

When Declarations are Crimes: Structural Selectivity and the No Quarter Prohibition

By Bhavya Johari - 20 August 2026

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Bhavya Johari argues that the unpunished no quarter declaration of the United States Secretary of War, set beside the International Criminal Court's prosecution of Rodrigo Duterte for comparable public statements, exposes group-based selectivity operating at the level of the international legal order itself, and calls for enforcement structures in which permanent Security Council membership confers no exemption.

On 13 March 2026, United States Secretary of War Pete Hegseth declared at a press briefing that American forces engaged in military operations against Iran would offer *no quarter, no mercy*. The declaration violated one of the oldest categorical prohibitions in International Humanitarian Law (IHL). [Article 23\(d\)](#) of the 1907 Hague Convention (IV), [binding the United States since 1909](#), forbids declaring that “no quarter will be given.” The prohibition has crystallised into International Criminal Law (ICL): [Article 8\(2\)\(b\)\(xii\)](#) of the Rome Statute criminalises such a declaration, independent of whether it is carried out.

What makes the episode significant is not the rule but its selective enforcement. Rodrigo Duterte awaits trial in The Hague after Pre-Trial Chamber I [confirmed charges of crimes against humanity](#) under [Article 7](#) of the Rome Statute on 23 April 2026 for [directing a systematic killing campaign](#). Hegseth continues to direct military operations from the Pentagon. Both are executive officials whose public declarations formed part of the evidence of criminal conduct; one faces prosecution, the other impunity. The divergence reveals [group-based selectivity](#) operating at a systemic level.

The Declaration as Crime

The ICC [Elements of Crimes](#) for Article 8(2)(b)(xii) attach liability where the perpetrator declared or ordered that there shall be no survivors, threatened an adversary therewith, or conducted hostilities on that basis, while in a position of effective command or control over subordinate forces, in the context of an international armed conflict. No executed killing is required. A sitting Secretary of War directing an active international armed conflict satisfies the command and contextual elements. The statement, [delivered at an official Pentagon briefing](#) as operational guidance, satisfies the declaratory act and the mental element.

The prohibition also has independent force in the United States domestic law. Title 18 United States Code (U.S.C.) [Section 2441\(c\)\(2\)](#) classifies conduct prohibited by [Article 23](#) of Hague Convention IV as a war crime where the perpetrator is a United States national, punishable by imprisonment for life and, where death results, by death. The declaration is therefore the completed offence, not an inducement to one. The Department of Defence's Law of War Manual restates the prohibition at [Section 5.4.7](#).

The declaration cannot be dismissed as rhetoric. On 21 February 2025, Hegseth [dismissed three Judge Advocates General](#), publicly stating that he sought to remove potential roadblocks to the President's orders, strip legal review from the command structure, and create a permissive climate. In the [March briefing](#), he described the Iranian leadership as “cowering,” adding that “that’s what

rats do.” The dehumanising frame, coupled with the no-quarter directive, reproduces the cognitive pattern that the prohibition targets.

Transmission alone has long sufficed for liability. At Nuremberg, the International Military Tribunal [convicted Field Marshal Wilhelm Keitel](#) for transmitting Hitler’s Commando Order directing that captured Allied commandos be “slaughtered to the last man,” the conviction resting on transmission despite his own doubts about its legality. The Tribunal held that by 1939, the Hague Convention IV prohibitions were regarded as “declaratory of the laws and customs of war.” No Pentagon official has been prosecuted for comparable conduct.

Structural Selectivity at the Systemic Level

The enforcement gap is patterned rather than anomalous. Selectivity in ICL takes [three distinct forms](#): design selectivity (temporal and jurisdictional limits built into tribunals), operational selectivity (which situations and states are investigated) and group-based selectivity (differential prosecution of similarly situated offenders). The first two reflect institutional constraints inevitable in any bounded system. The third is normatively distinct: it treats comparably positioned actors differently, undermining victims’ dignity and institutional legitimacy.

The framework was designed for prosecutions arising from territorial conflicts, in which governments shield their own forces while targeting opponents. Extending it from geographic to systemic scope requires reconceiving its terms. The *situation* becomes the global IHL enforcement regime rather than a bounded conflict. Similarly, *situated offenders* become executive officials who make prohibited declarations during active armed conflicts, regardless of which state they serve. Group membership is determined not by conduct or command level but by permanent membership in the United Nations Security Council (UNSC) and the veto.

[Duterte](#) demonstrates the pattern by contrast. He was [prosecuted](#) for public declarations during the war on drugs campaign that incited mass killings, the Court treating them as evidence of a common plan and indirect co-perpetration under [Article 25\(3\)\(a\)](#). The evidentiary architecture parallels the Hegseth episode: an executive official’s public statements create a permissive climate in which subordinates are likely to kill.

The divergence is institutional, not factual. The [Philippines was a party](#) when the crimes occurred; jurisdiction survived its withdrawal; the successor government cooperated with the issuance of the [arrest warrant](#); and it holds no [permanent seat](#) or veto. The United States [has never been a party](#). The [American Service-Members’ Protection Act of 2002](#) bars the ICC’s jurisdiction over United States nationals, and [Executive Order 14203](#) sanctions Court personnel who investigate them. Domestically, [Trump v. United States](#) grants the President “absolute immunity” under his *exclusive and preclusive constitutional authority* and at least presumptive immunity for official acts, including military command. That immunity does not extend to cabinet officers, but the [Section 2441](#) route runs through the Department of Justice, whose head serves at the President’s pleasure, and no prosecutor within it has an incentive to indict a Secretary of War for conduct the President cannot be tried for. The law is clear, the facts are public, and the impunity is designed.

Normative Erosion and Embedded Hierarchies

The prohibition is also customary. [Rule 46](#) of the Customary IHL Study confirms that it applies to all states in both international and non-international armed conflicts. Customary law does not collapse from a single breach, but repeated violations by major powers, left unrepudiated, erode its binding force. What begins as one state’s impunity becomes permission for others, and the combatants whose right to surrender the rule protects lose it first.

In the eighty years since Nuremberg, no sitting cabinet officer of a permanent UNSC member has been prosecuted for IHL violations. The prosecutions that have occurred involve officials of states defeated in war, weakened by political transition, or lacking a permanent seat: [German officers at Nuremberg](#), [Yugoslav](#) and [Rwandan](#) officials before the ad hoc tribunals, and now [Duterte at the ICC](#). [Structural bias](#) of this kind stabilises hierarchies of power, and in ICL it operates in only one direction.

If permanent UNSC members can exempt their executive officials from accountability while comparably positioned officials from weaker states are prosecuted, international criminal justice becomes what it has long been accused of being: not universal law but the continuation of colonial hierarchies through judicial means. Until that structure changes, through Security Council reform, universal jurisdiction prosecutions or tribunals constituted without veto power, the prohibition on denying quarter remains a rule that binds the weak and exempts the powerful.

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