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Rhoda E. Howard-Hassmann, *State Food Crimes* (Cambridge University Press, 2016) 270 pp. 20£ (Paperback) ISBN 9781316459812

State Food Crimes is a book providing detailed evidence of the specific mechanisms through which devastating starvation is inflicted. Rhoda E. Howard-Hassmann presents six historical (Ukraine, China, Cambodia, Ireland, Germany during the First World War British Blockade and Canada in the 1870s) and four contemporary (North Korea, Zimbabwe, Venezuela and the West Bank and Gaza) case studies of food deprivation. She explains that state food crimes are ‘crimes by states that deny their own citizens and others for whom they are directly responsible one of their most fundamental human rights, the right to food’.¹

Howard-Hassmann’s main objective is to reflect on the prevention and punishment of state-induced famine. The selection of her case studies illustrates the ways in which starvation and violations of the right to freedom from hunger and the right to food go hand in hand with, are caused or exacerbated by, abuses of ‘citizenship, mobility rights, property rights, and the right to work’ and abuses of rights related to political participation (voting rights, freedom of the media), providing further evidence of the interdependence of human rights.² Howard-Hassmann forcefully describes the political agency through which state actors enrich themselves, deny human rights to maintain their power, impede or politicize food aid, engage in corruption and attack livelihoods in order to strategically advance their own interests. Following David Marcus’ four categories of faminogenesis,³ the author classifies the contemporary case studies on a spectrum ranging from incompetent decision-making (Venezuela), to indifference or recklessness (West Bank and Gaza/Israel), finally culminating at intentional criminality (Zimbabwe and North Korea).⁴

Howard-Hassmann arrives at the conclusion that the worst famines are caused by internal state policies.⁵ From this she deduces that the best protection against state food crimes are ‘internal human rights, not external law and practice’.⁶ As a complementary tool, Howard-Hassmann believes that a new treaty on the right to food would be useful to prevent and control state food crimes. The author presents her ideas for this new treaty in chapter 12 of her book and implies that such a convention would have a hybrid character as an instrument of international criminal law, international human rights law, refugee law and probably humanitarian law as well.

Howard-Hassmann’s most important contribution is the careful demonstration of the abusive role of states in the deprivations of the right to freedom from hunger and the right to food. As the Security Council has emphasized, millions of people presently face the threat of famine.⁷ Howard-Hassmann, a political scientist and former Canada Research Chair in International Human Rights, does an effective job at discrediting the myth that famines are the result of natural disasters. As William Schabas wrote, states do not have intent, they have

¹ R. E. Howard-Hassmann, *State Food Crimes* (Cambridge University Press, 2016), at 3.

² Howard-Hassmann, *supra* note 1, at 7 and chapter 10.

³ D. Marcus, ‘Famine Crimes in International Law’, 97 *American Journal of International Law* (2003) 245.

⁴ But see Howard-Hassmann, *supra* note 1, at 17, where she says that indifference and incompetence over time suggest recklessness or intentionality.

⁵ *Ibid.*, at 213.

⁶ *Ibid.*, at 4.

⁷ SC Res. S/RES/2417, 24 May 2018, preambular § 2.

policy.⁸ It is Howard-Hassmann's merit to focus on the concrete policies by which state actors deprive individuals of food or by which states fail to realize their positive obligations in relation to food.

The book is best understood as an analysis of the empirical evidence on the concrete mechanisms explaining, or exacerbating, the famines in the selected case studies and the inadequate international responses thereto. Whilst the book's strength lies in the political analysis of the case-studies, [page 926] the book also explicitly aims at evaluating the current state of international law in relation to food.⁹ The author's analysis of the current legal framework however, suffers from weaknesses. My main concern is that the author uses various sub-branches of international law with insufficient consideration of how these branches interact and differ but nevertheless complement each other. Howard-Hassmann argues that 'state food crimes' are insufficiently criminalized and that, 'thus' (or rather: at the least), a broader interpretation of 'state food crimes' would be required.¹⁰ As mentioned, she defines 'state food crimes' 'in both the legal and moral senses' as crimes by states that deny the right to food.¹¹ Legally, she argues, 'state food crimes fall under various aspects of international law, the most explicit of which is as a crime against humanity', namely the crime of extermination or 'a war crime under the Geneva Conventions'.¹² Given that the right to food is part of international human rights law, and not international criminal law, the author implies that there are norms of international law that criminalize acts or omissions *of states*.¹³ Although state responsibility and international criminal law can overlap,¹⁴ the predominant view is that states cannot commit international crimes.

This — majoritarian but not unanimous—¹⁵ position is based on the intense debate within the International Law Commission (ILC) on the 1996 proposal for 'international crimes of states'. This proposal that was met with such fierce opposition by some of the members of the ILC, as well as by powerful states in the General Assembly Sixth Committee, that the ILC withdrew it.¹⁶ The legal regimes concerning individual criminal liability and state responsibility (needed to identify violations of the right to food) are different in scope, purpose and sources. Indeed, not every violation of the right to food is a crime.¹⁷ Conflating the legal regimes not only leads to an inaccurate legal analysis but also comes with several other risks.¹⁸ The International Court of Justice confirmed that a state can incur state responsibility if genocide is committed by actors whose conduct is attributable to that state.¹⁹ This, however, does not equate to the state having committed a crime. The relationship between international

⁸ W. Schabas, 'State Policy as an Element of International Crimes', 98 *Journal of Criminal Law and Criminology* (2008) 953, at 970.

⁹ Howard-Hassmann, *supra* note 1, e.g., at 4 or 135.

¹⁰ *Ibid.*, at 4.

¹¹ *Ibid.*, at 3-4.

¹² *Ibid.*, at 4.

¹³ The author refers to 'crimes by states' and the idea to 'penalize states or their leaders'. *Ibid.*, at 3, 152.

¹⁴ A. Bianchi, 'State Responsibility and Criminal Liability of Individuals', in A. Cassese (ed.), *The Oxford Companion to International Criminal Justice* (Oxford University Press, 2009) 16, at 18.

¹⁵ A. Pellet, 'Can a State Commit a Crime? Definitely, Yes!', 10 *European Journal of International Law* (1999) 425.

¹⁶ For a summary of the fate of this proposal, see J. Crawford, *State Responsibility: The General Part* (Cambridge University Press, 2013), at 52-53.

¹⁷ E. Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* (Cambridge University Press, 2015), at chapter 3.

¹⁸ Notably a risk of 'distracting attention from the structural changes that need to be made to avoid all types of human rights violation'. A. Clapham, 'Human Rights and International Criminal Law', in W. Schabas (ed.), *The Cambridge Companion to International Criminal Law* (Cambridge University Press, 2016) 11, at 18.

¹⁹ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 26 February 2007, § 181.

criminal law and state responsibility is thus complex. The author's legal conclusions would appear stronger if we limit the understanding of state crimes to crimes committed with the involvement of state actors, which allows us to bridge the concept with existing international criminal law. In some places in the book, Howard-Hassmann uses the term 'state crime' to highlight the role of state actors in policies leading to food deprivation,²⁰ and she herself wonders how it would be 'possible to punish an entire political regime, rather than only individual actors within it'.²¹

Let us now turn to the author's recommendations. Howard-Hassmann proposes that a new United Nations treaty on the right to food be adopted. She suggests that such a treaty would notably emphasize the 'relevant clauses' in the Genocide Convention and the Statute of the International Criminal Court (ICC). This treaty would combat the starvation of prisoners, modify the definition of a [page 927] refugee to (explicitly) include those who flee state food crimes and stress the importance of civil and political rights in relation to the right to food.²² The arguments set forth that such a treaty would put the right to food or 'food crimes' higher up on the international agenda are meaningful and the codification of food-related norms in a single document might be useful. However, the procedures and powers available to courts and quasi-judicial organs supervising the application of human rights instruments are remarkably different from those available to tribunals trying persons for criminal offence. It is unclear from the author's work how states could be convinced to negotiate this distinction. For readers to fully appreciate the author's proposal, it would have been pertinent to detail the potential oversight provisions of such an instrument.

Considering the practical difficulties that the adoption and implementation of a new treaty would pose, several alternative options deserve to be considered. First, there is currently a proposal to amend the ICC Statute.²³ This amendment would explicitly criminalize starvation in non-international armed conflicts and would eradicate doubts on the status of this war crime. Second, at least as an intermediate but nonetheless crucial step, we should emphasize the existing norms and obligations in relation to starvation and food more broadly, be it in human rights law or in individual criminal liability, both internationally and domestically. Many of the human rights aspects of the proposed treaty are already part of positive law.²⁴ As far as international criminal law is concerned, existing law holds some promise to deal with abuses related to food deprivation. Despite this (relative) potential, abuses pertaining to people's enjoyment of socio-economic rights, such as the right to food continue to be neglected in approaches based on international criminal law, be it in criminal proceedings or as part of other transitional justice strategies such as truth commissions. There is no appropriate legal justification for such neglect.²⁵ Randle DeFalco argued that the disregard for famine-related conduct by the Extraordinary Chambers of in the Courts of Cambodia (ECCC) was not dictated by the necessities of positive law, neither in substance nor procedure.²⁶ Last year, Tine

²⁰ Howard-Hassmann, *supra* note 1, at 3, 152-153.

²¹ *Ibid.*, at 218.

²² *Ibid.*, at 214.

²³ ICC-ASP/17/35, Annex IV, 20 September 2018, Sect. E, draft amendment to Art. 8(2)(e) ICCSt.

²⁴ Some of the author's legal conclusions on the right to food are disappointingly inaccurate. For instance, she laments that states would 'still possess the sovereign right' to violate human rights 'that might protect people from state-induced starvation', '[u]ntil and unless violations reach the level of genocide and crimes against humanity.' See, Howard-Hassmann, *supra* note 1, at 217. States have accepted a range of obligations that limit their freedom to legally deprive people of food outside the context of genocide or crimes against humanity. For an overview, e.g. C. Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International Levels* (FAO, 2009).

²⁵ Schmid, *supra* note 17, at 334.

²⁶ R. DeFalco, 'Accounting for Famine at the Extraordinary Chambers in the Courts of Cambodia: The Crimes against Humanity of Extermination, Inhumane Acts and Persecution', 5 *International Journal of Transitional Justice* (2011) 142.

Destrooper examined the empirical consequences of this neglect and found that the failure to incorporate social and economic rights considerations in the ECCC triggered a similar blind spot on the side of human rights non-governmental organizations who disproportionately focused on a small range of civil and political rights issues rather than, for instance, the right to food.²⁷ It seems uncertain whether we would make much progress by calling for the drafting of new legal instruments when we are unable to raise enough awareness of the existing ones and their — albeit often modest — oversight and enforcement mechanisms.

Evelyne Schmid
Université de Lausanne
evelyne.schmid@unil.ch

²⁷ T. Destrooper, 'Neglecting Social and Economic Rights Violations in Transitional Justice: Long-Term Effects on Accountability', 37 *Journal of Current Southeast Asian Affairs* (2018) 95.