

Utrecht, January 1, 2019

The incitement to genocide by Mr. Donald J. Trump, president of the USA,
with particular focus on the Philippines.

1. Background

On February 8, 2018, the prosecutor of the International Criminal Court (ICC), Mrs. Fatou Bensouda, declared she had decided to open a preliminary examination of crimes allegedly committed in the context of the "war on drugs" campaign launched by the Government of the Philippines. Since 1 July 2016, the day of the start of the administration of Philippine president Rodrigo Duterte, thousands of persons had been killed in that country for reasons related to their involvement in illegal drug use or dealing, many by extra-judicial killings in the course of police anti-drug operations.

The preliminary examination is a process for the prosecutor to determine whether there is a reasonable basis to proceed with an investigation, considering issues of jurisdiction, admissibility and the interests of justice. The ICC would have jurisdiction over genocide, crimes against humanity and war crimes if committed on the territory of the Philippines or by its nationals. The prosecutor will give consideration to all submissions and views conveyed to her during the course of the preliminary examination.

The Drugs Peace Institute (DPI) conveyed its view that the killings mentioned above constitute the crime of genocide. The DPI equally submitted that the United Nations-units (UN-units) competent for international drug control policy formulation and implementation do incite - since the adoption of the 1961 Single Convention on Narcotic Drugs (SCND) - to this genocide. This incitement is a crime in itself. The DPI therefore holds that it is in the interest of justice that the competent UN-units mentioned be included in the preliminary examination and that if the prosecutor determines that there exists a reasonable basis to proceed with an investigation for atrocity crimes committed in the Philippines, this investigation also covers these UN-units.

However, during the past two years no other person has so consistently attracted the world's attention for his approval for the Philippine genocide and his admiration for Mr. Rodrigo Duterte, the one orchestrating this genocide, as the president of the USA, Mr. Donald J. Trump. Although his support for the Philippine genocide was deliberately packaged in such a way that, under the 2002 Rome Statute governing the ICC, the criteria set forth to determine the Courts jurisdiction would not be met, an April 23, 2018 press declaration from Malacañang Palace finally cleared that obstacle: Trump incitements were made in the Philippines itself.

Moreover, given the overall exchange of congratulatory messages between the presidents of the Philippines and the USA, it has become apparent that far from a simple approval, their discussions focused on concrete advise to deliberately inflict on the group of drugs users conditions of life calculated to bring about its physical destruction. As the Trump-effect is spreading the killings in the region and beyond, it seems to the DPI that there exists great urgency in establishing that there exists a "reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed" by Mr. Trump of "sufficient gravity to justify further action by the Court".

A list of references to media articles on Mr. Donald Trump's 'incitements', is attached to this report. The list was googled in the second half of October 2018. Search terms: 'trump', 'duterte', 'drugs' (dutch/english)/ drogues (french)/ drogas (spanish)/ Drogen (german).

2. The acts as committed

A. First incitement

20161202 Friday, incitement committed

The Philippine president called Trump on Friday evening to congratulate him on his election victory and Trump wished him "success" in his controversial crackdown, in which 4,800 people had been killed since July. Rodrigo Duterte said Mr. Trump was "quite sensitive" to "our worry about drugs." And had endorsed his brutal antidrug campaign, telling Mr. Duterte that the Philippines was conducting it "the right way."

During the Friday dialogue, Trump said he understands the Philippines' anti-drug campaign as a sovereign nation and that the country is "doing it the right way." "He (Trump) understood the way we are handling it and said that there's nothing wrong in protecting a country," said Duterte.

20161203 Saturday, incitement reported

President Rodrigo Duterte of the Philippines said on Saturday that President-elect Donald J. Trump had told him the night before in a telephone communication that the Philippines was conducting the antidrug campaign "the right way".

B. Second incitement

20170429 Saturday, incitement committed

President Donald Trump congratulated his Filipino counterpart, Rodrigo Duterte, during a phone call for doing "an unbelievable job on the drug problem" in the Philippines, where the government has sanctioned the extrajudicial killing of suspects.

20170523 Tuesday, incitement reported

A transcript of the April 29 conversation was circulated on Tuesday May 23 and published online by [The Intercept](#). The transcript by the Americas division of the Philippine Department of Foreign Affairs was circulated under a "confidential" cover sheet.

In Washington it was confirmed that the transcript was an accurate representation of the call between the two leaders.

C. Third incitement

20171113 Monday, incitement committed

US President Donald Trump had a bilateral meeting with Philippine President Rodrigo Duterte on the sidelines of the 31st Association of Southeast Asian Nations (ASEAN) Summit and Related Meetings at the Philippine International Convention Center in Manila. Reporters saw the beginning of the leaders' bilateral meeting during which Trump praised Duterte's hospitality, the organization of the summit he was hosting and even Manila's weather. Trump said nothing about human rights and both leaders ignored shouted questions about the violent drug crackdown.

Later, White House press secretary Sarah Huckabee Sanders said that the 40-minute meeting focused on ISIS, illegal drugs, and trade. Human rights, she added, briefly came up in the context of the Philippines' fight against illegal drugs. That appeared to conflict with the Philippines' version of the meeting. Harry Roque, a spokesman for Duterte, said "there was no mention of [human rights](#). There was no mention of extralegal killings."

Trump praised Duterte throughout, and the two shared all kinds of laughs. Say, for example, one about the media. Duterte threw the free press out of the room during a meeting between the two presidents after Trump had finished speaking, referring to them in nakedly authoritarian terms. "Trump laughs as Duterte shuts down questions. / You are the spies," Duterte says, referring to press. / "Hah, hah, hah," Trump laughs. / "You are!" Duterte repeated" (Duterte had said the week before the meeting that he would tell Trump to "lay off" if he talked about human rights. Harry Roque said that human rights were not discussed, although Duterte had explained his anti-drugs campaign to Trump, who nodded and "seemed to be in agreement".)

20180423 Monday, incitement reported

Manila Bulletin

Palace: State Department report inconsistent with Trump's statement on PH drug war

Malacañang said that it prefers to stick with the statement of United States President Donald Trump that President Duterte is doing a good job in handling the country's illegal drugs problem.

Presidential Spokesperson Harry Roque made the statement after the US State Department said in its report that drug war killings and police impunity remain as top concerns in the Philippines.

"Extrajudicial killings have been the chief human rights concern in the country for many years and, after a sharp rise with the onset of the anti-drug campaign in 2016, they continued in 2017," the report released in Washington over the weekend said.

"The government investigated a limited number of reported human rights abuses, including abuses by its own forces, paramilitaries, and insurgent and terrorist groups. Concerns about police impunity increased significantly following the sharp increase in police killings," it added. Roque, in his Palace press briefing Monday morning, said that he found it hard to reconcile the report of the US State Department and the statement of Trump during the 31st Association of Southeast Asian Nations (ASEAN) Summit in Manila in November last year.

"I personally heard the discussion between President Trump and President Duterte when they were here in the Philippines during the ASEAN Summit and I think I heard words coming from President Trump praising President Duterte including the war on drugs. If I am not mistaken, President Trump said he (Duterte) knows what he's doing in the Philippines," Roque said.

"So I do not know how to reconcile the State Department report with the actual statement of the President. But for now, we're going with the statement of President Trump that we all heard from the mouth of President Trump," he added.

"Given what we heard from President Trump, let's just say it exists but we prefer to hold on to the words of President Trump. He is, after all, the President," he continued.

Global Nation/Inquirer.net

Palace holds on to Trump's praise of PH war on drugs

In a news briefing, Roque said that ... he heard the discussions between Presidents Duterte and Trump when the latter visited Manila last year for the Association of Southeast Asian Nations summit.

From Trump's mouth

"I think I heard words from President Trump praising President Duterte, including the war on drugs. If I'm not mistaken, President Trump said he knows what (Duterte's) doing," he said. He said this was why he did not know how to reconcile Trump's statements with that of the US state department report.

"But for now, we're going by the statements of President Trump, that we all heard (it) from (his) mouth," Roque added.

D. From incitement to cooperation

a. 20180408 Sunday, Duterte advise to Trump

Manila Buletin : Duterte to Trump: Throw drug dealers into Atlantic Ocean

Duterte, in a speech at a dinner concert in Pasay City Thursday night, said that the decision still lies with the 45th President of the United States on how he will solve the surprisingly large-scale problem of the world superpower.

"Pasok kaagad si Trump (Trump immediately said), 'I will follow Duterte if I can only kill.' Do not, do not. You just kill. Presidente ka (You are the President)," Duterte said.

"Bahala ka na diyan kung anong gawain mo. Kalaki 'yang Atlantic Ocean na 'yan, eh 'di doon mo itapon 'yan (It's up to you what you will do about the problem. The Atlantic Ocean is vast, you can throw them there)," he added. Duterte said Trump should learn to do what he thinks will be better for his country. "Mahirap sa kanya (It's difficult for him) because they cannot kill. Ako (Me), I will kill you to preserve my nation," Duterte said.

b. 20180920 Thursday, Duterte welcomes Bolton's attack on the ICC Manila Bulletin : US swipe at ICC, 'refreshing' to PH – Duterte

"The latest blistering criticism of US National Security Adviser John Bolton against the International Criminal Court (ICC) was "refreshing to us," President Duterte declared Thursday amid his renewed warning to the body "not to f*ck" with the country.

"It's good that there is international pressure on the ICC because Bolton's binull-shit them. He's really a very far right in America, Trump's boy. He has criticized the ICC but now," Duterte said during his visit to a military camp in Capas, Tarlac.

Bolton recently threatened the ICC officials with sanctions if they continue an investigation into the alleged war crimes by American troops in Afghanistan. He said the US would not cooperate with the ICC, adding the ICC was "already dead to us."

3. The acts seen as crimes under the ICC Statute

A. General frame of interpretation

The overall picture of the approval from Mr. Trump, henceforth referred to as Mr. Trump, of the anti-drug policy of extra-judicial mass killings (EMK) of Mr. Duterte, is one of spontaneous statements, fear of the legal consequences, lack of coordination between the partners in crime, conflicting statements to reduce personal loss of face and obstruction of justice in anticipation of possible incrimination

Spontaneous statements. The different remarks made by Mr. Trump under points 2 A to C, were all made in circumstances where he was in a situation of free conversation with his interlocutors, i.e. that no apparent outside pressure was applied which might have forced Mr. Trump to utter words that went against his deepest convictions. This view is amply supported by the numerous statements made by Mr. Trump regarding his theory that the killing of drug users is the best solution for the drug problem.

Fear of the legal consequences. A simple pattern behind these remarks of Mr. Trump is that he makes them in private conversations and that if they are made outside of the Philippines, they are made public afterwards by the interlocutor, if they are made in the Philippines, they are not to be made public. The only and obvious reason being that remarks made in the Philippines will establish the jurisdiction of the ICC, even for USA nationals. As equally confirmed by the Duterte reaction to the Bolton speech against the 'dead ICC' (see 2.D.a.), the ICC seems very much on the perpetrators' mind, regardless of Afghanistan.

David Scheffer, who established the ICC on behalf of the US and served as the country's ambassador-at-large for war crimes issues, said: "The Bolton speech today isolates the United States from international criminal justice and severely undermines our leadership in bringing perpetrators of atrocity crimes to justice elsewhere in the world.

"The double standard set forth in his speech will likely play well with authoritarian regimes, which will resist accountability for atrocity crimes and ignore international efforts to advance the rule of law. This was a speech soaked in fear and Bolton sounded the message, once again, that the United States is intimidated by international law and multilateral organizations. I saw not strength, but weakness conveyed today by the Trump Administration." ([The Guardian](#))

The fear of the legal consequences of their acts also translates into often repeated claims 'ad absurdo' that, contrary of the accusations, the policy of extra-judicial mass killings (EMK) is aimed at the protection of the human rights of citizens:

On May 5, 2018, the Manila Bulletin reported "[Duterte brand of justice adheres to rule of law](#)". Malacañang said that despite the slant made by TIME magazine in featuring President Duterte in its cover together with other "strongmen" leaders in the world, Filipinos are satisfied by how the President runs the country and his brand of justice adheres to the rule of law."

On April 23, 2018, the Philippine Star reported "[US: No conflict in rights reports, Trump – Duterte ties.](#)" The latest annual US Country Report on Human Rights and President Donald Trump's engagement with leaders who have been questioned for their human rights record, including President Duterte, are "complementary" and not two things in "conflict."

"Does that mean that (Trump) should never speak to these people? We're trying to keep the report as the factual baseline for what we're going to do in policy terms or sanctions as the (Secretary of State) was mentioning. So we can learn a lot from this, and we can use it to formulate a policy," said Ambassador Michael Kozak of the US State Department Bureau of Democracy, Human Rights and Labor.

For his part, Foreign Affairs Secretary Alan Peter Cayetano said last Saturday that the government's vigorous campaign against crime, most especially against the illegal drug trade, seeks to promote the welfare and protect the human rights of all Filipinos – to save lives, preserve families, protect communities and stop the country from sliding into a narco-state

On November 10, 2017, Reuters reported that, while in Vietnam for the Asia-Pacific Economic Cooperation meeting, "[Philippines' Duterte offers to host 'world summit' on human rights.](#)"

Lack of coordination. The hiding of the talks exchanged between Mr. Trump and Mr. Duterte during their 40 minutes meeting in Manilla (see 2.C) and the demand of Mr. Duterte that no human rights be discussed imply that the meeting could not be planned and prepared in a coordinated way. Indeed, on the one hand both partners know that their discussions are not in line with international ethical and judicial standards, on the other hand they both wish to pretend that such is nevertheless the case. No cover up strategy can therefore be discussed, only some general indications on how to handle the press can be issued. It leads to both parties providing a minimum of information in order to not contradict each other needlessly.

As [Reuters](#) reported : "Central to the rapprochement this week was Duterte holding his tongue, and Trump not expressing concern about Duterte's centerpiece policy - the crackdown on drugs that has killed thousands of Filipinos".

They both held their tongues in public, had contradictory press statements produced, and kept the world ignorant about the contents of what they had discussed. The fate of hundreds of thousands of people predestined for extrajudicial trial was possibly settled in this meeting by an avowed serial killer and the leader of the most powerful democracy on earth, beyond any democratic control, with the objective to normalize a procedure to EMK of drug users far beyond the Philippines.

Conflicting statements from both parties. Once the Monday November 13, 2017 meeting was over, contradicting press declarations from the press officers of the two presidents were released. They only confirmed that Mr. Trump wanted to be seen as having brought up the human rights question without having condoned with so many words the Duterte EMK-policy and that Duterte wanted to project himself as the one who defended during 90% of the talks this policy without Mr. Trump objecting on the basis of violation of human rights.

Because it was up to Mr. Trump to show that the previous two incitements were not his last word on the subject, he lost all credibility here when his press officer's claim that he had discussed human rights with Duterte was not repeated by this press officer after it had been rejected by Duterte's press officer. As a result, for all most another half year the world and in particular the potential victims involved, were not to know what had been discussed. The lack of coordination would however result in the April 23, 2018 final lapsus of Harry Roque, whereby the full endorsement of Mr. Trump with the Philippines EMK during the November 13, 2017 meeting in Manilla, was as yet revealed.

Obstruction of justice. The various comments made by Mr. Trump in the year 2018 do confirm his overall enthusiasm for a Duterte-like approach towards the drug problem, as witnessed in numerous reports and highlighted on special occasions by his “great friend” Duterte, who sympathizes with Mr. Trump, whose hands are tight by legal constraints. To prevent a possible action from the International Criminal Court for committing the crime of genocide, Mr. Trump is creating his international fan base, which he hopes to energize the moment he needs it, no matter what the cost. He needs this base because he believes it will provide him political protection from the fearful ICC/OTP. Simultaneously he has his national security adviser undermine the ICC legitimacy. Arm-twisting the world into injustice and his own impunity:

On March 3, 2018 the Manila Bulletin reported [“Duterte elated with Trump’s PH drug war comment”](#) : The President said Trump was right when he commented that the Philippines has no drug problem since those involved are killed. “Was it yesterday or the other day? Tignan mo ‘yung front page ng either Bulletin or ‘yung Philippine Star. (Look at the front page of either the Bulletin or the Philippine Star.) ‘Trump: we would like to follow Duterte because they have no problem in the Philippines, he just kills them” Duterte said with a grin during a police shoot fest in Davao City. “Tama ka talaga Trump. Bilib ako sa iyo. Nagsasabi ka ng totoo (You are right, Trump. I’m impressed with you. You are telling the truth),” Duterte added. President Duterte admitted that he prefers drug suspects to put up a fight, so they could be neutralized by arresting lawmen.

On March 20, 2018 [Slate](#) reported : “Not only has Trump effusively praised Duterte, he has also reportedly expressed a fondness for Singapore’s approach, and in New Hampshire he hinted that the city-state or China might be his model: I’ve gotten to know the leaders of many countries. And I won’t mention names, but you know the countries I’m talking about. I go around, “How is your drug problem?” “We don’t have much of a drug problem.” “What do you mean you don’t have a drug problem?” “Well, we don’t have.” I say, “How come?” “We have zero tolerance for drug dealers.” I said, “What does that mean?” “That means we have the death penalty for drug dealers. We don’t have a drug problem.”

The nonnegotiable [“Global Call to Action on the World Drug Problem”](#) launched by Mr. Trump at the September 2018 UN General Assembly meeting equally confirms his wish to realign international drug control policy with the failed policies of the past. Most disturbing was the arm-twisting that was used to get many of the 100 signatories to accept the call, which signaled the determination of Mr. Trump to force his punitive approach on the world community. ([The Intercept](#))

This arm-twisting of UN-members is a favored approach of Mr. John Bolton, the National Security Adviser of Mr. Trump, who already in 2002, when the ICC first opened its doors, “helped secure, in what he described on 10 September as one of his ‘proudest achievements’, around 100 bilateral agreements with other countries to prevent them from delivering US personnel to the ICC. Those agreements were often extracted under pressure, with the US threatening to cut off military and other aid to countries that refused to sign.” ([Chatham House](#))

But it doesn’t stop there. In order to make sure that the ICC will abstain from an investigation of any US national, Mr. Trump takes aim with every person – in particular judges and prosecutors of the ICC - or company or state cooperating with an ICC investigation of American citizens. These would be banned from entering the US, their funds in the US financial system would be sanctioned and they would be prosecuted in the US criminal courts. The USA would be taking note if any countries cooperate with ICC investigations of the United States and its allies and would remember that cooperation when setting US foreign assistance, military assistance and intelligence sharing levels’.

The US-presidency these days operates like the mafia, resorting to all the means at its disposal to save its criminal organization from prosecution including, if need be, the complete demolition of the world they wish to exploit: “après nous le deluge”.

B. The Drugs Peace Institute interpretation

Gravity of the crime

On three different occasions Mr. Trump has assured Mr. Duterte, as publicly reported, that he supported the Philippines president's murderous EMK-policy of drug users.

Duterte on Trump: "He was quite sensitive also to our worry about drugs. And he wishes me well... in my campaign and he said that... we are doing it as a sovereign nation, the right way,"

Trump to Duterte: "I just wanted to congratulate you because I am hearing of the unbelievable job on the drug problem" and "Many countries have the problem, we have a problem, but what a great job you are doing and I just wanted to call and tell you that."

Harry Roque: "I personally heard the discussion between President Trump and President Duterte when they were here in the Philippines during the ASEAN Summit and I think I heard words coming from President Trump praising President Duterte including the war on drugs. If I am not mistaken, President Trump said he (Duterte) knows what he's doing in the Philippines," Roque said.

"So I do not know how to reconcile the State Department report with the actual statement of the President. But for now, we're going with the statement of President Trump that we all heard from the mouth of President Trump," he added.

Although Mr. Roque presented his memories of Mr. Trump's statements with apparent caution, they were never refuted by Mr. Trump nor revoked by Mr. Roque or his superiors.

Jurisdiction

A crime has been committed within the territorial jurisdiction of the International Criminal Court, because it occurred on the territory of the Republic of the Philippines in the period between December 2, 2016 and November 13, 2017, when that country was a State Party to the Rome Statute.

It could have been argued that even the two phone calls between Mr. Trump and Mr. Duterte were made in the Philippines, as they both were made public in the Philippines, where they were received by Mr. Duterte through a hearing device only available to him at that moment. Given the affirmation by Mr. Roque of the third incitement, this argumentation is not developed here any further.

Interests of justice

The Office of the Prosecutor must assess whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice. This is not a superfluous task under the present circumstances, where a growing number of countries openly promotes the death penalty for drug users and more or less secretly already practices the Duterte EMK-policy.

The question of course is not if such practices are legitimate from a standpoint of prevention and punishment of genocide, but rather if the world community has or will in the future again try or continue to exclude drug users from mankind, as it has implicitly done since the 1961 Single Convention by equating their use with 'evil'. The DPI holds that such exclusion would be suicidal.

As our human history started with prohibition, which has brought us to the Anthropocene, of which it is the true Golden Spike, we wish to emphasize that the only way out of the separation between nature and man is the submission of man to the wholeness of creation, with the help of 'the plants of the gods'. 'Drugs', as society wishes to call them, are the natural complements of man's spiritual food diet. To prevent his downfall, from hubris.