



Human Rights and International Trade: How does the Trade System Violate Human Rights under the COVID-19 Pandemic?

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Abstract

Under COVID-19, the free trade system, especially the global intellectual property regime, is violating human rights in new ways. In the current fragmented state of international health law and human rights law, intellectual property law under the global trading system is commoditizing COVID-19 vaccines and other essential medicines, prioritizing commercial interests and patent protection over human rights. Although the international human rights system has issued a number of resolutions and reports on this issue, and many international and national organizations have also introduced mechanisms similar to the COVAX plan, the situation of "vaccine apartheid" and the marginalization of the interests of people in poor areas still exists. Therefore, this paper proposes some initial recommendations for better safeguarding of human rights during the COVID-19 outbreak, such as strengthening international cooperation or highlighting the human rights responsibilities of non-state actors, including multinational corporations and NGOs.

Keywords: Human rights, International trade, COVID-19 vaccine, Vaccine apartheid, Human rights protection, TRIPS, Human rights law.

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Contents

1. Introduction	28
2. The Violation of Human Rights by the International Trade System under the Global Public Health Crisis	29
3. Suggestions: How to Protect Human Rights under the Pandemic Better	33
4. Conclusion	34
References	34

Contribution of this paper to the literature

Based on authoritative data and representative cases, this article synthesizes research reports and literature of scholars and experts, illustrates how the intellectual property system violates human rights under the COVID-19, and makes preliminary recommendations on how to better protect human rights under the global health crisis.

1. Introduction

At the beginning of 2020, the World Health Organization (WHO) proclaimed this coronavirus epidemic “a Public Health Emergency of International Concern” and granted its formal designation COVID-19 in February. Later, in March of the same year, COVID-19 was classified as a pandemic by the WHO Director-General [1]. Globally, as of early November 2021, about 247 million confirmed COVID-19 cases have been submitted to WHO, including 5 million fatalities [2]. As early as October 2020, according to the World Bank’s forecast, within one year, COVID-19 will lead to a dramatic increase in the number of people living in poverty in the world, which will cause nearly 110 million people to live in extreme poverty. By 2021, it will increase to 150 million. At the same time, according to data predicted by the World Food Program, unless positive action is implemented, the number of hungry people in the world will nearly double, and 265 million people will be facing crisis levels of hunger by then [3].

These data are actually just the tip of the iceberg of the high cost of COVID-19 to humans. Historically, epidemics have often become a catalyst for profound social changes. As Frank M. Snowden, the professor emeritus of history and the history of medicine at Yale, said: “epidemics are a category of disease that seem to hold up the mirror to human beings as to who we really are” [4]. This pandemic is not just a health disaster; it is also an economic, humanitarian, security, and human rights issue, reflecting serious vulnerabilities and disparities within and across states and the interconnections and tensions between the trading system and human rights protection [5].

The WTO has produced multiple studies on COVID-19 and global commerce, detailing the pandemic’s influence on global trade [6]. It is worth mentioning that the recent WTO reports primarily concentrate on trade-related data, issues, and trade-facilitating measures for COVID-19 vaccine or other vital medical items for a pandemic response, including their manufacture, distribution, and tariff policy, etc [7]. This also coincides with the statement of the United Nations human rights experts that “universal access to vaccines is essential to the global prevention and containment of COVID-19 [3].”

It is essential to mention that, in 2021 when vaccination is highly critical, it is claimed that the sluggish and inequitable supply of vaccinations would raise the danger of new viral mutations, resulting in more readily transmitted and lethal variants emerging [8]. And previously developed vaccines may likely have no resistance to mutated new strains. Therefore, the United Nations Human Rights Council solemnly issued a unanimous resolution, reiterating and emphasizing that everyone is entitled to the highest attainable standard of physical and mental health; all countries are obliged to prevent, treat and control epidemics, improve domestic medical standards, and provide medical services for all patients [9].

Although the development of COVID-19 vaccines has sparked global optimism, many nations suffer formidable obstacles in getting these vaccines, partly due to the stringent intellectual property rules embedded in international trade agreements. As we all know, as a kind of intellectual property rights, pharmaceutical patents are strictly protected by the trade system. The intellectual property clauses contained in these trade agreements can prevent other manufacturers from copying, producing, and selling, and will lead to a monopoly on the production of medical supplies in some countries, which means that they can arbitrarily increase prices and reduce access to medical supplies in poor countries. Some scholars named that ‘vaccine apartheid’, which has been regarded as one kind of injustice or inequality creating stark disparities in vaccine access globally [10]. While 50.9 percent of the world’s population has gotten at least one dose of COVID-19 vaccination, only 4.1% of people in developing countries have received at least one dose [11]. As of March 21, 2021, every 100 people in North America have received 23 doses of the COVID-19 vaccine, while the global southern region has dropped significantly, with 3.8 out of 100 people in Asia and only 0.6 out of 100 people in Africa [12].

In this paper, we will focus on how the free trade regime, especially the global intellectual property system, violates human rights in the context of COVID-19 and then make some initial recommendations to help better safeguard human rights in global health crises. First, we will demonstrate the current fragmented state of international health law and human rights law and call for the imperative of harmonizing these two legal systems and improving the global health system. We will then explain how intellectual property law under the global trading system has commoditized the COVID-19 vaccine and other essential medicines, putting commercial interests and patent protection ahead of human rights. In other words, this article will illustrate how the restrictive intellectual property laws contribute to the phenomenon of “vaccine apartheid,” thereby exacerbating unequal global access to vaccines and impeding the realization of the right to health in vulnerable countries. Furthermore, the paper illustrates the limitations of a number of mechanisms, such as TRIPS flexibility under the Doha Declaration, the TRIPS waiver proposal, and the current COVAX scheme. In addition, although various human rights bodies have issued many resolutions and reports in response to this epidemic, there are still some shortcomings. Therefore, based on the above research, this paper will finally put forward some suggestions, hoping to better safeguard human rights during the COVID-19 outbreak, such as strengthening international cooperation or emphasizing the human rights responsibilities of non-state actors, including multinational corporations and non-government organizations.

This paper is mainly based on the study of relevant legal documents, resolutions and reports of international organizations, typical cases, as well as the reference and comparison of data issued by authoritative institutions. Firstly, based on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and related resolutions issued by the Committee on Economic, Social and Cultural Rights (CESCR), this article discusses the content and significance of the right to health, as well as the states’ responsibilities to protect the right to health under the epidemic [13]. According to the International Health Regulations (IHR), the literature of L. O. Gostin,

and the research report published by Roojin Habibi and others on the International Commission of Jurists, it explains the meaning, importance and shortcomings of the current global health law; we have discovered the fragmentation and limitations of human rights law and global health law; under the COVID-19, they did not cooperate well, and IHR was even ignored or forgotten by many countries [14-16]. This paper, therefore, highlights the importance of harmonizing global health law and human rights law, as well as building more effective and equitable public health systems, in the fight against the pandemic.

Secondly, according to the Agreement on Trade-related Intellectual Property Rights (TRIPS), we understand the basic history and content of the global intellectual property system; [17] according to Article 27 and Article 33 of TRIPS and the report issued by the WTO, this article finds that TRIPS provides pharmaceutical companies with rigorous and high-standard intellectual property protection [18]. Subsequently, based on a document on the Twair platform, we found that the intellectual property system has been used to commercialize basic medical products, at the expense of human rights, and has become a mean for developed countries to make huge profits, leading to unfair access to basic medicines worldwide [19]. This was also recognized in its report by the Economic UN Committee and Rights Social and Cultural, and this behavior of putting interests above human rights has also been criticized and opposed by the international community [20].

Afterwards, this article analyzes two classic cases, Pharmaceutical Manufacturers' Association of South Africa v President of the Republic of South Africa [21] and Drug Companies v Brazil [22]. In conjunction with Ruth Mayne's relevant comments, it once again emphasized that multinational companies and some developed countries put commercial interests above the protection of human rights, which will have a serious negative impact on the prevention and treatment of public epidemics. At the same time, this is also the background of the Doha Declaration [23]. Then, we introduce the primary content of the Doha Declaration, combined with related reports issued by the UN Human Rights Council and the WTO, and underline the significance of TRIPS flexibility under the Doha Declaration for the protection of human rights [24, 25]. In addition, through the analysis of Rwanda - Canada Case, combined with the views of Sharifah Rahma Sekalala, we analyzed the reasons why the current TRIPS flexibility has failed in practice [26].

Then, combined with the WTO report and the comments of scholars such as Siva Thambisetty, we learned about the basic content of the TRIPS waiver proposal and its significance for fair access to vaccines and the protection of human rights, and the reasons why it was blocked by developed countries [19, 27, 28].

With reference to the views of A Vanni and the data provided by The Duke Global Health Innovation Center, we analyzed the causes of vaccine apartheid and its negative impact on vaccine access and human rights protection [19, 29]. Then, according to the WTO report, the basic content of COVAX and its shortcomings are introduced [30]. With reference to the comments of scholars such as Sharifah Sekalala and the data provided by the World Bank, we found that after abandoning COVAX, developing countries were forced to buy vaccines with pharmaceutical companies at higher prices due to the lack of bargaining power, which eventually led to a sharp increase in their liabilities, and exacerbated the difficulties of these countries in fulfilling their human rights protection obligations [10, 31].

Finally, based on the statements and resolutions issued by various human rights organizations, this article analyzes the current efforts and significance of the human rights law in fighting the epidemic, [9, 32] but it also agrees with the views of relevant scholars and points out the limits of these resolutions regarding the protection of human rights under the pandemic [12].

Based on the above research, this paper puts forward two main suggestions:

To begin, we must underline the critical nature of international unity. Based on relevant documents of UN General Assembly, Economic UN Committee and Rights Social and Cultural and Economic UN Committee and Social and Cultural Rights, combined with the views of Colin J. Carlson and Alexandra L. Phelan, we have analyzed the legal basis, content and significance of countries in fulfilling their international cooperation obligations under the epidemic [32-34]. And it is clear that the protection of vulnerable countries is the focus of human rights protection and the fight against the epidemic [35]. In addition, in conjunction with the reports of UN human rights experts, some suggestions on ensuring fair access to vaccines and fully protecting human rights have been put forward [36, 37].

Furthermore, we agree with Bilchitz's point of view and call on non-state actors to take on more obligations to protect human rights [38]. According to the suggestion of Sofia Gruskin and Zyde Raad, we should accelerate the process of clarifying the content of their responsibilities in international human rights law and continue to monitor and assess them [39]. At the same time, United Nations Human Rights Council highlights that the role of human rights due diligence should not be ignored [40]. Finally, we analyze the crucial role of non-governmental organizations in increasing the legitimacy, transparency, justice, and democracy of human rights protection, based on some examples and the views of scholars such as Lawrence O Gostin [16, 41].

2. The Violation of Human Rights by the International Trade System under the Global Public Health Crisis

Immanuel Kant said that "rational human beings should be treated as an end in themselves and not as a means to something else." That means we are human has value in itself, [42] which has been considered as the supreme principle of morality. However, throughout human history, every rise of free trade has attempted to undermine or even overturn Kang's supreme moral principle. From the slave market in ancient Rome to the "triangle" slave trade created by capitalism, to the AIDS patients in developing countries unable to obtain medicines due to the WTO's strengthening of intellectual property protection, we can see that people and their rights are often used as "Means" rather than as protected targets.

As early as the "Human Development Report 2000" pointed out that "More global rules are being formulated in various fields from human rights to the environment and trade; however, they are formulated independently and may conflict; at present, trade rules are the only one truly binding on national policies because they have enforcement measures; therefore, trade rules should reflect human rights commitments and obligations" [43]. But so far, especially under the influence of the epidemic, the free trade system has not been able to truly realize the

“promises and obligations of human rights protection,” and the conflicts between the trading system and the human rights system have also changed from the “possibility” to the “reality.” It even resulted in numerous violations of human rights. The most critical aspect of the present COVID-19 response is to guarantee equitable access to vaccinations. However, the current trade system, particularly the intellectual property system, prioritizes commercial interests and IP protection over human rights, deprives vulnerable groups, and causes inequalities in access to the COVID-19 vaccine, leading to a new round of human rights violations.

2.1. Calling for Better Coordination Between the Global Health System and the Human Rights Protection Regime

There is no doubt that global health law plays a critical role in combating the outbreak, encompassing the legal standards, procedures, and institutions necessary to set the stage for human beings worldwide to achieve the highest possible level of physical and mental health [14]. Furthermore, the International Health Regulations (IHR) by the WHO frames global health law to address infectious disease threats and binds states to foster international cooperation in response to the public health crises of worldwide concern but has not codified international legal responsibilities to guide responses to global health emergencies [15].

From the perspective of human rights law article 12 of ICESCR stipulates the fundamental articulation of the right to health, and General Comment no 14 emphasizes that the right to health is a “fundamental human right indispensable for the exercise of other human rights”, and “every human is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.” [13]. Additionally, several international institutions, including the WHO’s constitution and treaties, put duties on states to uphold the dignity, human rights, and basic freedoms of all individuals [44]. Therefore, it needs to be emphasized that under the legal framework of human rights law, all countries are obligated to provide their people with necessary sanitation facilities in a timely manner and improve the corresponding sanitation system to adequately prevent, detect and respond to epidemic outbreaks.

While the law has been instrumental in combating great public health threats in the past, its power to enhance global health in a fair and equitable manner remains significantly neglected [16]. During the response to this unprecedented COVID-19, international human rights law and global health law have exposed practical limitations. On the one hand, international human rights law lacks certainty in clarifying the scope, meaning, and implementation rules of countries’ international human rights obligations or other stakeholders. Perhaps due in part to its soft law, it relies too much on the voluntariness and initiative of its members to enable these countries to take inappropriate and violating public health response measures. On the other hand, the International Health Regulations agreement, which is legally binding on 194 contracting states, was almost forgotten by its members, and it did not have the effect of quickly and efficiently responding to the pandemic as expected when the agreement was concluded, which obviously exposes its legal limitations [15].

Although the legislative aspects of the two have a certain degree of mutual penetration and support, in practice, the two are in a state of being separated from each other, and they have not actively cooperated with each other to achieve the effect of quickly responding to the epidemic and protecting human rights. The outbreak has undoubtedly exposed the fragmentation and limitations of international human rights law and global health law. As the fight against the coronavirus continues globally, it is urgent to consider how to coordinate global health laws and human rights laws to establish a more effective and equal public health system, [15] while reducing the exploitation and violation of human rights.

2.2. How does the Intellectual Property Law under the World Trade System Prioritizes Commercial Interests and Patent Protection Over Human Rights?

As we all know, one of the patent system’s primary goals is to foster technological innovation. In the context of economic globalization, product trade has transcended national boundaries; simultaneously, patent infringement has become more and more serious. Therefore, TRIPS incorporates trade-related Intellectual Property Rights into the normative international trade system, establishing high standards for intellectual property protection worldwide. Under the TRIPS agreement, all developed or developing members are obliged to provide patent protection for medicines and their manufacturing methods [17].

Especially in the pharmaceutical industry with high R&D costs and long cycles, medical drugs are easy to be imitated once produced. Therefore, TRIPS provides pharmaceutical companies with a higher standard of protection. Under article 27 of the TRIPS Agreement, patents must be “available for any inventions, whether products or processes, in all fields of technology”, including pharmaceutical products and processes [17]. Meanwhile, article 33 of TRIPS requires member states of the WTO to provide protection for patent rights for 20 years [17]. Thus, due to the strong exclusivity of patent law, patent owners, often transnational pharmaceutical firms, have the right to prohibit anyone from developing, utilizing, or trading patented inventions for at least 20 years [18].

However, due to its complexity, the TRIPS agreement has become one of the most contentious concerns under the WTO framework. As a unique commodity, medical medicines and devices are an essential part of realizing fundamental human rights-the right to health, with essential social functions, which should be available to all human beings. However, such trade clauses related to intellectual property protection often impose stringent patent protection conditions on developing countries, allowing those already wealthy developed countries to gain more trade advantages and evade trade sanctions. That means the IP law progressively commodifies those essential medical drugs and supplies to combat the viruses, sacrificing the poor’s right to health and life just for corporate profitability [19]. In fact, as early as April 2020, the United Nations Committee on Economic, Social and Cultural Rights has admitted that our investment in the global public health system has been obviously insufficient for decades [20]. In the absence of adequate supervision, the privatization and commercialization of medical supplies have created countless incredible inequalities. Therefore, the international human rights community has strongly criticized and questioned the intellectual property system’s behavior of putting property rights above human rights, especially the right to health, the right to life, and the right to benefit equally from scientific progress [20].

2.3. It is a Challenge for TRIPS Flexibility under the Doha Declaration to Resolve COVID-19 Vaccine Shortages

Since the publication of TRIPS, many low-income countries have been actively resisting the system, believing that it is an unjust extension of colonial nature in the new era and will cause serious human rights violations. At the same time, international trade disputes on this issue have continued to emerge. On the one hand, it heralds the frequent outbreak of global public health crises. On the other hand, it also heralds the institutional tensions and conflicts between trade and human rights protection.

In *Pharmaceutical Manufacturers' Association of South Africa v President of the Republic of South Africa*, at that time, the epidemic was particularly prevalent in Africa, with over 4.7 million individuals in South Africa alone infected with HIV [21]. However, almost all of the most critical medicines are protected by intellectual property rights, making them too expensive for the general public to afford. Thus, to handle this, the South African government passed the one Medicines Act, stipulating that the South African Government can use parallel importing to obtain cheaper patented essential medicines from other countries; and authorize one patent-protected medication non-commercial government use to produce or import them through compulsory licenses [21]. This is an essential measure adopted by the South African government to bring down the price of medicines and enhance their availability, consequently lowering the prevalence of AIDS and other infectious infections. Additionally, it is a South African effort to protect the health, safety, and well-being of its population via the exercise of sovereign rights.

However, shortly after South Africa issued the amendment of their Act, the US listed it in the Section 301 investigations and warned to slap trade sanctions on it if it did not alter it. Then, at the beginning of 1998, the local Pharmaceutical Manufacturers Association and many transnational pharmaceutical corporations brought an action against the South African government, alleging that the alteration infringed the TRIPS agreement and the nation's Constitution. However, when these pharmaceutical companies sued, nearly 400,000 persons in South Africa died of AIDS due to their incapacity to afford the pricey treatment. Therefore, the behavior of multinational companies that ignores human rights and marginalizes the interests of the poor has aroused strong criticism and protests from the international community. Furthermore, MSF collected 300,000 signatures from 130 nations on a worldwide petition requiring multinational corporations to abandon their lawsuit [45]. In the end, due to the pressure from the international community and unsupported litigation reasons, these companies unconditionally dropped all arguments and spontaneously reduced medicine prices and provided relevant drugs.

Another classic example is the *Drug Companies v Brazil*, [22] where Brazil has taken a series of measures to protect public health in an attempt to decrease the price of AIDS medicine. Consequently, multinational pharmaceutical companies have vehemently opposed its positive actions. Because developed countries, headed by the US, worry that other low-income countries would follow Brazil's path and deny multinational pharmaceutical companies absolute control over medicine prices and patents. Thus, since the 1980s, the United States has repeatedly exerted diplomatic pressure on Brazil and imposed a number of trade sanctions against Brazil in an effort to sway Brazil's patent system and drug policy in favor of U.S. business interests [46]. Likewise, the US's sanctions against Brazil has been strongly criticized by the international community. Finally, in June 2001, the United States and Brazil reached an agreement, where the two parties agreed to terminate the dispute settlement procedure, under the proviso that if Brazil considers that Article 68 must be implemented to patents owned by US corporations, Brazil shall consult with the American government prior to granting a forced license.

There is no doubt that in the above cases, multinational companies and some developed countries have placed too much emphasis on the protection of intellectual property rights and have put commercial interests above the protection of human rights, which will have a severe negative impact on the prevention and treatment of public epidemics. To this end, the WTO has obtained the consent of member states and issued the "Doha Declaration on Trade-Related Intellectual Property Rights and Public Health." [47]. This document emphasizes the significance of human rights and enables members to utilize the TRIPS system's maximum flexibility to respond to public health emergencies, ensuring that they can obtain affordable and effective basic medical supplies, including vaccines, promptly [24]. However, the policy on the flexibility of TRIPS soon also aroused strong opposition and criticism from pharmaceutical companies and the governments of developed countries where they are located.

Similarly, in the context of COVID-19, developed countries' extreme opposition to the use of TRIPS flexibilities is still fermenting. Moreover, many low-income countries are reluctant to adopt TRIPS flexibility because it doesn't work that well. Although this rule allows low-income states without sufficient manufacturing capability to acquire generic pharmaceutical medicines produced under obligatory licensing, [25] it merely offers a conceptual legal framework that is challenging to execute in reality. For instance, in the *Rwanda-Canada Case*, Rwanda, with the assistance of specialists from *Medecins Sans Frontieres (MSF)* and the *Clinton Foundation*, imported the anti-retroviral drug *APO-Triavir* from *Apotex*, a Canadian generics manufacturer. Despite the support of many professionals, it took nearly a year for Rwanda to finally import the first batch of medicines, which was too long in the emergency of fighting HIV/AIDS and other epidemics. In the end, it was abandoned because of the complicated or cumbersome approval and import and export procedures [26].

Additionally, the intricacy of this regulation was exacerbated under the COVID-19 pandemic as a result of the rapid production of vaccines, which led to the loss of transparency about the patent procedure. Due to the vast global demand, a large number of public funds have been invested and used in the development and production of the COVID-19 vaccines. However, according to the investigation, there is a severe lack of transparency in the process of vaccine development and supply, which increases the risk and defects of the implementation of TRIPS flexibility [48]. Furthermore, taking the European Union as an example, to date, no significant generic drug manufacturer has expressed an interest in utilizing TRIPS flexibilities, and many developed states continue to lack favorable political will, even though TRIPS flexibilities have already provided an ideal legislative framework [26].

In summary, imperfect and unbalanced legal structures, hard-to-implement rules, difficulties in international collaboration, and enormous economic and pandemic pressures conspire to perpetuate and deepen global health and vaccine access inequities.

2.4. The TRIPS Waiver Proposal has been Rejected

Although the international community has always emphasized the importance of making COVID-19 vaccines and crucial technologies the “global public products” to fight the epidemic, [49] pharmaceutical corporations in high-income states continue to oppose intellectual property protection relaxation or suspension, as well as sharing of critical pharmaceutical knowledge and technologies with southern low-income countries. Therefore, in order to break this deadlock, India and South Africa proposed a “TRIPS waiver” proposal last year, which has received strong support from the international community so far [27]. This proposal aims to promote universal vaccination and immunization, and hopes to temporarily suspend TRIPS’ particular requirements on the treatment, control and prevention of coronavirus [28]. Thus, states would not be obligated to offer strict intellectual property protection for COVID-19-related treatment, diagnosis, and pharmaceutical technologies during the pandemic. We will be able to rapidly expand the production of COVID-19 medical products globally in order to meet the enormous demand for vaccines while also thoroughly ensuring the poor’s equitable access to these essential medicines.

Although 57 mainly developing countries have supported this proposal, [50] many developed countries have blocked it at the WTO, which will undoubtedly exacerbate shortages in vaccine production and delay the global rollout of vaccines again. However, if the global vaccine is not promoted in time, the scarcity of vaccines will further deepen the negative impact of this epidemic. According to statistics, due to the fight against the epidemic, the world has lost nearly 9.2 trillion US dollars; what is worse is that half of it will be borne by developed economies, [51] which will undoubtedly deepen the determination of developed countries to make profits through vaccine commercialization. Therefore, these high-income countries will express strong opposition to the exemption proposal, completely forget about the obligation to protect human rights and promote international solidarity, and attempt to quickly obtain huge economic returns by using the intellectual property protection system [19]. This behavior of developed countries is exacerbating the long-term predicament of the epidemic, which has resulted in a vicious circle.

2.5. The Limitation of COVAX and Inequalities Between Countries

Vaccine nationalism or vaccine apartheid is a phenomenon in which high-income states enter into advance purchase agreements (APAs) with pharmaceutical corporations in order to secure the global supply of vaccines for their people at the expense of other countries, which has even been regarded as a new kind of imperialism, the vaccine imperialism, by some scholars [19]. According to the authoritative survey, almost 3.8 billion doses of COVID-19 vaccination have already been acquired by developed nations, which means those developed countries will be capable of vaccinating their populations even twice over [29]. In contrast, countries from the Global South are left behind and facing inequitable vaccine access. As a result, it is clear that the present worldwide distribution of COVID-19 vaccinations is mostly determined by uneven distributions of political influence, economic strength, and other capabilities, rather than by the demands of each country’s population or the intensity of the epidemic. Then, these developed countries ordered large quantities of vaccines, stockpiled them, monopolizing production and driving up prices, ultimately reducing access to vaccines in low-income states. During the global pandemic, this new imperialism marginalized the human rights and interests of disadvantaged groups and unscrupulously violated human rights under the framework of intellectual property law.

Therefore, the vaccine apartheid is hampering the effectiveness and operation of the COVID-19 Vaccine Global Access Facility (COVAX), which is a pooled procurement mechanism for COVID-19 vaccinations that intends to speed the research and production of COVID-19 vaccinations while ensuring balanced and equal access for all countries worldwide [30]. Although the value and significance of this mechanism cannot be ignored, it is still insufficient. Firstly, its initial purpose is to vaccinate only 20% of the population of every participant, thus the effectiveness is pretty limited facing the rapid rate at which the virus mutates [30]. In addition, although the financing tool called the COVAX Advance Market Commitment (AMC) has been launched, it is still facing severe financing challenges; so far, it has only raised less than one-third of its original goal of \$2 billion [30]. Furthermore, the developed countries and pharmaceutical companies firmly block such technology transfer and sharing supported by the COVAX. Therefore, coupled with the own shortcomings of COVAX, under the substantial obstruction of “imperialism,” its future is bleak.

Therefore, because of the complexity of COVAX, some developing countries facing severe threats had to give up the charitable model of the COVAX scheme and directly deal with vaccine manufacturers in developed countries, hoping to buy vaccines. However, in many situations, the only option for them to acquire vaccinations is to incur further indebtedness, which will reduce their expenditure on health system improvement and force them to repay these loans [10]. To make matters worse, under this unfair capacity gap, developing countries are significantly lacking in the ability to compete with high-income states, resulting in insufficient negotiating power in signing vaccine contracts, and ultimately paying significantly more than those high-income ones. Accordingly, as of June 2021, the World Bank has provided \$12 billion through grants and extremely low-interest loans to procure and distribute COVID-19 vaccines for developing countries [31]. As a consequence of the COVID-19 epidemic, many poor nations have been pushed to engage in international trading networks that result in their inhabitants being exploited by unfair global economic systems and intellectual property rules. And there is no doubt that these unequal trades and debts will impair the growth of these developing nations, reducing their ability to meet their commitments to defend their citizens’ human rights, notably their right to health.

2.6. Limitations of Human Rights Resolutions

Since 2020, multiple international human rights organizations have released a slew of documents or resolutions urging international cooperation in combating COVID-19-related human rights violations. Nonetheless, the efficacy of these remedies seems to be limited.

The resolution by the Human Rights Council underscores that “equitable access to health products is a matter of global priority” and “the availability, accessibility, acceptability and affordability of health products of assured quality are fundamental to tackling the pandemic.” [9]. It then encourages all nations and other relevant stakeholders, to “remove unjustified obstacles restricting the export of COVID-19 vaccines” and to “take

appropriate measures to guarantee the fair, transparent, equitable, efficient, universal and timely access” to COVID-19 vaccine for all [9].

Meanwhile, CESCR emphasized that countries has responsibilities to “devote their maximum available resources to the full realization of all economic, social and cultural rights, including the right to health” and they “must make every effort to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups.” [32]. Then on 23 April 2021, CESCR acknowledged that there had been “inequality within and among countries” and emphasized that “the flexibilities of the TRIPS Agreement have thus far proven insufficient” and “the current restrictions imposed by the intellectual property rules in the TRIPS Agreement make it very difficult to achieve the international cooperation needed for the massive scale up in production and distribution of vaccines.” [52].

Although these documents clarify the current difficulties and challenges in the anti-epidemic process, and also emphasize the content of the obligations of relevant subjects and the importance of human rights protection, they have not received sufficient attention from developed countries and not effectively prevented the trade system from infringing on human rights, and the ongoing unfairness of vaccine access. As for the resolution of “Ensuring equitable, affordable, timely and universal access for all countries to vaccines in response to the coronavirus disease (COVID-19) pandemic” by the UN Human Rights Council, some scholars believe that it merely reiterates the right for countries to take advantage of TRIPS flexibilities, instead of advocating such measures as a best practice for fulfilling States’ duties to protect human rights, which may weaken the strong foundation for vaccine access and human rights protection in this resolution [12]. In addition, it vaguely referred to some of the obligations of “other relevant stakeholders” rather than directly addressing the non-states actors’ responsibilities to respect human rights, especially the multinational corporations’ under the UN Guiding Principles on Business and Human Rights [15, 53]. In the end, the coalition of developed countries completely ignored these pertinent proposals and statements. They hindered the TRIPS waiver proposal, restricted the effectiveness of COVAX, increased the inequality of vaccine access between countries, forced developing countries to participate in unfair vaccine purchase agreements, and were driven by interests to put the protection of so-called intellectual property rights or the trade order over the protection of human rights.

3. Suggestions: How to Protect Human Rights Under the Pandemic Better

3.1. Global Health Emergencies have Heightened the Need for Global Solidarity

Global solidarity via international collaboration is a human rights requirement as well as a public health need on a worldwide scale. The United Nations General Assembly emphasized the significance of “full respect for human rights” and the prohibition of “any form of discrimination, racism, or xenophobia” in the fighting against the COVID-19 epidemic [33]. Under the COVID-19, the CESCR has declared that “access to a vaccine that is safe, effective and based on the best scientific developments is an essential component” [52] of “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” which has been stipulated in the Article 12 of *International Covenant on Economic Social and Cultural Rights* [54]. Meanwhile, the CESCR regrets the inequitable access to vaccines caused by the monopoly of vaccines by some countries, and stresses that countries have the responsibility “to support, to the maximum of their available resources, efforts to make vaccines available globally.” [54]. Thus, to combating pandemics, we need the “scientific international cooperation to face transnational threats”, because “viruses and other pathogens do not respect borders.” [34].

In the near future, as global warming intensifies, the planet will face more global health threats, just like COVID-19, involving the outbreak of new viral infections and large-scale climate disasters, ecological degradation, earthquakes, and tsunamis and other natural disasters. If the world cannot unite to improve sanitation safety systems and relevant reparative policies and continues to dismiss the voices of the oppressed, the COVID-19 will worsen racial, ethnic, disability, gender, socioeconomic, and age inequities and animosities [55]. Therefore, no country can face these threats alone. To tackle them, we must completely share knowledge, technology, medical supplies, and other resources; and coordinate our efforts to mitigate the crisis's impact on the economy, society, and, most importantly, human rights [20].

Furthermore, the principles of cooperation require that nations concentrate the fulfilment of “the rights of vulnerable, disadvantaged, and marginalized populations.” [35]. And CESCR also affirmed in the statement that “the needs of vulnerable and disadvantaged groups as well as fragile countries, including least developed countries, countries in conflict and post-conflict situations,” should be prioritized in such global endeavors [15]. However, because vaccine manufacturing is very specialized, merely a tiny percentage of nations can produce the vaccine in the quantities required, [56] which all have strong political and economic power but seem to have weak cooperation initiatives. Given the present situation, just calling for voluntary commitment and cooperation is not enough to ensure essential technologies and medicines are widely shared with developing countries. Additionally, to strengthen the production and allocation abilities of essential medical supplies in order to guarantee fair access to the COVID-19 vaccines, the “binding commitments” to promote accessible information, technologies, data exchange, and worldwide “non-exclusive rights” to fabricate COVID-19 medical supplies, should be implemented instantly [37].

Moreover, the COVID-19 Technology Access Pool (C-TAP) by WHO also provides an electronic platform for developers of medical products to share the relevant researches, technologies, and IP data “through public health-driven voluntary, non-exclusive, and transparent licenses,” which can function as one complementary mechanism to facilitate equitable and timely access to essential medical supplies [36].

3.2. Emphasizing the Human Rights Obligations of Non-State Actors

There has always been a traditional understanding that states are the sole agents bound by human rights obligations [38]. Still, under the COVID-19, this historical fixation has been challenged by the growth of non-state actors’ influence. Thus, several academics and human rights advocates have fought to highlight the non-state actors’ human rights obligations, particularly multinational corporations, as advocated in the resolutions of human rights institutions discussed above. However, this is not to say that if safe and efficient vaccines are

developed successfully, corporations should not be fairly rewarded for their efforts but rather call on these pharmaceutical companies and other stakeholders to work collaboratively and globally to address COVID-19 successfully. Thus, those non-state actors are critical to developing, impacting, and funding worldwide health and human rights systems under the pandemic.

Firstly, countries should guarantee that those corporations receiving government assistance should respect human rights and establish appropriate disclosure and accountability mechanisms for assessing and monitoring the behavior of these enterprises, which can be carried out on the platforms with different dimensions, including domestic, regional, and international scale. Moreover, although the international human rights law has recognized that corporations have the direct obligation to “respect” human rights, including the right to live and health, [57] it just seems to require not to make situations worse, like a kind of negative responsibility [53]. However, in the context of globalization, many scholars and human rights communities strongly demand that these non-state actors or other stakeholders should undertake more obligations to protect human rights; thus we need to accelerate the process of clarifying the content of their responsibilities in the international human rights law and continue to monitor and assess them [39]. Perhaps we can follow the proposals of the “Guiding Principles on Corporate and Human Rights” and impose an independent obligation on all corporations to safeguard and promote human rights; to do so, these businesses must perform “human rights due diligence” by “identifying, preventing, mitigating, and accounting” for how they handle human rights effects, as well as effectively managing prospective and existing detrimental health human rights implications [40].

In addition, some non-state actors, like non-governmental organizations, can also play a critical role in inspecting unreasonable exercise of government power. They have a powerful voice in pressuring nations and international organizations to use their legal capabilities to advance fairness and human rights, such as protecting marginalized or vulnerable groups [16]. Furthermore, some private charitable organization has become a significant funder of global health, like the Bill & Melinda Gates Foundation, which has partnered with other organizations to gather experts, executives, and public health specialists to conduct clinical trials of current medications against viral disease and ensure that effective medical products reach all those in need [41]. Therefore, the participation of non-State actors in international cooperation can, to some extent, increase the legitimacy, transparency, justice, and democracy of these projects.

4. Conclusion

Therefore, in the context of COVID-19, a series of intellectual property protection regulations inside the global trading system are abused by multinational companies and developed countries in order to maximize profits at the expense of the human rights and interests of low-income countries and their persons. They privatize and commercialize basic medical supplies necessary to fight the epidemic, especially the vaccines, resulting in significant disparities in access to the COVID-19 vaccines on a worldwide scale. This injustice is also called “vaccine apartheid” by many scholars, and can even be regarded as a continuation of the new “imperialism” during the COVID-19. Under the shadow of capitalism and imperialism, the failure of TRIPS flexibility and waiver proposal and the dilemma faced by COVAX seem to be doomed.

These high-income countries have a weak awareness of human rights protection, lack sufficient enthusiasm for international cooperation, blindly place commercial interests above the right to health and life, and ignore the cry for help from the oppressed people from the bottom. What needs to be emphasized is that in addition to reiterating the importance of human rights, the resolutions and statements of human rights protection organizations should have more pragmatic and thorough recommendations and measures. While we cannot deny the efforts of human rights organizations and advocates, they continue to seek more support and assistance from both state and non-state actors. As a result, the subject categories and duties of non-state actors, particularly transnational businesses, should be more clear. With such a rapid rate of viral mutation under COVID-19, we must also accelerate the process of exchanging technology, knowledge, and resources, particularly those related to medical supplies. Additionally, the trading system should not be regarded as a means of violating human rights, but rather as a way of promoting humanity's collective development and advancement. Whether at the international or domestic level, human rights protection should be recognized as the highest moral and legal norm. Finally, regardless of whether these aspirations can be completely realized, we should do all conceivable for the goal of human rights protection, confronting the endless challenges.

As stated in the main body of this paper, while people in developed countries can get twice the amount of the COVID-19 vaccines, the populations of many southern countries are not even able to get the first dose of vaccine; when the South African government tried very hard to use national sovereignty to amend the act just for introducing low-cost drugs to treat its AIDS patients, developed countries and multinational corporations strongly blocked and opposed it, and eventually the South African government had to be forced to give up; when... Without these cases, I never thought that there would be such injustice and cruelty in the same world. But in fact, in the face of the epidemic, only viruses are the enemy of mankind, and everything else is our partners and comrades in arms. Human rights protection is the forever theme and goal that mankind has guarded throughout life. When COVID-19 rages beyond national boundaries, what else is required of us but solidarity and cooperation?

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