THE IMPACT OF STATE POLICY ON INTERNATIONAL TREATIES: A CASE STUDY OF ZIMBABWE'S FAILURE TO RATIFY THE ROME STATUTE

BY

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Dedication

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Abstract

This study centres on the International Criminal Court as a supranational body that affects the formulation and implementation of state foreign policy. As such, the ICC would be the major unit of analysis in this research, together with those states that have not signed the Rome Statute establishing the Court. The dissertation analyses the reasons why Zimbabwe signed but has not become a member state of the ICC through ratifying the treaty. It is fundamental to note in this research that most literature on the ICC dwells much on states that are member states. This dissertation seeks to achieve justice by focusing on the relationship of the ICC with non-member states to the Rome Statute. The major research question that the dissertation seeks to ask is the reason why Zimbabwe has a negative stance on the Court with particular reference to policy-making. The rationale behind Zimbabwe's decision(s) on the ICC can best be explained by understanding the environment in which policy is made and formulated by the state. This dissertation is justified by the fact that it evolved from the non-academic arguments where uninformed attention had been given on the subject. The operational proposition guiding this dissertation is that failure to display impartiality by the ICC as witnessed by its neo-colonialism inclinations has by and large discouraged some countries becoming signatories of the Court. This proposition was supported through the utilisation of the Mandate System as the theoretical base underpinning this research.

Abbreviations and Acronyms

AU	African Union
BBC	British Broadcasting Cooperation
DRC	Democratic Republic of Congo
G77	Group of 77
ICC	International Criminal Court
IDRC	International Development Research Centre
LOAC	Law of Armed Conflict
OAU	Organization of African Union
SADC	Southern African Development Community
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VC	Vienna Convention

Table of Contents

CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction

This dissertation investigated the relationship between policy formulation within states and its impact on the role of international supranational bodies in controlling the behaviour of state actors. Reference will be made to the case of Zimbabwe which as a state fundamentally recognises the importance of legal criminal justice and international law. However, due to the justified need to safeguard national interests and domestic circumstances, Zimbabwe has reserved its right to become a member state of the International Criminal Court (ICC). It is against this backdrop that this chapter will outline the background of problem, statement of the problem, objectives of the study, research questions, proposition and methodology implored in this study. The chapter will explore Zimbabwe's position on the ICC. Particular reference will be made to the factors that influence policy formulation and how these have impacted on Zimbabwe's policy on the ICC.

1.2 Background

Before the establishment of the International Criminal Court (ICC), the international community always sought tangible and sustainable ways of achieving international criminal responsibility to no avail. The ICC was created by way of a treaty, the Rome Statute, which was adopted at a United Nations (UN) conference on 17 July 1998. The Court presides over cases that are defined as international criminal cases. Due to the fact that cases ascribed to the ICC cover both municipal laws of states and international law, there is need for the ICC to ensure that there is no conflict in the two domains of law as the Rome Statute establishing the ICC is not a peremptory norm which has a universal binding and awaits ratification for it to have a legal binding in municipal law. Orakhelashvili (2005: 62-63) states that, "peremptory norms safeguard the community interest as opposed to individual state interests". As such, "their rationale consists in invalidating or prevailing over incompatible acts and transactions in order to ensure the paramount superiority of fundamental community values and interests, and to avoid fragmentation of legal relations safeguarding the community interest" (Orakhelashvili, ibid). Thus, the lack of peremptory norm status in the Rome Statute leaves concerned parties in a position where they can choose whether or not to ratify it.

The ICC can be classified as a supranational body that was established solely for the purpose of presiding over criminal cases that have an international character. The formation of the ICC can easily be understood from a series of historical developments as Cryer et al (2010:144) notes that the first serious proposal to establish a permanent international court was made by Mognier Gustav "who was one of the founding members of the International Committee of the Red Cross". As Cryer et al (ibid: 144) notes, this was followed by another proposal as discussed during negotiations on the 1948 Genocide Convention, but these negotiations looked to such a possibility as only in the future. It was the United Nations General Assembly (UNGA) that gave the final and most important impetus on the practical possibility of the formation of such a Court. This saw the UNGA giving a request to the International Law Commission to draft a Statute for such a possibility. However, what is key to note for this research here is the fact that not all countries are parties to this Rome Statute. This diminishes the extent to which the Court can have jurisdiction. It was in 1989 that the creation of such a Court was put back on the United Nations agenda through the efforts of Trinidad and Tobago. It was in response to this that "the General Assembly asked the International Law Commission to draft a Statute for such a court, and the Commission responded swiftly, producing a final text in 1994," (Ibid.145). It was this text that gave birth to the ICC which needed sixty member states for it to come into operation. The sixty member states were generated in 2002 thereby operationalising the Court.

According to the Coalition of the International Criminal Court website (2010), "The next serious call for an internationalized system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War I". This saw an international tribunal being established by the Commission of Responsibilities in order to judge political leaders accused of international crimes. The issue was addressed yet again at a conference held in Geneva under the auspices of the League of Nations in 1937, which occasioned in the decision of the first convention stipulating the establishment of a permanent international court to try acts of international terrorism. The convention was initially signed by 13 states but none ratified it and it suffered premature death. Efforts were made again at the conclusion of the Second World War where the victorious set up tribunals to judge over those accused of perpetrating international criminal violence.

Cryer et.al (2010: 144) states, "The creation of a permanent international criminal court with potentially worldwide jurisdiction is one of the most important developments in international law". After the Second World War, efforts were made to achieve criminal responsibility as evidenced in the establishment of the Nuremberg and Tokyo tribunals that were meant "to prosecute international crimes at the international level", (ibid). After this period, efforts to achieve international criminal responsibility prolonged as was evidenced in the negotiations of the Genocide Convention in 1948. (ibid) supports this claim by noting, “there had been earlier proposals for a permanent international criminal court and a proposal was discussed during negotiations on the 1948 Genocide Convention, but the convention as agreed looked only to the possibility of such a court in the future”.

Given this background of the desperation by the International Community to come up with an international instrument on criminal justice, this research argued that the expectation from the international community would have been that most states, if not all, would quickly become members to a court that purported to achieve such a goal. However, this was evidently not the case because even those states that had strongly advocated its formation shunned it. It is against this background that this research seeks to investigate factors that led to Zimbabwe’s failure to ratify the Rome Statute. Zimbabwe as a state adheres very much to international law as symbolised by its own domestic jurisdiction which maintains friendly relations with the outside world. Chigora (2007: 1) notes that, “Zimbabwe is one African country that has maintained a rather active role participating in several fora maintaining links with several countries, participating in several multilateral processes, namely through the United Nations (UN), Organisation of African Unity (OAU) /African Union (AU), Group 77 (G77), Non Aligned Movement” among others. The question as to why a state that actively participates in the international environment as supported by the above quote would choose not to ratify the Rome Statute establishing the ICC must be key in noting the political aspect surrounding the operations of the ICC. This research therefore answers the question, “what is the reason behind Zimbabwe’s failure to ratify the Rome Statute that established the ICC?”

As a state, Zimbabwe is in favour of the achievement and adherence to international criminal justice in the international body politic. This is evidenced by its membership to tribunals like the SADC Tribunal. The reasons as to why a state that favours the upholding of international criminal justice but is not a member of the ICC a supranational body mandated with the attainment of such justice can be best explained by understanding the policy formulation process of that state. Geurts (2014: 6) states that, public policy can be defined as “a choice that government makes in response to a political issue or a public problem”. This choice is influenced by a number of factors which include ideology, personalities, political culture among other things. Geurts (ibid) went further to highlight that, “The term ‘public policy’ used in this context always refers to the decisions and actions of government and the intentions that determine those decisions and actions". It then follows that Zimbabwe's decision not to join the ICC is a policy stance in itself, but one being done on the international arena.

It is in the above context that this dissertation will investigate the intentions and actions behind Zimbabwe's failure to ratify the Rome Statute from 2002 to date. The study will investigate how faith in domestic mechanisms of achieving international criminal justice, personality of individuals, ideology and political culture among other factors have motivated Zimbabwe not to be a member State to the ICC.

1.3 Statement of the Problem

The core problem that this study addressed is that some States fail to become members of supranational bodies due to the need to safeguard their sovereignty. Zimbabwe as a State holds the fact that the ICC has an interventionist approach that may be detrimental to its own sovereignty. This has been evidenced by various statements that have been issued by Zimbabwean President Robert Gabriel Mugabe concerning the Court. As a result of its perceived interventionist approach, selective approach (as it has been accused of targeting Africa) which is in direct contrast to Zimbabwe's non-interventionist foreign policy objectives, Zimbabwe as a nation has tended to shun the Court. Zimbabwe prefers its domestic mechanisms of achieving international criminal justice.

Of fifty three African states, thirty four are members of the ICC while a total of 19 states are non-members. Ironically, more than thirty four African states participated in the negotiations of the Rome Statute establishing the ICC, given that a total of forty seven African states participated. However, other participating countries refrained from ratifying the Rome Statute. This invoked many questions which include; why did African states which had shown such a keen interest in having an international criminal court later refrain from becoming members of such a court? Could it be that public statements made by President Mugabe have had a bearing on the African continent? It is these and other questions that this dissertation would seek to answer from the perspective of Zimbabwe.

Zimbabwe has shown its negative stance of the ICC in a number of ways. One way Zimbabwe has proved this is her failure to ratify the Rome Statute establishing the International Criminal Court. According to Article 14 of the Vienna Convention (VC) on the Law of treaties which deals with the consent to be bound by a treaty expressed by ratification, acceptance and approval, "The consent of a State to be bound by a treaty is expressed by ratification when: (a) The treaty provides for such consent to be expressed by means of ratification; *(b)* It is otherwise established that the negotiating States were agreed that ratification should be required…" The other way is an example that was given by the British Broadcasting Cooperation (BBC). The BBC News (2015) stated that, "Though South Africa was a staunch advocate of the ICC's creation; its position is now closer to that of neighbouring Zimbabwe, which has always been a fierce opponent of the Court". This inference shows that Zimbabwe has not hidden its opposition of the Court to the international community. President R.G Mugabe's uncontrolled support on the sovereignty of Zimbabwe in one of his speeches at independence expressed concern over the mechanisms being employed by the western community to ensure their continued hold to domination of African states particularly Zimbabwe. Kersten (2015) quotes President R.G Mugabe as having said that,

"In fact, our understanding of the ICC-Africa relationship seems entrenched within a harsh and overly simplistic dichotomy, wherein the Court is either viewed as a neo-imperial, colonial project bent on subjugating members of the Global South or as a deeply misunderstood force for good and a legal institution that rises above politics".

This researcher argues that the important remarks from President Mugabe implies that the ICC has been utilized as a neo-colonialist mechanism by the powerful members of the ICC, particularly the United States of America and her Western allies to maintain their dominance of the minor states. The above characterisation of the Court mirrors Zimbabwe's position based on the President's personality. This is because Zimbabwe still experience threats to its sovereignty through neo-colonial practices like sanctions. This ultimately affects her independence which came through the liberation struggle.

Zhou and Zvoushe (2012: 213) capture the importance of Zimbabwe's independence when they state that, "Zimbabwe achieved its independence in 1980 after a gruelling seven year armed struggle. This historical reality remains a decisive factor in national policy decision making to this day". As such Zimbabwe's policies have by and large been influenced by the need to fight against any form of neo-colonialism. The historical reality that remains a decisive factor in national policy is the liberation struggle that brought Zimbabwe onto the international map. As such, the state is against any intervention that could compromise its sovereignty including ICC's role.

Patel (2006: 75) captures the importance of independence to foreign policy when he states that,

> "…since 1980 there has been an organic link between the method of independence, that is, the armed struggle (the Second Chimurenga) for independence, and its values and beliefs, and domestic policy and foreign policy".

Patel (ibid) went further to note that Zimbabwe's foreign policy is highly influenced by the liberation struggle mainly due to the fact that "the chief maker and articulator of Zimbabwe's foreign policy, President Robert Mugabe, and other major policy makers were leaders in the armed struggle". This concurs well with the view of Chigora (2007) who states that, "It has been noted that Zimbabwe through its political leadership, composed mainly of veterans of a gruesome liberation guerrilla war, has been positioning itself as the world challenger of international capital". This research argues that the views by Partel (ibid) and Chigora (ibid) imply that Zimbabwe's foreign policy has got a domestic bearing whereas it is hard to ignore the effects of colonialism and how the state leadership views the outside world.

1.4 Justification of the Study

This research was necessitated by the need to come up with a study that investigates the reasons why states shun certain supranational bodies. It is noted in this research that most studies that have been done were focusing on the ICC on a case study basis. They looked largely on states that are members or signatories of the ICC. This has somewhat seen those states that are not member states being ignored which means their argument in relation to the Court has played second fiddle to that of member states. For that reason studying the stance of non-member states of the ICC is worth undertaking as it brings balance to the manner through which the Court is viewed. An academic case will be made of such states as they have important arguments to offer that might be significant to the operation of the ICC. In order for international criminal justice to be achieved, the ICC needs the support of most, if not all, states in the world. Hence, effort should be made to understand and appreciate arguments from all segments of the world.

The study is also justified due to the fact that it will contribute immensely to both policy makers and academics. To policy makers in Zimbabwe, it will be of immense value in that it will investigate and add value to an understanding of Zimbabwe's foreign policy on supranational bodies involved in justice delivery. This will help policy makers in the Foreign Affairs Ministry to have one solid argument to which they can refer when it comes to reasons why the country is not a member of the ICC. The study will also help the Zimbabwean government to craft justifiable reasons for not ratifying the Rome Statute. This is important taking into consideration what the Chinese government has achieved, namely crafting a five point foreign policy model explaining its position on the ICC. If the same is achieved by Zimbabwe, diplomats will declare Zimbabwe's foreign policy with candour and clarity. The research is also justified because Foreign policy has to be planned and consistent. If the foreign policy of a country is not clearly articulated it is highly likely that consistency will be lost. It is on this basis that this study is justified as it will allow policy makers and those in the academia to clearly understand how the ICC functions and possibly create room for policy makers to counter the shortfalls associated with the operation of the Court.

Apart from this, another justification is that, the study will contribute heavily to whether Zimbabwe should maintain its policy stance or should revise its position and maybe become a member state of the Court. This will be beneficial to most if not all African countries as they have been faced with such a dilemma at continental level. Zimbabwe is an African state and its voice through President Mugabe is important. He has been the chairman of the continental body. With international media airing its opinion, Zimbabwe needs a clear position on the ICC. The BBC (2013), "The AU is heavily divided over the ICC, with East African leaders facing strong resistance from their West African counterparts in their campaign to whip up hostility towards the Court". This nature of things if not handled properly might see the international arena being divided on the proper course to take in achieving international criminal justice.

1.5 Proposition

The International Criminal Court's failure to display impartiality and its often criticised interventionist stance has by and large discouraged Zimbabwe from ratifying the Rome Statute establishing this Court.

1.6 Research Objectives

The execution of this study is intended to achieve the following objectives:

- To investigate the reasons why Zimbabwe only limited itself to signing, but not ratifying the Rome Statute establishing the ICC.
- To analyse the process of policy formulation in Zimbabwe and how it has influenced its decision on the ICC.

- To analyse whether it is feasible for Zimbabwe to ratify the Statute and how this would affect other African countries.

1.7 Research Questions

In line with the above research questions this research seeks to ask the following major research questions:

1. What are Zimbabwe's foreign policy objectives and to what extent do they present Zimbabwe's policy stance of not becoming a member of the ICC?
2. What has influenced Zimbabwe's policy stance on the ICC?
3. To what extent is it feasible for Zimbabwe to ratify the Rome Statute or influence other African countries to also ratify the Statute?

1.8 Methodology

This section will present the research methodology that will be followed in order to generate ideas on the subject matter. A clear and concise explanation of how this study will be conducted is presented herein. The research methodology inclusive of the research design, philosophical assumptions, sampling procedure, population, data gathering technics, research instruments, data collection procedure, data analysis procedure and data presentation will be the focus of this section. Ethical considerations that will guide this research will also be explained in this section.

1.8.1 Research Design

This research will utilise a qualitative research design, as opposed to a quantitative research design. According to MacCleod, cited in Chindanya (2002:78), qualitative methodology is "a process of systematic inquiry into the meanings which people employ to make sense of their experience and guide their actions". Qualitative research is about understanding the subjective meaning that people give to phenomena. As a result of this the researcher will investigate why Zimbabwe has not been a member of the ICC through deep understanding of the opinions of policy makers and politicians who have influenced this foreign policy decision.

A research design can be thought of as a structure of research. Orodho (2003) defines it as the scheme, outline or plan that is used to generate answers to the research problem. The qualitative research will be a case study with the case of Zimbabwe being the emphasis of the analysis. Very little is known about the foreign policy reasons behind Zimbabwe's policy stance on the

ICC. As such, there is need to use massive documentary search, key informant interviews and focus group discussions. These methods will help in generating more information about the phenomenon under study. The data that will be collected will be analysed qualitatively through the use of content and thematic analysis where data will be grouped or codified according to its themes.

1.8.2 Sampling Procedure

Purposive sampling assisted the researcher as respondents who have in-depth knowledge about the operations of the ICC and Zimbabwe’s foreign policy in relation to it were targeted. The sample will be mainly derived from policy makers within the Ministry of Foreign Affairs as these are the people with the knowledge on Zimbabwe’s foreign affairs. In-depth interviews and focus group discussions will be utilized to elicit the data used for this research.

1.8.3 Ethical Considerations

In doing research four main principles must be considered to ensure that ethical issues are covered in research and these are: privacy, anonymity, informed consent as well as confidentiality.

1.8.4 Informed consent principle

In order to ensure that the researcher got the consent of the respondents to use their views, they were informed about the study nature and its objectives. All the major themes, title being looked into, data collection method and the estimated period of the interview as well as the attendance of a researcher assistant in the interviews were clarified to the respondents.

1.8.5 Privacy principle

The researcher signed an oath of secrecy with the interviewees and this helped them to be at ease in providing information as it would be treated in a confidential manner and would be kept secured. While the researcher recorded them verbatim, their identities remained anonymous.

1.8.6 Confidentiality and anonymity principle

All the interviewees were also guaranteed that their individualities would be reported in an unidentified manner such that there would be no names attached. The respondents were also given the option to refuse to respond to any questions which they felt infringed on their rights or would result in conflict of interest. They were also told that they could also withdraw from the interview at any point without clarification. However, most participants voluntarily gave their permission to probe and extract as rich data as possible.

1.9 Limitations

The first limitation was that most of the information involved was sensitive foreign policy information and as such most officials were not readily available to share such information. The Foreign Affairs Ministry deals with information that is of a sensitive nature and as such officials within the Ministry are restricted very much on what they should and should not say. A case in point is that most, if not all employees, are subject to the Officials Secret Act and this limited this study as valuable information could not be communicated. It also has to be noted in this research that most of the information dealt with was prone to bias as officials might have gave subjective information that is in line with their political affiliations.

Another limitation that was faced by this study was that Zimbabwe as a non-member state to the ICC lacked or do not have an ICC representative hence her input to the ICC is not considered for review by ICC member states. Resultantly, objectivity was likely affected as the data to be utilized was just mainly from one side as Zimbabwe is not a member of the ICC and given her open criticism of the operations of the Court there is a likelihood of the provision of defensive data from the Zimbabwean part.

1.10 Delimitations

This focused on Zimbabwe as the case study. It also focused mainly on the policy decisions Zimbabwe has pursued from 2002, since the establishment of the ICC up to the year 2016. It did not focus on what the country might do from 2015 going forward in its relationship with the ICC. The timeframe that this study focused on was from 2002 with the inception of the ICC, to February 2016. The research was also limited to factors that influenced policy making and formulation and how they have impacted on Zimbabwe's stance on the ICC. The study utilised qualitative methods of data collection and analysis and not quantitative methods. The research was carried out from September 2015 to February 2016.

CHAPTER TWO: LITERATURE REVIEW, THEORETICAL AND CONCEPTUAL FRAMEWORK

2.0 Introduction

There is a shortage of literature that describes the relationship existing between the ICC and States that are not signatories to its statute. Most of the literature in academic discourse have dwelt much on those states that are signatories to the Rome Statute establishing the ICC. Some literatures have focused on States whose citizens are on trial, or are still being tried by the Court. This study relied heavily on literature on the establishment of the ICC, jurisdiction of the ICC, policy and foreign policy. The theoretical and conceptual frameworks governing this research were also outlined and discussed in this chapter.

2.1 LITERATURE REVIEW.

2.1.1 Policy and Policy Formulation

On a daily basis governments are faced with the need to come up with specific policies to enable them to react differently to external circumstances that they face on a day to day basis. Anderson (2003: 2) states that, "policy is defined as a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern". Anderson (ibid), notes that policy "also may be viewed as whatever governments choose to do or not to do". This research notes that the latter definition may be adequate for ordinary discourse, but it can be said to be too shallow, as it leads to the fact that all decisions of government, acted and non-acted upon, can be termed as policy while the former definition is scientific in its nature and is a working definition. Anderson (ibid) further states that, "this definition focuses on what is actually done instead of what is only proposed or intended; differentiates a policy from a decision, which is essentially a specific choice among alternatives; and views policy as something that unfolds over time".

The above classification of policy is very crucial to this dissertation because the Zimbabwean government has not come up with a clearly articulated policy on the ICC. What is there are decisions that are made by key government officials or personalities when they will be speaking on public spheres. These decisions are however important as they have a huge bearing and insight on policy. Decisions influence national policies sometimes resemble a State's policy. Anderson (ibid) states that, "in response to policy demands, public officials make decisions that give content and direction to public policy. These decisions may enact statutes, issue executive orders or edicts, promulgate administrative rules, or make judicial interpretations of laws".

On the nature of policy it was significant to distinguish policy into two broad distinctions which are domestic and foreign policy. Although the two emanate from the same branch of policy studies they fall into different categories, while at the same time correlating. Beasley et al (2012: 2) state that, "We typically make the distinction between foreign policy and domestic policy. “Foreign” is in this paper meant to apply to policy toward the world outside states' territorial borders, and “domestic” is meant to apply to policy made for the internal political system”. Following the above, the ICC falls outside the borders of Zimbabwe and as a result Zimbabwe's relationship to it will be a matter of foreign policy. Be that as it may, this research argues that how Zimbabwe relates to the outside world is heavily influenced by happenings on the domestic arena. Resultantly, the relationship between foreign and domestic policy is noted. It is in this regard that it is important as part of literature review to analyse the foreign policy of Zimbabwe and then come up with an understanding of how this has influenced its decisions on the ICC.

2.1.2 Foreign Policy

It was critical for this research to inquire into the aspect of foreign policy. This will not only be helpful in understanding why Zimbabwe has not ratified the Rome Statute but will be of great significance as well in understanding why it only chose to sign the treaty. As a result of this it is good to define what foreign policy is and to understand the nature it can take. It is submitted that if one does not appreciate what foreign policy entails, it is likely that they would not understand the reasons behind Zimbabwe not becoming a member state. The concept of Foreign Policy has been defined in various ways. However in these definitions it is clear that: it is a system of action of one government towards another, a state towards another state or of a government towards an international organisation. Foreign policy, therefore, is designed to promote, protect and defend a nation's vital interests such as the preservation of national sovereignty, the defence of territorial integrity, promotion of economic, military, strategic and diplomatic interests. Russet (2000:378) defines a policy as “a program that serves as a guide to behaviour that is intended to realize the goals an organization has set for itself”.

Modelski (1962:3) defines foreign policy as the “process whereby a state adjusts its actions to those of other states so as to minimise adverse actions and maximise the favourable actions of a foreign state”. Modelski (ibid: 308) views foreign policy as consisting of “strategies to safeguard national interest and to achieve national goals and interest”. Foreign policy thus occurs at the meeting point of the state and the international environment because “policy is seen here not as actions based on some grand design but as a continual process of pragmatic adjustment to the actions of others in the external environment” (Ojo et al, 1990:43). In one way or another, it is submitted in this research that the whole foreign policy process is like a game of chess, as the purpose of adjustment is “to make the environment more hospitable and favourable or, at least, less hostile and disadvantageous” (Ojo, Ibid).

From the above characterisation of foreign policy this research noted that Modelski (ibid) first identifies foreign policy as a relationship that occurs between states. However, it must be said that this relationship should not be limited to state actors only, as it should as well extent to how the state relates to other players in the international arena. In order to mention the extending of relations to other players that are not state actors Damerow (2007: 14) refers to foreign policy as "ways in which the central governments of sovereign states relate to each other and to the global system in order to achieve various goals or objectives". Hence foreign policy also involves how states relate to other players. How Zimbabwe relates with the ICC can be best contextualised within the auspices of foreign policy goals.

2.1.3 Factors that Influence Foreign Policy

This research argued that domestic and external environment both influence foreign policy. Domestic environment plays a role on national objectives and foreign policy too. One of the major objectives for a state's foreign policy is to maintain its security and survival as a state. As such state sovereignty is an important element in making foreign policy. Independence and territorial integrity and non-interference in domestic issues constitute sovereignty of a state. This is the fundamental objective of foreign policy where a state is expected to make the maximum effort to achieve physical survival of the population and the continuation of the effective sovereignty and political independence of the state. Any loss that may threaten the viability of the state is also of paramount importance and this is why states defend their territorial integrity.

Another factor that is the gaining of power whether it is national power, individual power or economic power. Bertrand Russell (1903) argues that of "the infinite desires of man, the chief are desires for power and glory". It must be noted in this research that nation-states exist in a relationship of potential insecurity and as such each government seeks to enhance and preserve its national interests as would be done by every other state in the international system. It is therefore proper to note that foreign policy objectives are influenced by power, and "these objectives vary in terms of scope, intensity and time period in which they are pursued and the resources which are allocated in an attempt to achieve them" (Bealey, 1999:54).

2.1.4 Models of Foreign Policy

The decision making process of a nation is at the centre of foreign policy. As Goldstein and Pavehouse (2007:140) state that, "foreign policy is a process of decision making". States take actions because people or decision makers choose actions. Goldstein and Pavehouse (ibid) suggest "three models of decision making process that can influence foreign policy".

The first was the rational model which "is a step by step method and weighs the options before making a foreign policy decision" (ibid). It is submitted in this research that they consider facts on the ground especially the popularity of the policy, stakes (what a country may lose or gain) in following that policy. Some countries in Europe took this model in deciding whether or not to join the Euro zone. The same could be said about SADC, DRC in 1997 joined the grouping and in 1998 they benefitted militarily when SADC deployed troops in its support.

The second model was the organizational model. The model, according to Goldstein and Pavehouse (2007:142), "heavily relies on standard operating procedures". This refers to how responsibilities are shared within institutions. An example is how the responsibilities between the Minister in the ministry of Foreign affairs and the Permanent secretary are carried out. Zinyama (2014: 30) likens the role of the Minister to that of the Chairman of the corporate entity who provides general policy direction while the secretary acts more like the CEO of a company who "has direct responsibility for ensuring the effective and efficient delivery of the ministry's programmes and policies".

The other model is called the 'government bargaining or the bureaucratic politics model' in which the foreign policy decision result from the bargaining process among various government agencies with a degree of divergent interests in the outcome, (Goldstein and Pavehouse 2007:142).

Internally, some individual decision makers are also important players in foreign policy actions. Goldstein and Pevehouse (ibid) note that every international event is the result, intended or not, of decisions made by individuals. For instance Goldstein and Pevehouse (ibid) argue that most of these individual decision makers are presidents, mostly because they wield the power and mandated by the electorate. Whether the decision they make are rational and relevant to the state are a matter of another discussion. Most decisions to go to war by the United States during the George Bush Administration are blamed on the former president himself. Swoyer et al (2011: 26) provides that Julius of Nyerere of Tanzania single-handedly managed to steer his country's foreign policy towards fighting for liberation and independence of African states. Swoyer et al (ibid) state that, "One of Nyerere's most important contributions to African liberation movements was his allowance for foreign nationalist/liberation groups to use Tanzania as a safe haven for their operations". This research therefore argues that individual members play crucial roles in defining the foreign policy of their States.

Daniel Elazar (1975:23) suggests that "political culture of the country can also determine the foreign policy of a nation". For example, using this viewpoint, Zimbabwe's political culture was to fight for freedom and this was reflected in its role both in the frontline states and SADCC when it assisted Mozambique as well as campaigned against the apartheid South Africa. This research therefore argues that political culture is the traditional orientation of the citizens of a nation toward politics affecting their perception and political legitimacy. It is submitted that there is a link between domestic policy and foreign policy, thus demonstrating that domestic environment plays a crucial role in shaping Foreign Policy.

Ideologies that a nation follows can also shape its foreign policy. These ideological goals are epitomized in the cold War era where the competition was between the USSR policies guided by Marxism and the United States' pursuing a policy of containment to counter communism. Brzezinski and Huntington (1963) quoted in Calin (2010: 55-56) state that,

> "Ideology and political beliefs play significant roles in the Soviet and American political systems. Ideology gives the Soviet leaders a framework for organizing their vision of political development; it sets limits on the options open to them as policy makers; it defines immediate priorities and long-range goals; and it shapes the methods through which problems are handled".

Hunt (1987: 16) adds that, "ideologies are essential because they establish the framework in which policymakers handle specific issues and in which the interested public understands those issues". This research therefore notes that ideology plays a pivotal role in shaping a State's foreign policy as it provides the framework to be considered by policy makers in establishing international friendly relations.

There are also external influences that have a bearing on foreign policy. On external influence when explained from a neo-realist perspective, foreign policy is strongly determined by the external environment, an international system characterized by anarchy. In this system, states - understood as unitary, rational actors - interact to assure their security (Jervis, 1978:34). A state's foreign policy behaviour is determined by its relative power, which is a function of the distribution of power in the international system, and is seen to depend on material re-sources (military capacities, raw materials) (Mearsheimer ,2007:98).

The International Development Research Centre (IDRC: 2015) points to the fact that the external environment can provide both inhibiting and facilitating influence in the foreign policy of a nation. The influences can be in the immediate and proximal environment from the boundaries of a State or can be peripheral. An example of the immediate and proximal environment is that States in the South Africa Development Community influence each other's foreign policy activities. The Southern African Development, European Community Regional Strategy Paper and Regional Indicative Programme for the period 2002-2007 (2010: 5) state that SADC member States conclude a,

> "Series of protocols to spell out policies, areas of cooperation and harmonisation as well as the obligations of Member States for effective implementation of agreed decisions. The protocols are negotiated by Member States and all stakeholders and, after approval by the Summit and ratification, become an integral part of the Treaty. So far 20 protocols have been signed, 9 of which have been ratified and are under implementation".

The above factors need be identified and explained as it is from them that one can understand from which angle Zimbabwe's policy stance on the ICC is premised. This information will be very invaluable at a later stage of this discussion when findings will be analysed.

2.1.5 Zimbabwe's Foreign Policy

As a small power that gained its independence through the liberation struggle, Zimbabwe has a foreign policy that is nationalistic in nature. According to Patel (1985: 229-230), the five key principles of Zimbabwe's foreign policy as highlighted in a major speech at the United Nations in August 1980, Mugabe, then prime minister, expounded on the five key principles of Zimbabwe's foreign policy:

1) "national sovereignty and equality among nations";
2) "attainment of a socialist, egalitarian and democratic society";
3) "right of all peoples to self-determination and independence";
4) "non-racialism at home and abroad"; and
5) "Positive nonalignment and peaceful co-existence among nations".

The above five major principles have guided Zimbabwe's foreign policy from 1980 up to present. As noted earlier in the words of Patel (2006: 75) President Mugabe is "the chief maker and articulator of Zimbabwe's foreign policy". This scenario has seen Zimbabwe pursuing the same or nearly the same foreign policy as President Mugabe still remains the premier of the state up to date. These principles still reside as the major planks of Zimbabwe's foreign policy as the Ministry of Foreign Affairs still alludes to these as the fundamental basis of Zimbabwe's foreign policy, (Ministry of Foreign Affairs, 2015).

Principle number one, that is, 'national sovereignty and equality among nations', and principle number three, that is, 'right of all peoples to self-determination and independence', are the major principles that have influenced Zimbabwe's negative decisions towards the ICC. This concurs well with what Schuster (2011: 5) argued when he stated that, "the classic definition of state sovereignty denotes the competence, independence, and legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusions from other sovereign states".

The view by Schuster (ibid) entails that all states should have the legality to choose what they wish without any interference from other state. Adherence to the principle of national sovereignty is much adamant in the once colonised states as they feel vulnerable as such they have to protect what they have by minimising outside intervention. This scenario was summed up by Anghie (2004: 196) who stated that, "For the newly independent states, sovereignty is the hard won prize of their long struggle for emancipation. It is the legal epitome of the fact that they are masters in their own house". As a result, this has seen them pursuing a foreign policy that is protective and aimed at minimising outside (mainly Western) influence. The reason why the ICC is considered to be Western is because it was the West, through imperialism that once compromised the sovereignty of these weak or small countries. Zimbabwe as a State is no exception to this scenario and even her Supreme Law, the Constitution (Amendment Number 20) under Section 3 underlines the values and principles that shape Zimbabwe's model of governance.

Thus a closer look into Zimbabwe's foreign policy, exhibit the above nature of things. The suspension and later withdrawal of Zimbabwe from the Common Wealth serves as a good example. Zimbabwe viewed its suspension from the Common Wealth as a way to target its sovereignty which eventually led to its withdrawal. According to Patel (2006: 183), "The 'white' members of the Commonwealth have been the leading and most vocal and persistent 'bloc' in their 'anti-Zimbabwe' stance". This later led to the permanent withdrawal of Zimbabwe from the supranational body as it was not given an adequate and a fair platform to present its case. Patel (ibid.) notes that, both SADC and Zimbabwe were not given a chance to voice out their concerns regarding the suspension of Zimbabwe. This example serves a good purpose of showing the reasons why Zimbabwe is not associated with some supranational bodies from a policy perspective.

Having outlined or analysed the nature of Zimbabwe's foreign policy on other aspects, it is then fundamental to give a literature on the evolution and operation of the ICC. It is very significant to analyse the operations of the Court and try to make a case of Zimbabwe's foreign policy with particular focus on how the two diverge.

2.1.6 The International Criminal Court's (ICC's) Jurisdiction

An introduction of how the ICC was formed has already been given in Chapter 1. This section will only cover the operations of the Court as presented by its jurisdiction, and try to analyse the reasons behind Zimbabwe's negative stance on that basis. But before one moves to the jurisdiction of the court, it is fundamental to highlight the composition of the court. Aust (2010:258) states that, "The ICC sits in three divisions: Appeals (five judges), Trial (three judges) and the Pre-Trial (one to three judges)". The ICC also consists of the office of the prosecutor who is required to "have extensive practical experience of the prosecution or trial of criminal cases, and is elected by parties for a nine-year, non-renewable term".

Aust (ibid: 259) predicts that the ICC will not be able to prosecute all major crimes of international that it must not be thought that in future all major crimes of international concern even crimes that fall under the Court's jurisdiction. This shows that the jurisdiction of the Court is not automatic but follows certain procedures for it to be invoked. The ICC's jurisdiction stems from the complementarity principle. Under this principle, national jurisdictions get the first crack at prosecuting genocide, crimes against humanity, and war crimes with the ICC only operating as 'the court of last resort' for those states that prove unwilling or unable to prosecute (Dugard: 2011). Cryer et al (2010: 153) further add that the other aspect is the rule of admissibility which is mainly concerned with the question of whether the ICC should admit a case for prosecuting and trial. Cryer et.al (2010: 153) states that, "The ICC is a court of last resort. The court is intended to supplement, not to supplant, national jurisdictions and the preamble to the ICC statute recognises that every state has a responsibility to its own criminal jurisdiction over international crimes". The above are the major guiding principles through which the principle of complementarity and the rule of admissibility can be invoked.

The Rome Statute (2002:3) accentuates that, "It is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes" and that, the ICC would have, "power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions". It is however argued in this research that the ICC has failed to impartially "exercise its jurisdiction" over non-African persons. President Robert Mugabe's statement that, "They (Europeans and Americans) committed crimes, colonial crimes galore – the slaughter of our people and all that imprisonment... I have a case, why was I imprisoned for 11 years? We forgave them, but perhaps we've not done ourselves justice... You set up the ICC; we set our ICC to try Europeans, to try Mr [George] Bush and Mr [Tony] Blair" (News24: 2015). It is also noted in this research that the Statute observes that domestic courts have the onus of prosecuting criminals and that there is need for another court like the ICC to deal with the same cases at a certain level in time but only acting to enhance rather than to supersede domestic courts. These matters concern jurisdiction and admissibility. Gove (1986: 1227) defines jurisdiction as legal power or "the right or authority to hear or determine a cause considered either in general or in reference to a particular matter". The Statute therefore defines which cases can be brought before the ICC and by whom. The Statute also underscores circumstances under which the ICC can entertain these cases and the reasons why.

Shaw (2008: 439) states that the crime of aggression was not defined at the initial signing of the treaty but was defined later. However the crimes of genocide, crimes against humanity and war crimes are all well defined in the Rome Statute Articles 6, 7 and 8. It will be important to note that the stipulated war crimes are those covered by the Law of Armed Conflict (LOAC) also known as the Geneva Conventions. In line with what Shaw stated, the Rome Statute (2000: 10) specifies that the Court considers only cases committed after its establishment *(jurisdiction ratione temporis*). The Court will also consider submissions by State parties for crimes committed from the date of that state party becoming party to the Rome Statute. du Plessis (2008) note that the ICC has no jurisdiction over cases committed before the Statute entered into force thus in July 2002. An example can be that of the Herero Massacres by the Germans in Namibia in the 19th Century and atrocities committed during the dismantling of colonialism in the mid-20th Century in Africa. The ICC cannot and will not have jurisdiction over such cases as they were committed way before its establishment for instance the Rwandan Genocide of 1994.

The jurisdiction of the ICC is also limited only to State Parties and the United Nations Security Council referred cases. The Rome Statute (2002: 11) states in Articles 13 and 14 that cases to be considered by the Court are supposed to emanate only from State Parties to the Statute. It is also important for this research to state that the United Nations Security Council (UNSC) can also refer cases to the ICC emanating from Chapter VII of the United Nations Charter. Examples of cases referred by state parties to the Statute for investigation include that of General Ntaganda in the Eastern Democratic Republic of Congo and Josef Kony in Uganda. Both men are wanted for war crimes. Abraham 2015 notes that the case of Sudanese president Al Bashir is an example of a case referred to the ICC by the Security Council. Abraham (2015) further notes that the case of Uhuru Kenyatta and others in Kenya is an example of a case where investigations were initiated by the Prosecutor. However, the consent of the Pre-Trial Chamber has to be secured by the Prosecutor before he or she can start investigations and/or proceedings in a certain matter. Thus this research notes that the ICC exercises its jurisdiction on state parties to the Rome Statute as well as cases referred to it by the UNSC. However, UNSC referrals have been noted in chapter three to be an instrument for Western and American States' domination over African states.

Another angle that is worth mentioning in this dissertation is that the court's jurisdiction relates to the United Nations Security Council's referral power. Dugard (2011: 191), citing Article 13 (b) of the ICC Statute states that, "under the Statute the UN Security Council is empowered to refer to the court situations in which crimes within the jurisdiction of the Court appear to have been committed". This characterisation of things devolves a little from what Aust (2010: 163) observes, when he argued that, "The Statute does not confer any such role on the Council; it could not add to the powers which the Council is given by the UN Charter". The difference between the two scholars is that the former gives the Rome Statute as the source of the Council's role, whilst the latter notes the UN Charter as the source. Be that as it may, the fact remains that the Council has power to grant the Court jurisdiction over crimes that are defined and are in its scope.

2.2 THEORETICAL FRAMEWORK: ICC as Part of the Mandate System

This study was guided by the theoretical framework of the Mandate System. Theoretically, the Mandate System was first suggested by General Smuts of South Africa, "who originally proposed the creation of the Mandate System, envisaged its application to European territories that had been left behind by the collapse of the Russian, Ottoman and Austro-Hungarian Empires", (Anghie, 2004:120). It was fundamental to "examine the legal structure of the system, the political context in which it was created, the goals it sought to advance and the manner and effects of its operation". According to Anghie (2004: 120), "The Mandate System was devised in order to provide internationally supervised protection for the peoples of the Middle East, Africa and the Pacific who previously had been under the control of Germany or the Ottoman Empire". The reason why international institutions where created where because, in the words of Smuts (1928), the above territories were "inhabited by peoples who were characterized as incapable of or deficient in power of self-government, destitute, and requiring nursing towards political and economic independence".

The idea of the Mandate System was supported by Woodrow Wilson, but with major difference. The term 'major difference' applying to the sense that Wilson wanted this system to apply not to European territories but to Asian and African territories. According to Anghie (2004: 121),

> "The Mandate System embodied two broad sets of obligations: first, the substantive obligations according to which the mandatory undertook to protect the natives and advance their welfare and, second, the procedural obligations relating to the system of supervision designed to ensure that the mandatory power was properly administering the mandate territory".

Initially this arrangement was to be temporary up until a time when the backward territories were capable of controlling themselves as the former colonial powers were left in charge of the administrative and supervisory roles of the mandate territory. However, it is on the basis of the argument that the Western European states have taken this arrangement as a permanent feature of international politics, so that they can continue controlling the weak states of the world, that this study uses this theoretical framework to give insights to this research.

The other theory that was used was the integration theory. This theory is important because States have to cooperate in the international system. Regions have integrated and the global community as represented by the ICC can cooperate in the criminal justice. Rosamund (2010: 140)'s argument that, "governments seek integration as a way of solving problems that they have in common" is subject to criticism as some of the international institutions that are there in the world to which Western European Powers have a controlling stake. The ICC is no exception. Its very same locality bears testimony to this. The power that the UNSC enjoys in the jurisdiction of the ICC, as resembled by its referral powers, shows this nature of things. Due to the fact that Zimbabwe's foreign policy is influenced by the need to safeguard sovereignty and the right to self-determination Zimbabwe will by all means necessary try to shun institutions that will compromise these principles. The theory is however faced with a number of limitations and strengths. Some of its weaknesses of the theory include the fact that it may be viewed "as an instrument of imperial power policy, because it continued the practice of foreign rule over the former colonies…." (Matz, 2005). This therefore applies to the topic under study as the International Criminal Court has been viewed as a colonial model by the Zimbabwean Government leadership as highlighted in paragraphs above.

2.3 Conceptual Framework

The central question to this research was; what are Zimbabwe's foreign policy objectives and to what extent do they present Zimbabwe's policy stance of not becoming a member of the ICC? This question leads to other questions such as what is foreign policy, what are Zimbabwe's foreign policy objectives, what is the International Criminal court and how does the Court functions to mention but a few. Kaarbo et al (2012: 2) states that the term foreign policy "is meant to apply to policy toward the world outside states' territorial borders". Modelski (1962:3) defines foreign policy as the "process whereby a state adjusts its actions to those of other states so as to minimise adverse actions and maximise the favourable actions of a foreign state". Patel (2006: 76) identifies five factors that influence Zimbabwe's foreign policy. These are; 1) 'national sovereignty and equality among nations'; 2) 'attainment of a socialist, egalitarian and democratic society'; 3) 'right of all peoples to self-determination and independence'; 4) 'non-racialism at home and abroad'; and 5) 'positive nonalignment and peaceful co-existence among nations'. It is in the interest of this research to note how these factors have influenced Zimbabwe's negative stance on the International Criminal Court.

The International Criminal Court can be thus classified as a "court of last resort" internationally that has been established mainly for the purpose of presiding over criminal cases that have an international character. Arieff (2011: 1-2) states that, "the Statute of the ICC, also known as the Rome Statute (the Statute), entered into force on July 1, 2002, and established a permanent, independent Court to investigate and bring to justice individuals who commit war crimes, crimes against humanity, and genocide. The ICC's jurisdiction extends over crimes committed since the entry into force of the Statute". This research however raises more questions concerning the independent part of the International Criminal Court given the claimed bias towards the African States. If it is true that the ICC is independent as it claims to be, the next question would be then, why has the Zimbabwean government failed to ratify the Rome Statute establishing the International Criminal Court.

CHAPTER THREE: MAJOR FINDINGS

3.1 Introduction

This chapter presentedthe major of findings of this research. The findings came about as a result of key informant interviews, secondary interviews and documentary search. The research targeted informants from the Ministry of Foreign Affairs (MFA) who are well vested with Zimbabwe's foreign policy agenda. While documentary search was also utilized in the acquisition of data, focus group discussions could not be used as informants indicated that dedicating time for discussions would interrupt their day to day businesses at the Ministry.

The central finding on this research was however that the International Criminal Court is politicized. To date the ICC has presided over 23 cases in 9 situations and all are African cases.

The research notes that this has discouraged the Zimbabwean government from ratifying the Rome Statute. The research also noted that factors such as colonialism, neo colonialism and the desire for self-rule (sovereignty) among other factors to be discussed in the following paragraphs also played a pivotal role in discouraging the Zimbabwean government from ratifying the Rome Statute.

3.2 Finding on the International Criminal Court's alleged bias.

This research found out that the ICC is politicized and it shows a lot of bias towards African States. This research found out that the ICC is negatively politicised as it neglects crime against humanity cases against USA and British leaders who were front runners in the 2003 invasion of Iraq. Kaarbo and Ray (2008: 85) states that: "The failure to democratize and stabilize Iraq and charges of prisoners' rights abuses in prisons in Iraq, Afghanistan, and Guantanamo Bay further depleted goodwill toward the United States". While Kaarbo and Ray (2008: 85) even acknowledge that, "Indeed, very few people in the rest of the world viewed the United States favourably by 2006", the ICC has done nothing to redress these crimes against Humanity. Instead, when the Sudanese "Janjaweed" (government backed militants) went into war against rebels starting in 2003, "The United States has called the killings an act of genocide, and the International Criminal Court has issued arrest warrants, charging Sudan's president and rebel leaders with war crimes" (Kaarbo and Ray, ibid: 80). This research notes that this finding implies that the ICC is highly politicised and that it stands for the rights of the super powers.

A key informant in the MFA who refused to be named in this research noted during interviews that the ICC is a court meant to try African leaders. He pointed out that, "The International Criminal Court has fast developed into a melting pot where African Heads (leaders) are boiled and subsequently melted while their European and American counterparts cool down their thirst with human blood from mass slaughters in the Middle East and in Africa of cause". This augurs well with what Maodza in an article in the Chronicle Newspaper (2015) quotes President Mugabe as saying the African Union is not the ICC headquarters and there is nowhere it would have submitted to the calls to manhandle Sudanese President Omar Al-Bashir during its 25th General Assembly in South Africa,

> "This (venue of summit) is not the headquarters of the ICC. There is this view that we should distance ourselves from the ICC. The treaty was signed not by the AU but by individual countries. Of those that signed the treaty, they are now regretting".

The Zimbabwean President also adds that, “We didn’t sign as Zimbabwe to submit ourselves to justice outside the country” which adds to another finding to be presented below that the Zimbabwe subscribes to internal, regional and continental justice systems. News24 (2015) also quotes President Mugabe as having said,

> “They (Europeans and Americans) committed crimes, colonial crimes galore – the slaughter of our people and all that imprisonment... I have a case, why was I imprisoned for 11 years? We forgave them, but perhaps we’ve not done ourselves justice... You set up the ICC; we set our ICC to try Europeans, to try Mr [George] Bush and Mr [Tony] Blair".

This research also found out that the UNSC case referral system creates room for bias. Responding to the question of how is it possible that the Zimbabwean Government was quick to note that the ICC is biased towards African States (thus withholding her ratification of the Rome Statute before any case had been herd by the Court) and if it was not the problem of African States that hurriedly ratified the Rome Statute, the same informant who refused to be named highlighted that the issue of referrals whereby the United Nations Security Council (UNSC) could greenlight the ICC to open cases even for Heads of States that are not signatories to the Rome Statutes created room for bias. The informant rather imposed a question, “who controls the United Nations Security Council?” David Hoile, director for the London based African Research Centre quoted in Maodza (2016) highlights that the ICC loses its integrity because of its funding by the European Union which creates room for manipulation. He notes that sixty percent of the ICC funding is done by the European Union and as a result, “It (the ICC) (is) nothing more than an instrument for EU foreign policy. The funders are former colonial powers. It is an instrument of neo-colonialism. It has appointed its full ICC judges who have never been lawyers or judges”. It is therefore noted in this research that the ICC is highly politicized given its execution of functions that has seen it opened 23 Cases in 9 situations all from Africa as supported by the evidence on the ICC website (2015)

This research also noted that the ICC is strongly manipulated by the world major powers. It has been subject to manipulation not only in the process of the trial of would be perpetrators but when observing the alleged perpetrators of the crimes that fall under the Court’s jurisdiction. This has been noted in this research to have weakened the Court. Brown (2005: 23) notes that,

> "A permanent ICC was supposed to depoliticize international criminal law so that international investigations and prosecutions would not depend on Security Council approval, but unfortunately this vision has not yet been fully realized. The ICC is a very weak institution, and will therefore depend *de facto* upon the Security Council both for more effective jurisdiction based on referrals and for enforcement of its judicial authority over recalcitrant states. Even those accused of genocide, the most grievous of all crimes, may still escape international prosecution unless the Security Council makes a political decision to intervene".

Thus the UNSC is left to determine the nature of the crimes as defined by the Rome Statute. The problem that arises thereof is the politics of the United Nations Security Council. Falk (1994: 625) states that the UN "was from the outset to be a universal instrument of geopolitics." Hurd (2014: 366-367) in expanding the UNSC veto power concept writes,

> "This of course leads to apparent paralysis when the permanent members disagree with each other, as was evident throughout the Cold War and more recently over the Iraq invasion of 2003 and the Syrian war since 2011. But this is by design; the alternative would be to empower the Council to act against the strongest states, an eventuality which would likely cause them to actively oppose or abandon the organization".

Resultantly, this research notes that looking to the UNSC for referrals is a scenario by which real politicking is promoted whereby everything is defined in terms of the concerned members' interests in the subject matter as highlighted by another informant in the Ministry of Foreign Affairs who was elaborating on the question of UNSC referrals and the impact it imposes on the independence of the ICC. This has been noted to have discouraged the Zimbabwean Government from ratifying the Rome Statute.

3.3 Finding on how Zimbabwe's foreign policy objectives reflect the State's position not to ratify the Rome Statute establishing the ICC.

The Ministry of Foreign Affairs (MFA) website page (2015) outlines Zimbabwe's foreign policy objectives. These are; "safeguarding the country's sovereignty and territorial integrity; the protection of its prestige and image; the pursuit of policies that improve the standard of living of all Zimbabweans wherever they are; and the creation and maintenance of an international environment conducive for the attainment of these goals". An interviewee from the MFA who could not reveal his identity had this to say about the observation of foreign policy objectives in defining Zimbabwe's foreign policy direction: "these foreign policy objectives are helpful not only in defining what the state has to do externally and who to that with but they act as rock that is going to save the current crop of leaders and those to come hundreds of years ahead. These objectives are a framework upon which our foreign policy is rooted. Consider a foreign policy that fails to observe our history, the liberation struggle, our independence, our sovereignty. That would not be a foreign policy at all". The researcher however sought to understand how each of the Foreign Policy objectives outlined on the MFA website page are reflected on Zimbabwe's stance of not ratifying the Rome Statute.

3.4 Finding on how the objective to protect Zimbabwe's sovereignty has impacted the State's stance of not ratifying the Rome Statute.

Well informed about the significance of sovereignty in defining Zimbabwe's position on the ICC, one interviewee referenced John Ashcroft, Attorney-General and former United States of America Foreign Relations Committee Member in the George W. Bush administration's statement on the ICC that:

> "If there is one critical component of sovereignty, it is the authority to define crimes and punishment. This court strikes at the heart of sovereignty by taking this fundamental power away from individual countries and giving it to international bureaucrats",

a statement also cited in Wind (2009: 84).

The interviewee noted that Zimbabwe's foreign policy is crafted in such a way that any international deal the State gets into does not interfere with the State's dire need to sustain its independence. Thus this research notes that Zimbabwe's foreign policy objective of sustaining its sovereignty is highlighted in its position of not ratifying the ICC treaty. The General Secretary of the European Council on www.consillum.europaeu.infopublic (2010: 23-24) asserts that,

> "The EU position on the different situations before the Court (ICC) is based in European Council Conclusions, Council Conclusions and Presidency (now HR) Declarations on behalf of the EU….. On Sudan, the Council of the EU adopted in 2004 three sets of conclusions calling for the UN to establish a Commission of Inquiry (COI) into crimes committed in Darfur, which the UN did. On the basis of the COI's report, the Council adopted conclusions calling for a Security Council referral of the situation to the ICC".

Scholars such as Patel (2006: 77) argue that “During the past few years, Zimbabwe’s reinvigorated defence of its sovereignty as the continuation of the struggle for independence, recast in terms of the Third Chimurenga being fought against the UK in particular, and its Western allies, is illustrated by the official currency of phrases such as ‘‘Zimbabwe will never be a colony again’’, and ‘‘the land is the economy, the economy is the land’’, and by the characterization of the March 2005 parliamentary elections as the ‘anti-Blair elections”. An interviewee from the MFA supports Patel’s argument by noting that Zimbabwe’s failure to ratify the Rome Statute is because the state is against any kind of colonialism, neo-colonialism and external intervention which impedes her desire for self-rule. The interviewee adds that the ICC mirrors the undesired aspects of Zimbabwe’s foreign and domestic policy which include interference by external forces. One lady from the MFA equated the decision to ratify the Rome Statute to Rousseau’s famous statement on man “choosing” his own “chains” to tie himself with. She argued that ratifying the Rome Statute is more like creating room for foreign interference in domestic and international policies because “as early as you put your signature to it, they are a mile ahead trying to find ways to lock you down.” As a result of this ICC status of being a neo colonialists’ organ, the Zimbabwean Government has defected from ratifying the ICC. Thus this research notes that Zimbabwe’s foreign policy objective of sustaining her sovereignty is fundamental in her foreign policy position of not ratifying the Rome Statute.

3.5 Finding on the need to safeguard territorial integrity and its impact on Zimbabwe’s stance on the ICC.

Responding to the question of whether it is feasible for Zimbabwe to ratify the Rome Statute or to influence other African States to withdraw their membership to the ICC treaty, an interviewee who preferred to be identified as Mukanya argued that while Zimbabwe’s major economic partner in the region, South Africa, is part to the Rome Statute, her conduct on Regional integrity is much announced than that of South Africa. Mukanya then provided an example where South Africa during her term as a non-permanent member of the UNSC voted for resolution 1970 which gave the North Atlantic Treaty Organization (NATO) the go ahead to attack Libya’s Muammar Gadhafi. This research argues that Abraham (2015) shares the same view with Mukanya’s statement when he notes that, “The 2011 Libyan crisis coincided with South Africa’s second term as a non-permanent member of the UNSC. Framed in broad R2P (Responsibility to Protect) terms, South Africa – along with India and Brazil – supported Resolution 1970, which imposed selective sanctions on Libya and referred the Gaddafi regime to the ICC”.

From the views of Mukanya and Abraham (2015), this research found that documentary search proves that President Mugabe has been vocal on the need for African states to withdraw their membership from the ICC. Abraham (2015) states that President Mugabe of Zimbabwe, the AU chairperson announced at the end of the AU Summit held in June 2015 that African States' withdrawal from the ICC was to be on the agenda for the AU Summit that followed. News24 (2015) quotes President Mugabe as having said, "This is not the headquarters of the ICC, we do not want it in this region at all" after "Sudanese President Omar al-Bashir evaded an ICC arrest order by leaving early from an African Union summit that was held in Johannesburg". This research also noted that Zimbabwe's stance of not ratifying the Rome Statute has influenced the behaviour of some other African states that are ICC signatories. Maodza (2015) quotes the African Union Commission chairperson Nkosazana Dlamini Zuma as having said "Sudan is a member of the African Union. They always attend its summit be it in Addis Ababa. There is nothing different. He always attends the summit and here was no different" concerning the failed calls to arrest Al-Bashir's and hand him over to the ICC during the AU Summit held in South Africa in 2015.

3.6 Finding on the importance of the Liberation Struggle and the subsequent attainment of independence to Zimbabwe foreign policy framework.

It was also noted in this research that Zimbabwe's historical background against colonialism which gave rise to the outbreak of the Liberation Struggle and the subsequent attainment of independence play a pivotal role in shaping Zimbabwe's Foreign Policy. Data acquired through key informant interviews and documentary search confirm this notion. Patel (2006: 75) captures the importance of independence to foreign policy when he states that:

> "…since 1980 there has been an organic link between the method of independence, that is, the armed struggle (the Second Chimurenga) for independence, and its values and beliefs, and domestic policy and foreign policy".

Patel (ibid) further notes that Zimbabwe's foreign policy is highly influenced by the liberation struggle mainly due to the fact that, "the chief maker and articulator of Zimbabwe's foreign policy, President Robert Mugabe, and other major policy makers were leaders in the armed struggle". This fits well with the view of Chigora (2007) who states that:

> "It has been noted that Zimbabwe through its political leadership, composed mainly of veterans of a gruesome liberation guerrilla war, has been positioning itself as the world challenger of international capital".

Expanding on the influence of the liberation struggle on Zimbabwe's foreign policy, one interviewee noted that the "new wave of colonialism (neo-colonialism) is hard to detect but thumps up to the Zimbabwean government for observing the hide and seek motive of the Europeans when it refused to ratify the Statute (Rome)". The same interviewee further claimed that the liberation struggle is at the core of Zimbabwean government policies whether internal or external policies. Thus this research notes that Zimbabwe's foreign policy stance of not ratifying the ICC treaty is a reflection of her awareness to resist neo-colonial tools of the West, her history against colonialism being a lesson well-learnt.

3.7 Finding on how the objective to create and maintain an international environment conducive for the attainment of National goals influences Zimbabwe's negative stance on the ICC.

The MFA website page (2015) notes that, "the Ministry of Foreign Affairs in particular is charged with the responsibility of co-ordinating the implementation of Zimbabwe Policy through its interface with foreign envoys in Zimbabwe and abroad, relying mainly on its personnel at Head Office and at its diplomatic Missions located strategically throughout the globe". The website page further explains that,

> "The implementation of Zimbabwe's Foreign Policy is guided by a number of considerations, namely, forging regional, political, economic and cultural co-operation with Zimbabwe's neighbours as well as with the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) regions; promoting African unity and solidarity through the African Union (AU)".

Responding to the question of how ratifying the Rome Statute was to impede the objective to create an international environment conducive for the attainment of national goals, one of the interviewees quoted above argued that, "the ICC is not the platform where the enjoyment of national goals is achieved but rather a platform where the expectation to enjoy these national goals is removed. The fact that the ICC denotes sovereignty is a strong case against the ratification of the Rome Statute". The interviewee went as far as drawing the example of Kenya's case with the ICC and questioned whether the Kenyan government was left with enough time to deal with international and national goals when her president was being summoned by the Court. Resultantly, the research notes that Zimbabwe's position of not ratifying the Rome Statute is a reflection of her foreign policy objectives.

3.8 Finding on Zimbabwe's position on the Regional and Continental Justice Systems as well as her policy stance on the Rome Statute.

It was also noted in this research that although Zimbabwe did not ratify the Rome Statute, her commitment to international justice is visible at regional level where she has supported the SADC Tribunal. Dzinesa and Zambara (2012) state that, "In May 2007, SADC mandated Mbeki to negotiate a political agreement between the Zimbabwe African National Union Patriotic Front (ZANU-PF) and the two factions of the Movement for Democratic Change (MDC) against the backdrop of a political and economic crisis". Mukanya, an interviewee quoted above noted that the fact that the Zimbabwean Government responded positively to regional calls for mediation as well as supporting the outcomes of the mediation is evident enough that Zimbabwe the Zimbabwean Government has dedicated itself to a full observation of international justice. Mukanya also noted that President Mugabe as the chief maker of Zimbabwe's foreign policy is against any form of foreign influence on Africa. This is similar to what Malian President, Ibrahim Boubacar Keita said when he was once quoted as having said it is "up to Africans, not Europeans or Americans to judge their leaders" (News24, 2015) which concurs well with President Mugabe's, "We do not want it in this region at all" also quoted in News24 (2015). Abraham (2015) forwards the proposition for Africans themselves "to create and consolidate peace on the continent". He adds that "Africa needs to become its own policeman" which supports one interviewee argument that Africa is still in "colonial chains" and needs strong characters like President Mugabe who stands tall to defend the sovereignty not only of Zimbabwe but continental. Mukanya lamented the fall of other strong African leaders such as Libya's Muammar Gadhafi who perished in the hands of USA and former European colonial masters such as Britain and France.

3.9 Finding on whether it is feasible for the Zimbabwean government to ratify the Rome Statute and influence other African States to withdraw their membership to the ICC.

All interviewees concurred on the view that there is no advantage attached to Zimbabwe's ratification of the Rome Statute. They rather predicted that the Zimbabwean Government will continue distancing itself from the Rome Statute and the ICC although one of them noted that he foresees ratification in the event that the ICC is "overhauled and the European warmongers are brought to book". He however ascertained that this is only achieved when "God Himself becomes the ICC prosecutor" and laughed off the possibility of such a scenario. Regarding the concept of continental withdrawal from the ICC all interviewees again concurred on the view that this may not be achieved as long as "puppet governments are still existent in Africa" Malila and Molebatsi (2014) point out to the division in the SADC region when they claim that, "Following a presidential election run-off between Robert Mugabe and his arch-rival Morgan Tsvangarai on 27 June 2008 in which the former emerged as the victor, the Khama administration refused to recognize Robert Mugabe as the president of Zimbabwe". The Sunday Standard (2011) quoted in Malila and Molebatsi (2014) expands on the nature of conflict between the Zimbabwean Government and the Government of Botswana. It further quotes The Zimbabwean Minister of Defence as having, "claimed that his country had handed over evidence on preparations for invasion over to the SADC Organ on Politics, Defence and Security". Thus one respondent argued that the ICC will remain dominant in Africa because some African leaders are afraid to take the initiative to build on continental sovereignty to deal with their issues without the influence of the western world and the United States America.

3.10 Finding on the relevance of the research proposition

Research findings confirm that the research proposition that the International Criminal Court's failure to display impartiality and its often criticised interventionist stance has by and large discouraged Zimbabwe from ratifying the Rome Statute establishing this Court is relevant for this study. Findings on the ICC's selective application of the Rome Statute whereby the Court has presided over cases all drawn from African states and whereas the Western and European individuals would have committed crimes against humanity just like their African counterparts, the Court has turned to be blind sighted on the crimes committed by non-African individuals. Zimbabwe's foreign policy objectives which are mainly centred on the preservation of her sovereignty have also encouraged Zimbabwe to continue her policy stance of not ratifying the Rome Statute of the ICC. Thus all of the above findings highlight that the ICC is highly manipulated by world super powers who seek to maintain their dominance over underdeveloped states.

CHAPTER FOUR: RECOMMENDATIONS AND CONCLUSIONs

4.1 Recommendations

This research recommends that the court execute its duties more impartially for it to draw a universal membership. This recommendation arrives after the finding that the major weakness of the ICC has been found to be its failure to display impartiality. This has been noted to have discouraged the Zimbabwean Government from ratifying the Rome Statute. The failure to display impartiality has also seen other States like Kenya withdraw their membership from the court. New York Times (2011: 10) expands on AU calls to neglect the warrant of arrest against Gadhafi in 2010 claiming that the ICC had been "discriminatory" against African States after the failure to investigate crimes committed in Iraq and Afghanistan. "Such a charge goes directly against the ICC's mission of employing its impartial standards to hold accountable the worst perpetrators" (New York Times, ibid). This suggests that the hegemonic influence of Western States continues to prevail as they are in the position to influence the selection of ICC cases through the UNSC case referral powers. On the other hand the case with Gadhafi, Omar al-Bashar and more recently Uhuru Kenyatta tells a contested nature of indictments whereby Tony Blair and George Bush still walk free despite crimes committed in the Middle East as has been highlighted in the research. The major advantage of this move is that it would remove the bias associated with the ICC. The Court would be universally appreciated for bringing justice in discriminatorily.

The other recommendation forwarded in this research is the broadening of the case referral system from the UNSC to the ICC. The major weakness noted in this research that is associated with the referral system is that it lives the powerful western powers in poll position to dictate who should be tried by the ICC. The fact that the United States of America did not ratify the Rome Statute leads to the view that for her leaders to be brought before the ICC for trial when they are involved in acts of aggression as defined under the Rome Statute, the UNSC has to refer such violations to the ICC first. Sadly, this is not achievable given the nature of control the United States of America exercises over the UNSC. That the USA is a permanent member in the UNSC means that she shields her leaders from the face of prosecution by blocking any UNSC case referrals for her citizens in the event of the commitment of crimes defined in the Rome Statute.

The researcher also forwards that the power for referrals be extended to Regional Organs that deal with peace and security for example the Peace and Security Council and regional justice systems for instance referrals by the SADC Tribunal. While the recommendation is subject to criticism as it encourages regionalism rather than globalization, the researcher still maintains that this is the only viable option that does not allow the five permanent seat holders in the UNSC to determine who should be brought before the court in the event of violations of the Rome Statute. Thus by allowing regional peace and security organs to make referrals automatically deletes the notion of bias as these bodies would check and balance the power of each other than having one superior body the UNSC determine who should be tried.

The other recommendation forwarded in this research is to abandon the ICC. That way, states are left with the sovereign power to determine a wrong as defined under the municipal law of the concerned states. As noted in 3.4, the main problem associated with the ICC is that it does not allow local courts to deal with would be offenders but rather surrender them to "international bureaucrats". While this kind of move calls for a strong political will by governments to bring the would-be offenders to book, this move allows concerned governments to deal with their issues independently without foreign influence. Furthermore, that exercise would remove the contradiction between international law and municipal law. This means that the scenario whereby International law takes precedence over Municipal law is eroded as there won't be an International Statute defining what constitutes a violation of human rights. Instead, national constitutions which are regarded as supreme laws in various circumstances would govern the conduct of governments upon their citizens. In the end the concept of State Sovereignty is upheld and governments are not indirectly colonized.

Apart from this, this research also recommends that the Zimbabwean Government keep pestering for African States' withdrawal from the ICC. Such a move makes a strong statement to the international super powers such as Britain, the USA and their allies. Again a new world order is created which eye opens the Western world that they need the support of African States for them to keep moving. It would tell the unsaid saddening story concerning how the Western world and America "underdeveloped Africa" but the result thereof is effective as it would usher in a new era of world equality where racial supremacy is eroded. Moreover, this research recommends that the Government of Zimbabwe organize peaceful continental demonstrations and awareness campaigns as a way to enlighten other African States on how their sovereignty is being overshadowed as a result of them being signatories to the ICC. Although it may prove costly to organise such demonstrations, the researcher thinks the effectiveness of such a move is that it creates awareness to our African brothers who still live in the colonial shadows by way of them ratifying anything on the table for them.

Apart from that, this research also recommends that the complementary principle be practically observed. This principle reduces the ICC's free access to try would be offenders as the Court would only exercise jurisdiction in the event that national legal systems are genuinely incapable or unwilling to prosecute the accused individuals. As noted in the research findings that the case referral system together with an international trial of accused individuals by the ICC breaches state sovereignty, the complementary principle reduces external intervention on internal justice systems. Lastly, this research recommends that the Rome statute should be fully observed and that that its dictates should be impartially executed. This follows the finding that the ICC has selectively applied the Statute in favour of European and American nationals who committed crimes against Iraq and Afghanistan but were left walking freely.

4.2 Conclusions

This research was based on the proposition that The ICC's failure to display impartiality and its often criticised interventionist stance has by and large discouraged Zimbabwe from ratifying the Rome Statute establishing the International Criminal Court.

Research findings confirmed that the failure by the Zimbabwean Government to ratify the Rome Statute is mainly because of the ICC's lack of partiality as well as its often criticised interventionist stance hence the applicability of the research proposition to this study. As noted in the research findings, the ICC is biased towards the western states and USA and this has attracted calls for African States to withdraw their membership from the Court. The Court's inability to bring to book American and British nationals for the war crimes committed in Iraq and Afghanistan but its strong willingness to bring to book the Kenyan President Uhuru Kenyatta, its calls for the arrest of Omar al-Bashar and Gadhafi sums up the bias that characterises the court. Thus the research proposition governing this dissertation holds frim ground in determining the impact of state policy on international treaties with particular attention to Zimbabwe's failure to ratify the Rome Statute establishing the ICC.

The theoretical base to this research was the Mandate System theory together with the Integration theory. The explanation on the main reason for the creation of the Mandate System as noted by Anghie (2004: 120), "The Mandate System was devised in order to provide internationally supervised protection for the peoples of the Middle East, Africa and the Pacific who previously had been under the control of Germany or the Ottoman Empire" and Smuts (1928)'s notion that these territories were "inhabited by peoples who were characterized as 'incapable of or deficient in power of self-government', 'destitute', and requiring 'nursing towards political and economic independence" however does not tell the true story of the operations of the ICC. The supervisor-supervised aspect in the theory has rather created dictatorship since the type of supervision being executed by the Western States and America does not create room for weaker States to enjoy fulfil their mandates as sovereign states. Research findings have confirmed that the ICC has focused on furthering Western and American imperialist manoeuvres through their subjugation of African state leaders as exemplified in the Kenyan case.

While the integration theory entails the desire by African states to be part of the Global village as evidenced by their ratification of the Rome Statute, their willingness has been taken advantage of. That only African states have been summoned to the ICC for hearing implies not that African Governments only are responsible for the violations of crimes defined under the Rome statute but that European powers and America have found a way of dominating Africa. That the ICC is situated in Europe and that the UNSC reserves the power to make referrals entails that the European states remain dominant over African States. Thus the two theories support the view that the failure by the ICC to display impartiality and its often criticised interventionist stance has discouraged the Zimbabwean Government from ratifying the Rome Statute.

Some of the policy factors that have influenced Zimbabwe's policy stance of not being a member of the ICC have been noted to be ICC bias, foreign policy objectives ranging from the create and maintain an international environment conducive for the attainment of National goals, the objective to protect Zimbabwe's sovereignty and the objective to safeguard territorial integrity. Other factors noted in the research included the role of the liberation struggle, independence and the desire to hold up to State sovereignty.

Having noted the weaknesses associated with the ICC the researcher forwarded a number of recommendations which included the need to broaden the referral system, the need for impartial execution of the Rome Statute, the withdrawal of African States' membership to the Court among others which sums up the research project on the impact of State policy on ratifying International treaties basing on Zimbabwe's failure to ratify the Rome Statute establishing the International Criminal Court.

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Appendices

Appendix 1

INTERVIEW GUIDE FOR KEY INFORMANTS

Introduction

My name is Psychology Maziwisa and I am pursuing a Master of Science in International Relations with the University of Zimbabwe (UZ). My Research Topic is:

THE IMPACT OF STATE POLICY ON RATIFYING INTERNATIONAL TREATIES: A CASE STUDY OF ZIMBABWE'S FAILURE TO RATIFY THE ROME STATUTE ESTABLISHING THE INTERNATIONAL CRIMINAL COURT

This interview guide is intended to obtain your assessment concerning the impact of state policy on ratifying international treaties. You have been selected to take part in this research because you have been involved in the Policy Formulation initiatives within the Zimbabwean government. Your contributions are very valuable as the input can provide insights into the issues surrounding the influence of state policy on the ratification of international treaties.

Rules and Confidentiality

Please feel free to provide me with your opinion. The information that you will provide will be strictly used for academic purposes and there is no right or wrong answer. Should you wish to provide additional information please feel free to contact me through the following details:

Email .

Cell phone: 0777 616 335

Name	
For how long have you been involved in policy formulation in Zimbabwe	
Sex	Male .... Female......

Interview Questions

1. Please tell what you know about the International Criminal Court?

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2. What is your understanding of the ratification process?

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3. What is Zimbabwe's Foreign Policy Objectives and how do they present Zimbabwe's policy stance of not becoming a member of the International Criminal Court?

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4. What has influenced Zimbabwe's policy stance on the International Criminal Court?

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5. To what extent is it feasible for Zimbabwe to become a member of the International Criminal Court? Should Zimbabwe continue with its stance and influence other African countries to withdraw their membership from the Court?

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6. What is the relationship between Domestic and International Law? How do Zimbabwe's domestic policy objectives affect her stance on the International scene?

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7. What reforms do you think should be implemented by the International Criminal Court for it to draw universal membership?

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8. Is there a possibility of Zimbabwe becoming a member of the International Criminal Court?

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The End! Thank You and Stay Blessed!