



Learning Lessons
from Failed Negotiations



A Strategic Framework

About this paper

This strategic framework was developed during the 5th Meeting on Negotiations “Learning Lessons from Failed Negotiations and National Dialogue” held in November 2013, in Berlin. It provides an overview of some of the most frequent stumbling blocks in peace negotiations, addressing process- and party-related as well as contextual challenges and ways to tackle them. While in no way exhaustive, we hope that our readers find this overview useful both for reflecting on their own case-specific negotiation challenges and for designing strategies to overcome them.

Why learning from failure?

The literature (Hauge Storholt 2001: 331)¹ suggests that negotiation success can be “measured in terms of the ability to arrive at an agreement that is not only signed by all parties, but that can be effectively implemented as well.” Based on this, negotiation failure can be understood as the abortion of talks before a peace deal is signed or the failure to implement a signed peace deal. But why examine failure when there are also successful negotiation processes to observe and learn from? Together with our meeting participants, we thought it worthwhile and useful to have a closer look at the things that can go wrong during peace negotiations in order to be better prepared for the numerous challenges linked to these complex processes. Our focus on failed negotiations was driven by the aim to identify a set of frequent negotiation stumbling blocks and to brainstorm constructive ways to overcome them. With that in mind, our approach to negotiation failure takes into consideration that:

- In each successful negotiation process mistakes have been made, meaning that we can learn from failures in overall successful negotiations as well as from negotiations ultimately aborted.
- Many peace agreements are the result of a series of negotiation processes. Hence, an aborted negotiation must not necessarily be a dead end, but rather one step in the larger process of reaching an agreement.
- In most cases, negotiations do not stop because of one major failure or mistake but rather negotiation break-down is an outcome of a series of stumbling blocks parties were not able to resolve.

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

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Negotiation challenges ...

... and how to respond to them

PROCESS DESIGN

Timing and venue of negotiations

- ≡ **Timeframe:** the time required is often underestimated, especially as negotiations take place in volatile political contexts.
- ≡ **Location symbolism:** the place where negotiations are carried out can create a sense of hierarchy between the parties, one party being the “host” of the event or having disproportionately better access to security provision at the site. Seemingly small details at the negotiation table (food, seating arrangements etc.) can also negatively affect the course of the process.
- ≡ **Security guarantees:** who hosts the negotiations is also an important question with regard to security. In 2001, GAM (Aceh) negotiators were arrested in a hotel provided by the NGO HD Centre.

- ≡ Examples from the ground demonstrate a broad variety in negotiation timeframes which makes it difficult to generate general lessons. However, two elements should be considered. On the one hand, negotiations should not be rushed. Firstly, because the objective is to address the root causes, not just to obtain a short-term ceasefire. Secondly, because too much time-pressure might be counterproductive when it comes to relationship-building between negotiation parties. On the other hand, a realistic understanding of the ability to uphold negotiations in terms of managing frustration, keeping internal sceptics on board, and financially sustaining the process will help define a provisional timeline.
- ≡ Ideally, negotiations should be carried out in a neutral location which provides security to all participants. All parties must feel comfortable with the venue. Important logistical details (who guarantees for safe travel to the site, visa issues etc.) must be resolved beforehand.
- ≡ The host of the negotiations or negotiation parties should be capable of guaranteeing security.

Agenda Setting

- ≡ Agenda items: broad and comprehensive vs. narrow and manageable?
- ≡ Inability to agree on a common agenda.

- ≡ Agenda items and their order should be decided jointly; flexibility and compromise on both sides can help the negotiation start off on the right foot. Not all issues should necessarily be dealt with during the negotiations and prioritization can be valuable to avoid an interminable process.
- ≡ Starting with “easier” topics first to build up trust during the process and getting to the “tricky” issues towards the end (e.g. during the Camp David negotiations in 2000, the most important issues were only discussed at the end) and applying the principle of “nothing is agreed upon until everything is agreed upon” are instruments often used to facilitate the agenda-setting process. The latter principle was introduced during the peace negotiations between the Government of Indonesia and the Free Aceh Movement by the mediator Martti Ahtisaari, and has since been used in different conflict contexts such as in Israel-Palestine negotiations or in Colombia in the current negotiation process between the government and Farc.
- ≡ If agenda-setting proves to be too challenging, start with common principles or ground rules for engagement. E.g. in the case of Northern Ireland, all involved in negotiations, including the Irish and British governments and the political parties in Northern Ireland, confirmed their commitment to six ground-rules regarding participation in talks on the future of the region: the so-called Mitchel Principles (named after United States Senator George Mitchel).

Participation/ Inclusivity

- ≡ How inclusive should peace negotiations be? While inclusivity and broad civil society participation is said to strengthen both the legitimacy and sustainability of peace agreements, adding more actors to a process can make it slower and more complicated.

- ≡ Agree on a model for civil society (ranging from direct participation as negotiating party or through national dialogue formats to more indirect forms of participation such as public hearings, opinion polls or mass action outside the table) that suits the process and is in line with local traditions and culture.
- ≡ Build up mass action outside the table and parallel to the negotiation process with civil society advocating in favor of the peace process through non-violent means such as hunger strikes, sit-ins, demonstrations, legal actions.

Communication

- ≡ Lack of a clear communication strategy;
- ≡ Absence or break-down of official communication channels;
- ≡ Lack of presence in media/information policy towards general public, propaganda and manipulation;
- ≡ Mismanagement of information exchange with negotiation counterparts.

- ≡ Devise both internal and external communication strategies that include appropriate risk analysis (leakage, negative media coverage, management of expectations). Identify a spokesperson responsible for managing communication.
- ≡ The degree of discretion and, if necessary, secrecy must be analyzed on a case-by-case basis and will influence the communication strategy. Have in mind that an excess of publicity of the negotiations can be detrimental by directly affecting the actors' flexibility and by fostering aggressive negotiation positions. On the other hand, a lack of media coverage can prevent public awareness.
- ≡ Establish and maintain different tracks of communication with your constituency and your counterpart. Include informal/back-channel contacts that can be used as safety-nets to maintain communication in case the official channel breaks down.
- ≡ Use (alternative) mass media to clearly communicate demands and objectives. Advocating the cause not only locally but also regionally and internationally can help diffuse preconceptions and propaganda.
- ≡ Information dissemination policies are essential to the quality of the negotiation and powerful trust-building tools. Information exchange can be done through the press or through mediators if tensions are high. It is a strategic decision to decide what information should be shared and must be carefully assessed.

NEGOTIATING PARTIES

Negotiation capacities

Negotiation team²:

- ≡ Choice of negotiators:
Inexperience and lack of technical knowledge;
“Hidden agendas”: financial and/or political interests of individuals might disturb negotiation process; negotiators with very strong personalities might refuse agreements based on their interests or on the approach rather than on the offers themselves³;
- ≡ Discordance within the team with regard to negotiation content, process or negotiation *per se*, e.g. due to different personal assessment or change of delegation staff.
- ≡ Lack of support structures for the negotiation team.

Preparation:

- ≡ Lack of preparation, improvisation.

Negotiation strategy:

- ≡ Weak political strategy,
- ≡ Aggressive negotiation strategy and short-term tactical moves such as “bluffing” (i.e. misleading intentions); misrepresentation of information (i.e. misleading arguments); competitive bargaining (i.e. high demands, low concessions)⁴.

- ≡ Carefully select negotiators in terms of their personal assets (experience and knowledge, tact and empathy, status, legitimacy, authority and decision-making power); make sure all important factions/regions/sectors within the movement feel represented at the table; use opportunities for (negotiation) training and exchange before and during negotiations (including peer-to-peer exchange); establish your own or collaborate with training institutions.
- ≡ Consider using confidential (in)formal negotiation checklists that help make sure the issues, negotiable items, goals and strategy are clear for every member of the delegation.
- ≡ Make sure the negotiation team is supported by a knowledgeable and trusted team of advisors who provide assistance on demand. Logistical and security issues should be arranged by a negotiation secretariat so that negotiators can fully focus on the negotiation itself.
- ≡ Prepare for negotiations using different tools such as conflict mapping, actors mapping and internal strategy-building sessions. As negotiation processes are never linear and cannot be fully controlled: remain flexible and periodically revise and if necessary adapt your strategy.
- ≡ Get specific negotiation training and exchange with experts and peers.
- ≡ Be aware of what your BATNA (best alternative to a negotiated agreement) would be.
- ≡ Avoid coming to the table with an unclear strategy: establish clear definitions of needs and goals, set up clear criteria for non-negotiable needs, short-term and long-term negotiation goals and design; conduct profound analysis with regard to own weakness/strengths.
- ≡ Make an effort to understand the counterpart's perspective; identify and work on compromise solutions; adopt a collaborative strategy, remain flexible, don't get stuck in details, do not forget the overall goal/big picture.

	<ul style="list-style-type: none"> ≡ Lack of (time for) reflection/learning processes. 	<ul style="list-style-type: none"> ≡ Take a step back and reflect on the negotiation process and the underlying assumptions and theories that inform your current strategy. Sometimes, it is necessary to not only change your strategy but the very assumptions your strategy is based on to formulate a completely new answer to a problem.
<p style="text-align: center;">Parallel organisational development</p>	<ul style="list-style-type: none"> ≡ Preponderance of military over political aspects. ≡ Difficulties maintaining cohesion within the movement and managing internal discordance due to power struggles between e.g. military and civilian leaders/entities; local and diaspora elites. 	<ul style="list-style-type: none"> ≡ Build up not only military but also political (ideology), economic (self-reliance) and organisational strength by involving progressive journalists, academics, and human rights activists, establishing a program for change that mobilises broad domestic support and does not depend on single personalities and establishing alliances. Keep the moral high-ground: Most often, it is not advisable to count on military success as the strongest asset. It is better to highlight the moral strength or the (liberation) vision and one's own commitment to certain values. This implies not to imitate the (deviant) behavior of the state. ≡ Keep strong internal consensus around the decision to negotiate by e.g. integrating different wings or sections of the movement into the negotiation process, maintaining internal consultations and communication channels between those engaged in negotiations and the broader constituency and elaborating timely post-negotiation scenarios for the movement in order to avoid fragmentation (for instance, transformation into a political party, social movement, post-militancy opportunities for rank-and-file members of your movement).
<p style="text-align: center;">Relational and psychological factors</p>	<ul style="list-style-type: none"> ≡ Imbalance of power/asymmetric relations due to different (international) status and thus different leverage but also due to unequal access to resources such as e.g. training and information. ≡ Deep mutual mistrust as a result of lack or delay in the implementation of past or current agreements, lies and treason lead to a low credibility of commitments and feelings of insecurity and uncertainty. ≡ Insecurity about or lack of belief in the implementation power of the counterpart, especially when a strong (and rather independent) military sector might not feel bound to agreements negotiated by civilians. ≡ (Perceived) lack of political will; blockage, no goodwill. 	<ul style="list-style-type: none"> ≡ Try to counterbalance the asymmetry at the negotiation table by seeking support from countries that promote your status as a negotiation partner. In the case of El Salvador for instance, the governments of Mexico and France recognized the FMLN as a "representative political force" in El Salvador in 1981 and lobbied the El Salvadorian government to engage in a negotiation process with them. ≡ Take trust-building measures to move the process forward (e.g. cease-fire, unilateral steps). Keeping the same negotiators through the whole process, even in case of failure, can be valuable as the personal relationship between negotiators might bring trust to the negotiation table. ≡ Involve third parties to mediate and monitor the respect of engagements in order to counterbalance the lack of confidence between parties. Devise an effective communication strategy to keep the (inter)national audience informed about progress and breaches in the negotiations and make sure that implementation is monitored by an actor with the technical capacity and strength to pressure the groups to respect the agreements. ≡ Do not believe in goodwill, but focus on engaging people. Try to engage your counterpart by changing the balance of power or by eliciting his own interest. Create strong support for the process, so that it becomes more difficult for your counterpart to pull out. In the absence of any steps forward, start elaborating a strategy of unilateral steps. For instance, in the case of the Basque Country, a strategy of unilateral steps was adopted in the absence of any steps forward by the Spanish or French states. With the aim to move the country gradually to self-rule, this strategy includes the mobilisation of civil society, the strengthening of political party work and the set-up and collaboration with an international support group for a peace process.

THIRD PARTY INVOLVEMENT

Third party involvement/mediator

- ≡ Lack of third party support.
- ≡ Wrong facilitator/mediator.
- ≡ Lack of strong guarantees to the process.

- ≡ Try to create external support on various levels while being aware of the different tasks (and limitations) third party interveners can fulfill. A mapping exercise can help clarify who can best serve as observers, facilitators, mediators, guarantors of the process, or “groups of friends” supporting the process.
- ≡ Choose the “right” mediator in terms of mediation style (muscle/directive mediation vs. soft/non-directive mediation style), personality (enough authority in terms of professional status, experience, cultural sensitivity, age, sometimes gender) and acceptance by all parties to the negotiations. Regarding the last point, mediators can be chosen on the basis of their trustworthiness and perceived fairness or on the basis of their impartiality. While the latter has for a long time been considered the best option, new research and practice have demonstrated the potential of insider mediators with close links to the negotiation parties.
- ≡ While individual actors or NGOs are often fundamental to help kick-start negotiation processes, states or international organisations have considerably more leverage (and financial means) to sustain a process in the long-run, including the monitoring of the implementation phase. To ensure an effective implementation, make sure to develop credible procedures and clear responsibilities.

CONTEXT

Internal environment

- ≡ Continuation of hostilities/counterinsurgency and discrimination: ongoing military offensives and/or societal violence against negotiation parties and their constituencies.
- ≡ Influence of political dynamics (e.g. elections, dynamics within the party system, new policies).

- ≡ Address cultures of violence and paramilitary violence. Use non-violent means and take unilateral steps to involve civil society by taking legal action, promoting multiculturalism and interfaith dialogue.
- ≡ Use elections strategically. Rather than boycotting elections, it might be helpful to vote for a more progressive party/candidate to work with in the future. Use the political agenda to stimulate the negotiations. To increase your leverage, contact other political forces, unless it jeopardizes the negotiations.

External environment

- ≡ Isolation, no (or too weak) support from the international community.
- ≡ Foreign economic/political and security interests of international/regional players (international organisations, states, criminal actors and INGOs) can bring international actors to support the state, provide military or logistic support.
- ≡ Development of new international/regional laws and paradigms which states can use and/or are bound to (war on terrorism, TJ laws, blacklisting).

- ≡ Use international pressure to isolate the state: engage with impartial third parties; expose the state through education and advocacy using mass media.
- ≡ Understanding the interests of global and regional players and dynamics is fundamental to developing a strategy to positively influence the international environment and to generate support. Mapping exercises can help identifying potential allies and entry points for lobbying and design actor-specific liaison and out-reach strategies (e.g. having diaspora groups lobbying abroad, getting strong allies such as the US on board, and establishing strong relationships with neighboring states).
- ≡ Get peer-to-peer or expert advice on relevant laws and norms and look into the experiences of other movements to find out how new developments can affect (or serve) your purpose.

Potential spoilers

If actors with a significant leverage capacity (e.g. the military, the business sector, other armed groups, and political opposition parties) feel excluded, there is a strong risk for conflict resurgence as these actors might not abide by the terms of the agreement. Hence, it is important to find strategies to include potential opponents or at the very least try to contain spoiling behavior by:

- ≡ Internal spoilers
- ≡ State-related spoilers
- ≡ Interest groups

- ≡ Use internal advocacy and dialogue tools to convince your own constituency, demonstrate the legitimacy of your negotiation approach with competition and success in the electoral arena;
- ≡ Use competing interests among the international community to put pressure on the state; forge alliances with other like-minded forces to avoid a “divide-and-rule-strategy” by the state.
- ≡ Be aware of the interests of social sectors opposed to the peace process; try to find common ground to engage with them.
- ≡ With regards to other armed opposition movements: it might be helpful to get them on board.

Further reading

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1 Hauge Storholt, Kristine 2001. *Lessons Learned from the 1990-1997 Peace Process in the North of Mali*. In: *International Negotiation* Vol. 6(3).

2 For more details on the challenges of negotiating as a team and the challenges of internal cohesion at the negotiation table, see Sally, David F. & Kathleen M. O’Conner 2006. *Negotiating in Teams* & Matz, David 2006. *Intra-Team Miscommunication*. Both in: Schneider, Andrea Kupfer and Christopher Honeyman (eds.) 2006. *The Negotiators Fieldbook. The Desk Reference for the Experienced Negotiator*. Washington, D.C.: American Bar Association, Section of Dispute Resolution, 547-560.

3 With regard to the damaging effect of “high-self focus” behavior, see Cho, Yeri., Jennifer R. Overbeck & Peter J. Carnevale 2010. *Status Conflict in Negotiation*. *Research on Managing Groups and Teams* 14, University of Southern California.

4 Elahee, Mohammad Niamat 1999. *The Role of Trust in International Business Negotiations: A Culturally Determined Perspective*. Available online: <http://www.sbaer.uca.edu/research/sribr/1999/14.pdf>.