



Equity and technology in the pandemic treaty

Industry must not be allowed to block sharing of knowledge for medicines and vaccines

Matthew M Kavanagh,¹ Luis Gil Abinader,¹ Amanda Banda²

¹ Center for Global Health Policy and Politics, Georgetown University School of Health and O'Neill Institute for National and Global Health Law, Washington, DC, USA

² Center for Global Health Policy and Politics, Georgetown University School of Health and O'Neill Institute for National and Global Health Law, Lilongwe, Malawi

Correspondence to: M Kavanagh
Matthew.Kavanagh@georgetown.edu

Cite this as: *BMJ* 2023;383:p2533

<http://dx.doi.org/10.1136/bmj.p2533>

Published: 03 November 2023

Within a year of the first reported covid-19 cases, effective vaccines were approved in Europe and North America using technology that would win the Nobel prize.^{1,2} Yet just 1% of all vaccines produced in the first year went to low income countries.³ Much the same happened in the early years of HIV treatment. Breakthrough antiretroviral therapy slashed mortality in high income countries, but drugs were priced out of reach for people in Africa, Asia, and Latin America until intellectual property and production barriers were overcome and generic versions arrived.⁴ In both cases, remarkable scientific victory was undermined by similarly remarkable equity failure. The pandemics were prolonged, took many more lives, and had highly unequal impacts because of inequitable distribution.⁵⁻⁷

In the wake of covid-19, governments are negotiating a treaty (accord) to create an international legal framework for states' obligations before and during a pandemic. A new draft was released in October 2023.⁸ To ensure equity in future pandemics the treaty needs strong legal commitments on benefit sharing and technology transfer.

One provision in the new draft is already drawing the ire of pharmaceutical industry lobbyists: waivers on intellectual property. The draft says states shall “commit to agree upon ... time-bound waivers of intellectual property rights to accelerate or scale up the manufacturing of pandemic-related products during a pandemic, to the extent necessary.”⁸ The International Federation of Pharmaceutical Manufacturers and Associations reportedly called for no treaty at all rather than this current text, claiming it will undermine development of new pandemic products.⁹

This is strategic framing to close what political scientists call a “window of political possibility.”¹⁰ By labelling a relatively timid policy move toward sharing technology as radical and harmful, lobbyists seek to prevent more substantive policy change. This raises the question: what bigger policy moves are needed before the next pandemic?

Waiver rationale

Waiving intellectual property rights during a pandemic is a simple act of responsible policy making—necessary but not sufficient. When a pandemic hits, the world has no time to lose developing as much medicine, vaccine, and diagnostic capability as possible to stop it. Yet pandemic related products are covered by dozens or even hundreds of patents and other intellectual property protections, creating a legal monopoly for producers. Industry groups insist this is not a problem. But scientists working to set up an mRNA

manufacturing hub in South Africa found patents slowed efforts to build factories and secure investment.¹¹

The obvious solution is that when a pandemic is declared, a waiver on intellectual property comes with it. A waiver does not cancel patents or take away intellectual property rights. It simply returns policy making to national governments, temporarily suspending global rules so each country decides its own policy during the pandemic. Waivers in general are standard, regularly used mechanisms in international trade law.^{12,13}

A fairer system

During covid-19, mRNA vaccine producers made most of their sales and profits in high income countries.¹⁴ Even though these governments sometimes limit patents to help their own companies produce needed products,¹⁵ they usually enforce pandemic patent monopolies, waiver or not. So incentives to innovate change little in these markets. Some African, Asian, and Latin American governments might suspend patents in a pandemic to facilitate manufacturing for their populations. But multinational pharmaceutical companies showed that these markets are not valued by refusing to prioritise their covid-19 orders.¹⁶ Diversifying production is necessary. To work, the pandemic treaty needs stronger, not weaker language—committing simply to waive intellectual property rights in a pandemic, not as the current draft suggests, sending the question to the World Trade Organization, where we have seen institutional design and political interests block rapid action.¹⁷

Waivers are just one part of what is needed for the next pandemic. Governments should commit to actively sharing pandemic technology such as knowledge needed to make vaccines and treatments. The current draft commits states to share government owned technology, which could be important. Beyond that, however, the text only obligates states to “encourage” and “coordinate with, collaborate with, facilitate and incentivize” companies to share know-how. Even that is only on “mutually agreed terms,” despite the experience during covid-19 that companies simply refused to agree any terms. Governments and civil society in low and middle income countries have noted this weakness.¹⁸

Instead, the treaty should include commitments to condition research and development funding on sharing technology and know-how with low and middle income countries and, more broadly, transform the research and development ecosystem to place equity at its centre.¹⁹ Countries should commit to using their national legal authority to compel companies to share technologies in a crisis;

create predictable arrangements for accessing pandemic research and development results; fund coordinated building and maintenance of production capacity in low and middle income countries; and establish a right to access scientific knowledge to fight pandemics, similar to the biological weapons convention.²⁰

Recent pandemics have been so destructive in part because of failure to share technology. A new pandemic agreement could overcome this—but only if governments ignore industry’s misleading framing and make bolder commitments to act in the interest of public health before and during the next pandemic.

Competing interests: The BMJ has judged that there are no disqualifying financial ties to commercial companies. The authors declare the following other interests: MK is special adviser to the executive director of UNAIDS, but is not writing in that capacity. Further details of The BMJ policy on financial interests are here: <https://www.bmj.com/sites/default/files/attachments/resources/2016/03/16-current-bmj-education-coi-form.pdf>.

Provenance and peer review: Commissioned; not externally peer reviewed.

- 1 Ledford H, Cyranoski D, Van Noorden R. The UK has approved a covid vaccine—here’s what scientists now want to know. *Nature* 2020;588:–6. doi: 10.1038/d41586-020-03441-8 pmid: 33288887
- 2 Nobel Prize goes to scientists behind mRNA Covid vaccines. BBC News, 2 Oct 2023. <https://www.bbc.com/news/health-66983060>
- 3 Schellekens P. Trackers of vaccination by income group. Pandem-IC, 2022. <https://pandem-ic.com/trackers-of-covid-19-vaccination-by-world-bank-income-group/>
- 4 Smith RA, Siplon PD. *Drugs into bodies: global AIDS treatment activism*. Praeger Publishers, 2006.
- 5 Watson OJ, Barnsley G, Toor J, Hogan AB, Winskill P, Ghani AC. Global impact of the first year of COVID-19 vaccination: a mathematical modelling study. *Lancet Infect Dis* 2022;22:–302. doi: 10.1016/S1473-3099(22)00320-6 pmid: 35753318
- 6 Nkengasong JN, Ndembi N, Tshangela A, Raji T. COVID-19 vaccines: how to ensure Africa has access. *Nature* 2020;586:–9. doi: 10.1038/d41586-020-02774-8 pmid: 33024330
- 7 Friedman EA, Gostin LO, Kavanagh MM, et al. Putting health equity at heart of universal coverage—the need for national programmes of action. *BMJ* 2019;367:. doi: 10.1136/bmj.l5901 pmid: 31653611
- 8 WHO Intergovernmental Negotiating Body. *Negotiating text of the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (WHO Pandemic Agreement)*. [Advanced unedited version] WHO, 2023.
- 9 Furlong A. Fears grow that new pandemic treaty won’t correct COVID-19 mistakes. *Politico* 19 Oct 2023. <https://pro.politico.eu/news/170193>
- 10 Lynch J. *Regimes of inequality: the political economy of health and wealth*. Cambridge University Press, 2020.
- 11 Jerving S. Moderna’s patents stand in way of mRNA vaccine hub’s grand vision. Devex, 2022. <https://www.devex.com/news/sponsored/moderna-s-patents-stand-in-way-of-mrna-vaccine-hub-s-grand-vision-103055>
- 12 Marrakesh Agreement establishing the World Trade Organization. 1994. https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm#articleX
- 13 WTO. *Annual report 2022*. https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep10_e.pdf
- 14 Duke University Global Health Innovation Center. Launch and scale speedometer. 2021. <https://launchandscalefaster.org/covid-19/>
- 15 Fang L. Moderna among firms quietly granted powers to seize patent rights during early days of covid pandemic. *The Intercept* 23 Aug 2022. <https://theintercept.com/2022/08/23/covid-vaccine-patents-moderna-big-pharma-section-1498/>
- 16 Kavanagh MM, Singh R. Vaccine politics: law and inequality in the pandemic response to COVID-19. *Glob Policy* 2023;14:–46doi: 10.1111/1758-5899.13203.
- 17 Fischer SE, Vitale L, Agutu AL, Kavanagh MM. Intellectual property and the politics of public good in covid-19: framing law, institutions, and ideas during TRIPS Waiver negotiations at the WTO. *J Health Polit Policy Law* 2023;10910269. doi: 10.1215/03616878-10910269 pmid: 37522338
- 18 Third World Network. WHO: INB Bureau proposes unbalanced draft negotiating text; no concrete deliverables on equity. 2023. <https://twm.my/title2/health.info/2023/hi231006.htm>
- 19 Torreele E, McNab C, Adeyi O, et al. It is time for ambitious, transformational change to the epidemic countermeasures ecosystem. *Lancet* 2023;401:–82. doi: 10.1016/S0140-6736(23)00526-3 pmid: 36924776
- 20 United Nations. Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction. 1972. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.37_conv%20biological%20weapons.pdf