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Human Rights in Times of Occupation: The Case of Kuwait

Walter Kalin, ed.

Berne: Law Books of Europe, 1994, 156 pp.

Reviewed by Olga R. McWilliam†

Walter Kalin served as Special Rapporteur to the United Nations Commission on Human Rights on the Situation of Human Rights in Occupied Kuwait in 1991–92. His co-author, Larisa Gabriel, served as a Human Rights Officer at the United Nations Center for Human Rights in Geneva for several years. In *Human Rights in Times of Occupation: The Case of Kuwait*, they analyze the extent to which human rights guarantees apply to citizens of occupied territories.

The book has three distinct parts. Part I outlines the applicable law and its relation to the situation in Kuwait. Part II is a reproduction of the report on the situation of human rights in Kuwait as presented by the Special Rapporteur to the United Nations Commission on Human Rights. Part III details the Security Council Resolutions and other documents relating to the hostile occupation of Kuwait. Part I is the most useful portion of the book. It begins with a chronological overview of the Security Council's response to the Kuwait crisis, followed by an introduction to fact-finding procedures, the role of the Special Rapporteur, and an analysis of the United Nations' delay in handling the situation effectively. A thorough overview of the mandate of the Commission on Human Rights and the procedures used to assess potential human rights violations that is comprehensible to those without knowledge of international human rights law is also provided.

The analysis of the applicable law is the most problematic portion of the book. The authors discuss the Geneva Conventions, civil, political and economic rights, and customary law in summary form. The reader is directed to an appendix to determine what rights are guaranteed. This makes reading this segment somewhat difficult. The authors fail to

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detail the rights protected by the Geneva Conventions, focusing instead on the fact that it does not apply to civilians of the occupying country. The authors do examine other conventions, such as the Torture and Genocide Conventions, to see how they compensate for the omission. Although the reader can guess the content of these conventions, understanding their interrelation is difficult unless the reader is well versed in international law.

Kalin and Gabriel provide a useful discussion on the integration of humanitarian and human rights law and how they reinforce each other to provide stronger protection for individuals. They identify three conflicting theories on the relationship between human rights and humanitarian law. Separatist theory emphasized the distinct nature of human rights and humanitarian law, and is generally recognized as obsolete. The theory of complementarity recognizes that the two compliment each other, each filling the gaps left by the other. Convergence theory focuses on the integrated application of both sets of law. The authors hold the third approach as being most meaningful in times of occupation, and argue the point through a discussion of the situation in Kuwait. Rape is used as a compelling example. Under humanitarian law, rape is distinct from torture and therefore many women victims would have little recourse internationally. However, military officials used rape as a form of torture in Kuwait. Therefore, the definition of torture under the convention is fulfilled and international responsibility for human rights violations attached.

The authors give a detailed analysis of state responsibility and the liability of Iraq to make reparation to the victims of violations in Kuwait. The United Nations Compensation Commission receives and evaluates applications for compensation under a fund provided through a percentage of Iraq's oil export revenue. Kalin and Gabriel express disappointment with the Commission's refusal to entertain applications by innocent Iraqi nationals as the access to the fund is restricted to national of the occupied power. However, they emphasize the importance of the Commission as a precedent in requiring as occupying state to pay reparation to victims in the occupied state. The authors detail the procedure victims must follow to receive compensation and provide considerable discussion of the types of eligible violations. This discussion illustrates the cumbersome nature of evaluating individual complaints under an impersonal international legal regime. This section

further illustrates the authors' application of the theory of convergence of human rights and humanitarian law. Rape again provides a compelling example. Under human rights law the state is responsible for this crime if committed by someone acting in an official capacity. Humanitarian law, in contrast, makes the state responsible for all acts of its armed forces, regardless of whether the member were "on duty." This illustrates how integrating the two areas of law provides more complete protection for individuals of the occupied nation.

Individual responsibility in the form of criminal sanctions is also discussed. As the authors note, gaining criminal jurisdiction to deal with individuals responsible for human rights violations is nearly impossible under the current international legal regime. The process depends entirely on state cooperation. It is unlikely that the state will surrender its own nationals or cooperate in gathering evidence necessary to bring the violator to justice. Individuals can be held responsible for crimes against humanity and other international crimes. Such violations did in fact occur repeatedly throughout the conflict in Kuwait.

Part II consists of the report of the Special Rapporteur to the United Nations on the status of human rights in Kuwait. At first glance this report appears rather graphic in its description of acts committed on individuals. Taken as a whole the report brings to the reader a clear picture of the atrocities the innocent people of Kuwait experienced during the occupation. The best way to describe what they are is to exemplify what they are not, and the Special Rapporteur accomplished this effectively. Kalin is thorough in his analysis of violations of civil and political rights, as well as in his analysis of basic rights such as food, shelter, and medical attention. The report serves its purpose well as it reinforces the importance of human rights in an already difficult period by instilling anger in anyone willing to endure a reading.

The thoroughness of the report emphasized its misplacement in the text. The basis for intervention and a general historical overview of the conflict are provided. Kalin presents a clear analysis of human rights and humanitarian law within his discussion of the situation in Kuwait. Included in the discussion are all applicable international documents and an analysis of customary legal norms. In short, the report applies the substantive content of Part I. Rather than present the report separately, it should have been integrated into the main discussion. This would provide much needed clarification and expand the available readership.

Human rights problems during times of occupation become much clearer, and the legalities are comprehensible to those without international legal training when the two parts are read in combination.

The final section consists of Security Council documents relating to the crisis and the subsequent establishment of the Compensation Fund. Although a lay reader will find this section rather dry, it is quite useful to a student or practitioner of human rights law because it brings scattered documents together in one compact area. This section also provides a sense of complexity of United Nations intervention in times of conflict.

Human Rights in Times of Occupation: The Case of Kuwait is a useful tool for anyone interested in this area of law, especially in light of the ongoing difficulty in that part of the world. The text would be of great value as a supplement to a broader analysis of either human rights or international law. As essentially a legal text, it is excellent in its clarity and ease of reading. Although sometimes graphic and disturbing, the report is very enlightening in its thorough coverage of human rights in times of occupation.