



1-1-1986

Droit International de la Santé

Howard C. Anawalt

Santa Clara University School of Law, hanawalt@scu.edu

Follow this and additional works at: <http://digitalcommons.law.scu.edu/facpubs>



Part of the [Law Commons](#)

Automated Citation

Howard C. Anawalt, *Droit International de la Santé*, 80 AM. J. INT'L L. 747 (1986),

Available at: <http://digitalcommons.law.scu.edu/facpubs/731>

This Article is brought to you for free and open access by the Faculty Scholarship at Santa Clara Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

until nations are ready to accept an international penal tribunal—"an essential element in any serious campaign for the punishment of the crime of genocide" (*id.*). Until criminals can be tried in a proper court, tribunals of concerned citizens may play a useful educational role. In short, Kuper looks to the power of aroused public opinion as an immediate means of helping to prevent genocide and similar crimes against humanity.

As used in this book, the term "genocide" is given a much broader interpretation than was intended by Raphael Lemkin. Kuper's arguments are directed against mass murders of political opponents, terrorism, apartheid and a wide array of similar inhumanities. Indeed, the epilogue's reference to "the general intellectual and moral absurdity of the nuclear arms race" (p. 232) suggests that nuclear warfare would be the ultimate act of genocide. One hopes that this broad sweep will encourage greater enthusiasm for the formulation of the Code of Offences against the Peace and Security of Mankind, which is now being drafted by the International Law Commission, and that it will persuade the readers that if international crimes are to be punished and deterred, an international criminal court must be established.

It is a tragic irony that although nearly one hundred nations have seen fit to do so, the United States—which led the world in the protection of human rights—has not yet ratified the Genocide Convention. On February 19, 1986, by a vote of 83 to 11, the Senate advised and consented to ratification but its consent was subject to two reservations and five understandings that significantly weakened the already flawed instrument. Furthermore, the President was prohibited from depositing the ratification until additional implementing legislation is enacted by the Congress.¹ Despite these serious shortcomings, ratification should not be further delayed. The goals and recommendations of Kuper's book merit public approval. The Genocide Convention is a memorial to the sacred memory of all those who were victims of genocidal slaughter and an important symbol of support for the most fundamental of human rights objectives.

BENJAMIN B. FERENCZ
Pace University School of Law

Droit International de la Santé. By Michel Bélanger. Paris: Economica, 1983.
Pp. 336. Indexes. F.125.

A large part of the world's population suffers from poor health or a lack of health-related services. The author of this book points out that each year 5 million Third World children die of six readily preventable diseases: whooping cough, diphtheria, polio, German measles, tetanus and tuberculosis. Poor and aged persons lack health care in developed countries as well. The author estimates that 3.2 billion people do not have any regular access to ordinary health care.

¹ See 79 AJIL 116-29 (1985); 132 CONG. REC. S1378 (daily ed. Feb. 19, 1986).

The book addresses problems of world health from the perspective of law. One goal of the book is to examine the body of international and domestic regulations that constitute "the international law of health care" (p. 10). In approaching his task, the author emphasizes the political and social depth of his subject. International health law is an important strand of international human rights law. It finds its roots, for example, in Article 25 of the Universal Declaration of Human Rights. "The right to health is considered a fundamental right," he affirms (p. 40).

Yet, if there is such a right to health, one must ask how is it to be realized? Certainly, it is wide of the mark to insist that one can "abolish disease by decree." In place of such a chimerical notion, the author offers a practical role for law—to assure people *access* to health care. He proposes that such a right "is rather a twin moral obligation: each individual should be held to preserve his own health, while the state should furnish to each person access . . . to health services . . . and at the same time, if necessary, the state should take persuasive . . . or coercive measures . . . to protect individual health" (p. 42).

The book surveys the international organizations that play a role in regulating and delivering certain health services. The World Health Organization (WHO), for example, plays a "quasi-regulatory" role in organizing certain health services. This role appears in international cooperation to control epidemic diseases. Nations that are members of WHO are obliged to adopt implementing measures when the organization has established recommendations. The book also examines the activities of nongovernmental organizations such as the International Red Cross.

The role of law is complex. Regulations established by WHO do become a part of the fabric of traditional enforceable law through domestic legislation and enforcement. In addition, the international legal norms serve as guidance or general encouragement toward standardization and the assurance that health care will be widely available. In this sense, they are "soft" law because they exhort improvement of the human condition. In this larger movement to improve conditions, the international institutions plunge into the realm of politics. The question of effectively expanding health care is in fact part of a worldwide examination of questions concerning a new economic order. "Today, more precisely, one must consider [the international law of health] as part of international economic law, notably, part of the international law of development" (p. 10).

HOWARD C. ANAWALT
University of Santa Clara

Human Rights: An International and Comparative Law Bibliography. Compiled and edited by Julian R. Friedman and Marc I. Sherman. Westport and London: Greenwood Press, 1985. Pp. xxvii, 868. Indexes. \$75.

Intended as a "comprehensive and professional bibliography devoted to the international and comparative law of human rights," this volume is a