

Philippines: The International Criminal Court and Marcos Jr.

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Established in 2002 as a permanent international tribunal to promote the rule of law, ensure the protection of human rights, and punish serious offenses like genocide, aggression, and crimes against humanity, the International Criminal Court (ICC) today is struggling to assert its role in a world that now questions the legitimacy of institutions associated with globalization.

The ICC's main problem is that it lacks the power to enforce its own rulings. It has no police force to carry out arrest warrants issued for individuals it has charged. Without a multinational task force that can be assembled from the resources provided by its member states, it must rely on the voluntary cooperation of individual state parties in whose territories it has to do its work.

Yet, despite this grave limitation, it stands its ground, heroically doing what it needs to do as a crucial cornerstone in the unfinished edifice of global law and governance. Without the support of big nations like the United States, China, Russia, and India—which have refused to become state parties to the Rome Statute—the ICC's powers remain basically moral. It draws its will to carry out its mandate from the support provided by its 123 member states.

But, as though getting the big powers to sign up were not hard enough, two states have recently withdrawn their ICC memberships—Burundi and the Philippines. Two others, South Africa and Gambia, have also signified their intention to leave. The withdrawal of Burundi, probably the world's poorest country and one that has been wracked by ethnic divisions and a succession of corrupt military regimes, may not have come as a surprise. The ICC has been accused of targeting mostly African human rights violators.

It is the withdrawal of the Philippines that has caused considerable alarm both inside and outside the country. We became an ICC member state on Nov. 1, 2011, after an inspired campaign by human rights advocates to get the government to sign up.

As an active and consistent participant in the crafting of a rules-based world order founded on respect for human rights, we have justly taken pride in our readiness to assume our responsibilities as a member of the community of nations. We were there at the drafting of the Universal Declaration of Human Rights and at the founding of the United Nations. Our parliamentarians have been at the forefront of regional initiatives to create and promote institutions that bridge the pluralism of legal systems.

And to top it all, our government nominated Filipino legal luminaries like the late senator Miriam Defensor Santiago and former UP law dean Raul Pangalangan to the ICC. Both got the endorsement of the majority of the ICC member states. But while Santiago later opted not to take up the post, Pangalangan completed an impressive six-year term, the first Filipino to serve in the ICC as a judge.

It, therefore, seems out of character for the Philippines to suddenly turn its back on an international

covenant just to please a quirky head of state. There is, after all, the Senate, an autonomous body that holds the power to ratify international agreements, and then there is the Supreme Court. Both are known to be zealous guardians of the separation of powers.

Alas, the presumption of a modern political system capable of checking the excesses of its parts was proven wrong when the Senate majority chose not to question the executive's action, and the Supreme Court decided to uphold the legality of then President Rodrigo Duterte's withdrawal from the ICC on the ground that the issue had become moot and academic.

First announced by Duterte in 2018 in a moment of pique, the country's notice of withdrawal from the Rome Statute was finally accepted on March 17, 2019. This meant that the ICC lost jurisdiction over alleged crimes committed in the Philippines from that date onward. But it retained jurisdiction over crimes that occurred from Nov. 1, 2011 (when it became a signatory) to March 16, 2019 (its last day as a member state of the ICC).

In his bid to stop the ICC from proceeding with its investigation of the situation in the Philippines, former justice secretary (now Solicitor General) Menardo Guevarra wisely chose to focus on the issue of complementarity instead of arguing the ICC's outright lack of jurisdiction because we were no longer a member. In so doing, he earned the right to present proof that the country was willing and capable of doing its own investigation of the alleged crimes. His request for the ICC to postpone its investigation was granted.

A year has passed, and Duterte is no longer president. Last Jan. 26, the ICC announced that it was allowing the resumption of its investigation of the Philippine situation on the ground that it "is not satisfied that the Philippines is undertaking relevant investigations that would warrant a deferral of the Court's investigations on the basis of the complementarity principle."

While President Marcos Jr. has previously said he has no intention of reviving the country's ICC membership, it is now his call whether his administration will cooperate with the ICC or not. Guevarra says he will appeal the ICC decision. But his successor at the DOJ, Justice Secretary Jesus Crispin Remulla, has struck a more combative note.

How will Mr. Marcos, who has so far spent most of his time in office trying to win international goodwill, handle the request for cooperation from the ICC? Will he be the modern statesman he aspires to be and defer to the ICC, or will he be a traditional power player and protect his still influential predecessor?

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