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Reconstructing Global Health Law Post-Pandemic: Juridical Analysis of IPR and Equitable Access under WHO Pandemic Treaty

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Abstract. *This study examines the juridical architecture of global health law in the post-pandemic context, focusing on the tension between intellectual property rights (IPR) protection and equitable access to medical resources. The COVID-19 pandemic exposed structural weaknesses and inequalities in global health governance, particularly in the distribution of vaccines and essential medical technologies. This research aims to analyze how the evolving WHO Pandemic Treaty framework can serve as an integrative legal instrument to reconcile these competing interests. The study employs a normative juridical method using statutory, conceptual, and case-based approaches, supported by qualitative legal analysis and the IRAC method to structure legal reasoning. The findings reveal that the current global health law architecture remains dominated by the IPR regime, which prioritizes innovation protection but inadequately ensures equitable access, especially for developing countries. Furthermore, mechanisms such as TRIPS flexibilities have not been effectively operationalized due to political, structural, and institutional constraints. The study also finds that global responses during the pandemic were shaped by power asymmetries and economic capacity rather than public health needs, leading to systemic inequities. As a novel contribution, this research highlights the potential of the WHO Pandemic Treaty as a transformative legal framework capable of integrating distributive justice principles, strengthening IPR flexibilities, and establishing binding obligations for equitable access. However, its effectiveness depends on robust normative design, enforceability mechanisms, and sustained political commitment from member states.*

Keywords: *Equitable Access; Global Health Law; Intellectual Property Rights; WHO Pandemic Treaty.*

1. Introduction

The COVID-19 pandemic has constituted a critical juncture that rigorously tested the resilience and effectiveness of the global health law architecture. This crisis not only exposed structural weaknesses in national health systems but also revealed deep-seated inequities in the international distribution of medical resources. A growing body of scholarship demonstrates that access to vaccines, therapeutics, and health technologies has been largely shaped by states' economic and political power rather than by public health needs (Moon et al., 2017; Forman & Kohler, 2020; Gleeson et al., 2023). These dynamics underscore the inability of the current global health legal framework to fully uphold principles of equity and justice in times of global health emergencies.

From a normative perspective, international health law largely institutionalized under the framework of the World Health Organization (WHO) is expected to reconcile the protection of intellectual property rights (IPR) with the fulfillment of the right to health as a fundamental human right. However, in practice, the global IPR regime, particularly under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), has often functioned as a barrier to accessing essential medical products (Pedraza-Fariña, 2021; Pasechnyk, 2022). WTO et al. (2020) pharmaceutical patent protection in emergency contexts can delay the production and distribution of more affordable generic medicines, thereby exacerbating tensions between innovation incentives and urgent public health needs.

Empirically, the COVID-19 pandemic has illustrated the phenomenon of "vaccine nationalism," whereby high-income countries secured disproportionate shares of vaccine supplies through bilateral agreements with pharmaceutical manufacturers. Emanuel et al. (2020) demonstrate that global vaccine allocation was driven more by purchasing power than by epidemiological urgency. Consequently, many low- and middle-income countries experienced significant delays in vaccine access, contributing to increased morbidity and mortality. This pattern reflects systemic imbalances in global health governance that remain inadequately addressed by existing legal mechanisms.

In response to these shortcomings, the international community, under the auspices of the WHO, has initiated the development of a new legal instrument known as the WHO Pandemic Treaty. This proposed treaty aims to strengthen global coordination in future pandemic preparedness and response, including equitable distribution of medical resources, enhanced transparency, and technology transfer mechanisms. Eccleston-Turner & Upton (2021) suggest that this instrument holds transformative potential for reforming global health governance. Nevertheless, its negotiation process faces substantial challenges,

particularly in reconciling divergent interests between developed countries prioritizing strong IPR protection and developing countries advocating for equitable access to health technologies.

Despite extensive scholarship on the tension between IPR protection and access to medicines, existing studies remain largely fragmented and sector-specific, often focusing on isolated mechanisms such as TRIPS waivers or compulsory licensing. Such approaches fall short of offering a comprehensive framework for integrating these competing interests within a coherent global health legal architecture. Moreover, current analyses of the WHO Pandemic Treaty remain predominantly normative and descriptive, lacking in-depth juridical examination of its potential implications for balancing IPR protection and equitable access to medical resources.

Accordingly, a significant research gap persists between the urgent need for an integrative global legal framework and the fragmented nature of existing academic discourse. Prior studies tend to conceptualize IPR and access to health as inherently conflicting domains, without advancing a systematic model of reconciliation within emerging global legal instruments such as the WHO Pandemic Treaty (Gostin et al., 2020).

Against this backdrop, this study aims to provide a juridical analysis of the post-pandemic global health law architecture, with a particular focus on reconciling intellectual property protection and equitable access to medical resources through the evolving framework of the WHO Pandemic Treaty.

2. Research Methods

The statutory approach is utilized to examine key legal instruments, particularly the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the evolving WHO Pandemic Treaty framework. The conceptual approach engages with relevant legal doctrines and principles, especially those concerning the right to health as a fundamental human right and the protection of intellectual property. Meanwhile, the case-based approach is applied to assess the practical implementation of these legal norms during the COVID-19 pandemic, enabling a contextual understanding of how legal frameworks operate in emergency situations (Marzuki, 2017). In addition, this study incorporates the IRAC (Issue, Rule, Application, Conclusion) method as an analytical tool to structure legal reasoning and argumentation.

This research is descriptive-analytical in nature, aiming not only to describe but also to critically analyze the structure and dynamics of the global health law architecture in the post-pandemic context. Data collection is conducted through library research, encompassing the examination of primary, secondary, and

tertiary legal materials. Primary legal materials include international treaties and relevant regulatory instruments; secondary materials consist of peer-reviewed journal articles and academic literature; while tertiary materials include legal dictionaries and reference sources. The data are analyzed using a qualitative legal analysis, involving the interpretation, systematization, and construction of legal materials to develop coherent and comprehensive legal arguments aligned with the research problem (Soekanto & Mamudji, 2010).

3. Results and Discussion

3.1. Imbalance in the Global Health Law Architecture: Intellectual Property Rights and Equitable Access to Medical Resources

The findings reveal that the post-pandemic global health law architecture remains predominantly shaped by the intellectual property rights (IPR) regime, which provides robust protection for pharmaceutical innovation but is not adequately balanced by mechanisms ensuring equitable access to medical products. Within the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), patent protection frequently delays the production and distribution of generic medicines, particularly in developing countries. Although legal flexibilities such as compulsory licensing exist, their implementation remains limited due to political pressures and structural dependencies within the global economy. This condition reflects a normative disjunction between the protection of IPR and the realization of the right to health as a fundamental human right.

These findings align with the theoretical framework of global health governance, which posits that global health regulation is shaped not only by formal legal norms but also by power asymmetries among states and non-state actors, including multinational pharmaceutical corporations. From this perspective, the global legal structure tends to reflect the interests of technologically advanced countries, thereby reinforcing inequitable access for developing states (Gostin et al., 2020; Prado & Trebilcock, 2021; Pandey et al., 2022). The dominance of the IPR regime can thus be understood as a manifestation of structural power imbalances embedded within international law.

From the standpoint of global justice theory, particularly distributive justice, this situation illustrates a failure to equitably allocate the benefits of health innovation (Jecker et al., 2023; Diaz-Granados et al., 2024). Distributive justice requires that access to essential health resources especially during global emergencies be determined by need rather than economic capacity. However, the findings indicate that the IPR regime reinforces market-based logics, whereby access to medicines and vaccines is largely contingent upon states' purchasing power. Who demonstrate that COVID-19 vaccine distribution disproportionately favored

countries with greater financial capacity rather than those with the most urgent epidemiological needs (Daems & Maes, 2022; Privor-Dumm et al., 2023).

Muzaka (2023) corroborates that pharmaceutical patent protection often impedes the production of affordable generic medicines, thereby constraining broader public access to healthcare. While TRIPS flexibilities, such as compulsory licensing, are theoretically designed to mitigate these barriers, the present study finds that their practical application remains limited. This limitation is attributable to multiple factors, including diplomatic pressure from developed countries, insufficient domestic manufacturing capacity in developing states, and the procedural complexity associated with invoking such legal mechanisms.

The findings also reinforce the argument advanced by Harman & Papamichail (2024) that global health, as a global public good, has yet to be fully realized within the practice of international law. When medical products are treated as exclusive commodities protected under IPR regimes, access becomes inherently restricted and unevenly distributed. This reveals a fundamental misalignment between the normative principles underpinning global health law namely solidarity and equity and the realities of implementation, which remain driven by economic and national interests.

The imbalance between IPR protection and equitable access to medical resources is not merely a technical legal issue but reflects deeper structural inequalities in the global order. Addressing this imbalance requires a reconstruction of the global health law architecture, one that integrates principles of distributive justice, strengthens the operationalization of IPR flexibilities, and firmly prioritizes the right to health within international legal policymaking.

3.2. Global Access Inequality in Pandemic Response

The analysis of practices during the COVID-19 pandemic reveals significant disparities in access between developed and developing countries. The phenomenon of vaccine nationalism, coupled with the dominance of multinational pharmaceutical corporations, has reinforced monopolistic control over the distribution of vaccines and health technologies. The allocation of medical resources has largely been driven by states' financial capacity rather than epidemiological need. This condition reflects weak coordination mechanisms and limited enforceability within global health law, resulting in the suboptimal realization of distributive justice.

These findings are consistent with the framework of global political economy, which emphasizes that the distribution of global resources including in the health sector is deeply shaped by asymmetrical international economic and political structures. Within this framework, developed countries occupy dominant

positions due to their control over manufacturing capacity, technological innovation, and global supply chains. Consequently, access to vaccines and therapeutics becomes concentrated among a limited group of states, while developing countries face substantial access constraints. Inequities in pandemic response are inseparable from broader structural inequalities embedded within the global system (Forman & Kohler, 2020; Sierra et al., 2023; Cheshmehzangi & Zou, 2025).

From the perspective of distributive justice theory, the practice of vaccine nationalism constitutes a deviation from the principle of need-based allocation. Emanuel et al. (2020) argues that, in the context of a global pandemic, vaccine distribution should prioritize public health risk and urgency rather than economic capacity. However, the findings of this study indicate that high-income countries secured large quantities of vaccine supplies through bilateral agreements, often exceeding their domestic needs. This practice directly constrained access for developing countries and contributed to prolonging the duration and global impact of the pandemic.

Moreover, these findings are closely linked to the concept of health inequity in global health studies, which highlights avoidable and unjust differences in access across countries. Moon et al. (2017) contends that the failure to equitably distribute health resources reflects a weak commitment to treating health as a global public good. In this regard, international mechanisms such as COVAX (COVID-19 Vaccines Global Access) designed to ensure equitable vaccine distribution have fallen short of their intended objectives. This shortfall can be attributed to limited funding, reliance on voluntary contributions from high-income countries, and the absence of binding legal force.

Eccleston-Turner & Upton (2021) further confirm that global vaccine distribution initiatives continue to face substantial challenges in terms of both equity and effectiveness. Their analysis highlights that reliance on market-based mechanisms and public–private partnerships tend to favor actors with greater resources, thereby marginalizing developing countries. These findings reinforce the conclusion that, in the absence of stronger and binding legal interventions, patterns of access inequality are likely to persist in future global health crises.

The unequal access observed during the COVID-19 pandemic reflects not only technical failures in distribution but also deeper structural deficiencies within the global health law architecture. The inability of international legal frameworks to ensure fair and enforceable distribution mechanisms underscores the need for comprehensive reform. Accordingly, a more progressive and justice-oriented legal approach is required one that moves beyond voluntary arrangements and

establishes clear, binding obligations for both states and non-state actors to guarantee equitable access to medical resources at the global level.

3.3. The WHO Pandemic Treaty as an Instrument for Reconstructing Global Health Law

The WHO Pandemic Treaty has emerged as a response to structural deficiencies in global health governance exposed by the COVID-19 pandemic. The findings of this study indicate that the proposed instrument holds significant potential to strengthen international solidarity, enhance transparency, and institutionalize mechanisms for resource-sharing and technology transfer. From a juridical perspective, the treaty may serve as a new normative foundation for recalibrating the balance between intellectual property rights (IPR) protection and public access to essential medical products. However, its effectiveness will depend critically on the extent to which Member States commit to adopting binding, inclusive, and enforceable provisions, particularly those addressing the needs of developing countries.

These findings can be situated within the framework of global health governance, which underscores the necessity of coordinated transnational responses to global health threats. Within this framework, the WHO Pandemic Treaty functions as an institutional mechanism aimed at strengthening collective state capacity in pandemic prevention, preparedness, and response. Gostin et al. (2020) meaningful reform of global health governance requires legal instruments that move beyond declaratory commitments and possess sufficient normative force to shape state behavior. Accordingly, the treaty represents an effort to overcome the fragmentation of international law that has historically hindered effective pandemic response.

From the perspective of regime complex theory, the WHO Pandemic Treaty can also be understood as part of a broader attempt to harmonize overlapping and sometimes conflicting international legal regimes, particularly those governing global health and international trade. Tensions between World Trade Organization (WTO) rules especially under the TRIPS Agreement and public health imperatives have long generated normative conflicts. Eccleston-Turner & Upton (2021) argue that without clear coordination across regimes, global health policies are unlikely to achieve equitable outcomes. In this regard, the treaty holds potential as an integrative legal mechanism capable of bridging the divide between IPR protection and access to health technologies.

Moreover, from the standpoint of global justice theory, the WHO Pandemic Treaty embodies an effort to institutionalize principles of equity and international solidarity in the distribution of health resources. Mechanisms such as technology transfer, pooled financing, and equitable allocation frameworks are expected to

operationalize these principles. However, prior research suggests that embedding justice within international law remains politically contested. State commitment to treating health as a global public good remains inconsistent, particularly when confronted with domestic economic and political priorities (Gostin et al., 2020; Lei, 2022).

At the same time, this study identifies enforceability and state compliance as central challenges to the effective implementation of the WHO Pandemic Treaty. Unlike legal regimes equipped with robust sanctioning mechanisms, many international health instruments continue to rely on voluntary compliance. This reliance risks undermining the treaty's capacity to achieve its intended objectives. The effectiveness of global legal instruments depends significantly on the presence of clear accountability mechanisms and sustained political commitment among participating states (Forman & Kohler, 2020; Lall, 2025; Sellers, 2006).

While the WHO Pandemic Treaty presents a strategic opportunity for reconstructing the global health law architecture, its success will hinge not only on normative design but also on institutional architecture and implementation mechanisms. Without a coherent integration of distributive justice principles, strengthened IPR flexibilities, and binding legal obligations, the treaty risks failing to address the systemic access inequities revealed during the COVID-19 pandemic. Therefore, a more comprehensive and structurally robust approach is required to ensure that the treaty can effectively reconcile innovation incentives with the imperative of equitable global access to medical resources.

3.4. Integrating Intellectual Property Rights and Equitable Access to Medical Resources

Efforts to reconcile intellectual property rights (IPR) with equitable access to medical resources require an integrative approach within the global health law architecture. This can be achieved through strengthening the operationalization of flexibilities within the IPR regime, enhancing harmonization between the World Trade Organization (WTO) and World Health Organization (WHO) legal frameworks, and developing global distribution mechanisms grounded in public health needs. Furthermore, advancing the paradigm of health as a global public good is essential, ensuring that access to medical products is not determined solely by market dynamics but recognized as a universal entitlement safeguarded under international law.

These findings align with regime interaction theory in international law, which emphasizes the importance of coordination among overlapping legal regimes to avoid normative conflicts. In this context, the relationship between the international trade regime (WTO) and the global health regime (WHO) has long been characterized by tension, particularly regarding patent protection and access

to medicines. Eccleston-Turner & Upton (2021) argue that without effective harmonization, global health policies will remain fragmented and insufficiently responsive to crises. Accordingly, regime integration constitutes a strategic pathway toward achieving greater coherence within the global legal order.

From the perspective of the access to medicines framework, integrating IPR protection with public health imperatives requires a careful balance between innovation incentives and societal needs. While IPR protection plays a crucial role in promoting pharmaceutical research and development (R&D), rigid regulatory structures may generate exclusivity that restricts access. TRIPS flexibilities such as compulsory licensing and parallel importation—must be effectively operationalized to ensure the availability of affordable medicines (AL-HAMDANI, 2025; Tshering & Tshering, 2026) Md. Josim Uddin & Hossen, 2025). However, the findings of this study indicate that the implementation of these mechanisms remains suboptimal due to political pressures and asymmetries in state capacity.

In addition, global justice theory provides a normative foundation for this integration by underscoring that the distribution of health resources should be based on principles of equity and need. Emanuel et al. (2020) proposes allocation frameworks that prioritize risk exposure and public health urgency rather than economic strength. In this regard, the development of equitable global distribution mechanisms such as strengthening COVAX or similar models—forms a critical component of global health law integration. Nevertheless, as evidenced in prior research, such mechanisms continue to face challenges related to funding limitations, inconsistent state commitment, and weak legal enforceability.

The findings also reinforce the argument advanced by Moon et al. (2017) that health must be conceptualized as a global public good, necessitating collective governance and international solidarity. Within this framework, international law functions not only as a regulatory instrument but also as a mechanism of redistribution aimed at ensuring equitable access. Consequently, the integration of IPR and equitable access should be directed toward establishing legal norms that prioritize global public interests, including obligations related to technology transfer and transnational collaborative production.

From an institutionalist perspective, this integrative approach also requires institutional reform to ensure effective implementation of legal norms. The success of global legal frameworks depends significantly on the capacity of institutions to manage competing interests and enforce compliance. The WHO must be strengthened not only as a coordinating body but also as a normative authority with greater regulatory influence over global health resource distribution (Burci & Negri, 2022; Gostin et al., 2024). Thus, legal integration must be complemented by robust and responsive institutional structures.

Integrating IPR protection and equitable access to medical resources constitutes a foundational step in reforming the global health law architecture. This integration requires not only normative harmonization but also a broader transformation encompassing paradigm shifts, institutional strengthening, and sustained political commitment. Without such a comprehensive approach, the tension between IPR protection and access to healthcare will continue to impede the realization of a just and sustainable global health system.

3.5. Juridical Implications for Post-Pandemic Global Health Law Reform

The findings of this study underscore that the WHO Pandemic Treaty holds significant strategic potential for reforming the global health law architecture. However, in the absence of a robust normative design and sustained political commitment, the instrument risks being ineffective in addressing persistent structural inequities. Accordingly, there is a pressing need for legal policy formulations capable of integrating intellectual property rights (IPR) protection with principles of equity and accessibility in a sustainable manner, thereby fostering a more responsive and inclusive global health legal system.

From a juridical standpoint, a central implication of these findings is the need to reconstruct international legal norms so that they are no longer fragmented or sector-specific, but instead integrative across global health and international trade regimes. Within the framework of global legal pluralism, international law comprises multiple interacting regimes that often generate normative conflicts. In this context, the WHO Pandemic Treaty may function as a harmonizing instrument, aligning IPR protection with the obligation to fulfill the right to health. Meaningful reform of global health law requires the development of coherent legal norms oriented toward global public interests, rather than narrow national or corporate priorities (Gostin et al., 2020; Fidler & Gostin, 2017; Opolska et al., 2026).

From the perspective of distributive justice theory, the juridical implications of this study call for a stronger institutionalization of the principle of equity within international health law instruments. This can be operationalized through clearer and more enforceable provisions on technology transfer, patent licensing arrangements, and joint production mechanisms between developed and developing countries. Without legal interventions that actively promote IPR flexibility, access to essential medicines will remain constrained (Tenni et al., 2022; Cohen-Kohler et al., 2008). Therefore, legal reform must ensure that IPR protection does not impede the realization of the right to health, particularly in the context of global health emergencies.

Another critical implication concerns the need to strengthen enforceability mechanisms within global health law. Many existing international instruments rely

heavily on voluntary compliance (soft law), which has proven insufficient in crisis situations. From the perspective of compliance theory in international law, the effectiveness of legal norms depends on the presence of clear monitoring, reporting, and sanctioning mechanisms. Forman & Kohler (2020) argue that without robust accountability structures, state commitments to global health equity risk remaining largely rhetorical. Consequently, the WHO Pandemic Treaty should incorporate elements of hard law capable of ensuring binding obligations and enhancing state compliance.

In addition, the findings highlight the importance of repositioning health as a global public good within the international legal framework. Prior failures in pandemic response were partly driven by the dominance of market-based approaches in allocating health resources (Moon et al., 2017; David Williams et al., 2021). The juridical implication is the need for a paradigm shift in international lawmaking from an economic-interest-driven model toward a rights-based and solidarity-oriented approach. In this regard, the WHO Pandemic Treaty could serve as a normative foundation for institutionalizing these principles within the global legal order.

Post-pandemic reform of global health law requires a comprehensive and multidimensional approach, encompassing legal harmonization across regimes, strengthened equity principles, enhanced compliance mechanisms, and a fundamental shift in the conceptualization of health as a universal right. Absent such reforms, efforts to address structural inequities are unlikely to succeed. Therefore, the WHO Pandemic Treaty must be designed not merely as a reactive instrument for crisis management, but as a transformative legal framework capable of advancing a more just and sustainable global health system.

4. Conclusion

The post-pandemic global health law architecture continues to reflect structural imbalances dominated by the intellectual property rights regime, thereby failing to ensure equitable access to medical resources, particularly for developing countries. This study demonstrates that the persistent tension between innovation protection and the fulfillment of the right to health necessitates an integrative legal reconstruction through strengthening TRIPS flexibilities, harmonizing WTO and WHO legal regimes, and institutionalizing distributive justice principles within international law. The WHO Pandemic Treaty emerges as a novel and strategic instrument for reforming global health governance toward a more equitable and responsive system. However, its effectiveness depends on the establishment of binding normative provisions, robust enforcement mechanisms, and sustained political commitment from member states. Therefore, this study recommends the incorporation of enforceable obligations on technology transfer,

equitable allocation mechanisms, and mandatory compliance frameworks within the treaty to ensure that global health governance is not only normatively coherent but also practically capable of guaranteeing equitable access to medical resources as a global public good.

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