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Amnesty for War Crimes in Angola: Principled for a Day?

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Abstract

In April 2012, Angola celebrated ten years of a peace deal which contained an amnesty law. The Angolan government has over the past ten years demonstrated to be unwilling to prosecute perpetrators of war crimes. Potential war criminals currently (still) take important positions in the Angolan government or live as well known public figures in- and outside Angola. The author analyses that especially a lack of domestic interest in doing justice and third countries' interests in Angola's oil reserves might serve as an explanation why up to this moment no justice has been done. The Angolan case illustrates how international actors may react by taking a 'one-day principled position' when it comes to calling for prosecution. Potentially hampering fragile peace negotiations, critique on the blanket nature of the amnesty is before and immediately after the peace process voiced, not to be repeated anytime, anyplace, anywhere.

Keywords

Angola; war crimes; amnesty; accountability; impunity

1. Introduction

Since the 'norms entrepreneurs'¹ and 'advocates of international justice' began to spread their 'no peace without justice' mantra during the nineties of the last century,² it has increasingly become an accepted principle that states should not grant amnesty to perpetrators of international crimes. As M. Cherif Bassiouni states:³ "The *realpolitik* of reaching political settlements without regard to a post-conflict justice component is no longer acceptable." While granting amnesties as part of a negotiated peace deal was common practice in the seventies and eighties, this has over the past decade been severely challenged. Indeed, the possibility to

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¹ Jack Snyder and Leslie Vinjamuri, 'Trials and Errors; principle and pragmatism in strategies of international justice', *International Security*, 28, 3 (Winter 2003/4), p. 8.

² Michael P. Scharf, 'Trading justice for peace: The contemporary law and policy debate', in Edel Hughes, William A. Shabas and Ramesh Thakur, (eds.), *Atrocities and International Accountability: beyond Transitional Justice* (United Nations University Press, New York, 2007), p. 247.

³ M. Cherif Bassiouni, 'Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights', in M. Cherif Bassiouni (ed.), *Post-conflict Justice* (Transnational Publishers Inc., New York, 2002), p. 3.

grant a 'blanket' amnesty to all perpetrators as a means to end a conflict and promote peace has become increasingly restricted.

In April 2002 a large and unconditional blanket amnesty was granted in Angola. It marked the end of a three decade long civil war. The amnesty was granted three months before the Rome Statute entered into force in July 2002. Just before a large part of the international community formally agreed that impunity of the most responsible perpetrators of international crimes was intolerable, the Angolan government did just that. In a parliamentary approved law the government granted amnesty to perpetrators of "all crimes committed within the framework of the armed conflict between the UNITA [União Nacional para a Independência Total de Angola, J/VW] rebels and the government".⁴ After 30 years of brutal civil war in which thousands of civilians were murdered, tortured and raped the Angolan negotiators of the peace agreement chose to bypass the latest developments in international law.

This article gives a brief sketch of the background of the peace process that led to the amnesty and describes the domestic and international reactions to this often 'forgotten' and yet so recent blanket amnesty. At a domestic level there are no indications of any actions leading to prosecution. Although many members of the international community before and immediately after the peace deal voiced a principled position against the Angolan amnesty law, this article suggests that all international actors quickly adopted a much more pragmatic approach. The initial call for justice in 2002 has soon afterwards been firmly covered with a blanket of silence. Especially third countries' interests in Angola's oil reserves might serve as an explanation why intergovernmental organizations, such as the UN, do not openly criticize the Angolan government in this regard. Why NGOs remain silent is more difficult to explain. They may feel that it is at this moment better to let the past in Angola rest. However, this is not explicitly communicated. The article concludes with a call for more research to similar cases and poses the fundamental question if it is wise for international actors to take such a 'one-day principled' stance that perpetrators of international crimes should not be amnestied.

2. Granting Amnesties

There obviously is a reason why many wars in the past have ended in political settlements, including limited or general amnesties for perpetrators of war crimes. The option to grant amnesty can play a critical role in bringing the different

⁴ Conciliation Resources, 'Memorandum of Understanding', available at <<http://www.c-r.org/our-work/accord/angola/memorandum-of-understanding.php>> (19 October 2011).

parties of the conflict to the negotiating table. Most commentators therefore agree that amnesties can under certain circumstances be justified under international law. Scharf and Rodley for example, acknowledge that “governments are often presented with a Hobson’s choice between their very survival and the demands of justice”.⁵ They note that while the provisions of international law may require prosecution, “the doctrine of *force majeure* can warrant temporary postponement of prosecutions, provided steps are taken without delay to collect and preserve relevant evidence.” According to Naqvi amnesties should be in line with the following *cumulative* criteria.⁶ The amnesty should: 1) be prescribed and limited to achieving certain objectives, in particular, the objectives of securing peace and initiating or furthering reconciliation; 2) be accompanied by other accountability measures such as truth commissions, investigatory bodies, or lustration; 3) not be self-proclaimed, i.e., be the result of negotiation between the outgoing and incoming regimes or of a peace deal brokered by international parties, such as the United Nations; and (4) only apply to lower ranking members of armed forces or groups or those considered “least responsible” for the perpetration of international crimes. The South African Truth and Reconciliation Commission, which granted individual amnesties under certain specific conditions, is in this respect often referred to as a good example.⁷

Many of the amnesties in the 1990s were - as suggested by above mentioned commentators - accompanied by the parallel establishment of truth commissions, as was the case in El Salvador (1991), Haiti (1994), South Africa (1995) and Guatemala (1996). With the establishment of the International Criminal Court in 2002 all signatories to the Rome Statute expressed that perpetrators of international crimes should always be prosecuted, no matter what accompanying activities are organized. Before, the United Nations had already shifted to such a principled doctrine. In 1999 the High Commissioner for Human Rights stated that in relation to the situation of East Timor “Impunity for those guilty of these shocking violations would be a betrayal of everything the United Nations stands for regarding the universal promotion and protection of human rights”.⁸ Over the last decade the United Nations has continued to voice the principle that perpetrators of serious crimes under international law cannot be granted unconditional amnesties. In 2004 the Secretary-General stated:

⁵ Michael P. Scharf and Nigel Rodley, ‘International Law Principles on Accountability’, in M. Cherif Bassiouni (ed.), *Post Conflict Justice* (Transnational Publishers Inc., New York, 2002), p.96.

⁶ Yasmin Naqvi, ‘Amnesty for War Crimes; Defining the limits of international recognition’. *IRRC*, 851 (2003), p. 617.

⁷ Jeremy Sarkin, *Carrots and Sticks; The TRC and the South African Amnesty Process* (Intersentia, Antwerp, 2004).

⁸ United Nations Economic and Social Council, *Report of the High Commissioner for Human Rights on the situation of East Timor* (OHCHR/MIS/99/6, 17 September 1999), para. 48.

Domestic justice systems should be the first resort in pursuit of accountability. But where domestic authorities are unwilling or unable to prosecute violators [of international crimes, JVV] at home, the role of the international community becomes crucial.⁹

‘Carefully crafted amnesties’ can help in the return and reintegration of displaced civilians and former fighters, but “these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights”.¹⁰ Likewise, international NGOs such as Amnesty International, Human Rights Watch, Impunity Watch and TRIAL have, especially over the last years, taken a firm position opposing the granting of amnesties to perpetrators of international crimes.

How do these actors active in the field of international criminal law react to a relatively recent peace process that is not in line with any of the above mentioned criteria? What happens when the amnesty ruling is (partly) self-proclaimed and when it encompasses *all* perpetrators, including the most responsible for the most serious crimes? What if the amnesty is granted without any accompanying accountability components, without collecting relevant evidence, without any truth finding, and without any national incentives and initiatives to come to reconciliation? Such an amnesty was granted in Angola in 2002.

3. International Crimes Committed in Angola

Angola has in recent history been engaged in a brutal war. Since its independence from Portugal in 1975 until 2002 troops of the *Movimento popular de libertação de Angola* (MPLA) have fought *União nacional para a independência total de Angola* (UNITA) for almost three decades. All these years UNITA acted as a rebel force lead by its charismatic and undisputed leader Jonas Savimbi, while MPLA held the government and was for most of the period headed by the silent technocrat José Eduardo dos Santos. It is estimated that at least 500.000 people died as a consequence of the civil war.¹¹

It is undisputed that especially in the periods 1992-1994 and 1998-2002 war crimes were committed. Although foreign troops from both Cuba and South Africa were deployed in the early phases of the Angolan conflict, the latter part of

⁹ United Nations, *The rule of law and transitional justice in conflict and post-conflict societies; Report of the secretary general* (United Nations Report No. S2004/616, Geneva, 2004), p. 14.

¹⁰ *Ibid.*, p. 11.

¹¹ *For extensive recordings of the history of the Angolan conflict, see:* Tony Hodges, *Angola, from Afro-Stalinism to Petro-dollar Capitalism* (James Currey Ltd., London, 2001); Justin Pearce, *An outbreak of Peace: Angola's situation of confusion* (David Phillip, Cape Town, 2005); Michael Gerard Comerford, *The peaceful face of Angola: Biography of a Peace Process (1991 to 2002)* (John Meinert Printing, Windhoek, 2005); Assis Malaquias, *Rebels and robbers; Violence in post-colonial Angola* (The Nordic Africa Institute, Uppsala, 2007).

the war is generally conceived to be of a *non-international* character. The definition of war crimes in an internal armed conflict is given in ‘common article 3’ to the four Geneva Conventions of 12 August 1949: “This includes for example violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.” Indeed, there are sufficient indications that such crimes have in Angola been committed by UNITA “as part of a plan or large-scale commission”, as the same article 3 prescribes. There is ample evidence that murder, taking hostages and summary execution have taken place on a large-scale.¹² In 1999 the President of the UN Security Council issued a statement from which it can be deduced that also the UN was aware that UNITA violated the Geneva Conventions:

The Security Council urges both parties to ensure full respect for human rights and international humanitarian law. In this connection, the Council urges UNITA to cease committing atrocities, including killing civilians and attacking humanitarian aid workers, and demands the release of all foreign citizens, including the Russian aircrews, held by UNITA.¹³

In 2001 UNITA claimed responsibility for attacking the city of Caxito, for shooting a World Food Programme (WFP) plane near Kuito and for attacking a passenger train with 500 refugees in Kwanza Norte. The train hit two mines, derailed and burst into flames before guerrillas sprayed it with gunfire. 400 civilians are said to have died in these combined attacks.¹⁴

Although the United Nations never unambiguously defined UNITA’s actions as war crimes, both the Angolan parliament and the Angolan Chief State Prosecutor did so. In January 1999 the National Assembly of Angola declared Savimbi to be a war criminal and an international terrorist and called for his arrest and prosecution. On 18 February that same year, the Chief State Prosecutor of Angola indicated that Savimbi would be charged with war crimes and that proceedings against him were to be started soon.¹⁵ In 2001, immediately after the earlier mentioned train attack by UNITA, the Angolan government again urged the United Nations to prosecute Savimbi for charges of war crimes.¹⁶

¹² Amnesty International, *Annual Report for Angola* available at <<http://www.amnestyusa.org/annualreport.php?id=B080050DBD79FA4280256A0F005BCC45&c=AGO>> (October 2009); Human Rights Watch, *Angola Unravels; the rise and fall of the Lusaka peace process* (Human Rights Watch, New York, 1999); José Doria, ‘Angola: a case study in the challenges of achieving peace and the question of amnesty or prosecution of war crimes in mixed armed conflicts’, in Horst Fisher and Avril Mc Donald (eds.), *Yearbook of International Humanitarian Law*, Volume 3, (TMC Asser Press, The Hague, 2002).

¹³ Security Council, *Statement by the President of the Security Council* (Security Council, S/PRST/1999/26, New York).

¹⁴ Associated Press, ‘Angola Urges U.N. For War Crimes Charge’, available at <<http://nucnews.net/nucnews/2001nn/0108nn/010818nn.htm#300>> (18 August 2001).

¹⁵ <http://www.brad.ac.uk/acad/confres/monitor/mntr3_africa1.html> (19 October 2011).

¹⁶ Associated Press, ‘Angola Urges U.N. For War Crimes Charge’, available at <<http://nucnews.net/nucnews/2001nn/0108nn/010818nn.htm#300>> (18 August 2001).

It should be noted that the government itself does not have a clean record regarding war crimes either. Human Rights Watch holds Angolan government troops responsible for “torture, summary executions, the indiscriminate killing of civilians and pillaging during military operations and the use of indiscriminate weapons, such as antipersonnel landmines”.¹⁷ As part of the counter-insurgency strategy ‘*Operation Restauro*’ in 2001 government troops destroyed villages and crops in order to cut of food supply to UNITA. Large numbers of civilians were forcefully displaced.¹⁸ In other documents government troops are said to have recruited children for military service.¹⁹ Recruitment of child soldiers is defined as a war crime.

3. Peace at Last

3.1. *A Blanket Amnesty*

When Jonas Savimbi was February 2002 killed by Angolan government troops, peace negotiations between the remaining UNITA members and the Angolan government started. While negotiating peace the gathering of UNITA troops in cantonment camps was the government’s immediate priority. In early April the Luena Memorandum of Understanding was signed, which granted a blanket amnesty regarding all crimes committed during the conflict. No further provisions were made with respect to complementing methods to come to reconciliation or truth seeking. That the granting of amnesty in itself - according to the government - encompassed the process of reconciliation can be deduced from the fact that it was the sole paragraph in the Memorandum under the heading ‘Issues of National Reconciliation.’ As a 2009 International Center for Transitional Justice report concluded: “In practice, reconciliation has been limited to the warring parties putting aside all past differences, without exploring the causes of the conflict.”²⁰

¹⁷ Human Rights Watch, *Angola Unravels; The Rise and Fall of the Lusaka Peace Process* (Human Rights Watch, New York, 1999).

¹⁸ Medecins Sans Frontières, *Angola after the War Abandonment: A Collection of Témognages from Angola*, (MSF, Geneva, 2002); Assis Malaquias, *Rebels and robbers; Violence in post-colonial Angola* (The Nordic Africa Institute, Uppsala, 2007), p. 168.

¹⁹ Human Rights Watch, *Forgotten Fighters; Child Soldiers in Angola* (Human Rights Watch, New York, 2003); Michael G. Wessells, *The recruitment and use of girls in armed forces and groups in Angola: implications for ethical research and reintegration* (Ford Institute for Human Security, Pittsburgh, 2007).

²⁰ International Center for Transitional Justice, *Southern African Regional Assessment Mission Report; Angola* (ICTJ, 2009), p.13. Available at < http://www.csvr.org.za/index.php?option=com_content&view=article&id=1835%3Asouthern-african-regional-assessment-mission-report-angola&Itemid=2 > (19 October 2011).

3.2. *Reactions in the World*

That the Angolan government would opt for granting a blanket amnesty should not have come as a surprise to the international community. In 1994 the so-called ‘Lusaka Protocol’ was set up to foster a peace process in Angola. The Protocol included that the competent institutions should grant an amnesty for the illegal acts committed by anyone in the context of the conflict.²¹ Article 6 of the Protocol literally called the Angolan people to “in the spirit of National Reconciliation . . . forgive and forget the offences resulting from the Angolan conflict and face the future with tolerance and trust”. The United Nations has never signed the Lusaka protocol, but has always voiced to be a keen supporter of its implementation. Up until 2001 the Security Council supported the Government of Angola “in its efforts to implement the Lusaka Protocol”.²² No reservations with regards to article 6 were made. In this light it is remarkable that less than one year later Gambari - representative of the Secretary-General - in April 2002 adopted a reservation into the Memorandum that the UN did not recognize “any general amnesty that includes genocide, crimes against humanity and war crimes”.²³

Though remarkable with regard to the earlier statement of the Security Council, the reservation is less remarkable in a broader context. Gambari’s statement was in line with the United Nation’s position regarding the peace deal brokered in Sierra Leone two years earlier, where the UN also made a reservation regarding perpetrators of international crimes.²⁴ Gambari also anticipated to the UN High Commissioner for Human Rights Resolution on Impunity,²⁵ which explicitly recognized that:

Amnesties should not be granted to those who commit violations of international humanitarian and human rights law that constitute serious crimes and urges States to take actions in accordance with their obligations . . . Crimes such as . . . war crimes . . . are violations of international law and . . . perpetrators of such crimes should be prosecuted or extradited.

The UN-position with regard to the Memorandum was supported by international NGOs such as Amnesty International: “While acknowledging the

²¹) Human Rights Watch, *supra* note 22.

²²) Security Council, *Security Council sees need to improve effectiveness of sanctions against rebel group in Angola* (Security Council, Press release SC/7215, 4418th and 4419th meetings, 15 November 2001) available at <<http://www.un.org/News/Press/docs/2001/sc7215.doc.htm>> (19 October 2011).

²³) Security Council, *The Situation of Angola* (Security Council, 4517th meeting of the Security Council, 23 April 2002, S/PV.4517) available at <<http://www.undemocracy.com/S-PV-4517.pdf>> (19 October 2011).

²⁴) Carsten Stahn, ‘United Nations peace-building, amnesties and alternative forms of justice: a change in practice?’, *IRRC*, 84, 845 (2002), p. 199.

²⁵) UNHCHR, *UN High Commissioner for Human Rights Resolution on Impunity* (Resolution 2002/79, E/2002/23 - E/CN.4/2002/200, Geneva, 2002).

difficulties in reaching a cease-fire agreement, Amnesty International maintains that there can be no reconciliation, and therefore no lasting peace, without both truth and justice” stated the organization.²⁶ Human Rights Watch has as far as we could find not issued any press release after the brokered peace deal.

The position of the European Union with regard to the amnesty process in Angola has always been mysterious. The European Union representative in the Security Council stated in 2001 that “the European Union welcomed the Government’s offer of amnesty”.²⁷ A Presidency Statement on behalf of the European Union in that same year was more cryptic. First it was stated that “The European Union strongly condemns the attack by UNITA near the town of Caxito . . . and stresses the importance of bringing the perpetrators to justice”, only lines later to be followed by the statement that “A peaceful and lasting solution to the conflict, based on the Lusaka Protocol, is necessary” and that “the European Union is encouraged by some recent developments, including the Amnesty Law”.²⁸ In December 2002 the European Union congratulated the Angolan Government and UNITA for the “strong political will shown in achieving the goal of peace and national reconciliation.” No reservations were made with regard to the Amnesty Law.²⁹ The US State Department issued a statement that Washington looked forward to the full completion of the peace agreement and further steps to promote national reconciliation. Russia and Portugal reacted positively as well.³⁰ There are no indications that any of these countries made specific reservations with regard to the amnesty law.

3.3. *Reactions in Angola*

Within Angola itself the reservation delivered by the United Nations was received with mixed feelings. Some local NGOs supported the UN position because they disliked an amnesty that provided impunity for human rights violations and war crimes.³¹ For the same reason some sixty smaller political parties questioned the

²⁶ Amnesty International, *Angola; a new ceasefire; a new opportunity for human rights*. available at <<http://www.amnesty.org/en/library/asset/AFR12/002/2002/en/eb6644c8-d864-11dd-9df8-936c90684588/afr120022002en.html>> (5 April 2002).

²⁷ Security Council, *supra* note 27.

²⁸ European Union, ‘Common foreign and security policy’ ((14/27), *Bulletin EU*, 1.6.14, 2001) available at <<http://europa.eu/bulletin/en/200105/p106014.htm>> (October 2009).

²⁹ European Union, *Declaration by the Presidency on behalf of the European Union concerning the Peace Process in Angola* (Reference PESC/02/175, Brussels, 2 December 2002) available at <<http://europa.eu/rapid/pressReleasesAction.do?reference=PESC/02/175&format=HTML&aged=0&language=EN&guiLanguage=en>> (19 October 2011).

³⁰ BBC, ‘Angolans celebrate peace deal’ available at <<http://news.bbc.co.uk/2/hi/africa/1912761.stm>> (5 April 2002).

³¹ Amnesty International, *2003 Annual Report for Angola* available at <<http://www.amnestyusa.org/annualreport.php?id=B3ADE3AA5C6624C680256D24003790EB&c=AGO>> (October 2009).

amnesty in a letter to the President.³² Angolan media however, generally reflected an angry public reaction to Gambari's expressions. People feared that UNITA-combatants might believe this statement could negate the Amnesty Law.³³ As Gambari himself explained to the Security Council, the statement of principle had "left some apprehension in the minds of UNITA and some people in the armed forces of Angola, as well as in some segments of civil society, who felt that this position by the United Nations may undermine the peace process".³⁴ In the end, the UN position was negated and did not change the peace building process. The Luena Memorandum was accepted and the blanket amnesty was granted.

3.4. *Duty to Prosecute?*

The crimes committed in the Angolan civil war do not fall under the jurisdiction of the International Criminal Court. Angola has not ratified the Rome Statute and the crimes were committed before 2002. Angola is party to the Geneva Conventions which means that it has an obligation to search for, prosecute and punish perpetrators of war crimes committed during *international* armed conflicts.³⁵ But as mentioned above, the war is generally conceived to be of a *non-international* character. With respect to non-international armed conflicts article 6(5) of the Additional Protocol II actually prescribes a completely contradictory reaction of the state parties. The provision states that at the end of hostilities "Authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained". The rationale of this provision is to promote reconciliation, which is believed to be of greater importance in non-international conflicts than in international conflicts.³⁶ Doria therefore voices the opinion that states have the option of conceding amnesties at the end of internal conflicts, even for war crimes.³⁷ The observation that the international community not only condemns but at

³² Aaron Griffiths, 'The end of the war; The Luena memorandum of understanding', in Guus Meijer (ed.), *From military peace to social justice?: The Angolan peace process* (Conciliation Resources 'Accord', London, 2004), pp. 24-27.

³³ Security Council, *The Situation of Angola* (Security Council, 4517th meeting of the Security Council, 23 April 2002, S/PV.4517) available at <<http://www.undemocracy.com/S-PV-4517.pdf>> (19 October 2011).

³⁴ *Ibid.*

³⁵ Geneva Conventions, I, article 49, II, Article 50, III, Article 129, IV, article 146.

³⁶ Claude Pilloud et al, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross, Geneva, 1987), p.1402; Michael P. Scharf, *supra* note 3, p. 254.

³⁷ José Doria, 'Angola: a case study in the challenges of achieving peace and the question of amnesty or prosecution of war crimes in mixed armed conflicts', in Horst Fisher and Avril Mc Donald (eds.), *Yearbook of International Humanitarian Law*, Volume 3, (TMC Asser Press, The Hague, 2002), p. 60.

times also encourages amnesties - such as was the case in Mozambique 1992 or South Africa in 1994 - to Doria's opinion "reinforces the rule that prosecution of violations of the law of international armed conflicts should be considered only one of the alternative rights of the territorial state of jurisdiction".³⁸

Although the Geneva Conventions thus promote granting amnesty when conflicts of a non-international nature have ended, the United Nations has over the last years continuously and unambiguously promoted the prosecution of suspected war criminals. Regarding the internal conflicts in Nepal,³⁹ Afghanistan⁴⁰ and Kenya the UN has for example called for justice instead of amnesties.⁴¹ This leads us to conclude that based on the Geneva Conventions the Angolan government might not have a formal duty to prosecute war criminals, but in conformity with the United Nations statements in similar situations and in conformity with the latest developments in international criminal law it should.

3.5. *Investigation and Prosecution so Far*

Based on speeches and publications we conclude that the Angolan government supports the principled position of the United Nations that war criminals - whether active during international or non-international conflicts - should be prosecuted. The Angolan government has in the international arena continuously demonstrated to favour the UN position. It was one of the very first States to sign the Rome Statute on October 1998. At the signing ceremony in Rome, Angola's Minister of Justice stressed the need to punish perpetrators of war crimes and implored the Rome delegates to make the ICC effective.⁴² In 2001 he underlined that Angolan basic law recognizes the primacy of international law over national laws in that it requires that "legal norms be interpreted and integrated in line with . . . international instruments to which Angola is a party".⁴³ In a 2003 meeting of the Security Council, the Angolan representative expressed the importance

³⁸) *Ibid.*, p. 44.

³⁹) United Nations, 'UN Rights Chief Warns Against Amnesty For Human Rights Offenders In Nepal' available at <<http://www.unmultimedia.org/radio/english/detail/40322.html>> (24 January 2007).

⁴⁰) Reuters, 'U.N. rights boss Arbour condemns Afghan amnesty' available at <<http://www.reuters.com/article/topNews/idUSL0792095920070207>> (7 February 2007).

⁴¹) Robert Evans, 'U.N. team tells Kenya not to grant amnesty' available at <<http://www.alertnet.org/thenews/newsdesk/L19101237.htm>> (October 2009).

⁴²) Paul J. Magnarella, 'New world court targets war crimes; will the International Criminal Court meet Africa's expectations?' *Africa Recovery*, 12, 2 (1998) available at <<http://www.un.org/ecosocdev/geninfo/afrec/vol12no2/warcourt.htm>> (19 October 2011).

⁴³) PGA, *International Law and Human Rights Programme International Criminal Court (ICC) Campaign Event* (Conference on ICC Ratification in Lusophone Countries, Lisbon, 19/20 February 2001) available at <http://www.pgaction.org/uploadedfiles/09_2001Lisbon_rep.pdf> (19 October 2011).

of justice and the rule of law for the Angolan government. He emphasized that the gap between commitment and concrete action in the area had to be bridged. He furthermore stressed that the Security Council had taken major steps to strengthen the rule of law in Africa by establishing special criminal courts for Rwanda and Sierra Leone.⁴⁴

So far for theory. In order to find out what position the Angolan government in practice holds, one has to judge its actions. This offers quite a different perspective. Eight years down the line, there has been no single prosecution in Angola of a war criminal. It seems safe to conclude that so far even no concrete steps have been taken to start any investigations. How could it be explained that the Angolan government, notwithstanding its keen endorsement of the newest developments in international criminal law, has so far shown no initiatives when it comes to act in its own country?

3.6. *Unable to Prosecute?*

A possible explanation why investigations do not take place could be that the Angolan government is *unable* to do so. Setting up and organizing an effective justice system is expensive and complex. Countries like Sierra Leone and Rwanda would never have managed to organize their Special Courts (or even their national courts) if the international community had not financially contributed. This explanation that Angola is not in the position to finance such a project, does however not hold truth. Angola would very well be in the position to finance all these reforms. It is the second biggest African oil producing nation. Over the last three years the Angolan economy has grown with a staggering 20 per cent a year. As Todd Howland,⁴⁵ former employee of the Human Rights Division of the peacekeeping and peace building missions of the United Nations states: “Angola has the resources . . . to have a viable court system functioning throughout the country.”

Lack of power does neither seem to constitute a problem. Since the peace agreement the MPLA-government has constantly been in political, economic and military power. Nor UNITA, neither any other party has over the last seven years seriously challenged the power base of the MPLA-government. As Kibble observes:⁴⁶ “The army is well trained and large.” Finding any potential war

⁴⁴ United Nations, ‘Security Council calls on member states to help enhance UN role in establishing justice, rule of law in post-conflict states’ (United Nations, . 4833rd Meeting, Press Release SC/7880, 24 September 2003) available at <<http://www.un.org/News/Press/docs/2003/sc7880.doc.htm>> (19 October 2011).

⁴⁵ Todd Howland, ‘UN Human rights field presence as proactive instrument of peace and social change; lessons from Angola’, *Human Rights Quarterly*, 26, 1 (2004), p. 28.

⁴⁶ Steve Kibble, ‘Angola: can the politics of disorder become the politics of democratization & development?’, *Review of African Political Economy*, 33, 109 (2006), p. 534.

criminals is not hard either. Potential war criminals of the government troops have remained in the army and very few former high ranking UNITA militants hid away or emigrated. Instead, they are currently well-known public figures who hold important political, military, or business positions and publicly talk and write about their past.⁴⁷ As part of the disarmament, demobilization and reintegration programme at least thirty well known ex-UNITA officers simply switched army.⁴⁸ Certain lower ranking UNITA-members who personally directed and executed war crimes are also known. Human Rights Watch for example collected over one hundred testimonies from Angolans who survived or witnessed atrocities by UNITA forces. These villagers describe by name and rank which perpetrators committed which atrocities.⁴⁹ The names of the victims are known, the names of the witnesses are known, the names of the actual perpetrators of war crimes are known, and the names and whereabouts of leading officers who potentially directed or ordered rebels to commit such war crimes are known. When it wants, the Angolan government is able to detect war criminals and start prosecutions.

3.7. *Unwilling to Prosecute?*

Seen in the light of the above, the foremost reason why investigations and prosecutions have so far not taken place seems to be that the Angolan government is *unwilling* to prosecute war criminals. Given the fact that the government has since 1989 consequently promoted trading off peace for amnesty,⁵⁰ it does not seem to see any moral blockades in granting amnesties. The ‘politics of clemency’ are a preferred strategy by the MPLA-government to bring a halt to its internal

⁴⁷ Agostinho Rodrigues, “Nunca mais haverá Guerra entre os Angolanos”, garante o General Kamorteiro.’ (4 April 2005), available at <http://www.angonoticias.com/full_headlines.php?id=4691> (19 October 2011); Angola Digital, ‘Autobiografia de Samuel Chiwale quer repor certos factos históricos’ available at <http://www.angoladigital.net/digitalnews/index.php?option=com_content&task=view&id=5282&Itemid=40> (11 August 2008).

⁴⁸ BBC, ‘Angola’s war ‘is over.’’ available at <<http://news.bbc.co.uk/2/hi/africa/2168871.stm>> (2 August 2002).

⁴⁹ Human Rights Watch, *supra* note 22.

⁵⁰ Already in 1989 the MPLA had offered UNITA a general amnesty and integration into the government (Moisés Venâncio, *The United Nations, Peace and Transition: Lessons from Angola* (Instituto de Estudos Estratégicos e Internacionais, Lisbon, 1994) p.27; Assis Malaquias, *Rebels and robbers; Violence in post-colonial Angola* (The Nordic Africa Institute, Uppsala, 2007) p. 143. In the 1991 Bicesse Accords a de facto a deal was settled that no prosecution would take place. The 1994 Lusaka protocol provided an amnesty for all illegal acts committed in the context of the civil war. In 2002 - after Savimbi died - the government offered the amnesty as part of the Luena Memorandum. In 2006 the government agreed to issue yet another amnesty to various secessionist movements from the province Cabinda (Angop, ‘Governo aprova memorando de paz para Cabinda e projeto de Lei de Amnistia’ available at <http://www.angonoticias.com/full_headlines.php?id=10947%3Cb> (28 July 2006).

conflicts, notwithstanding its general claim to uphold the rule of international criminal law.

It is clear that starting prosecutions or investigations would risk opening a can of worms. The government would have to start investigating and prosecuting officers of its own army and important businessmen and politicians. Why open Pandora's Box when there is peace at last? Forgetting has even become more or less an official policy. The 4th of April 2005, while remembering the third anniversary of the peace accord, the Angolan government issued the official statement that "The Angolans have to regain their self respect, they have to look to tomorrow with confidence, leave the problems of the past and walk together to the future".⁵¹ The middle- and upper class are doing better than ever. With the oil dollars coming in by the billions, rotten shanty towns being replaced by fancy Chinese built skyscrapers and guarded condominiums popping up by the dozens, even the poorest Angolans that have been most affected by the war may see little reason to call for justice. After thirty years of war, economic decline and dictatorship things have changed for the good over the past six years. The rich may have become richer, but so have the poor. Minefields are cleared, farmers can farm, trains are running and the once sky rocketing inflation has come to a halt. They can visit their family via newly built roads, and sell their products at the market. What's more, September 2008 the first parliamentary elections took place. Observers of the Southern African Development Community (SADC) proclaimed the elections to be transparent and credible, while observers of the European Union and Human Rights Watch voiced some mild reservations.⁵² The MPLA won with a landslide victory of 81,7 per cent of the vote. In the run off for these elections an occasional politician referred to the war,⁵³ but in general the focus was on the future, rather than on the past.

Though there are obvious shortcomings concerning the rule of law in Angola and though the country is still very poor, the overall mood is positive. After thirty years of civil war, the people of Angola experience relative freedom, security and stability at last. Bringing up memories about the civil war, investigating and prosecuting the former crimes of currently powerful politicians and generals might have a negative impact on the current peace building efforts. The Angolan government does not have an interest in the potentially destabilizing effects of

⁵¹ Lusa, 'Governo apela á tolerância nas comemorações do terceiro ano de paz' available at <http://www.angonoticias.com/full_headlines.php?id=4688%3Cb> (4 April 2005).

⁵² BBC, 'Observers unsure over Angola poll' available at <<http://news.bbc.co.uk/2/hi/africa/7603735.stm>> (8 September 2008); Human Rights Watch, *Democracy or Monopoly: Angola's Reluctant Return to Elections* (Human Rights Watch, New York, 2009).

⁵³ A spokesman of the MPLA said in April for example: "UNITA has to reflect on what it did in the past." (Apostolado, 'UNITA tem que reflectir o que fez no passado', available at <http://www.angonoticias.com/full_headlines.php?id=19061> (6 April 2008).

investigations into war crimes. It might cause conflict in its own ranks, stir up old antagonism and consequently jeopardize the sustainability of peace.

3.8. *Reactions Ten Years Down the Line*

As stated above Scharf & Rodley argue that states may delay prosecutions for a reasonable amount of time until,⁵⁴ for example, a new government is secure enough to take such action against members of the former regime, or a new government has the judicial resources to undertake fair and effective prosecutions. It is safe to conclude that the Angolan government is secure enough and has the judicial resources but seems unwilling to prosecute its war criminals. Seen in this light, it is remarkable that the whole international community and large NGOs have over the last seven years kept completely silent vis-à-vis this unwillingness. What could they have done?

3.8.1 *Arrest Warrants*

Nothing bars individual nation states to take legal actions based on universal jurisdiction. Even when a conflict is domestic, inasmuch as fundamental principles of international humanitarian law have been violated its consequences are regarded to affect the entire international community. Any nation state can issue an arrest warrant for persons that it deems responsible for violating international humanitarian law. In that case it is not acting on behalf of its own domestic legal order, but on behalf of the international legal order.⁵⁵ Several individual states have already prosecuted perpetrators of international crimes on the basis of universal jurisdiction: the former Chilean dictator Pinochet was arrested by the British authorities and a Belgian Court charged the former Chadian president Hissène Habré. In countries like Austria, The Netherlands, Switzerland and the United Kingdom it regularly occurs that asylum seekers suspected of war crimes or crimes against humanity are arrested and prosecuted.⁵⁶ Two relatively well documented cases in Angola that could be used as a starting point for arrest warrants based on universal jurisdiction are the earlier mentioned attacks in 2001 on the WFP-plane in which 23 civilians and UN staff died and on the trains in which 250 civilians are said to have died. High ranking former UNITA leaders who have integrated in the Angolan army and might bear command responsibility for these atrocities are known by name and rank and regularly leave the country.

⁵⁴ Michael P. Scharf and Nigel Rodley, *supra* note 8.

⁵⁵ Menno T. Kamminga, 'Lessons learned from the exercise of universal jurisdiction in respect of gross human rights violations', *Human Rights Quarterly*, 23, 4 (2001) p. 943.

⁵⁶ Redress, *Universal Jurisdiction Developments: January 2006- May 2009* (Redress, London, 2009).

Issuing a warrant of arrest for citizens of a befriended nation - which Angola to most countries is - is obviously a very big step that could constitute major negative political, diplomatic and economic consequences for the country that asks for extradition. Another, less threatening option is to actively lobby for prosecution. The fact that this has so far not happened might have something to do with Angola's strategic position. As mentioned before, Angola's economy is rapidly growing. It produces diamonds, has a large financial sector and most importantly, vast hydrocarbon reserves. Oil companies continue to expand their stakes in Angola to the present day.⁵⁷ For this reason, as Malaquias suggests,⁵⁸ Angola to a large extent has become "The West's new best friend". Other than for example Sierra Leone or Rwanda, Angola did not need assistance of the international community to rebuild the country. It refused to accept the proposed structural reforms of IMF and the World Bank. Instead, from 2004 onwards it directed its attention to China and received some billions worth oil-backed loans.⁵⁹ These allow Angola to act independently and forego any pressure from the international community with regard to transparency of oil contracts or human rights issues. The same goes for prosecution of war criminals. It would be strange if these vested corporate interests do not impact Western governments' stance towards the lack of an appropriate response towards human rights abuses by Angolan authorities. Very few countries are in the position to direct Angola's government. Angola did not and still does not need the assistance of anyone. It is rather the other way around; with all the oil that it has, the world needs Angola.

3.8.2 Lobby

What is more intriguing, however, is that no representative of the United Nations and none of the international NGOs have over the past years actively propagated prosecution of war criminals in Angola. The silent position of the United Nations might be explained because it depends largely on the political unity of member states. As Messiant explains the interests of the 'real' international community - the great powers and transnational corporations - have always provided the context for and strongly influenced the attitude of the 'official' international community (the United Nations).⁶⁰ NGOs however, do not face any political pressure to (not) take a position. They may risk expulsion, but this has so far not withheld them in other circumstances. While many international NGOs have over the last years extensively lobbied for prosecution of perpetrators in Sierra Leone, former

⁵⁷ Davis Sogge, 'Angola, 'Failed' yet 'successful' (FRIDE Working paper 81, Madrid, 2009)

⁵⁸ Assis Malaquias, *Rebels and Robbers; Violence in Post-colonial Angola* (The Nordic Africa Institute, Uppsala, 2007), p. 227.

⁵⁹ Kibble, *supra* note 55, p. 529.

⁶⁰ Christine Messiant, 'Why did Bicesse and Lusaka fail? A critical analysis', in Guus Meijer (ed.), *From Military Peace to Social Justice?: The Angolan Peace Process* (Conciliation Resources 'Accord', London, 2004).

Yugoslavia, Sudan and Uganda, they never focused on Angola. Why cry out loud that difficult to arrest perpetrators of international crimes in Sudan, Uganda and Libya need to be brought to justice, while ‘available’ perpetrators of war crimes in Angola are not targeted? The crimes committed were not less serious and the perpetrators are not less responsible. After their initial expressions of ‘concern’ that the blanket amnesty would lead to impunity, these NGOs seem to have missed that a situation of impunity indeed *is* taking place.

In a press release commenting the Luena Peace Memorandum in 2002, Amnesty International unambiguously opposed the amnesty and called on “the authorities, all political parties and civil society in Angola to develop a comprehensive strategy to end impunity and ensure full protection of human rights”. It furthermore called on “the international community to support Angola in this endeavour”.⁶¹ In the Amnesty International Year Reports 2004–2011 it is not mentioned once that investigations into, or prosecution of war criminals in Angola have not yet started, let alone that the Angolan government or the international community is pushed to start acting.

Human Rights Watch has acted similarly. Its mission statement is: “We stand with victims and activists to prevent discrimination . . . and to bring offenders to justice.”⁶² In a 2009 report it argues that lack of accountability is likely to lead to negative effects.⁶³ The failed amnesties in Angola in 1991 and 1994 are taken as an example: “The successive failed efforts to broker peace with promises of amnesty in Angola are another example of impunity failing to achieve the desired results.”⁶⁴ Regarding the 2002 amnesty it however states: “in this instance . . . the Luena Accord did bring an end to the conflict.” Could this maybe explain why the organization has ever since the Luena Accord never publicly called for bringing the war crime offenders to justice?

Angolan based NGOs also do not actively lobby for prosecution of war criminals. During the conflict these organizations often voiced a call for peace and reconciliation,⁶⁵ while they in the post-conflict era mainly call for implementation of human rights, emancipation and democratization. They criticize the government for the poor execution of reintegration strategies of former UNITA soldiers, lack of transparency and corruption, but are far less committed to see perpetrators of war crimes held accountable. The few NGOs that do bring up

⁶¹ Amnesty International, *Angola; a new ceasefire; a new opportunity for human rights*, available at <<http://www.amnesty.org/en/library/asset/AFR12/002/2002/en/eb6644c8-d864-11dd-9df8-936c90684588/afr120022002en.html>> (5 April 2002).

⁶² <<http://www.hrw.org/en/about>> (19 October 2011).

⁶³ Human Rights Watch, *Selling Justice Short; Why Accountability Matters for Peace* (Human Rights Watch, New York, 2009).

⁶⁴ *Ibid.* p. 68.

⁶⁵ Michael Gerard Comerford, *The Peaceful Face of Angola: Biography of a Peace Process (1991 to 2002)* (John Meinert Printing, Windhoek, 2005), p. 125.

issues about dealing with the past, rather ask for truth seeking than for doing justice. The most active post-war lobby for truth seeking in Angola was set up by relatives of (supposed) opponents of the MPLA who had disappeared or were detained during or just after the independence war in 1977.⁶⁶ Furthermore the Namibian based National Society for Human Rights (NSHR) called days after the signing of the peace deal for a South African-style Truth and Reconciliation Commission.⁶⁷ A representative of the Angolan NGO ‘Campaign for a Democratic Angola’ has called in 2004 for more openness and mechanisms to improve reconciliation. A call to bring former war criminals to justice is however never voiced. A 2009 study of the International Center for Transitional Justice mentions that the complexity of the wounds suffered by the Angolan people has made a number of civil society activists believe that criminal prosecution would not be a favourable option today.⁶⁸ Even the adoption of a Truth Commission model such as applied in South Africa was not deemed ideal, since virtually the entire country had been involved in the conflict. The struggle of day-to-day existence, most Angolans still face, leaves little time for such issues of reconciliation. As one of the interviewed representatives of civil society put it: “Should we [Angolans, JWV] all sit at an Angolan TRC? How can we expect Angolans, exhausted from years and years of conflict, to even entertain such an idea?”

3.9. *Principled for a Day?*

While many advocates of doing justice such as the United Nations, Western countries and rights based NGOs in general terms continue to state that granting amnesty to perpetrators of war crimes is unacceptable, they in actual practice do seem to acknowledge that it might in the specific situation of Angola be better to keep silent about its culture of impunity. Seen in the light of the current overall positive situation in Angola, this is not surprising. They may feel that at this moment it is better to let the past in Angola rest. Just like the Angolan government, they might feel that prosecuting war criminals who currently hold important positions in the Angolan administration might only stir up political antagonism, negatively impact political and economic interests and endanger the current peace. Publicly calling for justice could only destabilize the country. However, seen in the light of the developments in international criminal law, it is surprising that no call for justice is issued. This is supposed to be the century in

⁶⁶ A.D. Cordeiro, A verdade toda sobre o 27 de Maio nunca será conhecida, *Publico*, 27 May.

⁶⁷ <<http://www.irinnews.org/PrintReport.aspx?ReportId=31009>> (19 October 2011).

⁶⁸ International Center for Transitional Justice, *Southern African Regional Assessment Mission Report; Angola* (ICTJ, 2009), p. 13. Available at <http://www.csvr.org.za/index.php?option=com_content&view=article&id=1835%3Asouthern-african-regional-assessment-mission-report-angola&Itemid=2> (19 October 2011).

which perpetrators of international crimes do not go unpunished. This is the century in which both Angola itself, as the United Nations, as all members of the European Union, as large and influential NGOs have spoken out that such perpetrators cannot and should not escape justice. And it is happening at this very moment....

The situation in Angola is therefore interesting for scholars studying transitional justice, the effects of amnesties and a (lack of) international criminal justice. Now and in the future. Experiences in Argentina, Chile and Cambodia illustrate that it can take decades before once amnestied perpetrators of international crimes are brought to justice by national, international or foreign tribunals. The recent announcement of Brazilian federal prosecutors to also open criminal investigations against once amnestied military officers accused of the enforced disappearance of civilians during the 1964-1985 military dictatorship is in line with those developments.⁶⁹ Once powerful, but currently powerless men in their seventies or eighties were - and still are - tried before or while they die(d). Are Angolan perpetrators perhaps next in line of such delayed justice? Given the lack of lobbying from domestic NGOs as well as international actors, it is not very likely that this will happen on short notice. It is therefore more likely that Angola will at least for the time being continue to be an example of how contrary to Bassiouni's earlier mentioned observation that "The *realpolitik* of reaching political settlements without regard to a post-conflict justice component is no longer acceptable", is in some cases de facto still accepted. While many actors voice a principled and unambiguous position that in case international crimes are committed justice should always be done, the case of Angola illustrates that it is apparently possible to be principled for a day.

4. Conclusion

Although international criminal law has evolved in such a way that amnesties for perpetrators of war crimes are no longer deemed acceptable, reality proves to be more obstinate. Amnesties might not be accepted by lawyers, for diplomats and politicians granting amnesty continues to be seen as a suitable solution to broker peace. Not only the Angolan amnesty illustrates this, but also other recent amnesties in for example Nepal and Aceh.⁷⁰ The 2007 amnesty in Afghanistan shows that in order to come to a political settlement even by signatories of the Rome

⁶⁹ International Center for Transitional Justice, 'Prosecutors announce investigation into disappearances during the Brazilian military dictatorship', available at: <http://ictj.org/news/prosecutors-announce-investigation-disappearances-during-brazilian-military-dictatorship> (10 March 2012).

⁷⁰ René Jeffery, 'Amnesty and Accountability: The Price of Peace in Aceh, Indonesia', *International Journal of Transitional Justice*, 6(1), (2012) pp. 60-82.

Statute blanket amnesties remain to be granted to the (potentially) most serious perpetrators of the most serious international crimes.⁷¹ In such situations reality on the ground does not reflect the idealized world of the international criminal law system. The Angolan case shows that many actors in the field of international criminal law and politics in such situations may react by taking a ‘one-day principled position’. Potentially hampering fragile peace negotiations, critique on the blanket nature of the amnesty is voiced before and immediately after the amnesty is granted, not to be repeated anytime, anyplace, anywhere.

It seems the Angolan case is no exception in this regard. A call for prosecution after amnesty is more often arbitrarily and instrumentally silenced. Think for example of Mozambique, where the international community has continuously supported a blanket amnesty, or Uganda, where it promotes doing justice for rebels, but is generally silent about atrocities committed by government forces.⁷² It would in this regard for future research be interesting to meticulously evaluate the stances taken by (inter)national actors on situations in other situations where in recent history blanket amnesties have been granted. As was done in this article, I would suggest to first assess to what extent international crimes have been committed, secondly if the country is willing and able to start domestic prosecution and thirdly to analyse what interests may or may not block a public call or pressure to do justice. Potential pressure from civil society, economic prospects and corporate and political interests should at least be taken into account, but it is likely that in other contexts other elements can be factored in.

If it turns out that ‘norms entrepreneurs’ and ‘advocates of international justice’ in general stick to their public call for justice, this leads to the question why they do so in these cases, but not in the Angolan case. If, however -because of pragmatic reasons- similar ‘one-day principled positions’ of especially international actors such as the United Nations, the EU and influential NGOs prove to be common practice, this leads to the more fundamental question what goal is actually served by voicing this principled position in the first place. Of course it reinforces the normative fundamental principle that justice should be done, but it might at the same time negatively impact the fragile peace negotiations.

⁷¹ Ron Synovitz, ‘Afghanistan: Amnesty Law draws criticism, praise’ available at <<http://www.rferl.org/content/article/1075272.html>> (14 March 2007).

⁷² Joris van Wijk, ‘Should we ever say Never? Arguments against granting amnesty tested’, in R. Letschert et. al. (eds.), *Victimological Approaches to International Crimes* (Intersentia, Antwerp, 2011). pp. 289-314.