



The Right To Life In The Context Of The 1949 Geneva Conventions



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Abstract

This study aims to determine whether the right to life is addressed in the 1949 Geneva Conventions, which constitute the most fundamental documents of international humanitarian law. Within this scope, the 1949 Geneva Conventions, comprising four international treaties, are examined. Subsequently, the right to life, one of the most fundamental human rights, is discussed, and the provisions related to the right to life within the 1949 Geneva Conventions are analysed. In this context, it is evaluated that the right to life, which is often presumed to be most disregarded during war or armed conflict due to the notion of completely eliminating the opposing side for protective purposes, should nonetheless be upheld even during such periods. Considering this assessment, it is investigated whether the 1949 Geneva Conventions have been violated concerning the right to life during the armed conflicts between Russia and Ukraine and between Palestine and Israel.

Keywords

1949 Geneva Conventions • International Human Rights Law • International Humanitarian Law • War • Right to Life.



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Although war has historically been a method used by states to achieve their interests, it presents itself as a phenomenon causing significant losses. The profound pain and suffering experienced during the I. and II. World Wars, with the participation of nearly all states, left an unforgettable mark on human history. These devastating experiences led states to establish the United Nations as an international organisation aimed at preventing wars and maintaining peace and security worldwide. Article 2(4) of the Charter introduced the prohibition of the use of force, creating a positive legal norm to prevent wars. However, exceptions to this prohibition are provided under Article 51 of the Charter, which regulates the right of self-defence, and through the decisions of the UN Security Council. This framework has promoted the concept of a “just war”, allowing war to remain a method still employed by states today. The ongoing armed conflicts between Russia and Ukraine, as well as between Israel and Palestine, serve as the most evident examples of this reality.

However, even if war cannot be entirely prevented, does it mean that everything is permissible in war? Can states or individuals resort to any means to win during wartime, inflicting all kinds of harm on humanity? The 1949 Geneva Conventions are the clearest proof that this is not the case. These Conventions were established based on the principle that human dignity and certain rights must be protected even during times of war. Following the destructive consequences of wars, they were developed through long and arduous processes of debate and reached their final form on 12 August 1949, entering into force on 21 October 1950.

The 1949 Geneva Conventions aim to minimise human rights violations occurring during wartime. One of these rights is the right to life, which is one of the most fundamental rights in international human rights law.

In this study, the development of the 1949 Geneva Conventions throughout history is first discussed, followed by an examination of the right to life. Finally, the study evaluates how the right to life is addressed within the 1949 Geneva Conventions and analyses the violations of the right to life in the context of the Russia-Ukraine and Israel-Palestine conflicts under the provisions of the Geneva Conventions.

The 1949 Geneva Conventions

To understand the origins of the 1949 Geneva Conventions, we must first examine the Battle of Solferino, which occurred between France and Austria on June 24, 1859. The primary reason for this is that the First Geneva Convention was established in response to the horrors witnessed during this battle.

The Battle of Solferino was one of the largest conflicts of the 19th century in Europe. What sets this battle apart from others is that a man named Jean Henry Dunant personally witnessed it. Dunant documented the events he observed during the battle and published them in a book titled “*A Memory of Solferino*” in 1862. According to Dunant, over 300,000 people fought in the battle, which lasted for more than 15 hours. He further described how lifeless bodies lay in heaps on every mound, hill, and rock, portraying a harrowing scene of death and destruction (Dunant, 1939, p. 19).

Towards the end of his book, Dunant explained that the primary reason for recounting the suffering caused by the battle was not to challenge the inevitability of wars but to minimise the human losses during wartime. He emphasised the need to establish a humanitarian society to assist wounded individuals and create international principles to protect them (Dunant, 1939, p. 129). In response to this, the Geneva Conference convened in 1863 with the participation of a committee of five individuals and representatives from 16 countries. As a result of this conference, the International Committee of the Red Cross was established,

and the First Geneva Convention, titled “the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”, was adopted in 1864 (Dunant, 1939, p. 130).

At the St. Petersburg Conference in 1868, the need for regulations to protect shipwrecked individuals at sea was also recognised. This led to the adoption of the Second Geneva Convention, titled “the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea” (Alsan, 1950, p. 57). These conventions were later revised in 1906.

The outbreak of the First World War in 1914 caused atrocities worldwide. In the aftermath of the war, it became evident that, in addition to protecting the wounded during wartime, prisoners of war also required protection (Solis, 2010, p. 110). This realisation led to the adoption of the Third Geneva Convention in 1929, titled “the Geneva Convention Relative to the Treatment of Prisoners of War”. During this period, the first two Geneva Conventions were also revised.

The Second World War, which resulted in far greater casualties and human suffering than the First World War, revealed even more devastating consequences, particularly due to the atrocities committed by Nazi Germany against Jewish populations. This war made it clear that its destructive impacts were not limited to combatants, the wounded, or prisoners but also severely affected civilian populations. Consequently, conferences began in 1945 with the participation of state officials to address the protection of civilians during wartime (Dijk, 2022, p. 29). These conferences involved extensive discussions about the rights of civilians that needed to be safeguarded during armed conflicts. Ultimately, the Fourth Geneva Convention, titled “the Geneva Convention Relative to the Protection of Civilian Persons in Time of War”, was adopted. During this period, the first three Geneva Conventions were also revised to align with the Fourth Convention.

The final versions of these Four Conventions were signed by the states on 12 August 1949 and came into force on 21 October 1950¹.

In conclusion, the 1949 Geneva Conventions consist of four international treaties. These conventions regulate the conduct of states during wartime based on the belief that certain rights must be protected simply because individuals are human. As such, the Geneva Conventions played a foundational role in the development of international humanitarian law and remain its most fundamental sources.

The general provisions, implementation, and final articles of each convention are identical. However, because the Four Conventions aim to protect victims with different statuses during wartime, the rights protected and the limitations of these rights vary depending on the status of the victims.

The Geneva Convention For The Amelioration Of The Condition Of The Wounded And Sick In Armed Forces In The Field

This Convention, established to protect the sick and wounded during wartime, defines the individuals entitled to this status in Article 13, where six paragraphs address different categories of individuals.

First, under Article 13(1), members of the official armed forces of a state or organisation party to a conflict, including militias or volunteer corps associated with these forces, are protected under the scope of this Convention if they fall sick or are wounded during combat.

¹I. Geneva Convention (entered into force 21 October 1950), vol. 75, UNTS No: 970, II. Geneva Convention (entered into force 21 October 1950), vol. 75, UNTS No: 971, III. Geneva Convention (entered into force 21 October 1950), vol. 75, UNTS No: 972, IV. Geneva Convention (entered into force 21 October 1950), vol. 75, UNTS No: 973.

Under paragraph 2, members of organised resistance movements operating under occupation or outside their own territory are also protected. These individuals must have certain criteria: they must be commanded by a responsible leader, possess a fixed and distinguishable emblem recognisable at a distance, carry arms openly, and act in compliance with the laws and customs of war. Thus, national or volunteer forces that fulfil these conditions are protected under the Convention if they are sick or wounded during combat.

Paragraph 3 specifies that “*members of regular armed forces who profess allegiance to a government or an authority not recognised by the detaining power*” are to be treated as protected individuals when they are sick or wounded.

Under paragraph 4, individuals who are not direct members of the armed forces but accompany them with official authorisation are also protected. Similarly, paragraph 5 ensures that members of crews and the crews of civil aircraft, who do not benefit from more favourable treatment under any other provisions of international law, are included in the scope of protection when sick or wounded.

Lastly, under paragraph 6, inhabitants of non-occupied territories who spontaneously take up arms to resist approaching enemies are protected under this Convention if they carry arms openly and respect the laws and customs of war, provided they are sick or wounded.

The Geneva Convention For The Amelioration Of The Condition Of Wounded, Sick, And Shipwrecked Members Of Armed Forces At Sea

This Convention, established to protect the sick, wounded, and shipwrecked at sea, defines the individuals entitled to this protection under Article 13. Upon examination of this article, it becomes evident that the categories of individuals eligible for protection are identical to those defined under Article 13 of the First Geneva Convention.

However, for protection under this Convention, individuals must meet two criteria: they must possess one of the six statuses listed under the First Geneva Convention’s Article 13, and they must be at sea or involved in a maritime incident.

In such cases, individuals protected under the Second Geneva Convention would instead fall under the protection of the First Geneva Convention if they were on land. Additionally, if captured by the enemy, they are expected to be protected under the provisions of the Third Geneva Convention.

The Geneva Convention Relative To The Treatment Of Prisoners Of War

The definition of a prisoner of war is provided under Article 4 of the Third Geneva Convention. Upon examining this article, it can be stated that an individual will be considered a prisoner of war if they meet one of the six criteria outlined in this article, which are similar to those listed in Article 13 of the First Geneva Convention. In this context, if an individual who should be protected under the First Geneva Convention is captured by the enemy, they are classified as a prisoner of war and are entitled to protection under the Third Geneva Convention.

Notably, under Article 33, medical and religious personnel who are retained by the detaining state to assist prisoners of war are not granted prisoner-of-war status. However, such individuals are entitled to benefit from all provisions of the Convention and must be provided with the necessary facilities for medical treatment and religious assistance.

The Geneva Convention Relative To The Protection Of Civilian Persons In The Time Of War

The Fourth Geneva Convention was established to protect civilians who suffered significantly during wartime, despite having no involvement in the conflict, and are treated as if they were a party or supporter of the war. Article 15 defines who is entitled to civilian status during times of war.

According to this article, civilians include individuals who were once involved in hostilities but are no longer active combatants due to illness or injury. It also includes individuals who have never been involved in hostilities but have been injured or have fallen ill. Furthermore, civilians encompass those who, even though neither sick nor wounded, have not participated in hostilities and are not engaged in any activity that could be classified as a military function. Such individuals are entitled to protection under the Fourth Geneva Convention during times of war.

The Right To Life

The right to life, whose origins date back to the late 18th century, is the most fundamental right of an individual. This is because the right to life serves as a prerequisite for all other rights and freedoms. Without the preservation of life, an individual cannot exercise any of their other rights, rendering all other rights, no matter how significant, meaningless (Kalabalık, 2017, p. 409).

The right to life is enshrined in nearly all international instruments concerning human rights. Among these instruments is the Universal Declaration of Human Rights (UDHR)², an international treaty established by the United Nations, widely regarded as the most significant international organisation due to the near-universal membership of states. Article 3 of the UDHR, adopted on December 10, 1948, states: *“Everyone has the right to life, liberty, and security of person.”* Similarly, Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR)³, adopted on December 16, 1966, provides: *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”* In the European Convention on Human Rights (ECHR)⁴, the right to life is regulated under Article 2, which states: *“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”* Other international treaties similarly regulate the right to life. However, despite recognising the right to life as a fundamental right, these international instruments do not explicitly define it. Based on the aforementioned key treaties, the right to life can be described as an inalienable and non-derogable right acquired by individuals at birth, once they are born alive and whole, while for legal entities, it is established upon their legal formation.

States bear a negative obligation not to interfere with individuals’ right to life. In this context, states must refrain from actions that would violate the right to life. Furthermore, the ICCPR and the ECHR specify that the right to life must be protected by law. Therefore, states are also burdened with a positive obligation to prevent violations of this right and ensure its protection.

Although the right to life is regarded as the most fundamental right, as it gives meaning to all other rights, and despite states’ negative and positive obligations regarding this right, it is not considered an absolute

²U.N. General Assembly resolution, UN. Doc. RES/ 217A, 3. Session, 10 December 1948.

³The International Covenant on Civil and Political Rights (entered into force 23 March 1976), vol. 999, UNTS No: 14668.

⁴Convention for the Protection of Human Rights and Fundamental Freedoms, vol. 213, UNTS No: 2889.



right due to its permissible limitations under specific conditions⁵. However, these conditions do not imply that states can arbitrarily violate this right. While the UDHR does not outline specific circumstances for limiting the right to life, the ECHR introduces an exception immediately following the recognition of the right to life. This exception is the imposition of a death sentence by a court following lawful proceedings. Furthermore, Article 2(2) of the ECHR states that the use of force, which does not exceed what is absolutely necessary, resulting in the loss of life does not constitute a violation of the right to life. To prevent arbitrary violations, the Convention enumerates the circumstances under which such force may be justified. These include: self-defence, lawful arrest or prevention of escape, and lawful suppression of a riot or insurrection.

Therefore, States must clearly delineate the boundaries of permissible limitations in their legal frameworks while also ensuring that the right to life is safeguarded.

The Right To Life In The 1949 Geneva Conventions

The 1949 Geneva Conventions established rules aimed at protecting the dignity and rights of individuals during wartime, acknowledging their existence as human beings. These rules caused a distinct branch of law known as international humanitarian law. In this regard, international humanitarian law is distinct from human rights law. Unlike human rights law, which enumerates rights individually, international humanitarian law addresses such rights through protective provisions in various articles. Consequently, the right to life is not explicitly regulated in a single article within the 1949 Geneva Conventions; rather, an assessment of individuals' right to life during wartime is derived from multiple articles.

In times of war, states repel threats to their territories. In this context, they seek to eliminate entities deemed a threat—namely, the enemy—by any means necessary. As a result, both sides often disregard the right to life of the opposing side, focusing instead on eliminating the perceived threat. However, despite the non-absolute nature of the right to life, the 1949 Geneva Conventions ensured its protection even during times of war.

To begin with, Article 3(1)(d), found in the general provisions of all four Conventions, prohibits the imposition of the death penalty without due process, thereby preventing arbitrary killings and safeguarding the right to life.

Moreover, Article 3(2) of the 1949 Geneva Conventions provides that *“the wounded and sick shall be collected and cared for.”* This provision imposes a positive obligation on warring states to protect the right to life, requiring them not only to refrain from killing individuals but also to preserve the lives of those closest to death. Similarly, Articles 12 of the First and Second Geneva Conventions mandate that the sick and wounded be treated without discrimination, while Articles 30 and following of the Third Geneva Convention regulate the provision of adequate food, clothing, accommodation, and medical care to prisoners of war. Article 91 of the Fourth Geneva Convention further sets forth provisions related to medical treatment, thereby imposing obligations on states to protect the right to life of civilians.

Article 7, present in all four Conventions, stipulates that *“the wounded, sick, and members of medical and religious personnel shall in no circumstances renounce in whole or in part the rights secured to them by the present Convention or by the special agreements provided for in Article 6.”* Although this provision does not directly protect the right to life, it underscores that individuals cannot be expected to relinquish their minimum protected rights during wartime, and it seeks to prevent states from evading their obligations

⁵Absolute rights are those that cannot be restricted under any circumstances. For instance, the prohibition of torture and ill-treatment is an absolute right.

to protect these rights. In this context, the provision ensures that states cannot escape their obligations concerning individuals' right to life as outlined in the Conventions.

Additionally, Articles 46 of the First Geneva Convention, 47 of the Second Geneva Convention, 13 of the Third Geneva Convention, and 33 of the Fourth Geneva Convention establish the prohibition of reprisals against protected persons during wartime. Accordingly, if a state violates the rights protected by these Conventions during an armed conflict, the opposing state is prohibited from responding in kind. For instance, if a party kills prisoners of war under its control, the opposing party is forbidden from retaliating by killing its own captives. This prohibition demonstrates that approaches akin to the principle of reciprocity, which is recognised under international law, are outlawed within humanitarian law. Thus, it can be concluded that the prohibition of reprisals also serves to protect the right to life during wartime.

As highlighted above, although the 1949 Geneva Conventions do not explicitly safeguard the right to life through a singular provision, they nonetheless protect this right through various articles. Furthermore, beyond the aforementioned provisions, the Conventions regulate the protection of the right to life according to the status of victims, ensuring that even the right to life, which is most often disregarded during wartime, is preserved. However, an examination of contemporary conflicts raises the question of whether the Geneva Conventions can effectively protect the right to life during times of war. In this context, the ongoing conflicts, such as the Russia-Ukraine War and the Israel-Palestine War, have been analysed to determine whether the protective provisions concerning the right to life under the 1949 Geneva Conventions have been violated.

The Armed Conflict Between The Russia And Ukraine

The crisis between the Russian Federation and Ukraine that emerged in 2014 escalated into an armed conflict, leading to heightened tensions between the two states. This tension reached a critical level on February 24, 2022, when Russian President Vladimir Putin announced the initiation of a "special military operation"⁶. The resulting armed attacks, which continue to date, have caused significant loss of life, including among civilians, and constitute violations of international humanitarian law. However, it is not feasible to address all the violations that have occurred between Russia and Ukraine within the scope of our study. Therefore, based on the report published by the Organisation for Security and Cooperation in Europe (OSCE) in 2022, we have addressed the violations between the two states. Indeed, while the war between the two parties continues, violations of humanitarian law persist in the region.

According to this report, on June 8, 2022, following a show trial conducted by the so-called Supreme Court of the Donetsk People's Republic, three members of the Ukrainian Armed Forces were sentenced to death by firing squad (OSCE Report, 2022, p. 17). This situation demonstrates that Russia has violated Article 3(1)(d) of the general provisions of the Geneva Conventions by imposing death sentences on individuals without proper judicial proceedings, thereby infringing upon their right to life.

On April 6, 2022, a video shared on a telegram showed Ukrainian soldiers executing captured Russian soldiers. The video depicted a wounded Russian soldier lying on the ground after being shot twice by a Ukrainian soldier, along with three dead Russian soldiers, one of whom had a head wound and his hands tied behind his back, lying next to the wounded soldier (OSCE Report, 2022, p. 17). This situation demonstrates that the right to life of prisoners of war has been violated, indicating a breach of the Third Geneva Convention by Ukrainian soldiers.

⁶<https://www.bbc.com/news/av/world-60505319>; <https://press.un.org/en/2022/sc14803.doc.htm>.

According to the OSCE report, the civilian population is unable to obtain sufficient food and medicine, and their procurement is even obstructed by Russia (OSCE Report, 2022, p. 20). This situation demonstrates that the Russian Federation has violated the Fourth Geneva Convention by depriving individuals of the necessities required to sustain their lives, thereby infringing upon their right to life and breaching the provisions of the Fourth Geneva Convention.

On 16 May 2022, BBC News reported that more than 1,000 civilians had lost their lives in Bucha and the surrounding areas during the Russian occupation, with over 650 of them being shot dead by the Russian armed forces. Ukrainian sources, however, indicate that the actual numbers are much higher. In response, the International Criminal Court (ICC) initiated an investigation into the events that occurred in Bucha and its vicinity during the period of the Russian occupation (OSCE Report, 2022, p. 63)⁷.

Ukraine is not, in fact, a State Party to the Rome Statute, the founding treaty of the ICC; however, it has accepted the Court's jurisdiction over crimes falling within its purview pursuant to Article 12(3) of the Statute. In this context, the ICC has jurisdiction over international crimes committed on Ukrainian territory from February 20, 2014 onwards. In response, the ICC Pre-Trial Chamber II issued arrest warrants for the President of the Russian Federation, Vladimir Vladimirovich Putin, and the Commissioner for Children's Rights in the Office of the President of the Russian Federation, Maria Alekseyevna Lvova-Belova, based on reasonable grounds to believe that they were responsible for the war crimes of unlawful deportation and unlawful transfer of population (children) from the occupied areas of Ukraine to the Russian Federation, causing harm to Ukrainian children. Subsequently, on 5 March 2024, the Pre-Trial Chamber II issued arrest warrants for Lieutenant General Sergei Ivanovich Kobylash, Commander of the Long-Range Aviation of the Russian Armed Forces, and Admiral Viktor Nikolayevich Sokolov, Commander of the Black Sea Fleet of the Russian Navy, based on reasonable grounds to believe that they were responsible for the war crime of directing attacks at civilian objects, the war crime of causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts⁸.

When examining the second arrest warrant issued by the ICC, it is noted that attacks on civilians constitute a war crime on the grounds that they represent a grave breach of the 1949 Geneva Conventions. In this context, it can be assessed that the violation of individuals' right to life, coupled with the classification of such acts as war crimes under the 1949 Geneva Conventions, results in the criminal responsibility of the individuals who perpetrate these crimes.

The Armed Conflict Between Israel And Palestine

The long-standing territorial dispute between Israel and Palestine escalated into an armed conflict constituting war crimes on October 7, 2023, following an armed attack by Hamas and other Palestinian armed groups against Israel. Since 7 October, attacks carried out by both sides have significantly violated international humanitarian law. To maintain the scope of our study, we focus exclusively on the violations reported in the Human Rights Watch report.

According to this report, on 7 October, Hamas-led gunmen launched an attack on Israel, deliberately killing civilians, firing into crowds, gunning people down in their homes, and taking hostages to Gaza, including elderly individuals and children. According to Israeli authorities, since October 7, more than 1,200

⁷In the present day, although the number of those who have lost their lives as a result of the war between the two states is significantly higher, Zelensky stated that 43,000 soldiers have died in the conflict alone. <https://www.bbc.com/news/articles/c5yv75nydy3o>.

⁸<https://www.icc-cpi.int/situations/ukraine>; <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.



people, most of them civilians, have been killed, and as of December 15, 133 individuals remain held hostage. This situation demonstrates the violation of the right to life of the civilian population and, consequently, the breach of the Fourth Geneva Convention⁹.

The ICC's Pre-Trial Chamber I, which holds jurisdiction over Palestine following its accession to the Rome Statute, issued an arrest warrant for Mohammed Diab Ibrahim Al-Masri, known as the highest commander of Hamas's military wing, the al-Qassam Brigades. The warrant charges him with crimes against humanity, including murder, extermination, torture, rape, and other forms of sexual violence, as well as war crimes such as murder, cruel treatment, torture, taking hostages, outrages upon personal dignity, and acts of sexual violence. These crimes are alleged to have been committed on the territories of both Israel and Palestine from at least October 7, 2023.

On 21 November 2024, ICC Pre-Trial Chamber I issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Israeli Defence Minister Yoav Gallant, based on reasonable grounds to believe that they were responsible for war crimes, including starvation as a method of warfare and intentionally directing attacks against the civilian population, as well as crimes against humanity such as murder, persecution, and other inhumane acts¹⁰.

Looking at the decisions made by the ICC, we can observe that the prosecution process has begun against individuals from both parties due to the violation of the right to life during the war, constituting a breach of the 1949 Geneva Conventions. Therefore, it is evident that even during wartime, the right to life of individuals is protected, and this protection is enshrined under the 1949 Geneva Conventions, which are among the fundamental instruments of international humanitarian law.

Conclusion

The 1949 Geneva Conventions consist of four international treaties that emerged with the recognition that certain rights of individuals exist even during times of war and that these rights must be protected. These Conventions form the foundation of international humanitarian law. While each Convention protects victims with different statuses during wartime, the First Geneva Convention safeguards wounded and sick armed forces, the Second Geneva Convention protects wounded, sick, and shipwrecked armed forces at sea, the Third Geneva Convention ensures the protection of prisoners of war, and the Fourth Geneva Convention protects the rights of civilians during wartime.

The right to life is one of the most fundamental human rights and has been protected under various international treaties. However, this right is not absolute, and it may be restricted under certain conditions.

In the 1949 Geneva Conventions, the right to life is not explicitly regulated in a direct provision, as is the case in international treaties addressing human rights. Nevertheless, it is understood from the protective provisions for victims that the right to life is safeguarded and observed even during times of war. In this context, various provisions establish both the negative and positive obligations of states concerning the right to life of victims. Indeed, while it is evident that the right to life has been violated during contemporary armed conflicts such as the Russia-Ukraine and Israel-Palestine conflicts, analyses and decisions made by the International Criminal Court do not directly state that individuals' right to life has been violated. However, it is observed that the humanitarian law violations that occur, particularly concerning civilians,

⁹<https://www.hrw.org/world-report/2024/country-chapters/israel-and-palestine>.

¹⁰<https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>; <https://www.icc-cpi.int/palestine>.

are grounded in the provisions of the 1949 Geneva Conventions, which can be interpreted as violations of the right to life.



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