

A Moral Test?

Contesting Global Health Inequalities during the Coronavirus
Pandemic

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Abstract

The Covid-19 pandemic illustrated structural inequalities between the developed and the developing world in global health, perpetuated by vaccine nationalism and vaccine hoarding. India and South Africa proposed a waiver for specific regulations of the WTO's Agreement for Trade-Related Aspects of Intellectual Property Rights (TRIPS) to mitigate the additional barriers to equitable vaccine distribution posed by intellectual property rights. The proposal led to an intense debate between the developed and the developing world.

Applying Stephen Gill's neo-Gramscian framework of New Constitutionalism to the global health realm, this research investigated to what extent the waiver proposal constitutes a challenge to the supremacy of the transnational bloc of the G7 and global capital. A narrative analysis of statements from representatives of the US and the EU on the one hand, and India, South Africa, and China, on the other hand, revealed that the latter contesting actors employed a morality discourse during the debate. Consequently, the waiver proponents undermined the ideological base of the G7-nexus' supremacy and formed a united opposition to the dominant powers. Therefore, this paper offers essential insights into the impact of the Covid-19 pandemic on the world order.

Key words: new constitutionalism, neo-gramscianism, covid-19, trips waiver, vaccine equity, narratives

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List of Abbreviations and Acronyms

Abbreviation / Acronym	Definition
ACT	Access to COVID-19 Tools
AU	African Union
BRICS	Brazil, Russia, India, China, and South Africa
CARE	Cooperative for American Remittances to Europe
Cepi	Coalition for Epidemic Preparedness Innovations
COVAX	COVID-19 Vaccines Global Access
CSO	Civil Society Organization
GATT	General Agreement on Tariffs and Trade
Gavi	Global Alliance for Vaccines and Immunization
GHG	Global Health Governance
GHS	Global Health Security
G7	Intergovernmental Group of Seven
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International labor Organization
IO	International Organization
IP	Intellectual Property
LMIC	Low- or Middle-Income Country
MC12	12th Ministerial Conference of the World Trade Organization
MDG	Millenium Development Goal
NGO	Non-Governmental Organization
NSA	Non-State Actor
OECD	Organization for Economic Co-Operation and Development
OEEC	Organization for European Economic Co-operation
PHEIC	Public Health Emergency of International Concern
PHM	People's Health Movement
PVA	People's Vaccine Alliance

R&D	Research and Development
SDG	Sustainable Development Goal
SPRP	Strategic Preparedness and Response Plan
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UHC	Universal Health Coverage
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
WIPO	World Intellectual Property Organization
WHO	World Health Organization
WTO	World Trade Organization

1. Introduction

“No one is safe until everyone is safe.” (Ghebreyesus, 2021, para. 8). This statement by the World Health Organization (WHO) Director-General Dr. Tedros Adhanom Ghebreyesus has become the most famous and widely used slogan in combatting the Covid-19 pandemic worldwide. The phrase denotes that in a globalized and integrated world, a single nation alone cannot stop a borderless virus but that cooperation and equal access to healthcare tools are required.

The reality, however, is a different one. While the WHO took a leading role in establishing global initiatives such as the COVAX facility aimed at enabling vaccine access for all, many developed nations subverted these mechanisms for their gain. COVAX functions through early market commitments by developed countries that aim to foster research and development innovation. Once produced, the developed countries should distribute vaccines to avoid shortages in developing countries. Instead, in some cases, nations used such bilateral deals to secure only their vaccine supply without intent to export, a practice subsequently referred to as vaccine nationalism (Eccleston-Turner & Upton, 2021). Consequently, by 2021, the G7 nations, which comprise only 13 percent of the world population, had managed to secure one-third of the world’s vaccine supply (Kirgizov-Barskii & Morozov, 2022). National vaccine policy has thus presented one central challenge to equitable vaccine access.

The structure of the international system itself is another challenge. Due to increased global connections, organizations and legal frameworks not primarily formed with a focus on health, such as intellectual property (IP), also impact global health governance. With the restructuring of the General Agreement on Tariffs and Trade (GATT) Secretariat into the World Trade Organization (WTO) in 1995, the new organization enforced a global intellectual property protection legal system, forcing all signing parties to adopt IP regulations. These regulations also included pharmaceutical products and processes (World Trade Organization, 2023c). Though the dominant discourse of the WTO proclaimed the centrality of IP rights for neo-liberal development (Peukert, 2017), health crises like the coronavirus pandemic illustrate how IP rights limit developing countries’ access to medications and vaccines through trade barriers such as patents. Accordingly, IP rights promote the dominance of transnational capital over the health interests of nations. Gill (1995) has argued that this expansion of disciplinary neo-liberalism aimed at globally institutionalizing capitalist property rights establishes a new constitutionalism instated by a supreme transnational bloc of the G7 nations and transnational capital.

Despite these structural limitations, the actors of the developing world were vocal during the Covid-19 pandemic to shed light on the inequalities they faced and claimed their right to equal access to vaccines. The most prominent campaign was the proposal to waive the IP rights enshrined in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) led by South Africa and India in the WTO. Submitted in October 2020, it sparked an intense debate between active members of the Global South and the defendants of intellectual property rights, mostly the developed countries of the Global North.

Based on Gill's (1995) theoretical framework, the research question of this thesis is to what extent the debate over the TRIPS waiver proposal during the Covid-19 pandemic constitutes a challenge to the supremacy of the Global North in global health. The thesis statement is that the narratives of the contesting actors manage to unite a previously fragmented opposition to Northern supremacy in global health and undermine the ideology of market civilization through an emphasis on health over capitalist interests. This paper will trace global health's conceptual and historical development and subsequently illustrate the current architecture of global health governance to investigate the central research question. Moreover, it will be analyzed how the theoretical framework of new constitutionalism can be applied to global health. Then follows a short introduction to the coronavirus before the case studies of narrative analysis are conducted and evaluated. To conclude, the result and the theoretical framework will be critically discussed.

2. Literature Review

The literature on global health is provided by various disciplines, from economics and medicine to history and political science, showcasing the interdisciplinary nature of inquiry in global health affairs. The historical emergence of the field is one key concern in research. Scholars like McCracken and Philips (2017) trace the emergence of global health from the initial conception of tropical health studies in colonial times, concerned with the diseases found in the colonies, to international health, the concept of which came into being with the founding of agencies such as the World Health Organization in 1948. The trend towards global health is thus a more recent phenomenon, which Grigorescu (2020) traced to the awareness of interdependencies in health matters and new challenges such as migration and travel. As Borowy notes, the term global health itself is contested, as it is used to refer to various meanings, "from the actual health of people worldwide to a political or developmental goal to

a practice of public health to a discipline of research and teaching” (2019, p. 329). While practices of global health seem to predate the introduction of the term, the use of a new word can imply a qualitative change. In their *Viewpoint* contribution, Koplan et al. define global health as

an area for study, research, and practice that places priority on improving health and achieving equity in health for all people worldwide. Global health emphasises transnational health issues, determinants, and solutions; involves many disciplines within and beyond the health sciences and promotes interdisciplinary collaboration; and is a synthesis of population-based prevention with individual-level clinical care (2009, p. 1995).

A crucial conflict within global health is the tension between a focus on Global Health Security and a wider focus on the right to health, which encompasses aspects of health beyond infectious diseases. Assefa et al. (2020) argue that an agenda to strengthen universal health coverage (UHC) does not have to contrast with an agenda of enhanced global health security (GHS) but rather that both should be combined, as intensified efforts for UHC will have a positive effect on the capacity for health security. Similarly, Erondy et al. (2018) point out the common aspects of GHS and UHC. They further claim that current global health policies hinder the establishment of a unified health system, which they see as crucial to sustain personal and collective security.

The base of global health and its normative aims lie in the right to health. Ooms and Hammonds illustrate the human right to health as a claim to “freedoms and entitlements that can have a positive impact on one’s health” (2018, p. 7). Matthews (2015) further traced the evolution of health into a human right, while Brown (2012) demonstrates the ontological background of arguments for and against a responsibility to guarantee a human right to health. However, the vague nature of the right to health and subsequent demands hinders comprehensive strategies to attain health for all (Ooms & Hammonds, 2018). Global health can therefore be approached from multiple perspectives: equity, the right to health, and global health security.

Moreover, various scholars point out how the issue of intellectual property rights characterizes the relationship of the Global North and the Global South in questions of health. Wills (2017) emphasizes that one dimension of persisting inequality between the North and the South is the consequence of regulations on intellectual property rights and patents for medicinal products such as vaccines. Patents drive up prices for medication and concentrate production capacities in the North, while the South lacks access and financial resources. Wills (2017) and Matthews (2015) investigate the relationship between the right to health and the TRIPS Agreement. Matthews (2015) shows how nations have used a right to health-based discourse to

affect legislative and policy change and judicial interpretations in the interplay of health and patents. In contrast, Wills (2017) demonstrates how the right to health can provide a framework for counter-hegemonic neo-liberal conceptions of intellectual property and global health.

In this regard, it is important to consider the governance of global health, another important research field. Fidler (2010) emphasizes the multiplicity of actors that inhabit the architecture of health governance, ranging from international organizations (IOs) to non-governmental organizations (NGOs) and even private actors. However, as Fidler (2010) points out, the nation-state remains a crucial player in global health governance since states are primarily interested in issues posing threats to their territory under control, negatively affecting cooperation on issues outside of widespread interest. While Sandler (2004) notes that nation-states are unwilling to submit their authority in the health realm to IOs unless in a situation of crisis, undermining the architecture of health governance, the Covid-19 pandemic was initially marked by the opposite phenomenon. Most states turned inwards and reasserted their national authority, rather than formulating a coordinated common response (Cameron 2020). Van de Pas et al. (2017) further criticize organizations' lack of leadership capacity, such as the WHO, due to under-financing and institutional gridlock. They also question to what extent the current global health governance is fit to aid in achieving the right to health, as it is anchored in the Sustainable Development Goals (SDGs). This overlap illustrates already that global health reaches beyond infectious diseases to include questions of sustainability, access to health care, and equity.

A critical debate at the intersection of global health, patent rights, and global health governance is the recent challenge of vaccinations for Covid-19. In addition to research tracing the pathways and competition for patent rights in the Global North, Amankwah-Amoah and Hinson (2022) and Peacock (2022) have investigated different vaccine distribution strategies. Both argue that vaccine nationalism has increased the inequality in the sector between North and South, with Amankwah-Amoah and Hinson focusing mainly on the consequential proliferation of counterfeit products. The role of vaccines and health diplomacy in this context presents another research object. Cooper and Farooq (2015) note the empowering character of health diplomacy for the South, while Peacock (2022) warns of its potential for geopolitical power gain. Kaasch (2021) illustrates the main governance organs' preliminary responses to the pandemic. Cameron (2020) points to the lack of leadership by the United States and the Trump Administration in the beginning of the pandemic and proposes intensified EU-Asia cooperation. Singh et al. (2022) go as far as to claim that the Covid-19 pandemic is proof for the reactive rather than proactive nature of global health governance, which they see as a reason

for the continuous vaccine inequity of the South. Kohler et al. (2022) have investigated the TRIPS waiver debate and identified the positions of the involved stakeholders. The pandemic thus served as an illustration of governance shortcomings and possible areas of contesting inequities. The interdisciplinary character of the field allows for various investigations into contemporary global health regimes and debates.

This thesis aims to contribute to the field by investigating the extent to which the theoretical framework of new constitutionalism can be applied to global health, and further what potential narratives on the TRIPS waiver proposal hold for the Global South to contest the inherent inequalities. This thesis thus goes beyond existing studies that identify positions in the waiver proposal debate to discuss possible consequences. Moreover, by assuming a Global Studies standpoint this paper counters traditional euro- or western-centric works on global health, thus broadening the perspectives accessible within the field. Moreover, it aims to show explicitly how actors beyond the Global North conceptualize and frame global health struggles to challenge existing power structures, connecting Global Studies with critical approaches to hegemony.

3. Theory

The theoretical base of this paper lies in a critical reading of the world system based on the theory of new constitutionalism by Stephen Gill (1995). Gill's theory is part of the neo-Gramscian approaches and, to an essential degree, a continuation of the internationalization theories of neo-Gramscianism proposed by Robert Cox (1983). In essence, neo-Gramscian theory aims to offer a more critical understanding of hegemony. In the realist tradition, hegemony is rooted in the material strengths of a state that allow it to assume a position as hegemon (Dirzauskaite & Ilinca, 2017). However, realists maintain that hegemony can never be stable, as unipolarity invites other actors to challenge the hegemon, thus always resulting in a multipolar system.

In contrast, neo-liberalism holds that hegemonic leadership stems from economic rather than military leadership and aims for other states to adhere to its vision of the world order. In the international system, hegemony shows itself in asymmetric relationships though it requires cooperation between the hegemon and other states to be successful. Cooperation, however, does not imply a nonexistence of conflicts: The hegemon can appeal to varying interests of other actors and engage in coercion to achieve submission (Dirzauskaite & Ilinca, 2017).

In contrast to these approaches, neo-Gramscianism broadened the concept of hegemony to “an expression of broadly based consent, manifested in the acceptance of ideas and supported by material resources and institutions, which is initially established by social forces occupying a leading role within a state but is then projected outwards on a world scale” (Bieler & Morton, 2004, p. 87). Following Cox (1983), hegemony works in the spheres of the social relations of production, which refers to all material, institutional, and discursive social relations, the form of the state, and the world order. These spheres are not separate but interact with one another, allowing for an explanation of historical processes through specific configurations of social relations, forms of state, and world order. Within each of the previous spheres, ideas, material capabilities, and institutions interact to create the necessary conditions for hegemony to emerge. Ideas here refer to intersubjective meanings and shared visions of world order, material capabilities refer to resources, and institutions emerge from the interplay of the first two factors (Bieler & Morton, 2004).

The social relations of production are not bound by a material conception of production but include the production of physical goods and knowledge or morals. Changes in production may benefit different social forces to become a source of power and rule. Hegemony is thus a form of class rule (Bieler & Morton, 2004). Following Gramsci’s writings, the supremacy of one social group can show itself either through domination, meaning through force, or intellectual and moral leadership, realized through allied groups (Bieler & Morton, 2004).

The form of the state refers to the historical construction of the state and the specific dominant social forces. Here, scholars use the term historical bloc to refer to relationships the leading social forces establish in a specific national context over contending social forces. In this process, the integration of various interests and values forms a unity within society that nevertheless is defined by hegemony or leadership of some social forces (Bieler & Morton, 2004). Thus, historical blocs characterize different state forms and illustrate the state-society complex. Following Cox’s (1983) internationalization theory, once consolidated on the domestic level, a hegemonic class may project its social order outward into the world order, supported by international organizations. The expansion and promotion of a specific mode of production can further support such hegemonic expansion. Similarly, challenges to international hegemony arise from the national level, where historical blocs emerge or are restructured.

Gill (1995) argues that the international historical bloc established in the aftermath of the Second World War has transformed into a transnational historical bloc in which transnational capital has become a leading social force. However, Gill does not see this as a

situation of hegemony but rather supremacy, marked by the dominance of a historical bloc over a fragmented opposition. In this case, the bloc maintains dominance through the dual mechanisms of new constitutionalism and market civilization. New constitutionalism refers to the quasi-legal restructuring of state and international political forms, resulting in commodifying the public sphere and attempting to move economic institutions away from public scrutiny or participation. This represents an attempt to establish neo-liberalism as the sole model of development, strengthened by the discursive formation of the desirability of transnationalization and capital, referred to by Gill (1995) as the notion of market civilization. (Gill, 1995).

Disciplinary neoliberalism and the strengthening of surveillance mechanisms further mark new constitutionalism. These measures aim at protecting capital, conferring to it almost “privileged rights of citizenship and representation” (Gill, 1995, p. 413). Thus, the neo-liberal paradigm becomes instated against the will of weaker states at the behest of the social forces enacting supremacy. This system becomes locked in place through international treaties such as the Maastricht Treaty or by inferring quasi-legal powers to international organizations such as the WTO. These treaties mandate hierarchies and asymmetrical power relations and limit the authority of state governments. Within international organizations, supreme social forces often oppose democratizing measures enabling more equality, such as through reforms in the WTO dispute and settlement mechanisms (Gill, 1995).

Consequently, the constitutionalization of neo-liberal policies and governance makes it harder for counter-hegemonic movements to succeed in long-term change. However, as Gill claims, the Gramscian “rift between the popular masses and ruling ideologies” (1995, p. 401), rooted in the decline of government authority and legitimacy after protecting the strong and the capital, enables space for resistance. Thus, pointing out the contestability and contradictions in neo-liberal discourse is central to counter-supremacist action (Gill, 1995). Taking new constitutionalism theory as a base for an analysis of global health governance during the Covid-19 pandemic allows the shedding of light on how inequalities have been constitutionally locked in and how they are narrated, justified, or contested. Following the neo-Gramscian as well as the new constitutionalist tradition in their emphasis on ideas and the role of discourses and narratives in defending the installation of neo-liberalism and commodification even in the health realm, new constitutionalism offers a valuable theoretical framework to investigate narratives as counter-supremacist attempts to challenge international hegemonic or supremacist powers.

4. Methodology

In the following part, the methodology will be introduced. This includes first considerations on the global studies framework of the paper, as well as an introduction to the case studies of the analysis section. Moreover, the methods for material collection and analysis will be introduced.

4.1 Global Studies Approach

This thesis builds on a Global Studies approach rooted in the global turn, which denotes an analytical shift to global entanglements and processes of globalization across academic disciplines, acknowledging the interdisciplinary character of globalization (Darian-Smith & McCarty, 2017). Another central aspect is the expansion of expertise to draw on various perspectives beyond the Euro-American academia to gain a more complex understanding of the dynamics at play in the world (Darian-Smith & McCarty, 2017). These components are crucial to this work and are reflected through including literature originating in the Global South and an active understanding of the transnational character of the topic and processes. A Global Studies approach likewise affects the level of actors: Beyond the role of the nation-state, global imagery includes non-state actors, organizations, and processes connecting various levels of interaction (Darian-Smith & McCarty, 2017). Global health and its governance reflect the “global condition” (Middell, 2020, p. 256), the increasing global density of flows and control caused by technological development in transport and communication, as health concerns transcend borders and the control of the nation-state.

Further, the origin of global health lies in the various colonial projects, as Europeans sought to control and study the diseases they encountered in colonial expansion in Africa and the Americas to protect the white population (Borowy, 2019). Thus, global health reflects inherent power dynamics, which this project considers. Consequently, the processes that are the focal point of this analysis are understood as historically contingent on the colonial past and the proliferation of global connections. Global health is therefore understood as a field that illustrates the connection between the global and the local: While governance is expanding globally and diseases spread over the world beyond borders, the effects of pandemics or other phenomena are also always playing out at the local level. Thus, by adhering to the principles of the global turn, and through the choice of topic, this thesis follows a Global Studies approach.

4.2 Case Studies

As pillars of the analytical section, five case studies showcase the variety of narratives in global health politics. The case studies include representatives of the Global North with the United States and the European Union, the Global South with India and South Africa, and China. The Global North and South terminology gained traction during the second half of the 20th century, popularized by the Brandt report, which gave a visualization of the geographic divide between North and South (Brandt, 1980). The concept remains debated: While some argue that the opening of trade and economic integration in the context of increasing globalization have rendered such categories futile, others point to the fact that only a few nations have been able to catch up with the Global North (Lees, 2021). Eriksen (2015), in contrast, criticizes the blanket-term characteristic of the concepts, stating that it stands in the way of their usefulness. However, in this paper, the terminology is used for two reasons. First, within international organizations, these terms remain prominent to refer to economically disadvantaged nation-states (Mahler, 2017). Second, the meaning of Global South, in particular, implies resistance. As Mahler has pointed out, this dimension refers to the “resistant imaginary of a transnational political subject that results from a shared experience of subjugation under contemporary global capitalism” (2017, para. 1), which draws on the Cold War rhetoric of the Non-Aligned Movement. In this thesis, references to the Global North and South refer to both dimensions: inequality and resistance.

As representatives of the Global North, the United States and the European Union are crucial. The United States is a critical case study due to its leadership role in international organizations and its self-understanding of its role in the world. While Donald Trump was still the American President at the time the waiver proposal was introduced in 2020, this analysis will be based solely on President Joseph Biden’s and his administration’s statements. On the one hand, President Biden is here considered a more classical example of US-typical global health discourses, and on the other hand, Biden’s Administration was in power for almost the entire duration of the waiver debate. Moreover, the difference in party background between Donald Trump and Joseph Biden is a central factor to explain their possible differences in position, so that one cannot easily evaluate an impact of the contesting actors on these changes.

The European Union is an interesting case study in the context of Covid-19 vaccination debates, as the European Commission retained a relatively coherent position on the international stage despite differences in opinion within the EU. Thus, in the WTO waiver debate, the EU as supranational organization as well as the individual member states made up

a big part of the opposition (Kohler et al., 2022). Moreover, while the US is a member of the G7, the EU is the unofficial eighth member of the group, as it is considered a non-enumerated member. Thus, both actors are representatives of the G7-nexus in Gill's (1995) sense.

For the competing cases, India and South Africa are prominent representatives of the South. Both nations have long been vocal in global health struggles and equity concerns and filled a similar role during the pandemic. India is most prominent for its role as exporter of generic medicine in the developing world, having earned the nickname "pharmacy of the developing world" (Bazzle, 2011, p. 785). Another case study is China, on the one hand, due to its competing role with the North and the United States in particular, and on the other hand, for its involvement in vaccine diplomacy despite it being the supposed origin of the virus (Lee, 2021). The case studies illustrate the positions of some of the most prominent and influential players in global health governance, making their narratives and visions of governance development key to understanding a possible contestation of supremacy.

4.3 Sources

This thesis is based on secondary literature and primary material. For the literature review and the background, secondary literature from global health, global governance, and intellectual property rights is necessary to understand the underlying power dynamics. Another critical field is the ongoing studies on the coronavirus pandemic.

Moreover, various primary sources are essential for this thesis. For the narrative analysis, speeches and official statements from the previously introduced actors form the analysis base. One crucial block is statements made by the chosen state actors in different forums of the WTO concerning the TRIPS Agreement and discussing a possible waiver to the TRIPS Agreement. For each actor, five representative statements have been selected and analyzed. The results are presented in the analytical section of this paper.

The primary material further includes treaties and legal texts. The TRIPS Agreement, the Doha Declaration on the TRIPS Agreement, the Constitution of the WHO, and the Ministerial Decision on the TRIPS Agreement are of particular interest. The TRIPS Agreement and the Constitution of the WHO lay the groundwork for the current tension between health and intellectual property rights. At the same time, the Doha Declaration represents an attempt to reconcile the two dimensions. The Ministerial Decision, in contrast, is of interest as it presents the outcome of the TRIPS waiver debates.

4.4 Material Collection

The material for analysis was collected from digital archives and official websites. Research in online archives is based on keyword searches, and the results depend on the engine's patterns (Natale, 2019). Some scholars have claimed that keyword searches represent a bottom-up approach to archival research, in contrast to the top-down process of the physical archive. In this context, scholars like King (2016) debate the capacity of digitalized archives to break traditional archives' constraints and access restrictions. Natale (2019) has pointed to the democratizing potential of digitization, going as far as claiming that the rising significance of internet sources reflects an "epochal turn in the production, access, and use of information" (Natale, 2019, p. 5).

However, as Nicholson (2013) argues, the digital archives also come with challenges. One concern is finding the right keywords while continuously engaging in close reading. Moreover, the researcher is dependent on the website's search mechanism. The embedded search engine filter algorithm presents results based on different systems, for example, through a ranking system. Any given search may not show all the relevant material or reproduce the canon (Pessach, 2019).

Moreover, these digital archives are part of technological and economic power structures, which can produce an artificial scarcity of resources or access barriers, creating new challenges. The consequential exclusion of scholars or institutions without the required funding can reproduce traditional power dynamics and undermine the democratizing potential of internet sources (Smits, 2013). Different stages of digitalization further impair the accessibility of online documents; some international organizations do not yet have an official digital archive.

The awareness of archival limitations, access, and the constructed nature of existing digital archives should be part of the methodological approach to research in digital archives, as Matthew Weber and Philip Napoli (2018) emphasize in their article. It is, therefore, the researcher's responsibility to contextualize the documents to ensure awareness of their embeddedness in power relations and historical reality. These considerations have formed the base of the material collection process for this work.

4.5 Material Analysis

This thesis is built on narrative analysis and literature review. Narrative analysis originated in literature studies under the guidance of Tzvetan Todorov (1971) but has since then proliferated across various academic disciplines, emphasizing different elements. Narrative analysis has grown in importance in political science as narratives present a way of communicating and representing political agendas. The analysis follows Porter Abbott's *Introduction to Narrative Analysis* and his definition of narrative as a "representation of an event or a series of events" (Abbott, 2008, p. 13). The distinction between story and narrative discourse is at the base of Abbott's approach. Whereas story refers to the event or series of events, the narrative discourse is how these events are conveyed. Together, these elements constitute the narrative. Story and narrative discourse differ in their time and order. No matter the length of time, the story proceeds in chronological order, whereas the narrative discourse has no temporal constraints or order (Abbott, 2008).

Different approaches emphasize different elements needed to form a narrative within the study of narratives. For Abbott (2008), the story can be divided into events and entities. The entities are needed as they are the ones who engage in action, forming the events. As Abbott says: "What are events but the actions or reactions of entities? (Note that the reverse is not true since there can be entities without events.)" (2008, 19).

Further differentiation is between the constituent and supplementary events. Constituent events are the main events to drive the story, whereas the supplementary events could be removed, and the story would still be recognizable. However, as Abbott (2008) argues, this apparent hierarchy only concerns the sequence of events in the story, as supplementary events are nevertheless of value for the narrative's meaning and impact.

Another point to address is the issue of narrativity. While even short sentences can constitute narratives, they are often disregarded as such because they seem to lack the element of narrativity, meaning the quality of presentation or performance of the narrative. However, Abbott (2008) argues that narrativity is a matter of degree and depends on the qualities that mark the narrative. In most cases, the texts chosen for analysis in this paper were presented in political councils and thus sometimes lack a traditional sense of narrativity. Nevertheless, they constitute narratives as they feature the necessary elements and are based on the aim to narrate a specific event to "engage the audience, communicate political values and provide a better comprehension of a topic" (Pederson, 2015, p. 111) but also to convince or manipulate the listeners. Therefore, even speeches on the same events can produce different narratives based

on the function they hold for the speaker. Consequently, narrative analysis is deemed an appropriate method for analyzing political statements and speeches.

For this analysis, the story concept refers to the Covid-19 pandemic and the TRIPS waiver debate. The material will be analyzed through MAXQDA, a program that allows the user to code a given. The value of MAXQDA is that it allows for constructing a hierarchical coding system, which is more flexible than simple linear coding, and offers a better overview of categories and subcategories (Kuckartz & Rädiker, 2019). In this case, the coding system is used to identify supplementary events, entities, and narrative discourses based on the concepts by Abbott (2008).

The other methodological building block of the literature review is used to synthesize existing findings and illustrate blind spots. In a time of increasing knowledge creation and output, the role of a literature review is even more critical (Snyder, 2019). In this case, a literature review assesses the existing literature and creates an introductory thematic section to complement and contextualize the analysis. The literature review is also considered a helpful tool in interdisciplinary research, as it allows for collecting and connecting the insights of different disciplines. One challenge is the positionality of authors. Due to the normative character of various debates on global health, some articles hold policy recommendations or leadership assumptions for specific nations. The literature review method will help uncover such positionalities and offer a more balanced picture of the literature and the topic at hand.

5. Global Health

As the events investigated in this thesis take place in the global health realm, an introduction to the field is helpful to contextualize the analysis. First, the conceptual development and the history of global health politics will be illustrated, including the right to health. Second, the architecture of global health governance will be explained.

5.1 Conceptual Development

Despite the current prominence of the term global health, its conception and diffusion in academia and research are relatively recent. Borowy's (2019) search on Google Books Ngram Viewer revealed that before 1970, global health was almost non-existent in the relevant literature until it experienced almost exponential growth after the 1980s. Global health has, therefore, effectively replaced the related concepts of tropical medicine and international health

in the dominant discourse. Though related, all terms have different historical contexts and denotations.

Out of the three, tropical medicine is the oldest term. It originated in the 18th and 19th centuries and was primarily concerned with colonial medicine. As European powers expanded overseas, they were confronted with unknown new diseases that posed a risk to Europeans in the colonies and at home. Consequently, they established tropical institutes to research and combat these new diseases and to protect the European population. This illustrates that health policies beyond the nation-state have been initially motivated by security concerns since the beginning (Holst, 2020).

In the aftermath of the Second World War and with the emergence of new IOs such as the United Nations (UN), tropical medicine was increasingly replaced by the term international health, as its links to colonialism undermined the new climate of a changing world order based on equality (Borowy, 2019). International health is characterized by a stronger emphasis on international collaboration in the health realm, mainly through state-based interaction and the rising role of IOs (Harman, 2018). International health is concerned with the health challenges of developing countries and an expanded understanding of health to include not just infectious diseases but also the improvement of hygiene, the strengthening of health systems, and the promotion of maternal health. In the context of the Cold War, IOs became platforms for countries to channel investments and aid to the developing world (Holst, 2020).

Against this backdrop, global health emerged to include the developments in health brought forward by globalization. Though also a contested term, globalization is understood not just as economic integration but as a plural process rooted in a “global condition” (Middell, 2020, p. 256). The global condition refers to the increased global density of flows and control caused by technological development in transport and communication. Moreover, states cannot retire from these engagements without losing competitiveness (Middell, 2020). Consequently, population health faces more challenges that transcend national borders, such as pandemics or climate change, food security issues, or migration (Holst, 2020). The increasing connections strengthened the globality and supranational character of global health governance and enabled the participation of more diverse private actors and civil society organizations (CSOs) (Harman, 2018). For some scholars, the increased influence and cooperation of CSOs with IOs in global health governance marks the fundamental shift from international to global health (Lee, 2010). However, Borowy (2019) also sees the global health concept as a response to the growing public awareness of the vulnerabilities and inequalities that persist in the health realm.

Despite the broad discussions about the emergence and contents of global health, a concrete definition has yet to be written. However, the preliminary definition by Koplan et al. marks three main facets: the notion of global health as a state, as an objective to work towards, and as a mix of scholarship and practice (McCracken & Phillips, 2017). Thus, global health is “collaborative transnational research and action for promoting health for all” (McCracken & Phillips, 2017, p. 36).

5.2 The History of Global Health Politics

The beginnings of global health cooperation beyond the colonies are often said to be in the 19th century: At the International Sanitary Conference in 1851, European powers came together to discuss ways to limit the spread of infectious diseases impacting trade and travel. Cooperation, however, was limited to a notification system in case of encountering either cholera, plague, yellow fever, smallpox, typhus, or relapsing fever in their respective territories and to avoid travel and trade restrictions without a justifiable concern for health. A treaty on this aspect was instated at the International Sanitary Conference in 1892 (Moon, 2022).

Despite the establishment of the Pan-American Sanitary Bureau and the International Health Organization of the League of Nations after the First World War, stronger cooperation followed only after the end of the Second World War, with the increasing institutionalization of global health governance in the main form of the WHO (Moon, 2022). The WHO’s mandate was based on the interlocking ideas of health as a human right and as a global public good, meaning that “it is non-rivalrous in consumption and non-excludable, or in other words, everyone should have access to it and one person’s consumption should not prevent another’s” (Harman, 2018, p. 721). As the WHO was part of the massive institution-building after the Second World War, cooperation between institutions such as the United Nations Emergency Children’s Fund (UNICEF) or the United Nations Development Program (UNDP) was central to its work (Harman, 2018).

Despite the WHO’s founding principles, it was open to politicization. This became evident in the Cold War when the United States and the Soviet Union engaged in what one can call a ‘tug-of-war’ over the orientation of global health politics. The United States objected to the rights-based approach, while the Soviet Union supported such policies. As the United States was and remained a major donor to the WHO, the organization abandoned its rights-based direction under American pressure to withdraw funding (Meier & Onzivu, 2014). At the same time, the Cold War saw first successes: After the failure of campaign against malaria in

Zanzibar (Graboyes & Meta, 2022), a campaign against smallpox led to its eradication (Harman, 2018). Moreover, the Alma Ata Declaration of 1978 signaled strong cooperation in the health realm under the banner of “health for all” (Meier & Onzivu, 2014, p. 180), leading the WHO to present itself as “the health conscience” (Moon, 2022, p. 238) of the world.

The AIDS/HIV crisis of the 1980s was also framed in the rights framework. Initially ignoring it, the WHO established a special program on AIDS that was soon supplemented by other organizations, such as the Joint UN Programme on HIV/AIDS, signaling a loss of confidence in the WHO’s singular leadership. The Global Alliance for Vaccines and Immunization (Gavi) was formed to address medical access issues in 2000, marking the AIDS/HIV campaign as a public-private enterprise. Moreover, it exemplifies the focus on vertical campaigns on particular diseases prominent at the time (Moon, 2022).

Until today, the debate over a vertical or horizontal approach to global health remains prominent. Vertical refers to campaigns focused on specific diseases, while horizontal campaigns aim to strengthen health systems. As Harman (2018) argues, vertical campaigns are valuable for their impact on disease awareness and generating funding. Some, however, have argued that vertical campaigns neglect health systems in general, undermining the efficiency of vertical campaigns, as disease eradication necessitates robust healthcare systems. The difference between both approaches is often in funding: vertical campaigns are easier to sell and garner support than long-term horizontal projects (Harman, 2018).

The global health and development conferences of the 1990s resulted in an approach that combines vertical and horizontal campaigns, the Millennium Development Goals (MDGs). However, during the negotiations, the health goals were limited to two: the halting and reversal of AIDS/HIV’s spread by 2015 and the aim to halve the number of populations without access to safe drinking water. Later on, reproductive health was added. Nevertheless, the MDGs presented the first big approach in global health governance involving various actors, from Non-State Actors (NSAs) to IOs and governments (Hulme, 2009).

Despite the early progress following the MDGs, some inequalities remained, and success differed between nations. Consequently, a new round of international stakeholder negotiations culminated in the 2016 SDGs. While the MDGs focused on the old paradigm of development through poverty reduction based on economic growth targeted at developing countries, the SDGs aimed at a more comprehensive approach, including social and environmental factors, targeting both developing and developed countries (De Jong & Vijge, 2021). The SDGs contain an explicit health goal with SDG 3, good health and well-being, but also include the social determinants of health in poverty, education, climate action, and reduced

inequalities. Still, some challenges persist, such as accountability and funding (Kumar et al., 2016). Thus, one can claim that the SDGs represent a culmination of global health as a multi-stakeholder global operation, at least until the Covid-19 pandemic in 2020. The evolution of an expanded focus from vertical to horizontal campaigns illustrates the more comprehensive approach to global health, though success varies between initiatives.

5.3 The Right to Health

Central to debates over global health, particularly concerning access to medications, is the right to health, an often-forgotten fundamental human right. The WHO Constitution of 1946 established a human right to health, stating that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition” (WHO, 2023c). However, the right to health does not imply a right to be healthy but rather refers to claims on health entitlements such as education or health care (Ooms et al., 2019).

Article 12 of the International Covenant of Economic, Social, and Cultural Rights (ICESCR) from 1966 further enshrined the right to health: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” (United National General Assembly, 1966). The treaty called on the signees to undertake steps to the “maximum of its available resources” (UN General Assembly, 1966) to fully realize the covenant, both individually and through cooperation. Thus, it can be argued that legislation undermining the right to health violates the ICESCR and its binding obligations. However, the mandate of the Covenant leaves room for interpretation (Ooms & Hammonds, 2018), and the annual spending on healthcare varies from country to country.

Today, many scholars and activists have theorized the right to health as a legal counter to the neo-liberalization of health politics. The right to health can be utilized as a moral trump against the discourses that justify commodification and as a legal trump to intellectual property rights. However, the right to a health frame can be challenged. If used to invoke an individual right, opponents have argued that an individualized approach strengthens the conceptualization of medicines and healthcare as a private good. At the same time, IP and the right to health are differently implemented in the global legal framework, allowing the argument that the right to health is only a soft law, whereas IP rights are entrenched in a hard framework, including

retaliatory measures (Wills, 2017). Therefore, the right to health remains an essential reference point in global health and its governance, even when not directly or openly referenced.

5.4 Global Health Governance Architecture

Due to the historical development of global health as a concept and the historical landmarks, global health governance (GHG) has a complex structure. States, international organizations, CSOs, and private philanthropic enterprises constitute GHG in competing, sometimes overlapping regimes. This diversity is partly rooted in the various understandings of health, different types of diseases, the proliferation of service providers, and the difference between public and private healthcare systems, and further spurred on by the conflicting co-existence of national, local, and transnational responses (Kaasch, 2021). Van Belle et al. have described this network of actors as “chaotic pluralism” (2017, p.1), as all actors vie for leadership, attention, and funding. Thus, a short illustration of GHG structures is necessary to understand the complexity and interrelations between various actors.

5.4.1 International Organizations

As Kaasch argues, IOs have a central role considering that they were “set up by governments, granted with mandates and tasks, and [are] intensely observed and covered by worldwide political and media actors” (2021, p. 235). The central entities are the WHO, the World Bank, the International Labor Organization (ILO), the Organization for Economic Co-Operation and Development (OECD), and the WTO. While the WHO is the center of the UN response and policy on global health issues, the World Bank is crucial for funding research projects and campaigns. In contrast, the ILO and the OECD do not focus on health directly but include it in the social aspects of their work (Kaasch, 2021). The WTO is also of interest as it manages the interplay of access to health and the protection of intellectual property rights. This conflict is central to the new constitutionalism of global health.

The WHO is the oldest and the most central actor among these organizations. During the negotiations to set up the United Nations Organization following the end of World War II in 1945, Brazil and China proposed the founding of an international health organization. In 1946, the constitution was presented, adopted, and signed, all in the same year. The constitution entered into force in 1948, officially instating the WHO (World Health Organization, 2023a). The Constitution tasked the new organization with the promotion and the protection of the

health “of all peoples” (WHO, 2023, p.1), illustrating an expansive mandate for an organization designed to coordinate global health issues based on the right to health (Moon, 2022).

Over time, the WHO has expanded its cooperation with other actors, including NSAs. While initially reluctant to cooperate with NSAs, funding challenges forced the WHO to consider new partnerships. The 1990s then saw the establishment of the public-private partnership model, prevalent also today, though it has been criticized for giving too much power to corporations. This dynamic constrains the WHO, as donors like the US tend to oppose campaigns that counter the interests of their own companies (Grigorescu, 2020).

Thus, the role of the WHO in contemporary GHG is debated. The Covid-19 pandemic has given the WHO a chance to demonstrate leadership in the face of claims of declining relevance. Its unique role based on the legitimate mandate to promulgate international law remains in place (Van de Pas et al., 2016), though undermined by its constraints and budget weaknesses. Moreover, the landscape of GHG has broadened, forcing the WHO to share the playing field.

Another fundamental entity and the largest external funder of global health projects is the World Bank. Like the WHO, the World Bank was established after the end of the Second World War as a part of the Bretton Woods Conference in 1944. The purpose of the World Bank was to aid in reconstruction and development. After the beginning of the Marshall Plan in Europe, the World Bank shifted from issuing loans to European nations to supporting infrastructure projects worldwide (World Bank, 2023).

At the outset, the World Bank did not focus intensely on health. However, the presidency of Robert McNamara in 1968 heralded a change in the organization’s outlook. McNamara subscribed to the changing conceptualization of development, no longer emphasizing only economic growth but also including a human dimension of factors of underdevelopment such as poverty or lack of access to health (Ruger, 2005). In 1979, the World Bank created its health department, following McNamara’s emphasis on man’s health for development (Grigorescu, 2020). The 1980s saw increased activities in the health sector and an expanded understanding of health that included social determinants like poverty, education, and access to water (Kaasch, 2021). The World Bank has increasingly cooperated with other IOs, including the WHO, in universal health care and social protection (ibid.). Other cooperative projects aim to advance the understanding of health issues and extract profit from WHO’ technical assistance for World Bank projects (Ruger, 2005). Moreover, the World Bank is involved in projects to strengthen health systems, understood as “the combination of resources,

organization, financing, and management that culminate in the delivery of health services to the population” (Tichenor & Sridhar, 2017, p.1).

Despite its varied engagement, World Bank health policies also face criticism. On the one hand, experts warn of further health sector privatization based on the World Bank’s promotion of structural adjustment programs in the Global South (Tichenor & Sridhar, 2017). On the other hand, critics point to the tension between the Bank’s mandate to foster economic development and the human right to health, claiming that the Bank puts economic growth above human rights, seeing the former as a stepping stone to reach the latter (Hammonds & Ooms, 2004). During the pandemic, the World Bank has maintained project financing. However, it has been criticized for its strong conditionality in times of crisis (Landers & Aboneaaj, 2021). Thus, the World Bank’s engagement in global health remains ambivalent.

Further active in global health governance is the ILO. Founded in 1919 through the Treaty of Versailles, the ILO aims to safeguard social justice concerning work and labor rights. The ILO is singular in its conception as a tripartite organization, bringing together workers, employers, and governments, and was integrated into the UN as a specialized agency in 1946 (International Labor Organization, 2023). The ILO is primarily concerned with global health in connection with labor and the fight against poverty, similar to the World Bank. Thus, the role of the ILO is primarily to enforce “health (care systems) as an element of social protection” (Kaasch, 2021, p. 243).

Likewise, Kaasch (2021) illustrates the role of the OECD in GHG. Initially, the OECD was founded as Organisation for European Economic Co-operation (OEEC) within the Marshall Plan for European Reconstruction. In 1960, the OEEC was officially transformed into the OECD, reflecting the new imperative for global cooperation, economic growth, and development (Organization for Economic Cooperation and Development, 2023). In the beginning, the health dimension in the OECD was reflected in statistical work, shifting in the early 2000s to a more practical approach, illustrated by the OECD Health Project. Like in the case of the ILO, health is part of the OECD’s social policy. Today, the OECD is active in improving and monitoring its members’ healthcare systems, competing with the WHO on authority concerning healthcare systems, and working on health issues in the development areas, for example, through the SDGs (Kaasch, 2021). Once again, this shows the interconnected and competing nature of the IOs involved in global health governance.

Lastly, the WTO has emerged as an essential actor, or forum, for global health challenges. The WTO was established in 1995, replacing the General Agreement on Tariffs and Trade Secretariat. The original trade agreement of 1947 was adopted as part of the WTO’s

umbrella treaty, conceptualized during the Uruguay Round negotiations in 1986 (World Trade Organization, 2023a). While GATT dealt with trade on goods, the new WTO's competencies reached further to include trade in services and intellectual property (WTO, 2023b).

The impact of the WTO on global health exemplifies the growing importance of health considerations in the non-health sector. The globalized economy led to the generation of new health issues, as well as increased transmission through transnational trade (Moon, 2021). In the case of the WTO, the central tension arises from intellectual property rights enshrined in various regional, bilateral, or multilateral trade accords (Fidler, 2010). In the context of vaccines, medications, and other medical products, the WTO inhabits a governance role based on the TRIPS Agreement (Van de Pas et al., 2017). Therefore, the WTO's challenge is to balance access to health and health products while protecting IP rights to facilitate creativity. The volatility of this configuration became evident during the Covid-19 pandemic, as WTO members debated the potential of IP to act as a barrier to vaccine access. So, the role of the WTO in GHG, though indirect, has gained importance in an interconnected world.

5.4.2 Non-State Actors

Beyond IOs, civil society organizations and philanthropy are increasingly important in global health governance. While philanthropic action in the health realm has been prominent since the early 20th century, the involvement of CSOs and their cooperation with IOs has gained traction after the 1970s. Additionally, transnational companies retain increasing influence and power in the neo-liberal GHG.

The Rockefeller Foundation and the Bill and Melinda Gates Foundation prominently showcase the impact of philanthropic initiatives through their health projects. The Rockefeller Foundation, founded in 1913, was built on the idea of "scientific philanthropy" (Birn & Fee, 2013, p. 1618), launched by Andrew Carnegie in the United States. The philosophy called for the rich to use their wealth to improve society and helped cushion the lack of a welfare state in the early 20th-century United States. The Rockefeller Sanitary Commission, established before the Foundation itself, led the first campaign against hookworms from 1910 until 1914. The campaign's success led to the creation of an official International Health Board, which the Rockefeller Foundation restructured as the International Health Division in 1927 (Birn & Fee, 2013).

The Foundation ran many successful campaigns, for example, against malaria in 1915 and yellow fever from the 1920s until the 1950s. Their style of health campaigns was taken up

by the WHO in its campaigns, for example, against smallpox in 1966 (WHO, 2023e). Over time, the Rockefeller Foundation's actions shifted from singular-disease campaigns to multidisciplinary efforts, culminating in its accession as a non-State actor in official relations with the WHO in 2022. This partnership also includes the crucial funding the Rockefeller Foundation provides (WHO, 2023e).

Another platform is the Bill and Melinda Gates Foundation, founded as William Gates Foundation in 1994. The Gates Foundation describes itself as a “nonprofit fighting poverty, disease, and inequity around the world” (Bill and Melinda Gates Foundation, 2023), a commitment translated into funding health initiatives and foci on specific diseases such as polio or tuberculosis. Moreover, vaccination funding is a crucial part of the Foundation, which has been supporting the Gavi vaccine alliance since 2000 and declared financial commitment to Covid-19 vaccine production and distribution (Gates Foundation, 2023). What becomes clear in both cases is the possibility for philanthropy to wield influence through funding and cooperation with IOs.

CSOs in global health are also numbersome and include, for example, the International Red Cross, Doctors Without Borders, and the Cooperative for American Remittances to Europe (CARE) (Kaasch, 2021). The functions of CSOs are myriad, as they “play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation” (Tomlinson, 2013, p. 123). Thus, CSOs can have a positive influence in supporting health claims and vulnerable populations.

The cooperation also offers advantages to IOs, who had been more hesitant in the past to engage with NSAs, particularly the WHO. However, as Buse and Walt (2000) have pointed out, partnerships would allow IOs to use the private sector for development, allow organizations to effectively fulfill their mandates, and enable them to bargain for funding from the private sector. Due to the global scope of development goals and policies, the verdict remains that IOs need cooperation with CSO to navigate their mandates. At the same time, IOs make themselves vulnerable to criticism that the financial power of the industry and CSOs hold too much influence (Buse & Walt, 2000).

However, the influence a CSO can realistically have within an IO differs from organization to organization. Gómez (2018) argues that the influence within organizations in the UN system is limited as their constitutions do not allow CSOs to vote or engage in agenda-setting. In non-UN organizations, in contrast, CSOs often are allowed to vote and decide on a policy agenda. Beyond that, CSOs can demonstrate “discursive influence” (Gómez, 2018, p. 4)

by offering targeted criticism toward governments in addressing unspoken-of issues. Thus, such discursive influence can influence policy formulation, making CSOs central actors that IOs cannot ignore due to CSOs' aims and potential to challenge existing policies.

6. The New Constitutionalism of Global Health

Following the significant advances in global health and sciences over the years and the increase in actors engaged in GHG, the question arises of how structural inequalities and crises such as the coronavirus pandemic can be explained. Gill's (1995) theoretical framework of new constitutionalism offers a possible explanation for global health development. Two factors are central: On the one hand, the supremacy of the G7-nexus in global health, and on the other hand, the subsequent application of new constitutionalism to global health.

The supremacy of the G7-nexus, here also referred to as the Global North, has resulted from the creation of the UN system after the end of the Second World War by the previous international bloc. The central UN institutions and agencies in GHG were devised under the leadership of the United States of America and its allies, who entrenched their leadership, for example, in the construction of the UN Security Council in the form of the veto-power, or by installing consensus mechanisms as in the WTO (Patomäki & Teivainen, 2004). While the decolonization of the Global South in the 1970s challenged this leadership, the dominant powers countered all attempts to democratize the governance landscape. One example is the strategic undermining of multinational fora like UNESCO, in which Southern nations were dominant until they agreed to reforms in favor of the Global North (Patomäki & Teivainen, 2004).

The 1980s saw the shift to the supremacy of the transnational historical bloc, referred to as the G7-nexus (Gill, 1995). It further repressed the Global South through the introduction and subsequent expansion of neo-liberalism, as Patomäki and Teivainen (2004) have argued. The new disciplinary measures included in neo-liberal policies on foreign debt pushed many Southern nations to the structural adjustment programs of the World Bank or the International Monetary Fund. The programs severely undermined their possibilities to contest the emerging economic order. Thus, the measures taken by the supremacist bloc have created a fragmented opposition (Patomäki & Teivainen, 2004). In the context of global health, the supremacy of the G7-nexus was and remained anchored by its funding power, enabling conditionality and pressure on IOs. The effect is reflected in the "10/90 gap" (Lisk & Šehović, 2020, p. 52),

referring to the statistic that only ten percent of health research funding is dedicated to investigating diseases that affect 90 percent of the world's population.

Moreover, the dominance of transnational capital as part of the supremacist bloc is evident in global health. As a consequence of the funding vulnerabilities of IOs like the WHO, NSAs in global health have proliferated and hold a power similar to the prominent donor states of the Global North. In research and development (R&D), states often engage with pharmaceutical companies to fund research without being sure whether the companies will manage to develop the requested product (Eccleston-Turner & Upton, 2021). Moreover, the power of companies presents itself as a paradox for global health: As the funding traditionally provided by member states of IOs is decreasing, IOs have to rely on voluntary funds from NGOs, philanthropy, and private companies. At the same time, these companies work to undermine IOs such as the WHO by marking their funding for specific purposes, effectively shaping the organization's agenda (Shah, 2011). Thus, the transnational historical bloc's supremacy is evident in global health.

Part of the initiative to sustain supremacy is the proliferation and entrenchment of neoliberalism through new constitutionalism, the political project "designed to anchor neo-liberal policies into national and international legal frameworks, insulating these policies from normal, day-to-day democratic debate and decision-making" (Lesage et al., 2014, p. 197). These agreements are constitutionalist as they have a legally binding constitutional status and are hard to reverse or change due to the lock-in mechanism (Gill & Benatar, 2016). Within these practices, the rights of citizenship and representation get conferred to corporate capital and investors to create a social order in which public policy is based on the dominance of the investor and protects his rights (Harmes, 2014). The idea of good governance prescribed by institutions such as the World Bank and the WTO includes disciplinary neoliberalism, meaning methods and mechanisms that proclaim market discipline as the most desirable form of governance (Gill & Benatar, 2016).

In the realm of global health, Benatar et al. (2009) argue that new constitutionalist treaties and agreements have formed a base to maintain inequalities between the North and the South. The WTO and its governance of intellectual property rights in the form of the TRIPS Agreement are vital mechanisms for sustaining neo-liberal dominance in global health. IP is further presented as central to good governance and neo-liberal progress, meaning it is part of the myth of market civilization.

Before the TRIPS Agreement, patent law was a domestic matter, and states were free to design their legal frameworks for IP law. During the Uruguay Round negotiations, members of

developed countries argued that IP protection was necessary to incentivize innovation, including for health products, leading to the inclusion of pharmaceutical products and processes in IP protection despite protests from the Global South. In general, TRIPS covers copyright regulations, trademarks, geographical indications, patents, industrial design, layout designs of integrated circuits, and undisclosed information. It governs the standards and enforcement of all aspects and dispute settlement (WTO, 2023c).

The negotiations that led to the Doha Declaration on the TRIPS Agreement and public health in 2001 were rooted in developing countries' demands for clarity on the relationship between IP and public health after Brazil and South Africa had faced resistance from the US and Europe on their IP legislation (International Institute for Sustainable Development, 2003). The Doha Declaration confirmed

that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all (IISD, 2003, p. 3).

Thus, the Doha Declaration affirms the access to medicines for all as central. However, additional free trade agreements negotiated bilaterally by developed countries such as the United States undermined the flexibilities provided by the Doha Declaration and the TRIPS Agreement, as these additional trade agreements often entail provisions that go beyond WTO trade agreements and have less room to promote health (Lee et al., 2009). Moreover, many developing countries and LDCs have issues implementing the TRIPS flexibilities due to the complexity of the patent-related legal provisions, insufficient institutional support, or fear of trade retaliation (Azam, 2016).

The TRIPS Agreement further illustrates the promotion of private ownership rights and the protection of capital. Also, it illustrates the power of capital and companies to influence politics. As Matthews (2002) points out, companies were essential for the lobbying effort for globalizing intellectual property rights and are since then also engaged as monitors, filing complaints against TRIPS breaches. Moreover, many pharmaceutical companies seek to weaken IP national laws limiting their benefit, such as legislation for generic drugs (Shah, 2011). Therefore, the increasing reach of IP to include health leads to the commodification of health and illustrates the reconstitution of the relations between people and the environment of new constitutionalism (Gill & Cutler, 2014).

The commodification of health through new constitutionalism in GHG also undermines the right to health. Neoliberal market ideology and a human rights-based approach have

fundamentally different starting points. The main point enabling access to pharmaceutical products in the market is the willingness and ability to pay for goods. At the same time, human rights start from a strategy to allocate as many goods as are needed to promote well-being and dignity (Chapman, 2016). Interestingly, in offering a justification of the TRIPS Agreement in a human rights context, the WTO has argued that IP itself is a human right and that the flexibilities of the agreement offer a balance between the rights of the producers and the people in need of vaccinations (Wills, 2017). This reading of human rights by the WTO illustrates how private companies and transnational capital get conferred citizenship status and rights in the process of capitalist expansion: The rights of people and companies to profit are put on an equal level. Through this interpretation, the WTO can claim that it acts in accordance with the right to health in incentivizing and protecting the further development of health medicines. This goes hand in hand with the ideology of market civilization, with neoliberalism as the only way towards development, as it justifies the intensifying commodification of previously taboo areas. Thus, the advent of neoliberalism and new constitutionalist policies challenges the ability of actors to act independently in the health realm and to keep health for all as the primary goal while protecting the supremacy of the G7-nexus and undermining the formation of a coherent opposition.

7. The Covid-19 Pandemic

The most recent chapter and challenge in the history of global health in the past few years is the Covid-19 pandemic. The first cases of a new viral respiratory disease discovered in Wuhan, China, reached the world at the end of December 2019. On January 5, 2020, the WHO published its first Disease Outbreak Report, containing information on the cases of the novel disease and WHO advice on public health measures, and an initial risk assessment. Throughout January, different regional and national public health offices reported the first cases of the new virus, leading the WHO to investigate and publish statements on the evidence of human-to-human transmission. On January 30, 2020, the WHO Director-General declared the virus outbreak coronavirus public health emergency of international concern (PHEIC), confirming by March 10 that the outbreak can be assessed as a pandemic (World Health Organization, 2023b). The virus was named severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and the disease it caused was called coronavirus disease (Covid-19).

Following the rapid development and proliferation cases worldwide, international and national responses to the pandemic began to take form. The WHO established the COVID-19 Partners Platform, designed to support and coordinate the affected countries as part of its COVID-19 Strategic Preparedness and Response Plans (SPRP) (Shen et al., 2021). As vaccine development was sped up, the WHO further established the Access to COVID-19 Tools (ACT) Accelerator, an initiative to enable technology and knowledge sharing and access and support the development of therapeutics, diagnostics, vaccines, and health care systems (Eccleston-Turner & Upton, 2021). Another important institution was founded by the Coalition for Epidemic Preparedness Innovations (CEPI), the Gavi Vaccine Alliance, and the WHO in early 2020: the COVAX Facility. The ambition of COVAX was to avoid vaccine shortages experienced by developing countries during the influenza pandemic by fostering R&D incentives through advanced market commitments by developed countries to ensure access to vaccines after their development (Eccleston-Turner & Upton, 2021).

However, COVAX's premises have been criticized for their advantages for pharmaceutical companies, who can profit from bilateral deals upfront without being liable to produce a vaccine that passes regulatory standards. Another issue lies in the national response of developed countries: In some cases, countries used such bilateral deals to secure only their vaccine supply without intent to export, a practice subsequently referred to as vaccine nationalism (Eccleston-Turner & Upton, 2021).

Vaccine nationalism, as defined by Evenett et al.

can take the form of overt export bans or limits—that aim at increasing domestic availability of vaccines at the expense of foreign supply—or they can take less transparent but often equally effective forms [...] includ[ing] delays in shipments and conditioning delivery abroad on imports of vaccine from other production locations (2021, p. 1).

Vaccine nationalism was largely prevalent in pre-purchase deals that guaranteed more vaccines than the concerned country needed. Effectively, this meant that the G7 nations purchased over a third of the world's vaccine supply despite forming only 13 percent of the world population (Kirgizov-Barskii & Morozov, 2022). National vaccine policy has, therefore, often hindered global efforts for equitable access.

However, there exists a counter policy to vaccine nationalism, namely vaccine diplomacy, defined as “almost any aspect of global health diplomacy that relies on the use or delivery of vaccines” (Hotez, 2014, p. 2) and thus includes Gavi, the COVAX facility, as well as private and national initiatives. During the coronavirus pandemic, it was notably Russia, China, and India who emerged as leaders of vaccine diplomacy. Based on the political economy, India's diplomacy lay mainly in its role as a production site, while China engaged in

all three dimensions: production, R&D, and export and donations of vaccines (Sukuzi & Yang, 2022). Nevertheless, the (geo)politicization of vaccine diplomacy exercised by China, India, as well as the EU and the US in the form of donations diverted from COVAX, has managed to reinforce rather than counteract inequalities in vaccine access (Sparke & Levy, 2022).

To limit the arbitrariness of vaccine diplomacy, curtail the power of pharmaceutical companies, and work towards health equity during the pandemic, India and South Africa proposed a waiver to the TRIPS Agreement in October 2020. Based on Article 5(c) of the agreement, a public health crisis can constitute national emergencies or other circumstances of urgency, in which case nations can draw on TRIPS flexibilities to limit IP protections for public health (Javed & Chattu, 2020). The ensuing debate over a possible waiver until a decision at the 12th WTO Ministerial Conference (MC12) in 2022 illustrates the tension between health and the dominant intellectual property system enshrined as part of the new constitutionalism of global health. The opposing delegations from the EU and, at the beginning of the debate, the US faced strong resistance from the waiver proponents of India, South Africa, and China. As such, it is worth investigating what narratives on the waiver each actor presented and to what extent they constitute resistance to new constitutionalism in the health realm.

8. Case Studies

In the following part, the analysis of the selected case studies will be presented. For each actor, five representative speeches or statements were selected to illustrate the underlying narration of the TRIPS waiver proposal. For all statements, the constituent event based on Abbott's (2008) framework is the TRIPS waiver proposal presented by South Africa and India in October 2020, as it enabled the broader debate about vaccine access and IP measures and is, as such, the indirect reference point of all elements selected.

8.1 Global North

The narratives of the spokespersons from the transnational historical bloc are presented first to form a base against which the contesting power of the waiver proposal can be evaluated. In the case of the United States, a speech from an ambassador at the WTO Conference on Vaccine Equity as well as a speech from President Biden supplement the statements presented in the TRIPS Council. For the European Union, all statements represented in this part were

introduced during the debates inside the Council. This decision is based on the fact that the US was less detailed in their council statements than the EU.

8.1.1 The United States

As a leading figure in establishing global health governance and its new constitutionalist dimensions today, the narratives of the United States on the Covid crisis and the proposed IP waiver are crucial to this analysis. The first American statement of the Biden Administration in the TRIPS Council was on February 23, 2021. The supplementary events of the speech emphasize the American openness to cooperation with “international partners” (WTO TRIPS Council [TRIPS Council], 2021b, p. 28), referring to President Biden’s pledge of 4 billion dollars to the COVAX initiative on February 18, 2021, and facts-based negotiations on the waiver proposal. Therefore, the crucial actors in the speech are the United States and its partners, which are differentiated from general references to the WTO and TRIPS Council members. It is not further defined which actors belong in which category, and there is no mention of either the parties opposing the waiver or its proponents.

The narrative discourse brings together events and actors. There are two different narrative discourses in the speech. The first discourse is that of cooperation and action when representing the constituent event and the supplementary events. Considering the changing American presidents and their different positions towards multilateralism, this discourse is essential in framing American actions in connection with the events. Moreover, it also calls for others to cooperate: “It is paramount that we collectively increase access to and facilitate equitable distribution of COVID-19 vaccines” (TRIPS Council, 2021b, p. 29).

The second discourse that emerges is one of the confidence in American actions. The American speaker emphasizes the aim “to end this pandemic and respond to the next one” (TRIPS Council, 2021b, pp. 28-29), showcasing confidence and optimism at a moment of the pandemic when vaccination was starting, and many states were turning away from international cooperation on health access (Peacock, 2022). However, this confidence is only connected to American incentives, while the waiver proposal debate is framed as finding solutions to respond to the crisis (TRIPS Council, 2021b). Thus, the narrative that emerges in this speech is that it is not the waiver proposal but renewed American commitment to international cooperation that will end the pandemic.

The American ambassador held the second speech at the WTO Conference on Vaccine Equity on April 15, 2021. Two supplementary events enrich the framework of the speech: the

HIV/AIDS crisis and the Doha Declaration. The events illustrate a parallel in history, another intense crisis, and the Doha Declaration that sought to strengthen health against IP after the HIV crisis. The events thus work as a warning: “We must learn from, and not repeat, the tragedies and mistakes of the past” (U.S. Mission to International Organizations in Geneva [U.S. Mission], 2021a, para. 11). Most strikingly, the speaker uses the pronoun “we” (U.S. Mission, 2021a, para. 3) throughout the speech, invoking the international community while not once speaking of the United States. The only statement that marks the American delegation is at the beginning, stating that the US delegation is looking forward to partnering with the Indian and South African representatives on the “issues before us today and more broadly” (U.S. Mission, 2021a, para. 2), referring to the waiver proposal. Beyond that, the main categories of actors are governments, companies or the industry, and the WTO.

One narrative discourse is the extraordinary crisis, illustrated through human costs and unequal access to vaccines. This connects to a second discourse that a crisis of such measure needs extraordinary leadership, including heroism and sacrifice. This discourse is used in a normative way to call on companies and governments: “As governments and leaders of international institutions, the highest standards of courage and sacrifice are demanded of us in times of crisis. The same needs to be demanded of industry” (U.S. Mission, 2021a, para. 9). Thus, extraordinary leadership is one of shared responsibility.

One other central narrative discourse is that of progress. In the speech, progress is, on the one hand, related to the need for reforms in the World Trade Organization and, on the other hand, to the extraordinary measures required from governments and industry (U.S. Mission, 2021a). Thus, the waiver proposal can be framed as an object for progress, also considering the call on companies to endure sacrifices, which could be understood as a loss of profit due to a TRIPS waiver. The narrative presented in the speech is thus that to avoid another tragedy like the HIV crisis, leadership with shared responsibility and willingness to sacrifice is necessary.

In contrast to the first two speeches, the third speech was held by President Biden during a White House Briefing on June 3, 2021. Once again, the supplementary events emphasize American efforts in fighting the pandemic in the form of the COVAX commitments and American cooperation: “[W]e have launched partnerships to boost global capacity to manufacture more vaccines” (Biden, 2021, para. 2). Throughout the speech, Biden refers primarily to the United States, emphasizing a focus on US achievements and to the American people. While this is notable insofar as other speeches do not typically refer to the American population, Biden’s role as president and the public setting of the speech explain such references. Other actors are countries worldwide, such as Korea, the Caribbean, or Mexico, as

recipients of US donations, and the G7 as “democratic partners” (Biden, 2021, para. 4). Notably, such a description excludes, for example, China as a partner state.

The most apparent narrative discourse in this speech is American leadership. This leadership has two dimensions: on the one hand, it is demonstrated indirectly through the US achievements in donations and aid to other nations; on the other hand, it is an explicit leadership assumption based on values. As Biden states, the US aims to “lead the world in bringing an end to the pandemic, with the power of our example and with our values” (Biden, 2021, para. 4). Thus, this discourse of leadership also includes the exemplary dimension rooted historically in American exceptionalism.

Another discourse is global health security, both on the domestic and international level, also led by the US. Security here has multiple aspects. First, security refers to the domestic provisioning of vaccines to counteract the vulnerability of the American people. Second, it refers to security through enhanced production and access to vaccinations globally. It is in this dimension that Biden categorizes the American support for the TRIPS Waiver proposal: “My administration supports efforts to temporarily waive intellectual property rights for COVID-19 vaccines because, over time, we need more companies producing life-saving doses of proven vaccines that are shared equitably” (Biden, 2021, para. 2). Lastly, these two elements combined are vital “to build a world that is safer and more secure against the threat of infectious disease” (Biden, 2021, para. 5). Therefore, Biden presents the narrative that American leadership is crucial to attaining global health security worldwide, and the waiver is a critical instrument in this strategy.

The following speech is the US delegation’s statement at the TRIPS Council Meetings on June 8, 9, and 29, 2021. The statement includes multiple supplementary events, which underline the American willingness to cooperate in generating a decision on the Waiver proposal. To this end, the US delegation references the statement from May 5, 2021, which was the official announcement of American support for the waiver proposal of the co-sponsors (U.S. Mission, 2021b). Moreover, the delegation addressed both the revised waiver proposal and the European Union proposal and called for text-based negotiations for the former and open discussions for the latter. As such, the key actors are the United States, the European Union, and the waiver proponents (TRIPS Council, 2021e).

One central discourse is the lack of progress in the negotiation process. As the US delegation remarks upon noticing only minor changes between the original and revised waiver proposal, “it is a shared responsibility to find common ground and to respond to the issues raised by other Members, and time is of the essence” (TRIPS Council, 2021e, p. 60). This goes

hand in hand with a call for more efficient cooperation to reach a timely solution based on the human impact of the pandemic.

The second prevalent discourse is that of American leadership. Leadership here is illustrated as choosing the waiver for the greater good, despite a strong belief in the necessity of intellectual property regulations and a more substantial commitment to vaccine production and distribution. Additionally, the US presents itself as a negotiation leader by emphasizing its openness to any outcome (TRIPS Council, 2021e). The emerging narrative is thus that the US is acting as a leader to overcome the lack of progress and reach a decision on the waiver to protect lives.

The last chosen statement is from the TRIPS Council Meeting on July 6, 2022, notably after the WTO's 12th Ministerial Conference, where the TRIPS waiver was adopted, though in a modified form. Thus, the supplementary events are the final Waiver adoption at the Conference and the request for an extension of the waiver. Following the events, the actors are the United States and the members of the WTO, without differentiation (TRIPS Council, 2022e).

Interestingly, the central narrative discourse is American leadership in the pandemic. Within this representation of events, the decision on the waiver proposal is framed as part of the US leading response to the Covid-19 pandemic:

Over the year the United States, as part of its comprehensive effort to end the pandemic, worked constructively with other WTO Members to facilitate discussions and bridge differences that led to an outcome on intellectual property that achieved consensus across 164 Members of the WTO (TRIPS Council, 2022e, p. 29).

This sub-discourse of success is also connected to successful cooperation within the WTO.

In a second discourse, domestic politics are emphasized. The US illustrates the question of a waiver extension as a domestic concern, emphasizing the role of domestic politics within the broader framework of international politics (TRIPS Council, 2022e). The subsequent narrative is the waiver's success as part of American leadership.

8.1.2 The European Union

The European Union has been involved in the debate over a TRIPS waiver proposal from the beginning, showcasing a solid position. The EU delegation held the first speech chosen in the TRIPS Council Meeting on October 15 and 16 as well as December 10, 2020. The supplementary events are the EU commitment to the COVAX initiative in September 2020,

illustrating the organization's openness to support vulnerable countries during the pandemic. A reference to the Doha Declaration on the TRIPS Agreement illustrates the claim that IP was made to allow for flexibilities in times of crisis (TRIPS Council, 2021a). Both elements illustrate the tension between engagement and adherence to IP regulations on behalf of the EU. Beyond the EU, other actors are the waiver proponents, India and South Africa, developing countries, and "like-minded WTO partners" (TRIPS Council, 2021a, p. 137) of the European Union, reflecting a split between opponents and proponents of the waiver itself.

There are a few prominent narrative discourses in the speech. One central discourse is that of EU leadership, cooperation, and problem-solving, reflected in the Union's actions and initiatives to combat the pandemic as well as its openness to multiple approaches. Scaling up production is crucial in the EU's approach to facilitate access to medications and supplies, primarily through trade and donation schemes (TRIPS Council, 2021a).

Another discourse, then, is of critical role of IP rights in an international response. The EU's position is that the TRIPS flexibilities make it an excellent instrument to enhance medication access, as they already provide a solution in case IP should become a barrier: "We believe that the intellectual property system, with its checks and balances, does not stand in the way of these efforts. Indeed, it is part of the solution to the challenge of universal and equitable access" (TRIPS Council, 2021a, p. 135).

This position leads to the third central discourse: the unnecessary of the waiver. The EU delegation claims that the waiver proposal is the wrong starting point to tackle the persistent inequalities, as they see no indication of IP enabling inequalities. Moreover, the delegation states that while they

agree that maintaining continued supply of such medicines and technologies is a difficult task we all face, non-efficient and underfunded healthcare and procurement systems, spike in demand and lack of manufacturing capacity or materials are much more likely to have an impact on the access to those medicines and technologies. (TRIPS Council, 2021a, p. 110).

Therefore, the problems are more practical and structural than those in IP. The emerging narrative is that of an engaged EU leadership seeking to combat the real issues of the pandemic in contrast to the unfitting waiver proposal.

The second statement is from the TRIPS Council Meeting on June 8, 9, and 29, 2021. The EU speaker mentions the revised waiver proposal submitted by the co-sponsors, reflecting the progress of the negotiations. He further refers to the Doha Declaration and the new proposal on trade-related response IP measures by the European Union. Like before, the central actors are the EU, the waiver proponents, developing countries, and the WTO members, reflecting an unchanged opposition (TRIPS Council, 2021e).

In the statement, the narrative discourse connected to the European Union itself is leadership and problem-solving. This is exemplified by the emphasis on vaccine donations and support of the European Union: “With over 300 million doses exported, the EU continues to remain the largest COVID-19 vaccine exporter in the world” (TRIPS Council, 2021e, p. 44). Another aspect of this is the EU’s engagement to find alternative solutions to the waiver proposal by submitting their proposal aimed at “respond[ing] to the crisis in a short term in an effective and pragmatic manner” (TRIPS Council, 2021e, p. 45). Similarly, the EU presents itself as open to multiple measures simultaneously, calling for a “multi-pronged approach” (TRIPS Council, 2021e, p. 45).

This discourse contrasts with the one linked to the waiver proposal by South Africa and India. It illustrates the waiver proposal as underdeveloped in scope and aims. The EU delegation thus does not agree with its basic assumptions and sees the issue of unequal access rooted in production and supply shortages (TRIPS Council, 2021e). Therefore, the narrative is that while the EU is engaged in finding a solution for equal distribution, there are better approaches than the waiver proposal.

Another crucial statement was presented in the TRIPS Council Meeting on July 20, 2021. The supplementary events mentioned strengthen the European self-representation as engaged supporters of developing countries in the pandemic. The speaker refers again to the Ottawa Group’s Initiative and the new Team Europe Initiative, aimed at supporting Africa. Notably, the actors in this speech are the EU, the WTO, the proponents of the waiver, developing countries, and Africa. However, Africa is not further specified than “African leaders” (TRIPS Council, 2022a, p. 10) and the African Center for Disease Control and Prevention, resulting in a generic reference (TRIPS Council, 2022a).

Consequently, one prominent narrative discourse is of European aid and support. This aid represents a hands-on approach to the previously mentioned challenges in production and access and strengthening local healthcare systems. Moreover, as the EU delegation points out, the aim is to

create conditions that will invite the transfer of technology, strengthening manufacturing capacities and resilience of the health systems of lower- and middle-income countries, creating conditions for investment, including via adequate regulatory frameworks, in order to attract the private sector where their technology is crucial (TRIPS Council, 2022a, p.10).

Thus, EU aid aims to expand new constitutionalism in the health sector through new treaties, reinforcing disciplinary neo-liberalism.

The narrative discourse on the constituent event represents the waiver proposal as harmful. The integral aspect here is its supposed undermining of the legal framework of IP and

its risk to collaboration, as the EU calls the proposal “an action that undermines the existing collaborations, and the transfer of technology” (TRIPS Council, 2022a, p. 9). Thus, the narrative is that the waiver proposal is counterproductive to its aims and that developing countries can depend on the EU for support instead.

The statement in the TRIPS Council Meeting from March 9 and 10 and May 6, 2022, is notable for multiple reasons. The supplementary events are the European Union-African Union (EU-AU) Summit in February 2022 and the EU proposal. As in the previously analyzed statement, an emphasis is put on cooperation with Africa. The actors are, therefore, the EU, including an explicit reference to President von der Leyen, the African Union and a general Africa, as well as the international community (TRIPS Council, 2022d).

There are multiple narrative discourses to be distinguished. One central discourse is of the leadership and assistance of the European Union. The referenced EU-AU Summit is used as an example of EU cooperation with the developing world to strengthen production while maintaining the existing IP regulations:

The President of the European Commission, Ursula von der Leyen, indicated that what we need is a multifaceted strategy to enhance production of mRNA vaccines in Africa. [...] Finally, we need to protect intellectual property, as the element that is necessary for research and development (TRIPS Council, 2022d, p. 40).

The discourse representing the actions of the waiver proponents is that of lack of cooperation. The EU claims that flexibility is needed on both sides to reach an agreement. In contrast, the EU delegation emphasizes its flexibility, claiming it has shifted from its position throughout the negotiations (TRIPS Council, 2022d).

One other discourse is once again the unnecessary of the waiver proposal. The delegation emphasizes that a strategy of IP protection has thus far not undermined progress and access, as they state that “production is no longer a bottleneck” (TRIPS Council, 2022d, p. 41) in Africa. The narrative presented is, therefore, that the European approach is successful in aiding developing countries, rendering the waiver unnecessary.

The last statement is taken from the TRIPS Council Meeting on July 6, 2022, after the MC12 and the adoption of the waiver. The EU references as supplementary events the conference and the decision to adopt a waiver. The main actors are the EU, the co-sponsors of the waiver proposal, and developing countries (TRIPS Council, 2022e)

The central discourse is that of success in having reached an agreement. However, this success for the EU refers to maintaining IP protection and affirming the TRIPS flexibilities. Success is also connected to cooperation, where the EU emphasizes the final decision and an additional Declaration on the WTO Response to the Pandemic and Preparedness for Future

Pandemics. Moreover, the problem-solving discourse is also present, as the EU delegation reiterates its openness to discussing the extension of the waiver to therapeutics and diagnostics (TRIPS Council, 2022e). Thus, the narrative presented is that of the waiver as a success of cooperation and affirmation of the European position.

8.2 Contesting Actors

Following the narratives of the supremacist bloc is the analysis of the contesting narratives. As was the case for the United States, additional material from outside the TRIPS Council was selected for China, including a statement from the General Council of the WTO and the International Forum on Vaccine Equity. The analysis of India and South Africa, however, is based on their delegations' statements in the TRIPS Council.

8.2.1 India

As one of the original co-sponsors of the waiver proposal, India is central to the debates. After the original joint communication with South Africa to propose a waiver, the first central statement on the topic was presented by the Indian delegation at the TRIPS Council meetings on October 15 and 16 and December 16, 2020. The delegation referred to the publication of the WTO Report on Trade and Health as a supplementary event to illustrate the lack of action in connection with the topic until the introduction of the proposal. Thus, the primary differentiation in actors is between the WTO and its members, India and the waiver proponents, and the EU (TRIPS Council, 2021a).

The central discourse is the existing IP system's inefficiency in dealing with extraordinary crises. The speaker illustrates that the TRIPS flexibilities were not created for an emergency such as the pandemic and thus offer too many complications to act as fast relief. In consequence, IP law acts as a barrier to equal access to healthcare products and technology in the form of patents, copyrights, industrial design, and the protection of undisclosed information. Moreover, this inefficiency presents itself in the industry's actions: "We also need to recognize that to date, most multinational corporations holding COVID-19 vaccine IP have not shown any willingness to openly license or transfer technologies to all competent vaccine developers globally" (TRIPS Council, 2021a, p. 150).

Another discourse is proportionality, related to the waiver proposal. The argument of proportionality is essential in convincing other members of the lawfulness of the proposal. To

this extent, the Indian delegation illustrates the justification for the scope and duration of the proposed waiver. This discourse is also connected to the national emergency measures of countries, such as mask mandates to illustrate precedents of extraordinary measures (TRIPS Council, 2021a).

Concerning the waiver, the discourse is one of responsibility. As the delegation states, “[i]t’s time for Members to take collective responsibility and put people’s lives before anything else” (TRIPS Council, 2021a, p. 95). One key aspect is the demand for a global solution, as the pandemic affects all nations. While many members of the WTO, including those from the Global North, have claimed that no one is safe until everyone is safe, the Indian delegation thus calls for implementing that rhetoric. The waiver proposal is thus also a proposal for a global solution: “Our waiver proposal represents an open and expedited global solution to allow uninterrupted collaboration in development, production and supply of health products and technologies required for an effective COVID-19 response” (TRIPS Council, 2021, p. 149). The narrative of the statement is then that the waiver is a necessary medium to fulfill global responsibility amid inefficient IP regulations.

Another interesting statement was presented in the small group negotiations on June 28, 2021. The Indian delegation refers to the HIV crisis to issue a warning to the members of the WTO and the TRIPS Council to enable equal access. The main differentiation in actors is between India and the proponents, the industry, developed countries, developing countries, and WTO members.

Based on the HIV crisis, one central discourse is to learn from the past. The delegation argues that the absence of IP regulations was central to providing medicines during the HIV crisis. It is then deduced that in a more severe crisis such as the Covid-19 pandemic, waiving IP rights is central to making medications more accessible and affordable (TRIPS Council, 2022a).

A different discernable discourse is that of uncertainty. The uncertain patent landscape undermines the ability of countries to gain access or make use of TRIPS flexibilities. The delegation illustrates the challenges posed by patents, trade secret protection, copyrights, and industrial design in the statement. The discourse of uncertainty is strongly connected to the discourse of the necessity of the waiver. In illustrating the weak points of IP, the proponents also establish the need for their proposal. As the speaker argues,

The proponents and the co-sponsors of the waiver have these four elements in scope of IP as we believe that rather than entering discussions on the nitty-gritties of the relevance of each section we must work towards the final objective that is to ramp up production and save lives. We must list out all possible elements of IP that may be a barrier in achieving our final goal (TRIPS Council, 2022a, p. 36).

By establishing saving lives as its objective, the argument illustrates the last central discourse: health first. To this end, the Indian delegations see extraordinary measures justified, as anything less would prolong the pandemic and other risk lives and livelihoods. This also includes overcoming the consequences of the Global North's vaccine hoarding through bilateral agreements with companies on vaccine supply (TRIPS Council, 2022a). The narrative is then that a waiver is necessary to put health first and eliminate uncertainties based on past experiences.

The statement in the informal TRIPS Council meeting on July 6, 2021, also holds valuable insights. On the importance of the human impact of the pandemic, the speaker refers to the development of Covid-19 in cases and lives lost, illustrating the urgency to adopt the waiver proposal through these supplementary events. The mentioned actors are India and the waiver proponents, the developed countries and the pharmaceutical industry, developing countries, and the WTO and its members (TRIPS Council, 2022a).

Concerning the delegations opposing the waiver, the discourse is non-cooperation and self-centeredness. One element here is the continued dominance of the Global North in securing vaccinations for its population. The Indian delegation dismisses this behavior as inefficient during a pandemic: "We believe it would be naïve for any country to think that it can win over a virus, which knows no boundaries, by securing vaccinating [sic] their own population" (TRIPS Council, 2022a, p. 41). The supposed unwillingness to engage constructively in the negotiations is another aspect of this discourse. As the Indian delegation argues, bilateral negotiations had previously been an excellent tool to reach a consensus; however, in this case, it seems "that some Members have agreed for TBN but not with an intent of concluding it" (TRIPS Council, 2022a, p. 40), stalling the procedure.

A morality discourse contrasts the negative discourse on the opposing side. For the Indian delegation, the waiver would reflect a commitment to health before anything else: "The waiver is more than just a legal mechanism, it is a statement of intent by all countries that they accord highest value to protecting human lives rather than protecting private profits" (TRIPS Council, 2022a, p. 41) The emphasis on the human dimension remains prevalent in the statement through references to case numbers, numbers of deceased, and rising infections. Moreover, framing the pandemic as an exceptional crisis supports the morality discourse in its severity and the necessity for urgent action.

Lastly, the previous discourse of proportionality is present in the statement. This also includes the openness to use various tools to fight the pandemic, including the EU proposal.

However, the delegation remains adamant that the waiver is proportionate in its adherence to WTO guidelines (TRIPS Council, 2022a). The narrative is thus the waiver is a morally necessary proportionate instrument currently being undermined by a few self-centered nations.

Further statements on the waiver proposal were presented at the TRIPS Council meetings on October 13 and 14, November 5, 18, and 20, and December 16, 2021. The supplementary events represent the pressure to decide for the Ministerial Conference and a warning of the consequences of inaction and unequal access for developing countries by citing the United Nations Conference on Trade and Development (UNCTAD) Trade and Development report. The relevant actors are thus India and the proponents, the waiver opposing delegations, the WTO members, developing countries, and the international community (TRIPS Council, 2022b).

One dominant discourse is the necessity of the waiver. Beyond illustrating the benefits of the waiver, in this statement, the Indian delegation stresses the negative consequences of the non-adoption of a waiver thus far. One element is the risk posed by new mutations of the virus, which the delegation sees as a consequence of unequal access to vaccinations. Thus, the vaccine hoarding of the Global North is counterproductive, as it will lead to more mutations among unvaccinated people. As the speaker states, “the virus itself is pleading this case on [their] behalf” (TRIPS Council, 2022b, p. 61).

In contrast to this is the morality discourse. Here is again the appeal to adopt the waiver to save lives and reduce the risk of new virus mutations. Furthermore, the implications make it clear that the duration of the waiver discussion had led to more significant harm: “It is highly unfortunate that over 5 million lives have been lost while we are still amidst discussions on the Waiver Proposal” (TRIPS Council, 2022b, p. 74). The delegations opposing the waiver, therefore, have the wrong priorities. The waiver is thus the way for the WTO and its members to show that they are putting health first.

The last narrative discourse illustrates the WTO as losing credibility in the crisis. If a solution is not reached, the WTO cannot assert its usefulness in times of crisis, which undermines its legitimacy. The waiver is thus the way for the WTO to reinstate its “credibility and relevance” (TRIPS Council, 2022b, p. 74). So, the statement’s narrative is that nonaction on the waiver results in the loss of credibility of the WTO and the moral credit of its members.

The last statement to be analyzed was presented on July 6, 2022, after MC12 and the adoption of the waiver in a modified form. The Ministerial Conference is, therefore, a supplementary event. The actors include India, South Africa, the waiver proponents, the WTO members, and the WHO (TRIPS Council, 2022e).

The central narrative discourse is that of disappointment. The Indian delegation argues that the waiver is too little in scope and too late to be effective in its adopted form. Thus, the emphasis is on a renewed discussion about a possible extension of the waiver and the scope of its applicability. Another critical point is that amongst the uncertainty of the pandemic, measures like testing that were left out in the waiver will remain crucial to containment and prevention (TRIPS Council, 2022e).

However, another discourse is that of cooperation. It includes the waiver's representation as an example of successful negotiations in times of crisis. Moreover, the speaker claims that it can be seen as a renewed opportunity for the WTO members to confirm the leadership of the WTO in extending the waiver (TRIPS Council, 2022e). As such, the emerging narrative is that while the waiver is insufficient, it illustrates the power of cooperation that remains needed.

8.2.2 South Africa

As in the case of India, South Africa is a crucial actor as original co-sponsor of the proposal. The South African delegation presented another statement on the waiver proposal at the TRIPS Council meetings on October 15 and 16 and December 10, 2020. In the statement, the speaker refers to previous health emergencies such as HIV and Influenza and the rising second wave of Covid-19 to illustrate the historical prevalence of unequal access to healthcare in developing countries. In illustrating the dynamics of health emergencies, the South African delegation draws a central distinction between the opposing delegations, including the UK, the EU, and the US, with the waiver proponents, which includes South Africa. It also refers to developed and developing countries and other stakeholders like governments, companies, and the World Intellectual Property Organization (WIPO), representing a complete introductory picture (TRIPS Council, 2021a).

There are several narrative discourses to be distinguished. One central discourse is the demonstrated necessity of the waiver. The discourse features several elements. One is the hypocrisy of the opposing delegations, which is illustrated on the one hand through the historical inequality in healthcare access of the HIV crisis, but also through the availability of persons from developing countries to participate in vaccine trials only to later be denied access to the end product (TRIPS Council, 2021a). Moreover, the South African delegation criticizes the vaccine nationalism of certain governments through bilateral deals. Another aspect is the lack of a global solution to guarantee access. As the speaker states, "COVID-19 is far from over

and there is no certainty as to when effective vaccines will be available in sufficient quantities to ensure equitable access” (TRIPS Council, 2021a, p. 122).

Connected to the first discourse is another one on the insufficiency of the existing IP framework. The speaker points to the challenges developing countries face in attempting to implement the TRIPS flexibilities, such as national legislation or limited institutional capacity. Additionally, the South African delegation emphasizes that pressure from trading partners is a crucial concern and undermines the use of the flexibilities. Here, they point to actions by the EU and US. Connected to this is also the aim to limit the power of the pharma industry through governments, as companies have a quasi-power overproduction and thus the power to exclude regions or countries from access to medicines (TRIPS Council, 2021a).

One last discourse is that of proportionality. Here, the delegation argues that the waiver only pertains to Covid, even as they are aware of other structural inequalities in global health. Central is the aspect of Covid-19 as an international emergency, which is used as a justification for the proposal of a waiver (TRIPS Council, 2021a). Thus, the narrative of the statement is the proportionality and necessity of the waiver to counteract insufficient IP legislation and political pressure.

Another statement from the South African delegation to the WTO was presented at the TRIPS Council Meeting on February 23, 2021. As the speaker did not refer to supplementary events, the focus was on the opposition between the waiver proponents, India and South Africa, and the opposing delegations. Thus, one central narrative discourse concerns the relationship between the developed and the developing world (TRIPS Council, 2021b).

One aspect of this discourse is that of sustained dependency. Here, the South African delegation argues that approaches relying on philanthropy and financial aid are insufficient to help the developing world long-term, as countries want to be able to produce vaccines and other medical supplies for themselves. As the speaker states, “the problem with philanthropy is that it cannot buy equality” (TRIPS Council, 2021b, p. 5). The role of companies is central, as the IP protection that leads Africa to rely on imports “puts the continental population of 1.3 billion people at the mercy of a few monopolistic companies” (TRIPS Council, 2021b, p. 5). The aim of the waiver is thus to allow the developing world to exercise self-help rather than remain dependent.

Further present is the discourse of a global solution. This includes the element of necessity based on the risk new virus mutations pose to the global system that increases through unequal vaccinations. To this end, the speaker cites comments by the Director General of the

WHO. The global solution in the waiver proposal is also supposed to counteract the “business-as-usual” (TRIPS Council, 2021b, p. 5) attitude of the WTO and the developed world.

Another discourse is that of the self-centeredness of the opposing parties. An element here is vaccine nationalism, criticized as naïve: “[T]he idea that a vaccine rollout will be the *deus ex machina* is misplaced, we cannot put the virus back into its bottle, we just cannot go back to the old normal” (TRIPS Council, 2021b, p. 4). Another point of reference is the political pressure from developed countries on developing countries to dissuade them from implementing TRIPS flexibilities (TRIPS Council, 2021b). Thus, the speaker’s narrative is the waiver as a global solution to overcome dependency and counter the egoism of the developed world.

The South African statement from the TRIPS Council Meeting on April 30, 2021, also offers interesting insights. The referenced supplementary events of the HIV crisis and the reaction in the form of the Doha Declaration represent once more a warning to engage in global cooperation. The concerned actors are pharmaceutical companies, developed countries, the US and the EU, South Africa and the waiver proponents, and developing countries (TRIPS Council, 2021d).

The narrative discourse of morality is central in the statement, as the speaker refers to contemporary Covid statistics to illustrate the inequality in vaccination distribution and the death count. Recounting the risks of virus mutations if inequality remained as stark, the South African delegation states that “vaccine equity is the biggest moral test before the global community” (TRIPS Council, 2021d, p. 4). Thus, opponents and proponents take different positions on a moral axis. Moreover, the speaker reiterates the aspect of dependency, claiming that “COVID-19 has thus exposed the strategic vulnerabilities of many countries” (TRIPS Council, 2021d, p. 3).

A second identifiable discourse is the representation of the waiver as a necessity. On the one hand, the necessity is based on enhancing production and overcoming supply shortages worldwide. On the other hand, the insufficiency of initiatives like COVAX generates the necessity. As the speaker states, “COVAX only covers 20% of the global population of the participating countries, and what the waiver does is to complement this initiative” (TRIPS Council, 2021d, p. 25). The value of the waiver is therefore claimed to be its compatibility with, not replacement of, traditional IP protections for health.

Another discourse is the call for cooperation. This is reflected in the reiteration of the slogan that “no one is safe until everyone is safe” (TRIPS Council, 2021d, p. 4). Cooperation also includes companies, emphasizing that successes in R&D are based on governments’

funding of companies' projects. Another part of cooperation is the proponents' openness to discussion and negotiation, as demonstrated by the revised waiver proposal (TRIPS Council, 2021d). Consequently, the narrative of the delegation's statement is the moral imperative to agree on the waiver to bridge the life-threatening gaps in existing IP practices through cooperation, not dependency.

The South African statement from the TRIPS Council meetings on October 13 and 14, November 5, 18, and 19, and December 16, 2021, is another vital building block in the analysis. The delegation uses the supplementary events to emphasize the lack of progress in the negotiations, most prominently by calling attention to the first anniversary of the waiver proposal. Beyond the common differentiation in actors between opposing delegations and the proponents, developed and developing countries, the UK, US, and EU, the statements concern the AU and Africa more generally (TRIPS Council, 2022b).

One central discourse is that of unfairness, represented in the travel bans against African nations after the emergence of the Omicron variant was traced to South Africa, which was not mentioned by other actors in their accounts in the same period. The South African delegation calls out the opposing delegations for leading the move for travel bans, further undermining the possibility of equality in the pandemic and effectively cutting off Africa. Moreover, the unfairness discourse sees the events as negatively impacting the credibility of the WTO (TRIPS Council, 2022b).

Loss of credibility is also predominant in the discourse of lack of cooperation and progress in the negotiations. The South African delegation finds fault with the manner of debate, claiming that “[c]ircular, ideological debates about the role of IP are not going to contribute to the ramping up and de-concentration of COVID-19 health product manufacturing” (TRIPS Council, 2022b, p. 37). Similarly, the delegation criticizes the lack of cooperation from the opposing delegations in text-based negotiations, effectively undermining the process. This is contrasted with an emphasis on the human impact of the pandemic and the claim that the proponents do not aim “to win a debate but to reach outcomes that would save lives” (TRIPS Council, 2022b, p. 39).

Moreover, another discourse is accountability. One aspect here is the exemplary effect of the negotiations on the perception of the WTO and the WTO members. As the delegation claims: “History will judge us on our ability to deliver a credible response to the COVID-19 pandemic. As the Chair rightly noted, the world is watching us closely” (TRIPS Council, 2022b, p. 37). As part of accountability, one can claim the necessity for the waiver and the insufficiency of other approaches like the EU proposal. Therefore, the narrative is that unfair and

uncooperative measures of the opponents undermine both the proponents' aim to save lives and the accountability of the WTO. The waiver could be the solution to these problems.

The last statement was presented at the TRIPS Council meeting on July 6, 2022, following the 12th Ministerial Conference and the adoption of the TRIPS waiver. The reference to the joint statement by the WTO, WHO, and WIPO to commit to equitable access for various Covid-19 vaccines and therapeutics is used to convince other WTO of the need for a waiver extension, following its limitation to vaccines. The actors are the waiver proponents, South Africa, the WTO and TRIPS Council members, and the EU (TRIPS Council, 2022e).

There are two main narrative discourses. One discourse is the lack of progress and cooperation in the waiver negotiations, reflected in the final limitations of the waiver. The South African delegation thus renews the call for cooperation on the Article 8 extension question by emphasizing the need for action amongst new variants (TRIPS Council, 2022e).

The other discourse is the human concern, reflected in the call for equitable distribution, the need to widen the scope of the waiver, and the risk of prolonging the pandemic through a limited waiver. The delegations also point out the inconsistencies between the acceptance of opposing delegations of the centrality of therapeutics in fighting Covid domestically and the unwillingness by the same parties to include them in the waiver (TRIPS Council, 2022e). The narrative of the statement is thus that due to a lack of cooperation, the waiver decision is insufficient and needs to be revised to protect lives.

8.2.3 China

As in the previous two case studies, the first speech selected for China was held in the TRIPS Council on October 15 and 16 and December 10, 2020. The TRIPS waiver proposal by the co-sponsors is once more the constituent event. As a supplementary event, the speaker refers to the Chinese decision to join the COVAX facility at the beginning of October, exemplifying Chinese engagement in the Covid-19 pandemic. The central actors of the speech are China, the developing countries, and the co-sponsors (TRIPS Council, 2021a).

One crucial narrative discourse is Chinese support for the pandemic. The speaker emphasizes the engagement with COVAX but also the commitment to export vaccines when they are ready. Moreover, China emphasizes that vaccines are a "global public good" (TRIPS Council, 2021a, p. 105), meaning that its export will likely not be restricted.

Another narrative discourse is the concern for developing countries. In the statement, the speaker points out that providing access to vaccines to developing countries will be the

priority of Chinese exports. Thus, the Chinese delegation supports the statement since the waiver proposal aims to bring relief to developing countries. For China, it is the global community's responsibility to offer such support (TRIPS Council, 2021a). Thus, the narrative emerges that China is open to the waiver as part of its support for developing countries.

The second statement selected was presented at the Council meeting on March 10 and 11, 2021. It refers solely to the joint proposal. Thus, the main actors to differentiate are China, the co-sponsors, developing countries, and WTO members. The dominant discourse is that of cooperation, which reflects the position that “[o]nly through global cooperation and solidarity, we can win this combat against pandemic” (TRIPS Council, 2021c, p. 39). A possible waiver is congruent with this position.

The discourse of Chinese denunciations of vaccine nationalism contrasts with the cooperation discourse. As the speaker states, “vaccine nationalism benefits no one” (TRIPS Council, 2021c, p. 38). He points out the Chinese support in the pandemic based on the idea of vaccines as a global public good, creating a moral contrast between China and countries with export restrictions. At the time of the debate, these were notably the EU, the UK, and the US, all entities of the Global North. Thus, the emergent narrative is that, unlike the actions of the Global North, China supports a waiver to offer relief to developing countries.

Another intriguing speech was held at the International Forum on August 5, 2021. Supplementary events are related to the pandemic, such as vaccine shortages and new mutations, or linked to Chinese engagement, for example, at the 73rd Health Assembly in May 2020. In the speech, the focus is on China and explicit mentions of President Xi Jinping, developing countries, and international organizations. In the speech, China presents itself as part of the developing world, speaking of “fellow developing countries” (Ministry of Foreign Affairs of the People's Republic of China [Foreign Ministry of the PRC], 2021, para. 13), creating an opposition to the Global North.

One prominent discourse is, therefore, the concern for and solidarity with developing countries. This discourse is directly related to Chinese support and leadership in the crisis. Here, the variety of interaction is emphasized, from the export of vaccines to cooperation in production. The speaker states, “The safety and effectiveness of Chinese vaccines have gained authoritative recognition internationally. This is a joint achievement by China and other developing countries” (Foreign Ministry of the PRC, 2021, para. 12). The speaker also refers to “health for all” (Foreign Ministry of the PRC, 2021, para. 21) using the Alma Ata Declaration as a framework for action today.

Moreover, the discourse of responsibility is represented through a constituent call for multilateral action and cooperation. Here, the speaker presents vaccinations as essential, claiming that “[c]oronavirus vaccination is like a touchstone of true multilateralism” (Foreign Ministry of the PRC, 2021, para. 6). This discourse addresses the work of IOs like the WTO and World Bank, who could prove their multilateralism in reaching an agreement on the waiver proposal. Interestingly, the rhetoric frames multilateralism and cooperation as a battle in Chinese style, referring to the need to “pull together to build a great wall against COVID-19” (Foreign Ministry of the PRC, 2021, para. 21).

Another discourse is that of humility. While describing China’s achievements, the speaker points out that China is acting in solidarity despite its own limitations: “Although China’s vaccine production capacity has yet to reach a sizable scale and domestic demand for vaccination has been rising sharply, China has started supplying vaccines to countries with urgent need from as early as September 2020” (Foreign Ministry of the PRC, 2021, para. 13). Another aspect of this discourse is the rejection of political motives, claiming that “China has no political motive [...]. The only purpose of China is to make vaccines a global public good that genuinely serves as people’s vaccines and helps the world defeat the pandemic at an early date” (Foreign Ministry of the PRC, 2021, para. 15). Conversely, nations who do not engage in the same way are indirectly presented as selfish. Thus, China’s cooperation initiatives are an example for other industrialized nations. The emergent narrative is thus that of exemplary Chinese cooperation in times of crisis, while the rest is too self-centered.

Another statement selected for analysis was presented at the informal TRIPS Council Meeting on May 6, 2022. The main supplementary events are MC12, which acts almost as the deadline for the negotiations process, and the circulation of an update on the negotiations between the US, the EU, India, and South Africa, hereafter referenced as the Quad. The central actors, however, are China, the WTO, and developing countries (Permanent Mission of the People’s Republic of China to the World Trade Organization [Permanent Mission of the PRC], 2022).

One central discourse is once again that of Chinese support in the pandemic. To this end, the speaker emphasizes the openness of the Chinese government to cooperate with other entities, such as the BRICS forum, which “made the public health and vaccines cooperation a key area of BRICS’ work this year” (Permanent Mission of the PRC, 2022, para. 6). Moreover, the speaker repeats that President Xi had declared vaccines a global public good to be distributed after their approval.

This connects to another discourse, the criticism of the WTO and the work of the Quad. In essence, China feels that the proposed language in the communication from May 3, 2022, disregards Chinese vaccine export achievements by excluding “developing country members who exported more than 10 percent of world exports of Covid-19 vaccine doses in 2021” (TRIPS Council, 2022c, p. 3) from being eligible for the waiver. This language undermines cooperation and unity within the WTO for the Chinese delegation, as it weakens incentives to “export critical materials to others if we are to face another pandemic in the future” (Permanent Mission of the PRC, 2022, para. 11). Such an eligibility criterion is thus seen as counterproductive, leading nations to follow policies of vaccine nationalism, subverting the purpose of the waiver. Thus, the narrative is the subversion of the waiver proposal to punish nations like China for their support.

The last statement was submitted for the General Council Meeting on October 6 and 7, 2022. As it concerns the possible waiver extension as mandated under Article 8 of the TRIPS Waiver decision, the supplementary event is MC12. The main actors are China and WTO members (WTO General Council, 2022).

One discourse is that of urgency. On the one hand, this refers to the original December 2022 deadline for a decision on Article 8; on the other hand, it refers to the human dimension. The speech states: “If we do not take this opportunity now, we run the risk of more variants, more deaths, more disruption, and more uncertainty” (WTO General Council, 2022, p. 55). Thus, it is the aim of the statement to call for cooperation and action.

Another discourse is that of morality. The Chinese speaker emphasizes that it is “morally imperative” (WTO General Council, 2022, p. 55) to decide on the extension proposal. Members should prioritize morality over economic interests, illustrating China as the international community’s conscience. However, morality coexists with pragmatism, meaning that the extension should focus on critical means of therapeutics and diagnostics for developing countries (WTO General Council, 2022). The narrative of the speech is then that the waiver extension is a moral necessity, though it must be pragmatic in form.

8.3 Evaluation

What became apparent in the analysis is that the cohesion between the members of the transnational bloc and the contesting actors differs. For the G7-nexus, the US and the EU present different narratives throughout the negotiations. In the case of the US, the narratives shift from not directly mentioning the waiver proposal to including it as part of the central

narrative: the American leadership as a way out of the crisis. The waiver thus becomes a strategy to achieve this goal, despite its origin in the Global South.

In contrast, the European narrative on the waiver becomes increasingly more hostile. While in the beginning, the waiver was illustrated as the consequence of a wrongful understanding of IP, later statements portrayed it as a destructive and counterproductive force. The waiver is also juxtaposed with the European achievements, proving that it is not a necessary tool to counter the pandemic. As such, the European narrative entails paternalism, as it plays on the fact that the proponent seemingly cannot understand the TRIPS Agreement or else they would not propose a waiver. Gradually, the EU delegation increases examples of its own actions that should illustrate the successful nature of a policy based on IP. Thus, while the EU presents itself as open and constructive partner, its opposition to the base and scope of the waiver remains intact.

In contrast, the narratives of the contesting actors are more similar. The Indian narrative remains stable over time in its morality dimension, confronting the waiver opponents with their hypocrisy in using Ghebreyesus' slogan but not abiding by it. It further frames the waiver as a global responsibility, reinforcing morality. Likewise, morality retains the central position in South Africa's narrative, as was strongly shown in illustrating the Covid-19 crisis as a moral test for the world. Moreover, morality includes overcoming existing dependencies between the developed and developing world, which the crisis perpetuates. The narratives of South Africa are also strong in their emphasis on the lack of cooperation and hypocrisy of the opposing delegations. Moreover, the South African delegation is not reluctant to refer directly to the EU, the UK, or the US in its criticism of vaccine nationalism or political pressure toward developing countries, something that India or China avoid. Moreover, neither actor referred to the right to health in a statement in the TRIPS Council, despite its perhaps obvious potential to challenge the defense of IP protection.

The Chinese narrative has similarly remained firm in including the waiver as part of China's protection of the weak, the developing world. Here China almost illustrates itself as a big brother responsible towards the younger siblings. Over time, the narrative entails criticism of the Northern countries for their lack of support for developing countries and their politicized attacks on China. For the Chinese delegation, the attempt to exclude China through an eligibility criterion from the waiver is a central example of such. It also allowed the delegation to assume the moral high ground and question the motive of such a criterion. Thus, in general the narratives of each respective actor have remained relatively similar throughout the debate, with

the US notably embracing the waiver. Here the change in the presidency and the pressure on President Biden to show goodwill as leader of the world can be seen as central.

In addition, the contrast between the ideas of development models is evident. The EU aims to foster vaccine equity through donations and export, attracting capital and instating regulations, effectively strengthening a system of new constitutionalism in global health. In contrast, the South African speaker calls for limits to the power of private capital and the strengthening of local production to achieve self-help. The contesting actors' narratives undermine the ideologic base of the supremacy of the G7-nexus and new constitutionalism, as well as the idea of market civilization, by illustrating the possibility of alternative development models to neo-liberalism.

However, support from the US and China should not be overestimated. As President Biden's speech reveals, the security of the domestic population remains the priority and support is for a waiver concerning vaccines only. Additionally, while China has claimed to be open to the waiver from the beginning, its engagement in pushing for it was limited. As Yu (2021) argues, the nation's already expansive bilateral health diplomacy and a shift towards the position of the developed world in IP matters can explain the discrepancy between action and rhetoric.

Moreover, the narratives did not affect the material realities; the dominance of the G7-nexus in economic and military dimensions. The narrative effect is felt primarily in the realm of institutions and ideas but does not affect all aspects of hegemony or supremacy in a neo-Gramscian understanding. While one could argue that this finding is in line with common criticism that neo-Gramscian approaches tend to be preoccupied with the ideological dimension (Bieler & Morton, 2004). Nevertheless, in neo-Gramscian premises ideas as inter-subjective meanings are an explicit part of the political economy and as such not independent from the social relations of capitalism (Bieler & Morton, 2004). In the context of this analysis, it can therefore be argued, that a change in ideology can affect institutions, which are the result of in the interplay between ideas and material capabilities. As capital is shifting towards players in the Global South such as China or India who are part of the BRICS forum (Schrecker, 2020), it is plausible that their adoption of a contesting ideology can influence existing institutions or create new ones.

In addition, during the TRIPS waiver debate, the contesting actors united an opposition to the supremacist structure. On the one hand, the waiver managed to attract an increasing number of co-sponsors and proponents in the TRIPS Council during the debates, showcasing a common understanding of the necessity for the waiver and the persistent inequalities in the

structures of IP and global health. Interestingly, as more members joined the initiative, the rhetoric changed in the common communication. The original communication from October 2, 2020, justifies the proposal through the reference to Covid-19 as global emergency and the human impact (TRIPS Council, 2020). A new communication from September 30, 2021, signed by India, South Africa, the LDC group, the African Group, and 17 other nations, explicitly refers to the right to health and the obligations of the ICSECR to take steps to fully realize this right (TRIPS Council, 2021f). Therefore, the morality discourse attracts other members, who in turn impact the strategy employed in narrating the waiver proposal.

On the other hand, the morality narrative proliferated outside of the WTO, bringing other actors into the debate. The People's Health Movement (PHM) issued an open letter to the EU on April 2, 2021, demanding a global response based on global solidarity, and called on the EU to follow its "moral imperative" (People's Health Movement, 2021). The letters also demanded that health be put over profit in pandemic times, reflecting the demands and narratives issued by India and South Africa. As a coalition of 94 CSOs issued the letter, it illustrates the development of a broader acceptance of the position of the contesting actors and, thus, the process of uniting opposition against the Global North. These demands demonstrate the wide-reaching questioning of the contemporary exclusionary patterns of social relations. These dynamics can be seen as an example of Gómez' (2018) concept of CSOs' discursive influence, as they aim to convince governments and IOs of the CSOs' position. Moreover, it exemplifies the rise of different morals, which are part of the social relations of production and can constitute a source of power for different social forces (Bieler & Morton, 2004). Therefore, as Gill (1995) assumed, the contradictions of neo-liberalism and the protection of capital offer a space for resistance.

Despite a lack of narrative change on the opponents, it is also worth mentioning that the WTO adopted the waiver proposal in a reduced form. The act shows that a united opposition can open spaces for contestation and force changes to the existing system of new constitutionalism. Such acts further reduce the moral and intellectual legitimacy of the supremacist leadership of the G7-nexus in opposition to claims based on morals. As Benatar et al. (2009) have previously pointed out, a moral paradigm in global health is essential to overcome inequalities. The TRIPS waiver debates have partly proven the supposed value of a morality narrative global health.

9. Outlook

While the first round of debate has finished, the Ministerial Decision on the TRIPS Agreement in 2022 has opened the door for an extension of the waiver to cover not just vaccines but also therapeutics and diagnostics (WTO Ministerial Conference, 2022). Continuous American and European claims that an expansion must first be discussed domestically, even though over a year has passed since MC12 currently block negotiations in the TRIPS Council. The first deadline has already been delayed, and debates are being diverted by discussing reports rather than thematic matters (TRIPS Council, 2022f).

Support from the waiver proponents as well as CSOs, has remained strong. In a supportive statement, the People's Vaccine Alliance (PVA) points out the necessity to extend the waiver to protect people's health (People's Vaccine Alliance, 2022). The proposed delay in a decision has been intensely criticized by CSOs from health, human rights, and even fair trade organizations, illustrating the broad reach of an emerging opposition (Amnesty International, 2022). Moreover, a recent statement from the PVA shows the expansion of TRIPS waiver narratives, claiming that crises like Covid-19 and HIV illustrate the need to put health first. Its demands also include a more comprehensive role for civil society, calling for "transparency and accountability mechanisms to enable civil society and community participation in decision-making and monitoring" (People's Vaccine, 2023, para. 4). Thus, a new coalition seems to be forming.

At the same time, the experience of the coronavirus pandemic has led to debates over reform in the WHO: in discussing amendments to the International Health Regulations from 2005 and in the form of a new pandemic treaty for enhanced preparedness. All 194 nations of the WHO are part of the discussion over the pandemic treaty, which was first discussed at the end of 2021 (WHO, 2023d). The legal base for the agreement is the WHO Constitution Art. 19 power "to adopt conventions or agreements with respect to any matter within the competence of the Organization" (WHO, 2023c). As these conventions can be adopted with a two-thirds majority, the chance to overrule possible opposition from the Global North is bigger than in IOs based on consensus.

However, the breadth and efficiency of the treaty remain to be seen, as experts have criticized the lack of provisions of financial support for low- and middle-income countries (LMIC), few resources to support LMICs in building social protection programs, and the lack of protection for human rights (Friedman et al., 2022). Moreover, *The Lancet* has warned of the

vulnerability towards the politicization of the proposed monitoring mechanism, calling for an independent organ instead (The Lancet Editorial Team, 2023). Most of all, a pandemic treaty is that – a treaty. It therefore holds the potential to be incorporated into the body of new constitutionalist agreements to protect the status quo, subverting the original purpose. However, that can only be judged after the completion of the treaty texts and is thus outside the scope of this paper.

10. Discussion

Beyond an immense human impact, the coronavirus pandemic demonstrated persistent inequalities and vulnerabilities in contemporary global health and governance. Vaccine nationalism based on bilateral agreements between developed countries and pharmaceutical companies, as well as the limitations put in place by the intellectual property regime of the WTO in the form of the TRIPS agreement, undermined global efforts to counteract the pandemic and achieve equitable access to vaccines around the globe. These events motivated the research question of this paper to what extent the debate over the TRIPS waiver proposal during the Covid-19 pandemic constitutes a challenge to the supremacy of the Global North in global health.

Global health, as a term, reflects the changes in the world order as it descended from tropical medicine and international health. While tropical health denoted colonial understandings of health security, international health refers to the international system established after the Second World War, shaped by the cooperation between states and IOs such as the WHO, the World Bank, and the WTO. The shift to global health demonstrates the increasing impact of global connections to health and the proliferation of NSAs in the governance of global health.

Historically, global health has been impacted by the situation of the world at large. Despite increasing cooperation after WWII, most notably through the WHO, the Cold War led to the politicization of global health. Moreover, the notion of health has changed to include social determinants such as education, access to water, or climate change. The formulation of the MDGs exemplified this understanding, despite being limited to the developing world. With the 2016 SDGs, global health aims are directed at developing and developed countries. The MDGs and SDGs illustrate a horizontal approach to health, though vertical campaigns focused on singular diseases remain part of global health politics today.

The base of all global health politics is the right to health, first established in the founding constitution of the WHO and later confirmed in other international covenants. While they are binding and call on the treaty partners to work towards the structural requirement for the right to health, other legal frameworks impair the right to health. Most notably, IP regulations illustrate health and intellectual property protection tension.

Thus, to govern a wider field of global health, multiple actors are engaged in GHG. IOs such as the WHO, ILO, OECD, the World Bank, and the WTO are the most prominent. While the WHO and the World Bank have an explicit health mandate, other organizations come into contact with GHG through the social protection dimensions of their work. In the framework of this thesis, the WTO is of particular interest as an arena to contest access to health.

In this paper, the current state of global health and its governance was approached from the theoretical framework of new constitutionalism, a neo-Gramscian approach that critically assesses the development of international leadership. New constitutionalism presupposes the supremacy of a transnational historical bloc formed by the G7 nations and transnational capital, the G7-nexus. The dominant bloc maintains its power through the political project of neo-liberalism, entrenched in constitutionalist agreement and further justified by the notion of market civilization. In the case of global health, the supremacy of the G7-nexus is evident in the historical dominance of relevant IOs, the power of funding, subsequent agenda-setting, and the conscious undermining of a united Global South.

Moreover, through trade agreements like TRIPS and bilateral treaties, the G7-nexus has solidified neo-liberal policies in global health, leading to the commodification of health on the one hand and the protection of capital on the other hand. This commodification also undermines the right to health by conferring citizenship rights to capital, thus putting capital and human lives on the same level. Moreover, the G7-nexus confirms that IP is necessary for development, employing the ideology of market civilization, which maintains that neo-liberal integration is the only possible and desirable development model.

The Covid-19 pandemic is a prime example of the effect of new constitutionalism, but also of contestation. In October 2020, India and South Africa issued a proposal to waive certain aspects of the TRIPS proposal, prompting a debate that was the main focus of the analysis to uncover the narratives of the US, the EU, India, South Africa. The actors were selected as representatives of the supremacist bloc and a contesting force.

A narrative analysis showed that the United States framed the waiver as part of its return to world leadership, in contrast to the EU, which framed it as a harmful instrument based on a nonunderstanding of IP that undermined efforts to stop the pandemic. India and South Africa,

however, illustrated the waiver as a moral necessity and responsibility of the world to counter dependencies in the Global South. China also supported the waiver as part of its narrative as a defender of the weak, the developing world.

Despite only little changes in narrative across all actors, the narrative of the contesting actors has united many members of WTO behind the proposal, as well as numerous CSOs, effectively forming a united opposition marked by proliferating moralist rhetoric. The waiver proponents question the exclusionary nature of the current social relations of production and in consequence undermine the ideology of the market civilization by promoting a different model of development. In turn, the new morals present a source of power to different social forces. Thus, the contesting actors undermine the base of the transnational historical bloc's legitimacy, while forming an opposition. Event though it was limited in form, the waiver proposal and its ongoing negotiations demonstrate the impact and sustained challenge of the contesting actors. Hence, the TRIPS waiver debate can be understood as an effective counter-supremacist movement in a new constitutionalist context.

However, one needs to consider that while a narrative might change ideas or impact institutions in the Gramscian sense, material realities are also necessary for a decisive change in hegemony or supremacy and have remained unchanged by the TRIPS waiver debate. Thus, while I find the thesis that the narratives of the contesting actors manage to unite a previously fragmented opposition to Northern supremacy in global health and undermine the ideology of market civilization through an emphasis on health over capitalist interests to be proven, one must emphasize the limits of such a challenge. Ongoing debates over an extension of the waiver and a new pandemic treaty to enhance preparedness and equity can be interesting starting points for a sustained challenge of global supremacy.

In addition, it is necessary to highlight the limits of the presented framework. While new constitutionalism allows for the TRIPS waiver proposal and Covid-19 to account as a contestation of the current dominance of the Global North in global health, one needs to acknowledge the more general decline of neo-liberal globalization illustrated by the Covid-19 pandemic. Moreover, the verdict of contestation in one realm of global policy is not generalizable for all policy fields, a tension that Gill's framework cannot explain, as it does not account for different models of hegemony or supremacy in different aspects. A case study on one aspect of the pandemic is thus not suited to hypothesize a general shift in the world order. Likewise, the relative omittance of the material dimension of power is a limitation of the current approach.

A further concern is the tension between a challenge to supremacy and ensuing hegemony. As Gill (1995) argues, hegemony is marked by the dominant historical bloc's inclusion of the opposition's demands. The reaction of the current transnational historical bloc to accommodate the oppositions demand in the form of a pandemic treaty could also be interpreted tactic to facilitate legitimacy of the bloc's leadership. Consequently, it is unclear to what extent one can interpret the current events as pathway to hegemony based on active consent by a united opposition.

Lastly, Gill fails to offer an equitable alternative to new constitutionalism, sketching out only a possibility for resistance. Thus, if resistance leads only to a new historical bloc in power, this does not mean an automatic end to the challenges associated with constitutionalism but more a change in perspective based on the ruling configuration. As capital concentrates itself in various nations in the Global South, the question arises to what extent constitutionalism will always appear in a new form, as international treaties will continue to exist in an interconnected world. A following project could thus investigate the possibility of multiple constitutionalist projects, and the way they can challenge the current configuration of the social relations of production.

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