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Vigilante "Justice": The Need for an International Response to End President Duterte's Lawless Antidrug Campaign in the Philippines

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**VIGILANTE “JUSTICE”: THE NEED FOR
AN INTERNATIONAL RESPONSE TO
END PRESIDENT DUTERTE’S LAWLESS
ANTIDRUG CAMPAIGN IN THE
PHILIPPINES**

*Daniel Sawey**

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I. INTRODUCTION

*"You destroy my country, I'll kill you. And that's a legitimate thing. If you destroy our young children, I'll kill you."*¹

Since his assumption of the office of the President on June 30, 2016, Rodrigo Duterte has waged a bitter campaign against suspected drug users and distributors throughout the Philippines. State-sanctioned violence, stemming from both Filipino police and bands of armed vigilantes, has led to the deaths of approximately 6,000 men, women, and children, as well as the arrest or surrender of one million more.² As the body count continues to rise, Duterte also continues to stand in defiance of requests from leaders throughout the international community, as well as from his own Filipino people, to cease the bloodshed.³

This Comment will address Duterte's antidrug campaign in three parts. The first part will provide a brief overview of the harsh methods, carried out by Filipino police and State-sanctioned vigilantes in order to satisfy Duterte's desire to cleanse his nation of illegal drugs. This part will primarily rely upon first-hand accounts and news reports in order to succinctly convey the suffering endured by the Filipino people over the course of the past several months.

The second part will establish the foundation of applicable International Human Rights Law ("IHRL"), focusing on the Universal Declaration of Human Rights ("Universal Declaration") and the International Convention for Civil and Political Rights ("ICCPR"). This part will also briefly analyze how Duterte's methods

¹ *Rodrigo Duterte interview: Death, Drugs and Diplomacy*, ALJAZEERA (Oct. 16, 2016, 13:06 GMT), <http://www.aljazeera.com/programmes/talktojazeera/2016/10/exclusive-rodrigo-duterte-war-drugs-161015100325799.html>.

² *Martial Law Eyed in War on Drugs*, INQUIRER.NET (Jan. 156, 2016, 12:14 AM), <http://newsinfo.inquirer.net/862468/martial-law-eyed-in-war-on-drugs>.

³ *Full Text: Sen. Leila de Lima Privilege Speech on Drugs, Killings*, INQUIRER.NET (Aug. 2, 2016), 6:51 PM <http://newsinfo.inquirer.net/802151/full-text-leila-de-lima-privilege-speech-drugs-killings>

are in clear violation of many of these key principles of international law.

Finally, the third part will outline several potential courses of action that the international community can, and should, pursue in order to end the violence in the Philippines. This part will first explore mediation and arbitration, two of the least confrontational methods available between Duterte and various representatives from the international community. mediation and arbitration between Duterte and various representatives from the international community.

This part will then progress to a discussion of two options for possible adjudication should mediation and arbitration fail. The first of these options is the involvement, either through trial or through an advisory opinion of the International Court of Justice (“ICJ”). The second of these options involves the prosecution of Duterte by the International Criminal Court (“ICC”).

This part, and ultimately this Comment, will then conclude by recommending United Nations Security Council intervention under its Article VII powers, should all alternative means of resolution prove ineffective. While each of these proposed methods for resolution have their own potential difficulties, as will be discussed later in this Comment, the international community must take some sort of action to put an end to the violence in the Philippines. Too many Filipinos have been unjustly deprived of life and liberty for the rest of the world to sit idly by.

II. DUTERTE’S METHODS

Like many nations around the world, the Philippines has long struggled with the issue of drug abuse. Out of approximately one hundred million Filipino citizens, upwards of 1.3 million are drug users.⁴ This is a tremendous figure, and serves as the primary reason

⁴ Euan McKirdy, *Duterte’s Crackdown: 6 Stories from the Frontlines*, CNN (Sept. 3, 2016, 11:20 PM), <http://www.cnn.com/2016/08/28/asia/philippines-voices-drugs-war/>.

why Duterte based his campaign on his desire to cleanse the country of its drug troubles.⁵ However, instead of bringing about an end to the plethora of violence and untold horrors that stem from drug abuse, Duterte has only made things significantly worse through his open acceptance of vigilante and extrajudicial killings.

“If (a criminal) fights, and he fights to the death, you can kill him . . . Please feel free to call us, the police, or do it yourself if you have the gun . . . you have my support.”⁶ This quote, originating from a speech given by Duterte during the beginning stages of his drug crackdown, is a fairly representative sample of Duterte’s willingness to encourage state-sanctioned violence towards suspected drug abusers. Lawyers and scholars across the globe should be able to identify this rhetoric as condoning clear violations of fundamental principles of due process. However, what has been the actual physical and emotional impact of Duterte’s open hostility towards drug offenders on the people of the Philippines?

Simply stated, Duterte’s antidrug campaign has had an almost indescribably deleterious impact on countless thousands of Filipino citizens. Indeed, as one Filipino citizen described, Duterte’s openly harsh stance towards drug users and abusers has led “the cops [to] feel they can act without fear of retribution, official or otherwise.”⁷ This same individual was forced to stand helplessly to the side as police forced themselves into her home in pursuit of her brother, a drug user.⁸ The police placed her brother in handcuffs and proceeded to shoot her brother in the head, execution-style, alongside three other men.⁹

In addition to storming private residences, Filipino police have also taken their violence to the streets. Suspected drug dealers have been publicly gunned down by police, with their bodies often

⁵ *Rodrigo Duterte Interview: Death, Drugs and Diplomacy*, ALJAZEERA (Oct. 16, 2016, 13:06 GMT), <http://www.aljazeera.com/programmes/talktojazeera/2016/10/exclusive-rodrigo-duterte-war-drugs-161015100325799.html>.

⁶ McKirdy, *supra* note 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

left out in the open to rot and serve as an ominous warning to other drug dealers in the area.¹⁰ Indeed, one of the first images to bring Duterte's antidrug campaign to international attention featured the lifeless body of a suspected drug pusher cradled in the arms of his grieving partner.¹¹ Beside the body stood a sign stating "Drug Pusher Huwang Tularan," which is translated as "I am a drug pusher, don't emulate."¹²

Besides the rampant killings, jails around the Philippines have become inundated with inmates. For example, in September 2016, the Quezon City jail, which was constructed to hold approximately 800 inmates, instead housed over 4,000 individuals, ranging from teenagers to the elderly.¹³ Due to the overcrowding, these prisoners have been forced to sleep in rotations, if they are even able to find some crevice to rest their weary heads in the first place.¹⁴

From extrajudicial killings to mass incarceration, individuals across the Philippines are terrified for the safety of themselves and their families. Any potentially incriminating statement could very well result in a Filipino citizen staring down the barrel of an armed vigilante or overzealous police officer's gun.¹⁵ After witnessing the death of her brother at the hands of police, as was described above, "Janie" (actual name withheld) felt little but despair. "My God, Duterte, stop doing this . . . You don't have the right to take the lives of these people."¹⁶

¹⁰ Raffy Lerma, *The Story Behind the Viral Photo*, INQUIRER.NET (July 31, 2016, 12:02 AM), <http://opinion.inquirer.net/96101/the-story-behind-the-viral-photo>.

¹¹ *Id.*

¹² *Id.*

¹³ McKirdy, *supra* note 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

III. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW: THE
UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Having briefly shed light upon the horrendous traumas inflicted against the Filipino people, this Comment will now seek to establish how Duterte's antidrug campaign directly flouts international law. First, this part will classify Duterte's actions as falling within the scope of International Human Rights Law, as distinguished from International Humanitarian Law, and will explain the essential differences between the two. This part will then highlight two specific sources within the scope of International Human Rights Law and describe how Duterte's crackdown is in open violation of many of its most basic precepts.

Although Duterte's crackdown on drug users in the Philippines has frequently been labeled a "war on drugs," few legal practitioners would argue that Duterte's actions amount to a "war" or "armed conflict" within the scope of International Humanitarian Law ("IHL"), otherwise known as the Law of Armed Conflict ("LOAC").¹⁷ Under IHL, only two potential engagements can be classified as "armed conflicts" under international law.¹⁸ The first, an International Armed Conflict ("IAC"), only occurs between two or more States, such as the United States' (and a whole host of other States') war against Nazi Germany.¹⁹ The second, a Non-International Armed Conflict ("NIAC"), occurs between a State and

¹⁷ The core of IHL is comprised of the four Geneva Conventions, as well as Additional Protocols I and II. These treaties apply only during periods of armed conflict, and seek to (1) mitigate the pain and suffering inflicted by opposing armies, (2) prevent unnecessary civilian casualties, and (3) protect those individuals who are no longer taking part in the hostilities, including prisoners of war. *See The Geneva Conventions of 1949 and their Additional Protocols*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Jan. 1, 2014), <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>. (providing an introduction to these treaties).

¹⁸ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14 (June 27).

¹⁹ *Id.*

some organized group, such as the United States' long-running battle against the Al-Qaeda terrorist organization.²⁰

Duterte's drug campaign is neither an IAC against a foreign State nor a NIAC against some organized drug cartel or syndicate; rather, it is a purely internal campaign directed against individual persons suspected of abusing or distributing drugs. Therefore, IHL will not govern Duterte's actions and policies regarding his crackdown on drugs. Instead, International Human Rights Law ("IHRL") will serve as the legal basis for evaluating Duterte's conduct in the realm of international law.²¹

This distinction is key. Under IHL, a belligerent may, subject to limitations imposed by the Geneva Conventions, use lethal force to both combat enemy forces and achieve desired objectives.²² Conversely, under IHRL, lethal force may only be used when absolutely necessary, i.e. in self-defense.²³ Additionally, as will be further discussed below, suspected criminals are entitled to a host of

²⁰ *Id.*

²¹ Unlike IHL, which applies only during times of war, IHRL governs the day-to-day interactions between States and their respective citizens, and serves to guarantee individuals across the world certain fundamental and inalienable rights. See *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>. (providing an introduction to the history and development of IHRL).

²² As outlined by the Geneva Conventions, military operations under the umbrella of IHL are governed by four basic principles: (a) proportionality, (b) distinction, (c) necessity, and (d) unnecessary suffering. Although militaries may not explicitly target civilians, they may legally inflict civilian casualties should they arise from an operation that was necessary to achieving a legitimate military objective and proportional to the importance of that objective.

²³ See, e.g., Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Provision 9 ("Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.").

due process protections prior to deprivation of life or liberty, as specified by several IHRL treaties and declarations.

Of those applicable IHRL sources, this Comment will highlight key provisions of the Universal Declaration of Human Rights (“Universal Declaration”) and the International Covenant on Civil and Political Rights (“ICCPR”). Both sources treat due process with utmost sanctity, something which Duterte has openly and repeatedly failed to do in his campaign against suspected drug criminals in the Philippines.

A. Universal Declaration of Human Rights

The Universal Declaration was proclaimed by the United Nations General Assembly in Paris on December 10, 1948, just a few years after the conclusion of the bloodiest and most costly war ever waged in human history.²⁴ The United Nations has described the Universal Declaration as having established a “common standard of achievements for all peoples and all nations,” as well as established, “for the first time, fundamental human rights to be universally protected . . .”²⁵

The Universal Declaration established several basic guarantees of due process, which its signatory States agreed to extend to their respective citizens. Article 3 of the Universal Declaration states, “[e]veryone has the right to life, liberty and the security of person.”²⁶ The Universal Declaration features several other pertinent provisions, which are listed in their entirety in the notes following this comment.²⁷

²⁴ *Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/>.

²⁵ *Id.*

²⁶ Universal Declaration of Human Rights, art. 3, Dec. 10, 1948, U.N. Doc. A/777 [hereinafter Universal Declaration]: (“Everyone has the right to life, liberty and the security of person.”).

²⁷ Universal Declaration art. 5: (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); Universal Declaration, art. 8 (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution

The Philippines has long been party to the Universal Declaration, having helped craft the declaration in 1948.²⁸ However, Duterte's antidrug campaign has repeatedly violated several of the Universal Declaration's most basic precepts. For example, as described in the preceding section of this Comment, Filipino citizens across the country have been denied access to the courts, in favor of summary executions in homes and in the streets.

B. International Covenant on Civil and Political Rights

The ICCPR was adopted by the United Nations General Assembly on December 16, 1966, almost twenty years after the adoption of the Universal Declaration.²⁹ The Philippines signed the ICCPR on December 19, 1966, and ratified the treaty on October 23, 1986.³⁰ The treaty is divided into several sections, which will now be briefly described.

Part II of the ICCPR establishes the responsibilities the treaty obligations owed by the member States.³¹ Part III of the ICCPR

or by law."); Universal Declaration, art. 9 ("No one shall be subjected to arbitrary arrest, detention or exile."); Universal Declaration, art. 10 ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."); Universal Declaration, art. 11(1) ("Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."); Universal Declaration, art. 12 ("No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.")

²⁸ *PHL among founding fathers of new UN Declaration on Human Rights Education and Training*, OFFICIAL GAZETTE (Mar. 30, 2011), <http://www.officialgazette.gov.ph/2011/03/30/phl-among-founding-fathers-of-new-un-declaration-on-human-rights-education-and-training/>.

²⁹ International Covenant on Civil and Political Rights, art. 2(1), adopted Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

³⁰ United Nations Human Rights Office of the High Commissioner, Philippines Ratification Status of Human Rights Treaties, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN.

³¹ 8070, 999 U.N.T.S. 171 [hereinafter ICCPR]: Each State Party to the present Covenant undertakes:

establishes the various due process rights guaranteed by the treaty; those provisions most pertinent to Duterte's antidrug campaign are listed in the notes following this Comment.³² Part IV of the ICCPR

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. ICCPR, art. 2(1). See also ICCPR, art. 3 ("The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.).

(c) To ensure that the competent authorities shall enforce such remedies when granted.

³² ICCPR art. 6(1): ("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."); ICCPR, art. 6(2) ("In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant . . . This penalty can only be carried out pursuant to a final judgment rendered by a competent court."); ICCPR, art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."); ICCPR, art. 9(1) ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."); ICCPR, art. 9(2) ("Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."); ICCPR, art. 9(3) ("Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."); ICCPR, art. 9(4) ("Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."); ICCPR, art. 9(5) ("Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."); ICCPR, art. 10(1) ("All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."); ICCPR, art. 14(1) ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."); ICCPR, art. 14(2) ("Everyone charged with a criminal offence

establishes a system of review of member States' compliance with the treaty, with pertinent provisions listed below.³³

shall have the right to be presumed innocent until proven guilty according to law.”); ICCPR, art. 14(3) (“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equity: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and so obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (g) Not to be compelled to testify against himself or to confess guilt.”); ICCPR, art. 14(5) (“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”); ICCPR, art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”).

³³ ICCPR, art. 40(1) (“The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned; . . . “); ICCPR, art. 41(1) (“A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.”); ICCPR, art. 42(1)(a) (“If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.”); ICCPR, art. 44 (“The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.”).

When questioned about the brutality of his campaign, Duterte has often emphatically stated that such violent measures, including the potential declaration of martial law, were and are necessary in order to combat the Philippines' rampant drug epidemic.³⁴ It should be noted that this argument is not entirely without merit; in fact, the ICCPR contains such a "public emergency" provision in Article 4, which states:

(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law . . .³⁵

As many who have witnessed the effects of illicit drugs can undoubtedly attest, illicit drugs have the potential to significantly harm communities if left unchecked. However, despite any real or conceived danger posed by drugs in the Philippines, Section 2 of Article 4 of the ICCPR contains the following caveat: "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."³⁶ As discussed above, signatories to the ICCPR recognize every person's right to life, which may not be deprived without adequate process. Drugs may be a rampant issue throughout the Philippines, but that does not give Duterte *cart blanche* to take the lives of thousands of individuals, as well as imprison thousands more, without providing each and every one of them opportunities to have their respective days in court.

³⁴ *Martial Law Eyed in War on Drugs*, INQUIRER.NET (Jan. 15, 2016, 12:14 AM), <http://newsinfo.inquirer.net/862468/martial-law-eyed-in-war-on-drugs>.

³⁵ ICCPR, art. 4.

³⁶ ICCPR, art. 4(2.)

IV. LEGAL RECOURSE FOR THE INTERNATIONAL COMMUNITY:
MEDIATION, ADJUDICATION, INTERVENTION

Duterte's actions are clear and egregious violations of the above principles of IHRL. However, for the sake of the many thousands of Filipinos suffering from the rampant violence and bloodshed, it is not enough to simply recognize and acknowledge these violations. Rather, the international community needs to take affirmative action in order to bring Duterte's crackdown to an end. This action may take one of three forms: (1) arbitration and mediation; (2) adjudication by an international court; or, in the event that the first two options fail, (3) intervention by the UN Security Council.

A. Mediation and Arbitration

The first course of action that should be pursued by the international community should be some form of arbitration or mediation with Duterte. Over the past several years, mediation, or arbitration with a third-party arbiter, has seen a drastic increase in use by the international community to resolve disputes between international parties.³⁷

The primary advantage of mediation and arbitration, and what could potentially coerce Duterte into participating, is the control the parties have over the process. First, unlike with traditional courts, the parties, should they agree, will make the decision as to the individual(s) who will hear their case. For example, in order to incentivize Duterte to agree to arbitration, the parties may agree to have an arbitrator from Southeast Asia. Such an arbitrator may have direct knowledge of the Philippines' drug problems, and thus may be viewed by Duterte as potentially sympathetic to his cause.

Second, in addition to the parties deciding upon the individual who will arbitrate the dispute, the parties also have

³⁷ See, e.g., Gary Born and Wendy Miles, *Global Trends in International Arbitration*, WILMER CUTLER PICKERING HALE AND DORR LLP, http://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/GlobalTrends_InternationalArbitration.pdf.

significant latitude in deciding which rules will apply to their case. Again, to further incentivize Duterte to come to the negotiating table, the parties may agree to use Filipino law to govern the dispute, or any other law which Duterte may see as potentially advantageous to his position.

However, in order for the parties to reap these advantages, both parties must be willing to engage in the process. Unfortunately, this will likely prove to be the fatal flaw for this avenue of resolution, due to Duterte's ardent belief in the justness and necessity of his antidrug campaign. Indeed, time and time again the stubborn Duterte has proclaimed the righteousness of his cause, and as such he is unlikely to waiver from this belief.³⁸

B. Adjudication

Should the above mediation techniques fail to bring an end to the violence, the international community should then seek recourse from one of two international courts: the International Court of Justice ("ICJ") or the International Criminal Court ("ICC").

1. International Court of Justice.

As established in Article 92 of the UN Charter, "The International Court of Justice shall be the principal judicial organ of the United Nations. . . ."³⁹ It offers a forum for adjudication of a whole host of international issues, as outlined in the Statute for the International Court of Justice.⁴⁰ Additionally, the Court will employ a

³⁸ *Rodrigo Duterte interview: Death, Drugs and Diplomacy*, ALJAZEERA (Oct. 16, 2016, 13:06 GMT), <http://www.aljazeera.com/programmes/talktojazeera/2016/10/exclusive-rodrigo-duterte-war-drugs-161015100325799.html>.

³⁹ U.N. Charter, art. 92.

⁴⁰ (1) The Jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

(2) The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would

host of measures in order to reach a fair decision.⁴¹ Furthermore, only states may bring suits before the Court.⁴²

Since its inception, the ICJ has decided several influential cases. For example, in the *Nicaragua* case (referenced above), the ICJ established several parameters for defining armed conflict.⁴³ More recently, the Court has passed judgment on a case between Croatia and Serbia involving the applicability of the Convention on the Prevention and Punishment of the Crime of Genocide.⁴⁴

However, before it may actually decide a case, the ICJ must first establish its jurisdiction over the parties, which could pose a significant issue regarding Duterte's drug campaign. In order for the ICJ to have jurisdiction over a case, both parties must consent to such jurisdiction.⁴⁵ Should one party refuse to recognize ICJ jurisdiction, the Court's decision would be stripped of its intended impact, and thus rendered moot. So, should Duterte refuse to

constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

(6) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. Statute of the International Court of Justice, art. 36, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 933 [hereinafter: ICJ Statute].

⁴¹ The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. ICJ Statute, art. 38(1).

⁴² Only states may be parties in cases before the Court. ICJ Statute, art. 34.

⁴³ *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27).

⁴⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, Feb. 3, 2015.

⁴⁵ See U.N. Charter, art. 36(3) ("The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.").

consent to ICJ jurisdiction pertaining to his drug campaign, the Court would lack the authority necessary to issue an opinion.

In addition to this jurisdictional concern, and as stated above, the ICJ has jurisdiction only over States, i.e. it may not exercise jurisdiction over specific individuals. Although Duterte is the President and leader of the Philippines, the Court may potentially not wish to exercise jurisdiction over the entirety of the Philippines, as to do so may seem as if the Court was indicting the entire country, Duterte and victims alike.

As stated in Article 96 of the UN Charter, the ICJ has the power to do more than adjudicate cases. In fact, should the ICJ fail to secure jurisdiction through consent, or should the ICJ elect not to assert jurisdiction over the entirety of the Filipino State, the ICJ may instead issue an advisory opinion at the request of the General Assembly or the Security Council.⁴⁶

ICJ advisory opinions have addressed several important international issues, including the Court's 2004 advisory opinion concerning the legality of an Israeli-constructed wall in Palestine.⁴⁷ However, as can be easily inferred by their name, advisory opinions are not binding. They are devoid of substantive legal impact, and a hard man like Duterte would likely view an ICJ advisory opinion with the same little regard as a reckless motorist views a speed limit sign on an empty, open-country, road.

2. International Criminal Court

The ICJ is not the only international judicial body to which the international community may turn for a resolution to the Philippine humanitarian crisis. The ICC was created by the Rome Statute in 2002, for the purpose of prosecuting individuals suspected

⁴⁶ U.N. Charter, art. 96(1): ("The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.")

⁴⁷ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion, July 9, 2004.

of perpetrating the major crimes of international criminal law.⁴⁸ These crimes, which are defined by the Rome Statute, include genocide, crimes against humanity, war crimes, and crimes of aggression.⁴⁹ Over the course of its nearly fifteen years of existence, the Court has tried several dozen cases, and currently has ten cases under investigation.⁵⁰

The ICC presents a significant advantage over the ICJ regarding its jurisdiction. Unlike the ICJ, which may only hear disputes between States, the ICC may only assert its authority over individual persons.⁵¹ Therefore, the Court would be better able to focus attention towards Duterte himself rather than the entirety of the Philippines, provided that the Court could establish requisite jurisdiction.

Regarding jurisdiction, the ICC would likely be able to assert jurisdiction over Duterte for three reasons. First, the Philippines is one of the 124 States party to the Rome Statute, having ratified the multilateral treaty in 2011.⁵² Therefore, all Filipino people, including President Duterte, fall within the umbrella of ICC jurisdiction.

⁴⁸ The Rome Statute of the International Criminal Court [hereinafter Rome Statute], art. 1, July 17, 1998, 2187 UNTS 3, *available at*: <http://www.icc-cpi.int>: (“An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes on international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”)

⁴⁹ The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression. Rome Statute, art. 5(1).

⁵⁰ *Situations Under Investigation*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/Pages/Home.aspx><https://www.icc-cpi.int/Pages/Home.aspx> (listing the current situations that are under investigation).

⁵¹ Rome Statute, art. 1.

⁵² *Philippines Ratifies the Rome Statute of the International Criminal Court*, UNITED NATIONS (Aug. 30, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39416#.WJ0WpvkrI2w>.

Second, the actions committed by Philippine police and vigilantes, pursuant to Duterte's dictates, can arguably constitute crimes against humanity, which the ICC defines as "serious violations committed as part of a large-scale attack against any civilian population."⁵³ According to the Rome Statute, there are several forms of "crimes against humanity," which include: murder, imprisonment, torture, and enforced disappearance.⁵⁴ The Duterte regime has employed such acts throughout the country, as part of a systematic attempt to eradicate drug use and distribution.

Third, it is unlikely that a national court would be able to effectively adjudicate a case of this magnitude. As established by the Rome Statute, the ICC has only secondary jurisdiction, meaning that the Court may only exercise its jurisdiction if a national court is unable or unwilling to adjudicate the case.⁵⁵ As Duterte is the head of the Filipino government, a Filipino court would likely be hard-pressed to successfully hear a case against him concerning his grave affronts of international human rights law. Additionally, as Duterte's antidrug campaign is largely a domestic affair, another country's domestic courts would likely also exhibit great difficulty in securing the firebrand leader's presence within its courts.

Despite the ICC's potential ability to exercise jurisdiction over Duterte, there are two problems associated with the Court's potential action. First, the ICC has no actual authority or ability to carry out sentences.⁵⁶ Rather, the Court is wholly reliant upon the

⁵³ *How the Court Works*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/about/how-the-court-works/Pages/default.aspx#legal> Process (last visited Nov. 19, 2016).

⁵⁴ For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (i) Enforced disappearance of persons; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Rome Statute, art. 7(1).

⁵⁵ Rome Statute, art. 1.

⁵⁶ Upon rendering a guilty verdict, the ICC may, under the Rome Statute, institute a number of potential punishments, including prison sentences, fines, and

international community to enforce its judgments. Therefore, while the ICC may find Duterte guilty of committing crimes against humanity, enforcement of the Court's decision and sentence is wholly dependent upon either (a) Duterte's willing cooperation, which is incredibly unlikely, or (b) the international community's willingness to enforce the Court's decision through potentially violent means.

A second, and perhaps more important, concern is that it remains to be seen how long the Philippines will continue to remain party to the Rome Statute. On 16 November 2016, Russian President Vladimir Putin officially withdrew his country's support of the Rome Statute, placing Russia outside the scope of the ICC's jurisdiction.⁵⁷ Duterte may very well follow Russia's path, and also elect to withdraw the Philippines from ICC jurisdiction, thus placing him outside of the Court's ability to exercise its prosecution powers.⁵⁸

C. Intervention

Ultimately, should arbitration, mediation, and adjudication each fail to effectively put an end to the rampant violence plaguing the Philippines, the UN Security Council should seek to take a proactive role in ending Duterte's campaign. First, this section will briefly discuss the principle of non-intervention, and how it should not apply to Duterte's actions. Next, this section will establish the Security Council's authority to act, pursuant to the Charter of the United Nations. Finally, this section will explore possible avenues of Security Council action.

property forfeitures. *See* Rome Statute, art. 77. However, in order to carry out such punishments, the ICC is wholly dependent on the cooperation of Rome Statute member States. *See, e.g.*, Rome Statute, art. 1(a) ("A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court *their willingness to accept* sentenced persons.").

⁵⁷ *See* Ivan Nechepurenko and Nick Cumming-Bruce, *Russia Cuts Ties with International Criminal Court, Calling It 'One Sided'*, THE NEW YORK TIMES (Nov. 16, 2016), <https://www.nytimes.com/2016/11/17/world/europe/russia-withdraws-from-international-criminal-court-calling-it-one-sided.html>.

⁵⁸ Neil Jerome Morales and Stephanie van den Berg, *Philippines' Duterte says may follow Russia's withdrawal from 'useless' ICC*, REUTERS (Nov. 17, 2016, 11:54 AM), <http://www.reuters.com/article/us-philippines-duterte-icc-idUSKBN13C0GS>.

The international community has long recognized the principle of non-intervention, which frowns upon any effort by a State to compromise the sovereignty of another State. This principle was codified in Article 2 of the UN Charter, which states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.⁵⁹

Based on the principle of non-intervention, Duterte would doubtlessly argue that the Philippines' drug problem is "essentially within the domestic jurisdiction" of the country. Therefore, Duterte should be able to employ whatever methods he sees fit to combat the nation's drug epidemic, free from international interference. Indeed, as discussed above, the essentially domestic nature of Duterte's drug campaign could prevent another State's courts from exercising jurisdiction to hear a case concerning Duterte's human rights abuses.

However, the language in Article 2 does not preclude the involvement of the Security Council, despite the domestic nature of the incident. The procedures which govern potential Security Council involvement are listed within Chapter VII of the UN Charter. As stated in Article 39 of Chapter VII:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁶⁰

President Duterte's war on drugs constitutes both a threat to and a breach of the peace as outlined in this article. Since his

⁵⁹ U.N. Charter, art. 2.

⁶⁰ U.N. Charter, art. 39.

assumption of the presidency, countless thousands of Philippine citizens have suffered at the hands of an overzealous police state. In addition, such rampant violence could potentially endanger international travelers coming to the Philippines. Furthermore, Duterte's campaign could potentially influence other leaders in the region to begin their own violent campaigns against drugs.⁶¹

In sum, the Security Council arguably has the authority under the Charter of the United Nations to initiate measures against Duterte. Furthermore, the Security Council has a wide latitude of potential options when determining how to best achieve peace. First, the Security Council may elect to employ nonviolent means, such as economic sanctions and communications interruptions, in order to secure stability in the country. Specifically, Article 41 states:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.⁶²

Furthermore, the Security Council's potential measures are not limited to these relatively peaceful measures. In fact, the Security Council has the discretion to authorize other UN member States to use military force to secure the peace. Specifically, Article 42 states:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

⁶¹ *Indonesian Anti-drugs Chief Supports Implementing Rodrigo Duterte's Philippine-style Drug War*, ABC News (Sept. 7, 2016, 3:37 PM), <http://www.abc.net.au/news/2016-09-08/indonesian-official-wants-philippine-style-drug-war/7824696>.

⁶² U.N. Charter, art. 41.

Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.⁶³

In 2011, the Security Council intervened in Libya regarding a situation that was also arguably an internal matter. In response to the many injustices inflicted upon the Libyan people at the hands of notorious despot Muammar Gaddafi, the Security Council elected to enforce a no-fly zone over Libyan airspace and permitted U.N. member states, namely the United States, to participate in strategic bombing campaigns of Libyan military targets.⁶⁴ Although Libya continues to face instability, Security Council involvement did ultimately result in the death of Gaddafi in the Libyan city of Sirte on October 20, 2011.⁶⁵

However, Security Council action could pose several significant potential problems. First and foremost, in order for the Security Council to be able to take action, it must receive consent, either explicitly or implicitly through abstention, from each of the permanent five members: the United States, the United Kingdom, France, Russia, and China.⁶⁶ Each of these five countries wields veto power, and could unilaterally impede Security Council operations should they choose to exercise that power.⁶⁷

⁶³ U.N. Charter, art. 42.

⁶⁴ United Nations Security Council, Resolution 1973, S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁶⁵ Martin Asser, *The Muammar Gaddafi Story*, BBC NEWS (Oct. 21, 2011), <http://www.bbc.com/news/world-africa-12688033>.

⁶⁶ The Security Council shall consist of fifteen members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. U.N. Charter, art. 23(1).

⁶⁷ Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting. U.N. Charter, art. 27(3).

While the first three listed countries may be more receptive to possible Security Council action regarding the Philippines, China would likely oppose any potential Security Council interference with its newly-budding relationship with Duterte and the Philippines.⁶⁸ Additionally, as the Philippines lies relatively close to the Chinese mainland, Chinese officials would likely view potential military operations as a possible threat towards Chinese interests and Chinese sovereignty.⁶⁹ Again, a Chinese veto would, as outlined in the U.N. Charter, essentially strip the Security Council of its ability to intervene on behalf of the embattled people of the Philippines.

Additionally, members of the international community would need to consider a potential Philippine military response towards acts which could be perceived as attacks on Philippine sovereignty. By his very nature, Duterte would likely not submissively accept intervention by the international community; more likely, Duterte would actively combat any attempt by foreign States to intervene in the Philippines, thus leading to greater suffering by the Filipino people. Additionally, should one State attempt to unilaterally use force to stop Duterte's drug campaign, Duterte would likely invoke Article 51 of the U.N. Charter as a legal basis for using deadly force in self-defense.⁷⁰

⁶⁸ For an insight into the Philippines' shifting of loyalties away from the United States and towards China, *see*, for example, Ben Blanchard, *Duterte Aligns Philippines with China, Says U.S. Has Lost*, REUTERS (Oct. 20, 2016, 7:39 PM), <http://www.reuters.com/article/us-china-philippines-idUSKCN12K0AS>.

⁶⁹ As demonstrated by its current hostility towards any outside interference in the South China Sea, China is notoriously protective of its national interests and its borders. For an overview of China's role in the South China Sea dispute, *see, e.g.*, Howard W. French, *What's Behind Beijing's Drive to Control the South China Sea?*, THE GUARDIAN (July 28, 2015, 1:00 AM), <https://www.theguardian.com/world/2015/jul/28/whats-behind-beijings-drive-control-south-china-sea-hainan>.

⁷⁰ Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems

Despite all of these concerns, it would behoove the Security Council to at least attempt to take action. Too many lives and liberties are at stake for the member States to simply sweep Duterte's lawless actions under the rug. Although this Author is admittedly ignorant of the optimal Security Council action necessary to stop further violence, those individuals from the Security Council's member States with requisite experience should be called on to craft a workable solution.

V. CONCLUSION

"Double your efforts. Triple them, if need be. We will not stop until the last drug lord, the last financier, and the last pusher have surrendered or put behind bars -- or below the ground, if they so wish[.]"⁷¹ Over the last excruciating days, weeks, and months this harsh rhetoric, uttered by Duterte during his State of the Nation address on July 25, 2016, has served as the impetus for incredible violence committed by the Philippine state towards thousands of its citizens.

Drugs are undoubtedly a scourge. They strip the body of its health, as well as the mind of its cognitive function. Drugs tear families apart, and are the cause of a significant percentage of the world's violent crime. The people of the Philippines have undoubtedly experienced the many deleterious effects associated with the abuse of drugs. However, despite President Duterte's ardent beliefs to the contrary, the answer to this dilemma is not to confront one human tragedy with another.

As outlined by the Universal Declaration of Human Rights and the ICCPR, every individual is entitled to the basic precepts of due process, including a right to not be summarily shot in the streets by roving gangs of police and vigilantes. When those due process rights are unilaterally denied by an overzealous executive, it is the duty of the international community to respond in such a way as to

necessary in order to maintain or restore the international peace and security. U.N. Charter, art. 51.

⁷¹ McKirdy, *supra* note 4.

cease the violations, and bring about the restoration of those rights. The first step in this process should be an attempt to arbitrate or mediate with Duterte, through means which may coerce Duterte into sitting at the table.

Should this measure fail, the international community should next seek to adjudicate the matter before the ICJ, which has the authority under the UN Charter to both adjudicate against Duterte's actions as well as issue an advisory opinion detailing how Duterte is in the wrong. Additionally, the international community may also seek to adjudicate Duterte's crimes against humanity before the ICC.

Finally, should mediation, arbitration, and adjudication fail to achieve peace, the Security Council should intervene against Duterte's antidrug campaign. In the case of the Philippines, the Security Council should seek, through means specified in the Charter of the United Nations, to put an end to the suffering of untold thousands of Filipinos, who have watched their loved ones be brutally gunned down in the streets and locked away in filthy, overcrowding jail cells. The violence in the Philippines is a human tragedy that continues to escalate, and Duterte must be stopped before more lives can be irreparably harmed by his naked aggression and wanton disregard for fundamental precepts of international law.