PART FIVE

DEALING WITH THE PAST
Chapter Fourteen

Post-Conflict Justice

1. Introduction

Post-conflict justice is the term used to refer to the building of a fair and sustainable political system in a post conflict society. The main objectives of this concept are to prevent a relapse into violence and to repair harm done in the past. In order to achieve this end, warring parties need to be reconciled. States need to deal with the hate and anger within people who have been victimized, suffered from international crimes themselves or who have lost family members and friends. Ideally, in order to achieve a sustainable peace “the truth” needs to be acknowledged, justice needs to be done, the parties need to be reconciled and the harm needs to be repaired. These aims, however, are not easily achieved within a traumatized post-conflict society in which the peace accord and power balance may still be very fragile.

In this chapter, we focus on the question how states deal with their violent past. In section 2, we discuss why it is important to deal with the past and the four key concepts related to post-conflict and transitional justice, namely truth (section 2.1), accountability (section 2.2), reconciliation (section 2.3) and reparation (section 2.4). In section 3, we discuss three main ways for states to deal with the past. First of all, we focus on states that do nothing about the past and try to forget by way of explicit or de facto amnesties and pardons (section 3.1). In subsections 3.2 and 3.3 the concepts of retributive justice and restorative justice will be defined and discussed. Retributive justice entails criminal prosecution while restorative justice has been defined by Marshall as ‘a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future’ (Parmentier et al. 2008, 344). Truth and reconciliation commissions are generally considered to be the most important form of restorative justice when dealing with international crimes. We discuss the advantages and disadvantages of these means, the various ways states can use these means and explore why states choose for these options. In subsection 3.4, other ways of dealing with the past will be briefly mentioned and described while in section 4, we hint towards how states can choose the best option.