
THE INTERNATIONAL CRIMINAL COURT'S JURISDICTION OVER WITHDRAWN STATES: LESSONS FROM THE PROSECUTOR V. RODRIGO ROA DUTERTE AND BEYOND

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ABSTRACT

The International Criminal Court (ICC) was established to prosecute the perpetrators of the world's most serious crimes genocide, crimes against humanity, war crimes, and crimes of aggression. However, the Court's power is not unlimited. Its jurisdiction is treaty-based, meaning that it can ordinarily act only when the accused's home state has agreed to be bound by the Rome Statute. This raises a critical question: what happens when a state voluntarily withdraws from the Rome Statute while the ICC is already looking into crimes committed within its territory?

The case of *The Prosecutor v. Rodrigo Roa Duterte* has brought this question to the centre of international legal debate. Former Philippine President Rodrigo Duterte is accused of orchestrating a brutal "war on drugs" that allegedly resulted in thousands of extrajudicial killings between 2011 and 2019. Although the Philippines withdrew from the Rome Statute in 2018, the ICC asserted and in April 2026 firmly confirmed at the appeals level that it retains jurisdiction over crimes committed while the Philippines was still a State Party. Duterte was arrested in March 2025 and, following a confirmation of charges hearing in February 2026, was committed to trial in April 2026.

This article traces the legal foundations of the ICC's jurisdiction, explains the Duterte case in detail, examines how Article 127 of the Rome Statute operates in practice, and places these issues in a broader comparative context by looking at situations in Burundi, Africa's mass withdrawals, and the Lubanga and Bemba precedents. The article argues that the ICC's interpretation of its "legacy jurisdiction" the power to continue proceedings even after a state's withdrawal is legally sound, essential for combating impunity, and consistent with the object and purpose of the Rome Statute. It also explores the challenges such an approach poses for state sovereignty and the Court's legitimacy.

I. INTRODUCTION

Imagine a country where thousands of people are killed by police and government-backed vigilantes over just a few years. Imagine further that the head of state publicly encouraged such killings, declared he would not stop, and even compared himself to Adolf Hitler. Now imagine that when the international community's primary criminal court begins to investigate, that country simply walks away from the court's treaty and argues that the court can no longer touch it. This is, in essence, what happened in the Philippines under President Rodrigo Duterte.

The International Criminal Court (ICC), established by the Rome Statute of 1998,¹ was designed precisely to deal with situations like this. It has jurisdiction over the most serious crimes of international concern, including crimes against humanity.² Its jurisdiction is primarily territorial and personal in nature – it applies when crimes are committed on the territory of a State Party, or when the accused is a national of a State Party.³ The principle of complementarity means the Court steps in only when national courts are unwilling or unable to genuinely prosecute those responsible.⁴

The Duterte case has tested the limits of these jurisdictional rules like no case before it. It has forced international lawyers, judges, and scholars to answer a deceptively simple question: can a country "opt out" of the ICC's oversight by withdrawing from the Rome Statute, thereby shielding its leaders from prosecution for crimes already committed? The ICC's answer, confirmed by both the Pre-Trial Chamber and the Appeals Chamber, is a resounding no.

This article is structured as follows. Part II provides the background on the ICC's jurisdictional framework under the Rome Statute. Part III narrates the facts and procedural history of the Duterte case in detail. Part IV analyses the critical legal issue of jurisdiction after state withdrawal under Article 127. Part V places the case in comparative context with other ICC situations, including Burundi and the African withdrawals. Part VI addresses the principle of complementarity and the Philippines' domestic accountability record. Part VII considers broader implications for the ICC's legitimacy and the fight against impunity. Part VIII

¹Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) [hereinafter Rome Statute].

²Rome Statute, Art 5.

³Rome Statute, Arts 12–13.

⁴Rome Statute, Art 17.

concludes.

II. THE ICC'S JURISDICTIONAL FRAMEWORK: A PRIMER

A. The Rome Statute and the Court's Subject-Matter Jurisdiction

The Rome Statute, adopted on 17 July 1998 and entering into force on 1 July 2002, is the founding treaty of the ICC. It established the Court as a permanent international tribunal with the mandate to try individuals accused of genocide, crimes against humanity, war crimes, and crimes of aggression. These are often referred to as the "core international crimes."

Crimes against humanity are defined under Article 7 of the Rome Statute. They include acts such as murder, torture, rape, enforced disappearance, and other inhumane acts when committed as part of a widespread or systematic attack directed against a civilian population.⁵ The word "widespread" refers to the scale of the acts how many victims are affected. The word "systematic" refers to the organised or planned nature of the attack. Crucially, the perpetrator must know that his or her actions form part of this broader attack. A single killing, no matter how horrific, does not by itself constitute a crime against humanity. It is the pattern, the policy, and the scale that elevate individual acts into this most serious category of international crime.

B. Triggering Jurisdiction: How the ICC Gets Involved

The ICC can begin proceedings in three main ways. First, a State Party may refer a situation to the Prosecutor. Second, the United Nations Security Council may refer a situation to the Court (even if the state concerned is not a party to the Rome Statute). Third, the Prosecutor may independently initiate an investigation *proprio motu* of his or her own accord subject to authorisation from the Pre-Trial Chamber.⁶ This third route, known as an Article 15 investigation, was the one used in the Philippines situation.

Crucially, for the Court to exercise jurisdiction, there are two basic preconditions under Articles 12 and 13 of the Statute. First, the crimes must have been committed on the territory of a State Party, or the accused must be a national of a State Party. Second, the situation must have been referred to the Court in one of the three ways just described. These are not mere procedural

⁵Rome Statute, Art 7(1)(a).

⁶Rome Statute, Art 15.

formalities they define the limits of the Court's reach.

C. Complementarity: The ICC as a Court of Last Resort

One of the most important principles in the Rome Statute is complementarity. Under Article 17, the ICC may only proceed when a state is genuinely *unwilling or unable* to carry out a genuine investigation or prosecution. This makes the ICC a backstop, not a replacement for national justice systems. It was designed to respect state sovereignty while ensuring that impunity does not prevail when national systems fail.

The International Center for Transitional Justice describes complementarity as "one of the most important concepts in the Rome Statute and the global fight to end impunity for serious crimes."⁷ States that investigate and prosecute genuinely have nothing to fear from the ICC. It is only when they refuse, delay, or engage in sham proceedings designed to shield perpetrators from accountability that the ICC may step in.

III. THE DUTERTE CASE: FACTS, WITHDRAWAL, AND PROCEEDINGS

A. The "War on Drugs" and the Scale of Alleged Killings

Rodrigo Roa Duterte served as Mayor of Davao City for many years before becoming President of the Philippines in 2016. Throughout his political career, he was associated with a particularly aggressive approach to crime and drug enforcement. As mayor, he reportedly encouraged vigilante killings of drug dealers. When he ran for president, he famously declared: "When I become president, I'll order the police and military to find these people and kill them."⁸

After taking office in June 2016, Duterte launched a nationwide "war on drugs" which was characterised by massive police anti-drug operations, vigilante killings, and a climate of impunity. According to human rights organisations, the death toll from these operations may have reached as many as 30,000 people. The victims were predominantly poor Filipinos from marginalised communities, many of whom were summarily killed without any due process. The ICC Prosecution later charged that these killings were committed as part of a widespread and systematic attack against a civilian population, amounting to crimes against humanity of

⁷ICTJ, *Handbook on Complementarity: An Introduction to the Role of National Courts* (ICTJ 2016) 1.

⁸Cambridge Core, "An Evaluation of the 'Legacy Jurisdiction' of the International Criminal Court: The Philippines Investigation" (2025) *Asian Journal of International Law*, doi:10.1017/S2044251324000286.

murder, torture, and rape, in violation of Articles 7(1)(a), 7(1)(f), and 7(1)(g) of the Rome Statute.⁹

B. The Philippines' Accession and Withdrawal from the Rome Statute

The Philippines became a State Party to the Rome Statute on 1 November 2011, following ratification by the Philippine Senate. This was a significant moment, signalling the country's commitment to international accountability norms.¹⁰

On 8 February 2018, the Office of the Prosecutor (OTP) of the ICC opened a preliminary examination into the situation in the Philippines, prompted by reports of mass extrajudicial killings during the war on drugs.¹¹ Within approximately one month, on 17 March 2018, the Philippines deposited a written notification of withdrawal from the Rome Statute with the Secretary-General of the United Nations, with President Duterte accusing the ICC of attacking his administration and violating due process.¹²

Under Article 127(1) of the Rome Statute, withdrawal takes effect one year after the date of receipt of the notification by the Secretary-General.¹³ Accordingly, the Philippines' withdrawal became effective on 17 March 2019. From that date, the Philippines was no longer a State Party to the Rome Statute. However, as this article will discuss in detail, that withdrawal did not eliminate the ICC's jurisdiction over crimes committed *before* it took effect.

C. The ICC's Investigation and the Warrant of Arrest

Following the Philippines' withdrawal, the OTP continued its preliminary examination, and on 24 June 2021, applied to the Pre-Trial Chamber for authorisation to open a formal investigation. On 15 September 2021, the Pre-Trial Chamber authorised the investigation, covering crimes allegedly committed between 1 November 2011 and 16 March 2019.¹⁴ The investigation was subsequently resumed after a brief suspension, and the OTP gathered extensive evidence of the

⁹Georgetown Journal of International Affairs, "The ICC Investigation and Accountability in the Philippines" (28 January 2022) <<https://gja.georgetown.edu>> accessed 25 June 2026.

¹⁰ICC, "Republic of the Philippines" <<https://www.icc-cpi.int/philippines>> accessed 25 June 2026.

¹¹ICC Office of the Prosecutor, *Situation in the Republic of the Philippines*, ICC-01/21-2, Request for Authorisation of an Investigation (24 June 2021).

¹²Wikipedia, "States Parties to the Rome Statute"

<https://en.wikipedia.org/wiki/States_parties_to_the_Rome_Statute> accessed 25 June 2026.

¹³Rome Statute, Art 127(1).

¹⁴ICC Pre-Trial Chamber I, *Situation in the Republic of the Philippines*, Decision on the Prosecutor's Request for Authorisation of an Investigation, ICC-01/21-1 (15 September 2021).

scale and nature of the drug war killings.

On 10 February 2025, the OTP applied for a warrant of arrest against Rodrigo Duterte.¹⁵ The warrant, charging him with crimes against humanity of murder, torture, and rape, was issued by Pre-Trial Chamber I as "Secret" on 7 March 2025 and reclassified as "Public" on 11 March 2025. On the same day, Philippine National Police, acting in coordination with Interpol, arrested Duterte at Ninoy Aquino International Airport in Manila as he returned from a trip to Hong Kong. He was subsequently transferred to the ICC's detention facility in The Hague, Netherlands.

This arrest was remarkable. It marked only the second time in the ICC's history that a former head of state from a country that had withdrawn from the Rome Statute was arrested and transferred to the Court. It also marked an unusual degree of cooperation by a non-party state with the ICC the Marcos administration, while formally maintaining non-cooperation with the ICC investigation, acknowledged it could not prevent Interpol-facilitated law enforcement actions.¹⁶

D. Pre-Trial Proceedings: Jurisdiction Challenge and Confirmation of Charges

After his initial appearance on 14 March 2025, Duterte's defence team mounted a jurisdictional challenge, arguing that the ICC had no authority to try him because the Philippines was no longer a State Party to the Rome Statute.¹⁷ They also argued that he was medically unfit to participate in proceedings a motion that was rejected by the Court in January 2026.¹⁸

On 23 October 2025, Pre-Trial Chamber I rejected the jurisdictional challenge. The defence immediately appealed. The Appeals Chamber delivered its judgment on 22 April 2026, by majority, rejecting the defence's appeal in its entirety and confirming that the ICC retains jurisdiction over alleged crimes committed in the Philippines between 1 November 2011 and

¹⁵ICC, *The Prosecutor v. Rodrigo Roa Duterte*, Case No. ICC-01/21, Warrant of Arrest (7 March 2025); reclassified as public on 11 March 2025.

¹⁶Wikipedia, "International Criminal Court investigation in the Philippines" <https://en.wikipedia.org/wiki/International_Criminal_Court_investigation_in_the_Philippines> accessed 25 June 2026.

¹⁷ICC Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, Decision on the Defence Challenge to the Jurisdiction of the Court, ICC-01/21 (23 October 2025).

¹⁸JURIST, "ICC Confirms Jurisdiction in Former Philippine President Duterte Case" (30 April 2026) <<https://www.jurist.org/news/2026/04/icc-confirms-jurisdiction-in-philippines-ex-president-duterte-case/>> accessed 25 June 2026.

16 March 2019.¹⁹

The confirmation of charges hearing took place from 23 to 27 February 2026 before Pre-Trial Chamber I. On 23 April 2026 just one day after the jurisdictional ruling the Pre-Trial Chamber unanimously confirmed all charges against Duterte and committed him to trial. The judges found substantial grounds to believe that Duterte was responsible for the crimes against humanity of murder and attempted murder.²⁰ The Duterte trial is now expected to commence before a Trial Chamber of the ICC.

IV. THE LEGAL QUESTION: JURISDICTION AFTER WITHDRAWAL

A. Article 127: The Withdrawal Provision

Article 127 of the Rome Statute is the pivotal provision. Article 127(1) provides that a State Party may withdraw from the Statute by giving written notice to the Secretary-General of the United Nations, and the withdrawal takes effect one year later. Article 127(2) provides, crucially, that withdrawal shall not discharge a state from its obligations under the Statute that arose from its membership before the withdrawal takes effect, "including any financial obligations which may have accrued."²¹ More importantly for jurisdictional purposes, it provides that withdrawal "shall not affect any prosecution of the Court that was already commenced prior to the date on which the withdrawal became effective."

The Oxford Commentary on the Rome Statute confirms that Article 127 was deliberately drafted to prevent states from using withdrawal as a shield against ongoing or imminent prosecutions.²² The text reflects the object and purpose of the Statute to end impunity for the most serious crimes of international concern by ensuring that a state cannot simply walk away once the ICC has begun to focus on crimes within its territory.

B. The Defence Argument: Sovereignty and the Right to Exit

Duterte's defence team made a compelling sovereigntist argument. They contended that once

¹⁹ICC Appeals Chamber, *The Prosecutor v. Rodrigo Roa Duterte*, Judgment on the Appeal of Mr Rodrigo Roa Duterte against Pre-Trial Chamber's Decision on Jurisdiction, ICC-01/21 (22 April 2026).

²⁰ICC Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, Decision on the Confirmation of Charges (23 April 2026).

²¹Rome Statute, Art 127(2).

²²Oxford Academic, Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn, Oxford University Press 2016) commentary on Art 127.

the Philippines' withdrawal became effective, the ICC was left without jurisdiction because Articles 12 and 13 of the Statute require the relevant state to be a party *at the time the Court exercises its jurisdiction*. In other words, they argued that the Philippine withdrawal did not just end future obligations; it also eliminated the jurisdictional basis for any proceedings, because the Court can only act when the state concerned is currently a member.

They also argued that allowing the ICC to exercise jurisdiction indefinitely after withdrawal would undermine the very concept of a sovereign state's right to exit a treaty. If a state can never truly leave the ICC at least for crimes committed during membership then, they said, the right of withdrawal under Article 127 is a mere formality, not a genuine sovereign right.

The LSE Law Review Blog, in a critical analysis of the Philippines jurisdiction decision, lent some support to this view by questioning whether a preliminary examination which is far less than a formal investigation was sufficient to trigger the continuity provisions of Article 127(2).²³ The author of that piece argued that the minority decision in the ICC's Philippines judgment had a point: to allow the OTP's preliminary examination alone to lock in jurisdiction would give the Office effectively unlimited power, as it could commence a preliminary examination in any withdrawing state within the one-year notice period and thereby maintain jurisdiction forever.

C. The Court's Response: Systemic Interpretation and the Purpose of the Statute

The ICC's response endorsed by the Appeals Chamber was sophisticated and carefully grounded in treaty interpretation principles. The Court invoked the Vienna Convention on the Law of Treaties (VCLT), which requires that a treaty be interpreted in good faith in accordance with the ordinary meaning of its terms, in light of its object and purpose, and in a systemic manner with other relevant rules of international law.²⁴

The Appeals Chamber held that Articles 12, 13, and 127 of the Rome Statute must be read together systematically. While Articles 12 and 13 set out the preconditions for the exercise of

²³LSE Law Review Blog, "A Look at the ICC's Philippines Decision: Is a Preliminary Examination enough for the Court to retain jurisdiction?" (12 May 2025) <<https://blog.lselawreview.com/2025/05/12/a-look-at-the-iccs-philippines-decision-is-a-preliminary-examination-enough-for-the-court-to-retain-jurisdiction/>> accessed 25 June 2026.

²⁴Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), Art 70.

jurisdiction, Article 127 provides the specific rules that apply when a state withdraws. The *lex specialis* principle that specific provisions prevail over general ones means that Article 127 governs the jurisdictional consequences of withdrawal, not the general jurisdictional provisions read in isolation.

More fundamentally, the Court held that the object and purpose of the Rome Statute supports a reading of Article 127 that preserves jurisdiction over crimes already committed within the temporal scope of membership. To hold otherwise would allow perpetrators of crimes against humanity to escape justice simply by engineering a withdrawal an outcome that would strike at the very heart of the Statute's anti-impunity mandate.

The Cambridge Core analysis of the "legacy jurisdiction" concept in the Philippines investigation is particularly illuminating on this point. The article notes that a broad interpretation of Article 127(2) one that covers crimes committed during the period of membership, even if the investigation was at the preliminary examination stage at the time of withdrawal is consistent with the Rome Statute's design and is "plausible in the sense that it is not prohibited by the terms of the treaty."

D. The Temporal Scope of Jurisdiction: 1 November 2011 to 16 March 2019

Both the Pre-Trial Chamber and the Appeals Chamber were careful to define the temporal limits of the ICC's jurisdiction precisely. The Philippines became a State Party on 1 November 2011, and its withdrawal became effective on 17 March 2019. Therefore, the ICC's jurisdiction covers crimes committed in the Philippines between **1 November 2011 and 16 March 2019** the day before the withdrawal took effect.²⁵

This temporal framing is legally significant. It means that while Duterte's drug war continued after March 2019, the ICC can only prosecute crimes within this window. Crimes committed from 17 March 2019 onwards, after the Philippines formally left the Rome Statute, are outside the Court's jurisdiction. This demonstrates that the Court's "legacy jurisdiction" is not unlimited it is carefully circumscribed to the period of membership.

²⁵ICC, *Situation in the Republic of the Philippines* (n 7) para 113.

V. COMPARATIVE CONTEXT: WITHDRAWAL AND JURISDICTION IN OTHER ICC SITUATIONS

A. The Situation in Burundi

The situation in Burundi provides the closest precedent to the Philippines case. Burundi withdrew from the Rome Statute in 2017 the first state ever to successfully complete the Article 127 withdrawal process.²⁶ The ICC had opened a preliminary examination into Burundi in 2016 and then authorised a full investigation in October 2017, shortly after the withdrawal took effect.

Yudan Tan's analysis in the *Journal of International Criminal Justice* examines how the ICC handled the Burundi withdrawal and draws comparisons with the Philippines. Tan argues that in both situations, the ICC employed a "context-indifferent interpretation" that focuses on when the crimes were committed, not on whether an investigation had formally commenced at the time of withdrawal.²⁷ Tan notes that this approach, while controversial, is legally defensible given the text of Article 127(2) and the overall architecture of the Rome Statute.

The key difference between Burundi and the Philippines is that in Burundi, the investigation was authorised *after* the withdrawal took effect, while in the Philippines, the preliminary examination was opened before the withdrawal. This distinction prompted extensive academic debate about whether the Court's approach was consistent across situations a debate that the Duterte jurisdictional decisions have now largely settled in favour of broad legacy jurisdiction.²⁸

B. African States' Withdrawals: South Africa, The Gambia, and Burkina Faso, Mali, Niger

In 2016, three African states South Africa, Burundi, and The Gambia filed withdrawal notifications from the Rome Statute, though South Africa and The Gambia ultimately reversed their withdrawals before they could take effect. Their primary grievance was that the ICC was targeting African leaders disproportionately, which they characterised as a form of neo-colonial

²⁶ICC, *Situation in Burundi*, ICC-01/17, Decision on the Prosecutor's Request for Authorisation of an Investigation (25 October 2017).

²⁷Yudan Tan, "Withdrawal from the Rome Statute: Its Impact on the Continuity of ICC Proceedings" (2024) 22(3–4) *Journal of International Criminal Justice* 609–630, doi:10.1093/jicj/mqae022.

²⁸Tan (n 13) 615.

interference.²⁹

More recently, in September 2025, three members of the Alliance of Sahel States – Burkina Faso, Niger, and Mali – announced their plans to withdraw from the ICC, labelling it an "instrument of neo-colonialist repression." Their leaders accused the ICC of being unable to handle proven war crimes and crimes against humanity committed by more powerful states.

These withdrawals raise similar legal questions to those in the Philippines case. If any of these states had ongoing ICC proceedings or preliminary examinations at the time of withdrawal, the Court would face the same Article 127 question. The Duterte jurisprudence now provides clear guidance: withdrawal does not eliminate jurisdiction over crimes committed during membership. This makes the legacy jurisdiction doctrine highly significant for the future of international criminal justice.

It is also worth noting that the Philippines case has attracted international attention because it involves a democratically elected leader from a non-African state, which somewhat neutralises the critique that the ICC is purely a tool of Western imperialism targeting Africa. However, critics of the Court note that powerful states – including the United States, Russia, China, and India – have never joined or have withdrawn from the Rome Statute, leaving the Court structurally unable to address crimes committed by their nationals or on their territory.³⁰

C. The Lubanga and Bemba Cases: Precedents for Crimes Against Humanity and ICC Process

While not directly involving withdrawal from the Rome Statute, the cases of *The Prosecutor v. Thomas Lubanga Dyilo* and *The Prosecutor v. Jean-Pierre Bemba Gombo* are important precedents for understanding how the ICC exercises jurisdiction in practice.

Lubanga (ICC-01/04-01/06) was the ICC's first ever conviction. Lubanga, a Congolese militia leader, was found guilty in 2012 of enlisting and conscripting children under the age of fifteen years and using them to participate actively in hostilities – a war crime under the Rome Statute.³¹ The case established critical principles regarding the ICC's admissibility and complementarity

²⁹Oxford Academic, *ICC and Africa: State Withdrawals from the Rome Statute* (Oxford University Press 2017) ch on South Africa, Burundi and The Gambia.

³⁰Human Rights Watch, "ICC: Court Sends Duterte Case to Trial" (23 April 2026)

<<https://www.hrw.org/news/2026/04/23/icc-court-sends-duterte-case-to-trial>> accessed 25 June 2026.

³¹ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Trial Judgment (14 March 2012).

analysis. The Democratic Republic of Congo had self-referred the situation to the ICC, effectively acknowledging its inability to prosecute these crimes domestically.

Bemba (ICC-01/05-01/08) involved Jean-Pierre Bemba, a former Vice-President of the Democratic Republic of Congo, who was charged with crimes against humanity and war crimes committed by troops under his command in the Central African Republic.³² The Trial Chamber convicted him in 2016, though he was ultimately acquitted on appeal in 2018. The case is significant for its extended discussion of the principle of complementarity and how the ICC interacts with national jurisdictions that are nominally conducting investigations.³³

Both cases reinforce the broader proposition that the ICC is designed to operate as part of a global system for accountability, intervening where national systems fail. They also illustrate the complexities of ICC proceedings including jurisdictional challenges, admissibility disputes, and the roles of victims and their representatives features that are all present in the Duterte case as well.

VI. COMPLEMENTARITY AND DOMESTIC ACCOUNTABILITY IN THE PHILIPPINES

Given the principle of complementarity, a central question in the Duterte case is whether the Philippines has genuinely investigated and prosecuted those responsible for the drug war killings. If it has, the ICC would ordinarily be barred from proceeding. The evidence strongly suggests that genuine domestic accountability has been absent.

During Duterte's presidency, police officers who killed suspected drug users and dealers faced virtually no legal consequences. The Department of Justice conducted a limited review of a small number of killings, but human rights organisations characterised these as token investigations designed to provide a veneer of accountability rather than genuine justice. The Duterte administration publicly denied that there was any systematic policy of extrajudicial killing and characterised the killings as legitimate law enforcement actions.

The current Philippine President Ferdinand Marcos Jr. has never formally repudiated the drug

³²ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Trial Judgment (21 March 2016).

³³Oxford Academic, "Complementarity (Un)Fairness" (2025) 23(2) *Journal of International Criminal Justice* 227, doi:10.1093/jicj/mqaf006.

war as government policy and has not rescinded the orders associated with it. The Philippine government formally maintained a position of non-cooperation with the ICC investigation, while in practice allowing Interpol-facilitated enforcement actions that led to Duterte's arrest. The Human Rights Watch observed that this contradictory approach reflects the political complexity of the Philippines' relationship with international accountability mechanisms.

The Georgetown Journal of International Affairs has argued that the ICC investigation represents a historic opportunity to end the "near-total impunity for grave human rights violations that have been committed in the Philippines for decades." The complementarity analysis in the Duterte case will ultimately be determined by whether the Philippine domestic system has conducted genuine proceedings covering the same conduct. Given the available evidence, the ICC is well-positioned to hold that domestic proceedings have been neither genuine nor adequate.³⁴

VII. IMPLICATIONS: THE ICC, SOVEREIGNTY, AND THE FIGHT AGAINST IMPUNITY

A. The Legacy Jurisdiction Doctrine and Its Significance

The ICC's confirmation of legacy jurisdiction in the Duterte case is one of the most significant developments in international criminal law in recent years. It establishes, at the appellate level for the first time, that withdrawal from the Rome Statute does not shield a state or its officials from ICC prosecution for crimes committed during membership. This closes what might otherwise be a dangerous loophole in the Rome Statute system.³⁵

The implications extend well beyond the Philippines. Any state currently under ICC investigation or preliminary examination that is considering withdrawal must now reckon with the fact that withdrawal will not eliminate the Court's jurisdiction over past crimes. The doctrine thus serves as a powerful deterrent against strategic withdrawals designed to protect leaders from accountability.³⁶

³⁴Amnesty International Philippines, "International Justice and the ICC" <<https://www.amnesty.org.ph/campaigns/intl-justice-icc/>> accessed 25 June 2026.

³⁵ICC Appeals Chamber (n 9).

³⁶Coalition for the ICC (n 17).

B. The Tension Between Sovereignty and Accountability

The Duterte case also illuminates a fundamental tension in international law: the tension between state sovereignty and international accountability. Sovereignty – the right of states to govern themselves and to make and unmake treaty commitments – is a cornerstone of the international legal order. The principle that states can withdraw from treaties is enshrined in customary international law and reflected in the Vienna Convention on the Law of Treaties.

However, sovereignty is not absolute. The Rome Statute was designed with the explicit recognition that some crimes are so serious that they cannot be left entirely to state discretion. The Preamble to the Statute "affirms" that such crimes "must not go unpunished." The legacy jurisdiction doctrine does not deny states the right to withdraw – it simply ensures that, having accepted certain obligations during membership, they cannot retroactively erase accountability for crimes already committed.

This is consistent with the general principle in international law that obligations arising during the period of treaty membership survive withdrawal. The ICJ's decision in the *North Sea Continental Shelf Cases* recognised that legal rights and obligations crystallised during a period of treaty membership cannot simply be extinguished by termination of the treaty.³⁷

C. The ICC Under Pressure: Russia, the United States, and the Question of Universal Application

It is important to acknowledge that the ICC operates in a deeply political environment. At the time of the Duterte case's most critical proceedings, the Court was facing extraordinary pressure from both Russia and the United States. In December 2025, a Russian court convicted the ICC Prosecutor and eight ICC judges *in absentia* in retaliation for the Court's arrest warrant against Russian President Vladimir Putin. In February 2025, US President Donald Trump issued an executive order authorising sanctions against ICC officials, in response to the Court's investigations involving US allies.

These pressures raise serious questions about the ICC's long-term viability and its ability to exercise jurisdiction in a genuinely universal manner. A court that can only reach leaders of

³⁷ICJ, *North Sea Continental Shelf Cases* (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*) [1969] ICJ Rep 3.

small or mid-sized states while the leaders of major powers remain permanently beyond its reach risks being perceived as selective and politically motivated. However, these are structural limitations of the treaty-based system, not defects in the Court's legal analysis in the Duterte case itself.³⁸

The Duterte case, whatever its broader political context, demonstrates that the ICC can deliver serious, legally rigorous proceedings when given the opportunity. The arrest of a former president, the thorough pre-trial process, and the confirmation of charges all attest to the Court's institutional capacity and professionalism.

VIII. CONCLUSION

The ICC's exercise of jurisdiction in the Duterte case represents a watershed moment in international criminal law. For the first time at the appellate level, the Court has firmly established that a state's withdrawal from the Rome Statute does not extinguish its jurisdiction over crimes committed during the period of membership. This "legacy jurisdiction" doctrine is grounded in the text of Article 127, the object and purpose of the Rome Statute, and principles of systematic treaty interpretation derived from the Vienna Convention on the Law of Treaties.

The Duterte case is not an isolated event. It connects to a broader pattern of states attempting to use withdrawal as a political tool from Burundi to South Africa to the Sahel states and the ICC's consistent response that accountability obligations cannot be erased by signing a withdrawal notice. The comparative cases of Lubanga and Bemba further illustrate how the ICC functions in practice and the principles it brings to bear in every situation it examines.

At the same time, the case is a reminder of the ICC's limitations. Thousands of Filipinos were allegedly killed over nearly a decade, and the Court can only address crimes within a specific eight-year window. Crimes committed after the Philippines' withdrawal remain beyond the ICC's reach. Domestic accountability which was almost entirely absent during and after the drug war remains the primary mechanism through which justice must ultimately be delivered for the majority of victims.

For students of international law, the Duterte case offers a masterclass in the interplay between treaty law, jurisdiction, sovereignty, and accountability. It shows that international law is not

³⁸Rome Statute, Arts 86–88.

merely academic it has real consequences for real people, from the victims who have waited years for acknowledgment of their suffering to the former president who now faces trial in The Hague. The case reminds us that the "end of impunity" promised in the Rome Statute's preamble is not inevitable, but it is possible and that possibility is what makes international criminal law worth studying and defending.

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