

Holger Hestermeyer. ***Human Rights and the WTO: The Case of Patents and Access to Medicines***. Oxford: Oxford University Press, 2007. Pp. xxxvi, 369. \$50.00. ISBN: 9780199215201.

This book aims to fill a gap between studies of international patent law and pharmaceuticals and the literature on human rights and access to medicines. It is an account of the relationship between pharmaceutical patents under the WTO Agreement on Trade Related Intellectual Property Rights (the TRIPs Agreement) and the utilization of flexibilities inherent in the TRIPs Agreement to ensure access to medicines in developing countries, examining how a human rights approach might inform use of such flexibilities. This narrow focus is both a strength and a weakness of the book.

The book traces the relationship between patents and anti-retroviral drugs (ARVs) to combat the HIV/AIDS pandemic, pointing out that tensions between patent rights for pharmaceutical products and the public health imperatives in developing countries have existed from the outset. In this account, the book demonstrates that the author is sensitive to the legal and clinical issues relating to the provision of ARVs in developing countries. The author remains laudably impartial and

demonstrates considerable clarity, given the complex issues covered.

The book works best when it plays to its strengths, examining the extent to which access to medicine as a human right is accommodated within the WTO system; analysing to what extent the right to access to medicine can be applied within the WTO dispute settlement mechanism; describing the flexibilities inherent in the TRIPs Agreement; demonstrating the limits of human rights-based interpretation as an argument for granting more discretionary space to WTO members taking measures to safeguard access to medicines; and arguing that the current situation is still not satisfactory, given the lack of clarity about how human rights can be accommodated within the WTO system. However, by focusing attention on the extent to which access to medicines as a human right might be considered within the WTO dispute settlement mechanism, the book adopts an unduly narrow focus on a complex set of issues.

The narrow focus on how human rights might inform disputes on the use of TRIPs flexibilities at the WTO is a weakness of the book because, although the extent to which human rights have informed the debate about patents and access to medicines in developing countries is touched on, the book devotes insufficient attention to this issue. The significance of the landmark South African Constitutional Court decision in *Minister of Health & Others v. Treatment Action Campaign & Others* (2002) 10 BCLR 1033 is alluded to at various points but the wider implications for using the constitutional right to health as a strategy to ensure access to ARVs in developing countries are not examined in a systematic way. The significance of patient groups in Brazil using the right to health in access to medicines cases before the *Supremo Tribunal Federal* is also underplayed. Similarly, although the book acknowledges that these human rights conventions highlight a potential conflict between the 'moral' and 'material' interests of inventors on the one hand and the right to health on the other, this discussion is significantly understated in terms of discussion and analysis. This narrow

focus may be disappointing for some readers anticipating a more comprehensive account of human rights, patents, and access to medicines issues in this otherwise well researched and well written account.

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doi: 10.1093/ejil/chn080