CHAPTER FIVE

THE RIGHT TO WATER: ISRAEL V. PALESTINE
(A CASE STUDY)

Introduction

This chapter will consider how basic collective rights fare in relation to particularly severe ongoing problems in the Middle East: the situation of the Palestinian people facing the aggression of the state of Israel, combined with the support of the US and the weakness of the UN.

I have defined “basic collective human rights” as those rights that need a collective implantation based on a universal common good, also following Dwight Newman description of the same rights as “moral rights held by collectives” (Newman 2004: 128). It is important to note that, in general, the recent proliferation of individual human rights has not been followed by a comparable international focus on collective rights: even the Declaration on the Rights of Indigenous Peoples needed special UN support in order to counter the resistance of major Western states (especially Canada, Australia, New Zealand and the US). Other collective rights have been equally neglected.

This chapter discusses some of the few collective human rights that have been universally accepted: for instance, the right of peoples not to be colonized or enslaved, as well as the right of people to retain their own resources, in order to ensure their life and dignity. To lend further strength to my argument, the main focus will be an absolutely necessary human right: the right to water, which is even more essential than the right to food or any civil or political right (Dellapenna 2008; Chimni 2006).

The most obvious ongoing case today combines the inhumane treatment of a “colonized” or otherwise unfree people with the deprivation of the basic collective human right to water: the case of the Occupied Palestinian Territories (OPT).

The next section will briefly review the historical background of the formation of the state of Israel and of Palestine, against the background of the development of the UN. The latter’s efforts to control and mitigate the ongoing harms to the Palestinians, as we shall see, run against
a solid “wall” of opposition on the part of the US and other Western powers, for the most part.

*Self-Determination, State-Making and Collective Rights: Israel and Palestine*

Palestine was in 1914 an undivided part of the Ottoman Empire, without separate status. It was occupied by British troops in 1917 and came to be disposed of as part of a post-war settlement. The difficulty in achieving such a settlement was that by 1917 Britain had incurred conflicting obligations with respect to Palestine (Crawford 1999).

It is worthwhile to attempt a brief discussion of the complexity of the move from the right to self-determination of peoples (the topic of this section) to the actual creating of states, which is quite a different proposition. The history Crawford (1999) details is such an inextricable mixture of politics and law, arguments and counter-arguments, that it is indeed hard for a non-lawyer to follow the complex reasoning that has led to the present impasse.

Yet despite the procedural and legal complexities, it is encouraging to note that the peremptory norm regarding the “right to self-determination of peoples” permits one to understand that “in these respects at least, statehood was a normative concept in the international system and not merely a descriptive one” (Crawford 1999: 95).

In November 1917, Lord Balfour, speaking on behalf of the British War Cabinet, said:

> His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country (“The Balfour Declaration”, British government statement of policy from Foreign Secretary Arthur James Balfour, 2 November 1917).

Lord Balfour’s somewhat ambiguous statement was eventually to form part of the Mandate for Palestine: the Treaty of Sèvres of 1920 spoke in favour it as well (Crawford 1999: 98; by Article 97 of this document, Turkey agreed, and in 1923 Turkey ratified the Treaty of Lausanne). The question of Palestine was referred to the United Nations in 1947 (GAOR, 1st Special Session, 2 April), and the United Nations adopted Resolution 181(II), which included the division of Palestine into an