

REFLECTIONS ON THE INTERNATIONAL CRIMINAL COURT AND ITS IMPLICATIONS FOR ZAMBIA

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Abstract

The International Criminal Court was established by states for the purpose of establishing individual accountability for persons suspected of having committed the most serious offences of international concern. The nature and function of the ICC are considered. Most importantly, Zambia's obligations under the Rome Statute are examined. On the basis of the Statute, it would be better for Zambia not to withdraw its membership to the court for various reasons including that, the jurisdiction of the ICC is limited to offences committed after entry into force of the Statute for Zambia; the Rome Statute preserves the jurisdictional primacy of Zambia as a sovereign state; the court operates on the basis of the principle of complementary, which implies that it is not intended to be a substitute for Zambia's domestic courts. Zambia's failure to incorporate the statute into national legislation does not in any way relieve its treaty obligations under international law; and finally Zambia is under both legal and moral obligations to oblige with the statute.

Keywords: *International Criminal Court, jurisdiction, individual accountability, most serious offences of international concern, impunity, supremacy, national courts, complementarity, legal, moral, obligation, Zambia.*

I

INTRODUCTION

The International Criminal Court (ICC) is a permanent Court that was established by treaty for the purposes of investigating and prosecuting persons suspected of committing the most serious offences of international concern. Inspired by the creation of the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the ICC was established by the adoption of the Rome Statute at the Rome Diplomatic Conference on 17 July 1998, (hereinafter the Rome Statute). The Statute entered into force on 1 July 2002.¹ Apart from the adoption of the Statute, the state parties also adopted the Elements of Crimes, the Rules of Procedure and Evidence and the Agreement on the Privileges and Immunities of the Court document that were also negotiated by the Preparatory Commission.² The establishment of the ICC has also been described as a significant development of the principle of international individual criminal responsibility.³

The adoption of the Statute by states denotes that individuals suspected of having committed offences within the jurisdiction of the ICC must be prosecuted. The preamble of the Rome Statute refers to offences within the ICC's jurisdiction, as *the most serious crimes of concern to the international community*. The phrase is used throughout the article to refer to offences within the ICC's jurisdiction, that include genocide,⁴ crimes against humanity,⁵ war crimes⁶ and crimes of aggression.⁷ The preamble further provides that prosecution will be more effective if carried out at a national level and by enriched international cooperation. The object of the ICC accordingly, is to seek to put an end to impunity for perpetrators of such crimes.

Consequently, the ICC is intended to contribute towards the prevention of such crimes.⁸ For that reason, the Court offers measures by which individuals could be held criminally liable for grave

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¹ Sixty ratifications were needed for the ICC to come into force Rome Statute Article 126, as of 5th September 2003 91 states had ratified, the ICC is not an organ of the UNs, although the two institutions have a formal relationship, the Rome Statute 1998 Article 2.

² Documents may be found in the Official Records of the first session of the Assembly of States Parties to the Rome Statute of the International Criminal Court on the website of the ICC <http://www.icc-cpi.int/asp.html> (accessed on 17 July 2016).

³ Adriaan Bos 'Crimes of State In Need of Legal Rules?' in Gerard Kreijen *State Sovereignty and International Governance* (Oxford University Press 2002) 222.

⁴ *Supra* note 2 Article 6.

⁵ *Ibid* Article 7.

⁶ *Ibid* Article 8.

⁷ *Ibid* Article 5, 8 bis Annex I RC/ Res. 6 Adopted at the 13th plenary meeting, on 11 June 2010, by consensus <https://treaties.un.org/doc/Publication/CN/2010/CN.651.2010-Eng.pdf> (accessed on 6 January 2017).

⁸ *Supra* note 1 Preamble paragraphs 3, 4, 5, Otto Triffterer 'Preamble' in Otto Triffterer (ed) *Commentary on the Rome Statute of the International Criminal Court* 2 edition (Beck Hart 2008), Markus Benzing and Morten Bergsmo 'Some Tentative Remarks on the Relationship Between Internationalised Criminal Jurisdictions and the International Criminal Court' in Casare PR Romano, Andre Nollkaemper & Jann K Kleffner *Internationalized Criminal Courts* (Oxford University Press 2004) 408, Payam Akhavan 'Beyond Impunity can International Criminal

human rights violations.⁹ The Rome Statute provides that the Court can ‘exercise its functions and powers, as provided in the Statute, on the territory of any state party and by special agreement, on the territory of any other state.’¹⁰ The ICC is therefore an inter-national as opposed to a supra-national body, similar to any inter-national bodies that exist. The creation of the ICC by treaty in 1998 signifies that the Rome Statute is a reflection of compromises accomplished at the Rome Conference. The Statute is only binding on state parties. This article considers the ICC in relation to its role, nature, jurisdiction, trigger mechanisms and what it means to Zambia. The overall objective is to assess the relevance of Zambia’s membership to the ICC, and to clarify Zambia’s position as a state party. The contention is that it would be better for Zambia to continue to be a party to the ICC for the following reasons; the Rome Statute preserves the jurisdictional primacy of sovereign states; the ICC operates on the basis of the principle of complementarity, thus it is not intended to be a substitute to domestic courts; lack of domestication of the Rome Statute does not discharge its treaty obligations; and finally Zambia is under both legal and moral obligations to oblige with the statute.

The article is divided into four parts; part I is the introduction, part II considers the mandate of the ICC as a criminal Court, while part III focuses on the ICC and its implications for Zambia, finally part IV is the conclusion.

II

THE MANDATE OF THE ICC AS A CRIMINAL COURT

The jurisdiction of the ICC under the Rome Statute is limited to offences committed after 1 July 2002, for state parties, and offences committed after entry into force of the Statute for that state.¹¹ The Statute has been criticised for its incapacity to prosecute atrocities committed prior to its entry into force.¹² However, failure to prosecute retroactively is not intended to grant a form of impunity to previous perpetrators. There is an assumption under the Rome Statute that domestic courts would charge and prosecute those responsible for atrocities committed prior to the Statute’s entry into force. In cases where domestic courts fail to exercise their jurisdiction to prosecute, drafters of the Rome Statute were relying on the concept of universal jurisdiction,

Justice Prevent Future Atrocities’ (2001) 95 (1) *American Journal of International Law* 7, Ellah TM Siang’andu ‘History of Institutions and Jurisprudence of International Criminal Justice’ (2014) 45 *Zambia Law Journal* 101, 102.

⁹ Max Du Plesses *Africa and the International Criminal Court* Criminal Justice Consolidation Transformation Conference 7-8 February 2005 1 <http://www.csvr.org.za/index.php/publications/conferences/criminal-justice-2005.html> (accessed on 30 October 2016).

¹⁰ *Supra* note 2, Article 4(2).

¹¹ *Supra* note 2, Article 11.

¹² William A Schabas ‘Complementarity in Practice Some Uncomplementarity Thoughts’ presented at the 20th Anniversary Conference of the International Society for the Reform of Criminal Law 2007 Vancouver 23 June 2007 <http://www.isrc.org/Papers/2007/Schabas.pdf> (accessed on 21 July 2017).

which theoretically enables any state to exercise jurisdiction to prosecute over the most serious offences to international concern.¹³

However, the Rome Statute preserves the jurisdictional primacy of sovereign states.¹⁴ This implies that the Rome Statute sets out strict conditions that forms a basis for the court's exercise of jurisdiction over a particular matter. The ICC may exercise jurisdiction only where the alleged offences were committed on the territory of the state parties or where the accused is a national of the state party.¹⁵ However, this is not necessary under the following circumstances; firstly where the state concerned accepts the jurisdiction of the ICC by issuing a declaration to that effect;¹⁶ secondly, where the Security Council acting under Chapter VII of the UN Charter refers a situation to the Court.¹⁷

The ICC is not expected to be a substitute for national courts, but instead complementary to national courts.¹⁸ The premise is that whenever faced with widespread large scale atrocities, the best response should be a resort to national criminal courts as affirmed in the renowned *Eichmann* decision,¹⁹ where the Supreme Court of Israel stated that the territorial state, that is the state where the crimes have been committed, is the appropriate place for adjudication. The advantage of holding trials in the state where an alleged crime was committed is that evidence is easily available, and it is easy to access witnesses.²⁰

In addition, the cost of investigation and transportation of witnesses to trial is minimised²¹ and most importantly such proceedings have the greatest legitimacy and impact on society involved.²² This is because the population concerned can easily follow the proceedings; consequently this encourages reconciliation and some sort of closure for the victims and

¹³ Naomi Roht-Arriaza (eds) *Impunity and Human Rights in International Law and Practice* (Oxford University Press 1995), Steven R Ratner, Jason S Abrams and James L Bischoff *Accountability for Human Rights Atrocities in International Law Beyond the Nuremberg Legacy* 3rd edition (Oxford University Press 2009).

¹⁴ *Supra* note 2, Preamble paragraph 4, 10, Article 1, Michael A Newton 'The Complementarity Conundrum are we Watching Evolution or Evisceration?' (2010) 8 *Santa Clara Journal of International Law* 115, 127, Sarah Williams *Hybrid and Internationalised Criminal Tribunals Selected Jurisdictional Issues* (Bloomsbury Publishing 2012) 47.

¹⁵ *Ibid* Article 12 (2).

¹⁶ *Ibid* Article 12 (3).

¹⁷ *Ibid* Article 13, Security Council Resolution 1593 <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm> (accessed on 23 July 2014).

¹⁸ *Ibid* Preamble Paragraph 6, Articles 1, 17, 18, Payam Akhavan 'The Rise and Fall of International Criminal Justice' (2013) 11 (3) *Journal of International Criminal Justice* 531, Michael A Newton 'Comparative Complementarity Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court' (2001) 167 *Military Law Review* 20, 26, Robert Cryer, Hakan Friman, Darryl Robinson *Introduction to International Criminal Law and Procedure* (Cambridge University Press 2007) 127.

¹⁹ The *Eichmann* Case (1962) 36 ILR 304.

²⁰ Bruce Broomhall *International Justice and the International Criminal Court between Sovereignty and the Rule of Law* (Oxford University Press 2003) 84.

²¹ David Hoile *Justice Denied the Reality of the International Criminal Court* (African Research Centre 2014) 18.

²² Bruce Broomhall *International Justice and the International Criminal Court between Sovereignty and the Rule of Law* (Oxford University Press 2003) 84.

families.²³ In particular, the victims can easily access the institution as well as follow the work of the Court closely. Domestic prosecutions further offer opportunities for prosecuting a large number of offenders, this is because domestic trials cost less than international justice.²⁴

Broomham further contends that putting suspected perpetrators on trial in national courts could act as a deterrence effect to future offenders.²⁵ The population at large would bear in mind the consequences for committing such atrocities. The Rome Statute is therefore justified for granting state parties the jurisdictional primacy.²⁶ This implies that the ICC acknowledges the need for trials to be conducted in national courts. This is further affirmed in the incorporation of the complementarity principle within the ICC structure.

The ICC operates on the basis of complementarity, which provides that the ICC can only exercise jurisdiction where the territorial state is not currently investigating or prosecuting the case or where the state is unwilling or unable to do so.²⁷ The notion underlying the principle of complementarity is that the ICC can only exercise jurisdiction if there is no state with the requisite jurisdiction initiates criminal prosecutions. Further, the Rome Statute in paragraph 6 to the preamble recalls that 'it is a duty of every state to exercise jurisdiction over those responsible for international crimes'. The Statute emphasizes that the ICC was established for the purposes of being complementary to national criminal jurisdiction. This implies that the ICC will only investigate a situation where there is a failure to act by the state.

So, the principle of complementarity recognises that it is the responsibility of states to exercise criminal jurisdiction. This is not only a right of states, but also a duty.²⁸ Prosecutor Moreno

²³ Benson Olugbuo 'Positive Complementarity and the Fight against Impunity in Africa' in Chacha Murungu and Japhet Biegon (eds) *Prosecuting International Crimes in Africa* (Pretoria University Law Press 2011) 251.

²⁴ Nancy Amoury Combs *Guilty Pleas in International Criminal Law Constructing a Restorative Justice Approach* (Stanford University Press 2006) 40.

²⁵ Bruce Broomhall *International Justice and the International Criminal Court between Sovereignty and the Rule of Law* (Oxford University Press 2003) 84.

²⁶ *Supra* note 2, Preamble paragraph 4, 10, Article 1, Michael A Newton 'The Complementarity Conundrum are we Watching Evolution or Evisceration?' (2010) 8 *Santa Clara Journal of International Law* 115, 127, Sarah Williams *Hybrid and Internationalised Criminal Tribunals Selected Jurisdictional Issues* (Bloomsbury Publishing 2012) 47.

²⁷ *Supra* note 2, Preamble paragraph 10, Articles 1, 17, 18, J T Holmes 'The Principle of Complementarity' in Roy S Lee (eds) *The International Criminal Court the Making of the Rome Statute Issues Negotiations and Results* (Kluwer Law International 1999) 41 78, Jann K Kleffner 'The Impact of Complementarity on National Implementation of International Criminal Law' (2003) 1 (1) *Journal of International Criminal Justice* 87, Mohamed EL Zeidy *The Principle of Complementarity in International Criminal Law Origin Development and Practice* (Brill Nijhoff 2008) 126, Benson Olugbuo 'Positive Complementarity and the Fight against Impunity in Africa' in Chacha Murungu and Japhet Biegon (eds) *Prosecuting International Crimes in Africa* (Pretoria University Law Press 2011) 252, Gregory S Gordon 'Complementarity and Alternative Justice' (2009) 88 (3) *Oregon Law Review* 627 - 628, Frédéric Mégret 'In Defense of Hybridity Towards a Representational Theory of International Criminal Justice' (2005) 38 *Cornell International Law Journal* 725, 730-32, Leila Nadya Sadat and S Richard Carden 'The New International Criminal Court an Uneasy Revolution' (2000) 88 *Georgetown Law Journal* 381, 385.

²⁸ Draft Policy Paper on some Policy Issues before the Office of the Prosecutor for Discussion at the Public Hearing in the Hague on 17 and 18 June 2003 http://www.icc-cpi.int/iccdocs/otp/draft_policy_paper.pdf (accessed on 6th

Ocampo, justified the principle of complementarity on the basis that, it encourages states to commence their own proceedings before domestic judicial institutions.²⁹ The general principle is that the ICC will only investigate in a situation where there has been a clear failure of the state concerned to act. This implies that the ICC is meant to be the court of last resort,³⁰ as national courts have primacy over the ICC when it comes to exercising jurisdiction. This implies that if a domestic court is investigating or prosecuting a case or if the issue has already been addressed, such a case will be inadmissible before the ICC. Having considered the nature and mandate of the ICC, the next section examines the relationship between the ICC and Zambia as a state party to the Rome Statute. The section seeks to clarify Zambia's rights and duties under the Rome Statute.

III

THE INTERNATIONAL CRIMINAL COURT AND ITS IMPLICATIONS FOR ZAMBIA

Zambia signed the Rome Statute establishing the International Criminal Court on 17 July, 1998. Zambia further ratified the Statute on 13 November, 1998. This means that Zambia is a state party to the ICC. It implies that the ICC can exercise jurisdiction over the most serious offences committed on the territory of Zambia. Such jurisdiction of the Court however, is limited to offences committed after 13 November, 2002. Thus, on the basis of the Rome Statute, Zambia is under an obligation to prosecute those responsible for atrocities committed prior to the Statute's entry into force.

In order to ensure the effectiveness of the judicial process within the ICC, as was the case for the ICTY and the ICTR, state cooperation is essential. The decisions, orders and requests of the ICC must be enforced by states, as the Court does not have enforcement agencies.³¹ This indicates that the ICC relies on state parties to execute its request including instructions such as the arrest warrants, collection of evidentiary material, to compel witness to give testimonies as well as searching the scenes where offences were allegedly committed. This means that the success of the ICC is dependent on state parties. For this reason, a state party such as Zambia, is obliged to

January 2017), Sarah MH Nouwen *Complementarity in the Line of Fire the Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge University Press 2013) 14, 35, 37.

²⁹ Supra note 31, Draft Policy Paper on some Policy Issues before the Office of the Prosecutor for Discussion at the Public Hearing.

³⁰ Jamie Mayerfeld 'The Democratic Legacy of the International Criminal Court' (2004) 28 (2) *Fletcher Forum of World Affairs* 148, Britta Lisa Krings 'The Principles of 'Complementarity' and Universal Jurisdiction in International Criminal Law Antagonists or Perfect Match?' (2012) 4 (3) *Goettingen Journal of International Law* 740.

³¹ Rene Blattmann and Kirsten Bowman 'Achievements and Problems of the International Criminal Court A view from Within' (2008) 6 (4) *Journal of International Criminal Justice* 720 - 723, Peter Dixon and Chris Tenove 'International Criminal Justice as a Transnational Field Rules Authority and Victims' (2013) 7 (3) *International Journal of Transitional Justice* 400.

co-operate with the ICC's investigations, to either arrest, surrender the accused, to secure evidence and undertake the prosecution for the most serious offences of international concern.³²

It is the responsibility of each state party to ensure that there are procedural measures in place to allow for all forms of cooperation.³³ Similarly, Zambia has a dualist national jurisdiction. International law is regarded as separate from domestic law. Put differently, international law is not automatically considered part of domestic law. International law is only applicable to Zambia where it has ratified such treaties. This argument is alluded poignantly clear by the constitution of Zambia which provides that the laws of Zambia consists of the Constitution, the laws enacted by parliament, statutory instruments, Zambian customary law, the laws and statutes which apply or extend to Zambia as prescribed.³⁴ This means that the Rome statute or any other international treaty that Zambia has signed and ratified applies to Zambia on the basis of treaty law. It is essential for state parties to observe international treaties generally, the Vienna Convention on the Laws of Treaties (1969), Article 26 provides for the principle of *pacta sunt servanda*, this provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith. A state party and above all, Zambia may not invoke provisions of national law as a justification for its failure to undertake the obligations as stipulated in a specific treaty.³⁵

But, an international treaty that Zambia has signed and ratified such as the Rome Statute lacks direct effect. This means that the Statute cannot be enforced by the courts in Zambia. This would only be possible if parliament was to pass an enabling act, intended to domesticate the Rome Statute. This was further illustrated in the case *Zambia Sugar Plc v. Fellow Nanzaluka*, Appeal No.82 of 2001, in which on appeal to the Supreme Court it was held that international instruments on any law although ratified and approved to by the state cannot be applied unless they are domesticated. Treaties represent the mutual promises that a state is deemed to have consented to by virtue of having signed and ratified a particular treaty. So, the treaty is binding on a state that signs and ratifies it, regardless of domestication. This idea of mutual consent *pacta sunt servanda*, is one of the fundamental principles of international law. Zambia is thus under a legal obligation under international law, bound to keep the promises made in the signing and ratification of the Rome Statute.

This principle was further reaffirmed in the *Sara Longwe v. Intercontinental Hotels* 1992/HP/765 decision, where Justice Musumali stated that once a state has signed and ratified such instruments, it is an indication of its willingness and intention to be bound. Hence, Zambia's failure to domesticate the Rome Statute does not in any way evade its obligations under international law. Zambia is under an obligation to act in accordance with the Rome Statute.

³² See *supra* note 2, Article 86, part 9, 15, 15(4).

³³ *Supra* note 2 part 9 Articles 86, 88.

³⁴ The Constitution of Zambia (Amendment) Act No 2 of 2016.

³⁵ See the Vienna Convention on the Laws of Treaties (1969), Article 27.

However, based on the reasoning in the *Zambia Sugar Plc v. Fellow Nanzaluka*, Appeal No.82 of 2001 where the court justified the lack of self-execution of international treaties on the basis that the court below was only empowered to do substantial justice within the scope of domestic law. Based on the court's reasoning, it could be argued that on a national level, Zambia is only under a moral obligation to oblige with a treaty that has not been domesticated.

Nevertheless, under the Rome Statute, state parties can deny disclosure of documents that, according to the state, would compromise national security interests.³⁶ Non-state parties are not obliged to cooperate with the ICC, however *ad hoc* arrangements can be made to allow for cooperation.³⁷ There are four circumstances under which a state party can be exempted from the obligation to cooperate. Firstly, where a state is actively pursuing its duty to investigate and prosecute, in such a situation, the ICC prosecutor would only intervene after establishing that the state party is 'unable' or unwilling to undertake its obligations. Secondly, where a state party can establish that the concerned individual has already been investigated, prosecuted, or either convicted or acquitted, this is the principle of *ne bis idem*.³⁸ This means that if national courts in Zambia were to initiate criminal proceedings against an individual for any of the offences within the jurisdiction of the ICC, and there after proceed to either convict or acquit. The implication is that such a person cannot then be prosecuted before the ICC for the same offence. This signifies the complementary nature of the ICC.

Thirdly, where the Security Council requests for the suspension of investigations or prosecution,³⁹ the ICC is obliged not to investigate such matters. Finally, where a state or a non-state party has entered into other international agreements, which would make it inconsistent, should the state decide to oblige and cooperate with the Court.⁴⁰ The Rome Statute is drafted in such a way that it is flexible and allows for different circumstances to be taken into account, before the ICC decides to proceed with the investigation with regards to a particular situation. The ICC cannot force any state to comply or cooperate with the Court. This implies that state parties can only act on a morality basis.

Despite the weakness of the ICC, it still remains an independent and self-governing intergovernmental organisation, with international legal personality and powers to request cooperation from the state parties.⁴¹ The fact that state parties are obliged to ensure that measures are available under domestic law for all forms of cooperation,⁴² implies that under the Rome Statute, state parties and other entities are required to collaborate with the ICC, to the extent

³⁶ *Supra* note 2, Articles 72, 93(4).

³⁷ *Ibid* Article 87(5).

³⁸ *Ibid* Articles 17, 20.

³⁹ *Ibid* Article 16, Security Council Resolution 1422 (July, 12, 2002).

⁴⁰ *Ibid* Article 98.

⁴¹ *Supra* note 2, Article 4, Part 9, 86 and 88.

⁴² *Ibid* Article 97.

required of them by the Statute.⁴³ Zambia is obliged to work together with the ICC in accordance with the provisions of the Statute; this indicates that the ICC cannot expect Zambia to do more than what is required under the Statute. This model of interstate judicial cooperation in criminal matters is referred to as a horizontal model as it requires states to cooperate on an equal basis.⁴⁴ A state party such as Zambia is justified on its failure or refusal to cooperate with a court, under circumstances where a request to work together requires the release of information that could pose a threat to the state's national security.⁴⁵ This shows that with regard to the law, the Rome Statute is clear and only expects states to do what is required of them under treaty law.

However, states that are not a party to the Rome Statute, are not under any obligation to cooperate with the ICC, except in circumstances where the situation in a state has been referred to the court by the Security Council, as was the case with the Sudan,⁴⁶ or a state has voluntarily decided to cooperate with the ICC as was the case for Switzerland or with the USA in relation to Ntaganda.⁴⁷ Unlike, the above-described horizontal model, there are also examples of the vertical model of state cooperation, also referred to as the *supra-state* model.⁴⁸ The vertical model assumes that the ICC has supremacy over the states, meaning that states are compelled to cooperate. The dependence of the ICC upon states has led to the Court being described as a 'giant without arms or legs'.⁴⁹ The horizontal approach under the ICC is a weaker arrangement as national courts are accorded primacy over the ICC.

The vertical model attributes more power than the horizontal as it is limited to what states can do. Therefore, unless states are willing and able to assist the ICC, there is nothing much that the ICC can do to ensure that states comply with the Rome Statute. Therefore, only state cooperation can ensure the effectiveness and success of the Court.

⁴³ The ICC prosecutor requested the United Nations peacekeeping force in the DRC (MONUC) to execute the arrest warrants concerning the LRA commanders see Prosecutor's 'Submission of Additional Information on the Status of the Execution of the Warrants of Arrest in the Situation in Uganda' (ICC-02/04-01/05-132) 8 December 2006 paragraph 11.

⁴⁴ Geert –Jan Knoops *Theory and Practice of International and Internationalized Criminal Proceedings* (Kluwer Law International 2007) 310.

⁴⁵ *Supra* note 2, Article 93(4).

⁴⁶ *Ibid* Article 13b.

⁴⁷ *Ibid*, Articles 12 (3), 87(5), Robert Cryer, Hakan Friman, Darryl Robinson *Introduction to International Criminal Law and Procedure* (Cambridge University Press 2007) 457.

⁴⁸ Geert – Jan Knoops *Theory and Practice of International and Internationalized Criminal Proceedings* (Kluwer Law International 2007) 310.

⁴⁹ Robert Cryer, Hakan Friman, Darryl Robinson *Introduction to International Criminal Law and Procedure* (Cambridge University Press 2007) 467.

IV

CONCLUSION

This article has examined Zambia's position with regards to the Rome Statute. On the basis of treaty law, Zambia is under an obligation to comply with the Rome Statute. The Statute accords member states supremacy in the prosecution of individuals suspected of committing the most serious offences to international concern. Therefore, Zambia's national courts enjoy primacy over the ICC. The Rome statute imposes rights as well as obligations on Zambia as a state party. Zambia has a duty to exercise jurisdiction over those responsible for the most serious offences of international concern, these are genocide, war crimes and crimes against humanity. The ICC is thus intended to be the Court of last resort, operating at a complementary level to national criminal jurisdiction. It is thus befitting that its creation has been described as the most significant international organisation to be established since the United Nations.