

***Taking Economic, Social and Cultural Rights Seriously  
in International Criminal Law* by Evelyne Schmid**

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*Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* is a significant and timely contribution not only for the broader scheme of international criminal law, but more specifically for the expanding field of transitional justice, as well. Evelyne Schmid offers a meticulous and systematic analysis of the neglect of economic, social and cultural rights (ESCR) violations in international criminal law, relying on extensive sources that include legal cases, academic literature, and real life situations. The core argument of the book is that a situation or fact can, concurrently, be explained as a violation of ESCR while at the same time being qualified as an international crime. This parallel legal qualification means that not only should *state* responsibility for an internationally wrongful act be considered, but also *individual* criminal responsibility can be triggered.

To illustrate this argument, the book is divided into three thematic parts in nine chapters. Part one offers an in-depth theoretical explanation to provide a broader understanding of key issues as pertinent to the book's argument, such as human rights hierarchies in international criminal law (chapter two) and relating international crimes to ESCR violations (chapter three). Chapter four revisits crimes against humanity as massive violations of human rights norms, and hence a category that significantly overlaps with ESCR violations. The next chapters look at specific situations and cases

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of war crimes (chapter five), genocide (chapter six) and torture, slavery and other types of international crimes (chapter 7) to examine overlaps between those crimes and ESCR violations. The final part (chapter 8) provides corollaries of qualifying ESCR violations as international crimes, with a range of jurisdictional and remedial consequences.

*Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* not only offers a novel argument, but is also rich in grounding the claim in various legal instruments. More importantly, by looking at specific situations and cases, the book does not stay at an abstract level but rather comes to the very objective realities that have for so long been neglected. The author, in fact, does not advocate for an expansion of international criminal law to include ESCR violations, but instead identifies situations where ESCR abuses can already be considered as part of existing crimes. In chapter four, for example, Schmid looks at the case of forced eviction, which is considered a violation of the right to housing in human rights law and therefore an ESCR violation. In examining the overlap between ESCR violations and international crime, the author compares the element of “forced eviction” with certain aspects in the definition of crimes against humanity, ie deportation or forcible transfer. Other examples include enslavement and sexual slavery, which can overlap with certain elements of ESCR violations such as the right to health, the right to work, and the right to just and favorable conditions of work.

This work, in its core, challenges the existing tradition within the international human rights regime where a deep cleavage between civil and political rights violations, on the one hand, and ESCR violations on the other, has given rise to different responses at the international criminal law arena. Schmid argues that despite the occurrence of incidents such as “destruction of homes, cutting off water sources, excluding certain groups from education or cultural life and forcing people to work under inhumane conditions” throughout history, such violations have rarely been addressed “through legal processes relying on international criminal law” (7).

Perhaps one of the most significant contributions of the book relates to the field of transitional justice (TJ). A number of TJ scholars and practitioners have taken the question of rights hierarchy seriously during the last decade. While such discussions predominantly come from the legal discipline, an attempt to systematically analyze overlaps between certain facts and situations of ESCR violations in post-conflict contexts and international crimes is not only novel in the TJ discourse, but also one which can provide a solid legal ground upon which TJ scholars and practitioners can build up with specific cases. A number of Truth Commissions (TC) – including those in Peru, Sierra Leone, and Liberia – have already incorporated addressing aspects of ESCR violations in their mandates. Such measures can, arguably, be of benefit if findings and recommendations are also supported in the international legal regime. In particular, it will bear consequences for legal mechanisms within the international criminal law system that the book discusses. One such example is corruption, an issue that a handful of TCs have attempted to address. However, as an emerging topic within the human rights community, discussions around it are still rather inconclusive. Schmid’s argument, therefore, could potentially be one way to clarify the notion of corruption within human rights law. She notes that “the same conduct can both constitute a form of corruption criminalized in one of the international criminal law instruments and give rise to a violation of ESCR” (263).

*Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* makes a significant contribution to the enhanced legal protection of ESC rights, not by making proposals for far-reaching change, but by exploring the potential within the current confines of international criminal law. It does so at two levels: first by demonstrating how many ESCR violations may be qualified as international crimes, and secondly by analyzing how that opens up avenues for redress. For instance, through the International Criminal Court and national tribunals, as well as truth commissions and other non-judicial mechanisms.

International criminal law and human rights law seem to converge more and more, and many of the same facts may be analyzed from both perspectives. Yet each legal field traditionally focuses on the responsibility of a different actor; the former on the individual, the latter on the state. That sharp distinction is increasingly under strain, with compelling evidence that some crime and actors should come within the purview of both legal regimes. Although not at its core, Schmid's book offers further support for that argument.