

BOOK REVIEW

THE GLOBAL TOBACCO EPIDEMIC AND THE LAW EDITED BY ANDREW D MITCHELL AND TANIA VOON (EDWARD ELGAR, 2014) 339 PAGES. PRICE £90.00 (HARDCOVER) ISBN 9781783471515.

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I INTRODUCTION

Tobacco use causes the deaths of over five million people per year and this figure could rise to more than eight million by 2030 unless measures are taken to control the tobacco epidemic.¹ Thus, tobacco control has become an essential aspect of contemporary public health governance. As countries are gradually implementing tobacco control measures, a number of disputes have arisen before national, regional and international courts and tribunals with regard to these regulations. Tobacco companies have challenged regulatory measures concerning tobacco control before a variety of fora for decades. They have challenged the constitutionality of tobacco control measures before national courts and have claimed that such measures violate their property rights before regional courts and tribunals.² Disputes relating to tobacco control measures are also pending before the World Trade Organization dispute settlement mechanism and investment tribunals. In fact, tobacco-control-related investment treaty arbitrations are the most recent articulation of the cultural clash between the regulatory power of states and the economic interests of (affected) private actors.

Several questions arise in this context: is international health law providing sufficient guidance to cope with the tobacco epidemic? Are the WTO dispute settlement mechanism and investor–state arbitration suitable fora to protect public interests? How can panellists and arbitrators adjudicate such difficult cases? What do these cases tell us? Are they representative of broader trends? Can we distil general principles of law concerning tobacco regulation by looking at a number of domestic and regional experiences in addition to, and beyond, existing treaty law?

¹ See Valentina S Vadi, ‘Global Health Governance at a Crossroads: Trademark Protection v Tobacco Control in International Investment Law’ (2012) 48 *Stanford Journal of International Law* 93, 95, citing World Health Organization, ‘Tobacco’ (Fact Sheet No 339, July 2011).

² See, eg, *A-G (Canada) v JTI-Macdonald Corp* [2007] 2 SCR 610; *British American Tobacco South Africa Pty Ltd v Minister of Health* [2012] 3 SA 593 (Supreme Court of Appeal); *JT International SA v Commonwealth* (2012) 250 CLR 1. See also *The Queen v Secretary of State for Health; Ex parte British American Tobacco (Investments) Ltd* (C-491/01) [2002] ECR I-11453.

The Global Tobacco Epidemic and the Law is an edited collection of essays addressing some of these questions and offering a range of perspectives on tobacco control. The volume explores first the twin areas of international law that govern this field — international health law and international economic law — and then specific domestic regulatory frameworks. The book is divided into three parts. Following a brief introduction by the editors, contributions in Part I examine how international health law has increasingly governed tobacco control. After introducing the role of the World Health Organization (‘WHO’) in tobacco control, it focuses on the global significance of the *WHO Framework Convention on Tobacco Control* (‘*WHO FCTC*’).³ Part II of the book investigates how international trade and investment law impact on states’ abilities to fulfil their duties under international health law. In Part III, the book showcases some domestic regulatory frameworks around the world, illustrating the types of legal and political challenges faced by states in the pursuit of tobacco regulation. The book shows that while several industrialised countries have succeeded in significantly reducing smoking rates, developing countries are facing increasing pressures from multinational corporations to water down their regulatory efforts.

This review proceeds by shortly summarising the book. After this, there is a critical assessment in light of the existing literature. It then concludes, highlighting some scope for future research in the field.

II SUMMARY OF THE BOOK

As mentioned above, *The Global Tobacco Epidemic and the Law* is divided into three parts. After a short introduction by the editors, which constitutes Chapter 1 of the book and briefly summarises the contents of the volume,⁴ Part I explores how international health law governs tobacco control. In Chapter 2, Katherine DeLand, Gemma Lien and Heather Wipfli highlight the fact that ‘[a]s the first legally binding ... response to non-communicable disease, the *WHO FCTC* mark[ed] a watershed in public health history’.⁵ They highlight that this unparalleled move was due to the transnational dimension of the tobacco epidemic, the notable academic work of scholars such as Ruth Roemer and Allyn Taylor and the political momentum given by the election of Gro Harlem Brundtland as the WHO Director-General.⁶ The chapter is valuable in that it traces the historical background, the negotiations and the making of the *WHO FCTC*.

In Chapter 3, Chang-fa Lo discusses and critically assesses the respective usefulness of guidelines and protocols adopted under the *WHO FCTC*. The *WHO FCTC* embodies a ‘framework convention’ approach and while ‘there are some substantive rights and obligations included in the convention itself, for many

³ *WHO Framework Convention on Tobacco Control*, opened for signature 16 June 2003, 2302 UNTS 166 (entered into force 27 February 2005) (‘*WHO FCTC*’).

⁴ Andrew D Mitchell and Tania Voon, ‘Introduction’ in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 1.

⁵ Katherine DeLand, Gemma Lien and Heather Wipfli, ‘The *WHO Framework Convention on Tobacco Control* and the Tobacco Free Initiative’ in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 11, 11.

⁶ *Ibid* 14–16.

aspects of tobacco control, the treaty identifies only general principles'.⁷ Therefore, the parties have adopted a protocol and a number of guidelines to implement aspects of the *WHO FCTC*.⁸ The Conference of the Parties ('COP') can propose appropriate guidelines for the implementation of provisions of the *WHO FCTC*.⁹ Although the guidelines are non-binding, they constitute a sort of 'soft law', carrying significant weight in the interpretation of the *WHO FCTC*. In fact, not only do they 'assist parties to meet their *WHO FCTC* obligations'¹⁰ serving as useful benchmarks,¹¹ but they also provide 'valuable guidance ... for non-parties when formulating their tobacco control policies'.¹² Moreover, they have been referred to in disputes to help determine the scope of the obligations of parties to the *WHO FCTC*. The COP can also adopt protocols to the *WHO FCTC* which 'establis[h] legally binding obligations in addition to the obligations created by the *WHO FCTC* itself'.¹³ Lo identifies the merit of adopting a dual, complementary use of both instruments to empower international health law vis-à-vis other branches of international law.¹⁴

In Chapter 4, Jonathan Liberman discusses the 'power' of the *WHO FCTC*, examining its legal status and international and domestic impact in promoting public health in general and tobacco control in particular. The *WHO FCTC* has strengthened states in their approaches to tobacco control, 'reinforc[ing] the view that tobacco products are not normal consumer products'.¹⁵ Not only has the *WHO FCTC* influenced the interpretation of domestic law, but it has also had an impact on the interpretation of international law. On the one hand, it has 'support[ed] the constitutionality of tobacco control measures'.¹⁶ On the other hand, international tribunals are taking the *WHO FCTC* into account. In fact, a WTO 'panel has referred to the *WHO FCTC* and its guidelines, notably in a dispute between Indonesia and the United States, neither of which is a party to the treaty'.¹⁷ Moreover, both 'Uruguay and Australia are invoking the *WHO FCTC* in their defences against lawsuits brought against their tobacco packaging laws by the multinational tobacco company, Philip Morris'.¹⁸

Chapter 5 concludes the first part of the book, exploring the role of the European Anti-Fraud Office in the development of the *Protocol to Eliminate*

⁷ Chang-fa Lo, 'Guidelines and Protocols under the *Framework Convention*' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 32, 32.

⁸ *Ibid.* See also *Protocol to Eliminate Illicit Trade in Tobacco Products*, WHO Doc FCTC/COP5(1) (12 November 2012) ('*Protocol to Eliminate Illicit Trade*').

⁹ *WHO FCTC* art 7.

¹⁰ Lo, above n 7, 37.

¹¹ *Ibid.* 41.

¹² *Ibid.*

¹³ *Ibid.* 39.

¹⁴ *Ibid.* 44–5.

¹⁵ Jonathan Liberman, 'The Power of the *WHO FCTC*: Understanding Its Legal Status and Weight' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 48, 49. See also Jonathan Liberman, 'Four COPs and Counting: Achievements, Underachievements and Looming Challenges in the Early Life of the *WHO FCTC* Conference of the Parties' (2012) 21 *Tobacco Control* 215, 215.

¹⁶ Liberman, 'The Power of the *WHO FCTC*', above n 15, 49.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

Illicit Trade in Tobacco Products.¹⁹ Neil Boister cautions that '[g]iven the nature of its product, the tobacco industry should never be constructed as a partner' in tobacco control regulation.²⁰

Part II of the book investigates how international trade and investment law impact on states' abilities to fulfil their duties under international health law. In Chapter 6, Todd Tucker discusses the WTO rulings on the United States' flavoured cigarettes ban.²¹ In 2011 and 2012, a WTO Panel and the Appellate Body upheld a complaint by Indonesia against aspects of the US *Family Smoking Prevention and Tobacco Control Act*.²² Indonesia successfully argued that the US policy of banning clove cigarettes (mainly imported from Indonesia) while allowing (mostly US-produced) menthol cigarettes amounted to discrimination under art 2.1 of the WTO's *Agreement on Technical Barriers to Trade* ('*TBT Agreement*').²³ As Tucker points out, many observers and US policymakers have criticised the ruling 'for being out of step with health and regulatory prerogatives'.²⁴ Interestingly, the panel discussed the *WHO FCTC* guidelines as evidence of international consensus on specific aspects of tobacco control policies, despite the fact that none of the parties had ratified the *WHO FCTC*.²⁵ Nonetheless, Tucker correctly cautions against the potential for WTO rulings to weaken domestic regulation in key public health areas such as tobacco control.²⁶

In Chapter 7, Lukasz Gruszczynski proposes the conceptualisation of the *WHO FCTC* and related protocols and guidelines as international standards under the *TBT Agreement*.²⁷ This is not a purely theoretical question. In fact, it can arise in the current WTO challenge involving Australia's plain packaging scheme: '[I]f the *WHO FCTC* [and its] guidelines are qualified as international standards, measures that are based on them will benefit from the presumption of consistency with article 2.2 of the *TBT Agreement*'.²⁸ As Gruszczynski opines, '[t]he possibility of relying on guidelines will guarantee necessary regulatory space for WTO members when it comes to tobacco control measures, ensuring at the same time a high level of health protection'.²⁹ If the presumption did not

¹⁹ *Protocol to Eliminate Illicit Trade*, WHO Doc FCTC/COP5(1).

²⁰ Neil Boister, 'The European Anti-Fraud Office and the *Protocol to Eliminate Illicit Trade in Tobacco Products*' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 64, 79.

²¹ Todd Tucker, 'The WTO Ruling on the United States' Flavoured Cigarettes Ban' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 87.

²² *Family Smoking Prevention and Tobacco Control Act*, Pub L No 111-31, 123 Stat 1776 (2009); Panel Report, *United States — Measures Affecting the Production and Sale of Clove Cigarettes*, WTO Doc WT/DS406/R (2 September 2011) ('*US — Clove Cigarettes*'); Appellate Body Report, *United States — Measures Affecting the Production and Sale of Clove Cigarettes*, WTO Doc WT/DS406/AB/R, AB-2012-1 (4 April 2012).

²³ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A art 2.1.

²⁴ Tucker, above n 21, 88.

²⁵ Panel Report, *US — Clove Cigarettes*, WTO Doc WT/DS406/AB/R, [7.229]–[7.231], [7.414].

²⁶ Tucker, above n 21, 99.

²⁷ Lukasz Gruszczynski, 'The *WHO FCTC* as an International Standard under the *WTO Agreement on Technical Barriers to Trade*' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 105.

²⁸ *Ibid* 119–20.

²⁹ *Ibid* 120.

apply, the chapter suggests considering the *WHO FCTC* and the relevant guidelines as ‘relevant rules of international law applicable in the relations between the parties’ under art 31(3)(c) of the *Vienna Convention on the Law of Treaties*.³⁰ In addition, ‘both the *WHO FCTC* and the guidelines may be used as a “fact” that will help to confirm existence of certain risks to health, and the importance and legitimacy of national measures as well as their necessity and proportionality’.³¹ The chapter also highlights the fact that although there is no formal agreement between the WTO and the WHO, ‘the WHO enjoys observer status in various WTO committees and councils’ including the Technical Barriers to Trade Committee and the Council for Trade-Related Aspects of International Property.³² In turn, ‘the WTO Secretariat holds the same status in various bodies operating within the institutional framework of the WHO’.³³ For instance, ‘[a] representative of the WTO Secretariat is always present at the meetings of the COP’.³⁴

In Chapter 8, Tsai-yu Lin discusses some elements pertaining to the pending investment treaty arbitrations regarding tobacco control.³⁵ Rather than discussing the facts giving rise to the litigation and/or the type of claims brought by the claimants, Lin focuses on selected analytical issues; including non-disputing parties’ access to arbitration proceedings, the lack of appellate review of awards and possible resistance to compliance with the awards on the grounds of transnational public policy.³⁶ She also considers the possible investor’s home state involvement in the course of the investment treaty arbitration as an *amicus curiae* and the possibility of interpretative clarification by the investment treaty contracting parties to guide the conduct of the arbitral tribunal.³⁷ Lin concludes that investment treaty arbitration does not provide an appropriate forum for settling tobacco-control-related disputes.³⁸

The last two chapters of Part II explore tobacco control in regional settings. In Chapter 9, Locknie Hsu discusses and critically assesses how the Association of Southeast Asian Nations (‘ASEAN’) is tackling issues relating to tobacco control.³⁹ She concludes:

ASEAN’s mosaic of tobacco control laws and regulations is ... a work in progress, as the region continues to step up economic integration and liberalisation aggressively while managing important health issues such as those relating to tobacco control.⁴⁰

³⁰ *Ibid.* See also *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31(3)(c).

³¹ Gruszczynski, above n 27, 120.

³² *Ibid.* 117.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Tsai-yu Lin, ‘Disputes regarding Tobacco Control Measures under Investor–State Arbitration’ in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 126.

³⁶ *Ibid.* 127–31.

³⁷ *Ibid.* 128–30, 135–6.

³⁸ *Ibid.* 137.

³⁹ Locknie Hsu, ‘Tobacco Control in ASEAN’ in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 142.

⁴⁰ *Ibid.* 142.

Chapter 10 concludes the second part of the book by examining the international trade policy and tobacco products under the Obama administration.⁴¹ In this chapter, Jamie Strawbridge explores the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership negotiations.

Part III of the book showcases some regional and domestic experiences in adopting tobacco control regulations. At the regional level, Chapter 11 and Chapter 13 deal with tobacco control in the European Union and Latin America respectively. In Chapter 11, Peter Henning and Leonid Shmatenko examine how the EU is dealing with tobacco control and is considering plain packaging.⁴² The authors suggest that '[i]f plain packaging is consistent with EU law ... *a fortiori* ... any less severe measure is consistent with EU law as well'.⁴³

In Chapter 13, Oscar Cabrera and Juan Carballo examine tobacco control in Latin America.⁴⁴ The Latin American experience contrasts with that of most industrialised countries as Latin American countries are facing ongoing challenges when adopting tobacco control regulations. In fact, Cabrera and Carballo highlight that 'the tobacco industry is increasingly focusing on developing countries' as a result of strengthened tobacco control regulation and higher taxes imposed in industrialised countries.⁴⁵ As a result, they stress that the poorest tend to have the highest tobacco consumption rates.⁴⁶ Interestingly, the chapter shows how Latin American courts have characterised tobacco control as a human rights issue to give it more prominence and constitutional weight. While the conceptualisation of tobacco control as a human rights issue is not new,⁴⁷ the chapter examines a number of recent disputes making a significant contribution to discussions in the field. The authors correctly point out that while the '*WHO FCTC* is not technically a human rights treaty ... it poses important implications for international human rights law'.⁴⁸

At the national level, Chapters 12, 14, 15 and 16 deal with tobacco control in Canada, Australia, Taiwan and India respectively. In Chapter 12, Rob Cunningham analyses and critically assesses tobacco control in Canada.⁴⁹ He pinpoints that in Canada, 'tobacco use has decreased considerably' as governments have implemented 'a comprehensive [tobacco control] strategy that

⁴¹ Jamie Strawbridge, 'International Trade Policy and Tobacco Products under the Obama Administration' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 166.

⁴² Peter K Henning and Leonid Shmatenko, 'Tobacco Control in Europe: The Potential for Plain Packaging' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 187.

⁴³ *Ibid* 188.

⁴⁴ Oscar A Cabrera and Juan Carballo, 'Tobacco Control in Latin America' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 235.

⁴⁵ *Ibid* 236.

⁴⁶ *Ibid*.

⁴⁷ For discussion, see Valentina Sara Vadi, 'Reconciling Public Health and Investor Rights: The Case of Tobacco' in Pierre-Marie Dupuy, Francesco Francioni and Ernst-Ulrich Petersmann (eds), *Human Rights in International Investment Law and Arbitration* (Oxford University Press, 2009) 452, 453–6.

⁴⁸ Cabrera and Carballo, above n 44, 237.

⁴⁹ Rob Cunningham, 'Tobacco Control in Canada' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 209.

includes taxation, legislation and programming'.⁵⁰ The chapter showcases how Canada has been successful in the fight against tobacco consumption despite domestic constitutional challenges and threats of investment treaty arbitrations. In Chapter 14, Mark Davison examines the Australian experience, focusing on the recent challenge to the *Tobacco Plain Packaging Act 2011* (Cth) in the High Court of Australia.⁵¹ The last two chapters focus on selected Asian experiences. In Chapter 15, Chuan-Feng Wu examines tobacco control in Taiwan.⁵² In Chapter 16, Amit Yadav and Deepti Singh explore tobacco control in India.⁵³

III CRITICAL ASSESSMENT

The volume successfully achieves its stated aim 'to offer hope for the ongoing international disputes, clarifying the relevant complex areas of law and showing how they can interact effectively with domestic policy'.⁵⁴ In fact, it illustrates 'the progress made to date in tobacco control' and clears the path for its continuation.⁵⁵ The book adopts a multi-level and multi-sectoral approach focusing on various levels of tobacco control governance — namely, international, regional and national — and showing the various legal *topoi*, or areas, where the friction between public health policies and the tobacco business takes place. It constitutes essential reading for those interested in tobacco control, international health law and international economic law. It may also be valuable reading for human rights and constitutional law scholars given the interaction between the local and the global in tobacco control governance.

The book could not be timelier. Given the wealth of pending disputes, undoubtedly, the book has the potential to inform and shape current debates on tobacco control regulation. It illustrates the crucial legal challenges faced by states when adopting tobacco control measures at both national and international levels. The volume is informative, well-thought-out and well-structured. All of the contributions are well-connected to each other and contribute an important piece to the mosaic of tobacco control regulation. The editors, Andrew Mitchell and Tania Voon, both professors at Melbourne Law School, have done excellent work in selecting, editing and organising the contributions in an extremely well-crafted volume. The contributors are mostly legal scholars, but the sources — well-arranged in a comprehensive bibliography at the end of the volume — include both legal and public health materials. Given its interdisciplinarity, the book will be valuable not only for legal scholars and policymakers but also for public health law experts.

Part I, focusing on tobacco control in the context of the WHO, provides a rather positive assessment of the *WHO FCTC*, stressing that 'the *WHO FCTC*

⁵⁰ Ibid.

⁵¹ Mark Davison, 'Tobacco Control in Australia: The High Court Challenge to Plain Packaging' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 258. See also *JT International v Commonwealth* (2012) 250 CLR 1.

⁵² Chuan-Feng Wu, 'Tobacco Control in Taiwan' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 279.

⁵³ Amit Yadav and Deepti Singh, 'Tobacco Control in India' in Andrew D Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, 2014) 302.

⁵⁴ Mitchell and Voon, 'Introduction', above n 4, 5.

⁵⁵ Ibid 5.

has been a genuine success — for the parties to the treaty, for the WHO and for public health in general'.⁵⁶ While Lo notes that the *WHO FCTC* is 'a living treaty' continuously growing and 'enriching its content',⁵⁷ Liberman points out that it is not just a framework convention.⁵⁸ Rather, Liberman suggests that by including 'a number of detailed provisions and strong obligations ... [i]t is already a powerful, legally binding instrument of international law'.⁵⁹

Yet, adopting a more critical stance, it would have been useful for the book to examine why the WHO has been so reluctant to adopt binding legal approaches to regulating public health matters. The WHO was established in 1948.⁶⁰ Only in 2003, 55 years later, did the WHO adopt the *WHO FCTC*, which has been its first, and so far only, binding convention. Yet, the *WHO FCTC* is in the form of a framework convention — which establishes a general governance framework with detailed content and obligations to be elaborated through protocols — rather than a fully-fledged convention. Certainly, the adoption of framework conventions may be more likely to facilitate 'political consensus'.⁶¹

The WHO has traditionally favoured non-legal approaches to health issues.⁶² The institution, mainly composed of health specialists,⁶³ has principally, if not exclusively, developed guidelines and other non-binding tools. It has developed 'an ethos that looks at global health problems as medical-technical issues to be resolved by the application of the healing arts'.⁶⁴ Critics have described instruments adopted by the WHO as 'limited in scope and application'⁶⁵ as well as 'historically, politically and structurally inadequate to do what is needed'.⁶⁶ Such instruments 'are being developed and deployed in an uncoordinated ... manner' and 'pale in comparison to that of other international [organisations]'.⁶⁷

International health law has not been an effective system due to its mainly non-legal approach, lack of enforcement powers and consequent states' failure to

⁵⁶ DeLand, Lien and Wipfli, above n 5, 26.

⁵⁷ Lo, above n 7, 33.

⁵⁸ Liberman, above n 15, 51–3.

⁵⁹ *Ibid* 52–3.

⁶⁰ *Constitution of the World Health Organization*, opened for signature 22 July 1946, 14 UNTS 185 (entered into force 7 April 1948).

⁶¹ Allyn L Taylor, 'An International Regulatory Strategy for Global Tobacco Control' (1996) 21 *Yale Journal of International Law* 257, 294.

⁶² David P Fidler, 'International Law and Global Public Health' (1999) 48 *University of Kansas Law Review* 1, 2. David Fidler notes that critics of the World Health Organization ('WHO') have often pointed out its 'historical penchant for dealing with public health problems within a narrow "medical-technical" approach': at 22.

⁶³ *Ibid* 22. Fidler highlights that the 'WHO has historically been staffed predominantly by physicians, medical scientists, and public health experts': at 22.

⁶⁴ David P Fidler, 'The Future of the World Health Organization: What Role for International Law?' (1998) 31 *Vanderbilt Journal of Transnational Law* 1079, 1099.

⁶⁵ Shawn H E Harmon, 'International Public Health Law: Not So Much WHO as Why, and Not Enough WHO and Why Not?' (2009) 12 *Medicine, Health Care and Philosophy* 245, 251.

⁶⁶ *Ibid*, quoting Lawrence O Gostin, 'Meeting Basic Survival Needs of the World's Least Healthy People: Toward a Framework Convention on Global Health' (2008) 96 *Georgetown Law Journal* 331, 375.

⁶⁷ Harmon, above n 65, 251.

comply with its rules.⁶⁸ International health law differs remarkably from other subfields of international law, such as international economic law. While the former is characterised by the lack of dedicated tribunals, the latter is defined by highly effective, binding dispute settlement mechanisms. This institutional imbalance helps to explain why so many public health-related disputes tend to be attracted by international economic fora. Rarely has the WHO participated in trade and investment negotiations or the resolution of international disputes even when such are linked to public health.⁶⁹ The WHO cautiously started intervening in trade disputes and investment treaty arbitrations as an *amicus curiae*.⁷⁰

Part II provides perhaps the most interesting part of the book, illustrating the range of international and transnational disputes involving tobacco control. It would have been useful to have a short discussion on the question as to whether some tobacco control measures are too paternalistic or whether in fact they enable a more informed freedom of choice.⁷¹

Part III showcases a number of domestic experiences. While certain tobacco control regulatory measures have been upheld by a number of courts which have recognised their urgency, prominence and reasonableness, doubts have nonetheless been raised as to the constitutionality of other measures.⁷² The book demonstrates the need for further in-depth comparative study in order to assess whether such cases are representative of broader trends. In particular, it would be useful to survey whether other jurisdictions, in addition to those examined in Part III of the book — in both industrialised and developing countries — have adopted similar approaches. Such a study would assess whether general principles of law have emerged in the field. A comparative endeavour of this nature would be most useful as the *WHO FCTC* does not adopt a command and control technique, but leaves a margin of regulatory autonomy to the ratifying countries.

In conclusion, the book is destined to become a reference point for scholars and practitioners alike. This is even more the case if one considers the fact that the volume constitutes a valuable addition to the state-of-the-art and other coedited volumes of the coeditors.⁷³ This important collection illustrates the extent to which convergence between international law and domestic law is occurring. Those who are familiar with international economic law will find

⁶⁸ Jennifer Prah Ruger, 'Normative Foundations of Global Health Law' (2008) 96 *Georgetown Law Journal* 423, 437–8. Jennifer Ruger notes that '[i]nternational health law has been viewed as "ineffective"': at 438.

⁶⁹ Harmon, above n 65, 251. But see the pivotal role played by the WHO in the International Court of Justice: *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226.

⁷⁰ Jarrod Hepburn, Clovis Trevino and Luke Eric Peterson, 'World Health Organization Is Given Green-Light by Arbitrators to Intervene in *Philip Morris v Uruguay* Arbitration' (2015) 8(5) *Investment Arbitration Reporter* 31.

⁷¹ Cf Fernando D Simões, 'Paternalism and Health Law: Legal Promotion of a Healthy Lifestyle' (2013) 3 *European Journal of Risk Regulation* 347.

⁷² See generally Valentina Vadi, *Public Health in International Investment Law and Arbitration* (Routledge, 2013).

⁷³ Tania Voon, Andrew D Mitchell and Jonathan Liberman, *Regulating Tobacco, Alcohol and Unhealthy Foods: The Legal Issues* (Routledge, 2014); Andrew D Mitchell and Tania Voon (eds) (2012) 9(5) (Special Issue) *Transnational Dispute Management*; Tania Voon, Andrew D Mitchell and Jonathan Liberman (eds), *Public Health and Plain Packaging of Cigarettes: Legal Issues* (Edward Elgar, 2012).

Parts I and II of particular interest, because they survey the interplay between international health law and international economic law in a clear and accurate fashion. Those who are familiar with international health law will find Parts II and III of particular interest, as they show how international health law is effective (or ineffective) in practice, showcasing a number of international and domestic disputes.

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