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Research Article

Head of State Liability for International Crimes ICC Prosecution of Duterte for Crimes Against Humanity

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Abstract. This research aims to analyze the liability of former heads of state for international crimes, focusing on the International Criminal Court's (ICC) prosecution of Rodrigo Duterte for crimes against humanity. Using normative juridical methods with a case study approach, this paper examines the applicability of international criminal law principles, particularly individual accountability, complementarity, and jurisdiction, in Duterte's case. The study emphasizes that despite the Philippines' withdrawal from the Rome Statute in 2019, the ICC retains jurisdiction over crimes committed while the country was a State Party. The research concludes that the ICC's issuance of an arrest warrant for Duterte on March 11, 2025, affirms that former heads of state are not immune from prosecution for grave international crimes. This case sets a significant precedent in Southeast Asia and demonstrates the importance of international cooperation to overcome challenges related to state sovereignty and jurisdiction. It further highlights the ICC's critical role in upholding the rule of law and providing justice for victims of human rights violations.

Keywords: Head of State Immunity, Crimes Against Humanity, Complementarity Principle, ICC Jurisdiction, State Sovereignty

INTRODUCTION

International criminal law (ICL) emerged as a legal response to the global need for addressing crimes that transcend national borders and threaten international peace, security, and fundamental human values. The limitations of national legal systems in prosecuting grave offenses—such as genocide, crimes against humanity, war crimes, and aggression—became evident through the history of armed conflicts, military aggression, and systematic abuses of power, especially during and after the World Wars (Teacher, 2013). These realities catalyzed the development of international legal norms that hold individuals, including state leaders, personally accountable for the most serious crimes of concern to the international community (International Criminal Court, 2019)].

ICL is a branch of public international law that governs cross-border criminal responsibility and the enforcement of justice for international crimes[4]. Its foundational principles—such as individual criminal responsibility, *nullum crimen sine lege* (no crime without law), *nullum crimen sine poena* (no punishment without law), non-retroactivity, and complementarity—are enshrined in the Rome Statute and other international legal instruments (International Committee of the Red Cross, 2021.). The establishment of the International Criminal Court (ICC) in 2002, through the Rome Statute, marked a historic milestone as the first permanent and independent tribunal mandated to prosecute individuals for genocide, crimes against humanity, war crimes, and, under certain conditions, aggression. The ICC operates on the principle of complementarity: it may only exercise jurisdiction when national courts are unable or unwilling to genuinely prosecute such crimes. This ensures respect for state sovereignty while providing a mechanism to end impunity for the gravest offenses (International Criminal Court, 2020).

The prosecution of former Philippine President Rodrigo Duterte by the ICC for alleged crimes against humanity in connection with the "war on drugs" is a significant precedent in Southeast Asia. Despite the Philippines' withdrawal from the Rome Statute in 2019, the ICC retains jurisdiction over crimes committed while the country was a State Party, as stipulated in Article 127(2) of the Statute (GMA News, 2025, June 12). This legal position is reinforced by the ICC's prosecutorial and judicial practice, which emphasizes that withdrawal does not absolve a state of obligations or preclude the Court's jurisdiction over ongoing investigations initiated prior to withdrawal (Yogaswara, 2021). Furthermore, Article 27 of the Rome Statute affirms that official capacity, including as a sitting or former head of state, does not exempt an individual from criminal responsibility or from the Court's jurisdiction. The ICC's mandate is strictly judicial, not political, and its focus is on those bearing the greatest responsibility for the crimes, regardless of their position (Rakhmawati, 2023).

Previous academic works and international legal commentaries—such as those by Schabas (2016), Cryer et al. (2019), and Cassese (2013)—have comprehensively

analyzed the evolution, principles, and challenges of ICL and the ICC's role in enforcing accountability for international crimes. These studies emphasize the Court's complementarity regime, the legal and practical limits of its jurisdiction, and the ongoing tension between state sovereignty and the imperative to end impunity (Global Nation Inquirer, 2025). The Duterte case is widely discussed in recent legal scholarship as a test of the effectiveness of ICL mechanisms in Asia and the resilience of the ICC's jurisdictional framework in the face of political resistance and withdrawal maneuvers (International Criminal Court, 2025).

The present research is important because it examines, with reference to authoritative legal sources and academic literature, the principles and jurisdictional reach of the ICC in prosecuting former heads of state for crimes against humanity, even after a state's withdrawal from the Rome Statute. The contribution of this study lies in clarifying the legal basis and implications of the ICC's actions in the Duterte case, highlighting the ongoing relevance of ICL in promoting accountability, justice for victims, and the protection of human rights at the global level. This research also provides a critical perspective on the challenges faced by the ICC in balancing the principles of state sovereignty, judicial independence, and international cooperation in the enforcement of international criminal justice (Just Security, 2025).

RESEARCH METHODS

The research method used in this paper is normative juridical research, focusing on the study and analysis of written legal norms within the scope of international criminal law and the jurisdiction of the International Criminal Court (ICC) (Rakhmawati, 2023; Yogaswara, 2021). This study applies a statutory, case, and conceptual approach. The statutory approach is used to examine the provisions of the Rome Statute and relevant national and international legal instruments. The case approach focuses on the analysis of the Rodrigo Duterte case as a primary example of the application of international criminal law in Southeast Asia, utilizing official ICC documents and relevant case developments. The conceptual approach is employed to analyze doctrines, theories, and principles within international criminal law, especially the principle of complementarity and non-retroactivity. The data sources in this research include primary legal materials (the Rome Statute, international treaties, ICC decisions, and national regulations), secondary legal materials (academic books, journals, and scholarly articles), and tertiary legal materials (legal dictionaries and encyclopedias). Data were collected through library research (International Criminal Court, 2020) and analyzed using qualitative methods by interpreting the relevant legal materials to build logical, systematic, and structured legal arguments. Based on previous research that discusses similar topics, this paper provides a more focused analysis of the ICC's jurisdiction over Rodrigo Duterte, particularly on how the Court exercises its authority despite the Philippines' withdrawal from the Rome Statute. Prior studies, such as those conducted by Rakhmawati (2023) and Yogaswara (2021), have examined the legal implications of the ICC's jurisdiction in Southeast Asia, yet they have not fully addressed the deeper doctrinal application of the complementarity principle and the Court's authority over former heads of state. This research fills that gap by emphasizing the procedural,

doctrinal, and jurisdictional aspects of the Duterte case, and by analyzing the challenges faced by the ICC in implementing arrest warrants and upholding accountability in complex geopolitical contexts. This study's novelty lies in its integrated focus on international criminal law, ICC procedural mechanisms, and the contemporary challenges of enforcing international justice against political leaders involved in crimes against humanity.

RESULTS AND DISCUSSION

1. Fundamental Principles and Scope of International Criminal Law in Establishing Individual Criminal Responsibility.

International Criminal Law (ICL) is a specialized branch of public international law that governs the prosecution and punishment of individuals responsible for committing the most serious crimes that threaten the peace, security, and well-being of the international community. Unlike domestic criminal law, which operates within the confines of national boundaries, ICL transcends borders and holds individuals personally accountable for crimes that shock the conscience of humanity. These core crimes include genocide, crimes against humanity, war crimes, and the crime of aggression. The operation of ICL is anchored in several fundamental principles that ensure justice is pursued fairly, consistently, and in alignment with international human rights standards (Werle & Jessberger, 2020). The cornerstone of ICL is the principle of legality, or *nullum crimen sine lege*, which means "no crime without law." This principle prohibits the retroactive application of criminal laws and mandates that individuals can only be prosecuted for conduct that was legally defined as a crime at the time it occurred (Werle & Jessberger, 2020, pp. 89–92; ICLS, 2024, para. 3.2; ICRC, 2021). It is codified in Article 22 of the Rome Statute and Article 15 of the International Covenant on Civil and Political Rights (ICCPR), ensuring that criminal laws are specific, foreseeable, and accessible (ICRC, 2021; ICLS, 2024, para. 3.2).

The principle of legality performs essential protective functions. It prevents arbitrary prosecutions, prohibits the use of analogy in criminal law, and safeguards individuals from the retroactive enforcement of criminal statutes (ICRC, 2021). The International Criminal Court (ICC) rigorously applied this principle in *Prosecutor v. Lubanga*, emphasizing that crimes must be clearly articulated in law at the time they are committed. Without strict adherence to the principle of legality, the legitimacy of international prosecutions would be severely compromised. Legal certainty and predictability remain essential to the credibility of ICL. The doctrine of individual criminal responsibility, enshrined in Article 25 of the Rome Statute, asserts that natural persons, not states or collective entities, bear personal liability for international crimes (Cassese, 2013, p. 153; Cryer et al., 2019, p. 495). This doctrine developed prominently in the Nuremberg and Tokyo Tribunals following World War II, where state leaders were individually held accountable for mass atrocities.

ICL emphasizes that official status does not shield individuals from liability. Article 27 of the Rome Statute expressly rejects immunity based on official capacity, enabling the prosecution of sitting or former heads of state (Cryer et al., 2019, p. 495; Cassese, 2013, p. 242). The Al-Bashir decision by the ICC confirmed this principle, affirming that customary international law does not recognize head-of-state

immunity before international criminal tribunals (ICC, 2019, para. 43; Helen Suzman Foundation, 2015). The ICC further explored individual criminal liability in *Prosecutor v. Katanga*, where it elaborated on multiple modes of liability, including co-perpetration, ordering, and aiding and abetting. The Court's ability to hold leaders accountable, even if they do not directly perpetrate the crimes, is fundamental in addressing the systemic nature of international crimes.

A distinctive feature of the ICC's jurisdiction is the principle of complementarity, set out in Article 17 of the Rome Statute. The ICC functions as a court of last resort, intervening only when national jurisdictions are unwilling or unable to genuinely prosecute international crimes (Schabas, 2016, p. 112; iResearchNet, 2021). This structure respects state sovereignty while ensuring that perpetrators are not shielded by domestic inaction or politically motivated proceedings. The complementarity regime promotes national accountability and incentivizes domestic courts to prosecute serious crimes within their own legal systems. The Duterte case in the Philippines exemplifies the complementarity principle. Even though the Philippines withdrew from the Rome Statute, the ICC retains jurisdiction over crimes allegedly committed while the country was still a State Party. The Court's intervention highlights its role in ensuring justice where national systems fail to provide effective remedies.

Crimes against humanity, as defined in Article 7 of the Rome Statute, involve serious acts such as murder, torture, and enforced disappearance, committed as part of a widespread or systematic attack against a civilian population (ICC, 2020, p. 7; Rome Statute, Article 7). Unlike war crimes, which require an armed conflict context, crimes against humanity can occur during peacetime or wartime. The contextual element—that the acts are part of a widespread or systematic attack—is essential in distinguishing individual offenses from crimes of international concern. This threshold focuses international prosecutions on systemic, large-scale abuses. The Rome Statute enumerates various underlying acts, including murder, torture, persecution, and enforced disappearance (Open Society Justice Initiative, 2016, p. 2). In the ongoing investigation into Duterte's war on drugs, the alleged extrajudicial killings may satisfy the criteria for crimes against humanity, as the killings were widespread, systematic, and allegedly directed by or with the acquiescence of state authorities. The doctrine of command responsibility is another critical component of ICL. It holds military or civilian superiors criminally liable if crimes are committed by subordinates under their effective control, and the superior failed to prevent or punish the perpetrators (iResearchNet, 2021; ICRC, 2021). This doctrine is particularly important in hierarchical organizations where orders may be tacit or informally conveyed.

The ICC's *Prosecutor v. Bemba* decision established the standard for command responsibility, emphasizing the need for effective control and reasonable measures to prevent or repress criminal conduct. In addition to these liability doctrines, ICL strictly enforces fair trial rights. The presumption of innocence, the right to legal counsel, and the right to a public, impartial trial are guaranteed under the ICC framework (ICRC, 2021). These protections ensure that even those accused of the

most serious crimes are afforded procedural fairness in line with international human rights standards.

The foundational principles of international criminal law—legality, individual criminal responsibility, complementarity, non-immunity, and command responsibility—form the legal backbone of the international effort to hold individuals accountable for atrocities. These principles are reflected in the Rome Statute and have been rigorously applied in ICC jurisprudence, including the Lubanga, Katanga, Bemba, and Al-Bashir cases. Current investigations, such as the Duterte case, further demonstrate the resilience of ICL in confronting impunity, despite challenges related to sovereignty and political resistance. As the international community continues to develop mechanisms for enforcing international criminal justice, the enduring relevance of these principles is vital for advancing accountability, upholding human dignity, and protecting global peace and security.

2. Application of ICC Jurisdiction to Former Heads of State after Withdrawal from the Rome Statute

The jurisdiction of the International Criminal Court (ICC) over former heads of state, including Rodrigo Duterte, remains a crucial demonstration of the Court's ability to uphold international justice despite political resistance and state withdrawal from the Rome Statute. The Rome Statute, as the foundational legal instrument of the ICC, provides a clear framework for the Court's jurisdiction, including the temporal, personal, and subject matter dimensions that collectively ensure that individuals—regardless of their official capacity—can be held accountable for the most serious international crimes.

Under Article 127(2) of the Rome Statute, a state's withdrawal does not affect the Court's jurisdiction over crimes committed while the state was still a party to the Statute (ICC, 2024, p. 54; Schabas, 2016, p. 189). In the case of the Philippines, the country was a State Party to the Rome Statute from 2011 until its official withdrawal in 2019. Accordingly, the ICC retains jurisdiction over crimes allegedly committed between November 1, 2011, and March 16, 2019, which includes the period during which the Duterte administration's controversial "war on drugs" unfolded (ICC, 2024, p. 54; GMA News, 2025; Institute of International Legal Studies, 2025, p. 2).

This principle was pivotal in the ICC's decision to continue proceedings against Duterte. The Court emphasized that the timing of the alleged crimes—occurring while the Philippines was a State Party—anchors its temporal jurisdiction, which remains unaffected by subsequent withdrawal (ICC, 2024, p. 54; GMA News, 2025). The legal continuity of the Court's jurisdiction despite withdrawal ensures that former State Parties cannot evade accountability simply by terminating their membership.

The ICC's approach is further supported by the principle of non-immunity, which is enshrined in Article 27 of the Rome Statute. This provision categorically removes immunity based on official capacity, whether the individual is a sitting or former head of state (Cassese, 2013, p. 242; ICC, 2019, para. 43). This principle has been firmly upheld in ICC jurisprudence, most notably in the Al-Bashir case, where the Court ruled that customary international law does not recognize head of state

immunity in prosecutions before international criminal tribunals (ICC, 2019, para. 43; Helen Suzman Foundation, 2015). The Al-Bashir decision reaffirmed that the prosecution of senior political figures, including presidents, is permissible under international law, thereby eliminating the long-standing barrier of sovereign immunity in cases involving international crimes.

The Pre-Trial Chamber I of the ICC applied these principles to the Duterte case, concluding that there were reasonable grounds to believe that Duterte was individually responsible, as an indirect co-perpetrator, for crimes against humanity—specifically, murder committed as part of the Philippine "war on drugs" (ICC, 2025, p. 1; Institute of International Legal Studies, 2025, p. 2). The ICC Prosecutor charged Duterte with responsibility for widespread extrajudicial killings, which may qualify as crimes against humanity under Article 7 of the Rome Statute (ICC, 2020, p. 7).

The principle of complementarity, a cornerstone of the ICC's jurisdictional structure, also played a decisive role in the Duterte proceedings. According to Article 17 of the Rome Statute, the ICC only intervenes when national legal systems are unwilling or unable to genuinely investigate or prosecute (Schabas, 2016, p. 112; Human Rights Watch, 2025, p. 8). The ICC concluded that the Philippine judicial system was either incapable or politically unwilling to address the human rights abuses associated with the "war on drugs" (Human Rights Watch, 2025, p. 8; GMA News, 2025). Numerous reports, including those by independent human rights organizations, indicated that national investigations were either superficial or non-existent, and that domestic authorities actively protected senior officials from accountability.

The Philippine Supreme Court, in a significant ruling in 2021, determined that withdrawal from the Rome Statute did not absolve the country of obligations incurred while it was a member, particularly obligations to cooperate with ongoing investigations (Inquirer, 2021). This aligns with Article 127(2) of the Rome Statute, which stipulates that a state's withdrawal does not affect cooperation obligations connected to criminal investigations and proceedings that commenced before the withdrawal became effective (ICC, 2024, p. 54; GMA News, 2025; Institute of International Legal Studies, 2025, p. 2). This decision by the Philippine judiciary was instrumental in clarifying the binding nature of Rome Statute obligations, even post-withdrawal.

Despite repeated jurisdictional challenges from Duterte's defense, the ICC Pre-Trial Chamber upheld the Court's authority over the case. The ICC Prosecutor argued, and the Chamber agreed, that the initiation of a preliminary examination prior to withdrawal preserved the ICC's jurisdiction (GMA News, 2025; ICC, 2025, p. 1). The Philippines' attempt to terminate the Court's authority through withdrawal was thus legally ineffective with respect to ongoing proceedings.

Nonetheless, enforcing ICC arrest warrants remains a major obstacle, particularly when political resistance exists at the national level. Many ICC suspects, including former heads of state, have evaded arrest due to the Court's reliance on state cooperation. The successful arrest and subsequent transfer of Duterte to the ICC's custody in March 2025 (ICC, 2025, p. 1; Institute of International Legal Studies,

2025, p. 1) illustrates that enforcement, although challenging, is not impossible when domestic authorities align with international obligations.

The Duterte case stands as a landmark in the development of international criminal law, offering a concrete example of how the International Criminal Court's (ICC) jurisdiction persists despite state withdrawal and political resistance (Schabas, 2016, p. 189; ICC, 2024, p. 54). It demonstrates the resilience of the ICC's jurisdictional framework, particularly the interplay of temporal, personal, and subject matter jurisdiction. The Court's reliance on Article 127(2) of the Rome Statute effectively neutralizes the argument that a state's withdrawal absolves it of responsibility for crimes committed while it was a party to the Statute (ICC, 2024, p. 54; GMA News, 2025). The Duterte proceedings illustrate the Court's ability to maintain temporal jurisdiction over acts committed during the Philippines' membership period, from 2011 to 2019, regardless of the country's subsequent withdrawal in 2019 (Institute of International Legal Studies, 2025, p. 2).

Furthermore, the case affirms the principle of personal jurisdiction, emphasizing that individuals, including former heads of state, cannot shield themselves behind their official positions (Cassese, 2013, p. 242; ICC, 2019, para. 43). The ICC's reliance on the doctrine of individual criminal responsibility, as codified in Article 25 of the Rome Statute, and the reaffirmation of non-immunity under Article 27, ensure that accountability attaches to persons, not states or offices (Cryer et al., 2019, p. 495; Helen Suzman Foundation, 2015). The Court's jurisprudence in the Al-Bashir case laid essential groundwork for this understanding, which now finds further reinforcement in the Duterte proceedings (ICC, 2019, para. 43). By holding that no official capacity exempts a person from criminal liability, the ICC sends a clear message that power cannot insulate individuals from justice (ICC, 2025, p. 1).

Equally significant is the application of subject matter jurisdiction. The ICC has identified that the alleged crimes committed under Duterte's "war on drugs" policy—primarily extrajudicial killings—may constitute crimes against humanity under Article 7 of the Rome Statute (ICC, 2020, p. 7; Human Rights Watch, 2025, p. 8). This determination ensures that the scale, systematic nature, and contextual elements of these crimes fall squarely within the ICC's mandate (Open Society Justice Initiative, 2016, p. 2; Amnesty International, 2025, p. 4). The Court's careful assessment of the widespread and systematic attacks against civilians contributes to the evolving legal understanding of crimes against humanity, particularly in domestic law enforcement settings rather than traditional armed conflict contexts (ICC, 2025, p. 1).

The Duterte case also serves as a crucial precedent for the operational reach of the ICC in regions where skepticism toward international criminal justice remains prevalent, such as Southeast Asia (Institute of International Legal Studies, 2025, p. 2). It illustrates that the ICC's jurisdiction is not easily undermined by political decisions such as state withdrawal or by claims of domestic jurisdiction that lack genuine investigatory efforts (Inquirer, 2021; GMA News, 2025). The principle of complementarity ensures that the ICC acts only when national systems are demonstrably unwilling or unable to prosecute (Schabas, 2016, p. 112; iResearchNet, 2021). In Duterte's case, the ICC found that Philippine domestic processes did not

meet this threshold, enabling the Court to proceed with its investigation and issuance of arrest warrants (Human Rights Watch, 2025, p. 8).

Despite substantial political pushback, the Duterte case demonstrates that the ICC can function effectively when supported by domestic authorities, as evidenced by Duterte's eventual surrender following the issuance of an arrest warrant (ICC, 2025, p. 1). However, it also highlights a critical challenge in the ICC's enforcement mechanism: the Court relies heavily on the cooperation of states for the arrest and transfer of suspects (Schabas, 2016, p. 189; Amnesty International, 2025, p. 4). Without sufficient international support, particularly from national governments, the ICC's capacity to fulfill its mandate may remain practically limited, despite its strong legal foundation.

Beyond the legal affirmations, this case contributes to the growing body of jurisprudence that strengthens the ICC's legitimacy as an institution capable of addressing international crimes in real, politically sensitive circumstances (Cryer et al., 2019, p. 495; Werle & Jessberger, 2020, p. 120). It further demonstrates that the Court is not merely a symbolic entity but a functioning tribunal capable of securing accountability even in the face of complex enforcement challenges (Schabas, 2016, p. 112; Human Rights Watch, 2025, p. 8).

Moving forward, this case should encourage states to cooperate more actively with the ICC and to strengthen their domestic capacities to prosecute international crimes (iResearchNet, 2021; Open Society Justice Initiative, 2016, p. 2). The case also underscores the necessity for the international community to develop more robust and coordinated enforcement mechanisms, potentially through regional organizations or stronger international legal instruments, to support the ICC's operations, particularly in politically resistant environments (Amnesty International, 2025, p. 4).

Ultimately, the Duterte proceedings reaffirm that the ICC's jurisdictional reach is not constrained by changes in political leadership or national membership status (GMA News, 2025; ICC, 2024, p. 54). The case reinforces the core message of international criminal law: the most serious crimes—those that shock the conscience of humanity—must not go unpunished. Through the consistent and principled application of the Rome Statute, the ICC continues to uphold the global fight against impunity and advances the protection of human dignity (Schabas, 2016, p. 189; Amnesty International, 2025, p. 4). The Duterte case will remain a significant reference point in international criminal law for years to come, not only for its legal implications but also for its impact on the evolving discourse surrounding accountability, state cooperation, and the practical enforcement of international justice..

CONCLUSION

The case of Rodrigo Duterte before the International Criminal Court (ICC) underscores the enduring jurisdiction of the Court over crimes committed while a state was a party to the Rome Statute, irrespective of subsequent withdrawal. This case affirms that neither a change in political leadership nor a state's withdrawal can shield individuals from international accountability, as stipulated under Article 127(2)

and reinforced by the ICC's jurisprudence on non-immunity in Article 27. The Duterte proceedings demonstrate the crucial role of the ICC in ensuring justice when national legal systems are unwilling or unable to genuinely prosecute international crimes. However, the case also highlights continuing challenges in the enforcement of international criminal law, particularly regarding securing state cooperation and overcoming political resistance to arrest and transfer obligations.

The eventual surrender of Duterte to the ICC illustrates the potential effectiveness of international legal mechanisms when supported by domestic authorities and the broader international community. Moving forward, it is essential that states strengthen their commitment to international justice by ensuring full cooperation with the ICC, regardless of their membership status. National judicial systems must also be empowered to prosecute international crimes effectively, in accordance with the principle of complementarity, to reduce dependency on international tribunals. The ICC is likewise encouraged to expand its outreach and capacity-building initiatives to promote broader support and understanding of its mandate. Further legal research should address practical strategies to enhance the enforcement of ICC decisions and to overcome the persistent challenges posed by political resistance and limited international cooperation. Ultimately, the Duterte case reinforces that while the ICC remains a vital guardian of global justice, its success is dependent on collective international support and the genuine political will of states to combat impunity.

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