
Book Reviews

Fidler, David P., *International Law and Infectious Diseases*. Oxford: Clarendon Press, 1999. Pp. xlvii, 364. Index.

In the editor's preface, Ian Brownlie calls Fidler's book a 'study of considerable originality'. Indeed, the words 'infectious diseases' and 'international law' seem to make a strange combination. Or do they? It is certainly true that infectious diseases have not attracted much interest from international lawyers. Professor Fidler is a notable exception. In a number of articles published in recent years (which form the nucleus of this monograph), he has written about the nexus between human health issues and international law. (Incidentally, an article entitled 'Trade and Health'¹ inspired this reviewer to write a doctoral thesis² on the subject.) More specifically, Fidler has focused on the role international law can play in the prevention and control of infectious diseases. To this end, he develops the concept of *microbialpolitik*, which lies at the centre of his theory of international health law. According to Fidler's definition, *microbialpolitik* is the international politics generated by human attempts to control infectious diseases. Since international law can only operate within a specific political context, it follows that the international law of infectious diseases is a product of *microbialpolitik*.

The term *microbialpolitik* is introduced in the first chapter, where Fidler analyses why infectious diseases are back on the global public health agenda, after the advent of vaccines and antibiotics seemed to have made the problem disappear for good. He criticizes

international lawyers for their tendency to concentrate too much on analysing the law, while neglecting the political realities behind international legal rules. In order to further the understanding of the historic and diplomatic background, the second chapter provides a brief history of international law and diplomacy on the control of infectious diseases from 1851 to 1951. Fidler concludes that the sanitary conferences of the nineteenth century were aimed at protecting Europe from 'Asiatic' diseases, and sought to harmonize quarantine rules and create an international surveillance system and a permanent international health organization. The main forces that led states to cooperate in the field of disease control were the fear of new diseases and economic losses suffered from other states' reactions to diseases. The author rightly notes that, despite all diplomatic efforts, progress was slow until science had evolved sufficiently to identify the origin of infectious diseases.

After the Second World War, the newly created World Health Organization adopted in 1951 the International Health Regulations (IHR), which replaced the multitude of conventions previously in force for WHO members. Chapter 3 sets out the international legal regime introduced by the IHR. Their importance for Fidler's monograph is obvious as they are the only binding rules of international law on infectious diseases ever created by the WHO. However, he notes that their impact has been relatively small and WHO member states have often ignored their obligations in the past. Efforts are currently under way to revise the IHR to make them more effective, including by the insertion of a dispute settlement mechanism.

The following chapter on 'Sources of International Law and the Control of Infectious Diseases' puts the creation and interpretation

¹ Fidler, 'Trade and Health: The Global Spread of Diseases and International Trade', 40 *German Yearbook of International Law* (1997) 300.

² Oliver Landwehr, *Globalisierung, Freihandel und Gesundheitsschutz (Trade and Health)* (2000).

of the IHR in the context of sources theory. It may be surprising to find a chapter on such a general topic in this type of volume. But Fidler emphasizes that his book is aimed not only at international lawyers, and this chapter provides an opportunity to give non-lawyers a basic understanding of the creation of international law in general. Fidler also discusses the question whether the IHR have become customary law, but concludes that state practice is lacking since IHR compliance has been very unsatisfactory in the past.

The next four chapters examine areas in which infectious diseases cause problems: international trade, human rights, armed conflict and environmental protection. Chapter 5 deals with international trade law and how it attempts to reconcile free trade and national health concerns. The principal international treaty in this field is the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures, which imposes strict disciplines on trade-restricting measures that states justify on public health grounds. Fidler observes that trade concerns have been the most powerful forces in the development of international law on infectious diseases. In this respect, he expresses the hope that the WTO dispute settlement process might create opportunities to strengthen international law on disease control.

The next chapter analyses the ways in which disease control measures can restrict human rights and discusses the controversial 'right to health'. The author argues that the right to health does exist, but that it is so broad and nebulous that it lacks coherent meaning. The nexus between human rights and infectious diseases is further illustrated by the observation that, during the HIV/AIDS pandemic, a human rights discourse was sparked for the first time by an infectious disease. Fidler notes that, in the wake of the HIV/AIDS crises, international law, after decades of neglect, was rediscovered by public health officials.

The chapter on 'War Weapons and Infectious Diseases' explores how international law regulates weapons and armed conflicts to control diseases. Fidler analyses the basic rules of the law of war in this area. The

chapter also deals with biological weapons and biological terrorism. Fidler is in favour of expressly making the use of biological weapons a war crime.

International environmental law, which is the focus of Chapter 8, is relevant to the topic because environmental pollution is often regarded as a major factor in the emergence and re-emergence of infectious diseases. The author notes that local air and water pollution, marine pollution and deforestation have remained largely unregulated by states through international environmental law, even though they pose clear infectious disease threats.

In Chapter 9, Fidler comes back to his central theme of *microbialpolitik* and seeks to provide a theoretical framework for the role of international law in the prevention of infectious diseases. This chapter also presents the author's draft of a WHO framework convention on global infectious disease prevention and control, which he proposes as a means to advance global health jurisprudence. In the final chapter, Fidler looks back at the history of the struggle between mankind and microbes, quoting Albert Camus who called this struggle 'a never ending defeat'. The study is rounded off with an appendix setting out the author's ambitious 'Proposal for a World Health Organization Framework Convention on Global Infectious Disease Prevention and Control'.

It is to be hoped that the detailed, comprehensive and thoughtfully worded proposal will be given the attention it deserves. Fidler is certainly right when he criticizes the fact that the role international law can play in the prevention of diseases has not been sufficiently appreciated by public health officials or by international lawyers. Apart from Goodman's *International Health Organizations* and Bélanger's *Droit international de la santé*, there exist very few volumes on the subject. And, apart from the IHR, there are hardly any international legal instruments in the area of health. It is to be hoped that Fidler's book will help to bring about change on both of these fronts. If the catchy term *microbialpolitik* is instrumental in this endeavour, then Fidler

will be forgiven for straining to invent a term that appears to have been chosen less for its meaning than for its glamour. In any case, the author deserves praise for having taken up this much neglected field of international law. And perhaps it is an encouraging sign that, at their meeting in Japan this year, G-8 leaders announced that they would be paying particular attention to the scourge of infectious diseases — especially HIV/AIDS, tuberculosis and malaria.