

# Security Arrangements Before, During and After Negotiations

A Strategic Framework

## About this paper

This strategic framework was developed during the 4<sup>th</sup> Meeting on Negotiations “Security Arrangements before, during and after Negotiations” held in October 2012 in Berlin. The paper is based on the input and the discussion among all meeting participants, which were later complemented with insights and examples from the literature. We hope that this paper gives a clearly arranged overview on the different aspects to take into account when thinking about security arrangements, including setting, actors, strategies and timing and provides readers with practical examples and hands-on ideas for their own context.

## Why security arrangements?<sup>1</sup>

### What are security arrangements?

- ≡ Security arrangements comprise the processes, infrastructure and assets a state, organizations or citizens of a country/countries might establish to protect themselves, while trying to stop the violence within a specified territory.
- ≡ These arrangements may have particular relevance to citizens living in politically and socially volatile or remote areas. Additionally they tend to vary in form, mechanisms and content according to the “nature of the conflict”.

### What are security arrangements good for?

- ≡ Security arrangements in general cannot resolve the fundamental issues driving the conflict, or transform the political economy. They can, however, buy time and space, either for good or ill.
- ≡ But neither are security arrangements simply “technical arrangements”. While some parts might be technical, they are ultimately political, and must be integrated into a broader peacebuilding strategy.
- ≡ Don’t expect too much from security arrangements!

### What can a strategic framework contribute?

- ≡ Be cautious of templates: There is no “one size fits all”! Each case is different, each context needs its own strategy and this determines the specific components.
- ≡ It is important to view both the whole and its specific components.
- ≡ The linkages and transitions between components are critical.

However, there are recurring strategic aspects with regard to security arrangements to be considered in negotiations. Thus, despite the uniqueness of each case, referring to a strategic framework may be helpful.

## About our strategic frameworks

As one major output of our annual Meetings on Negotiations, our strategic frameworks are practical tools providing a structured and comprehensive overview on different themes related to political negotiations. These papers are based on the input and the discussion among all meeting participants enriched through additional desk research and literature review. Recognising that each conflict scenario and negotiation situation is unique, the aim of these frameworks is not to provide any blue-print solution, but to present some ideas and lessons learned from different international contexts that can be helpful for developing authentic and case-by-case approaches to negotiation challenges.

## Contact

Comments and feedback on the paper are more than welcome.

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## To cite

Prinz, Vanessa, Luxshi Vimalarajah & Katrin Planta 2013. Security Arrangements Before, During and After Negotiations. A Strategic Framework. Berlin: Berghof Foundation. Copyright Berghof Foundation. Available online at: [www.berghof-foundation.org/publications](http://www.berghof-foundation.org/publications).

## Which safety measures (currently) exist for negotiators, combatants and the groups' constituencies?<sup>2</sup>

RLMs entering negotiations and later implementing demobilisation schemes are facing a number of security challenges. For them, it is crucial to devise safety guarantees during negotiations and early post-war transitions, including:

### Before: Pre-Negotiation Phase

- Regrouping combatants in safe areas ahead of peace talks. This measure can also serve the purpose of keeping troops united and disciplined during fragile post-agreement transitions, thus maintaining group cohesion and the stability of existing RLM-internal security structures. In Colombia for example, the combatants of the April 19 Movement (M-19) proactively took the initiative to converge from across the country into a single assembly area surrounded by a demilitarized zone, where negotiations with the government took place.
- Rules of engagement that include safety guarantees for negotiators and group members. One such example is the "Joint Agreement of Safety and Immunity Guarantees" between the National Democratic Front of the Philippines and the government (1995), which provides for "free and unhindered passage in all areas in the Philippines, and in travelling to and from the Philippines in connection with the performance of their duties in the negotiations", as well as immunity for "all duly accredited persons [...] from surveillance, harassment, search, arrest, detention, prosecution and interrogation or any other similar punitive actions" in relation to "all acts and utterances made in the course of and pursuant to the purposes of the peace negotiations"<sup>3</sup>. In the scope of such an agreement, identity cards might be issued that identify negotiators and those enjoying immunity from punitive actions.

### During: Negotiation and Transitional Phase

- Individual or collective protection schemes might include amnesty provisions, deproscription from terrorist blacklists and other measures to legalise ex-combatants' status, human rights vetting and accountability systems within the security apparatus (see below). Individual protection schemes This may include relocation to safer regions less affected by violence or the deployment of bodyguards and armoured vehicles.
- Some groups decided to employ precautionary tactics during negotiations, e.g. understating weapon and troop numbers. In El Salvador, the Farabundo Martí National Liberation Front (FMNL) kept hidden weapon caches. In Aceh, the Free Aceh Movement (GAM) did not only understate troop numbers, , the movement also rejected providing names of combatants in order to protect them The deployment of peacekeeping or monitoring teams might also enhance security for combatants, e.g. through their physical presence in cantonments.
- The principle of "nothing is agreed until everything is agreed" means that all components of a peace deal are included in a single comprehensive accord. This enables the embedding of security arrangements (e.g. arms management) into broader structural reform schemes. This approach was for example adopted by GAM and the Indonesian government.
- Power imbalances between statutory and non-statutory armies can be redressed ahead of, or during, peace talks through bringing in local allies/experts and learning from international experience, thus evening out material power asymmetries through skilful negotiators and advisors; through holding negotiations in a neutral foreign venue; and through separate negotiation venues on security matters with the most concerned leaders only. Other forms of evening out material or structural resource asymmetries include better preparation for the talks, technical and logistical backup from the diaspora, external sources of support, as well as the groups' strength of commitment and proactive initiatives.
- Ceasefire mechanisms that regulate the movement of armed forces can provide enhanced safety for RLM's constituencies.

### After: Implementation Phase

- Self-decommissioning. In Colombia, for instance, M-19 decided to melt its weapons before the eyes of an international commission rather than hand them over to the state, while in Nepal, the People's Liberation Army (PLA) maintained full control over its weapons by granting its combatants the responsibility of keeping the keys of the containers where they were stored (while UN troops exercised 24-hour control), until they were handed over to a national technical committee and later, in the scope of army integration, to the government.
- Transitional Justice (TJ) mechanisms, among them
  - (Conditional) amnesty measures to facilitate the return and reintegration of both displaced civilians and ex-combatants (for instance in Colombia, Aceh or El Salvador). Judicial amnesties can be made conditional upon collaboration with truth-seeking efforts (to which former combatants need not only be subjected, they can also be active implementers of and participants in local justice initiatives) such as in South Africa, where applicants to the Truth and Reconciliation Commission's Amnesty Committee had to make a full disclosure of their armed actions
  - Human rights vetting within state security organs as a major method of ensuring integrity and legitimacy of the security system and ensuring public confidence. All forces should take part equally in those processes, overseen by independent commissions, and those responsible for war crimes or human rights violations should be barred from positions within the military or the police. In El Salvador for instance, high-ranking army officers were removed after an Ad-Hoc Commission had proven their participation in serious acts of violence during the war.
  - Reintegration schemes solely benefitting ex-combatants at the expense of other population groups affected by the conflict might be perceived as unfair. More favorable are balanced inclusive programmes which provide financial and technical assistance to both combatants and war victims. In Aceh, for instance, "economic facilitation" was provided to both ex-combatants and civilian victims of the conflict.
  - International interveners should be careful with quick-fix TJ mechanisms. Setting longer-term oriented timeframes might strengthen the likelihood of TJ processes being respected and implemented.

## How can security transitions be structured, and how can these structures be strategically linked to each other?<sup>4</sup>

3 phases: (1) ceasefire process, (2) transitional security management, and (3) final status of forces. An overall strategy must enable the integration of all three phases, whereby each phase establishes the foundations and framework for the next phase. It is thus essential to focus on each phase in detail and achieve defined objectives in a planned sequence (with regard to the overall process).

### Before: Pre-Negotiation Phase

#### Which essential issues are to be considered with regard to ceasefires (phase one of the security transition process)?

- Different types of ceasefire exist with different levels of formality and verification. They include battlefield truces, declarations of intent or principles (including unilateral ceasefires), various forms of restriction on hostilities (including humanitarian ceasefires), and cessations of hostilities. While battlefield truces are short-term, unverified breaks in hostilities, and cessations of hostilities consist in the temporary, unverified version of a truce, ceasefires are formal agreements that establish a verifiable halt in hostilities, disengaging forces and aim at creating conditions for formal negotiations.
- Basic requirements of a ceasefire include guiding principles and a statement of wider aspirations. It must be formulated using clear definitions, language and logic. Both the parties and the organisational framework need to be defined, including the role of third parties. They need to contain a detailed operational framework, as well as a mapping and disclosure of the order of battle (ORBAT), and a list of prospective commitments.
- Conceptual frameworks need to be appropriate to the specific context and objectives. It may include prohibitions and control mechanisms, mutual threat reduction, security guarantees by third parties, and joint security management systems.
- Under prohibition and control mechanisms, different areas of demilitarization should be defined, including demilitarized zones, zones of exclusion and zones of limitation, areas and lines of control, buffer zones and humanitarian zones. The role of third parties needs to be clearly defined. Prohibition and control mechanisms should further address issues of disengagement and redeployment, the assembly and cantonment of military forces, restrictions on deployment and the use of heavy weapons systems, restrictions on troop movement, resupply and training (advance warning and verification). Additionally, joint verification mechanisms, joint patrols and other confidence building measures can be outlined.
- A ceasefire should be designed to achieve objectives (short, medium, long term). It needs to be based on a clear conceptual framework. Its form should follow its function! Crucially, ceasefires must be designed to survive violation and to re-establish compliance.
- Every party outside the ceasefire is an adversary; every party to a ceasefire is a partner for peace!

### During: Negotiation and Transitional Phase

#### Which essential issues are to be considered with regard to interim joint security management (phase two of the security transition process)?

- Interim joint security management needs to address the four core issues of joint ceasefire management, implementation and monitoring; interim joint command and responsibility for security; preparations for the final status of forces (and integrated security forces); and confidence building.
- Ceasefire management and implementation can be assured by a number of bodies and instruments, including a (joint) ceasefire commission that is mandated to implement the ceasefire. A precondition for this implementation is agreed, planned and phased compliance. Monitoring can be managed by a ceasefire verification and monitoring organisation, and upheld by ceasefire and security guarantees. Third parties can play a specific role in this process.
- Bodies tasked with transitional security management may include joint security/military commissions, which might have overall responsibility for transitional security measures and the general maintenance of security. Other instruments integral to transitional security management are forms of transitional command/governance, an interim legislative security framework, and an interim reform programme. The role of third parties therein needs to be addressed.
- Preparations for the final status to be addressed in the scope of interim joint security management includes preparations for DDR, preparations for final status negotiations, an agreement on a final status agenda and negotiations procedures, and the development of an initial security sector strategy framework.

### After: Implementation Phase

#### Which essential issues are to be considered with regard to the final status of forces (phase three of the security transition process)?

- Crucial issues to be addressed with regard to the final status of forces in negotiations include the restructuring of security governance institutions and legislative framework, the restructuring of security command and management systems, the integration of forces, substantive DDR planning (DDR commission), the development of a security sector transformation strategy (initial SSR planning), and other related (political, economic, social) reforms.
- Negotiations about the final status of forces further need to address questions of implementation and guarantees. Both can be addressed through establishing an agreed implementation schedule with clear responsibilities, supervisory bodies and/or international guarantees, non-compliance mechanisms, and clearly defined programme implementation and respective funding.
- Security Sector Reform (SSR) should address all dimensions of human security, and thus needs to be a multi-sectoral approach that also incorporates the wider civil society. Its focus lies both on an effective delivery of security and an oversight on related processes and issues, including modernisation and professionalization of the forces, policy reform (towards a national security strategy), security governance as well as legislative reform. With regard to the negotiation of SSR, it is critical to establish real and inclusive national ownership and capacities and thus build a dialogue and consensus process. Marginalised communities and sectors (including women and gender issues) have to be addressed, as well as strategic perspectives. The negotiation focus should be on institutional transformation, thus implementing reforms and building new capacities to enable new actors to enter the process, further establishing a framework for a longer term transformation process, which may then ensure sustainability. Parties might wish to learn from international experience and ask for expert advice on SSR. In South Africa for instance, the only form of foreign peacebuilding support all parties welcomed was technical advice on international standards with regard to the ranking processes in the framework of military integration.

## What roles do the different actors inside the process have with regard to security arrangements in negotiations? How can they be managed and/or supported?

### Negotiating parties, third parties

#### How should negotiating parties be composed?<sup>5</sup>

- Intra-party unity should be maintained in order to prevent internal contestation of the outcomes or the formation of dissident, rejectionist factions who might later challenge the peace process. It can best be ensured by maintaining constant dialogue and consultation between the negotiation team and the rest of the movement, between and during negotiation rounds, e.g. through briefings and caucus meetings.
- In order to enable all conflict stakeholders to become part of the solution, the negotiation process should be as inclusive as possible. Thus, the widest possible spectrum of stakeholders should be invited to the negotiation table. This also serves to increase the sense of ownership, thereby promoting long-term stability. However, not all relevant parties need to be involved at once, in order to allow for flexibility in situations that might require incremental and step-by-step negotiation strategies. In Burundi for instance, the Arusha peace accord (2000) was not signed by the main armed opposition forces. However, the agreement was a major incentive for them to sign ceasefire agreements with the government.
- Downsides of having a highly inclusive process might be that marginal groups that are given parity at the negotiation table might have only small constituencies, thus making the process both undemocratic and inefficient, thereby slowing it down.

Peace processes generally operate simultaneously on multiple, complementary levels. Parallel dialogue tracks might precede or accompany direct (or mediated) official negotiations between top party leaders, including informal talks and political platforms to formulate, prepare and bring issues to the actual negotiation table where the official teams would eventually have to deal with them. During periods of breakdown in the official negotiations, these informal channels help to maintain a continuous line of direct communication, and contribute to the confidence-building process between parties. In the Guatemalan case, informal talks (facilitated for instance by the Community Sant' Egidio) and political platforms with the church, popular organisations and academics helped maintain communication and confidence-building despite various interruptions of the official negotiations by military and popular offensives.

#### What role can third parties have with regard to security arrangements?

- The principle of ownership of the peace process by the primary parties should be kept, and can be enforced by declining international involvement as much as possible, setting their own timeframes and prioritising joint decision-making.<sup>6</sup> Where third-party facilitation is (explicitly) required, there is a need for international oversight in good faith, keeping in mind that larger neighbours might rather be inclined to look after their own interests.
- Having said that, third parties can function as guarantors of the process, providing security guarantees or safe and neutral negotiation venues. International humanitarian and peacebuilding organisations can act as observers to reduce tension and guarantee a certain amount of security to ex-combatants (e.g. through their presence at cantonment sites) and constituencies alike.

### Civil society and the media

#### How can the wider population/ civil society be included in negotiations?

- In parallel to keeping intra-party unity, it is important to keep civil society and communities on board through constant dialogue and consultation, otherwise the outcome might be perceived as an “elite deal”.
- There are different options for involving civil society in negotiations:
  - Civil society representatives and organisations can be directly present at the negotiation table;
  - They can be involved through parallel civil society forums with a consultative mandate;
  - Through effective communication channels with the facilitator and/or all or some parties to the negotiation.
  - Furthermore, negotiations among civil society actors can help to maintain a line of communication among the parties when track one negotiations are stalled or have broken down.<sup>7</sup>
- Specifically with regard to security provisions, both national and international civil society organisations can fulfil an important protection function, both for ex-combatants and the wider population, especially when combined with monitoring and advocacy that can attract media and international attention.<sup>8</sup>

#### What role can the media play with regard to security arrangements?

- Consulting the broader public and keeping the media informed might help to build a national consensus in favour of the peace agreements (although the most sensitive decisions of a negotiation process might have to be taken behind closed doors).<sup>9</sup>
- Media events can be used at the beginning of negotiations to build confidence, facilitate negotiations or break diplomatic deadlocks to create a climate conducive to negotiation.<sup>10</sup> They can create confidence and goodwill among the parties to the conflict and their constituencies.
- A lack of information about ongoing negotiation processes among fighting forces or the wider population can create insecurity. Media messaging and a sound information policy through a joint media strategy of the parties to the peace process can create security for the wider population during a ceasefire.

### Outside parties, “spoilers”

#### How to deal with parties that are not parties to the negotiations? How to manage both state and non-state groups that might jeopardize the negotiation process?

- As has been highlighted earlier, it makes sense to have negotiation processes that are as inclusive as possible, thus keeping the number of parties outside the negotiations low.
- Likewise, peace processes should be designed in a way that prevents “spoiling” as far as possible, by being non-zero-sum, consensual, locally owned and internationally and regionally supported. The peace process should not be imposed upon an unwilling or disengaged public; it should accommodate the legitimate concerns of all parties, address not only immediate security goals but also human rights and the rule of law; allow for balanced power relationships among the parties at the negotiation table, and should be negotiated by protagonists seen as credible and legitimate by their constituencies.<sup>11</sup>
- Keeping in mind that the role of “spoilers” is extremely versatile and will vary from conflict to conflict, three broad approaches to managing spoilers can be identified. Depending on whether “spoilers” are outside or inside the peace process (the latter being for example parties that sign but consciously fail to implement agreements), guarantors to peace processes can implement a range of strategies to manage groups threatening to jeopardize negotiations:
  - One approach to managing “spoilers” is to create an inclusive framework for security transition programmes that also offers incentives to groups not party to the negotiations to enter the programmes, thus making them partners to the process.<sup>12</sup>
  - A second approach focuses on socialization, i.e. changing the behaviour of spoilers to adhere to a set of established norms (e.g. commitment to the rules of democratic competition and adherence to the protection of human rights).
  - Thirdly, guarantors can revert to coercion, punishing spoiler behaviour or reducing the capacity of the spoiler to destroy the peace process.<sup>13</sup>

#### How to deal with governments that are unwilling to negotiate?<sup>14</sup>

- On the governmental side, entering negotiations with opposition forces requires recognition that the status-quo is not sustainable and that a peace agreement will necessarily entail some structural reforms to accommodate some of the insurgents’ demands.
- In those cases where the government is unwilling to turn to negotiations, internal and external pressure needs to be raised over a certain threshold that “alters the power balance”, obliging the government to engage with RLMs. Internal pressure can be built through alliances with civil society actors and diaspora organisations, the business community and other political forces, such as conventional oppositional parties. In Nepal for instance, the alliance between the Maoists and seven mainstream political parties was a decisive move in pushing for negotiations. Other strategies include acting on “multiple fighting fronts” and supporting societal activism by political parties, trade unions and human rights groups in parallel to armed struggles. Pressure from the outside can be built up by the regional/international environment, which RLMs can contribute to by mobilising international public opinion and foreign governments against repressive state policies. RLM leaders in exile might be especially well-suited to reach out to the international community. GAM’s leadership in Sweden for instance was able to campaign to internationalise the conflict in Aceh without worrying about their safety and security.

## How can RLMs approach security arrangements in negotiations?<sup>15</sup>

- There is no commonly applied template, each case is different and thus has to be approached differently. However, there is a specific layout that is often used with some minor variations.
- This so-called “Standard Check-List” consists of eight steps distributed over the pre-negotiation, negotiation, and implementation phases of a negotiation process. These eight steps are;
  1. preparing to engage,
  2. assessing the fighting forces,
  3. determining a mediation approach and strategy, and
  4. laying the groundwork for security arrangements negotiations, all four of which take place in the pre-negotiation phase;
  5. conducting and managing negotiations,
  6. linking security arrangements to other parts of the peace process, and
  7. putting security arrangements in the peace agreement are core activities relating to security arrangements in the negotiation phase; while
  8. facilitating implementation is the core activity in the implementation phase. In this phase, the preparation taken in the preparatory stage during the pre-negotiation phase is of crucial importance.



### Before: Pre-Negotiation Phase

- When preparing to engage in security arrangements, RLMs should take into consideration that security arrangements are “combatant-focused agreements”, and only one security instrument, complementary to others, that can only meet limited expectations. All security arrangements need to have achievable parameters; definitions of security arrangements should be seen as a guide only. It must be kept in mind that security arrangements might have potentially destabilizing consequences.
- Assessing the fighting forces can constitute the second step in preparing for security arrangements. From a mediator’s perspective, it involves gaining an understanding of the strategic objectives of the conflict parties, identifying and including key armed groups, analyzing characteristics of the fighting forces, mapping the evolution of the fighting forces, assessing their reliance on external support, and understanding weapons ownership and other cultural cues. However, some or all of these issues might be as relevant for RLMs preparing for negotiations.
- The same is true for the third step: determining a mediation approach and strategy. While primarily seen from a mediator’s point of view, the questions are likewise valid for RLMs. Tasks and crucial aspects of this step include the adoption of an approach of “nothing is agreed until everything is agreed”, finding credible and appropriate interlocutors, identifying methods of contacting the fighting forces, facilitating safe passage and movement for negotiators (security of the negotiators), considering women’s roles, adopting a problem-solving approach, minimizing asymmetry between the parties, upholding international law (regarding amnesty regulations and de-proscription), and commencing preliminary discussions.
- Laying the groundwork for security arrangements in negotiations constitutes the last step of the “Standard Check-List” during the pre-negotiation phase. The goal of this phase is to link cessation of hostilities/ceasefire agreements to other transitional security arrangements, and to include key armed groups in the framework agreements. Meanwhile, it remains important to avoid preconditions for talks.

### During: Negotiation and Transitional Phase

- Conducting and managing the negotiations involves negotiating key security arrangement details, anticipating and managing the negotiation techniques of fighting forces, and explaining security arrangement commitments to the troops.
- Security arrangements need to be linked to other aspects of the peace process, most notably social and political arrangements, economic reintegration, and security sector reform.
- Finally, security arrangements should be put in the peace agreement, crafting a clear vision, approach, and desired outcome for the security arrangements, detailing who and what are covered by the security arrangements, and establishing realistic timelines. Furthermore, institutional structures needed to plan and implement the security arrangements should be outlined in the document.

### After: Implementation Phase

- In order to facilitate the implementation of security arrangements, it may be helpful to:
- Include implementers in the negotiation phase,
  - Develop a mediation and facilitation strategy to support implementation,
  - Address implementation of key political provisions before starting to implement security arrangements,
  - Anticipate and resolve security arrangements specific problems, and
  - Build local capacity for mediation and conflict resolution.

## How to approach provisions for special groups in negotiations, specifically political prisoners and “People on the Run”?<sup>16</sup>

### Amnesties

#### How can amnesties serve to enhance accountability in transitional justice?<sup>17</sup>

- Amnesties recognize that crimes have been committed, but prevent penal sanctions being pursued for these crimes. In contrast to former forms of tabula-rasa amnesties, and a reliance solely on formal trials (which for a lack of resources tends to create an “impunity gap” among low-profile offenders), new amnesty laws are increasingly conditional upon enhancing offenders’ accountability and exist complementarily to promoting mechanisms of truth-finding, justice and reparation for victims.
- Different forms and functions of amnesties can be identified:
  - Truth commissions empowered to grant amnesties to individual offenders who fully disclosed their past political offences (as was the case in South Africa) incentivise testimony and remove the risk of self-incrimination. Amnesties can be linked to other truth recovery processes, e.g. civil proceedings or commissions of inquiry.
  - Additionally, amnesties can support the enforcement element of accountability, e.g. when the possibility of prosecution is written into the text of the amnesty. Amnesties can be limited to exclude certain categories of offenders (e.g. military or political leaders) or crimes (e.g. severe human rights violations). Furthermore, amnesties can be linked to offenders fulfilling certain conditions, such as disclosing the truth or refraining from violence. If offenders breach the preconditions of such conditional amnesties, they are still liable for prosecution.
  - Amnesties can further complement non-judicial enforcement mechanisms. Publicly disclosing past crimes can have public, personal and professional repercussions for past offenders.
  - Amnesties can enforce accountability by encouraging compliance with vetting programmes that remove specific individuals from public office, particularly from the police or armed forces.
- Amnesties can be implemented by domestic courts, advisory bodies that report to the executive, or specific amnesty provisions (which can be government bodies or operate independently). These bodies may be mandated to grant or recommend amnesty, and possibly also have additional functions, such as monitoring the reintegration of amnesty beneficiaries. All decision-makers in this process need to be held accountable for their decisions.
- An Amnesty Law Database has been developed by Dr Louise Mallinder. It currently contains information on over 520 amnesty laws in 138 countries since the end of World War Two. It is currently being updated and edited and will be made freely available online in the future. In the meantime, Dr Mallinder will respond to queries on the database or individual amnesty processes ([L.mallinder@ulster.ac.uk](mailto:L.mallinder@ulster.ac.uk)).
- Case study jurisdictions on South Africa, Uganda, Uruguay, Argentina and Bosnia-Herzegovina can be found on the website of the Institute of Criminology and Criminal Justice of the Queen’s University Belfast under <http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Research/BeyondLegalism/CaseStudyJurisdictions/>

### Political Prisoners

#### How to solve the issue of political prisoners?<sup>18</sup>

- Both the question of the release of political prisoners, and reintegration measures for released prisoners are an essential and integral part of the peace process.<sup>19</sup>
- In the scope of negotiating the release of political prisoners, the following issues may be of importance:
  - The question of prisoner release should be dealt with pragmatically; it should not be linked to other issues, such as decommissioning.
  - A clear timeframe is required: The Good Friday Agreement in Northern Ireland foresaw a release of all qualifying prisoners within two years after the accord was signed.
- In order to facilitate prisoner release, a commission may be established – as has been done in Northern Ireland – which is mandated to release “qualifying” prisoners. Qualifying prisoners had to apply individually and were released on license.
- Key issues to take into consideration with regard to prisoner release and negotiation may include:
  - The question of encouraging organisations outside the peace process (prisoner release as a “carrot”);
  - The notion of using prisoner release as a lever to secure concessions from RLMs, particularly decommissioning (prisoner release as a “stick”);
  - Issues of prisoner release and victims, taking into account the diversity of victims’ organisations’ views towards prisoner release and the victims’ potentially increased need of additional resources such as counselling, compensation and other support to cope with the trauma of early releases;
  - The reintegration of RLM prisoners, which in Northern Ireland followed a self-help model wherein the former prisoners would take responsibility for the management and delivery of services, thus highlighting their agency and sovereignty and avoiding the label of “criminal” commonly associated with clients of professional probation agencies. Their projects included counselling, micro economic projects, “dealing with the past”, engagement with victims and campaigning for the rights of ex-combatants.

### People on the Run

#### How to deal with the issue of “People on the Run”?<sup>20</sup>

- Case study Northern Ireland:
- In 2005, the British government, after having given respective commitments in the Weston Park negotiations in 2001, published legislation regarding persons suspected of paramilitary offences who had not been tried or convicted by virtue of the fact that they were “on the run”. It included provisions for people who might be charged in the future, or who had been charged and convicted but subsequently escaped from prison. The rationale behind the legislation was that, had they been in the jurisdiction, they would have benefited from early prisoner release. To rectify this “anomaly”, the legislation would have enabled the award of exemption from prosecution certificates for politically related offences committed pre-Agreement in Northern Ireland, also to individuals guilty of “offences committed in the course of efforts to combat terrorism”.
  - The legislation was severely criticised by the parties (including Sinn Fein), victim and human rights groups alike, and eventually abandoned. Criticism included:
    - The notion of impunity for both republican suspects and those in the security forces guilty of collusion and other illegal acts;
    - That loyalists who had never decommissioned any weapons could benefit;
    - The lack of international involvement in the proposed tribunal which would issue the exemptions;
    - The failure to involve relatives or impose an obligation to provide information to relatives;
    - The grant of potential anonymity for offenders applying for certification;
    - The potentially excessive powers granted to the Executive in appointment, control of evidence, and control of information dissemination.
  - Lessons that can be drawn from this example include:
    - Right-timing with regards to the political context and maximising the potential political consensus in such a controversial policy initiative is of crucial importance;
    - The support of those most directly affected on the ground, i.e. community, victims and human rights groups, should be sought. Efforts at the macro level to ensure political consensus should be matched by concurrent efforts in the community sector designed to optimise their ownership and involvement.
    - Security forces were only included relatively late in the legislation. However, truth-recovery initiatives that seek to encourage members of RLMs and security forces to come forward are likely to have more chance of success if they are applied equally to both state and non-state actors from the outset.

## Which stumbling blocks exist in the process? How can they be avoided?

### Before: Pre-Negotiation Phase

### During: Negotiation and Transitional Phase

### After: Implementation Phase

#### How to avoid premature decommissioning?<sup>21</sup>

- Premature demands by state actors for decommissioning deprive RLMs from their main “bargaining chip” and can lead to a breakdown of negotiations. Negotiations on arms management and their implementation should thus be carefully timed with reciprocal measures to redress the conflict’s root causes. It may be useful to
  - Insist on having no preconditions to negotiations;
  - Embed arms management in broader structural reform schemes in peace accords; and
  - Adopt an approach of “tit-for-tat” or parallel implementation.
- Careful sequencing with regard to different types of ceasefires (unilateral, humanitarian, cessation of hostilities), as well as right-timing of arms-management and right-timing of security-sector transformations (joint technical committees, interim security bodies) further avoid premature concessions.<sup>22</sup>

#### Which common problems of dealing with security arrangements in negotiations exist?<sup>23</sup>

- In some cases, security arrangements are treated as a purely technical aspect of the mediation process<sup>24</sup>. Furthermore, in rushing from the ceasefire to the final post-conflict settlements, the transitional phase tends to be neglected in many peace processes.
- The whole process may lack a security arrangements strategy or might suffer a lack of strategic integration between security, political, economic and social negotiation processes. This should be avoided by integrating political, economic and social negotiations into security negotiations.
- Security arrangements are essentially about (re)assigning the right to the monopoly of the use of force. This requires armed parties to accept losing their own offensive and defensive capability. The challenge of a sustainable peace is to ensure the establishment of a secure environment and a legitimate authority which makes this concession safe.

#### How to avoid the “security trap” in negotiations?

Negotiators getting stuck on security issues can be avoided through

- Confidence-building measures with negotiation counterparts regarding both the framework of negotiations (e.g. terms of reference that include safety guarantees for negotiators and group members<sup>25</sup>), and various security-related measures with regard to negotiated issues, among them joint verification mechanisms, joint patrols and other joint security management systems<sup>26</sup>;
- as well as through capacity-building (training) for negotiators.

#### How to avoid fragmentation of negotiating parties?<sup>27</sup>

- The measure of regrouping combatants in safe areas ahead of and/or during peace talks can serve the purpose of keeping troops united and disciplined during fragile post-agreement transitions, thus maintaining group cohesion and the stability of existing RLM-internal security structures. This was the case in Nepal, where Maoists rebel troops were stationed in self-built cantonments until a final accord on their military integration/socio-economic rehabilitation was agreed upon.

#### How to avoid neglect of the transitional phase?<sup>28</sup>

- Sound interim joint security management avoids creating a “security vacuum” in the fragile post-agreement transitional phase. Measures include joint ceasefire management, measures of implementation and monitoring, as well as an interim joint command of the process (see p. 2).

#### How to avoid poor implementation of an agreed ceasefire agreement? How can parties ensure compliance with agreements?<sup>29</sup>

In order to ensure compliance and proper implementation of agreed ceasefires, negotiation parties can conduct specific implementation negotiations, during which a number of safeguarding mechanisms can be agreed upon, including,

- Defining a code of conduct and creating a ToR Liaison Office;
- Disciplinary actions for militaries found guilty of disregarding the agreement;
- The (limited) mandate of 3<sup>rd</sup> party monitoring body to the ceasefires;
- Prohibition and control mechanisms (joint verification, assembly & cantonment, etc.), and
- Monitoring institutions, among them
  - ad hoc/ local monitoring teams and
  - international monitoring teams.
 Monitoring of the implementation should be done by an independent body with enough capacity to impose sanctions against agreement violations or non-compliance. It should be made accountable to local monitoring mechanisms, with democratic foundations (jointly agreed by the parties).<sup>30</sup> In Burundi, the Implementation Monitoring Commission served as a guarantor. Even though it had no power to constrain disputing parties, its composition (six Burundis and one person each from the UN, the AU and the Regional Peace Initiative) gave the commission a high degree of authority. In El Salvador, the UN’s role progressively evolved from being a witness of good will, to a mediator, and finally to being a guarantor of the parties’ compliance with the peace accords.

## When can security arrangements best be accommodated in negotiations?



### Security Sector Transformations

#### How to ensure right-timing of security sector transformations/ development?<sup>31</sup>

Repressive and undemocratic security forces (army, police, and intelligence services) need to be replaced by a legitimate security sector that can provide security to all citizens. This process, however, is often delayed by lack of resources or political will or fears of security vacuums. Negotiators can anticipate such delays by devising transitional mechanisms, such as:

- Joint technical committees to pursue post-war technical negotiations. In South Africa and Nepal for instance, the establishment of joint technical committees not only served the purpose of providing technical details but was also seen as a symbolic first act of military integration. Interim security bodies can serve as 'stabilisation measures'. In Kosovo for instance, the Kosovo Liberation Army – instead of being directly dismantled – was first transformed into a civilian protection force, the “Kosovo Protection Corps” which served as interim security body until the new Kosovo army was set up. In other cases, interim stabilisation can be reached through the establishment of mixed security bodies comprised by statutory and rebel troops in equal proportions. Following the 2005 peace agreement in Sudan for instance, a select number of the SPLA and national army were recruited into so-called Joint Integrated Units and deployed across the country to fill post-war security vacuums.

### Arms Management

#### How to ensure right-timing of arms management?<sup>32</sup>

Premature demands by state actors for decommissioning deprive RLMs of their main “bargaining chip” and can lead to negotiation breakdowns. The timing of negotiations on arms management and its implementation should be carefully timed with reciprocal measures to redress the conflict’s root causes:

- Arms-management should not be a precondition to negotiations
- In peace accords, arms management needs to be embedded in broader structural reform schemes
- Arms-management may not be one-sided: Tit-for-tat or parallel implementation

### Final Status of Forces

#### When should security arrangements regarding the final status of forces be negotiated?

- Both mediators and negotiators should pay careful attention to the timing of security negotiations, judging what should be given priority and when. Keeping in mind that the timing needs to be individually adjusted to each and every process<sup>33</sup>, three broad approaches can be identified with regard to the timing of security negotiations (for the final status of forces):
  - Embodying extensive codification of security reforms into a peace agreement, negotiated in a context of distrust, under great pressure and short deadlines and driven mainly by external actors (as has been the case in Bosnia and the Dayton Peace Agreement);
  - Incorporating security negotiations into multi-stage, multi-year, multi-site negotiations among governments, rebels and CSOs, resulting in a series of separate peace agreements with extensive recommendations on security issues (such as in Guatemala); and
  - Delegating security issues (on the final status of forces) to later and more detailed negotiations by specialized commissions after having held initial locally driven peace negotiations that strongly focused on confidence building among the parties (e.g. in South Africa).
- A key lesson emerging from these experiences is that negotiations need to be designed to foster trust and mutual confidence. In cases where trust has not been built during the transitional phase, provisions regarding post-conflict security arrangements will not (or only under external pressure) be implemented. The focus on security guarantees in peace agreements should thus not be on defining every imaginable provision, but to put in place a framework for confidence-building that enables parties to reach consensus over debated issues later on.<sup>34</sup>

## Further reading

- Berghof Transition Series: <http://www.berghof-foundation.org/publications/transitions-series/>. Includes a policy report on security transitions and case studies on Colombia, South Africa, Northern Ireland, El Salvador, Kosovo, Burundi, Aceh/Indonesia, South Sudan and Nepal
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