

From Senator to Fugitive: Rendition in Light of Article 59 of the Rome Statute and the *Maxim Male Captus Bene Detentus*

On the evening of May 13, 2026, gunshots rang out in the Philippine Senate after alleged NBI agents entered the building where Senator Ronald “Bato” Dela Rosa was seeking protective custody. Senator Dela Rosa, who fled the senate at midnight, faces an International Criminal Court (ICC) arrest warrant for crimes against humanity in relation to Oplan Double Barrel.

The situation revives the unsettled tension between provisions of the Rome Statute and Philippine domestic law regarding manner of rendition, which has been hotly debated since former President Rodrigo Duterte was surrendered to the ICC. Referring only to Philippine Law, the concept of surrender could not be more straightforward. Section 17 of the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (RA 9851) provides in part:

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

The provision clearly authorizes the State to surrender an accused individual to an international court undertaking investigation or prosecution of the crime. However, complications arise when provisions of the Rome Statute are thrown into the mix.

This blog analyzes the applicability of Article 59 of the Rome Statute in relation to international criminal cooperation by a former State party and evaluates the doctrine of *male captus, bene detentus* that may ensure prosecution regardless of the manner of rendition.

Obligation of the Custodial State

When the PTC dismissed the challenge to the Court's jurisdiction over the situation in the Philippines, it effectively affirmed Article 127(2) insofar as the Philippines, by reason of its withdrawal, is not discharged from its obligations arising from the Rome Statute. Among these obligations include what is provided in Article 59(2):

A person arrested shall be brought promptly before the competent judicial authority in the custodial State *which shall determine*, in accordance with the law of that State, that:

- (a) The warrant applies to that person;
- (b) The person has been arrested in accordance with the proper process; and
- (c) The person's rights have been respected.

The explicit command of Article 59(2) is a procedural step absent in RA 9851. Thus, following the dictum of the Supreme Court in *Pangilinan v. Cayetano* that “statutes enjoy preeminence over international agreements [and] [that] [i]n case of conflict between a law and a treaty, it is the statute that must prevail,” it is understandable why many readily dismiss the applicability of Article 59 in any discussion of ‘surrender’ to the ICC.

But there are at least two reasons why this is misguided. First, the above-quoted provision of RA 9851 does not stand on its own. It requires that the surrender must be done **pursuant to the applicable treaties**. Clearly, the law presupposes that when an individual is to be surrendered to an international tribunal, there is a treaty whose rules relevant authorities must take into account. Consequently, Section 17 gives the government two options: prosecute the individual in a local court or surrender them to the ICC pursuant to the applicable treaty—the Rome Statute.

Second, the Philippines is either bound by the treaty or not at all. Alongside *pacta sunt servanda*, it is elementary in international law that “a party may not invoke [...] its internal law as justification for its failure to perform a treaty.” Article 59 makes reference to a “custodial State”, which is a state in a position to execute an arrest

warrant against the person sought to be arrested. It is irrelevant whether such a state is a State party, a former State party like the Philippines, or even a non-party under obligation to cooperate with the ICC (e.g., under a UN Security Council Resolution).

It is crucial to point out, however, that the applicability of Article 59 will not necessarily result in the illegality of an arrest similar to what was done to former President Duterte. I adopt the view that Article 59 is not so rigid as to create a hard and fast rule that requires custodial States to conduct particular arrest proceedings.

The PTC II in *Ongwen* indicates support for this position. In claiming that the Rule of Specialty does not apply because it is available only to a person surrendered, the Prosecutor argued that Ongwen should be considered as having “voluntarily appeared” (instead of surrendered) because the Central African authorities did not strictly apply Article 59. The PTC II held otherwise:

[Article 59] does not, in itself, create a duty for the surrendering State to undertake any particular proceeding, upon obtaining custody over a person [...] in order for the competent national authorities to transfer custody to the Court.

[T]he Central African authorities identified Dominic Ongwen as being the person to whom the warrant of arrest applies [...] notified to him the warrant of arrest [...] and proceeded to the transfer of custody to the Court [...] The fact that this procedure was relatively short having taken place in slightly less than one hour and with comparatively less procedural obstacles than on other occasions does not change the nature of this process.

The implication is that Article 59 does not straitjacket custodial States but gives flexibility on how the rendition process is to be designed domestically. I suggest that in the case of the Philippines, compliance with Article 59(2) is achieved when the competent authority correctly determines the person to be arrested and executes the arrest warrant in the same manner as a warrant issued by a local judge. After all, the role of the competent authority is limited under Article 59. For example, they are not

given power to assess whether there were reasonable grounds to support the issuance of the warrant.

Following this, while the Philippines does not need to bring Senator Dela Rosa before any local court, it may not dispense with critical requirements regarding the method of arrest by virtue of a warrant. Stated otherwise, it is sufficient that Senator Dela Rosa be informed of the basis of his arrest, apprised of his constitutional rights, and given access to counsel before transferring him to the ICC.

Male Captus, Bene Detentus

Yet even assuming that only appearing before a competent judicial body can satisfy the obligation under Article 59, there are reasons to believe that compliance with Article 59 is not the only way to keep violators of the Rome Statute accountable.

The doctrine *male captus, bene detentus* (wrongly captured, properly detained) expresses the principle “that a court may exercise jurisdiction over an accused person regardless of how that person has come into the jurisdiction of that court.” However, in interstate relations where there is a horizontal relationship between states, the doctrine is frequently criticized for infringing upon state sovereignty. This was the case in *United States v. Alvarez-Machain*, where a Mexican national was tried before a US court despite his forcible abduction. Unsurprisingly, the same criticisms are raised in Maduro’s recent capture in Venezuela. Such concerns, however, are largely muted in the context of an international criminal court vis-à-vis a custodial State where the relationship is vertical, although questions about fairness and due process remain.

In the context of prosecuting the most serious crimes of international concern, the challenge of securing custody over an accused is difficult to overstate. Not only does the ICC depend on states’ enforcement mechanisms in effecting an arrest warrant, but the individuals to be arrested generally occupy high-ranking positions and are supported by a network of powerful allies that can help them evade arrest. Taken together with the fact that the crimes punished under the Rome Statute are violations of jus cogens norms (with the exception of offenses against administration of justice), an openness to the doctrine may be called for.

Notably, no evidence of widespread state practice and opinio juris has yet elevated the status of *male captus, bene detentus* into a rule of customary international law, but tacit acceptance of the doctrine may be gleaned from the cases of *Lubanga* and *Katanga*. In both cases, the ICC refused to allow challenges to its jurisdiction on the basis of irregularities in arrest. Crucially, in *Nikolić*, the International Criminal Tribunal for the Former Yugoslavia (ICTY) considered the seriousness of the alleged illegality of the arrest and allowed trial to continue when it determined that the alleged mistreatment during the arrest could not be considered “egregious” or “shocking to the conscience.”

Indeed, a distinction must be drawn between a rendition that did not substantially comply with Article 59 and a transfer or surrender attended by torture and similar gross violation of human rights. In the former, an accused's remedy appears to be limited to compensation which he may be entitled to demand under Article 85(1); under the latter, the Court may decline to exercise jurisdiction.

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