

Act, and violated the Administrative Procedure Act.<sup>24</sup> The plaintiffs claimed that their work advising the ICC could subject them to sanctions for materially supporting the court's investigations into U.S. personnel.<sup>25</sup> On January 4, 2021, U.S. District Judge Katherine Polk Failla granted the plaintiffs' request for a preliminary injunction, relying on their First Amendment claims to enjoin enforcement of criminal or civil penalties against them for conduct alleged to have violated Executive Order 13,928.<sup>26</sup> Following repeated extensions to the defendants' deadline to answer the complaint, the Biden administration and the plaintiffs agreed to have the case dismissed without prejudice at the end of April.<sup>27</sup>

In her final briefing to the UN Security Council before the end of her term on June 15, Bensouda noted the removal of the sanctions and expressed that the prosecutor's office "hopes to establish a new relationship with the United States rooted in mutual respect and constructive dialogue."<sup>28</sup> In the same meeting, the U.S. representative affirmed that the sanctions were "inappropriate" and reiterated that the removal of these sanctions "can help us return to a time of cooperation between the United States and the ICC."<sup>29</sup> In an interview to mark the end of her term, Bensouda said that the sanctions had crossed a red line, but with their removal, the United States and the ICC "are working on some kind of a reset" of their relationship.<sup>30</sup>

#### INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

*United States Seeks Answers on COVID-19's Origin While Stepping Up "Vaccine Diplomacy"*  
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As the COVID-19 pandemic continues to rage across the world, the United States and its allies are pushing for answers about the virus's origins while China rebuffs inquiry into its early handling of the outbreak. Meanwhile, a growing U.S. stockpile of vaccines has opened new avenues for "vaccine diplomacy," and the Biden administration has thrown its weight behind an effort to suspend cross-border intellectual property (IP) rules for vaccine

<sup>24</sup> Complaint at 34–36, *Open Soc'y Justice Initiative et al. v. Trump*, *supra* note 4.

<sup>25</sup> *Id.* at 26–32.

<sup>26</sup> Opinion and Order at 33, *Open Soc'y Justice Initiative et al. v. Trump*, No. 1:20-cv-08121 (S.D.N.Y. Jan. 4, 2021) (Doc. 56).

<sup>27</sup> Stipulation of Dismissal Under Federal R. Civ. P. 41 (a), *Open Soc'y Justice Initiative v. Trump*, No. 1:20-cv-08121 (S.D.N.Y. Jan. 4, 2021) (No. 68).

<sup>28</sup> Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, Pursuant to UNSCR 1970 (2011) (May 17, 2021), at <https://www.icc-cpi.int/Pages/item.aspx?name=210517-otp-statement-unscl-libya> [<https://perma.cc/BMB6-EPAC>]; see also Edith M. Lederer, *ICC Prosecutor Hopes for New US Relations After Sanctions*, ASSOC. PRESS (May 17, 2021), at <https://apnews.com/article/united-nations-donald-trump-1486070a6dc353b950566f656f8fad15>.

<sup>29</sup> Amb. Jeffrey DeLaurentis, Acting Alt. Rep. for Special Pol. Affs., Remarks at a UN Security Council Briefing on Libya, United States Mission to the United Nations (May 17, 2021), at <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-libya-3> [<https://perma.cc/CP57-XMJT>].

<sup>30</sup> Mike Corder, *AP Interview: ICC Prosecutor Sees "Reset" Under Biden*, ASSOC. PRESS (June 14, 2021), at <https://apnews.com/article/government-and-politics-donald-trump-joe-biden-courts-4f191309f97a3734b032960877cccac6>.

manufacturing. In the near term, however, experts expect vaccination rates and access will continue to vary widely between countries depending on their wealth.<sup>1</sup>

In March 2021, the World Health Organization (WHO) and China jointly completed “part one” of an investigation into the origins of the novel coronavirus.<sup>2</sup> The investigative team that conducted the study included seventeen Chinese experts and seventeen international experts.<sup>3</sup> Their report did not identify the origin of the virus but instead assigned probabilities to four working theories. The report concluded, first, that introduction of the virus to humans through an intermediate animal host was “likely” or “very likely” the pathway of origin.<sup>4</sup> Under that scenario, the virus would have jumped from an animal such as a bat or pangolin, then to an animal that is in closer contact with humans, such as livestock, and then to humans themselves.<sup>5</sup> Second, the report said it was “possible to likely” that a bat or pangolin transmitted the virus directly to humans, a scenario known as “direct zoonotic spillover.”<sup>6</sup> Next, introduction through contaminated frozen food imports—China’s favored theory<sup>7</sup>—was rated “possible.”<sup>8</sup> Finally, the experts concluded that an accidental laboratory leak was “extremely unlikely” because there was no record of viruses closely related to COVID-19 in any lab before December 2019.<sup>9</sup> They also pointed to the high-level safety ratings of labs in Wuhan, the city where the virus was first identified.<sup>10</sup> The group did not consider the hypothesis that the virus was deliberately engineered or intentionally released, citing scientists who ruled out the theory based on genomic analysis.<sup>11</sup>

The United States and its allies criticized the study for its delayed start and lack of original data that could have provided more definitive answers. In a joint statement after the WHO report’s release, Australia, Canada, Czechia, Denmark, Estonia, Israel, Japan, Latvia, Lithuania, Norway, the Republic of Korea, Slovenia, the United Kingdom, and the United States pressed for “expert-driven phase 2 studies.”<sup>12</sup> Although the statement did not directly criticize China, the countries stated:

[W]e voice our shared concerns that the international expert study on the source of the SARS-CoV-2 virus was significantly delayed and lacked access to complete, original data

<sup>1</sup> See, e.g., World Bank Press Release, COVAX and World Bank to Accelerate Vaccine Access for Developing Countries (July 26, 2021), at <https://www.worldbank.org/en/news/press-release/2021/07/26/covax-and-world-bank-to-accelerate-vaccine-access-for-developing-countries> [<https://perma.cc/QQ9E-C5JT>].

<sup>2</sup> Joint WHO-China Study Team, *WHO-Convened Global Study of Origins of SARS-CoV-2: China Part*, WORLD HEALTH ORG. (Mar. 30, 2021), at <https://www.who.int/publications/i/item/who-convened-global-study-of-origins-of-sars-cov-2-china-part> [<https://perma.cc/N9RT-H6PC>] [hereinafter WHO Report].

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 116.

<sup>5</sup> *Id.* at 114–16.

<sup>6</sup> *Id.* at 114.

<sup>7</sup> E.g., Jeremy Page, Drew Hinshaw & Betsy McKay, *WHO Caught Between China and West on Frozen-Food Coronavirus Transmission*, WALL ST. J. (Jan. 22, 2021), at <https://www.wsj.com/articles/who-caught-between-china-and-west-on-frozen-food-coronavirus-transmission-11611324088>.

<sup>8</sup> WHO Report, *supra* note 2, at 118.

<sup>9</sup> *Id.* at 119–20.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 118.

<sup>12</sup> U.S. Dep’t of State Press Release, Office of the Spokesperson, Joint Statement on the WHO-Convened COVID-19 Origins Study (Mar. 30, 2021), at <https://www.state.gov/joint-statement-on-the-who-convened-covid-19-origins-study/> [<https://perma.cc/749N-USQT>].

and samples. . . . It is critical for independent experts to have full access to all pertinent human, animal, and environmental data, research, and personnel involved in the early stages of the outbreak relevant to determining how this pandemic emerged.<sup>13</sup>

The European Union (EU) ambassador to the United Nations expressed similar concerns, noting that “[e]very lack or delay in sharing public health information can have worldwide adverse impact.”<sup>14</sup>

The WHO acknowledged deficiencies in the report, too. WHO Director-General Tedros Adhanom Ghebreyesus told reporters in July that there was a “premature push” to rule out the lab leak theory.<sup>15</sup> He called on China to be transparent and to cooperate with international experts in the second phase of the investigation to probe the lab accident theory more fully.<sup>16</sup>

Thus far, however, China has refused to cooperate with phase two.<sup>17</sup> The vice minister of China’s National Health Commission said the WHO’s plan “disregards common sense and defies science.”<sup>18</sup> The White House slammed China’s position as “irresponsible” and “dangerous” and promised that phase two of the study, unlike the first, would be “scientific, transparent, expert-led, and free from interference.”<sup>19</sup> For its part, the WHO called on governments to “depoliticize the situation and cooperate to accelerate the origins studies.”<sup>20</sup> Notwithstanding the first report’s conclusion that a lab leak was “extremely unlikely,” the WHO defended further analyzing the possibility, explaining that “in order to address the ‘lab hypothesis,’ it is important to have access to all data and consider scientific best practice and look at the mechanisms WHO already has in place. WHO is only focused on science, providing solutions and building solidarity.”<sup>21</sup>

Still, within the United States, China’s accountability and apparent intransigence remain hotly political. Republicans on the House Foreign Affairs Committee, citing circumstantial evidence, released a report in August claiming that the novel coronavirus likely leaked from the Wuhan Institute of Virology laboratory in September 2019.<sup>22</sup> At least two U.S. states, Missouri and Mississippi, have joined dozens of plaintiffs in suing China and the Chinese

<sup>13</sup> *Id.*

<sup>14</sup> European Union Press Release, EU Statement on the WHO-led COVID-19 Origins Study (Mar. 30, 2021), at <https://onu-geneve.delegfrance.org/EU-statement-on-the-WHO-led-COVID-19-origins-study?lang=en>.

<sup>15</sup> Tedros Adhanom Ghebreyesus, Director-General, World Health Org., COVID-19 Virtual Press Conference Transcript, at 26:30 (July 15, 2021), at <https://www.who.int/publications/m/item/covid-19-virtual-press-conference-transcript—15-july-2021>.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., Gabriel Crossley, *China Rejects WHO Plan for Study of COVID-19 Origin*, REUTERS (July 22, 2021), at <https://www.reuters.com/world/china/china-will-not-follow-whos-suggested-plan-2nd-phase-covid-19-origins-study-2021-07-22>.

<sup>18</sup> *Id.*

<sup>19</sup> White House Press Release, Press Briefing by Press Secretary Jen Psaki and Secretary of Commerce Gina Raimondo (July 22, 2021), at [www.whitehouse.gov/briefing-room/press-briefings/2021/07/22/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-commerce-gina-raimondo-july-22-2021](http://www.whitehouse.gov/briefing-room/press-briefings/2021/07/22/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-commerce-gina-raimondo-july-22-2021) [<https://perma.cc/CVL6-CQFF>].

<sup>20</sup> WHO Statement on Advancing the Next Series of Studies to Find the Origins of SARS-CoV-2 (Aug. 12, 2021), at <https://www.who.int/news/item/12-08-2021-who-statement-on-advancing-the-next-series-of-studies-to-find-the-origins-of-sars-cov-2>.

<sup>21</sup> *Id.*

<sup>22</sup> MINORITY STAFF OF H. FOREIGN AFFS. COMM., 117TH CONG., THE ORIGINS OF COVID-19: AN INVESTIGATION OF THE WUHAN INSTITUTE OF VIROLOGY 4 (2021), available at <https://gop-foreignaffairs.house.gov/wp-content/uploads/2021/08/ORIGINS-OF-COVID-19-REPORT.pdf> [<https://perma.cc/F7NE-BLT8>].

Communist Party for negligence and other tort claims.<sup>23</sup> For the suits to proceed, plaintiffs must show that an exception to foreign sovereign immunity applies,<sup>24</sup> specifically, that the suit involves either “commercial activity” by Chinese officials in the United States or a tort committed by Chinese officials in their official capacity in the United States.<sup>25</sup> Many legal observers are skeptical that the suits fall within these exceptions.<sup>26</sup>

With no conclusive answers from the WHO’s origin-tracing efforts, President Biden turned to his intelligence agencies. In March, Biden “task[ed] the Intelligence Community to prepare a report on their most up-to-date analysis of the origins of COVID-19.”<sup>27</sup> In a statement at the end of May, Biden explained that “[a]s of today, the U.S. Intelligence Community has ‘coalesced around two likely scenarios’—spillover from contact with an infected animal and a laboratory accident—“but has not reached a definitive conclusion on this question.”<sup>28</sup> Biden asked them “to redouble their efforts to collect and analyze information that could bring us closer to a definitive conclusion, and to report back . . . in 90 days.”<sup>29</sup>

The report that resulted from Biden’s directive in late August did not pinpoint the origin of COVID-19, but shed light on how U.S. intelligence agencies assessed various theories. The Office of the Director of National Intelligence (ODNI) released an unclassified summary of the report and said it intended to release a declassified version of the entire report “in the near future.”<sup>30</sup> Like the WHO-convened group, the intelligence community agreed that “the virus was not developed as a biological weapon.”<sup>31</sup> The report also assessed that Chinese officials “did not have foreknowledge of the virus before the initial outbreak of COVID-19 emerged.”<sup>32</sup> A majority of the intelligence community elements concluded the virus “probably was not genetically engineered,” but only with low confidence, while “two agencies believe there was not sufficient evidence to make an assessment either way.”<sup>33</sup>

The intelligence agencies remain divided on the most likely origin but agreed that a laboratory incident or exposure to an infected animal were both “plausible” theories.<sup>34</sup> Four agencies and “the National Intelligence Council assess[ed] with low confidence” that the virus

<sup>23</sup> Sean Mirski & Shira Anderson, *What’s in the Many Coronavirus-Related Lawsuits Against China?*, LAWFARE (June 24, 2020), at <https://www.lawfareblog.com/whats-many-coronavirus-related-lawsuits-against-china>.

<sup>24</sup> See, e.g., JENNIFER K. ELSEA, CONG. RES. SERV., LSB10467, FOREIGN SOVEREIGN IMMUNITY AND COVID-19 LAWSUITS AGAINST CHINA 1–2 (2020).

<sup>25</sup> *Id.* at 2–3.

<sup>26</sup> *Id.*

<sup>27</sup> White House Press Release, Statement by President Joe Biden on the Investigation into the Origins of COVID-19 (May 26, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/statement-by-president-joe-biden-on-the-investigation-into-the-origins-of-covid-19> [<https://perma.cc/QRW8-SDE5>].

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Off. Dir. Nat’l Intel. Press Release, ODNI Issues Summary of Assessment on COVID-19 Origins (Aug. 27, 2021), at <https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2021/item/2237-odni-issues-summary-of-assessment-on-covid-19-origins> [<https://perma.cc/Z46D-TTNQ>].

<sup>31</sup> OFF. DIR. NAT’L INTEL., UNCLASSIFIED SUMMARY OF ASSESSMENT ON COVID-19 ORIGINS (2021), available at <https://www.dni.gov/files/ODNI/documents/assessments/Unclassified-Summary-of-Assessment-on-COVID-19-Origins.pdf> [<https://perma.cc/A6JE-AVKX>].

<sup>32</sup> *Id.* at 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

jumped from an animal to a human through natural exposure.<sup>35</sup> One agency assessed “with moderate confidence” that the first case was caused by “a laboratory-associated incident, probably involving experimentation, animal handling, or sampling by the Wuhan Institute of Virology.”<sup>36</sup> Other intelligence community “elements remain unable to coalesce around either explanation without additional information.”<sup>37</sup> The report concluded that in order to answer the origin question authoritatively, “China’s cooperation most likely would be needed,” but the Chinese government

continues to hinder the global investigation, resist sharing information and blame other countries, including the United States. These actions reflect, in part, China’s government’s own uncertainty about where an investigation could lead as well as its frustration the international community is using the issue to exert political pressure on China.<sup>38</sup>

In a statement responding to the report, Biden sharply criticized China for blocking access to information that could provide definitive answers.<sup>39</sup> He said:

We will do everything we can to trace the roots of this outbreak that has caused so much pain and death around the world, so that we can take every necessary precaution to prevent it from happening again.

Critical information about the origins of this pandemic exists in the People’s Republic of China, yet from the beginning, government officials in China have worked to prevent international investigators and members of the global public health community from accessing it. To this day, the PRC continues to reject calls for transparency and withhold information, even as the toll of this pandemic continue[s] to rise.<sup>40</sup>

Biden called on China “to fully share information and to cooperate with the World Health Organization’s Phase II evidence-based, expert-led determination into the origins of COVID-19—including by providing access to all relevant data and evidence.”<sup>41</sup>

As a definitive answer on COVID-19’s origin evades government officials, scientists, and the WHO, countries everywhere are tackling the pressing matter of vaccinating their populations—an effort that has underscored global inequities in vaccine access. In May, the Biden administration reversed a prior U.S. position that would have kept in place IP protections for the pharmaceutical companies that developed the vaccines. Along with other wealthy nations, the United States had previously opposed waiving the IP rules in the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2.

<sup>39</sup> White House Press Release, Statement by President Joe Biden on the Investigation into the Origins of COVID-19 (Aug. 27, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/27/statement-by-president-joe-biden-on-the-investigation-into-the-origins-of-covid-%e2%81%a019> [<https://perma.cc/RJ8K-BCAC>].

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

(TRIPS) out of concern that doing so would disincentivize scientific development.<sup>42</sup> Advocates of the proposed waiver, led by India and South Africa, however, argue that the extraordinary circumstances of the pandemic warrant a departure from typical IP rules<sup>43</sup> and that it would help low- and middle-income countries gain access to vaccines, medical devices, diagnostics, and personal protective equipment by scaling up manufacturing capacity.<sup>44</sup> On May 5, U.S. Trade Representative Katherine Tai announced U.S. support for a vaccine waiver specifically, a narrower position than what India and South Africa have advocated. Tai stated:

This is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures. The Administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines. We will actively participate in text-based negotiations at the World Trade Organization (WTO) needed to make that happen. Those negotiations will take time given the consensus-based nature of the institution and the complexity of the issues involved.<sup>45</sup>

The EU said it was “ready to discuss any option that helps end the pandemic” but was “not convinced that this would provide the best immediate response.”<sup>46</sup> Ultimately, the decision rests with the WTO, whose members have yet to agree on a waiver or its potential scope.

As a more immediate measure, the United States has responded to calls for international assistance by allocating a greater number of vaccines to foreign countries. After facing criticism earlier in the year for failing to share vaccines abroad,<sup>47</sup> Biden promised in a speech to a joint session of Congress at the end of April that the United States would “become an arsenal of vaccines for other countries—just as America was the arsenal of democracy in World War 2.”<sup>48</sup> After a slow start, the Biden administration announced in August that the United States had donated and shipped more than 110 million doses abroad, an amount greater than the

<sup>42</sup> See, e.g., Pfizer Press Release, An Open Letter from Pfizer Chairman and CEO to Colleagues, at [https://www.pfizer.com/news/hot-topics/why\\_pfizer\\_opposes\\_the\\_trips\\_intellectual\\_property\\_waiver\\_for\\_covid\\_19\\_vaccines](https://www.pfizer.com/news/hot-topics/why_pfizer_opposes_the_trips_intellectual_property_waiver_for_covid_19_vaccines) [<https://perma.cc/TL62-6QY5>]; Sam Meredith, *Rich Countries Are Refusing to Waive the Rights on COVID Vaccines as Global Cases Hit Record Levels*, CNBC (Apr. 22, 2021), at <https://www.cnbc.com/2021/04/22/covid-rich-countries-are-refusing-to-waive-ip-rights-on-vaccines.html>.

<sup>43</sup> World Trade Org. Press Release, Members Discuss TRIPS Waiver Request, Exchange Views on IP Role Amid a Pandemic (Feb. 23, 2021), at [https://www.wto.org/english/news\\_e/news21\\_e/trip\\_23feb21\\_e.htm](https://www.wto.org/english/news_e/news21_e/trip_23feb21_e.htm).

<sup>44</sup> Anthony D. So, *WTO TRIPS Waiver for COVID-19 Vaccines*, JOHNS HOPKINS U. (May 10, 2021), at <https://www.jhsph.edu/covid-19/articles/wto-trips-waiver-for-covid-19-vaccines.html> [<https://perma.cc/PJ6J-9AVN>].

<sup>45</sup> Statement from Ambassador Katherine Tai on the COVID-19 TRIPS Waiver (May 5, 2021), at <https://ustr.gov/index.php/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-covid-19-trips-waiver> [<https://perma.cc/X5LB-8JCK>].

<sup>46</sup> European Commission Press Release, EU Proposes a Strong Multilateral Trade Response to the COVID-19 Pandemic (June 4, 2021), at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_2801](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2801).

<sup>47</sup> See, e.g., Noah Weiland & Rebecca Rollins, *The U.S. Is Sitting on Tens of Millions of Vaccine Doses the World Needs*, N.Y. TIMES (Mar. 11, 2021), at <https://www.nytimes.com/2021/03/11/us/politics/coronavirus-astrazenca-united-states.html>.

<sup>48</sup> White House Press Release, Remarks as Prepared for Delivery by President Biden — Address to a Joint Session of Congress (Apr. 28, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/28/remarks-as-prepared-for-delivery-by-president-biden-address-to-a-joint-session-of-congress> [<https://perma.cc/3MKQ-QXL6>].

combined donations of all other countries, according to the United Nations.<sup>49</sup> So far, the United States has pledged to donate 500 million doses by the summer of 2022.<sup>50</sup> While touting its newfound position as the leader in “vaccine diplomacy,” the White House acknowledged the figure was only a fraction of the billions of vaccines needed to get the virus under control globally.<sup>51</sup>

For the most part, the donated vaccines are not shipped directly to recipient countries. Instead, the United States is working through the COVAX Initiative, a public-private partnership that the Biden administration joined within hours of Biden’s inauguration.<sup>52</sup> Despite the commitment, the administration has faced criticism for holding onto vaccines when so many in the United States have turned down the shot and so many abroad are desperate to get it.<sup>53</sup> Though the United States shared four million doses with Mexico and Canada in the spring, the donations to COVAX did not start in earnest until mid-summer.<sup>54</sup> Even equipped with vaccines—though far fewer than its target—COVAX has struggled to deliver doses to rural communities in poor countries.<sup>55</sup> Wealthy countries have also taken from the COVAX supply, which was intended to aid poor countries.<sup>56</sup>

Beyond the humanitarian goal of saving lives, the vaccine donations could also produce diplomatic dividends. Early in 2021, Russian and Chinese vaccine donations outpaced those of the United States.<sup>57</sup> Announcing in May that the United States would ship 80 million vaccine doses abroad by the end of June, Biden emphasized that the amount

<sup>49</sup> White House Press Release, Fact Sheet: President Biden Announces Major Milestone in Administration’s Global Vaccination Efforts: More than 100 Million U.S. COVID-19 Vaccine Doses Donated and Shipped Abroad (Aug. 3, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/03/fact-sheet-president-biden-announces-major-milestone-in-administrations-global-vaccination-efforts-more-than-100-million-u-s-covid-19-vaccine-doses-donated-and-shipped-abroad> [<https://perma.cc/P7WK-GST8>].

<sup>50</sup> White House Press Release, Fact Sheet: President Biden Announces Historic Vaccine Donation: Half a Billion Pfizer Vaccines to the World’s Lowest-Income Nations (June 10, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/10/fact-sheet-president-biden-announces-historic-vaccine-donation-half-a-billion-pfizer-vaccines-to-the-worlds-lowest-income-nations> [<https://perma.cc/59Q7-D7GU>].

<sup>51</sup> White House Press Release, Remarks by President Biden on Fighting the COVID-19 Pandemic (Aug. 3, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/03/remarks-by-president-biden-on-fighting-the-covid-19-pandemic> [<https://perma.cc/YR8Q-WSZH>] (“We have committed to over a half a billion doses. And we’re trying to provide for more and provide for the capacity of countries like India to be able to produce the vaccine themselves.”).

<sup>52</sup> Kristen E. Eichensehr, *Contemporary Practice of the United States*, 115 AJIL 309, 323 (2021).

<sup>53</sup> See, e.g., Tyler Pager & Dan Diamond, *Biden Boosts Vaccine Donations, But Critics Say Far More Is Needed*, WASH. POST (May 17, 2021), at <https://www.washingtonpost.com/health/2021/05/17/biden-donates-20-million-vaccine-doses>.

<sup>54</sup> See Natalie Kitroeff, Maria Abi-Habib, Zolan Kanno-Youngs & Jim Tankersley, *U.S. to Send Millions of Vaccine Doses to Mexico and Canada*, N.Y. TIMES (Mar. 18, 2021), at <https://www.nytimes.com/2021/03/18/world/americas/usa-mexico-vaccine-coronavirus.html>; Sabrina Siddiqui, *Biden Administration to Miss June Target for Some COVID-19 Vaccine Donations*, WALL ST. J. (June 21, 2021), at <https://www.wsj.com/articles/biden-administration-to-miss-june-target-for-some-covid-19-vaccine-donations-11624306309>.

<sup>55</sup> Benjamin Mueller & Rebecca Rollins, *Where a Vast Global Vaccination Program Went Wrong*, N.Y. TIMES (Aug. 2, 2021), at <https://www.nytimes.com/2021/08/02/world/europe/covax-covid-vaccine-problems-africa.html> (describing logistical challenges in African countries such as the lack of ultra-cold freezers needed to store vaccines).

<sup>56</sup> Maria Cheng & Lori Hinnant, *Rich Nations Dip into COVAX Supply While Poor Wait for Shots*, ASSOC. PRESS (Aug. 14, 2021), at <https://apnews.com/article/joe-biden-middle-east-africa-europe-coronavirus-pandemic-5e57879c6cb22d96b942cbe973b9296c>.

<sup>57</sup> Ryan Heath, *Unable to Get U.S. Vaccines, World Turns to Russia and China*, POLITICO (Feb. 25, 2021), at <https://www.politico.com/news/2021/02/25/global-vaccine-public-relations-war-471665>.

was “five times more than any other country” had shared and “more than Russia and China.”<sup>58</sup> Biden said:

[T]here’s a lot of talk about Russia and China influencing the world with vaccines. We want to lead the world with our values—with this demonstration of our innovation, ingenuity, and the fundamental decency of the American people. . . .

We’ll share these vaccines in the service of ending the pandemic everywhere. And we will not use our vaccines to secure favors from other countries.<sup>59</sup>

Biden and his deputies have repeatedly said that U.S.-donated vaccines would be free and would come with “no demands, no conditions, no coercion attached,” apparently drawing a contrast to Russia and China.<sup>60</sup> Scientists and health officials have questioned the efficacy of the Chinese-made shots, leading some Southeast Asian countries that received China’s vaccines to seek doses from Western drug-makers such as Moderna and Johnson & Johnson.<sup>61</sup> The demand has created a diplomatic opening for the United States in the region to send vaccine donations.<sup>62</sup>

Vaccination efforts are racing against the emergence and spread of new variants. As of late August, the worldwide tallies stood at more than 216 million confirmed cases of COVID-19 infections, 4.5 million deaths, and some five billion vaccine doses administered.<sup>63</sup>

#### INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

*U.S. Supreme Court Holds Claims Against U.S. Corporations for Aiding and Abetting Child Slavery Impermissibly Extraterritorial, Declines to Resolve Domestic Corporate Liability*  
doi:10.1017/ajil.2021.53

In *Nestlé USA, Inc. v. Doe, et al.*, former child slaves who were trafficked into Côte d’Ivoire to work on cocoa farms filed suit under the Alien Tort Statute (ATS) against U.S.-based companies that purchase cocoa from and provide other support to the farms, alleging that the companies aided and abetted child slavery. By an 8–1 vote, the Supreme Court held that

<sup>58</sup> White House Press Release, Remarks by President Biden on the COVID-19 Response and the Vaccination Program (May 17, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/05/17/remarks-by-president-biden-on-the-covid-19-response-and-the-vaccination-program-4> [<https://perma.cc/HLX7-3BCT>].

<sup>59</sup> *Id.*

<sup>60</sup> White House Press Release, Remarks by President Biden on Fighting the COVID-19 Pandemic (Aug. 3, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/03/remarks-by-president-biden-on-fighting-the-covid-19-pandemic> [<https://perma.cc/PW7F-S2BU>].

<sup>61</sup> *E.g.*, Sui-Lee Wee & Steven Lee Myers, *As Chinese Vaccines Stumble, U.S. Finds New Opening in Asia*, N.Y. TIMES (Aug. 20, 2021), at <https://www.nytimes.com/2021/08/20/business/economy/china-vaccine-us-covid-diplomacy.html>.

<sup>62</sup> *Id.*

<sup>63</sup> WHO Coronavirus (COVID-19) Dashboard, at <https://covid19.who.int> (last visited Aug. 31, 2021).