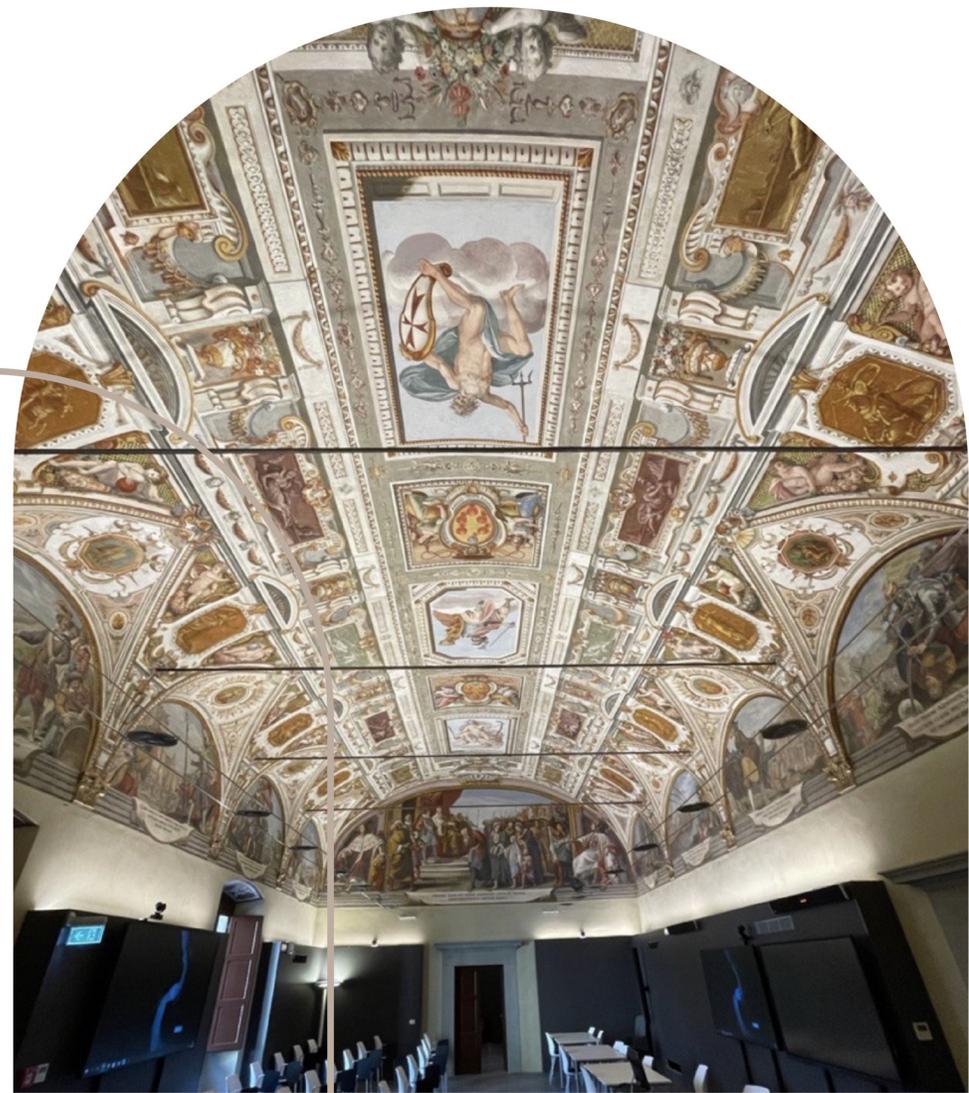


Realising equity in health emergencies

(Confessions of a fallen liberal institutionalist)

Professor Adam Kamradt-Scott



The law is an amazing tool, but it has limits. Good people, on the other hand, don't have limits.

Preet Bharara, fmr US Attorney



Two concurrent processes *(‘Danger Will Robinson, danger!’)*

Revise the IHR (2005)

1. Unwillingness to re-open IHR (2005) text
2. Minor textual amendments only
 - Insertion of entirely new articles = highly unlikely to gain consensus
 - Slight amendment of existing articles = more likely to secure support
3. Any amendments require consensus of 196 States Parties = very high bar

Negotiate a new PPR Instrument

1. Commitment to equity as “a principle and as an outcome”
2. Temptation to include “the kitchen sink”
 - WGPR stated equity “beyond equitable access to medical countermeasures in a pandemic but also includes UHC and health systems strengthening”
3. Increased risk of forum shopping between IHR (2005), WTO SPS Agreement & CBD (*NB: =big risk*)



It's worth recalling...

- WHA Resolutions are non-binding on MS
- IHR is a binding legal instrument, but no 'teeth' as MS were unwilling to penalise noncompliance (*NB: unlikely to change*)
- IHR is, however, automatically binding on all MS unless they 'contract out'
- PPR instrument will require:
 - negotiation (*i.e. compromise*)
 - adoption, and
 - ratification (*i.e. not guaranteed to be universally binding*)
- Type of treaty will be important...

The type of instrument is important...

Art 19

- ‘Framework Convention’ model equivalent to FCTC or FCCC
 - High level principles instrument
 - ‘Protocols’ later adopted to give effect to Convention
- ‘Operational’ treaty
 - No need for additional protocols, as obligations/expectations clearly articulated

Art 21+22

- Regulations



The question of “equity”

Pandemic “Equity”		The possible “asks”	What’s more realistic...
Medical countermeasures - vaccines - therapeutics - diagnostics		New obligation for SP to share vaccines, therapeutics & diagnostics when pandemic or health emergency occurs	Establish the principle & enactment parameters; mandate manufacturing capacity (not donations); integrate insurance & purchase agreements
Technology Transfers & ‘Know How’		Facilitate technology transfers when crisis emerges	Mandate manufacturing capacity; design new IP rules that clarify/replace TRIPS waiver
Pandemic Financing		Provide crisis financing and/or preparedness	Embed in a commitment to demonstrated State Party investment + sustainable financing; don’t expect cash handouts & take responsibility.



Some practical tips...

1. Be realistic – don't let perfect be enemy of good/incremental change
2. Avoid “should” or “may”, and aim for “shall” or “will”
3. Accept equity will not be given - it will have to be bargained for
4. Know what you have to bargain/negotiate with
5. Agree internally on the “red line” in advance and communicate this clearly to external parties.

Thank you.

