228 Research Paper
14 January 2026

UN Human Rights Council Resolutions on Access to Medicines and the Use of TRIPS Flexibilities: A Review

Nirmalya Syam

SOUTH CENTRE

RESEARCH PAPER

228

UN HUMAN RIGHTS COUNCIL RESOLUTIONS ON ACCESS TO MEDICINES AND THE USE OF TRIPS FLEXIBILITIES: A REVIEW

Nirmalya Syam*

SOUTH CENTRE

14 JANUARY 2026

* Nirmalya Syam is Senior Programme Officer of the Health, Intellectual Property and Biodiversity Programme (HIPB) at the South Centre.

SOUTH CENTRE

In August 1995, the South Centre was established as a permanent intergovernmental organization. It is composed of and accountable to developing country Member States. It conducts policy-oriented research on key policy development issues and supports developing countries to effectively participate in international negotiating processes that are relevant to the achievement of the Sustainable Development Goals (SDGs). The Centre also provides technical assistance and capacity building in areas covered by its work program. On the understanding that achieving the SDGs, particularly poverty eradication, requires national policies and an international regime that supports and does not undermine development efforts, the Centre promotes the unity of the South while recognizing the diversity of national interests and priorities.

NOTE

The views contained in this paper are attributable to the author/s and do not represent the institutional views of the South Centre or its Member States. Any mistake or omission in this study is the sole responsibility of the author/s.

Any comments on this paper or the content of this paper will be highly appreciated. Please contact:

South Centre
International Environment House 2
Chemin de Balexert 7–9
1219 Geneva
Switzerland
Tel. (41) 022 791 80 50
south@southcentre.int
www.southcentre.int

ABSTRACT

This paper reviews almost twenty years of the United Nations Human Rights Council's (UNHRC) work on access to medicines. The UNHRC has repeatedly framed access to medicines as part of the right to health and has urged States to rely on flexibilities in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to make essential treatments more affordable. Although the UNHRC has strengthened the human rights foundation for using such flexibilities, its resolutions have produced little change on the ground. The commitments embodied in the UNHRC resolutions stay broad and non-binding, leaving the deep structural barriers in place, including restrictive intellectual property (IP) clauses in trade deals, pressure from powerful States, limited technical and manufacturing capacity, and weak policy coordination within governments. Moreover, several recent resolutions reaffirm the value of IP protection, which creates tension that dilutes the Council's support for the wider use of TRIPS flexibilities. The paper finds that the main gap between global human rights commitments and national action on advancing access to medicines reflects political choices and structural barriers, and concludes by calling for stronger mandates for States to review access barriers during the Universal Periodic Review, increased technical assistance from the Office of the High Commissioner for Human Rights, more civil society participation, national right-to-health action plans, and systematic monitoring of TRIPS implementation.

Cet article passe en revue près de vingt ans de travail du Conseil des droits de l'homme des Nations Unies (CDHNU) sur l'accès aux médicaments. Le Conseil des droits de l'homme des Nations Unies a présenté à plusieurs reprises l'accès aux médicaments comme faisant partie du droit à la santé et a exhorté les États à s'appuyer sur les flexibilités prévues dans l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC) afin de rendre les traitements essentiels plus abordables. Bien que le Conseil des droits de l'homme des Nations Unies ait renforcé le fondement des droits de l'homme pour l'utilisation de ces flexibilités, ses résolutions n'ont entraîné que peu de changements sur le terrain. Les engagements pris dans les résolutions du Conseil des droits de l'homme restent généraux et non contraignants, laissant en place de profondes barrières structurelles, notamment des clauses restrictives en matière de propriété intellectuelle dans les accords commerciaux, la pression exercée par les États puissants, des capacités techniques et de fabrication limitées et une faible coordination des politiques au sein des gouvernements. En outre, plusieurs résolutions récentes réaffirment la valeur de la protection de la propriété intellectuelle, ce qui crée des tensions qui affaiblissent le soutien du Conseil à une utilisation plus large des flexibilités prévues par l'accord ADPIC. Le document constate que le principal écart entre les engagements mondiaux en matière de droits de l'homme et les mesures nationales visant à améliorer l'accès aux médicaments reflète des choix politiques et des obstacles structurels, et conclut en appelant à des mandats plus forts pour les États afin qu'ils examinent les obstacles à l'accès lors de l'Examen périodique universel, à une assistance technique accrue de la part du Haut-Commissariat aux droits de l'homme, à une plus grande participation de la société civile, à des plans d'action nationaux en faveur du droit à la santé et à un suivi systématique de la mise en œuvre des ADPIC.

Este documento repasa casi veinte años de trabajo del Consejo de Derechos Humanos de las Naciones Unidas (CDHNU) en materia de acceso a los medicamentos. El CDHNU ha enmarcado repetidamente el acceso a los medicamentos como parte del derecho a la salud y ha instado a los Estados a que se acojan a las flexibilidades del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (ADPIC) para que los tratamientos esenciales sean más asequibles. Aunque el CDHNU ha reforzado la base de

derechos humanos para el uso de dichas flexibilidades, sus resoluciones han producido pocos cambios sobre el terreno. Los compromisos recogidos en las resoluciones del CDHNU siguen siendo generales y no vinculantes, lo que mantiene las profundas barreras estructurales, como las cláusulas restrictivas de propiedad intelectual (PI) en los acuerdos comerciales, la presión de los Estados poderosos, la limitada capacidad técnica y de fabricación y la débil coordinación de políticas dentro de los gobiernos. Además, varias resoluciones recientes reafirman el valor de la protección de la PI, lo que crea una tensión que diluye el apoyo del Consejo al uso más amplio de las flexibilidades del ADPIC. El documento concluye que la principal brecha entre los compromisos mundiales en materia de derechos humanos y las medidas nacionales para promover el acceso a los medicamentos refleja decisiones políticas y barreras estructurales, y concluye con un llamamiento a que se refuercen los mandatos de los Estados para que revisen las barreras de acceso durante el Examen Periódico Universal, se incremente la asistencia técnica de la Oficina del Alto Comisionado para los Derechos Humanos, se potencie la participación de la sociedad civil, se elaboren planes de acción nacionales sobre el derecho a la salud y se supervise sistemáticamente la aplicación del Acuerdo sobre los ADPIC.

本文回顾了联合国人权理事会（UNHRC）**近二十年来在**药品可及性方面的工作。人权理事会多次将获得药品的权利纳入健康权范畴，并敦促各国利用《与贸易有关的知识产权协定》（TRIPS）**中的**弹性条款，使基本治疗手段更具可负担性。尽管人权理事会强化了运用此类弹性条款的人权依据，但其决议在实际层面收效甚微。人权理事会决议中的承诺仍停留在宽泛且非约束性的层面，导致深层结构性障碍持续存在——**包括**贸易协定中的限制性知识产权条款、强权国家的施压、有限的技术与生产能力，以及政府内部薄弱的政策协调。更值得注意的是，近期多项决议重申了知识产权保护的价值，这种矛盾立场削弱了理事会对更广泛运用 TRIPS 弹性条款的支持力度。该报告发现，全球人权承诺与各国在促进药品可及性方面采取的行动之间存在主要差距，这反映了政治选择和结构性障碍。报告最后呼吁加强各国在普遍定期审议期间审查可及性障碍的授权，增加人权事务高级专员办事处的技术援助，扩大民间社会参与，制定国家健康权行动计划，并对《与贸易有关的知识产权协定》的实施进行系统监测。

TABLE OF CONTENTS

I. INTRODUCTION

In all countries, access to life-saving medicines still depends significantly on legal and economic factors. The patent protection granted in accordance with the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)[1] has long been criticized for leading to prices of critical treatments that are out of reach in developing and least developed countries (LDCs) - especially in low and middle-income countries (LMICs).[2] However, the TRIPS Agreement also includes safeguards, known as "flexibilities," that allow governments to prioritize under some circumstances public health over patent rights.[3] These flexibilities are legally available, but have been difficult to use owing to procedural burdens, capacity constraints and in some cases political pressure from developed countries.[4]

Over the last two decades, the United Nations Human Rights Council (UNHRC) has stepped into this space, framing access to medicines not just as a policy issue, but as a matter of international human rights. Through a series of resolutions, the Council has called on States to adopt a rights-based approach to health and as part of this, to fully utilize the TRIPS flexibilities to improve the availability and affordability of medicines.[5] These resolutions assert a clear principle: when public health is at stake, intellectual property (IP) rules must defer to the right to life and health.[6]

Yet principles alone do not guarantee action. Despite the assertive language in UNHRC resolutions, the practical uptake of TRIPS flexibilities has remained sporadic.[7] Most governments have not invoked them in practice.[8] This disconnect raises an important question for policymakers: Have UNHRC resolutions made a difference in how States approach access to medicines? Have they empowered countries to actually use TRIPS flexibilities—or have they remained statements of good intent?

This paper argues that although the UNHRC has strengthened the normative basis for using TRIPS flexibilities, its resolutions have had limited practical impact because they do not directly address structural and political barriers that constrain their use. The paper reviews key UNHRC resolutions, analyzes how human rights and IP norms interact, and assesses the extent to which States have incorporated these commitments into national policy.

---

[1] World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Marrakesh Agreement Establishing the WTO (1994). Available from https://www.wto.org/english/docs_e/legal_e/downloads_e/TRIPS05_en.pdf.

[2] See generally, Ellen t'Hoen, "TRIPS, Pharmaceutical Patents and Access to Essential Medicines: A Long Way from Seattle to Doha", *Chicago Journal of International Law*, vol. 3, No. 1 (2002), pp. 27-46. Available from https://chicagounbound.uchicago.edu/cjil/vol3/iss1/6/.

[3] Carlos M. Correa, *Interpreting the Flexibilities under the TRIPS Agreement*, Research Paper, No. 132 (Geneva, South Centre, 2021). Available from https://www.southcentre.int/wp-content/uploads/2021/06/RP-132.pdf.

[4] United Nations Secretary-General's High-Level Panel on Access to Medicines (UNHLP), *Promoting Innovation and Access to Health Technologies: Final Report* (September 2016). Available from http://www.unsgaccessmeds.org/final-report.

[5] See Lisa Forman, Basema Al-Alami and Kaitlin Fajber, "An Inquiry into State Agreement and Practice on the International Law Status of the Human Right to Medicines", *Health and Human Rights*, vol. 24, no. 2 (December 2022), pp. 125-40. Available from https://www.hhrjournal.org/2022/12/06/an-inquiry-into-state-agreement-and-practice-on-the-international-law-status-of-the-human-right-to-medicines/.

[6] United Nations Human Rights Council (UNHRC), document A/HRC/RES/12/24. Available from http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/12/24&Lang=E.

[7] Ellen 't Hoen, *Private Patents and Public Health* (Amsterdam, Health Action International, 2016). Available from https://haiweb.org/wp-content/uploads/2016/07/Private-Patents-Public-Health.pdf.

[8] Forman, Al-Alami and Fajber, "An Inquiry into State Agreement". See also, e.g., Kenneth C. Shadlen, *Coalitions and Compliance: The Political Economy of Pharmaceutical Patents in Latin America* (Oxford, UK, Oxford University Press, 2017).

Strengthening the use of TRIPS flexibilities is not only a matter of legal interpretation but a central component of advancing the right to health and reducing global health inequities. Since patent-based pricing structures disproportionately burden developing and least developed countries as well as marginalized populations within them,[9] the ability to use TRIPS flexibilities directly influences who gains access to lifesaving treatment and who does not. These flexibilities therefore function as equity tools: they give governments the space to correct market failures and address disparities in access. A human rights framework that does not actively support the effective use of these mechanisms risks perpetuating the very inequalities it seeks to overcome. Situating UNHRC resolutions within this broader equity landscape clarifies that the stakes are not simply about State policy preferences, but about the distribution of health outcomes and the realization of substantive equality in access to medicines.

[9] In some countries, the problem is compounded by the grant of exclusive rights over test data. See, e.g. Carlos M. Correa, *Protection of Data Submitted for the Registration of Pharmaceuticals: Implementing the Standards of the TRIPS Agreement* (Geneva, South Centre, 2002). Available from https://www.southcentre.int/wp-content/uploads/2019/02/Bk_2002_Protection-of-Data-Submitted-for-Pharmaceuticals-Registration_EN.pdf.

II. CONCEPTUAL AND LEGAL FRAMEWORK

II.1 TRIPS and Public Health

The TRIPS Agreement adopted in 1994 as part of the WTO framework, established minimum international standards for the protection and enforcement of intellectual property rights, including pharmaceutical patents.[10] Before TRIPS, many developing countries did not grant patent protection for medicines at all; after its adoption, all WTO members were required to provide 20-year patent protection for pharmaceutical products and processes.[11] This fundamentally reshaped the legal landscape for access to medicines, effectively limiting the production and import of affordable generic drugs in many countries.[12]

Recognizing that rigid IP rules could harm public health, especially in resource-poor settings, TRIPS included several legal safeguards—commonly referred to as "flexibilities."[13] The TRIPS Agreement contains several public-health–oriented flexibilities that allow governments to balance patent protection with access to medicines. At the foundation is sovereign policy space, enabling countries to define strict patentability criteria, implement pre- and post-grant opposition systems, enforce robust disclosure requirements, and shape clear infringement standards to prevent unwarranted monopolies.[14] When patents nonetheless create access barriers, corrective measures are available, including compulsory licensing, government use authorizations, competition-law interventions against abusive practices,[15] and judicial discretion to deny provisional injunctions where public health is at stake. The TRIPS flexibilities also include other pro-competitive mechanisms such as the 'Bolar exception', parallel importation, and a flexible interpretation of test-data protection under Article 39.3—each designed to facilitate timely generic entry and/or lower prices.[16] Finally, the agreement includes defensive safeguards: a pharmaceutical patent exemption for Least Developed Countries extended until at least 2033.[17] Moreover, the TRIPS Agreement does not require WTO members to accept broader protections than that stipulated in the Agreement. Together, these flexibilities form an integrated framework that countries can use to promote access to affordable medicines while remaining fully compliant with TRIPS.[18]

The Doha Declaration on TRIPS and Public Health (2001) reaffirmed that TRIPS should not prevent States from taking measures to protect health.[19] It clarified that TRIPS "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."[20] The Declaration explicitly confirmed the right of WTO members to grant compulsory licenses, determine what constitutes

---

[10] WTO, TRIPS Agreement.
[11] Cecilia Oh, "TRIPS and pharmaceuticals: A case of corporate profits over health", Third World Network, August-September 2000. Available from https://twn.my/title/twr120a.htm.
[12] Carlos M. Correa, *Integrating Public Health Concerns into Patent Legislation in Developing Countries* (Geneva, South Centre, 2000). Available from https://www.southcentre.int/wp-content/uploads/2017/06/Bk_2000_Integrating-Public-Health-Concerns-into-Patent-Legislation_EN.pdf.
[13] Carlos M. Correa, "Interpreting the Flexibilities Under the TRIPS Agreement", in Carlos M. Correa and Reto M. Hilty, eds., *Access to Medicines and Vaccines: Implementing Flexibilities Under Intellectual Property Law* (Springer, 2022). Available from https://doi.org/10.1007/978-3-030-83114-1_1.
[14] WTO, TRIPS Agreement, arts. 27–30.
[15] *Ibid.*, art. 31.
[16] *Ibid.,* arts. 6, 30, 39.3. Also see Correa, "Interpreting the Flexibilities Under the TRIPS Agreement."
[17] World Trade Organization, document WT/L/971. Available from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/971.pdf.
[18] South Centre, "A Public Health Related Approach to Intellectual Property Rights: Public Health Related Flexibilities in the TRIPS Agreement". Available from https://ipaccessmeds.southcentre.int/wp-content/uploads/2018/12/Public-Health-Related-Flexibilities-in-the-TRIPS-Agreement.pdf.
[19] World Trade Organization, document WT/MIN(01)/DEC/2. Available from https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm.
[20] *Ibid.,* paragraph 4.

a national emergency, and choose their own methods of implementing TRIPS obligations. It also provided a basis for extending transition periods for LDCs and introduced mechanisms to help countries without manufacturing capacity import generic medicines under a compulsory license.

Despite these legal and policy options, the use of TRIPS flexibilities has been politically sensitive and procedurally complex.[21] Legally, the Doha Declaration clarified ambiguities in TRIPS and strengthened the legitimacy of using flexibilities. However, implementation has depended on national capacity and political will—areas where external pressures and institutional constraints remain significant.

II.2 Human Rights Standards

The foundation for treating access to medicines as a human rights issue lies in the right to health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[22] The Covenant, which came into force in 1976 and has been ratified by over 170 countries, recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." This includes not just access to health services but also access to essential medicines—especially those needed to treat life-threatening or chronic conditions.

The United Nations (UN) Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has interpreted this right expansively. In its General Comment No. 14 (2000), the Committee made clear that States have a "core obligation" to provide essential drugs, as defined by the World Health Organization (WHO), and that this obligation is non-derogable—meaning it cannot be delayed due to lack of resources or capacity.[23] The General Comment also emphasized four dimensions of access: availability, accessibility, acceptability, and quality—standards that are widely referenced in health policy and international law.[24]

Building on this legal base, the UNHRC plays a key role in interpreting and reinforcing the right to health through resolutions, special procedures, and expert reports. Although its resolutions are not legally binding, they carry significant normative weight. They reflect collective expectations about how international law should be applied and serve as soft law instruments that shape global discourse and guide State behaviour.[25]

Over the past two decades, the UNHRC has adopted multiple resolutions, examined below, linking access to medicines with the right to health, explicitly referencing States' obligations under the ICESCR and encouraging the use of TRIPS flexibilities.[26] These resolutions often underscore the responsibility of both governments and international institutions to avoid IP policies that undermine access, especially in low-income settings. They have also supported the mandate of the Special Rapporteur on the Right to Health, whose thematic reports[27] have provided detailed legal guidance on reconciling IP rights with human rights.

---

[21] UNHLP, "Final Report".
[22] International Covenant on Economic, Social and Cultural Rights (1966), art. 12. Available from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.
[23] United Nations Committee on Economic Social and Cultural Rights, document E/C.12/2000/4, para. 43. Available from https://docs.un.org/en/E/C.12/2000/4.
[24] *Ibid*., paras. 43-44.
[25] UNHRC, A/HRC/RES/12/24.
[26] United Nations Human Rights Council, document A/HRC/23/14. Available from http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/23/14&Lang=E.
[27] See, e.g., United Nations General Assembly, document A/HRC/11/12. Available from https://digitallibrary.un.org/record/652915?v=pdf#files.

In practice, these resolutions create political and moral pressure on States and international bodies. While they do not compel compliance in the way treaty obligations do, they contribute to norm-building, influence domestic and international health policy agendas, and are often cited by advocacy groups, courts, and legislators as authoritative interpretations of international law.

Ultimately, the UNHRC's contributions help reframe access to medicines not as an optional policy choice but as an obligation embedded in the ICESCR. However, their effectiveness depends on whether States adopt the measures they encourage—including the use of TRIPS flexibilities.

A commitment to equity lies at the heart of the right to health. This requires States to ensure that access to essential medicines is not determined by socio-economic status, geographic location, or other structural factors that systematically disadvantage certain populations. General Comment No. 14 makes this clear: the right to health encompasses not only availability and affordability, but also non-discrimination and the prioritization of vulnerable and marginalized groups. Seen through this lens, TRIPS flexibilities are not peripheral legal tools but central mechanisms for fulfilling core human rights obligations. By enabling competition, they allow States to narrow price gaps that disproportionately burden low-income households and to extend treatment to populations historically excluded from timely or affordable care. Thus, the use of TRIPS flexibilities is not a discretionary policy option—it is an essential means of advancing the equitable realization of the right to health.

III. Review of UNHRC Resolutions

Since its establishment, the UNHRC has treated access to medicines as a central element of the right to health. Across nearly two decades of resolutions, the Council has consistently framed access not merely as a development goal, but as an obligation grounded in international human rights law. The Council's texts promote the use of TRIPS flexibilities, call for policy reform, and demand States and institutions to align IP enforcement with public health objectives.[28]

The Council's early resolutions laid the groundwork. Decision 2/107 (2006) called for equitable access to treatment during pandemics and urged the UN Secretary-General to report on national and international efforts to improve medicine access.[29] It emphasized the need for human rights-based assessments of how IP regimes affect access to medicines and highlighted the role of the WHO. That same year, Decision 2/108 broadened the agenda by tasking the Special Rapporteur on the right to health with analyzing how inclusive health systems relate to the right to health.[30]

These early efforts gained substance in Resolution 6/29 (2007), which reinforced access to medicines as essential to the right to health, especially for people affected by HIV/AIDS, tuberculosis, and malaria.[31] The Council extended the Special Rapporteur's mandate and acknowledged initiatives like Unitaid for improving access to affordable drugs. Resolution 6/7, adopted in parallel, condemned the use of essential goods, including medicines, as instruments of political or economic pressure.[32]

The turning point came in 2009 with Resolution 12/24. For the first time, access to medicines was recognized as a standalone human rights concern. The resolution explicitly cited the Doha Declaration on TRIPS and Public Health and affirmed that IP enforcement must not undermine public health or restrict legitimate trade in generics. It called for expert consultations and encouraged governments to report access measures in their Universal Periodic Review (UPR) submissions.[33] This signaled a shift from rhetorical affirmation to concrete follow-up.

Subsequent resolutions—15/22 (2010),[34] 16/28 (2011),[35] and 17/14 (2011)[36]—deepened this approach. These texts reaffirmed States' responsibility to ensure affordable, safe, and quality-assured medicines. They emphasized the human rights obligations of both governments and pharmaceutical companies and encouraged the use of legal tools such as TRIPS flexibilities to overcome access barriers. Resolution 17/14 went further, mandating a comprehensive study on best practices and structural obstacles to be delivered to the Council's 23rd session.

---

[28] United Nations Human Rights Council, Resolutions on access to medicines, 2006–2025. Available from https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions.
[29] United Nations Human Rights Council, Decision 2/107. Available from https://ap.ohchr.org/Documents/E/HRC/decisions/A-HRC-DEC-2-107.doc.
[30] United Nations Human Rights Council, Decision 2/108. Available from https://ap.ohchr.org/Documents/E/HRC/decisions/A-HRC-DEC-2-108.doc.
[31] United Nations Human Rights Council, document A/HRC/RES/6/29. Available from https://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_29.pdf.
[32] United Nations Human Rights Council, document A/HRC/RES/6/7. Available from https://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_7.pdf.
[33] UNHRC, A/HRC/RES/12/24.
[34] United Nations Human Rights Council, document A/HRC/RES/15/22. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/22.
[35] United Nations Human Rights Council, document A/HRC/RES/16/28. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/28.
[36] United Nations Human Rights Council, document A/HRC/RES/17/14. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/14.

Between 2013 and 2025, the Council increasingly embedded access to medicines in broader rights frameworks—especially those addressing child health, universal health coverage (UHC), and non-communicable diseases (NCDs). Resolution 23/14 (2013) urged governments to use TRIPS flexibilities "to the full," adopt supportive legal and procurement systems, and invest in local production and technology transfer.[37] Resolution 32/15 (2016), introduced by Brazil and India, reinforced these calls and linked medicine access to national development strategies and health system strengthening.[38]

The Council's agenda adapted in response to global health emergencies. In 2020, Resolution 44/2 addressed the COVID-19 pandemic, stressing the State's duty to ensure equitable access to medicines and vaccines.[39] Later resolutions (e.g., 49/25,[40] 50/13,[41] 52/24[42]) reaffirmed access as a rights-based priority in pandemic response and recovery.

Resolution 59/7 (2025) marked the most comprehensive statement to date. It covered diagnostics, vaccines, and health technologies, and urged States to increase pricing transparency and regulatory capacity.[43] Resolution 60/10 (2025) reinforced the Council's position by welcoming the WHO Pandemic Agreement and supporting benefit-sharing mechanisms—further aligning access with the broader health emergency preparedness agenda.[44]

The table below captures key resolutions that directly addressed access to medicines and related technologies, emphasizing how the Council's focus has evolved over time:

Resolution	Session	Year	Title / Focus	Key Contributions
2/107	2nd	2006	Access to medicines in pandemics	Introduced rights-based framing; urged IP assessment and global reporting.
12/24	12th	2009	Access and the right to health	Cited Doha Declaration; promoted TRIPS flexibilities and expert follow-up.
15/22	15th	2010	Right to health	Reaffirmed access as a legal duty; supported Medicines Patent Pool.
16/28	16th	2011	HIV/AIDS and rights	Focused on anti-retroviral therapy (ART) access; reiterated TRIPS flexibilities.

[37] United Nations Human Rights Council, document A/HRC/RES/23/14. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/23/14.
[38] United Nations Human Rights Council, A/HRC/RES/32/15. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/15.
[39] United Nations Human Rights Council, document A/HRC/RES/44/2. Available from https://undocs.org/en/A/HRC/RES/44/2.
[40] United Nations Human Rights Council, document A/HRC/RES/49/25. Available from https://undocs.org/A/HRC/RES/49/25.
[41] United Nations Human Rights Council, document A/HRC/RES/50/13. Available from https://undocs.org/A/hrc/res/50/13.
[42] United Nations Human Rights Council, document A/HRC/RES/52/24. Available from https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F52%2F24&Language=E&DeviceType=Desktop&LangRequested=False.
[43] United Nations Human Rights Council, document A/HRC/RES/59/7. Available from https://docs.un.org/A/HRC/RES/59/7.
[44] United Nations Human Rights Council, document A/HRC/RES/60/10. Available from https://docs.un.org/A/HRC/RES/60/10.

17/14	17th	2011	Access in development context	Linked health access to poverty and inequality; mandated study.
22/32	22nd	2013	Children's health rights	Called for child-specific access; endorsed IP flexibilities.
23/14	23rd	2013	Access and NCDs	Urged legal reform, local production, and UHC integration.
32/15	32nd	2016	Structural access challenges	Emphasized innovation, tech transfer, and TRIPS compliance.
38/8	38th	2018	HIV and human rights	Reaffirmed ART access; addressed systemic discrimination.
41/10	41st	2019	Medicines and vaccines	Reasserted UHC, innovation, and production in the Global South.
44/2	44th	2020	COVID-19 pandemic response	Prioritized timely and equitable access in emergencies.
49/25	49th	2022	Vaccine equity	Called for universal, affordable vaccine distribution.
50/13	50th	2022	Right to health	Promoted inclusive, rights-based health systems.
52/24	52nd	2023	Drug policy and access	Addressed access in relation to broader drug policy reforms.
56/20	56th	2024	HIV/AIDS	Reviewed barriers to anti-retroviral treatment access.
59/7	59th	2025	Access to medicines, diagnostics, vaccines	Comprehensive scope; urged transparency and stronger national systems.
60/10	60th	2025	Pandemic response and right to health	Reaffirmed access obligations; supported WHO Pandemic Agreement.

Source: Author's compilation based on United Nations Human Rights Council resolutions from 2006–2025.

Across these resolutions, several themes recur: access to medicines as a human right; the importance of TRIPS flexibilities; and the need for national and international cooperation. However, the non-binding nature of the resolutions limits their ability to catalyze policy change.

IV. THE IMPACT OF UNHRC RESOLUTIONS

UNHRC resolutions provide normative clarity but have had limited influence on the actual use of TRIPS flexibilities. They reinforce that flexibilities are legally legitimate and align with human rights obligations.

In spite of the legal and moral weight of UNHRC resolutions, it must be acknowledged that these resolutions, as indeed international human rights law in general, operate in parallel with other specialized domains of international economic law which obligates the very States bound by human rights obligations to implement obligations arising under treaties like TRIPS or regional or bilateral trade and investment agreements which may contain obligations relating to intellectual property protection applicable to medicines, vaccines and other health technologies.

Indeed, while international human rights law has recognized the right to health as a human right (including access to medicines as integral to the realization of this right), the right to property has also been central to the discourse on human rights.[45] Even though right to property was not explicitly incorporated into the International Covenant on Economic, Social and Cultural Rights owing to the cold war era disagreements, the right to property has been increasingly recognized in human rights instruments.[46] Even the resolution 59/7 adopted in 2025 on access to medicines explicitly recognizes "... that the protection of intellectual property is important for the development of new and innovative medicines and vaccines", in the same operative paragraph which calls upon States to promote access to medicines through the full use of the provisions of the TRIPS Agreement which provide flexibility for that purpose.[47]

Recognition of the right to property, especially when tied to the importance of IP protection for medicines, vaccines, and other health technologies, creates a tension that potentially weakens efforts to promote the broad use of TRIPS flexibilities. When resolutions highlight property rights and the value of IP in driving innovation, they introduce a counterweight that States can invoke to justify stronger protection even when such protection constrains access. This framing risks shifting the balance away from public health needs and toward commercial interests, which already dominate global trade and investment law. It also reinforces the assumption that IP protection is inherently aligned with human rights, even though its real-world operation often restricts the availability and affordability of essential health products.

The equal footing between IP protection and the importance of using TRIPS flexibilities complicates advocacy that relies on TRIPS flexibilities as tools for correcting market failures and addressing health inequalities. States exercising political or economic pressure on countries using TRIPS flexibilities may lean on the property rights language to defend narrow interpretations of flexibilities or to resist their use altogether. Indeed, the view that "any process to renegotiate TRIPS or a new IP system that recognizes the primacy of human rights may result in the derogation of such rights" prevented a consensus in the UN Secretary-General's High-Level Panel on Access to Medicines on "... examining proposals to remedy the incoherencies in the human rights and trade frameworks as they relate to the current system of IP..." and making recommendations on the same.[48]

---

[45] Bhupinder S. Chimni, "Third World Approaches to International Law: A Manifesto", *International Community Law Review*, vol. 8 (2006), p. 11. Available from https://brill.com/previewpdf/journals/iclr/8/1/article-p3_2.xml?srsltid=AfmBOooxF0uf6bJ2dmGPk0D3eVtuDL77XjvHwP3w1OBtLJCVaP2U_nvL.
[46] José E. Alvarez, "The Human Right of Property", *University of Miami Law Review*, vol. 72, no. 3 (2018), pp. 580-705. Available from https://repository.law.miami.edu/cgi/viewcontent.cgi?article=4533&context=umlr.
[47] UNHRC, A/HRC/RES/59/7.
[48] UNHLP, "Final Report", p. 53.

In practice, this dual recognition blurs the clarity that public health advocates have fought to secure since the Doha Declaration. Instead of a clear mandate to prioritize health when IP rules obstruct access, States are presented with two competing rights frameworks: one centered on the right to health and access to medicines, and another grounded in property rights that support strong IP protection. This internal tension weakens the normative force of UNHRC resolutions as soft law instruments and makes it harder to use human rights arguments to even politically push back against restrictive IP regimes.

This ambivalence has direct implications for health equity. When resolutions endorse strong IP protection alongside human rights language, States with greater economic and technological capacity can maintain restrictive IP environments without scrutiny, while countries with fewer resources face political and economic disincentives to use TRIPS flexibilities. The result is an uneven global landscape in which access to essential medicines varies sharply along lines of income and geopolitical power. This reproduces rather than mitigates disparities in treatment access, undermining the principle that the right to health must be realized without discrimination.

Countries also face economic, legal and political barriers to the use of TRIPS flexibilities. They include insufficient manufacturing capacity, limited incorporation of flexibilities into national law, TRIPS plus obligations in free trade agreements (FTAs), weak public health information systems to adequately monitor the public health situation and access needs that could be addressed through the use of TRIPS flexibilities and, in some cases, external pressures from developed countries.

Thus, the Office of the United States Trade Representative (USTR) regularly puts countries on its Special 301 watch list for using TRIPS flexibilities. In spite of the threats of retaliations by the United States (US) being criticized,[49] not only has the practice remained unabated, but it has also spurred the European Union (EU) to adopt a similar approach by publishing annual reports on "protection and enforcement of intellectual property rights in third countries" with a similar approach.[50]

In addition to these, the continuing demands for TRIPS-plus measures in bilateral or regional FTAs involving developed and developing countries "... create further incoherence between human rights and IP protection."[51] For instance, the recently adopted FTA between the United Kingdom (UK) and India has been criticized for creating a potentially chilling effect on the use of the TRIPS flexibility to grant compulsory licenses by making voluntary licenses the preferred mechanism for addressing access challenges, and also relaxing requirements for patent holders to submit annual reports that could demonstrate whether the needs of the market are being adequately met by availability of the patented product.[52] According to experts, the use

---

[49] Carlos M. Correa, *Special Section 301: US Interference with the Design and Implementation of National Patent Laws,* Research Paper, No. 115 (Geneva, South Centre, 2020). Available from https://www.southcentre.int/wp-content/uploads/2020/07/RP-115.pdf; Maria Fabiana Jorge, "United States: An Obsolete Trade Practice Undermines Access to the Most Expensive Drugs at More Affordable Prices", Policy Brief, No. 83 (Geneva, South Centre, August 2020). Available from https://www.southcentre.int/wp-content/uploads/2020/08/PB-83.pdf; Viviana Munoz-Tellez *et al*., "Time for a Collective Response to the United States Special 301 Report on Intellectual Property", Policy Brief, No. 65 (Geneva, South Centre, July 2019). Available from https://www.southcentre.int/wp-content/uploads/2019/07/PB65_Time-for-a-Collective-Response-to-the-United-States-Special-301-Report-on-Intellectual-Property-_EN.pdf.

[50] Knowledge Ecology International, "EC publishes report on protection and enforcement of intellectual property rights in 'third countries'", 14 March 2018. Available from https://www.keionline.org/27207.

[51] UNHLP, "Final Report", p. 10.

[52] Biswajit Dhar and K.M. Gopakumar, "Another slip up by India in the trade pact with the U.K.", *The Hindu*, 4 August 2025. Available from https://www.thehindu.com/opinion/op-ed/another-slip-up-by-india-in-the-trade-pact-with-the-uk/article69890844.ece . Also see Abhijit Das, "US-EU trade deal", *Financial Express*, 30 July 2025. Available from https://www.financialexpress.com/opinion/us-eu-trade-deal/3930657/.

of TRIPS flexibilities in India's patent law are also likely to come under pressure in the ongoing negotiations for an FTA between the US and India.[53]

In spite of the range of challenges that impede the full use of TRIPS flexibilities in support of access to medicines, they have not fully translated into the operative language of UNHRC resolutions.

The polarization between developed and developing countries over whether the IP system constrains access to medicines has been a recurring feature of the TRIPS debates. During the COVID-19 pandemic, developing countries sought broader and more workable flexibilities—most clearly reflected in their proposal for a temporary TRIPS waiver. Developed countries, however, opposed the waiver on the grounds that existing TRIPS flexibilities were already sufficient to secure access to vaccines, medicines, and diagnostics.[54] The outcome was the adoption of a narrowly framed and ultimately sub-optimal "TRIPS Decision" at the WTO's 12th Ministerial Conference, limited only to vaccines and not subsequently extended to therapeutics or diagnostics.[55] This pattern is not new. Since the adoption of TRIPS, WTO members have agreed twice to address constraints on the use of TRIPS flexibilities: first through the paragraph 6 special compulsory licensing system for countries lacking manufacturing capacity,[56] and more recently through the COVID-19 TRIPS Decision. In both instances, owing to the opposition of developed countries the only solution that could be agreed through consensus has been sub-optimal and ineffective.[57]

This entrenched polarization in the WTO context does not remain confined to trade negotiations; it spills over into other multilateral fora, including the Human Rights Council, shaping both the ambition and the caution evident in its resolutions on access to medicines. In effect, UNHRC resolutions referring to TRIPS flexibilities have not gone as far as identifying the structural and political barriers that limit the realization of the right to health through their effective use. For instance, the recently adopted resolution 59/7 acknowledges the importance of using TRIPS flexibilities but does not directly address the core barriers that prevent developing countries from doing so. While the resolution encourages technology transfer, capacity-building, and the "full use" of TRIPS flexibilities, its non-binding nature means it cannot impose obligations on developed countries—for example, to refrain from promoting TRIPS-plus standards through FTAs or other forms of bilateral pressure, nor can it compel States to adopt practical mechanisms that support the effective use of these flexibilities. As a result, important structural constraints on access to medicines remain unaddressed.

The UPR reports submitted by both developed and developing countries and the UPR Outcome Reports show the limited impact of the UNHRC resolutions in effectively promoting the use of TRIPS flexibilities. No action related to the resolutions' call for promoting such a

---

[53] Abhijit Das, "Red lines beyond agriculture", *Financial Express*, 7 August 2025. Available from https://www.financialexpress.com/opinion/red-lines-beyond-agriculture/3939865/.

[54] See Carlos M. Correa and Nirmalya Syam, "Analysis of the Outcome Text of the Informal Quadrilateral Discussions on the TRIPS COVID-19 Waiver", Policy Brief, No. 110 (Geneva, South Centre, 5 May 2022). Available from https://www.southcentre.int/wp-content/uploads/2022/05/PB110_Analysis-of-the-Outcome-Text-of-the-Informal-Quadrilateral-Discussions-on-the-TRIPS-COVID-19-Waiver_EN.pdf.

[55] See Carlos M. Correa and Nirmalya Syam, "An elusive response from developed countries to a TRIPS waiver request to address COVID-19", in Taina Pihlajarinne, Jukka Mähönen and Pratyush N. Upreti (eds.), *Intellectual Property Rights in the Post Pandemic World* (Edward Elgar Publishing Ltd., Cheltenham, 2023). Available from https://doi.org/10.4337/9781803922744.00008.

[56] See Carlos M. Correa, "Will the Amendment to the TRIPS Agreement Enhance Access to Medicines?", Policy Brief, No. 57 (Geneva, South Centre, 2019). Available from https://www.southcentre.int/wp-content/uploads/2019/01/PB57_Will-the-Amendment-to-the-TRIPS-Agreement-Enhance-Access-to-Medicines_EN-1.pdf.

[57] See Carlos M. Correa and Nirmalya Syam, *The WTO TRIPS Decision on COVID-19 Vaccines: What is Needed to Implement It?*, Research Paper, No. 169 (Geneva, South Centre, 2022), p. 10. Available from https://www.southcentre.int/wp-content/uploads/2022/11/RP169_The-WTO-TRIPS-Decision-on-COVID-19-Vaccines_EN.pdf.

use has been mentioned in any national report of nor in any UPR Outcome Report for developed countries like the US, the UK, Germany, Switzerland or Japan. Only in 2023 in the UPR Outcome Report for Switzerland is there a mention of a recommendation by Malaysia for Switzerland to “support efforts to realize equitable global access to coronavirus disease (COVID-19) health technologies through pooling knowledge, intellectual property and data." Access to medicines and the use of TRIPS flexibilities have not been mentioned either in UPR national reports of nor in the Outcome Reports for developing countries, including those who have traditionally been at the forefront in advancing proposals relating to strengthening the use of TRIPS flexibilities for public health in the UNHRC as well as in other fora like the WTO, the World Intellectual Property Organization (WIPO) and WHO.

The absence of systematic reference in the UPR process to actions taken to promote access to medicines, particularly through the use of TRIPS flexibilities, confirms the limited or lack of impact of UNHRC resolutions in addressing global inequalities in this critical area for the realization of the right to health. When structural access barriers remain invisible within the principal mechanism for monitoring compliance with the right to health, the problem is left unaddressed. This narrows the scope of accountability and allows inequitable access patterns to persist.

V. ENHANCING THE ROLE OF THE UNHRC AND OHCHR

In light of the preceding discussion, it is important to delve into how the role of the UNHRC can be made more effective in addressing the challenges of realizing access to medicines vis-a-vis the protection of IP rights. In this regard, the United Nations Secretary-General's High-Level Panel on Access to Medicines (UNHLP) has made some recommendations which are worth considering. In addition, recommendations made in the differing opinions of members of the UNHLP should also be considered.

Building on this analysis, the reforms outlined in this section should be understood not merely as institutional adjustments but as essential interventions to strengthen the equity dimensions of the right to health and to correct the structural disparities that impede fair access to medicines. Enhancing the role of the UNHRC and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in supporting the effective use of TRIPS flexibilities is not simply about improving coordination or technical processes; it is about redistributing the benefits of scientific and technological progress in a manner consistent with human rights obligations. Each of the measures proposed in this section—greater transparency through the UPR, stronger civil society participation, coordinated national governance structures, and right-to-health action plans—serves to narrow gaps in treatment access between and within countries. Taken together, they translate the normative commitments embedded in the right to health into concrete equity-enhancing practices through the effective use of TRIPS flexibilities for access to medicines.

The UNHLP recommended that governments review the situation of access to health technologies in their countries in light of human rights principles and States' obligations to fulfil them, with assistance from the OHCHR and other relevant UN entities, adding that the results of these assessments should be made publicly available.[58] Though the recently adopted resolution 59/7 requests the OHCHR "to continue its work, within its mandate, to provide technical assistance to States throughout the next three years on the human rights dimension of access to medicines and vaccines in the context of the right of everyone to the highest attainable standard of physical and mental health", none of the UNHRC resolutions establish a clear requirement for member States to specifically review the situation of access to health technologies in their countries in light of the States' obligations under the right to health. Thus, there is scope for the UNHRC to agree on a specific mandate in this regard. Such a mandate could request member States to undertake a review of the situation on access to medicines in each UPR cycle, and report on the same in their national UPR reports. The OHCHR should accordingly be specifically mandated to provide technical assistance upon request to countries in undertaking such assessments. Such assessments should address how governments are making use of the TRIPS flexibilities, particularly with regard to application of rigorous patentability criteria to ensure that patents are only granted for genuine inventions,[59] adopting and implementing legislation to facilitate the grant of compulsory licenses and government use authorizations,[60] and make full use of the available grounds for exclusions from patentability, exhaustion of patent rights to enable parallel importation, possible exceptions to patent rights

[58] UNHLP, "Final Report", p. 10.
[59] See Carlos M. Correa, "Implementing Pro-Competitive Criteria for the Examination of Pharmaceutical Patents", Research Paper, No. 64 (Geneva, South Centre, 2016). Available from https://ipaccessmeds.southcentre.int/wp-content/uploads/2019/06/ProCompetitive-Criteria-Examination-pharma-patents.pdf. See also Carlos M. Correa, "Guidelines for Pharmaceutical Patent Examination: Examining Pharmaceutical Patents from a Public Health Perspective" (New York, United Nations Development Programme). Available from https://ipaccessmeds.southcentre.int/wp-content/uploads/2019/12/UNDPpatents.pdf.
[60] See Carlos M. Correa, *Guide for the Granting of Compulsory Licenses and Government Use of Pharmaceutical Patents*, Research Paper, No. 107 (Geneva, South Centre, 2020). Available from https://www.southcentre.int/wp-content/uploads/2020/04/RP-107.pdf.

(such as the Bolar exception),[61] as well as regulation of test data with a pro-competitive approach,[62] i.e. without granting market exclusivities.

Embedding such assessments in the UPR cycle would not only clarify States' compliance with their human rights obligations but also spotlight legal constraints that may lead to inequities in access, including those affecting specific communities—such as rural populations, people living in poverty, children, older persons, and those with chronic conditions. By requiring disaggregated analysis, the UPR could become a platform for identifying where inequities in availability or affordability are most pronounced and for tracking whether policy interventions grounded in TRIPS flexibilities could help narrow those gaps.

The UNHLP also recommended that civil society should be supported to submit shadow reports on innovation and access to health technologies.[63] In this regard, it would be important to invite civil society to submit shadow reports that could inform the outcome reports of the UPR. This could be done by the UNHRC agreeing through a resolution to invite civil society to submit such reports. At the same time, clear declarations on conflict of interest need to be established to determine whether a report is independently and objectively produced and not influenced, for instance, by financing provided by the pharmaceutical industry.

The inclusion of civil society voices also strengthens equity by elevating perspectives from communities that are often marginalized in formal policy processes. Civil society organizations—particularly those working with patients, women, people living with HIV, people with disabilities, and low-income groups—are uniquely placed to highlight disparities and supplement government reports. Their participation helps ensure that the right to health is assessed not only in aggregate terms but in ways that reflect lived experiences of inequality.

Specifically with regard to policy incoherence at the national level, the UNHLP recommended that governments establish inter-ministerial bodies to coordinate laws, policies and practices that may impact health technology innovation and access.[64] In this light, the UNHRC could request member States to establish appropriate bodies for such coordination and report the same in their UPR reports. Furthermore, the UNHRC could be mandated to facilitate the sharing of experiences of such coordination bodies in relation to the adoption, amendment and implementation of IP laws in the context of access to medicines, as well as safeguarding TRIPS flexibilities in FTA negotiations. The UPR reports could also be used for member States to report on the extent of public funding of biomedical research and development, including the terms and conditions of such funding.[65]

Improved coordination is essential from an equity perspective because disproportionate burdens often arise when trade or industrial policy decisions are made in isolation from health considerations. When ministries responsible for public health are sidelined, decisions about patent protection, procurement, or licensing can inadvertently deepen existing treatment disparities. Interministerial mechanisms that prioritize the right to health help align economic and regulatory decisions with equity objectives, reducing the risk that vulnerable populations bear the costs of incoherent policy making.

The OHCHR could also be mandated to coordinate the provision of technical assistance to member States upon request to implement and apply the TRIPS flexibilities in a manner that supports the realization of the right to health. The OHCHR could facilitate such technical

---

[61] See Carlos M. Correa, *The Bolar Exception: Legislative Models and Drafting Options*, Research Paper, No. 66 (Geneva, South Centre, 2016). Available from https://www.southcentre.int/wp-content/uploads/2016/03/RP66_The-Bolar-Exception_EN1.pdf.
[62] Correa, *Protection of Data Submitted for the Registration of Pharmaceuticals*.
[63] UNHLP, "Final Report", p. 10.
[64] *Ibid*.
[65] *Ibid*., p. 16.

assistance by coordinating with other UN agencies like the United Nations Development Programme (UNDP), WHO, WIPO, WTO and the South Centre. The OHCHR can be mandated to ensure that all technical assistance collaboration is premised on the primacy of the right to health over obligations in IP treaties.

The UNHRC could also request member States to develop national action plans (NAPs) on the right to health and access to medicines. These NAPs could serve as policy documents in which member States can outline strategies and instruments to comply with their duty to respect, protect, and fulfil the right to health in the context of access to medicines, including through the full use of TRIPS flexibilities. The use of NAPs in the context of human rights is not a novel approach. A number of member States have developed NAPs in the context of business and human rights.[66] The NAPs could serve as a strategic plan to achieve policy coherence as well as be the basis for reporting on implementation of the right to health in the context of access to medicines in UPR reporting cycles. The OHCHR secretariat could be mandated to provide technical assistance upon request to member States in developing NAPs.

NAPs may also provide a structured way to integrate equity benchmarks—such as reducing out-of-pocket expenditures, guaranteeing availability of essential medicines in underserved regions, or expanding treatment coverage for marginalized groups. By embedding TRIPS flexibilities within broader strategies to eliminate discrimination and improve distributional fairness, NAPs can help States move from general affirmations of the right to health to targeted measures that address entrenched inequalities.

An important exercise that could also be useful for the UNHRC to assess the impact of IP on access to medicines in the context of the right to health is the review of implementation of the TRIPS Agreement mandated under Article 71.1 of TRIPS. Some developing country members of the WTO have submitted proposals to the TRIPS Council for conducting the mandated review,[67] emphasizing the importance of focusing on the impact of implementation of the TRIPS Agreement on development objectives, including public health. However, due to differences with developed country WTO members on the scope of such review, discussions have not progressed. The UNHRC could request member States to specifically focus on the impact of implementation of the TRIPS Agreement on the right to health, particularly on access to medicines. The UNHRC could also request its member States to undertake a human rights impact assessment of their implementation of TRIPS obligations from the perspective of access to medicines for the consideration of the UNHRC.

If the member States have the desire and the political will to make the OHCHR and the UNHRC more effective in the endeavour to realize the protection and fulfilment of the right to health in the context of access to medicines through the use of TRIPS flexibilities, member States should empower the OHCHR to provide appropriate technical assistance by ensuring availability of sufficient resources.

It is clear that strengthening the roles of the UNHRC and the OHCHR will depend on more than new mandates or procedural adjustments. The core issue is whether member States are willing to treat access to medicines as a genuine human rights obligation rather than a policy preference. The tools already exist, from TRIPS flexibilities to the UPR process, yet they remain underused without firm political commitment, transparent reporting, and adequate support for both governments and civil society. An enhanced framework that pairs stronger mandates with reliable resources would position the UNHRC and OHCHR to guide States

---

[66] United Nations, document A/76/238. Available from https://digitallibrary.un.org/record/3936777?v=pdf#files.
[67] World Trade Organization, document WT/MIN(24)/W/20. Available from https://southcentre.us5.list-manage.com/track/click?u=fa9cf38799136b5660f367ba6&id=98f1ee72a9&e=e7a9144683; document IP/C/W/708. Available from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W925.pdf&Open=True.

toward coherent, rights-based approaches to health and IP. Whether this potential becomes real will rest on sustained political will to put the right to health at the center of global and national decision making.

VI. CONCLUSIONS

The experience of the past two decades shows that the UN Human Rights Council has played an important role in framing access to medicines as a matter of human rights rather than market choice. Its resolutions have helped clarify that the right to health includes access to affordable medicines and that TRIPS flexibilities are legitimate tools toward that end. However, the analysis in this paper underscores a recurring pattern: the ability of UNHRC resolutions to influence State behaviour has been constrained by a number of structural barriers that limit the practical use of TRIPS flexibilities. The tension between the merits of IP protection and its impact on access to medicines is visible in the cautious wording of recent resolutions, the limited reflection of access issues in UPR reporting, and the persistence of unilateral pressure through the USTR and the EU reports and TRIPS-plus demands in trade negotiations.

Strengthening the role of the UNHRC and OHCHR will require practical steps that build on tools already available within the human rights system. Establishing a clear mandate for States to review access to health technologies in their UPR submissions, supported by targeted technical assistance from OHCHR, would create a more consistent basis for monitoring State practice. Encouraging civil society shadow reporting, with safeguards to address conflicts of interest, would improve transparency and accountability. Support for inter-ministerial coordination bodies, national action plans on the right to health, and systematic assessments of how TRIPS implementation affects access to medicines would help States address policy incoherence at its source. All these measures depend on adequate resources for OHCHR and sustained cooperation across UN agencies. None of these steps require new legal frameworks; they simply call for stronger use of existing processes, backed by political will.

By identifying how gaps in the UNHRC's approach perpetuate uneven access to treatment, this paper also underscores that realizing the right to health requires explicit attention to health equity. The structural barriers that impede the use of TRIPS flexibilities do not affect all populations equally; they fall most heavily on those with the least economic and political power. The recommendations advanced here aim to strengthen the role of human rights institutions in reducing these disparities by ensuring that States are better equipped—and more consistently encouraged—to use the tools available to them to make essential medicines accessible to all.

Ultimately, the effectiveness of the UNHRC will rest less on the articulation of principles and more on the willingness of States to apply existing tools with consistency and transparency. The framework to support access already exists. What is missing is the political resolve to act on it.

RECENT SOUTH CENTRE RESEARCH PAPERS

No.	Date	Title	Authors
173	7 February 2023	Analysis of COVID-Related Patents for Antibodies and Vaccines	Kausalya Santhanam
174	13 February 2023	Leading and Coordinating Global Health: Strengthening the World Health Organization	Nirmalya Syam
175	22 March 2023	Experiencias internacionales sobre la concesión de licencias obligatorias por razones de salud pública	Catalina de la Puente, Gastón Palopoli, Constanza Silvestrini, Juan Correa
176	29 March 2023	De dónde viene y a dónde va el financiamiento para la salud mundial	Germán Velásquez
177	18 May 2023	Policy Dilemmas for ASEAN Developing Countries Arising from the Tariff Moratorium on Electronically Transmitted Goods	Manuel F. Montes and Peter Lunenborg
178	22 May 2023	A Response to COVID-19 and Beyond: Expanding African Capacity in Vaccine Production	Carlos M. Correa
179	14 July 2023	Reinvigorating the Non-Aligned Movement for the Post-COVID-19 Era	Yuefen Li, Daniel Uribe and Danish
180	9 August 2023	Neglected Dimension of the Inventive Step as Applied to Pharmaceutical and Biotechnological Products: The case of Sri Lanka's patent law	Ruwan Fernando
181	14 August 2023	Trends, Reasons and Prospects of De-dollarization	Yuefen Li
182	7 September 2023	Multistakeholderism: Is it good for developing countries?	Harris Gleckman
183	15 September 2023	Least Developed Countries and Their Progress on the Sustainable Development Goals	Peter Lunenborg
184	15 September 2023	Promoting Jordan's Use of Compulsory Licensing During the Pandemic	Laila Barqawi
185	13 October 2023	Foreign Investment Flows in a Shifting Geoeconomic Landscape	Danish
186	14 November 2023	Patentamiento de anticuerpos monoclonales. El caso de Argentina	Juan Correa, Catalina de la Puente, Ramiro Picasso y Constanza Silvestrini
187	4 December 2023	The Global Digital Compact: opportunities and challenges for developing countries in a fragmented digital space	Carlos Correa, Danish, Vitor Ido, Jacquelene Mwangi and Daniel Uribe
188	7 December 2023	The Intersection Between Intellectual Property, Public Health and Access to Climate-Related Technologies	Lívia Regina Batista

189	21 December 2023	Status of Permanent Establishments under GloBE Rules	Kuldeep Sharma
190	24 January 2024	Implementing the Doha Declaration in OAPI Legislation: Do Transition Periods Matter?	Patrick Juvet Lowé Gnintedem
191	25 January 2024	TRIPS Waiver Decision for Equitable Access to Medical Countermeasures in the Pandemic: COVID-19 Diagnostics and Therapeutics	Nirmalya Syam and Muhammad Zaheer Abbas, PhD
192	30 January 2024	Pautas para el examen de patentes sobre anticuerpos monoclonales	Juan Correa, Catalina de la Puente, Ramiro Picasso y Constanza Silvestrini
193	2 February 2024	Desafíos actuales y posibles escenarios futuros de la salud mundial	Germán Velásquez
194	15 February 2024	Implementation of TRIPS Flexibilities and Injunctions: A Case Study of India	Shirin Syed
195	6 March 2024	Régimen de licencias obligatorias y uso público no comercial en Argentina	Juan Ignacio Correa
196	19 April 2024	Licencias obligatorias para exportación: operacionalización en el orden jurídico argentino	Valentina Delich
197	28 May 2024	Compulsory Licensing as a Remedy Against Excessive Pricing of Life-Saving Medicines	*Behrang Kianzad*
198	31 May 2024	What Can Cambodia Learn from Thailand and India as It Prepares to Graduate from Least Developed Country Status?	*Brigitte Tenni, Deborah Gleeson, Joel Lexchin, Phin Sovath, and Chalermsak Kittitrakul*
199	10 June 2024	A Toss Up? Comparing Tax Revenues from the Amount A and Digital Service Tax Regimes for Developing Countries	*Vladimir Starkov and Alexis Jin*
200	26 June 2024	Transforming the Non-Military Structures of Global Governance Assessing Priorities for Chapter 5 of the Pact for the Future	Harris Gleckman
201	27 June 2024	Antimicrobial Resistance: Optimizing Antimicrobial Use in Food-Producing Animals	Viviana Munoz Tellez
202	28 June 2024	Constraints to and Prospects for Sustainable Livestock Sector Practices in Argentina with Emphasis on Antimicrobial Usage	*David Oseguera Montiel*
203	11 July 2024	The Vaccine Industry After the COVID-19 Pandemic: An International Perspective	*Felix Lobo*
204	24 July 2024	Negotiating Health and Autonomy: Data Exclusivity, Healthcare Policies and Access to Pharmaceutical Innovations	Henrique Zeferino De Menezes, Julia Paranhos, Ricardo Lobato Torres, Luciana Correia Borges, Daniela De Santana Falcão and

			Gustavo Soares Felix Lima
205	30 July 2024	Foreign Direct Investment Screening for 'National Security' or Sustainable Development: a blessing in disguise?	Daniel Uribe Teran
206	28 August 2024	Equity and Pandemic Preparedness: Navigating the 2024 Amendments to the International Health Regulations	Nirmalya Syam
207	29 August 2024	Discussions on Draft Provisions on Damages in the Investor-State Dispute Settlement System in UNCITRAL Working Group III	José Manuel Alvarez Zárate
208	10 September 2024	Catalyzing Policy Action to Address Antimicrobial Resistance: Next Steps for Global Governance	Anthony D. So
209	25 September 2024	AMR in Aquaculture: Enhancing Indian Shrimp Exports through Sustainable Practices and Reduced Antimicrobial Usage	Robin Paul
210	30 September 2024	Decision 15/9 and the Nagoya Protocol: Who should get what in the Multilateral Benefit-Sharing Mechanism?	Joseph Henry Vogel, Natasha C. Jiménez-Revelles, Xavier A. Maldonado-Ramírez de Arellano
211	14 October 2024	The Implications of Treaty Restrictions of Taxing Rights on Services, Especially for Developing Countries	Faith Amaro, Veronica Grondona, Sol Picciotto
212	9 January 2025	International Regulation of Industrial Designs: The TRIPS Agreement in the Light of European Union Law	Adèle Sicot
213	13 December 2024	Navigating the WTO's Working Group on Trade and Transfer of Technology: A Critical Analysis from the Perspective of Developing Countries	Nirmalya Syam
214	15 January 2025	Application of the Bolar Exception: Different Approaches in the EU	Dmytro Doubinsky
215	23 January 2025	Assessing Five Years of the African Continental Free Trade Area (AfCFTA): Proposals on Potential Amendments	Kiiza Africa
216	27 February 2025	Will the Pact for the Future Advance a Common Global Agenda on the Challenges Facing Humanity?	Viviana Munoz Tellez, Danish, Abdul Muheet Chowdhary, Nirmalya Syam, Daniel Uribe
217	20 May 2025	Cross-Border Enforcement of Copyright: A Special Emphasis on Court Decisions and Arbitral Awards	Hany Salem
218	12 June 2025	Winds of Change: The BRICS Club of Nations Chipping Away at Western	Len Ishmael, PhD

		Dominance - The Dawn of the New South	
219	16 June 2025	Reducing the Cost of Remittances – A Priority for the Global South	Danish
220	25 June 2025	Harnessing Open Account Trade — A Major Enabler for Illicit Financial Flows from Developing Countries	Yuefen Li
221	15 July 2025	The AI Race: A Tightrope Walk Between Innovation, Inclusivity and Prosperity for All	Daniel Uribe Terán
222	16 July 2025	Designing an Independent Panel on Evidence for Action on Antimicrobial Resistance: Lessons from Selected Bodies in Global Health, Climate Change and Biodiversity	Viviana Munoz Tellez and Francesca Chiara
223	22 July 2025	Community Based Surveillance for AMR Monitoring: Significance, Requirements and Feasibility in LMICS	Afreenish Amir
224	18 August 2025	Reflections on Global Development in Times of Crisis: Arguments in Favour of an Alternate Development Paradigm	K. Seeta Prabhu
225	12 September 2025	Seven Decades After Bandung: The evolving landscape for South-South and Triangular Cooperation	Danish
226	12 November 2025	The Taxation of the Digital Economy in Practice: Digital Services Taxes and Other Measures	Natalia Quiñones, Anchal Khandelwal, Oluwole Olushola Oni, Maryam Maiyaki, Doris Malgwi, Ezekiel Swema, Nickson Omondi, Ivy Watti, Dinesh Thapa, Anne Wanyagathi Maina & Kolawole Omole
227	20 November 2025	Participation of South Centre Member Countries in the WHO GLASS: Progress and Gaps in AMR Surveillance and Stewardship Efforts	Rasha Abdelsalam Elshenawy

SOUTH CENTRE

International Environment House 2
Chemin de Balexert 7-9
1219 Geneva
Switzerland

Telephone: (41) 022 791 8050
E-mail: south@southcentre.int

Website:
http://www.southcentre.int

ISSN 1819-6926