

Evelyne Schmid: Taking economic, social and cultural rights seriously in international criminal law

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Haris Jamil

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For a long time, economic, social and cultural rights (ESCR) were considered as a ‘socialist manifesto thinly veiled in the language of rights’,¹ and its full enforcement was opposed on the basis of political ideology. However, since the Vienna Declaration of the World Conference on Human Rights 1993, there has been a growing demand for the strict enforcement of ESCR, and the boundary between the first (civil and political rights) and second (ESCR) generations of rights concerning their implementation has weakened. This debate is equally relevant in the case of international criminal law. So, if conflicts can lead to infringement of civil and political rights, they equally infringe the ESCR.

Evelyne Schmid’s book *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* maps the relationship between ESCR and international crimes. Based on a comprehensive study, this book argues that the elements of international crimes overlap with the violations of ESCR and therefore, the same circumstances can be treated as an international crime and as a violation of ESCR.

¹ Barbara Stark, Economic Rights in the United States and International Human Rights Law: Toward an “Entirely New Strategy,” 44 *Hastings L J* (1992) 79, 81.

Haris Jamil: Junior Research Fellow pursuing MPhil/PhD.

Haris Jamil (✉)
Faculty of Legal Studies, South Asian University, New Delhi, India
e-mail: harisjamil.ks@gmail.com

Challenging the contemporary practice of focussing on civil and political rights, Schmid concludes that courts and tribunals (both national and international) and non- or quasi-judicial mechanisms should focus and exercise jurisdiction over violations of ESCR.

Schmid's book which runs into nine chapters can be broadly divided into three different parts (Chapters 2–3, 4–7 and 8), minus the first chapter which is introductory in nature and aptly presents the research problem, hypothesis and structure of the book. The last chapter (Chapter 9) sums up and concludes the study.

Chapter 2 counters the view that international criminal law cannot address the arguments related to the violations of ESCR. Terming it as 'legal impossibility argument', the author argues that such a view can hinder the evolution of international criminal law towards accounting for the violations of ESCR. Chapter 3 primarily deals with two aspects. First, it presents a methodology to determine the overlap between definitions of international crimes and ESCR violations. The author argues that such an overlap will exist if the same situation can be correctly treated as an international crime and as a violation of ESCR by an international criminal lawyer and a human rights lawyer, respectively. Second, this chapter clarifies key concepts (international crimes and violations of ESCR) and highlights the relationship between international criminal law, international humanitarian law and human rights law in order to appreciate truly the overlap between international crime and violation of ESCR (p. 67).

Central to the book are Chapters 4–7 which study the relationship between the definitions of international crimes and violations of ESCR. In Chapter 4, the author argues that definition of the crime against humanity cover acts which also constitute the violation of ESCR. Along with the meticulous examination of all the elements and conditions, the author makes reference to several instances ranging from Nuremberg judgments² to the atrocities committed in Zimbabwe (pp. 96–103). The author also analyzes specific actions (like deportation or forcible transfer, sexual slavery, enslavement, persecution, apartheid, etc.) which establish an overlap. Chapter 5 studies the situations under which a definition of war crimes can relate to the ESCR violation. The author identifies four groups of acts (war crimes against persons, war crimes

² For example, *United States of America v Altstoetter et al.* (Justice Trial), III TWC 954, NMT; *United States of America v Flick et al* (Opinion and Judgment), VI TWC 1187, NMT; *United States of America v Brandt et al* (Medical Trial), II TWC 171, NMT.

against property, war crimes consisting in the use of prohibited methods of warfare and war crimes consisting in the use of prohibited means of warfare) which fall under both war crimes and ESCR violations. With the help of *Greiser's* trial,³ the author successfully illustrates that violation of ESCR can also amount to commission of war crimes. In Chapter 6, the author argues that genocidal intent (*dolus specialis*) to destroy a protected group can be construed from the violation of ESCR directed at the corporal annihilation, including if the intention is to cause slow deaths' and incapacitation over a significant time. The author also argues that the five genocidal acts, as mentioned in Genocide Convention, can be committed by way of ESCR abuses. Chapter 7 examines eleven other international crimes (like slavery, apartheid, aggression, corruption, terrorist offenses, etc.) and concludes that these crimes, as defined by international law, may overlap with ESCR violations (p. 271). By examining elements of different crimes under international law, and referring to various judicial decisions and scholarly works, Schmid persuasively argues that international crimes have the potential to address those conducts that simultaneously amounts to the violation of ESCR.

Chapter 8 identifies jurisdictional and remedial consequences of this study. The author argues that international and national courts are competent enough to deal with ESCR abuses that overlap with the international crimes and the same remedies and reparations, as in the case of crimes overlapping with civil and political rights, can be claimed by the victims. The author also points out that for those ESCR violations which overlap with international crimes, states have a number of legal obligations under international law. The book also highlights the role of truth commissions, national human rights institutions and institutional vetting processes in investigating, monitoring and addressing the violations of ESCR resulting to international crimes. In this regard, author emphasises that many of these mechanisms usually have mandates that envelopes international crimes. This chapter also briefly discusses the issues relating to the role of the UN Security Council to deal with ESCR abuses, and the liability of non-state actors (such as businesses and international organizations) for international crimes that overlap with violations of ESCR. The last chapter (Chapter 9) draws the conclusion, identifies some potential

³ *Prosecutor v Greiser*, Case No 74, XIII Law Reports of Trials of War Criminals 70, Supreme National Tribunal, Poland (7 July 1946).

concerns, points out the limits of the findings and highlights areas of further research.

Based on a meticulous examination and study of the elements of international crimes, case laws and scholarly writings, this book convincingly challenges the practice of different mechanisms which reduce the consideration of human rights violation to civil and political rights only. Reading ESCR within the definition of international crimes will help in eliminating the prejudices like poverty, poor education, unemployment and other forms of deprivation, which, in most circumstances, is the principal source leading up to the commission of international crimes. This book, however, does not consider the possibility of attributing responsibility to armed non-state actors for the violation of ESCR, which is traditionally considered as the obligations of the state. This is particularly relevant in the present times as the most number of conflicts involve non-state actors. On the whole, this book will be useful for practitioners, academics and students of international law.