTO is to prevent unilateral decisions as to the justifiability of trade retaliation, a goal which can only be upheld by global adherence to the WTO and condemnation of unilateral retaliation outside it**. See Gabrielle Marceau, Consultations and the Panel Process in the WTO, in Key Issues In WTO Dispute Settlement: The First Ten Years, supra note 17, at 29, 30-31; see also Marcelo de Paiva Abreu, Trade in Manufactures: The Outcome of the Uruguay Round and Developing Country Interests, in The Uruguay Round and the Developing Countries, supra note 12, at 59, 69 (discussing the importance of "the WTO's capacity to create a level playing field among contracting parties of different sizes and heterogeneous bargaining power"). \*\*\*end footnote 107\*\*\* The **arbitrators** charged with performing the substantive work of the WTO by negotiating, compromising, and issuing judgments **are keenly aware of the responsibility they have to uphold the organization’s credibility**.108

## Plan

#### Plan text resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines

#### Enforcement through US TRIPS waiver is normal means

Jones et al. 21 Mike Jones, J.D., cum laude, Brooklyn Law School, 2014. Sean McConnell, University of Pittsburgh School of Law, J.D., 2002. Lauren Giambalvo, University of Georgia School of Law, J.D., magna cum laude, Order of the Coif, 2019; Georgia Law Review. Emily Harmon, Villanova University Charles Widger School of Law, J.D., 2020. Ipwatchdog, August 9, 2021. “What is a ‘Patent Waiver’ Anyway? Zooming Out on the TRIPS COVID IP Waiver Debate” <https://www.ipwatchdog.com/2021/08/09/patent-waiver-anyway-zooming-trips-covid-ipwaiver-debate/id=136381/> brett

Scientists, engineers, and everyday people have developed solutions for testing, preventing, and treating the COVID-19 disease. Ordinarily, we wouldn’t think twice about granting patents on these inventions. But, today, when COVID-19 is spreading all over the world and killing millions of people, some world leaders are questioning whether we should be granting the exclusionary rights of patent protection on inventions that help respond to the pandemic. Included in that group is the Biden-Harris Administration, which, in May, announced their support of an **“IP waiver”** on COVID 19 vaccines. Patent Waiver The “patent waiver” is a proposal to waive certain provisions of the Trade-Related Aspects of Intellectual Property (**TRIPS**) Agreement for three years. The TRIPS Agreement requires certain member countries (“Members”), including the United States, to have certain minimum intellectual property protections. While this proposal is often referred to as a “**patent** waiver,” the proposal would also waive sections associated with **copyright**, **industrial designs**, and **undisclosed information**. The proposal seeks to waive Part II, Section 5 Patents of the TRIPS Agreement and the associated enforcement sections only with respect to “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the **prevention, treatment or containment of COVID-19”** for a period of **three years**. Article 27 of Section 5 requires that certain Members issue patents to inventions that “are new, involve an inventive step and are capable of industrial application.” However, Members have the option to refuse to grant patents to certain categories of inventions, including, “diagnostic, therapeutic and surgical methods for the treatment of humans or animals.” Article 28 explains that an owner of a patent can prevent others from “making, using, offering for sale, selling, or importing” (“infringing”) the patented inventions. Finally, Part III of the TRIPS Agreement explains the potential consequences of infringing a patent. Among other things, the infringer can be liable for money damages and the judicial authority of the Member may order injunctions. Therefore, as the TRIPS Agreement currently stands, each Member must have patent laws that give patents to inventions that meet certain requirements, and each must provide avenues for patent holders to enforce its patent rights. As applied to the current situation, Members are required to grant patents to qualifying inventions related to “the prevention, containment and treatment of COVID-19” (with exceptions for pharmaceuticals if the Member does not allow pharmaceutical patents). Infringers could be liable for money damages and the judicial authority of the Member may order injunctions. If provisions in Part II, Section 5 and the associated enforcement sections are waived, Members would no longer be required to issue patents or provide avenues for patent holders to enforce patent rights. The proposal does not, however, require Members to waive their own domestic patent rights. In other words, the proposal to waive certain provisions of the TRIPS Agreement, the “patent waiver,” does not directly waive any patent protections. Rather, the patent waiver grants to Members permission to waive their own domestic patent protections. Patent laws are geographically limited; they only protect an invention in the country that issued the patent. For example, one cannot make, use, offer to sell, sell, or import an invention protected only by a U.S. patent in the U.S; however, one may do those things in another country where corresponding patent protection does not exist. Therefore, in order to waive patent protections worldwide, each Member subject the TRIPS Agreement’s requirement to have certain minimum intellectual property protection would have to waive its own domestic patent protections. The United States patent laws are codified in Title 35 to the U.S. Code. It provides that inventors may obtain patents for their new and useful inventions and infringers are liable for making, using, offering to sell, selling, or importing into the U.S. patented inventions without the patent holders consent. Because the power to enact patent laws lies with Congress, Congress would likely have to waive these laws.

#### Public funding and massive pre-purchases are superior incentives to patents in a pandemic.

Lindsey 21, Brink Lindsey, Vice President @ Niskanen Center “Why intellectual property and pandemics don’t mix,” Brookings Institution, June 3, 2021. <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/> brett

What approach to encouraging innovation should we take instead? How do we incentivize drug makers to undertake the hefty R&D costs to develop new vaccines without giving them exclusive rights over their production and sale? The most effective approach during a public health crisis is direct government support: public funding of R&D, advance purchase commitments by the government to buy large numbers of doses at set prices, and other, related payouts. And when we pay drug makers, we should not hesitate to pay generously, even extravagantly: we want to offer drug companies big profits so that they prioritize this work above everything else, and so that they are ready and eager to come to the rescue again the next time there’s a crisis. It was direct support via Operation Warp Speed that made possible the astonishingly rapid development of COVID-19 vaccines and then facilitated a relatively rapid rollout of vaccine distribution (relative, that is, to most of the rest of the world). And it’s worth noting that a major reason for the faster rollout here and in the United Kingdom compared to the European Union was the latter’s misguided penny-pinching. The EU bargained hard with firms to keep vaccine prices low, and as a result their citizens ended up in the back of the queue as various supply line kinks were being ironed out. This is particularly ironic since the Pfizer-BioNTech vaccine was developed in Germany. As this fact underscores, the chief advantage of direct support isn’t to “get tough” with drug firms and keep a lid on their profits. Instead, it is to accelerate the end of the public health emergency by making sure drug makers profit handsomely from doing the right thing. Patent law and direct support should be seen not as either-or alternatives but as complements that apply different incentives to different circumstances and time horizons. Patent law provides a decentralized system for encouraging innovation. The government doesn’t presume to tell the industry which new drugs are needed; it simply incentivizes the development of whatever new drugs that pharmaceutical firms can come up with by offering them a temporary monopoly. It is important to note that patent law’s incentives offer no commercial guarantees. Yes, you can block other competitors for a number of years, but that still doesn’t ensure enough consumer demand for the new product to make it profitable. DIRECT SUPPORT MAKES PATENTS REDUNDANT The situation is different in a pandemic. Here the government knows exactly what it wants to incentivize: the creation of vaccines to prevent the spread of a specific virus and other drugs to treat that virus. Under these circumstances, the decentralized approach isn’t good enough. There is no time to sit back and let drug makers take the initiative on their own timeline. Instead, the government needs to be more involved to incentivize specific innovations now. As recompense for letting it call the shots (pardon the pun), the government sweetens the deal for drug companies by insulating them from commercial risk. If pharmaceutical firms develop effective vaccines and therapies, the government will buy large, predetermined quantities at prices set high enough to guarantee a healthy return. For the pharmaceutical industry, it is useful to conceive of patent law as the default regime for innovation promotion. It improves pharmaceutical companies’ incentives to develop new drugs while leaving them free to decide which new drugs to pursue – and also leaving them to bear all commercial risk. In a pandemic or other emergency, however, it is appropriate to shift to the direct support regime, in which the government focuses efforts on one disease. In this regime, it is important to note, the government provides qualitatively superior incentives to those offered under patent law. Not only does it offer public funding to cover the up-front costs of drug development, but it also provides advance purchase commitments that guarantee a healthy return. It should therefore be clear that the pharmaceutical industry has no legitimate basis for objecting to a TRIPS waiver. Since, because of the public health crisis, drug makers now qualify for the superior benefits of direct government support, they no longer need the default benefits of patent support. Arguments that a TRIPS waiver would deprive drug makers of the incentives they need to keep developing new drugs, when they are presently receiving the most favorable incentives available, can be dismissed as the worst sort of special pleading. That said, it is a serious mistake to try to cast the current crisis as a morality play in which drug makers wear the black hats and the choice at hand is between private profits and public health. We would have no chance of beating this virus without the formidable organizational capabilities of the pharmaceutical industry, and providing the appropriate incentives is essential to ensure that the industry plays its necessary and vital role. It is misguided to lament that private companies are profiting in the current crisis: those profits are a drop in the bucket compared to the staggering cost of this pandemic in lives and economic damage.

## Framing

#### The standard is maximizing expected well-being, or hedonistic act utilitarianism.

#### 1] Neuroscience- pleasure and pain *are* intrinsic value and disvalue – everything else regresses.

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**Pleasure** is not only one of the three primary reward functions but it also **defines reward.** As homeostasis explains the functions of only a limited number of rewards, the principal reason why particular stimuli, objects, events, situations, and activities are rewarding may be due to pleasure. This applies first of all to sex and to the primary homeostatic rewards of food and liquid and extends to money, taste, beauty, social encounters and nonmaterial, internally set, and intrinsic rewards. Pleasure, as the primary effect of rewards, drives the prime reward functions of learning, approach behavior, and decision making and provides the **basis for hedonic theories** of reward function. We are attracted by most rewards and exert intense efforts to obtain them, just because they are enjoyable [10]. Pleasure is a passive reaction that derives from the experience or prediction of reward and may lead to a long-lasting state of happiness. The word happiness is difficult to define. In fact, just obtaining physical pleasure may not be enough. One key to happiness involves a network of good friends. However, it is not obvious how the higher forms of satisfaction and pleasure are related to an ice cream cone, or to your team winning a sporting event. Recent multidisciplinary research, using both humans and detailed invasive brain analysis of animals has discovered some critical ways that the brain processes pleasure [14]. Pleasure as a hallmark of reward is sufficient for defining a reward, but it may not be necessary. A reward may generate positive learning and approach behavior simply because it contains substances that are essential for body function. When we are hungry, we may eat bad and unpleasant meals. A monkey who receives hundreds of small drops of water every morning in the laboratory is unlikely to feel a rush of pleasure every time it gets the 0.1 ml. Nevertheless, with these precautions in mind, we may define any stimulus, object, event, activity, or situation that has the potential to produce pleasure as a reward. In the context of reward deficiency or for disorders of addiction, homeostasis pursues pharmacological treatments: drugs to treat drug addiction, obesity, and other compulsive behaviors. The theory of allostasis suggests broader approaches - such as re-expanding the range of possible pleasures and providing opportunities to expend effort in their pursuit. [15]. It is noteworthy, the first animal studies eliciting approach behavior by electrical brain stimulation interpreted their findings as a discovery of the brain’s pleasure centers [16] which were later partly associated with midbrain dopamine neurons [17–19] despite the notorious difficulties of identifying emotions in animals. Evolutionary theories of pleasure: The love connection BO:D Charles Darwin and other biological scientists that have examined the biological evolution and its basic principles found various mechanisms that steer behavior and biological development. Besides their theory on natural selection, it was particularly the sexual selection process that gained significance in the latter context over the last century, especially when it comes to the question of what makes us “what we are,” i.e., human. However, the capacity to sexually select and evolve is not at all a human accomplishment alone or a sign of our uniqueness; yet, we humans, as it seems, are ingenious in fooling ourselves and others–when we are in love or desperately search for it. It is well established that modern biological theory conjectures that **organisms are** the **result of evolutionary competition.** In fact, Richard Dawkins stresses gene survival and propagation as the basic mechanism of life [20]. Only genes that lead to the fittest phenotype will make it. It is noteworthy that the phenotype is selected based on behavior that maximizes gene propagation. To do so, the phenotype must survive and generate offspring, and be better at it than its competitors. Thus, the ultimate, distal function of rewards is to increase evolutionary fitness by ensuring the survival of the organism and reproduction. It is agreed that learning, approach, economic decisions, and positive emotions are the proximal functions through which phenotypes obtain other necessary nutrients for survival, mating, and care for offspring. Behavioral reward functions have evolved to help individuals to survive and propagate their genes. Apparently, people need to live well and long enough to reproduce. Most would agree that homo-sapiens do so by ingesting the substances that make their bodies function properly. For this reason, foods and drinks are rewards. Additional rewards, including those used for economic exchanges, ensure sufficient palatable food and drink supply. Mating and gene propagation is supported by powerful sexual attraction. Additional properties, like body form, augment the chance to mate and nourish and defend offspring and are therefore also rewards. Care for offspring until they can reproduce themselves helps gene propagation and is rewarding; otherwise, many believe mating is useless. According to David E Comings, as any small edge will ultimately result in evolutionary advantage [21], additional reward mechanisms like novelty seeking and exploration widen the spectrum of available rewards and thus enhance the chance for survival, reproduction, and ultimate gene propagation. These functions may help us to obtain the benefits of distant rewards that are determined by our own interests and not immediately available in the environment. Thus the distal reward function in gene propagation and evolutionary fitness defines the proximal reward functions that we see in everyday behavior. That is why foods, drinks, mates, and offspring are rewarding. There have been theories linking pleasure as a required component of health benefits salutogenesis, (salugenesis). In essence, under these terms, pleasure is described as a state or feeling of happiness and satisfaction resulting from an experience that one enjoys. Regarding pleasure, it is a double-edged sword, on the one hand, it promotes positive feelings (like mindfulness) and even better cognition, possibly through the release of dopamine [22]. But on the other hand, pleasure simultaneously encourages addiction and other negative behaviors, i.e., motivational toxicity. It is a complex neurobiological phenomenon, relying on reward circuitry or limbic activity. It is important to realize that through the “Brain Reward Cascade” (BRC) endorphin and endogenous morphinergic mechanisms may play a role [23]. While natural rewards are essential for survival and appetitive motivation leading to beneficial biological behaviors like eating, sex, and reproduction, crucial social interactions seem to further facilitate the positive effects exerted by pleasurable experiences. Indeed, experimentation with addictive drugs is capable of directly acting on reward pathways and causing deterioration of these systems promoting hypodopaminergia [24]. Most would agree that pleasurable activities can stimulate personal growth and may help to induce healthy behavioral changes, including stress management [25]. The work of Esch and Stefano [26] concerning the link between compassion and love implicate the brain reward system, and pleasure induction suggests that social contact in general, i.e., love, attachment, and compassion, can be highly effective in stress reduction, survival, and overall health. Understanding the role of neurotransmission and pleasurable states both positive and negative have been adequately studied over many decades [26–37], but comparative anatomical and neurobiological function between animals and homo sapiens appear to be required and seem to be in an infancy stage. Finding happiness is different between apes and humans As stated earlier in this expert opinion one key to happiness involves a network of good friends [38]. However, it is not entirely clear exactly how the higher forms of satisfaction and pleasure are related to a sugar rush, winning a sports event or even sky diving, all of which augment dopamine release at the reward brain site. Recent multidisciplinary research, using both humans and detailed invasive brain analysis of animals has discovered some critical ways that the brain processes pleasure. Remarkably, there are pathways for ordinary liking and pleasure, which are limited in scope as described above in this commentary. However, there are **many brain regions**, often termed hot and cold spots, that significantly **modulate** (increase or decrease) our **pleasure or** even produce **the opposite** of pleasure— that is disgust and fear [39]. One specific region of the nucleus accumbens is organized like a computer keyboard, with particular stimulus triggers in rows— producing an increase and decrease of pleasure and disgust. Moreover, the cortex has unique roles in the cognitive evaluation of our feelings of pleasure [40]. Importantly, the interplay of these multiple triggers and the higher brain centers in the prefrontal cortex are very intricate and are just being uncovered. Desire and reward centers It is surprising that many different sources of pleasure activate the same circuits between the mesocorticolimbic regions (Figure 1). Reward and desire are two aspects pleasure induction and have a very widespread, large circuit. Some part of this circuit distinguishes between desire and dread. The so-called pleasure circuitry called “REWARD” involves a well-known dopamine pathway in the mesolimbic system that can influence both pleasure and motivation. In simplest terms, the well-established mesolimbic system is a dopamine circuit for reward. It starts in the ventral tegmental area (VTA) of the midbrain and travels to the nucleus accumbens (Figure 2). It is the cornerstone target to all addictions. The VTA is encompassed with neurons using glutamate, GABA, and dopamine. The nucleus accumbens (NAc) is located within the ventral striatum and is divided into two sub-regions—the motor and limbic regions associated with its core and shell, respectively. The NAc has spiny neurons that receive dopamine from the VTA and glutamate (a dopamine driver) from the hippocampus, amygdala and medial prefrontal cortex. Subsequently, the NAc projects GABA signals to an area termed the ventral pallidum (VP). The region is a relay station in the limbic loop of the basal ganglia, critical for motivation, behavior, emotions and the “Feel Good” response. This defined system of the brain is involved in all addictions –substance, and non –substance related. In 1995, our laboratory coined the term “Reward Deficiency Syndrome” (RDS) to describe genetic and epigenetic induced hypodopaminergia in the “Brain Reward Cascade” that contribute to addiction and compulsive behaviors [3,6,41]. Furthermore, ordinary “liking” of something, or pure pleasure, is represented by small regions mainly in the limbic system (old reptilian part of the brain). These may be part of larger neural circuits. In Latin, hedus is the term for “sweet”; and in Greek, hodone is the term for “pleasure.” Thus, the word Hedonic is now referring to various subcomponents of pleasure: some associated with purely sensory and others with more complex emotions involving morals, aesthetics, and social interactions. The capacity to have pleasure is part of being healthy and may even extend life, especially if linked to optimism as a dopaminergic response [42]. Psychiatric illness often includes symptoms of an abnormal inability to experience pleasure, referred to as anhedonia. A negative feeling state is called dysphoria, which can consist of many emotions such as pain, depression, anxiety, fear, and disgust. Previously many scientists used animal research to uncover the complex mechanisms of pleasure, liking, motivation and even emotions like panic and fear, as discussed above [43]. However, as a significant amount of related research about the specific brain regions of pleasure/reward circuitry has been derived from invasive studies of animals, these cannot be directly compared with subjective states experienced by humans. In an attempt to resolve the controversy regarding the causal contributions of mesolimbic dopamine systems to reward, we have previously evaluated the three-main competing explanatory categories: “liking,” “learning,” and “wanting” [3]. That is, dopamine may mediate (a) liking: the hedonic impact of reward, (b) learning: learned predictions about rewarding effects, or (c) wanting: the pursuit of rewards by attributing incentive salience to reward-related stimuli [44]. We have evaluated these hypotheses, especially as they relate to the RDS, and we find that the incentive salience or “wanting” hypothesis of dopaminergic functioning is supported by a majority of the scientific evidence. Various neuroimaging studies have shown that anticipated behaviors such as sex and gaming, delicious foods and drugs of abuse all affect brain regions associated with reward networks, and may not be unidirectional. Drugs of abuse enhance dopamine signaling which sensitizes mesolimbic brain mechanisms that apparently evolved explicitly to attribute incentive salience to various rewards [45]. Addictive substances are voluntarily self-administered, and they enhance (directly or indirectly) dopaminergic synaptic function in the NAc. This activation of the brain reward networks (producing the ecstatic “high” that users seek). Although these circuits were initially thought to encode a set point of hedonic tone, it is now being considered to be far more complicated in function, also encoding attention, reward expectancy, disconfirmation of reward expectancy, and incentive motivation [46]. The argument about addiction as a disease may be confused with a predisposition to substance and nonsubstance rewards relative to the extreme effect of drugs of abuse on brain neurochemistry. The former sets up an individual to be at high risk through both genetic polymorphisms in reward genes as well as harmful epigenetic insult. Some Psychologists, even with all the data, still infer that addiction is not a disease [47]. Elevated stress levels, together with polymorphisms (genetic variations) of various dopaminergic genes and the genes related to other neurotransmitters (and their genetic variants), and may have an additive effect on vulnerability to various addictions [48]. In this regard, Vanyukov, et al. [48] suggested based on review that whereas the gateway hypothesis does not specify mechanistic connections between “stages,” and does not extend to the risks for addictions the concept of common liability to addictions may be more parsimonious. The latter theory is grounded in genetic theory and supported by data identifying common sources of variation in the risk for specific addictions (e.g., RDS). This commonality has identifiable neurobiological substrate and plausible evolutionary explanations. Over many years the controversy of dopamine involvement in especially “pleasure” has led to confusion concerning separating motivation from actual pleasure (wanting versus liking) [49]. We take the position that animal studies cannot provide real clinical information as described by self-reports in humans. As mentioned earlier and in the abstract, on November 23rd, 2017, evidence for our concerns was discovered [50] In essence, although nonhuman primate brains are similar to our own, the disparity between other primates and those of human cognitive abilities tells us that surface similarity is not the whole story. Sousa et al. [50] small case found various differentially expressed genes, to associate with pleasure related systems. Furthermore, the dopaminergic interneurons located in the human neocortex were absent from the neocortex of nonhuman African apes. Such differences in neuronal transcriptional programs may underlie a variety of neurodevelopmental disorders. In simpler terms, the system controls the production of dopamine, a chemical messenger that plays a significant role in pleasure and rewards. The senior author, Dr. Nenad Sestan from Yale, stated: “Humans have evolved a dopamine system that is different than the one in chimpanzees.” This may explain why the behavior of humans is so unique from that of non-human primates, even though our brains are so surprisingly similar, Sestan said: “It might also shed light on why people are vulnerable to mental disorders such as autism (possibly even addiction).” Remarkably, this research finding emerged from an extensive, multicenter collaboration to compare the brains across several species. These researchers examined 247 specimens of neural tissue from six humans, five chimpanzees, and five macaque monkeys. Moreover, these investigators analyzed which genes were turned on or off in 16 regions of the brain. While the differences among species were subtle, **there was** a **remarkable contrast in** the **neocortices**, specifically in an area of the brain that is much more developed in humans than in chimpanzees. In fact, these researchers found that a gene called tyrosine hydroxylase (TH) for the enzyme, responsible for the production of dopamine, was expressed in the neocortex of humans, but not chimpanzees. As discussed earlier, dopamine is best known for its essential role within the brain’s reward system; the very system that responds to everything from sex, to gambling, to food, and to addictive drugs. However, dopamine also assists in regulating emotional responses, memory, and movement. Notably, abnormal dopamine levels have been linked to disorders including Parkinson’s, schizophrenia and spectrum disorders such as autism and addiction or RDS. Nora Volkow, the director of NIDA, pointed out that one alluring possibility is that the neurotransmitter dopamine plays a substantial role in humans’ ability to pursue various rewards that are perhaps months or even years away in the future. This same idea has been suggested by Dr. Robert Sapolsky, a professor of biology and neurology at Stanford University. Dr. Sapolsky cited evidence that dopamine levels rise dramatically in humans when we anticipate potential rewards that are uncertain and even far off in our futures, such as retirement or even the possible alterlife. This may explain what often motivates people to work for things that have no apparent short-term benefit [51]. In similar work, Volkow and Bale [52] proposed a model in which dopamine can favor NOW processes through phasic signaling in reward circuits or LATER processes through tonic signaling in control circuits. Specifically, they suggest that through its modulation of the orbitofrontal cortex, which processes salience attribution, dopamine also enables shilting from NOW to LATER, while its modulation of the insula, which processes interoceptive information, influences the probability of selecting NOW versus LATER actions based on an individual’s physiological state. This hypothesis further supports the concept that disruptions along these circuits contribute to diverse pathologies, including obesity and addiction or RDS.

#### 2] Actor spec—governments must use util because they don’t have intentions and are constantly dealing with tradeoffs—outweighs since different agents have different obligations—takes out calc indicts since they are empirically denied.

#### 3] No intent-foresight distinction for states.

Enoch 07 Enoch, D [The Faculty of Law, The Hebrew Unviersity, Mount Scopus Campus, Jersusalem]. (2007). INTENDING, FORESEEING, AND THE STATE. Legal Theory, 13(02). doi:10.1017/s1352325207070048 https://www.cambridge.org/core/journals/legal-theory/article/intending-foreseeing-and-the-state/76B18896B94D5490ED0512D8E8DC54B2

The general difficulty of the intending-foreseeing distinction here stemmed, you will recall, from the feeling that attempting to pick and choose among the foreseen consequences of one’s actions those one is more and those one is less responsible for looks more like the preparation of a defense than like a genuine attempt to determine what is to be done. Hiding behind the intending-foreseeing distinction seems like an attempt to evade responsibility, and so thinking about the distinction in terms of responsibility serves 39. Anderson & Pildes, supra note 38. I will use this text as my example of an expressive theory here. 40. See id. at 1554, 1564. 41. For a general critique, see Mathew D. Adler, Expressive Theories of Law: A Skeptical Overview, 148 U. PA. L. REV. 1363 (1999–2000). 42. As Adler repeatedly notes, the understanding of expression Anderson & Pildes work with is amazingly broad, so that “To express an attitude through action is to act on the reasons the attitude gives us”; Anderson & Pildes, supra note 38, at 1510. If this is so, it seems that expression drops out of the picture and everything done with it can be done directly in terms of reasons. 43. This may be true of what Anderson and Pildes have in mind when they say that “expressive norms regulate actions by regulating the acceptable justifications for doing them”; id. at 1511. http://journals.cambridge.org Downloaded: 03 Aug 2014 IP address: 134.153.184.170 Intending, Foreseeing, and the State 91 to reduce even further the plausibility of attributing to it intrinsic moral significance. This consideration—however weighty in general—seems to me very weighty when applied to state action and to the decisions of state officials. For perhaps it may be argued that individuals are not required to undertake a global perspective, one that equally takes into account all foreseen consequences of their actions. Perhaps, in other words, individuals are entitled to (roughly) settle for having a good will, and beyond that let chips fall where they may. But this is precisely what stateswomen and statesmen—and certainly states—are not entitled to settle for.44 In making policy decisions, it is precisely the global (or at least statewide, or nationwide, or something of this sort) perspective that must be undertaken. Perhaps, for instance, an individual doctor is entitled to give her patient a scarce drug without thinking about tomorrow’s patients (I say “perhaps” because I am genuinely not sure about this), but surely when a state committee tries to formulate rules for the allocation of scarce medical drugs and treatments, it cannot hide behind the intending-foreseeing distinction, arguing that if it allows45 the doctor to give the drug to today’s patient, the death of tomorrow’s patient is merely foreseen and not intended. When making a policy-decision, this is clearly unacceptable. Or think about it this way (I follow Daryl Levinson here):46 perhaps restrictions on the responsibility of individuals are justified because individuals are autonomous, because much of the value in their lives comes from personal pursuits and relationships that are possible only if their responsibility for what goes on in the (more impersonal) world is restricted. But none of this is true of states and governments. They have no special relationships and pursuits, no personal interests, no autonomous lives to lead in anything like the sense in which these ideas are plausible when applied to individuals persons. So there is no reason to restrict the responsibility of states in anything like the way the responsibility of individuals is arguably restricted.47 States and state officials have much more comprehensive responsibilities than individuals do. Hiding behind the intending-foreseeing distinction thus more clearly constitutes an evasion of responsibility in the case of the former. So the evading-responsibility worry has much more force against the intending-foreseeing distinction when applied to state action than elsewhere.

#### 4] Utilitarianism should be used in the context of public health emergencies – this framework avoids abuses while ensuring just outcomes at the tail end of disease risks.

Kirkwood 9 School of Health Studies, Faculty of Health Sciences, University of Western Ontario. 06/01/2009. “In the Name of the Greater Good?” Emerging Health Threats Journal, vol. 2, no. 0. CrossRef, doi:10.3402/ehtj.v2i0.7092.

Public health authorities in many economically advantaged nations are bracing themselves to face future pandemics that will harm large numbers of citizens. Modern medical horrors such as Monkeypox or the much-feared future mutations of Avian Influenza (H5N1) are mentioned in the same breath as virulent strains of influenza, as a danger to our ‘way of living.’ Far beyond sickness and large numbers of death, an outbreak of one of these pandemics poses a real threat to long-term health, as well as to the social and economic well being of significant percentages of our surviving population.1 While confronting issues brought forth by a pandemic, the fundamental nature of ‘public health’ and its focus on the welfare of a population demands special attention to utilitarian considerations of promotion of the greatest good—in this case, health—as well as the limitation of illness and death in the ‘worst-case’ scenarios posed by the most lethal of pandemics. Of particular interest to this paper are questions related to the obligation of health-care workers (HCWs) to report to work in the face of heightened immunological threat and whether those same workers should have greater access to immunizations and treatments than should non-HCWs. Utilitarianism within public health ethics The fundamental feature of the ethical theory of utilitarianism states that moral behavior is that which promotes good and minimizes harm.2 In writings based on public health, utilitarianism is widely recognized as a fragment in the ethical ‘scheme’ of public health,3 but it is not afforded a stronger role for two primary reasons: first, considering its extreme position, utilitarianism is morally problematic,4 as it could literally permit anything in the name of the ‘greatest good to the greatest number,’ and second it is virtually impossible to live a moral life under the most extreme forms of utilitarianism, because the obligations are too difficult to discern (the ‘what’ of promoting the good) and impossible to execute (the ‘how’).5 Utilitarianism, in a moderate form, used in public health ethics, means that our actions and policies should be focused on increasing the total ‘net’ goodness rather than an average ‘net’ good for each person. The institutions of individual rights and the recognition of patient autonomy are not contradictory to this, but are believed to serve the overall good, as individual benefit increases the total good, and serves as a preventative measure of unjustified majoritarian actions against smaller groups. This model of utilitarianism is evident in many aspects of public healthFnot only through health-promotion projects that encourage the otherwise illness-free individuals to take up a more healthful diet and exercise regimen but also through harm-reduction programs, in which people with negative health behaviors such as abuse of drugs or dietary fats are aided to eliminate, or at least minimize the harm they cause to those around them. In everyday practice, the force of this utilitarian aspect has a supportive role along with other ethical elements of public health practice, and presents a balanced moral justification for all actions undertaken in accordance with this practice.6 However, I contend that there must be an ‘escalator clause’ in the utilitarian aspect that suggests that in the event of an extensive threat to the existence of a population, the force of this utilitarian aspect becomes the primary consideration in proportion to the threat. Therefore, the greater the threat, the greater the moral force of utilitarianism in making public health decisions. This also entails that the greater the threat, the greater the moral impetus to minimize the harm to the population. On duty, outbreaks, and distribution of resources Obligations to minimize harm and promote the goods of public health are not particularly controversial in times of relatively stable ‘good-health’ measures among the populace. The more troubling question emerges from the scenario in which promoting health and minimizing illness and death demands more from HCWsFhow can, or should, we compel HCWs to attend to their duties in the event that a highly lethal form of communicable disease should start spreading?7 Although current debates focus on questions of duty, and how much personal risk invalidates that commitment, utilitarian aspects of that obligation are not given enough weight in the debate. In many of the debates, the question of risk is posed in terms of how we do not expect a trained ‘first responder’ to recklessly endanger his or her life to save the life of another. The classic story of the lifeguard is offered as exemplar: a lifeguard is not expected to rescue a drowning swimmer if a shark is clearly present.8 Although this statement seems reasonable, it does not justify itself. By contrast, the consideration of the utilitarian aspect makes the point that in attempting to save a life, two are likely to be lost, thus propagating a greater total harm. The same holds true for the example of firefighters rushing into a house badly damaged by an active fire. Although there may be a life on that second floor to save, we do not expect any number of firefighters to sacrifice their lives for the doomed soul because the loss of many, including the original life in peril, is a maximization of harm, when harm should be minimized. When you control for the risks involved, such as using precautions to assure a level of safety for the rescuers, such as shark nets for the lifeguard, or safety gear for the firefighters, then the obligation to assist comes back into full force, as the potential for greater harm is manageable.9 It is the variable of risk, which creates variable demands on those whose duty it is to care for the population in times of crisis. We consider not only the risk to the obligated but also a question of the scope of risk to the population. In academic and public debates regarding the compulsion to attend to duty in the face of danger, one fallacy has been allowed to stand: the notion that exposure to a pandemic can be avoided if one simply does not come to his or her job as a HCW. Although it is true that working in a hospital during times of influenza outbreak puts one at a greater risk for contracting the illness,10 the more widespread the outbreak, the more people become sick, and the more likely the ‘stayat-home’ HCW will become sick even after having avoided contact in the course of his or her duties. We could reasonably state that, by virtue of staying home during a time of need for his or her service, the HCW improves the odds that he or she will contract this illness outside professional practice as part of the greater number who will be exposed. Another feature of the argument offered to defend dereliction of duty is to suggest that this risk that the HCW takes with his or her own health is a fixed variable, and thus should be considered as an exception to duty. On the contrary, it is a common feature of the infection-control literature that states that doctors and nurses are overwhelmingly neglectful toward their own basic infection-control protocols.11 Therefore, the threat is not a fixed variable, but one that is actually quite within the scope of the control of a HCW. Ethically, one cannot willfully or negligently enhance the exceptions to duty. At the same time, it is an obligation of the management to ensure that diligent HCWs are equipped to do all they can to reduce their risks. During the SARS crisis in Toronto, health-care administrators did not effectively communicate which precautions should be undertaken by HCWs to protect themselves.12 It bears mentioning that once clear direction could be given about the type and execution of masking procedures, the intrahospital transmission of SARS decreased to 0%.13 This fact speaks to the issue of risk, as the non-transmission of SARS correlated with the increased attentions of management and staff to infection-control precautions and the provision and use of proper equipment.14 When we speak in terms of risk and pandemics from the utilitarian perspective discussed herein, we recognize that it is completely nonsensible to sacrifice highly trained HCWs by rushing them ill equipped into dangerous situations. Much as with the example of firefighters and the unsafe burning house, we find it morally unacceptable to treat them as disposable, because of the singularity of their lives and their right to exist as individuals. There is also the detriment we would cause in an event such as a pandemic by losing the people trained to save us to the very threat they were trained to save us from. By that same logic, it could be argued that HCWs should have first access to available and medically accepted vaccinations by virtue of the fact that those HCWs are absolutely essential to our survival. The fear of an Avian Influenza outbreak brought with it much debate about scarce Tamiflu supplies and giving HCWs preferential access.15 However, the added value of a HCW is the fact that he or she will be facing the greater risk by virtue of faithful and responsible execution of his or her duty, and if this is trueFand we have seen from the example of SARS that it is not always the case that HCWs exercise due diligence or face unmanageable risks of infection simply by being ‘on-site’Fthen we should do more to protect them. Nevertheless, if the claim is that they can excuse themselves from duty because of risk, then we excuse ourselves from privileging their protection, through the preferential access to measures such as Tamiflu. The same should be true for access to vaccines or treatments: those who are compelled into service to defend the overall health of a society at tremendous risk should be first in line, as their opportunity for infectionFand to act as a vector for infection both within and outside their health-care facilitiesFmeans that the greater good is served by privileging their access to prophylaxis. A common objection to this comes from the perspective of social justice. The objection would point out that those who are least able to prevent their own infection, such as those from the lower socioeconomic classes, retirees and pensioners, and other vulnerable groups, would be denied access to the protections and treatments that are going to HCWs whoFto varying degreesFenjoy more comfortable socioeconomic positions. Although this question of access is valid in questions of many public health interventions, the preference of HCWs in questions of preferential access to vaccines and treatments is not unjust in these terms. Fundamentally, justice addresses unjustified imbalances in treatment. Aristotle famously mandated that equals should be treated as equals, and unequals as unequals.16 The key point of justice is that there should be a valid justification for differential treatment, and in that light, in this context, we are describing pandemics that pose a unique and credible threat to the public in a manner that could fundamentally undermine our way of life. Preferential treatment of HCWs, in this limited context, is a just and defensible practice. It is this same special status that we afford those who can save us from the most lethal and dangerous illnesses in times of public health emergency that also places greater demands on those same people. The greater the risk to society, the greater the responsibilities on those who can reduce the body count. The relationship between the duty of a HCW and the lethality of a disease is proportional—danger and obligation increase in step with each other, as opposed to other conceptions that suggest a threshold of exception as the risk of illness becomes too great. The fundamental flaw with this suggestion is that a negation of duty in such an outbreak simply allows the outbreak to pose an even greater threat to the populationFincluding that same derelict HCWFrather than confronting the illness in the relatively controlled environment of a hospital. Conclusions Utilitarianism in the form of promoting the good and diminishing the bad is a key moral belief in the realm of public health. It is one view in concert with others, all working to counterbalance each view to achieve a tenable moral equilibrium. In the extreme cases under consideration herein, such equilibrium dictates that the moral force of health promotion and harm minimization increases in relation to the threat posed to the well being of a larger society. In the case of widespread death or disability caused by a pandemic, this paper contended that an increased threat generates a heightened obligation on the part of HCWs, while also creating a reasonable expectation that those same HCWs will have preferential access to vaccines and treatments.

## UV

#### 1] 1AR theory is legit –

anything else means infinite abuse – drop the debater – 1AR is too short to make up for the time trade-off – no RVIs – the 6 min 2NR means they can brute force me every time – competing interps – otherwise they can skew the time crunched 1ar and play defense. 1AR theory first – it’s a much larger strategic loss because 1min is ¼ of the 1AR vs 1/7 of the 1NC which means there’s more abuse if I’m devoting a larger fraction of time.

#### 2] No new 2n theory and paradigm issues.

A] overloads the 2AR with a massive clarification burden B] it becomes impossible to check NC abuse if you can dump on reasons the shell doesn't matter in the 2n.

#### 3] Use reasonability on NC theory –

the 1AR is too short to line by line every argument, make a counter interpretation, and go for substance – key to check arbitrary interps.