



## **TRIPS Agreement Flexibilities: Unlocking a World of Development Possibilities?**

- Anuradha Lawankar (II B.A.LL.B.)

Intellectual property (IP), as defined by the World Trade Organization (WTO), encompasses the creations of the human mind and protects the products of the human intellect. It plays a key role in shaping policies in various fields such as industry, health and education. It is inherently territorial and applies only within the jurisdiction of registration or acquisition. This creates a greater responsibility for countries to advance their approach to intellectual property rights.

The Trade-Related Aspects of Intellectual Property (TRIPS Agreement) emerged from the WTO, was established in 1995 following the Uruguay Round of trade negotiations that lasted from 1986 to 1994 under the General Agreement on Tariffs and Trade (GATT). While numerous studies have examined the socio-economic benefits of the Agreement for developing countries, little attention has been paid to Least Developed Countries (LDCs). This neglect may stem from the

assumption that LDCs lack the resources to establish robust IPR systems similar to those in developed countries.

There are two perspectives to understanding this issue. First, some flexibility may remain unrealized without concrete implementation, highlighting the need for practical measures. Second, there is variation among LDCs in their ability to effectively use TRIPS flexibility for sustainable economic development.

The agreement extends several crucial options to countries, such as Article 66.1 which offers an extended transition period, especially in the area of pharmaceutical patents. This allows them to ensure that patent rights do not impede critical supplies of essential medicines, allowing for public non-commercial use without prior negotiations with patent holders. According to Article 31, these are compulsory licenses. It gives countries the option to formulate the grounds for issuing such licenses under their national law. Parallel imports also allow countries to import patented products from other regions where

## **News at a Glance**

Russian President Vladimir Putin met one of the most senior former commanders of the Wagner mercenary group and discussing how best to use "volunteer units" in the Ukraine war. The meeting underscored the Kremlin's attempt to show that the state had now gained control over the mercenary group after a failed June mutiny by its boss Yevgeny Prigozhin, who was then killed with other senior commanders in a plane crash in August. For more information, see [here](#).

A court in the Democratic Republic of Congo denied provisional release to journalist Stanis Bujakera, ignoring international bail standards and a global outcry over his continued detention at Kinshasa's Makala prison. Bujakera's case highlights the government's increasing repression of the media less than three months before the general election. For more information, see [here](#).



they are more affordable, improving access to essential goods and stimulating competition. Article 30 provides scope for countries to create exceptions to patent rights within their national law. The flexibility here lies in the absence of a fixed definition of the scope or nature of these exceptions.

This allows LDCs to design their legal frameworks in a way that promotes technology transfer and prevents the abuse of intellectual property rights by foreign patent holders. Finally, the TRIPS Agreement implicitly allows for exceptions to patentability, particularly for new uses of known products or processes. This provision authorizes LDCs to exclude such innovations from patent protection, effectively limiting anti-competitive practices such as patent evergreening by foreign corporations. The costs of implementing TRIPS can strain the resources of LDCs, requiring support from organizations such as WIPO. Despite a decade of TRIPS, technology and royalties remain dominated by developed countries, urging LDCs to maximize flexibility. Article 66.2 encourages technology transfer to least developed

countries, but lacks strict commitments that emphasize infrastructure needs.

Rwanda is an example of a balanced approach that brings intellectual property laws in line with international standards while encouraging foreign direct investment. In contrast, Malawi struggles with outdated patent laws that hinder its intellectual property regime and development potential. A proper assessment of development needs is essential for least developed countries to truly benefit from TRIPS flexibilities, as simply extending the transition periods may not be enough.

### Right to Privacy in International Cyber Law

- Arya Mitkari (II B.A.LL.B.)

The right to privacy encompasses not only physical privacy but also informational and decisional privacy and individuals enjoy the same rights online as they do otherwise. This particular right guarantees the individual autonomy over their personal data and freedom from surveillance. Privacy cannot only be considered under the right to privacy, but is also a key aspect of personal

### News at a Glance

On September 15, Cyprus Interior Minister Constantinos Ioannou bemoaned that European Union member states cannot currently return asylum seekers to Syria, and said the EU should reevaluate whether Syria is safe for returns so that asylum seekers could be deported to or returned there. Cyprus has also taken measures to expedite asylum processing, reduce financial support to asylum seekers, and begin construction of a migrant detention center to, as Ioannou puts it, "make Cyprus an unattractive destination." For more information, see here.

A report, by the International Commission of Human Rights Experts on Ethiopia exposes wide-ranging atrocities during the conflict, documenting 49 mass killings of Tigrayan civilians by Ethiopian and Eritrean forces, widespread and systematic sexual violence against 10,000 Tigrayan women and girls, starvation, forced displacement, and arbitrary detention. For more information, see here.



liberty. Being customary in character, it has been given importance in several international treaties and agreements, most notably, the UN Charter, ICCPR, ECHR and the EUCFR.

International law recognises privacy as an important aspect of human dignity as manifested in Article 12 of the UDHR, Article 17 of the ICCPR, and Article 8 of the ECHR.

Three developments have affected our concept of privacy greatly, i.e., the increase in data collection, globalization of the data market and easy access to this data; and the lack of mechanism to control digital data.

In Lane v. Facebook and Campbell v. Facebook, Facebook was accused of using users' information after logouts and of scanning users' private messages for targeted advertisements, highlighting how readily private information is accessible. Whereas, in the case of New York v. Harris, Justin Bellino, faced terroristic threat charges for comments on Facebook, claiming they were ingenuine and protected under free speech, shows us the difficulty in drawing a boundary

between private and public communications. From the judgements it is implied that an individual has a right of being unknown or obscure.

Obscurity is defined as the state of being unidentifiable online where an observer does not possess sufficient information about an individual to decipher the data that is accessible online. Although the need for a legal analysis of the right to obscurity is pressing, the discussion of the same in legal circles remains sparse.

Legal debates on obscurity can be traced back to the 1989 U.S. Department of Justice v. Reporters Committee for Freedom of the Press case. However, these discussions have been insubstantial, causing a delay in the legal adaptation of the same.

While debates over privacy concern obscurity, the term rarely gets used as its legal gray area presents a myriad of challenges. Primarily, defining obscurity and distinguishing it from privacy is ambiguous and upholding an individual's right to privacy while validating the public's right to access information is solely context driven. With changing tides in

### News at a Glance

In a move terrible for human rights, the European Union Commission announced that it will go ahead with a controversial deal on migration control, reached in July, by imminently releasing 67 million euros to Tunisia despite an absence of any specific human rights guarantees for migrants and asylum seekers, or any indication the EU has evaluated whether the funds would make the bloc complicit in abuses. For more information, see [here](#).

The task of transferring a million barrels of oil from the stricken supertanker Yemen, will take some 19 days – preventing what would be the fifth largest spill in history, were the rusting tanker to break apart. But this process will not end with the oil transfer, because the FSO Safer will continue to pose an environmental threat, the UN is warning. And an additional \$22 million in funding is still needed to finish the job. For more information, see [here](#).



technology, obscurity becomes complex and utopian. Hence, continuous adaptation in the legal field is imperative.

Today, the right to privacy is recognised as a fundamental right, as it aids freedom of expression and its importance is evidenced in the manner in which the right continues to evolve as per societal needs. For example, the [European Union's General Data Protection Regulation](#). Privacy plays a consequential role in individual autonomy in a high-tech world where technology brings about progress and potential harm; data protection appears to be at the forefront of the concerns. However, the current legal framework in the context of online technologies is insufficient to deal with the potential of the current technology to infringe privacy rights.

### **Lunar Economy: The Commercialization of the Moon, Legal Framework, and Challenges**

- Devansh Bhatt (IV B.A.LL.B.)

With the successful landing of the Chandrayaan 3 on the Lunar surface, India became one of the only four countries to land on the

surface of the moon and the first to land on the South Pole of the moon. After the first space race between the two power blocks in the 1950s and 60s, the world saw a rapid decline in space missions. However, in recent times most of the space agencies of the world have begun their journey towards the celestial bodies again and exploring the research and economic opportunities in the process. As these Lunar missions continue to grow, the next step is the target of the major space agencies returning to the moon and establishing a permanent human presence there.

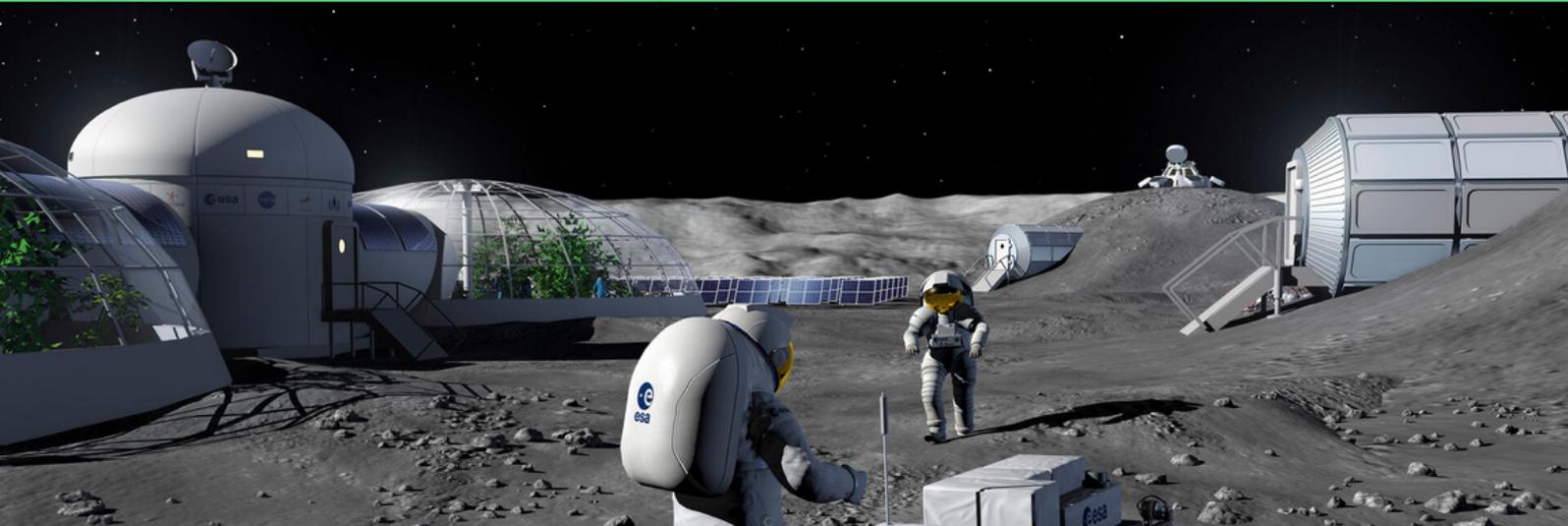
If these ventures prove to be successful, they lay down the foundation of a [Lunar Economy](#) in the near future. A lunar economy includes the general economic activity in the production, use and exchange of all the mineral resources present on the surface of the moon including plagioclase, pyroxenes, magnesium and rare earth metals which play a major role in the production of electronics and batteries.

The Lunar Economy contains [three different stages](#); (i) transportation (ii) commercialisation of lunar data and (iii) exploitation of lunar

### **News at a Glance**

The Chinese government appears increasingly anxious to silence critics of its appalling human rights record. At home, it arbitrarily detains or forcibly disappears them; abroad, it harasses them. At the United Nations, it's seeking another term on the UN's top human rights body – the Human Rights Council – while telling member states to boycott public events highlighting its litany of human rights violations in Hong Kong, Tibet, and Xinjiang. For more information, see [here](#).

It's been three months since police shot and killed Nahel M., a 17-year-old French teenager of North African descent. Nahel's tragic killing adds to at least 15 fatal police traffic stops in France in 2022. This 54th session of the UN Human Rights Council presents an opportune moment to build on concerns about systemic racism within French law enforcement raised by many UN human rights bodies. For more information, see [here](#).



resources for in-situ utilisation.

According to a [report](#) by PwC, the lunar economy could result in Lunar contracts exceeding \$1.2 Trillion, with USA leading and controlling the market with its Artemis Missions accounting to 51% share, followed by the JAXA and China taking up 31% of the share and the rest of the world shall be accountable for the remaining market.

The sheer size of this market warrants an analysis of the legal frameworks which generally governs the economy concerning space and the moon. The most significant treaty governing outer space is the [Outer Space Treaty \(OST\)](#), which was adopted by the United Nations in 1967. The OST established certain fundamentals principles regarding the use and exploration of space, which includes the moon. These principles include:

- Non-appropriation- which states that no country can claim ownership on the moon and the space
- Freedom of Exploration- Promotes space exploration but prohibits use of nuclear weapons and testing in any part of the space.

- Responsibility and Liability- countries are responsible for their space activities and any damage or harm caused by it to other nation's space assets or the celestial bodies

Although the OST covers a significant part of the legal framework of outer space utilisation and exploration, it fails to address the issue of the lunar economy and its resource utilisation. There are many challenges which need to be addressed concerning the legal issues of the Lunar Economy:

- Ownership and Property Rights: The OST covers the prohibits and controls the national appropriation of celestial bodies but not necessarily the mineral resources found on them.
- Environmental protection: there is still little to no knowledge of the impact of mining and exploitation of Lunar minerals on the environment of the moon and its effects on the Earth.
- Commercial competition: with the entry of multiple states and private entities into the lunar economy, there always remains a chance of legal disputes over access, allocation and market dominance.

### Upcoming Activities

#### **NUP Jean Monnet Working Papers**

The Jean Monnet Chair of the Neapolis University Pafos (Cyprus), with the support and funding of the European Union, welcomes contributions by young and senior scholars for the online publication series "NUP Jean Monnet Working Papers." For more information, see [here](#).

#### **Chinese Journal of Transnational Law**

The Wuhan University Institute of International Law, in partnership with the leading global research provider, SAGE, is delighted to announce the launch of its new journal: "The Chinese Journal of Transnational Law". A call for the first special issue/ section will be announced soon. For more information, see [here](#).



- **Space Traffic Management:** a legal framework needs to be designed in a manner which address the issue of increased space traffic and its management due to the increase in the space missions once Lunar economy commences.

In 2020, the US State Department introduced the Artemis Accords as an initial step towards addressing the regulatory gap in lunar operations. These accords present a defined set of rules and procedures for conducting activities on the moon, with the aim of offering useful guidelines for both public and private entities looking to engage in the emerging space economy. Among its various provisions, the accords necessitate that participating nations commit to using outer space transparently and peacefully, establish safety zones for lunar operations, and safeguard historical sites and artifacts. The provisions also include:

- **Peaceful Objectives:** The parties involved will execute agreements (MOUs) between governments or agencies for the purpose of carrying out space activities in compliance with international law, with an

emphasis on peaceful objectives.

- **Shared Infrastructure:** Those signing this document acknowledge the significance of shared exploration infrastructure in advancing scientific discovery and promoting commercial utilization.
- **Registration and Data Exchange:** Appropriate registration of space objects will be carried out, and scientific data will be openly exchanged promptly. The private sector is exempt, unless they are acting on behalf of one of the signatories.
- **Preservation of Cultural Heritage:** The signatories are to safeguard historic landing sites, artifacts, and any evidence of human activity on celestial bodies.
- **Space Resource Utilization:** This is to support safe and sustainable activities without disrupting the activities of others. Information regarding the location and nature of such activities must be shared to prevent interference.
- **Debris Management:** The signatories will devise plans to dispose and minimize the creation of potentially harmful space debris.

## Upcoming Activities

### **Asia/Pacific Conference: Law and Technology in a Changing World**

The International Law Section will present the 2023 Fall Conference in Seoul, South Korea on Law and Future of Technology from Oct. 10-13, 2023, where they will discuss current issues facing businesses involved in high-tech, covering everything from artificial intelligence and cybersecurity to biotechnology and digital platforms. For more information, see [here](#).

### **NLIU-International Trade Law Journal Essay Competition**

Law students currently enrolled in their undergraduate or LLM degrees (or equivalent) are eligible to write on International Trade Law including allied fields such as international investment law, international business law and international competition law etc. The Competition would prefer Essay entries about the Global South and India from an intersectional lens. For more information, see [here](#).



### UK's Illegal Migration Act, 2023: Potential Violations of the 1951 Refugee Convention

- Pritesh Shende (IV B.A.LL.B.)

In July 2023, the British government's Illegal Migration Bill passed the parliament. This law is introduced to realize the government's determination to "stop the boats" of illegal migrants entering the UK by denying asylum to those who arrive through an irregular route, without a legitimate visa. UK's home secretary has been given a legal duty under section 2 of the act to detain and remove any migrant entering the country illegally. However, this law has come under intense criticism, with significant concerns raised about its potential violations of the 1951 Refugee Convention. The convention born out of the aftermath of WWII and its devastating displacement of millions stands as a cornerstone of international law, offering protection to those fleeing persecution and conflict. However, the provisions in the act threaten to undermine the principles enshrined in this landmark convention.

Central to the convention is the

prohibition of "refoulement," in article 33(1). This principle is unequivocal: No contracting state can expel or return a refugee to the frontiers of territories where their life or freedom would be threatened. The objective is to prevent any action that might expose refugees to further persecution. The Illegal Migration act casts a shadow over this principle of non-refoulement and targets migrants entering the UK irregularly and who have not come directly from a territory where their life and liberty were threatened. This law disregards the spirit of the convention and fails to consider the realities faced by many asylum seekers who are forced to take irregular routes when fleeing persecution and conflict. Article 31 of the convention explicitly acknowledges that individuals fleeing persecution may have no choice but to cross borders irregularly.

The convention reflects the global commitment to protect the most vulnerable group of people, and its principles should be upheld with the utmost care. In light of these concerns, it is crucial for the UK to carefully consider the compatibility of the Illegal Migration Act with its obligations under the convention.

### Upcoming Activities

#### **Call for Papers: Journal of International Law of Peace and Armed Conflict (JILPAC)**

The Journal of International Law of Peace and Armed Conflict / Humanitäres Völkerrecht (JILPAC / HuV) specialises in the legal analysis surrounding armed conflicts. The Journal focuses on the contemporary challenges of international humanitarian law and related fields, including international human rights law and international criminal law as well as on practical challenges of humanitarian aid and peace missions. see [here](#).

#### **Editor:**

Shreya Patni (V B.A.LL.B.)

#### **Assistant Editors:**

Sana Kulkarni (III B.A.LL.B.)  
Tanishq Mishra (III B.A.LL.B.)