

**The Zionist massacres before 1948 :**

**Whose responsibility? (\*)**

**By**

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### General introduction

Undoubtedly, the Palestine problem is one of the rare, bitter and long issues which the international community has ever known.

The fate of Palestinians was one of the greatest tragedies in the modern era. It suffices to point out that the general rule of international law and relations under which “no people (no state) shall be subject to another” has not been applied to Palestinian people.

The Palestine problem has been an international issue for over eight decades. International community has been in a continuing search for a solution to a problem that has the potential of a major source of danger and disturbance for world peace. Before 1948, the “*non volumus*” of certain parties (e.g. United Kingdom) and the “*non possumus*” of the then existing international organization (i.e. the League of Nations) have clouded the basic issues and have obscured the basic and fundamental rights of Palestinians. *Prima facie*, this continues up till now, albeit actors have changed.

Massacres in Palestine constitute one of the most harrowing issues of the Palestine conflict<sup>(1)</sup>. Treacherous attacks had been especially committed against Arabs in Palestine which caused the death of a lot number of persons. Some of these massacres are still “top secret”. Thus, an author says:

“Les groupes sionistes, puis la jeune armée israélienne commirent un grand nombre de massacres, dont certains restent encore enfouis dans des documents classés “confidentiel défense”<sup>(2)</sup>.”

That being so, for a better grasp of the problem of Zionist massacres before 1948: whose responsibility? We should examine the two aspects relating thereto, namely:

- The Zionist massacres before 1948; and
- The responsibility for Zionist massacres before 1948.

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(1) Even. the revolt of 1937 left from 3000 to 6000 of Arabs killed (Alain Gresh: *Israël, Palestine-vérités sur un conflit*, Fayard, Paris, 2002, p. 60).

(2) *Ibid.* p. 139.

## Section I

### The Zionist massacres before 1948

Zionist massacres before 1948 raise many issues, the most important of which are the following:

#### **§I - Massacres are violations of Palestinians' human rights.**

Of all entities in the world, man is, obviously, the most precious. He is at the centre of concerns of all systems, including the international legal system. This particularly concerns man's rights and fundamental freedoms. These rights and freedoms have always existed with the human being before and independently of the state. For that reason constitutions of states characterize them as "inalienable", "sacred", and "eternal".

Prima facie, the enjoyment of human rights is, or should be, the final goal and the end-product of each society. For the existence *vel non* of the later supposes the respect of the former. Consequently, the one leads to the other and vice versa. Moreover, though the question of human rights is closely knit with that of sovereignty, the existence of these rights does not, on its face, solely depend on the will of the state. In fact, all human beings have an equal value in themselves and since the remotest times human rights have been deemed inherent in human nature. In other words, the *fons et origo* of these rights lies, *volens volens*, in human dignity.

Clearly, frequent violations of human rights, cause outrage to mankind. In fact, these violations and other mistreatment of human beings, are unjustifiable and unacceptable, by whomsoever committed.

Violations of human rights and fundamental freedoms have not come to an end in any part of the world. One cannot overlook that these violations are occurring with frightening regularity. In all corners of the earth we are witnessing an unprecedented violations of human dignity. This is done notwithstanding the principles of the rule of law, the indivisibility as well as the interdependence of human rights and the fact that, *grosso modo*, there is intimate relationship between peace and respect for human rights and fundamental freedoms.

The various human rights violations and atrocities perpetrated on our globe, in defiance of elementary rules and considerations of humanity, include, inter alia, massacres, rapes, abductions, murders, arrests, arbitrary detentions, inhuman and degrading treatment, seizure of property of individuals, violations of rights of minorities ... etc.<sup>(1)</sup>

Obviously, massacres constitute a flagrant breach of the right to life which is the first right of man.<sup>(2)</sup>

In this regard, the ICJ said that:

“In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities”.<sup>(3)</sup>

### **§II – Massacres are a constant policy of Zionists:**

In fact, massacres and violation of human rights of Palestinians were and still are a «viable processus» and a continuing «*modus operandi*» of Zionists.<sup>(4)</sup>

This study is, essentially, limited to those massacres committed before 1948 by Zionists.

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(1) Cf, Ahmed ABOU-EL-WAFA: Public international law, Dar Al-Nahda Al-Arabia, Cairo, 2002-1422, p.

(2) Ahmed ABOU-EL-WAFA: Le devoir de respecter le droit à la vie en droit international public, R. Egypt. D.I., 1984, p. 9-70.

(3) Cf, “Legality of the threat or use of nuclear weapons”, ICJ, Rec., 1996, para. 25.

(4) According to professor Richard Falk “Occupation was not only illegal and criminal, but was also an exterminist one seeking to obliterate the existence of the Palestinian people” Division for Palestine rights: United Nations international conference of civil society in support of the Palestinian people, UN headquarters, New York, 22-24 September 2002, p. 15.

Moreover, the policy of massacres continues up till now, in the form of extra judicial executions (Ibid. p. 6.19).

For massacres of recent years, see as well:

“ A record of Israeli violations of human rights of Palestinians”, Palestinian Red Crescent Association, a paper presented to the conference organized by Mansoura University in cooperation with the League of Arab States, Cairo 5-6 April 2003, 63 pp.

**§III– Massacres are a breach of rules of international humanitarian law applicable to internal armed conflicts:**

During the last two centuries, there have been worldwide efforts to mitigate the horrors of war. In fact, during, because of hostilities, or even at the end of the later, parties to an armed conflict are required to respect *durante belle* rules of *jus in bellum* or rules of international humanitarian law.

International humanitarian law aims at ensuring effective protection of both combatants and civilian victims of all kinds of armed conflicts, be they of an international or non-international character. In other words, these rules aim at mitigating, as far as possible, the severity of war and preventing the arbitrary judgement of military commanders.<sup>(1)</sup>

Evidently, massacres against innocent persons constitute a violation of the aforementioned rules. In fact rules of international humanitarian law apply to non-international armed conflicts. Especially, persons who do not take part in hostilities or are hors de combat are entitled to respect for their person, honour and convictions and religious practices, especially the following acts are prohibited.<sup>(2)</sup>

- violence to the life, health or mental well-being of persons.
- Collective punishments.
- Taking of hostages.
- Acts of terrorism.
- Outrages upon personal dignity.
- Slavery and slave trade.
- Pillage.
- Orders that there shall be no survivors.

In this regard, on March 12, 1948, the ICRC launched an appeal to Arabs and Jewish. The appeal was accepted by both sides. It was worded as follows:

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(1) Ahmed ABOU-EL-WAFA: Public international law, op. cit, p. 637-638.

(2) See as well other examples in art. 8 para. 2 statute of the international criminal court (1998).

“Although the incidents in Palestine do not constitute an armed conflict between two Powers, the International Committee believes it to be its duty, in the interest of those who are the victims, to call upon both sides - unless they decide meanwhile to abandon the use of force - to act in obedience to the accepted rules of International Law and to apply, as from today, the principles embodied in the two Geneva Conventions Of July 27, 1929.

The first of these Conventions deals with the relief of the Sick and Wounded, and the second with the treatment of Prisoners of War.

In the spirit of these Conventions, the International Committee wishes to emphasise the following humanitarian principles :

- (1)- The protection of the sick and wounded, who must be treated without discrimination in a spirit of humanity and receive the care which their condition demands. Vehicles transporting the sick and wounded, hospitals, fixed and mobile, as well as medical personnel and medical stores, shall be respected and protected in all circumstances.
- (2)- Respect to the dead, that is, to their remains and the funeral arrangements for their burial.
- (3)- Security for all who are non-combatant, in particular women, children and the aged.
- (4)- The right of every combatant falling into the hands of the adverse party to be treated as a prisoner of war.

The International Committee of the Red Cross, referring to proclamations already published, in the above sense by the Magen David Adom and by the Red Cross and Red Crescent Societies in Palestine, appeals also to the responsible Authorities, to the Arab and Jewish peoples, and to all who speak in their name. The Committee invites them to observe the minimum conditions given above and awaits on this point their formal confirmation; it believes such an agreement to be imperative for the accomplishment, in harmony with the principles it is called upon to defend, of relief work for those who are victims of the present unhappy events.<sup>(1)</sup>

#### **§IV- Causes of massacres:**

There are many causes which explain the massacres committed before 1948, some of which are “*Causa proxima*”, others are “*Causa remota*”.

These causes are the following:

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(1) Cf. ICRC: Report on general activities (July 1, 1947-December 31, 1948). Geneva, 1949. p. 102-103.

**A) The Balfour declaration:**

It is well known that on November 2, 1917, the then British Foreign Secretary, Sir Arthur Balfour, sent a declaration to the Zionist organization, whose terms were set forth as follows:

"Foreign Office"  
2 November 1917

"Dear Lord Rotschild,

I have much pleasure in conveying to you on behalf of His Majesty's Government the following declaration of sympathy with Jewish Zionist aspirations, which has been submitted to and approved by the Cabinet:

« 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. »

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours sincerely,

Arthur James Balfour".

Balfour declaration proved that the British Government gave away something that did not belong to Britain. It constituted an undertaking, by the British Government, that sowed the seeds of prolonged and bitter conflict in Palestine. Even, the declaration was set forth in the Mandate. This led to Arab unending opposition, revolt and struggle. Thus, Balfour declaration lies at the *fons et orige* (the root) of all issues relating to the problem of Palestine, including massacres committed there.

In this connexion, the League of Arab States (LAS) said that the Balfour declaration caused "serious disturbances and a continuing conflict between Arabs and Jews".<sup>(1)</sup>

Moreover, it had been maintained:

"During the period of the Mandate, the Zionist Organization worked to secure the establishment of a Jewish national home in Palestine. The indigenous people of Palestine, whose forefathers had inhabited the land for virtually the

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(1) Decisions of the Council of LAS, LAS, Secretariat General, 1988, Vol. 1 (1945-1954), p. 59-60.



two preceding millennia felt this design to be a violation of their natural and inalienable rights. They also viewed it as an infringement of assurances of independence given by the Allied powers to Arab leaders in return for their support during the war. The result was mounting resistance to the Mandate by Palestinian Arabs, followed by resort to violence by the Jewish community as the Second World War drew to a close.<sup>(1)</sup>

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- (1) The origins and evolution of the Palestine Problem, Part 1: 1917-1947, UN, New York, 1978, Sales No. E. 78. I.19, p. 3.

It is worth noting that, after the protests lasting from 1936 to 1939, a Royal Commission presented a report, among whose findings were the following:

“... the crux was plain enough to Arab eyes. It was the Balfour Declaration and its embodiment in the draft Mandate and nothing else which seemingly prevented their attaining a similar measure of independence to that which other Arab communities already enjoyed. And their reaction to this crux was logical. They repudiated the Balfour Declaration. They protested against its implementation in the draft Mandate. ‘The people of Palestine’, they said, ‘cannot accept the creation of a National Home for the Jewish people in Palestine’. And they refused to cooperate in any form of government other than a national government responsible to the Palestinian people.

“ ...

“ ... After examining this and other evidence and studying the course of events in Palestine since the War, we have no doubt as to what were ‘the underlying causes of the disturbances’ of last year. They were:

- (i) The desire of the Arabs for national independence.
- (ii) Their hatred and fear of the establishment of the Jewish National Home.

“We make the following comments on these two causes:

- (i) They were the same underlying causes as those which brought about the ‘disturbances’ of 1920, 1921, 1929 and 1933.
- (ii) They were, and always have been, inextricably linked together. The Balfour Declaration and the Mandate under which it was to be implemented involved the denial of national independence at the outset. The subsequent growth of the National Home created a practical obstacle, and the only serious one, to the concession later of national independence. It was believed that its further growth might mean the political as well as economic subjection of the Arabs to the Jews, so that if, ultimately, the Mandate should terminate and Palestine become independent, it would not be a national independence in the Arab sense but self-government by a Jewish majority.
- (iii) They were the only ‘underlying’ causes. All the other factors were complementary or subsidiary, aggravating the two causes or helping to determine the time at which the disturbances broke out.” =

**B) The non-fulfilment of pledges given to Arabs concerning their self-determination:**

General pledges were officially made to Arabs in the course of the First World War. Nevertheless, it is well known that, contrary to what Great Britain had made with Jews, the victorious powers did not consult the Palestinian people in the decision on the future of their country. This constituted a derogation of two important legal issues, namely:

- The principle of self-determination, as a right for every people. In this regard, the council of the League of Arab States pointed out that:

“the de facto situation arising out from mandate over Palestine is contrary to the provisions of UN charter and the right recognized for the Palestinian people after being detached from Ottoman State”.<sup>(1)</sup>

- The provisions of art. 22 of the League of Nation’s covenant which, particularly, provided that: “the wishes of these communities must be a principal consideration in the selection of the mandatory”.

Naturally, this cause encouraged Jews to implement their goals by whatever means, including massacres against Palestinians.

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= Moreover, the UN special committee on Palestine, appointed by the General Assembly in 1947, pointed out in its report:

“With regard to the principle of self determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the ‘A’ Mandates, it was not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the sui generis Mandate for Palestine run Counter to that principle”.

(See: “The international status of the Palestinian people”, prepared for and under the guidance of the committee on the exercise of the inalienable rights of the Palestinian people, UN, New-York, 1981, p. 9-10, 12).

- (1) Cf, decisions of the Council of the League of Arab States, op. cit., p. 115.

**C) The support of Zionists' friends:**

Prima facie, acts of violence committed by Zionists have been supported by their friends, either by actions (*in faciundo*) or by abstention or silence (*in non faciundo*).

In this context an author says:

"Buoyed by moral and material support from its friends, Israel is determinedly practicing exactions and aggressions of various kinds"<sup>(1)</sup>.

**D) The existence of illegal armed organizations:**

Inevitably, the existence of such illegal armed organizations led to the commission of various massacres.

In this regard, the report of the Anglo-American enquiry committee (April 1946) pointed out:

"A sinister aspect of recent years is the development of large illegal armed forces. The following is the structure as stated to us by the military authorities.

"The general organization is the "Haganah". It is an illegal development of the former organization, in the days of Turkish rule, of armed watchmen who protected Jewish settlements. Today, it is completely organized, under a central control and with subsidiary territorial commands, in three branches, each of which includes women, viz:-

- \* a static force composed of settlers and townfolk, with an estimated strength of 40,000;
- \* a field army, based on the Jewish Settlement Police and trained in more mobile operations, with an estimated strength of 16,000;
- \* a full-time force (Palmach), permanently mobilized and provided with transport, with an estimated peace establishment of 2000 and war establishment of some 6000.

"It is known that the Haganah has been procuring arms over a period of years. Vast quantities have been obtained from the residue of the campaigns in the Middle East. Arms and ammunition are kept and concealed in specially constructed caches in settlements and towns..

"Apart from the Haganah, two further illegal armed organizations exist, both having cut away from the parent body. One is the 'Irgun Zvei Leumi'.

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(1) M. N'Diaye" Zionist policies of extermination and expansion in the occupied territories, in Question of Palestine-legal aspects, A compilation of papers presented at the UN seminars on the question of Palestine 1980-1986. UN, New York, 1992, p. 375.

which was formed in 1935 by dissident members of the Haganah. The other is the 'Stern Group' which broke away from the Irgun early in the war when the latter announced an 'armistice'. The Irgun operated under its own secret command mainly in sabotage and terrorism against the Mandatory; its strength is estimated at from 3,000 to 5,000. The Stern Group engages in terrorism; its strength is said to be between 200 and 300... (The British Government commented that these estimates were 'on the conservative side'.)

All three organizations to which reference has been made are illegal...<sup>(1)</sup>

**E) The armament of Zionists:**

Massacres are, primarily, committed by weapons and arms. Accordingly, these arms and weapons constituted a leading factor underlying the massacres committed before 1948.

In this context, in its decision No. 73 (12/6/1946) the council of the League of Arab States decided that the report of the enquiry commission affirmed the Zionist armament and the failure of Great Britain to disarm Jews; and that this meant the necessity to resist force by force<sup>(2)</sup>.

**F) The increase of number of Jewish immigrants:**

Undoubtedly, the increase of the number of Jewish population, legally or illegally<sup>(3)</sup>, was as well a determining element which led, in one way or another, to the increase of massacres against Palestinians.

**G) The adoption of the partition plan:**

The adoption, by the General Assembly of the UN, of the partition plan led to the outbreak of violence in Palestine between Arabs and Jews. Reprisals and counter-reprisals commenced.

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(1) Cf. The origins and evolution of the Palestine problem, Part. 1, op. cit, p. 75-76.

Moreover, the expression "terrorism national" was used for stern group (Cf. Michel Veuthey: *Guerilla et droit international*, CICR, Genève, 1983, p. 137).

(2) Cf. decisions of the Council of the League of Arab States, op. cit., p. 107-108.

(3) See, e.g., the vessel exodus 1947, intercepted by British vessels, with 4500 illegal refugees, in: The origins and evolution of the Palestine problem, Part II: 1947-1977, UN, New York, 1978, Sales No. E.78. 1. 20, p. 18.

**H) The denial of Palestinians' inherent rights:**

Prima facie, the negation of natural rights of Palestinians encouraged Jews to commit massacres. In this connexion, a letter from the Palestinian Arab delegation, sent to the Permanent mandates commission, reads as follows:

"We believe that the main cause of the disturbances which have led to continual bloodshed in Palestine for the last twelve years is the persistence of the British Government in depriving the Arabs of their natural rights. We feel that there can be no security in future against the recurrence of disturbances such as those which have taken place, or perhaps of an even more serious nature, unless the British Government promptly and radically changes its policy..."<sup>(1)</sup>

**§V- Massacres and international bodies:**

The territory of Palestine was the theatre of riots, disturbance and massacres, which led to a great attention paid by international bodies. This is true as regards the General Assembly of the UN and UNSCOP as well as the council of LAS.

**1- The General Assembly of the UN and UNSCOP:**

In its resolution No. 181 (in 1947), the General Assembly of the UN pointed out that "the present situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations".

In a report of the UNSCOP in 1947, one can read:

"The primary purpose of the Palestine Government, in the circumstances of recurring terrorist attacks, is to maintain what it regards as the essential conditions of public security. Increasing resort has been had to special security measures provided for in the defence emergency regulations. Under these regulations, a person may be detained for an unlimited period, or placed under police supervision for one year, by order of an area military commander; and he may be deported or excluded from Palestine by order of the High Commissioner. Where there are reasons to believe that there are grounds which would justify...detention... or deportation, any person may be arrested without warrant by any member of His Majesty's Forces or any police officer and detained for not more than seven days, pending further decision by the military commander. The regulations concerning military courts prohibit a form of judicial appeal from or questioning of a sentence or decision of a military court.

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(1) Report to the Council, Doc. C. 355(1) M. 147(1), 1930 VI, Geneva, 1930, p. 139-140.

Under the regulations, widespread arrests have been made; and as of 12 July 1947, 820 persons were being held in detention on security grounds, including 291 in Kenya under Kenya's 1947 ordinance dealing with the control of detained persons. The detainees were all Jews with the exception of four Arabs. In addition to these, 17,873 illegal immigrants were under detention"<sup>(1)</sup>

Moreover, on February 1948, the Palestine commission presented to the security council a special report on the problem of security in Palestine, in which it "emphasized the need for prompt action in order to avert bloodshed".<sup>(2)</sup>

On 14 May 1948, the GA appointed a Mediator in Palestine to exercise, inter alia, the following function:

"Arrange for the operation of common services necessary to the safety and well-being of the population of Palestine"<sup>(3)</sup>.

## **2- The Council of the League of Arab States.**

It is well known that one of the objectives of the LAS (article 2 of the Pact) is the realization of a general concern with the affairs and interests of the Arab countries. This may be justified by the fact that the League, as is enshrined in the preamble of the Pact, is "responding to the wishes of Arab public opinion in all Arab lands".

This objective concerns not only the independent Arab countries, but also the non-independent ones. For that reason, it seems, art. 4/2 of the Pact provides that representatives of the other Arab countries may take part in the work of the committees charged with the task of laying down the principles and extent of co-operation. Additionally, annex 2 to the Pact concerns "Co-operation with countries which are not members of the Council of the League"<sup>(4)</sup>.

Accordingly, after its establishment in 1945, the League of Arab States paid a great attention to the Palestine problem,

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- (1) Cf. The origins and evolution of the Palestinian problem. Part II. op. cit., p. 19.
  - (2) Annual report of the secretary general on the work of the organization (1 July 1947-30 June 1948). GA. off. Rec., supp. No. 1 (A/565), p. 3.
  - (3) Ibid, p. 8.
  - (4) Cf, Ahmed ABOU-EL-WAFA: A manual on the law of international organizations. Dar Al-Nahda Al-Arabia, Cairo, 2001-1421, p. 551-552.

including massacres perpetrated against Arabs. It suffices, here, to mention the following:

- In its decision No. 208, February 2, 1948 the Council of the LAS said that civil war in Palestine caused a great loss, to Arabs, in assets and lives.

- Moreover, in its decision No. 218, November 3, 1948, the Council protested against the massacre of "Dweemah" and the horrible acts committed by Jews.<sup>(1)</sup>

#### **§VI- Examples of massacres:**

Riots, disturbances, clashes and massacres occurred in Palestine in several ways and manners.

The first notable violent clash between indigenous Arab and Jews occurred on 29 March, 1886, in the coastal strip<sup>(2)</sup>.

To the foregoing, one can add:

Jaffa riots (1921): 95 dead and 200 injured, the revolt of 1929: 220 dead and 520 injured, the disturbances of 1933, the revolt of 1936-1939: 275 dead and 1112 wounded (the Royal commission's estimate was 1000 deaths); in 1937 the casualties were 246, in 1938 the casualties reached a total of 3717.<sup>(3)</sup>

Here are some of the notorious massacres committed against Palestinians:

- The King David explosion (July 22, 1946), committed by the Irgun, which resulted in 92 deaths and about 58 wounded.

- The massacre at Baldat al-Shaikh (January 30-31, 1947) which led to the deaths of approximately sixty persons.

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(1) Decisions of the council of the League of Arab States, op. cit., p. 200, 215.

(2) Ilan Pappé: The making of the Arab-Israeli conflict 1948-1951. I.B. Tauris Publishers, London, 2001. p. 2.  
He adds that some of the worst atrocities and massacres against Palestinians occurred in Ilabun, Sa'as'a., Dawaymiya, Safsaf and elsewhere in Galilee and Hebron areas (Ibid, P. 97).

(3) See, the origins and evolution of the Palestine problem, Part 1, op. cit., p. 47-52; Alain Gresh: Israel, Palestine-verité sur un conflit. op. cit., p. 119-148.

- The Yehida massacre (December 13, 1947), which resulted in the death of 7 persons.

- The Khisas massacre (December 18, 1947) which led to 10 deaths.

- The Qazaza massacre (December 19, 1947), which resulted in the murder of 5 Arab children.

- Deir Yassin massacre (April 1948), during which Irgun killed about 200 villagers.

A former Israeli military governor of Jerusalem writes:

"We suffered a reverse of a different nature on April 9 when combined Etzel and Stern Gang units mounted a deliberate and unprovoked attack on the Arab Village of Deir Yassin on the western edge of Jerusalem. There was no reason for the attack. It was a quiet village, which had denied entry to the volunteer Arab units from across the frontier and which had not been involved in any attacks on Jewish areas. The dissident groups chose it for strictly political reasons. It was a deliberate act of terrorism..."

"... Women and children had not been given time enough to evacuate the village, although warned to do so by loudspeaker, and there were many of them among the 254 persons reported by the Arab Higher Committee as killed.

"The event was a disaster in every way. The dissidents held the village for two days and then abandoned it. They earned the contempt of most Jews in Jerusalem, and an unequivocal public repudiation by the Jewish Agency. But they gave the Arabs a strong charge against us, and the words 'Deir Yassin' were used over and over again both to justify their own atrocities and to persuade Arab villagers to join the mass flight which was now taking place all over Palestine".<sup>(1)</sup>

- Safsaf massacre (50 to 60 persons killed).

- Salha massacre (60 to 70 persons killed).

- Acts of violence were as well directed to the British. Thus, in a report of UNSCOP, one can read:

"During its five weeks in Palestine, UNSCOP was involved in more than official hearings. Almost immediately after its arrival in Jerusalem, UNSCOP was drawn into a case in which a death sentence to three members of the Irgun for terrorist activities was awaiting confirmation by the High Commissioner. An Irgun leader, Mr. Menachem Begin, had warned that the two British sergeants, kidnapped by the Irgun, would be killed as a reprisal if the death

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(1) The origins and evolution of the Palestine problem, Part II, op. cit., p. 42.



sentences were carried out. UNSCOP received a petition from the families of the condemned men, pleading that it intercede.

The British Government responded that the case was:

".. still sub judice. If the sentences are confirmed by the General Officer Commanding, it will then be open to the High Commissioner for Palestine to exercise, if he thinks fit, the royal prerogative of pardon delegated to him by His Majesty. It is the invariable practice of His Majesty's Government not to interfere with the High Commissioner's discretion whether or not to exercise this prerogative...".

Shortly after UNSCOP left Palestine, the three condemned men were executed, and the two British sergeants killed in reprisal in a wider wave of violence<sup>(1)</sup>.

### §VII- The raison d'être and Philosophy of massacres:

The raison d'être and philosophy, which underlined Zionist massacres and acts of violence, were echoed in the words of Gad Machnes, who told Ben Gurion that:

« we need a cruel and brutal relating policy, we have to be accurate in time, place and number of dead. If we know that a family is guilty, we should be merciless, and kill the women and the children as well, otherwise the reaction is useless. While the forces are in action, there is no room for checking who is guilty and who is not »<sup>(2)</sup>.

Nachmani, who was a military Zionist chief, known as "assassin sans larmes" as well said:

"Le sionisme a toujours eu deux visages. Le premier constructif, moral, apte au compromis; et un autre destructif, égoïste, militant, chauviniste-raciste. Les deux sont sincères et réels."<sup>(3)</sup>

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(1) The origins and evolution of the Palestine problem. Op. cit., Part II, p. 17-18.

Moreover, in April 1947, a British officers' club in Jerusalem had been blown up without warning, causing the death of a dozen officers; Seven Irgun activists who had been captured had been executed; others were sentenced to life imprisonment (Ilan Pappé: The making of the Arab-Israeli conflict, op. cit., p. 25).

See as well Hussein Al-Tantawi: Israel and terror, p. 184-186 (in Arabic).

(2) I. Pappé: The making of Arab-Israeli Conflict, op. cit., p. 82-83.

(3) Cf. A. Gresh: Israel, Palestine-Vérités sur un conflit, op. cit., p. 141.

**§VIII- Results of massacres:**

Massacres committed before 1948 led, inter alia, to three major consequences, namely:

- **Primo**, the loss of life of lots of number of innocent persons.

- **Secundo**, the realization of an important effect, i.e., that of the exodus of a great number of Palestinians.

In this regard, it had been pointed out that:

"The terror that spread among the Palestinian population was a crucial factor affecting developments in Palestine. It led to a mass exodus of refugees into neighbouring countries. The number of Palestinian refugees resulting from these hostilities were estimated to number 726.000 by the end of 1949 – half the indigenous population of Palestine. Charges that their flight had been incited by Arab leaders is refuted by a UN report noting that the refugees either fled from the war or were expelled.

"The majority of these refugees have come from territory which, under the Assembly resolution of 29 November, was to be included in the Jewish State. The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion...<sup>(1)</sup>

Moreover, an author said:

"It is the contention of many historians that the Deir Yassin massacre had a psychological effect on the Arab community and acted as a catalyst to the exodus".<sup>(2)</sup>

Additionally, massacre of Dayr Yassin:

"was publicized by the Arabs to demonstrate the savagery of the Zionists, and by the Zionists, frequently by loudspeakers touring the villages, to drive the Arabs out of their homes, "or meet the fate of Dayr Yassin"<sup>(3)</sup>

Finally, it had been pointed out that:

"Le véritable exode commence en avril 1947. Il s'explique naturellement par plusieurs facteurs: peur des combats et des représailles, volonté de mettre sa

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(1) The origins and evolution of the Palestine problem, Part II, op. cit., p. 43; A. Gresh: Israel, Palestine-Vérités sur un conflit, op. cit., p. 140.

(2) I. Pappé : The making of the Arab-Israeli conflict 1947-1951, op. cit., p. 96.

(3) "Salman Abu Sitta: Palestinian right to return, The Palestinian Return Centre, London, 1999, p. 26.

famille à l'abri, crainte de se retrouver isolé dans une région à majorité juive, etc".<sup>(1)</sup>

- *Tertio*, the consecration of the fait accompli policy, a policy applied by Jews *ab initio* and from the outset.

## Section II

### The responsibility for Zionist massacres before 1948

#### §I- Massacres are crimes against humanity or war crimes committed during a civil war:

Undoubtedly what had been committed against Palestinians before 1948 constituted crimes against humanity or war crimes. The concept and principles of the later are to be examined now.

##### a- The concept of war crimes or crimes against humanity:

In present-day conditions, as a result of aggressive wars, war crimes and crimes against humanity are being committed in various parts of the world. *Prima facie*, the arrest and punishment of persons guilty of such crimes<sup>(2)</sup>, are important factors in the prevention of these crimes now and *in futuro*. Otherwise, it would be paradoxical for international law to protect conduct which at the same time it seriously condemns.

The rationale for the punishment of war crimes and crimes against humanity lies in the following:

1- The gravity of crimes and injuries arising therefrom. In fact, war crimes and crimes against humanity consist in the commission of unimaginable atrocities that deeply shock the conscience of humanity.

2- The international character of criminal acts committed, and the fact that they threaten international peace and security.

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(1) A. Gresh: Israel. Palestine-Vérités sur un conflit. op. cit., p. 142.

(2) See also:

- "Reining in impunity for international crimes and serious violations of fundamental human rights". Ed. By Joyner and Ch. Bassiouni. Editions Erès, 1998, 605pp.

- Nasser: Approche analytique du crime contre l'humanité en droit international, RGDIP, 2001, p. 281-306.

3- The reprobation of these crimes by the international public opinion.

Moreover, the punishment of these crimes has three objectives, namely:

- To prosecute and punish war criminals.
- To ensure that serious war crimes must not go unpunished.
- To deter those who would proceed, in the future, to commit such crimes. For to put an end to the impunity of perpetrators of these crimes would contribute to their prevention.

War crimes and crimes against humanity, inter alia, include<sup>(1)</sup>: willful killing; torture or inhuman treatment, including biological experiment; extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, taking of hostages; intentionally directing attacks against civilian objects; attacking undefended towns, villages or buildings which are not military objectives; killing or wounding a combatant who has surrendered; making improper use of a flag of truce, of the flag or of the emblems of the Geneva conventions; employing poison or poisoned weapons.. etc. .

**b- Principles governing war crimes and crimes against humanity:**

These principles, inter alia, are:

1- Non-applicability of statutory limitations: under present international law the rule is that no statutory limitations apply to war crimes. Because war crimes are among the gravest international crimes and because the application of period of limitation prevents the prosecution and punishment of criminals responsible for these crimes, it is now well established that "no statutory limitations shall apply to war crimes and crimes against humanity, irrespective of the date of their commission"<sup>(2)</sup>.

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(1) See as well:

At. 8 of the statute of the international criminal court (1998); "grave breaches" set forth in the Geneva Conventions of 1949.

(2) Cf. convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (Res. 2391 adopted by the GA =

2- Irrelevance of official capacity: The official capacity of a person, e.g., a head of state or government, a minister, a member of parliament, a diplomatic or consular agent, does not constitute a bar for the exercise of jurisdiction over war crimes and crimes against humanity. Accordingly, in this regard, immunities attaching to the official capacity of a person are irrelevant.

**§II- Rules relating to international responsibility<sup>(1)</sup>:**

Prima facie, imposing upon states liability for acts, causing injuries, attributed to them, will have some major consequences, namely:

1- It encourages each state to exercise greater control and supervision over its representatives, agents and officials.

2- It incites every state to comply with principles and rules of international law.

3- It reduces disputes and conflicts on the international plane.

4- It affirms the rule under which illegal acts should not go unpunished.

5- It emphasizes the principle of the rule of law.

There are two elements which determine the existence of an internationally wrongful act, namely:

a- A conduct consisting of an action or omission which is attributable to the international person concerned.

b- The conduct must constitute a breach of an international obligation incumbent on the state. It is so:

- if it is not in conformity with what is required of the state by that obligation;

- regardless of the origin (whether customary or conventional) of that obligation. Consequently, the act or the omission gives rise

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= in 1968); European convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, Council of Europe. Strasbourg. 1974; art. 29 statute of the international criminal court (1998).

(1) Cf. Ahmed ABOU-EL-WAFA: Public international law, op. cit., p. 664 et seqq.

to international responsibility whether it rests on a treaty, custom or general principles of law; and

- only if the act was performed at the time when the obligation was in force vis-à-vis that state.

In general, the commission, by a state, of an internationally wrongful act has four consequences, namely:

- to take into account the principle *ex injuria non jus oritur*, which held that when a person had committed a wrongful act, it could not rely on that act to extract itself from a particular situation or to allege a right which he had not.
- to cease that act, if it is a continuing one.
- to perform the international obligation incumbent upon the state, by bringing its conduct into conformity with international law.
- to make full reparation to the injured state for the consequences flowing from that act.

Reparation, i.e., undoing the damage and eliminating the consequences that the breach of an international obligation had caused, is an outstanding principle of present international law. The remedying of a breach of an international obligation is one of the most acceptable rules of the later.

Reparation has three forms, namely:

- *Restitutio in integrum* or the restoration of the *status quo ante*.
- Compensation.
- Satisfaction.

It goes without saying that, as regards massacres, the two last effects, i.e., compensation and satisfaction are only capable of being applied.

### **§III- The four forms of responsibility for Zionist massacres before 1948:**

There are four kinds of responsibility for Zionist massacres committed before 1948, namely:

**A) The responsibility of individuals who committed massacres:**

Undoubtedly, perpetrators of massacres, i.e., those who directly committed them are to be held responsible. This is a mere application of the rule: "He who commits a wrong, should be punished".

- A document of the UN said that in 1947: "violence continued to spread in Palestine as Zionist terrorist groups, now on the offensive, stepped up their attacks and sabotage"<sup>(1)</sup>.

Moreover, in a report of the UNSCOP in 1947, it is maintained that:

" The right of any community to use force as a means of gaining its political ends is not admitted in the British Commonwealth. Since the beginning of 1945 the Jews have implicitly claimed this right and have (sic) supported by an organized campaign of lawlessness, murder and sabotage their contention that, whatever other interests might be concerned, nothing should be allowed to stand in the way of a Jewish State and free Jewish immigration into Palestine. It is true that large numbers of Jews do not today attempt to defend the crimes that have been committed in the name of these political aspirations. They recognized the damage caused to their good name by these methods in the court of world opinion. Nevertheless, the Jewish community of Palestine still publicly refuses its help to the Administration in suppressing terrorism, on the ground that the Administration's policy is opposed to Jewish interests. The converse of this attitude is clear, and its result, however much the Jewish leaders themselves may not wish it, has been to give active encouragement to the dissidents and freer scope to their activities..."<sup>(2)</sup>.

The recourse to terror is described by an official British document as follows:

"The lull in terrorist activity did not continue throughout the war years. The Jewish community resented the Land Transfers Regulations and the measures taken against unauthorized immigration. In 1942, a small group of Zionist extremists, led by Abraham Stern, came into prominence with a series of politically motivated murders and robberies in the Tel Aviv area. In the following year there came to light a widespread conspiracy, connected with Haganah (an illegal military formation controlled by the Jewish Agency), for stealing arms and ammunition from the British forces in the Middle East. In August 1944, the High Commissioner narrowly escaped death in an ambush outside Jerusalem. Three months later, on the 6<sup>th</sup> November, the British Minister

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(1) The origins and evolution of the Palestine Problem, op. cit., Part II, p. 3.

(2) Ibid. p. 19.

of State in the Middle East (Lord Moyne) was assassinated in Cairo by two members of the Stern group. A third illegal Jewish organization, the Irgun Zvei Leumi, was responsible for much destruction of Government property during 1944".<sup>(1)</sup>

**B) The responsibility of leaders:**

In fact, a military commander or a superior is, in principle, criminally responsible for crimes committed by forces under his command or authority, if:

- he, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

- he failed to take all necessary and reasonable measures to prevent or repress their commission<sup>(2)</sup>.

Professor R. Falk affirmed that:

" There was also the criminality of the military and political leaders who continuously violated the obligations of international law. It had been the practice of the international community, going back to the second world war, to say that the leaders that violated fundamental rights of people were committing crimes against humanity. The international community had waited for too long to castigate the Israeli leaders for the crimes they had committed. It was up to the voices of civil society to speak truth to underscore the extent to which crimes were daily being committed against the Palestinian people".<sup>(3)</sup>

**C) Responsibility of the state of Israel:**

Having been established in 1948, Israel carries responsibility for massacres committed before 1948. In fact, there is a rule of international law according to which if the rebellion succeeds, insurgents will be held responsible for acts committed by them in the course of the conflict.<sup>(4)</sup>

This has been pointed out by the international law commission. In fact, article 10 of draft articles on responsibility of states for internationally wrongful acts adopted by the International law commission in 2001, reads:

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- (1) Ibid, part I, p. 72.
  - (2) Ahmed ABOU-EL-WAFA: Public international law, op. cit., p. 652.
  - (3) Division for Palestinian rights: United Nations international Conference of civil society in support of the Palestinian people, op. cit., P. 15.
  - (4) Ahmed ABOU-EL-WAFA: Public international law, op. cit., p. 605.



“Article 10: conduct of an insurrectional or other movement:

1- The conduct of an insurrectional movement which becomes the new Government of a state shall be considered an act of that state under international law.

2- The conduct of a movement, insurrectional or other, which succeeds in establishing a new state in part of the territory of a pre-existing state or in a territory under its administration shall be considered an act of the new state under international law.”<sup>(1)</sup>

Accordingly, the conduct of those who had committed massacres should be considered an act of the new state, i.e., Israel, i.e., it is attributed to the later.

#### **D) Responsibility of the Mandatory:**

##### **a- Prefatory remarks:**

It is well known that Palestine was an area or a territory under Ottoman dominion.

The great powers, by the turn of the last century, decided to establish control over the territories of the then declining Ottoman empire. In 1916, negotiations between France, Britain, Russia and later on Italy, led to the secret Sykes-Picot agreement on the allocation of spheres of influence among the European powers.

Though formally still integral part of the Ottoman empire, Palestine was under British military occupation since December 1917, ending, by that, four hundred years of Ottoman rule. The British mandate over Palestine commenced in September 1923 following conclusion with Turkey of the treaty of Lausanne, concluded on July 24, 1923, by which Turkey relinquished any claim to sovereignty over the territory it was ceding, including Palestine. The Mandate over Palestine lasted for 25 years, from 1923 to 1947.

##### **b- Nature of the mandate for Palestine:**

The mandate for Palestine has, inter alia, a twofold nature relating to:

###### **1- The essence of the mandate:**

It is well established that the mandates system originated in a decision taken at the peace conference following world war 1

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(1) Cf, Report of the ILC, G.A., off. Doc., Supp. No. 10 (A/56/10), 2001.

(1914-1918). Under article 22 of the League covenant the well-being and development of the mandated territories should form “a sacred trust of civilization”.

In this regard, the ICJ affirmed:

“The mandate was created, in the interests of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilization”.<sup>(1)</sup>

Moreover, mandates contain, in general, two kinds of provisions:

- those relating to mandatory’s powers, and its obligations in respect of the inhabitants of the territory and towards the League of Nations and its organs; and

- those conferring certain rights relative to the mandated territory, directly upon the members of the League as individual states or in favour of their nationals<sup>(2)</sup>.

Nevertheless, Palestine mandate conflicted with the covenant of League of Nations from which it derived its authority. For, on the one hand, it did not take into account the wishes of Palestinians<sup>(3)</sup> and, on the other hand it was a violation of the Arabs self determination since it was forcing upon them an immigration which they did not desire. This meant that they would not be mastery in their own land.

Accordingly, the fons et origo of the Palestine problem lies in events occurring in the aftermath of the First World War when the League of Nations decided to place Palestine under the administration of Great Britain as the Mandatory Power under the mandates system adopted by the League.

## **2- Sovereignty over the mandated territory: No transfer of sovereignty to the mandatory:**

It is well established that, in the territories under Mandate, sovereignty rested with their peoples. This may be supported by

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(1) Cf. ICJ, Rep., 1950, p. 132.

(2) See also, ICJ, Rep., 1966, p. 20 et s.

(3) Despite the League of Nations Covenant’s requirements that: “the wishes of these communities must be a principal consideration in the selection of the mandatory” (article 22).

article 22 of the League covenant which provided that “the well-being and development of such peoples form a sacred trust of civilization and the securities for the performance of this trust should be embodied in this covenant”. Moreover, under article 22 in the case of “A” Mandates “their existence as independent nations can be provisionally recognized”. Finally, article 5 in the Palestine Mandate explicitly prohibited the alienation of territory under mandate.

In this regard, the ICJ affirmed:

“The terms of this Mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein, show that the creation of this new international institution (the Mandate) did not involve any cession of territory or transfer of sovereignty to the Union of south Africa. The Union Government was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants”.<sup>(1)</sup>

P. Pic pointed out:

“Les rédacteurs du Traité de Versailles, s’inspirant avant tout d’un droit pour les peuples de disposer d’eux-mêmes, ont formellement proclamé qu’il n’y aurait aucune annexion des territoires sous-mandat par une puissance quelconque, pas plus par la collectivité des Etats ayant nom Société des Nations et siégeant à Genève, que par tel ou tel Etat particulier. Ces territoires appartiennent virtuellement aux populations et communautés autochtones, dont la Société des Nations s’est constituée le défenseur, et au regard desquelles elle joue un peu le rôle d’un conseil de famille”.<sup>(2)</sup>

According to Professor Quincy Wright:

“Communities under ‘A’ mandates doubtless approach very close to sovereignty”.<sup>(3)</sup>

Judge Bustamante said:

“Great Britain is not a sovereign of Palestine but simply the Mandatory of the League of Nations”.<sup>(4)</sup>

### **3- Responsibility is not dependent upon sovereignty:**

If, as mentioned above, Great Britain had not sovereignty over the mandated territory of Palestine, this does not mean that it is not responsible for its failure to observe its authorities as a Mandatory.

(1) ICJ, Red., 1950, p. 132.

(2) P. Pic: Le régime du Mandat d’après le traité de Versailles, RGDIP, Vol. XXX, 1923, p. 334.

(3) Q. Wright: Sovereignty of the mandates. AJIL. 1923. p. 696.

(4) ICJ. Re., 1966. p. 368.

In this connexion, the ICJ affirmed:

“C’est l’autorité effective sur un territoire, et non la souveraineté ou la légitimité du titre, qui constitue le fondement de la responsabilité de l’Etat en raison d’actes concernant d’autres Etats”.<sup>(1)</sup>

#### **4- Limits of the responsibility of the mandatory:**

It is well known that UK was the mandatory over Palestine, even after the dissolution of the League of Nations. In this context, because of the dissolution of the League of Nations, and at the final session of the League Assembly, the UK representative declared that Palestine would be administered “in accordance with the general principles “of the existing mandate until “fresh arrangements had been reached”.<sup>(2)</sup>

At the end of 1947, the British Government announced its irrevocable decision to abandon the Mandate of Palestine and to withdraw all British forces on May 15<sup>th</sup>, 1948.<sup>(3)</sup>

As a Mandatory, Great Britain incurs a certain responsibility for Zionist massacres before 1948. It suffices to point out the following arguments:

1- Until 15 May, 1948 the British were still, under rules of international law, in charge of law and order in Palestine.

In this regard, Ilan Pappé says:

“In practice, the British confined their activity and concern in Palestine exclusively to those areas where Britons still lived or held property. The main priority of the High Commissioner was to ensure the well-being of British soldiers and the safety of British installations until the final date of withdrawal. According to Britain’s understanding, and probably in accord with international norms of behaviour as well, Britain was responsible for law and order in Palestine until 15 May 1948. By limiting its responsibility to areas under Britain’s immediate control. London clearly shirked its duty.”

He adds:

“Yet, most of the time the British let the local actors run the show “To move from alternative history to firmer ground, let us conclude this assessment

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(1) CIJ, Rec., 1971, Par. 118.

(2) ICJ, Rep., 1966, Sep. Op. Judge Van Wyk. p. 124.

(3) A report of the ICRC said: “The situation continued to deteriorate. Outrages on both sides led to reprisals: public unrest was steadily working up” ICRC, Report of general activities (July 1, 1947-December 31, 1948), Geneva. 1949, p. 101.

of the British role by commenting that the local British initiatives, all in all, had very little effort on the consequences of the civil war. In places like Jaffa and Haifa British involvement delayed the final outcome but could not prevent it. Elsewhere it was only the balance of power between the two sides that determined the course of the struggle and its issue."<sup>(1)</sup>

Moreover, an author says:

"even when appeals were raised for help, especially in Dayr Yassin, the British mandatory refused to protect the Palestinians from Zionist attacks, except briefly in Jaffa"<sup>(2)</sup>.

To the foregoing, one can add that the British policy in Palestine was characterized by the following:

"active and aggressive policies towards Arab military organizations and passive (sometimes direct) support of Jewish armament and military organizations"<sup>(3)</sup>.

2- Under rules of international law, the state on whose territory or on the territory of which it exercises its jurisdiction, a civil war, a rebellion or an insurrection occurs, may be held responsible if there is a fault or want of due diligence on the part of state authorities<sup>(4)</sup>, or a general failure to maintain order, to prevent crimes or to prosecute and punish criminals<sup>(5)</sup>, or failure to take adequate steps to suppress mutinies or riots<sup>(6)</sup>, or where it is itself guilty of breach of good faith or of negligence in suppressing insurrection.<sup>(7)</sup>

Accordingly, A state incurs the responsibility for acts of insurgents in a civil war, especially if it had not employed the due diligence and appropriate measures which ought to be normally taken in such conditions. In other words, because a major strife is tantamount to a *vis major*, there is a presumption against the

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- (1) Ilan Pappé: *The making of the Arab-Israeli conflict 1947-1951*, op. cit., p. 100-101.
  - (2) S.M. Abu-Sitta: *The Palestine Nakba 1948*, The Palestinian Return Centre, London, 2000, p. 5.
  - (3) Mohsen Saleh: *British-Zionist military cooperation during the mandate and the suppression of the national movements*, Palestinian Return Centre, London 23<sup>rd</sup> April 2002, p. 2.
  - (4) Cf, Aroa Mines case (1903), R.I.A.A., Vol. IX, p. 402.
  - (5) Ibid, Vol. VI, p. 311, Noyes Case (1913).
  - (6) Ibid. V. 5, p. 352-354. Georges Pinson Case (1928).
  - (7) Home frontier and foreign Missionary society case (1920), Ibid, Vol. VI, p. 42.

responsibility of the state for acts of insurgents, unless it had clearly failed, in light of the circumstances of the case, to adopt measures dictated by "due diligence."<sup>(1)</sup>

3- In its decision No. 151, March 3, 1947, the Council of the League of Arab States informed the British and American Governments that they were responsible for the consequences of the critical situation in Palestine and the threats to security and peace resulting therefrom in the region.<sup>(2)</sup>

The League of Arab States considered the British Government, as it was, de facto, the mandatory over Palestine responsible for the non observance of the political and civil rights of Arabs of Palestine.

The League added that the application of recommendations of the enquiry commission which led to disturbances in Palestine and the failure to maintain peace and security "was the responsibility of those who supported the report of the commission and put it into effect"<sup>(3)</sup>.

In its decision No. 140 (12.12.1946), the council of the League of Arab States asked the British Government to put an end to Jewish terrorism in Palestine. The council added that, since the Palestinian government failed to suppress such terrorism, the British government had to arm Arabs in order to enable them to defend themselves.<sup>(4)</sup>

4- In conformity with the mandate for Palestine, 24 July 1922, the Mandatory shall "have powers of legislation and administration" (article 1); shall "be responsible for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion" (article 2); shall "be responsible for exercising such supervision over religious bodies of all faiths in Palestine as may be required for the maintenance of public order and good government" (article 16).

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(1) Ahmed ABOU-EL-WAFA: Public international law, op. cit., p. 604 - 605.

(2) Decisions of the Council of League of Arab States, op. cit., p. 178.

(3) Ibid, p. 117-118.

(4) Ibid, p. 132-133.

Moreover, the Institut de droit international pointed out in 1931 (Cambridge session) that:

“ L’acte de mandat définit les obligations de l’Etat mandataire et les modalités suivant lesquelles il doit prêter son assistance.

Les pouvoirs conférés à l’Etat mandataire le sont dans l’intérêt exclusif des populations sous mandat”.<sup>(1)</sup>

From the foregoing, it is evident that the mandatory incurs responsibility in case of failure to observe the obligations bestowed on it.

5- In the Mavromatis Case, the PCIJ recognized the responsibility of the Mandatory. The court affirmed (p. 23-24):

“Puisque l’article 11 du mandat reconnaît à l’Administration de la Palestine une large autonomie, il fallait mettre hors de doute que les pouvoirs accordés ne doivent pas être exercés d’une manière qui serait incompatible avec certains engagements internationaux du Mandataire, les obligations résultant de ces engagements sont ainsi des obligations que l’Administration de la Palestine est tenue de respecter: leur violation engage la responsabilité internationale du Mandataire, car, conformément à l’article 12 du Mandat, les relations extérieures de la Palestine sont de son ressort”<sup>(2)</sup>.

In the same case Sir Douglas-Hogg (Great Britain) admitted the responsibility of the later for acts committed in Palestine. He said:

“It is Palestine which is the country which has within article 9 of the Protocol acquired the territory of Palestine; but of course by the mandate the British Government is charged as Agent for the League of Nations with the tutelage of the Palestine Administration, and no doubt it is to be held responsible for any breach by that country of that article”<sup>(3)</sup>.

Sir Cecil Hurst (Great Britain) as well maintained:

“The mandatory of Palestine, who is the sovereign of Great Britain, acting through his Government, is, of course, bound, by his legal obligations and was so bound from the moment when he took over responsibility for the administration of the country. Of course, he is bound by all the international obligations which he has accepted.”<sup>(4)</sup>

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(1) Ann. IDI, 1931, vol. 36, II, p. 233-234.

(2) Répertoire des documents de la cour de la Haye, Serie 1, 1922-1945, publications de l’IHEI, Genève, vol. 4, p. 1587.

(3) Ibid, Vol. 3, p. 639.

(4) Ibid, Vol. 4, p. 1583.

International responsibility may result either from acts or omissions, i.e., from acts of *in fasciendo* or of *in non fasciendo*.<sup>(1)</sup> Accordingly, since the British did not apply measures necessary for preventing or putting an end to massacres against Palestinians, they must be held responsible.

### Conclusion

Palestine was, and still is, the national home of the Palestinian people from time immemorial.

Before 1948, in Palestine, two contradictory positions existed:

- On the one hand, owing to Balfour declaration and the position adopted by Great Britain in favour of Jews, the Palestinians had decided that only through struggle they could force recognition of their inherent and natural rights.

- On the other hand, the Zionists had reacted with violence to hold the ground they had gained in order to achieve and preserve *manu militari* their ultimate objective of a Jewish state in Palestine.

Clearly, massacres, by whomsoever committed, are inadmissible<sup>(2)</sup>. Perpetrators of such acts are to be considered as the

(1) Thus, in the Corfu Channel case, the ICJ affirmed that:

"In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania".

Accordingly, the court added that:

"there is a duty on Albania to pay compensation to the United Kingdom", ICJ, Rep., 1949, p. 23.

Moreover, the ICJ held Iran responsible for breaches of the law of diplomatic and consular relations, because of the failure of Iranian authorities to control the militants (in the early phase) and the approval of the acts of militants (in the later phase), cf ICJ, Rep., 1980, p. 29-30, 33-36.

(2) This is true even if a party had supported massacres from a third party. Thus, it had been maintained:

"Certes, les juifs furent massacrés par les nazis, mais les Palestiniens, chassés par les milices juives puis par l'armée israélienne, sans être en aucune façon responsables du génocide, en furent en quelque sorte des victimes indirectes. Enfin, pour eux, l'exil se poursuit et leur calvaire n'a pas fait l'objet de la moindre reconnaissance officielle ni d'un début de "repentance", pas plus de la part d'Israël que de celle de la communauté internationale".

(Alain Gresh: Israël, Palestine, Vérités sur un conflit, op. cit., p. 121).



enemy of all mankind (*hostis humani generis*). For massacres dehumanize man and make him a destroyer of his fellow men. Human suffering resulting therefrom is inexcusable.

The campaign of terror against Palestinian Arabs and the British<sup>(1)</sup> reached such proportions that Churchill, at that time Prime Minister, stated in the House of Commons:

“If our dreams for Zionism are to end and in the smoke of assassins’ pistols and our labours for its future are to produce a new set of gangsters worthy of Nazi Germany, many like myself will have to reconsider the position we have maintained so consistently and so long in the past. If there is to be any hope of a peaceful and successful future for Zionism, these wicked activities must cease and those responsible for them must be destroyed, root and branch...

(Referring to the appeal of the Jewish Agency to the Jewish community’... to cast out the members of this destructive band, to deprive them of all refuge and shelter, to resist their threats and to render all necessary assistance to the authorities in the prevention of terrorist acts and in the eradication of the terrorist organization’, he said:) “These are strong words but we must wait for these words to be translated into deeds. We must wait to see that not only the leaders but every man, woman and child of the Jewish community does his or her best to bring this terrorism to a speedy end”.<sup>(2)</sup>

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(1) One can mention, e.g., what happened in April 1947 where a British officers club in Jerusalem had been blown up without warning – causing the death of a dozen officers. The British countered by imposing a severe curfew on central Palestine and seven Irgun activists who had been captured were executed; others were flogged and sentenced to life imprisonment.

(Cf., Ilan Pappé: The making of the Arab-Israeli Conflict, op. cit., p. 25).

(2) The origins and evolution of the Palestine problem, Part 1, op. cit., p. 73.

