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International Law and Infectious Diseases

David P. Fidler

Oxford 1999

International law plays an important but under-explored role in infectious disease control. Laws dealing with infectious diseases have implications on a number of important areas in international law including trade law, human rights law, environmental law and the law of war. *International Law and Infectious Diseases*, by David Fidler, is one of the first attempts to bring together the major legal issues concerning infectious diseases into book form. Fidler devotes a chapter to each area of convergence of international jurisprudence and infectious diseases that he identifies. Each chapter can be read alone or as a part of a larger analysis of how international law deals with infectious diseases.

Microbialpolitik is the framework Fidler uses in analyzing the politics of international infectious diseases and how it affects international law. *Microbialpolitik* is the dynamic created by the impact of infectious diseases on international relations, and the impact of international relations on infectious diseases. A weakness of the book is that this concept, though referred to often, is not fleshed out in a rigorous way until Chapter 9. A key to understanding this book is comprehending the relationship between different facets of international law and *microbialpolitik*. Having a robust explanation of *microbialpolitik* only at the end of the book makes it more difficult to understand some of the larger implications of *Infectious Diseases* when reading the book from cover to cover. This is especially important given that at the end of each chapter, Fidler offers a summary of how each chapter fits within a larger *microbialpolitik* framework.

Fidler begins his analysis with a historical background of international cooperation since the first organized major international attempt to deal with disease, the 1851 International Sanitary Conference. This history relies primarily on secondary sources rather than on any new research by Fidler. Its importance, however, is that it sets up a recurring theme in *Infectious Diseases*—the tension between forces that compel states to cooperate on disease control by developing legal solutions on the one hand and forces that restrict the outcome of such cooperation on the other.

A current issue of human rights law exemplifies the tension that Fidler identifies. The approach taken to AIDS by the World Health Organization ("WHO"), a part of the United Nations, has been grounded in the principles of international human rights law as embodied in documents such as the WHO Constitution and the International Covenant on Economic, Social and Cultural Rights. Yet the WHO has proved reluctant to confront member states on human rights violations for fear of losing the cooperation of these member states on health programs. Many states have enacted discriminatory laws in the AIDS context precisely because they do not have a scientific answer for AIDS. This approach, Fidler notes, is not new. History has shown that it is at the moment at which ignorance about how to confront diseases is greatest that the perceived need for international legal solutions also seems strongest.

Fidler concludes that international law will remain central to *microbialpolitik* but that the results of legal mechanisms affecting change are only as good as what states, international organizations, such as the WHO, and non-state actors make of it. Fidler's description of the current situation of international law and *microbialpolitik* is a strength of the book. The book would have been even better had Fidler predicted what changes might occur in the field and in which direction changes might lead. He advocates creating a global health jurisprudence that encompasses an integrated strategy of international law with national public law. Such a system would allow for the identification of procedures and strategies that would create a better regime of the control of international infectious diseases. Even with a successful global health jurisprudence, Fidler believes that legal improvements do not combat the root causes of infectious diseases. Rather, law serves as a tool in the struggle between humankind and diseases.

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