



INSTITUTE FOR INTEGRATED TRANSITIONS

Bargaining with the Devil to Avoid Hell?

A DISCUSSION PAPER ON NEGOTIATIONS WITH CRIMINAL
GROUPS IN LATIN AMERICA AND THE CARIBBEAN



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About the project

The [Institute for Integrated Transitions \(IFIT\)](#) is an international think tank that brings together under one roof the best of theory and practice in relation to successful negotiations and transitions out of conflict or authoritarian rule. This discussion paper is part of a project developed by IFIT's [Law and Peace Practice Group](#) to fill a major gap in policymaking: whether and how to negotiate amnesty and accountability questions with two kinds of unconventional armed actors: 1) “violent extremist” groups, such as jihadists; and 2) organised crime groups, such as mafia, gang networks and drug cartels. IFIT's

work on the latter, begun in 2017, includes high-level global meetings and more than two years of research and interviews. This paper draws on the results, with a focus on negotiation choices made in diverse cases from Latin America and the Caribbean. It will be the subject of an IFIT-led consultation process; simultaneously, fresh interviews will be conducted with individuals directly involved in other known cases of organised crime negotiation from different regions, including Africa, Asia and Europe. The project will culminate in an original and comprehensive policy framework.

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Introduction

Since 2007, negotiations with violent organised crime groups (hereafter, “criminal groups”) have been increasingly featured in government, church and NGO responses to violent criminality in Latin America and the Caribbean. They are enormously controversial, both politically and ethically. Many consider them unacceptable and counterproductive, as they may involve risks such as legitimising the criminal group or emboldening others to engage in criminal activities. The relative rarity with which such negotiations produce a deal and the great uncertainty as to their long-term outcomes are further sources of controversy. The sensitivity and risks are so large that some who have participated in the situations examined in this paper are wary of calling them “negotiations.” They may avoid the term even when they have bargained from a position of superiority or succeeded in striking a deal.

In attempting to address the challenges criminal groups present, most countries understandably employ a tough-on-crime stance. Any other would be hard to justify to the public. Yet, where the activities of these groups have become especially pervasive and violent, there is often a lack of deterrence capacity, leading to public anger and desperation. Negotiation can thus sometimes become an option and may be pursued in conjunction with coercive tactics, institutional strengthening, legalisation measures and more. As a diplomat involved in the talks with criminal gangs in El Salvador and Honduras put it, by negotiating “we were not trying to get to heaven; we were just trying to avoid hell.”¹

But if negotiation with criminal groups sometimes becomes necessary, which group characteristics and contextual factors must be taken into account? What end-goals are appropriate and realistic? What inducements, concessions and redlines must be contemplated? And how do such processes compare and contrast with negotiations conducted with politically-motivated insurgents? These are just some of the questions examined in this paper.

To begin to answer them adequately requires examining diverse cases. As this is an initial discussion paper aiming to shape a larger research agenda, we have chosen to focus on a single region – Latin America and the Caribbean – using a typologically diverse set of cases. We focus on Colombia’s 1990–1991 negotiations with Pablo Escobar and *Los Extraditables*; the negotiations between Colombia and the Gulf Clan in 2017; El Salvador’s and Honduras’s negotiations with street gangs known as *pandillas* and *maras*, from 2012–2014; negotiations between NGOs and Haiti’s criminal gangs; and between a bishop and several of Mexico’s criminal groups. We also make reference to other cases, including the dialogue and legalisation processes adopted in Ecuador and Panama.

These cases are highly varied in the design of the process, the scope of objectives and the type of criminal groups with which negotiations took place. Objectives ranged from national-level grand bargains to limited ceasefires, reduced criminality and physical access to controlled areas. The criminal groups varied from mafias to street gangs and drug trafficking cartels (which in some cases incorporated former paramilitaries or rebels).

Perhaps the greatest novelty of this paper is that the analysis is primarily derived from and focused on the results of first-person interviews IFIT and the author conducted with those who actually negotiated. These interviews highlight the diverse range of situations in which negotiation with criminal groups can become relevant or necessary, and the complicated policy considerations, trade-offs, potential spoilers, and expected outcomes that can be foreseen. The conclusions are necessarily conditional, given the limited historical and geographical scope of the cases and their many contextual differences.

The first section of the paper describes the research methodology and focus. The second details the crucial effects of the context in which any negotiation with criminal groups takes place. The explored dimensions include the strength of the government or entity negotiating with the group, and vice versa; and the characteristics of the criminal group, including its capacity for internal control, relationship with communities and self-identity and discourse.

The third section discusses motivations for negotiations, the scope of objectives and the expected benefits from the perspectives of the criminal group and its negotiating counterpart. This is followed by a fourth section analysing the range of modalities for negotiating with such groups and how the parties assess each other's influence and trustworthiness. It also analyses the systems and tools of bargaining; redlines; common legal and physical risks and stumbling blocks; and obstacles to a deal, such as internal disunity or lack of political support. Additionally, it examines the roles of communities, victims and the international community, if any, and the quandary of balancing the tension between secrecy and inclusiveness.

A final comparative section details case outcomes, exploring issues such as contagion, spill-over effects and moral hazard. This is followed by concluding observations and an outline of the agenda for further research, including new cases and unresolved questions that will be the subject of more in-depth investigation and interviews by IFIT with those who have negotiated with criminal groups. The ultimate aim is to give policymakers a clearer picture of the possible pitfalls and benefits of such negotiations and creative, practice-derived recommendations for whenever they are undertaken or considered.

DEFINITIONS

The term **“criminal group”** is used throughout as an abbreviation for *violent* organised crime groups, encompassing mafia, gangs, cartels and similar groups (all defined differently in academic literature). Article 2a of the 2004 *UN Convention against Transnational Organised Crime* defines an “organized criminal group” as “... a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.” (The treaty defines “Serious crimes” as offences “punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”)

The term **“negotiation”** is also central to this project. As it is undefined in international law, we follow the minimal definition in the reference publication, *Getting to Yes*,² which defines it as a “back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.” Our only interest is in direct or facilitated negotiations exhibiting a modicum of give and take, as opposed to those in which one side is a de facto victor able to dictate terms.

Research Scope

Overview

This study builds on nearly three years of IFIT research and workshops on negotiating with criminal groups, including 15 recent and targeted interviews with direct participants in such negotiations, which IFIT and the author conducted over three months in the fall of 2019. Given the enormous political and ethical controversies and legal risks, finding interlocutors willing to acknowledge and discuss their direct role in negotiations with a criminal group was challenging. Several interviews fell through as interlocutors changed their minds. Supplemental interviews were conducted with ex-government officials who witnessed negotiations. To protect interviewees and encourage honest speaking, all are reported without names.

That it is based largely on interviews with those who negotiated with criminal groups is the paper's most unique and valuable contribution. It provides an important record of the considerations, dilemmas, trade-offs and judgements with which negotiators grappled. Though this could imply bias toward a permissive view of negotiations with criminal groups, the cases reflect mixed outcomes that, if anything, could foster reluctance to consider negotiation. However, the paper starts from the premise that negotiation with criminal groups may sometimes be an option that is necessary, desirable, or both as a means to help reduce the severity and prevalence of violent crime.

In addition to first-person interviews, the research took account of IFIT's prior work on peace negotiations and the author's work on the political capital of criminal groups, criminal violence in Colombia and Mexico and the difficulties in transferring U.S. focused-deterrence models toward dealing with criminal groups abroad.³ The research also drew upon the large literature on greed versus grievance, the economic objectives of militant actors, the nexus of crime and militancy,⁴ negotiations with different types of violent extremists,⁵ and the way peace processes are impacted by the presence of organised crime groups.⁶ In addition, the review encompassed several articles on the general idea of negotiating with criminal groups.⁷ These looked either at specific cases of dialogue with criminal groups in Latin America and the Caribbean (e.g., Whitfield; Cockayne; Brotherton and Gude) or cross-cutting themes of inducement, coercion, legitimacy and more (e.g., Dubinsky; Wennman; Cockayne, de Boer and Bosetti). All were important in shaping the selection of cases and interview questions.

Focus Cases

Eight cases are examined of negotiation with criminal groups, with multiple and detailed first-person interviews conducted for seven. Rather than using elaborate process-tracing methods, the paper draws heavily on the perceptions and first-hand experiences of the interviewees.

1. Colombia – Pablo Escobar and the *Extraditables*

In 1990–1991, Colombia negotiated more lenient terms with the world’s drug kingpin, Pablo Escobar, and other traffickers. To reduce the brutal and debilitating violence that Escobar and his fellow *Extraditables*⁸ inflicted, the government agreed to change its laws so as to stop extradition of traffickers to the U.S. and allow Escobar to serve time in a prison he could renovate as part of the deal.

2. Colombia – Gulf Clan Negotiations

In 2017–2018, Colombia negotiated with the Gulf Clan, a drug trafficking organisation encompassing former paramilitaries and guerrillas. The process focused on a justice deal. Acting from a position of far greater institutional strength than in 1990, the government refused to consider the suspension of extradition the Cartel sought but engaged in lengthy negotiations about many other aspects of possible legal leniency. The controversial process, which saw the emergence of extensive opposition and powerful spoilers, did not result in a deal.

3. El Salvador – Gang Truce

The government secretly negotiated a truce in 2012 among violent *maras* (gangs) and a decrease and cessation of other criminal behaviour by them. Iron-fist law enforcement was widely perceived as having failed, and 90% of deaths in the country were attributed to gang confrontation. The government ultimately agreed to better prison conditions and selected transfers for imprisoned gang members, as well as socio-economic packages for their reintegration and for community development. A 52% drop in homicides resulted for over a year. But parts of the deal were not fulfilled by the parties; and when exposed to the public, strong political opposition formed. Along with other factors, this led to a collapse in implementation and a spike in violence.

4. Honduras – Gang Truce

The branches of the *Mara Salvatrucha* (MS-13) and *Barrio 18* gangs in Honduras called for negotiations and publicly declared a truce in May 2013 in exchange for a path to reintegration into society. However, homicides increased immediately following the declaration, and the negotiations fell apart within a few months.

5. Haiti – Bargaining with Gangs

Two NGOs bargained repeatedly with Haitian criminal gangs between 2000–2010. One merely sought access to gang-controlled neighbourhoods so as to safely provide humanitarian assistance and medical care. It focused on building legitimacy with local populations and threatened withdrawal of services if attacked. The talks succeeded, with the indirect benefit of reducing violence in the area. Another NGO, by contrast, sought to use material incentives to negotiate a deliberate reduction in violence. It does not appear it was able to achieve long-term behavioural change once material incentives ended.

6. Mexico – Territorial Access

The Mexican church has often negotiated with criminal groups engaged in drug trafficking and extortion rackets. Since 2018, an interviewed clergyman has negotiated a temporary reduction, in Guerrero state, in attacks against certain sectors of local society; he has also negotiated access by politicians to territories controlled by the criminal groups and delivery of services such as health care and schooling in crime-infested areas. These small-scope negotiations have been highly controversial with Guerrero officials, who have repeatedly warned against them.

7. Brazil – Gang Violence in Prisons

Gangs have perennially organised violence from inside prisons. Some have expanded into large international drug trafficking operations. In 2014 in the Paraná state, and 2017 in Amazonas state, there were negotiations between the state and gang leaders after several violent prison riots. Prison conditions improved, and violence inside was temporarily reduced.

8. Ecuador – Gang Legalisation

Ecuador conducted dialogue with and legalised street gangs in 2006, a policy widely considered a success; but little has been made public about the negotiations.

Context and Actor Analysis

Understanding the multifaceted contexts within which negotiations with criminal groups are considered is crucial for gaining insights into whether negotiations are ultimately attempted, whether a deal is reached and what benefits and costs ensue. But all contexts are idiosyncratic to an extent and vary along many dimensions.

This paper highlights three particularly significant dimensions, based on what emerged in the interviews: 1) the strength or weakness of the entity negotiating with the criminal group – whether it was the government, a multilateral organisation, an NGO or an individual; 2) the structure, strength and self-understanding of the criminal group; and 3) the weight and contagion effects of any local precedents of negotiations with criminal groups. We examine these while aware that in macro-criminal networks there will be overlaps between government, business and criminal structures; and a multiplicity of violent actors, rather than dichotomous situation of one organised actor confronting another.

Strength of the Entity Negotiating with the Criminal Group

The old adage is that one should always negotiate from strength. What is striking about the negotiations examined in this paper, however, is the comparative weakness of the negotiating entity vis-à-vis the criminal groups. Only Colombia, in its negotiations with the Gulf Clan, believed it was negotiating from strength.

The tendency to negotiate while weak is partially a function of the Latin American and Caribbean context, where incapacitation and deterrence capabilities of law enforcement are frequently low, particularly in comparison with the U.S., Europe or East Asia. Selection effects are also at play: by and large, Latin American and Caribbean governments choose to negotiate with criminal groups because alternatives are failing. Some of the most emblematic negotiations, including in 2012 by the Salvadoran government with MS-13 and Barrio 18, strongly display this. In Central America's Northern Triangle,⁹ the state and its law enforcement forces, though often brutal, are feeble and may have essentially ceded governance to the gangs.¹⁰

Prior policies of heavy-handed law enforcement and the criminalisation of mere gang membership – known as *mano dura* and *super mano dura* – did more than just fail to weaken the gangs. The arrests of thousands or tens of thousands turned prisons into universities for crime, hardened gang members and resulted in appalling conditions in prisons essentially controlled by the gangs. *Mano dura* also failed (and continues to fail) to reduce the extraordinary violence seen especially in the Northern Triangle, which has some of the world's highest homicide rates and per capita gang membership.¹¹

Negotiation with the *maras* in El Salvador was prompted by these realities and uncertainty about what else could make them less violent. Though frequently successful in places like Chicago, peer-to-peer methods (using ex-gang members to achieve deterrence) have not been viewed as

viable in Central America, where gangs tend to respond by lashing out even more brutally for fear of losing members or firepower.¹²

Focused deterrence methods, such as Operation Ceasefire in Boston in the early 1990s,¹³ are similarly difficult to replicate. That is because the credible threat of coercive law enforcement is a crucial variable underlying focused deterrence. An ex-government official involved in gang policies in Los Angeles observed: “in LA the state and police function. The community may be furious at the police, but they will still call them when there is crime, and the police will come and deal with it. There, gangs don’t fill the vacuum to the same extent that they do in countries (like El Salvador) where such institutions are weaker.”¹⁴

Brazil is one of many examples of such weakness in deterrence capacity; both at national and more local levels, it characterised negotiations with criminal gangs in the *favelas* (slums) and prisons. Gangs such as *Comando Vermelho* (CV), *Primeiro Comando da Capital* (PCC), *Amigos dos Amigos* and *Família do Norte* (FDN) control neighbours, impose social structures, extort businesses, shut down traffic in cities and engage in highly-violent warfare with each other and against the state.¹⁵ In addition, gangs such as PCC and CV obtain important income from drug trafficking and local drug distribution, seeking to expand their territorial control, funding streams and power.¹⁶ For several decades, the gangs have also controlled prisons, where they have access to drugs, arms and their criminal structures. As in Central America, they often instigate riots to eliminate members of rival gangs in the same penitentiary, demonstrate their power and bargain for better conditions (such as greater flexibility on conjugal visits and what items can be delivered to prison).¹⁷ The riots are often highly violent and coordinated country-wide, constituting a massive challenge to prison authorities and the state. For example, in September 2017, there were 142 gang attacks in prison within a mere 11 days.¹⁸

The 1990 negotiations between Colombia and Pablo Escobar likewise took place in the context of comparative governmental weakness. Several months prior, Escobar and other top-level drug traffickers facing the risk of U.S. extradition unleashed a bloody war, assassinating judges and bombing the oldest newspaper, *El Espectador*, to force the government not to extradite. The government felt overwhelmed. A former official described the sense of state weakness in striking terms:

Escobar’s offer came at a time when the government was under a lot of strain and facing a gigantic challenge. The government didn’t have the capacity to confront the cartels. The police force was in collapse – one part of it was working for the Medellín Cartel and another for the Cali Cartel. The military [also implicated in drug trafficking] were not able to tackle the drug trade. The minister of justice had just been killed. The very weak state felt totally under siege and the society completely cornered by the cartels. Desperate and looking for a completely different policy, the state saw Escobar’s offer of talks as a breath of fresh air because we feared a complete collapse of the state.¹⁹

In contrast, negotiations with the Gulf Clan (2017–2018) took place when the Colombian government felt confident. Military and police pressure on the Clan was intense. Several leaders were arrested and at least six killed during the talks. Though such coercion could have undermined trust in the negotiations and did delay some sessions, the government judged that the continued battering would give it important negotiating advantages. The group’s top leader, Dairo Antonio Úsuga (“Otoniel”), evaded arrest; but “the pressure on him was intense” and it was the Clan that proposed talks.²⁰ Even after these started, the government sought to reinforce its position

of strength, not only with military operations, but also by having the Director of the U.S. Central Intelligence Agency visit to create fear about further strikes.

In addition to negotiations led by national governments, civic actors often negotiate with criminal actors. Even if they lack coercive powers, they may have legitimacy and authority, as well as the capacity to provide services that the criminal groups value. For example, Catholic clergymen frequently engage with criminal groups in Latin America. Some have been prominent figures in national-level processes, as in El Salvador and Honduras, while others act more locally. In the latter instances, they may negotiate temporary cessations of violence in zones controlled or contested by criminal groups in order to enable delivery of food and medicine to populations, or to facilitate visits by local politicians. Such negotiations are possible because of the continuous presence and legitimacy that the church has in many marginalised and crime-affected communities, but also because “many *narcos* [drug traffickers] are Catholics and respect bishops.”²¹ In addition, criminal groups operating in more isolated spaces, such as rural Guerrero, need access themselves to health clinics and services that the Church may be able to arrange.²² Thus, negotiators’ strength can come from their authority as well as the transactional benefits they can facilitate.

In a similar vein, international and local humanitarian NGOs frequently negotiate with criminal groups to obtain access to the most vulnerable populations to whom they provide basic food relief and health care. However, they lack much bargaining power.²³ In the Haiti case, the weakness of one NGO was compounded by the fact that the national government blurred humanitarian and combat lines: since the government often delivered health supplies under armed protection, the gangs at times claimed the NGO was part of the armed forces. Nevertheless, the NGO had local legitimacy as it was the only source of primary medical care in the slum. It also supported a distant hospital with more advanced care. Even after the 2010 earthquake, when many other international humanitarians arrived, the NGO had unique medical skills to treat severe wounds and provide aftercare (most others resorted to amputations). Moreover, since the NGO hired locals for skilled and unskilled jobs, rented properties and bought local supplies, it was a source of employment and consumption in an otherwise depressed local economy.

But if the gangs were willing to negotiate with the NGO, it was mainly due to the former’s desire to be responsive to local populations. Criminal groups that shun local legitimacy and choose to rule through brutality, such as Mexico’s *Cartel Jalisco Nueva Generación* (CJNG), would not react in the same way and would more likely seek to destroy any medical or public services.²⁴ Haitian gangs’ willingness to tolerate the NGO was also enhanced because some of its staff were foreign.²⁵ The gangs feared that if they attacked an international NGO, they would face a strong reaction from the government and international forces. Still, the NGO had elaborate security plans and operated with the expectation that an attack against its facilities or personnel would eventually take place, though ultimately it did not.

Neither gangs nor government trusted the NGO, and it struggled on occasion with violent situations. When, for example, it needed to transfer a patient, it had to check with the police, army, MINUSTAH and the gangs. Its main leverage with the latter derived from its provision of medical treatment, conditional on entering the facilities without weapons and uniforms, and its special relationship with their leaders, including enabling a wife to give birth in an otherwise unavailable facility.²⁶

Structure and Strength of the Criminal Group

The criminal group's negotiating capacity is a multifaceted variable. Relevant dimensions include strength vis-à-vis the negotiating entity (be it state, NGO or religious authority); capacity for internal control; strength vis-à-vis other local non-state criminal armed actors; and ideology and political effects.

Relative strength

When state capacity or integrity is low, criminal groups may fill the governance gap and achieve a competitive advantage vis-à-vis the state; but this varies substantially by context. Central American *maras* have strong social and territorial control and governance capacities since they are mainly where the state is weak or absent. The group replaces the state, including providing basic social services, and gang members and communities are deeply fused down to the family level. In the U.S., by contrast, the police are strong even in neighbourhoods affected by gangs, and there is less fusion at the family level.²⁷

Access to resources is another variable that influences the criminal group's power and hence bargaining strength. Among other things, it facilitates capacity for expanded territorial presence and extortion of public and private actors. Such a group may have significant "political" power as a result, since the capacity to "tax" (a euphemism for extortion) is a symbol of such power.²⁸ Broad access to resources also allows a group to buy heavy firearms arsenals; obtain social capital with local populations if the group fills gaps in services and public goods; protect the population from unwelcome state actions (such as suppression of local black markets); or buy off officials and further infiltrate state institutions.²⁹

The ability to inflict intense violence with impunity is another source of relative power for criminal groups. As noted, it is this that in most cases primarily drives the state to the table. Such power is augmented further should the group have a unique ability to evade law enforcement, such as successfully hiding after it strikes and avoiding retaliation. All these factors, as well as other obvious ones such as size, can strengthen a criminal group's hand in any negotiations.

Internal control

The greater a criminal group's control of its members, the more external power it has. Internal controls include the ability to prevent defections by members and infiltration by law enforcement or rivals.

Hierarchical structures often enable stricter command and control and make it easier to mitigate and suppress internal rifts. Looser structures mean top leadership decisions in negotiations may not be respected. Most interviewees highlighted the predominance of these looser forms of organisation, which tend to display high fungibility of factions and members. The Salvadoran *maras*, for example, despite being some of the most structured criminal groups in the Americas, allow many subunits (*clicas*) to act with relative independence.³⁰ One element of the explanation of the collapse of the negotiated truce in El Salvador is this weakness in top level control. But it is neither a sufficient explanation nor a static one: the nearly immediate 40% drop in violent deaths that initially accompanied the deal indicates that at least at one point, the top leadership had sufficient, if temporary, control. A multifaceted analysis of internal controls is required.³¹

In the Brazilian case, gangs such as PCC and CV have maintained their structures for 40 years. Having survived the deaths of their founders, they use multiple councils and leadership rotation, while allowing more horizontal structures at lower levels. Both have also been able to ensure respect for their codes and statutes. Their leaders have the capacity to call for regular country-wide strikes and criminal attacks and, even while imprisoned, to maintain control of gang street units.

Further up the internal control scale is Colombia's Gulf Clan, which features much tighter vertical integration. Yet, as described later, its negotiations with the state led to the emergence of three factions – one favouring continued talks, one opposed, and one remaining neutral.³²

Thus, while a negotiation process can itself affect a criminal group's internal control, the more diffuse and decentralised ones are more likely to be unreliable partners and flounder in any deal's implementation, with defections far more likely and potentially far more significant. More centralised, cohesive groups are likely to be more demanding in negotiation, precisely due to those characteristics.

Criminal group's strength vis-à-vis other nonstate armed actors

For any deal to be reached and held, the criminal group must be able to keep the bargain vis-à-vis not just its own members but also armed criminal or militant groups that could become spoilers. If the group dominates the criminal market, it can more successfully negotiate than if the market is highly complex and fragmented. If it is weak, its negotiating interest may be survival: to secure protections and avoid being slaughtered by rivals. It may thus be willing to accept less favourable terms. More powerful rivals may nevertheless prevent a deal or its implementation. During efforts to negotiate a truce among the *maras* in Honduras in 2013, a negotiator believed that international drug trafficking organisations (DTOs) were trying to prevent the local *maras* from concluding a truce, were using the *maras* for local drug distribution, trafficking and street control, and may have felt their operations would be jeopardised.³³

Though Colombia's Gulf Clan is quite vertically integrated, it was vulnerable to Mexican DTOs (the CJNG and Sinaloa Cartel) that had been aggressively engaged in a turf war in Colombia for several years. A negotiator believed that, in addition to the government's military pressure, the group sought talks because of violent pressure from the Mexican cartels. Revenue was hurt, requiring difficult resource allocation even for a group with a diversified income portfolio of drugs, illegal mining and logging, land seizure, and money laundering.³⁴

In Mexico, where in Guerrero state alone there are at least 40 splinter groups derived from larger cartels,³⁵ the smaller groups are especially vulnerable to their numerous larger rivals. This may tend to make them more responsive to possible deals with the government but also far less reliable in carrying through more than minor and temporary ones. The extraordinary complexity, fluidity and instability of the out-of-control criminal market in Mexico also makes the criminal groups far less capable of dealing with each other on matters such as territorial control.³⁶ The complexity is multiplied further by the self-defence forces that have emerged to fight the criminal groups, as well as crime-infiltrated units of community police.³⁷

Groups in unipolar or bipolar criminal markets, such as 1980s and early 1990s Colombia dominated by Medellín and Cali cartels, tend to be more powerful in negotiations and seek significant concessions. They may also be more able to keep deals, even controversial ones, such as Cali's cartel agreeing to join the government in the early 1990s to fight Medellín's. It stuck to the deal, eliminating much of its Medellín rival's middle operational and control layers and killing several hundred of Escobar's men.³⁸

A criminal market with many small and no large groups (such as Afghanistan, 2002–2004) offers another context. In such cases, groups will likely be more able to keep deals since a small one leaving the market will not produce systemic change or attract spoilers. But such a deal is of limited benefit to the state, which cannot expect a result of significantly reduced criminal activity or violence.

Ideology and political effects

Criminal groups are unlike militant ones; they do not seek to topple the government or encourage a region to secede from the state. Yet, they often use politics to achieve their goals.

At one end of the spectrum, those such as a Mexican DTO operating in the U.S. or a Chinese wildlife trafficking entity in Germany lack political self-understanding and do not engage in governance functions for local populations or in the criminal market. However, some criminal groups, particularly in fragile states, have a political effect through governance and social or territorial control. They may seek to influence local political outcomes and corrupt or control local officials as a means to ensure their survival and illicit economies.

Nevertheless, criminal groups clearly differ in the political effects they seek or achieve. For example, some in Mexico are very conscious of and seek to shape their political roles.³⁹ Colombian negotiators understood that the Gulf Clan lacked a political nature but had to take account of its extensive territorial control and effort to provide basic services to communities.⁴⁰

But the self-understanding as well as political effects generated by a criminal group are fluid over time. The international NGO negotiators in Haiti assessed that the gangs were very different in 2006–2007 than in 2012–2015. During the instability, government meltdown and violence after the 2004 coup against President Aristide, the gangs were assessed to have an intensely partisan self-understanding, as there were widespread rumours that Aristide and his ex-soldiers were paying gangs to fight for his return. In 2012–2015, the NGO representatives perceived this self-understanding to have dissipated. But while self-understanding evolved, so did the gangs' political effects: they expanded into rural areas where they could provide governance and extra services, thus filling the void of the absent state.⁴¹

Influence of Negotiation Precedents

Whether negotiations with criminal groups are rare or frequent and have succeeded or not in the past influences willingness to negotiate with them and also critically shapes the groups' willingness.

For many local and international NGOs, negotiating access to spaces governed by criminal groups may be a daily business without which they may be unable to deliver aid, services and activities.⁴² Moreover, it is core policy for many humanitarian NGOs to talk with all actors, including criminal and other armed groups where they provide services. Members of Christian churches in Latin America, by the nature of their calling and pastoral care to local communities dominated by criminal groups (and to the groups themselves), may also be accustomed to such negotiations.⁴³

Less common are top-level government negotiations with criminal groups. However, Colombia stands out in repeatedly negotiating since the 1980s with criminal groups and how frequently such groups seek to do the same. Even prior to the 1990 talks with Escobar and *Los Extraditables*, Medellín's mayors regularly negotiated with the cartel. This became such a habit that the

mayors designated a member of their team specially for negotiations with the cartel and other criminal groups.⁴⁴ The government also repeatedly negotiated with the Cali cartel, even though the talks came with international opprobrium and sanctions. Colombian society – already burdened by decades of internal armed conflict – thus may well have become more accepting than other countries of such negotiations.

The deal reached in Havana with the leftist Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC) provided additional context and stimulus for negotiations with the Gulf Clan. A Clan representative went to Havana to speak with the FARC and reiterate that “they were not going to oppose the process of demobilisation”.⁴⁵ The government anticipated that, after the FARC negotiations, it would negotiate with the leftist National Liberation Army (*Ejército de Liberación Nacional*, ELN), and make a final push for a larger peace.⁴⁶ Thus, the Clan’s 2017 approach was anticipated; and the Clan explicitly referred to the FARC deal precedent, saying: “Otoniel [its leader] understood that there was a political moment in Colombia for negotiations.”⁴⁷

The 2012–2013 negotiation with the *maras* in El Salvador had precedents in short truces negotiated during holidays such as Christmas 2001.⁴⁸ In addition, since at least 2000, successive heads of the National Council on Public Security had engaged imprisoned gang leaders about crime prevention strategies and improving prison conditions. Multiple church and NGO groups also sought to negotiate truces and launch crime prevention, rehabilitation and reintegration efforts, though they often proved brief.⁴⁹

El Salvador’s 2012–2013 deal influenced other processes, including in Honduras. Its initial success in dramatically reducing homicides for several months motivated the Honduran *maras* and government to explore similar talks, crucially producing a permissive environment for the first phase. Furthermore, an OAS diplomat who accompanied both negotiations brought lessons directly from the Salvadoran process and encouraged Honduras to negotiate.⁵⁰ The Honduran talks also had their own precedents: a senior Catholic clergyman maintained that he mediated during *mara* violence five times prior to 2013 and in 2005 negotiated a three-month truce, though a lasting ceasefire could not be reached.⁵¹ Nevertheless, the 2013 negotiations in Honduras never got fully under way, in no small measure because of the low credibility of the government and its institutions, particularly the police.⁵² That the Salvadoran political class withdrew its support from that country’s deal (and criticised it heavily in the run-up to presidential elections there) gave further cause for Honduran government concern, along with the fact that, after several months, homicides in El Salvador dramatically shot up again.⁵³

But precedents and any associated relationship-building can help with new windows of opportunity. In Mexico in late 2018–2019, a collapse of opium prices resulted in a significant income decline for local criminal groups (as well as poppy farmers) and saw imprisonment of four local drug lords. A Mexican mediator involved in negotiations with local criminal groups said this meant the groups were unable to pay bribes to local politicians and police at previous levels, so lost some protection. The financial downturn and arrests weakened the groups enough to create an auspicious environment for negotiating humanitarian access and alternative livelihood programs with both groups and farmers.⁵⁴ Though the government did not take advantage, there were relationships in place that could have been leveraged.

Motivations and Objectives

The reasons for negotiations and the scope of objectives and expected benefits vary enormously across the cases in this paper (and those not explored here), not just for the government, international agency, NGO or cleric involved, but also for the criminal groups.

Motivation and Objectives of the Entity Negotiating with the Criminal Group

For individual and institutional negotiators alike, the motivations for bargaining with criminal groups reflect a wide spectrum of emotional, moral, philosophical and psychological variables, as well as pragmatic political and economic considerations.

Clergy appear to be some of the most frequent negotiators and mediators. Those interviewed stated consistently that religious belief led them to seek to eliminate violence through dialogue.⁵⁵ This deontologically-driven attitude can clash with a situation's objective ripeness for negotiations or a cost-and-benefit analysis. But normative logic is not limited to clergy. A Colombian official involved with the Gulf Clan argued that any armed confrontation requires dialogue to be solved.⁵⁶

The clergy who specialise in prison pastoral care also identified personal experiences with criminals as reinforcing their beliefs. They developed empathy with, understanding of and connections to individuals, in addition to acquiring the habit of talking and negotiating with them.⁵⁷ They saw the criminals as “victims also”, deserving of sympathy, not just accountability. A cleric involved in Mexican negotiations argued: “Even drug lords are human. They have seen their relatives killed by rival groups or the police, sometimes in extrajudicial killings.”⁵⁸ A clergyman in Central America similarly observed: “From the very beginning, the *mara* members live in highly stigmatised neighbourhoods. The stigmatisation has made them fearful and resentful of society. They are kids living in hunger. When they are 14 years old, they are baptised into the gangs with a tattoo and a nickname, and the gangs become their family.”⁵⁹

As shown in Colombia's 1990s talks with Escobar and *Los Extraditables*, governments can also choose to negotiate, but less likely due to sympathy than a feeling they have no alternative. But there may also be times, such as during Colombia's 2017–2018 talks with the Gulf Clan, when the main incentive is to achieve a comprehensive national peace, implying need for deals also with selected criminal groups involved in a larger armed conflict.⁶⁰

For humanitarian NGOs, the motivation is usually less political and more a mix of internal doctrine and operational needs. They generally have an institutional commitment to impartiality and neutrality that mandates they talk with all important groups which could hamper their humanitarian access. An NGO representative said they talk with all relevant groups – armed and unarmed, governmental and private – and insisted it is otherwise impossible to deliver humanitarian care.⁶¹

In sum, the motivations for negotiating the mitigation or reduction of violence with criminal groups can be varied. Yet, whatever the impulse, it is necessary to define the objectives clearly. Sometimes these will be narrow and transactional. For example, during prison riots in Brazil, the authorities are often focused on saving hostage lives or retaking the prison. Similarly, objectives in local Mexican negotiations were merely for the criminal group to permit food and medical deliveries to a community, or not to kill truckers along a particular stretch of road.⁶² An international humanitarian NGO in Haiti negotiated access for humanitarian assistance and the safety of its patients and personnel. For the NGO, talks were worth it if the criminal group allowed greater access to health services or schooling and agreed to an effective cessation of violent activities.⁶³

Other parties choose to negotiate with broader objectives. An international NGO specialising in public and citizen safety in Haiti after 2006 defined its purpose to be reducing gang violence.⁶⁴ Objectives in the El Salvador and Honduras negotiations with the *maras* were even more ambitious. In El Salvador, in its most aspirational form, they included suspension of all violence and criminality, including drug sales and extortion; surrender of all illegal weapons and explosives; voluntary surrender to authorities of all indictees; disclosure of clandestine cemeteries; and an end to disappearances and forced recruitment.

There were, nevertheless, substantial differences among members of the government negotiating team, including its international contingent and clergy.⁶⁵ Some sought transformational objectives such as the above, with an eye to expanding institutional capacity and state control; others took a more limited view, seeking only temporary violence reduction.⁶⁶ The OAS, which played a role in the negotiations, took a middle position, seeking reduced violence while expanding freedom of movement and legal enterprise for communities under *mara* control.⁶⁷ It and others also focused on incentives the *maras* would give each other to reduce violence, such as free passage between their respective zones.

But beyond substantive objectives, negotiations with criminal groups may also involve procedural objectives. Getting gangs “together in the same room and talking with each other”, to learn to negotiate with each other, instead of automatically resorting to violence, may be considered important.⁶⁸ At least some Salvador officials endorsed this and said they sought to promote dialogue and integrate gang members into government programs that would provide peaceful livelihood alternatives.⁶⁹ A participant in the Honduran talks emphasised a broad societal reconciliation goal among *maras*, police, state and society.⁷⁰

Objectives are logically a function of negotiating strength as well. Colombia’s talks with Escobar aimed to “buy the state time so institutional reforms can get underway and strengthen the state and prevent a complete demise of the state before institutional reforms have the time to mature.”⁷¹ With the Gulf Clan – a key culprit in the assassination of social leaders as well as of criminals the state was otherwise left to arrest or kill – it was to achieve a complete end to war; since the sense of needing to save the state was no longer present.⁷²

But sometimes the scope of objectives is mainly situational. For example, the international humanitarian NGO in Haiti rejected transformational objectives in negotiating with criminal gangs. The interviewee observed:

We have one sole mission – to deliver humanitarian assistance. In negotiating with criminal gangs, our objective is to negotiate access for the provision of humanitarian assistance But it is not our purpose to stop gang warfare, criminal behaviour, police brutality, change the dynamics of the violence, or create a peaceful environment. That’s not our mandate; that’s for others to do.

The interviewee further argued that expanding the objectives in negotiating with criminal groups would imperil the humanitarian mission and undermine the trust that must be kept in order to operate.⁷³

Overall, the majority of cases examined here unsurprisingly reflect a relatively modest scope of objectives, such as partial ceasefires, intelligence on local groups and access routes through controlled territory.⁷⁴ That is in no small measure because, all else being equal, larger goals require larger mutual concessions – something difficult to justify publicly when it concerns criminal groups – or a state that is much stronger and more capacious vis-à-vis the criminal groups.

Motivation and Objectives of the Criminal Groups

A factual premise of this research is that criminal groups’ primary but not exclusive organisational motivation is self-enrichment, not something more transformational (whether political or religious). As such, it is often presumed that negotiation is a non-starter, because it is too difficult to imagine what new, non-violent and publicly-acceptable organisational form they could take at the end of a process. Yet, as our research and interviews demonstrate, states and private actors do negotiate with criminal groups.

What objectives do these groups have? In the local negotiations examined here, they mainly had minimal objectives. For example, in exchange for not killing truck drivers in one region of Mexico, a group leader asked only that truckers not transport weapons for rival groups. In Brazil, during prison riots, groups sought improvements in conditions, lower restrictions on conjugal visits and transfers from federal to state prisons (though the latter was sometimes sought in order to slaughter rivals in the new prison).⁷⁵

In Colombia’s negotiations with Escobar and *Los Extraditables*, the cartel sought to prevent extradition to the U.S. – a significant change in judicial procedures with large impact on U.S.-Colombian relations. Escobar also sought comfortable prison conditions, including that he be allowed to stay in a prison he would renovate.⁷⁶ Similarly, the Gulf Clan had an explicit goal to achieve judicial leniency and avoid extradition to the U.S., but also asked for better socio-economic opportunities for its members and rural populations where it operated.⁷⁷ In addition, mimicking FARC demands, it asked that its members be allowed to stay together in three or four disarmament concentration areas during and after the negotiations, and to receive collective “resocialisation” benefits.⁷⁸

In contrast to the El Salvador government’s capacious objectives, the imprisoned *maras* leaders’ requests were mostly modest. With the exception of old or seriously ill and imprisoned members for whom they sought pardons, they asked for neither release nor shorter terms. Their demands centred on welfare measures for their families and communities and improvements in prison conditions, such as transfers from maximum to medium security facilities, access to phones calls, better sanitary conditions, prison access for the International Committee of the

Red Cross (ICRC), health care and sports facilities.⁷⁹ They also demanded an end to torture and other abuses by security forces against gang members and their communities. However, they did have a few politically-controversial and ambitious demands: revocation of the anti-gang law, the end of witness immunity for securing convictions of gang members, and withdrawal of the armed forces from internal security duties.⁸⁰

In the 2013 Honduran negotiations, gang demands were more ambitious. First, they made a significant procedural request: to ensure they were not negotiating in vain, they demanded that the government publicly agree to talks. Secondly, early conversations indicated that the gangs might consider stopping crime, giving up arms and reintegrating into society if they and their families were given jobs, and *mano dura* laws criminalising mere membership were revoked.⁸¹ These demands were a bridge too far for the government.

In sum, criminal groups may be presumptively illegitimate, but as a negotiation requires an agenda, it is critical to know their specific objectives within the process. Those can include legal leniency, partial ceasefires, group and individual economic benefits, and more.

Format and Functioning of Negotiations

This section explores the actual process of negotiations, based on the observations of the interviewees. It focuses particularly on key stumbling blocks and risks, such as a lack of social or political support and an inability to deal with spoilers or other key stakeholders. It also explores basic bargaining strategies, including redlines, that were used by entities negotiating with criminal groups.

Situation and Counterpart Analysis

Developing a good understanding of negotiating counterparts and local realities is as critical for successful negotiations as for any other policy intervention. For example, although highly different in their objectives and bargaining methods, two international NGOs dealing with Haiti's gangs invested significant effort in developing such an understanding. Having operated in Haiti since the 1980s, one had extensive knowledge of how politics, criminality and social order and systems had evolved. The other, focused on peace and social inclusion, arrived in the mid-2000s. Before talking with the gangs, it sought to understand relations inside the communities by first speaking with older people and religious leaders and other external influencers. But developing a good local picture was complex, and understanding what the gangs wanted remained a challenge, as their preferences kept shifting and they did not want to disclose them. Developing a good understanding of the government's side proved equally difficult: the NGO's conversations revealed that the police lacked good intelligence on the gangs, and high-level officers did not even know how many officers they had at their disposal.⁸²

Developing an understanding of the vectors and sources of influence was likewise important in El Salvador's negotiations with the *maras*. The representative from the OAS noted that women were critical actors in promoting the need for dialogue, yet were largely neglected in the talks. Women who visited imprisoned *mara* members during conjugal visits had grown tired of the violence and became key messengers for de-escalation, pointing out to gang leaders that, as they aged in prison, violence against women and children on the street was rising and *mara* protection mechanisms were failing.⁸³ An international expert on gangs who had worked with such women in several countries lamented how their role and influence in gang engagement processes has often been overlooked.⁸⁴

Of course, women's influence is likely to vary substantially across criminal groups and geographic and cultural areas. What is true for *maras* in El Salvador won't necessarily be true for Colombian or Mexican cartels. But paying more attention to overlooked influencers – women being but one example – is bound to pay dividends in preparation for any serious negotiation with criminal groups.

Another aspect of analytic preparation involves establishing the reliability of those who claim to represent the other side's views. In the *mara* negotiations in El Salvador and Honduras, the government knew well who the top leaders were – after all, they were in jail. Yet, whereas in El

Salvador the *ranfla* (the imprisoned top leadership) wielded considerable authority over the *clicas*,⁸⁵ in Honduras its authority was insufficient to control *clica* commanders on the outside.⁸⁶

In its negotiations with the Gulf Clan, Colombia invested time in analysing the credibility of its negotiating counterparts and their capacity to deliver on promises. When the talks got underway, it asked several times for a temporary halt in criminal and military activities as proof that the leaders truly exerted control, so could credibly make deals and ensure disarmament. As a further test and a means to understand the scope of who could receive leniency, it also asked about operating zones, organisational structures, drug trafficking routes and names of traffickers and dealers.⁸⁷ The Clan reported that it had 3,000 members, presence in eight regions and control of two ports. It also listed its weapons and generally described its relationship with drug traffickers. The report passed the verification test.

Trust Building and Incentives

To an extent, negotiations between governments and criminal groups resemble those governments would undertake with other entities, such as insurgents or unions. They include iterative in-person or virtual meetings and other steps to build confidence early and often with the group and other stakeholders.

In the El Salvador case, the negotiating team sought to build trust by transferring gang leaders (and some members) from maximum-security prisons to ordinary ones where the negotiators could more easily communicate with them, as well as with visiting family. That was heavily criticised because of the risk it could strengthen the gangs and allow them to coordinate new crimes. Though the negotiators acknowledged the risks, they considered it important for building trust and strengthening the credibility of the process.⁸⁸ Importantly, the gesture also encouraged imprisoned leaders to seek buy-in for the accord with members in the streets.⁸⁹

Religious authorities involved in negotiations with criminal groups commonly have a more expansive concept of trust building, going well beyond confirmation of command and control capacities. One senior cleric involved in talks with Honduran gangs maintained that the best negotiators would forge a lasting interpersonal bond: “One must have a vital and deep relationship with them, demonstrating that one loves them and is willing to give up his life for them, being there for them unconditionally, though not ignoring their violent acts.”⁹⁰ However, most secular negotiators tend to consider such a level of personal commitment and involvement unnecessary, even inappropriate, advocating instead the personal detachment typical, for example, of contemporary Colombian government negotiators.

NGOs that negotiate with criminal groups also need to establish trust, but the modalities can look very different when the deal’s terms require constant re-negotiation. In seeking commitments from police, international peacekeepers and gangs that none would harass its patients, the humanitarian NGO in Haiti would tell each: “One day, we will treat a member of the gang; but next day we will treat a police officer. Today we save the life of your opponent, tomorrow we save your life.”⁹¹ Yet, even when basic operating principles were agreed, the gangs sometimes tried to manipulate the situation to portray themselves as the ones who provided security to the NGO and promoted the idea that it was operating at their discretion and with their protection, as much as the NGO tried to correct the record.

This, along with certain incidents (such as when a patient discharged from the NGO's hospital was killed at the gate), broke the foundation of trust and required the NGO to negotiate with the gang's chief, threatening that such incidents would force it to end operations – which would upset locals and thus undercut the gangs' image. The NGO also had to be very conscious of avoiding manipulation by gangs when hiring locals for skilled and unskilled jobs. In addition to doing background checks on hires, it sought to avoid recruitment on the basis of affiliation with powerbrokers or gangs. Even so, there was recognition that in situations such as Haiti, almost everyone had some connection with armed actors, including the criminal groups with which the NGO was bargaining. To counter this and rebuild trust, the NGO tried to recruit staff from different and large areas, but the gangs kept requesting it hire members or clients, leading to constant bargaining. A similar dynamic arose in relation to security: the NGO refused to use handouts (e.g., money, motorcycles) to buy security for itself or its patients. It maintained this policy even though the gangs constantly asked for money.⁹²

The international NGO specialising in peace and social inclusion in Haiti based its negotiations and trust building on a different logic. Every month when no violent deaths occurred where it operated, it would use community leaders to hand out material rewards: motorcycles, scholarships, food, clothes or training slots.⁹³ In doing so, it was actively changing power structures in the communities, aiming to incentivise social responsibility among the different community actors. It worked through material reward of better behaviour and withdrawal of benefits when violence occurred.

But conditioning social services on violence reduction was enabled by the fact that the gangs were far poorer than those such as PCC or CV in Brazil. Lacking access to drug trafficking, Haitian gangs exist on robberies, kidnapping and selling votes to politicians. It is highly doubtful large criminal organisations such as Colombia's Gulf Clan or Mexico's Sinaloa Cartel could be bought off with such small handouts. Yet, despite the gangs' penury, the NGO struggled to maintain enough income to keep "buying non-violence", as behavioural changes were slow to take hold absent steady pay-outs.⁹⁴

Internal Redlines

The negotiators interviewed and negotiations examined varied widely in how explicitly they articulated redlines in the bargaining process. Thus, the international peace and social inclusion NGO in Haiti conditioned the distribution of material benefits on a halt to violent activities, and would not engage with a gang that lacked a fixed territorial presence.⁹⁵ The humanitarian NGO there had many more redlines: avoiding any behaviour or bargain that would put patients at risk; keeping control of its recruitment; maintaining clear focus on humanitarian aid and health care delivery to the most vulnerable; and applying strict procedures in the event of a staff kidnapping.⁹⁶

Colombia established explicit redlines with the Gulf Clan. Full amnesty and impunity were ruled out; there could only be sentence reductions, bearing in mind the precedents of the FARC and AUC paramilitary negotiations. It also insisted that the negotiations were not political, but were to be solely about the group's renunciation of violence and submission to justice in exchange for leniency. Though the Clan wanted to negotiate an extradition ban, the government insisted it would never concede one. Also non-negotiable was that only the attorney general would determine leniency for cartel members.⁹⁷

Similarly, for the *maras* in El Salvador, there was to be no “get out of jail free” card. The *maras*’ own redlines included refusal to be disbanded. This placed a hard cap on the deal’s transformative potential.⁹⁸

Specific Risks and Challenges

Negotiations with criminal groups involve many different types of risk. This section looks at risks while negotiations are planned or underway. Subsequent and longer-term risks are discussed later.

Physical and legal risks

Risks to individual negotiators are both physical and legal. When trust in a negotiator is broken or misplaced, the risks could be enormous, including death. Mexican criminal groups have regularly killed priests, bishops and nuns who tried to negotiate with them. A cleric interviewed felt that his safety had been substantially jeopardised since 2018, when a criminal group invaded a town and displaced some 1,600 people. After publicly criticising this, he received threats from the group’s leader and was accused of being biased for the displaced. Thereafter, he could not work in the area.⁹⁹

Risks can equally arise for government officials. For example, several top negotiators in the Salvadoran process were subsequently criminally prosecuted, including the former director of the prison holding the *maras*. Although international negotiators had diplomatic immunity, local negotiators did not have legal immunity and appear to be the victims of political retribution. Some were sentenced to imprisonment for their involvement in the negotiations, accused of corruption and providing illegal material support to the gangs.¹⁰⁰

Such challenges pertain not only to the fate of individual negotiators but also to the entire process. For example, in Colombia’s negotiations with the Gulf Clan, there appeared to be a legal gap in how a criminal group at a collective level could engage with the attorney general about its disarmament process and terms of judicial leniency. To overcome various obstacles, the government proposed a new legal framework of collective “submission to justice” (*sometimiento a la justicia*) that drew on a variety of national precedents. Its condition, however, was that the Clan’s leaders and negotiators could not participate in drafting that framework.¹⁰¹

Negotiations that involve any material or financial support to criminal groups may be particularly vulnerable to legal challenges, domestic and international. Jurisdictions vary widely as to the stringency and enforcement of prohibitions on providing material support to criminal groups. Internationally, the U.S. has exported and imposed especially tough restrictions on material and financial support to terrorist groups. It may also sometimes designate a criminal group as “a significant transnational criminal organisation”, which would tie the hands of national governments and in effect prevent them from negotiating with that group, especially if the deal was meant to include socio-economic benefits.

Such problems are especially acute when the U.S. designates a criminal group as terrorist. In 2012, the Obama administration designated MS-13, thus eviscerating the range of policy options for dealing with it. The Trump administration likewise threatened the designation for Mexican drug cartels in 2019.¹⁰² Because there is no clear path for a group to be de-listed, even after a

deal with the national government, the legal risk can endure indefinitely. In Colombia, U.S. officials still cannot even buy a FARC member a cup of coffee three years after the peace deal; and the U.S. Agency for International Development (USAID) cannot provide any financial support for FARC reintegration or for rural development initiatives in which FARC members would also be beneficiaries.

Unity challenges

Unity matters a lot in negotiation. Rifts within negotiating teams can undermine both the prospect of a deal and its future implementation. But unity often comes at a cost: while smaller teams representing fewer sectoral interests are more likely to stay together, they may be more vulnerable to accusations of insufficient representation and inclusion.¹⁰³

As El Salvador's talks with the *maras* progressed, it was hard at times to know who in the government still supported the process and who did not. It was clear that the involvement of the justice ministry and a direct reporting line from the negotiating team to the president were among the factors that helped the process advance. But multilateral representatives on the team believed that key officials, such as the attorney general and top people in the security ministry, were significant obstacles. The sensation was that the government only half-owned the negotiation, embracing it at times and distancing itself at others.¹⁰⁴ When the process eventually became public and was met with strong popular rejection, the negotiators were made to take the blame.¹⁰⁵

Similarly, while parts of the Catholic Church in El Salvador were highly supportive of the negotiations, other parts strongly opposed them. This contradiction was evident in the stance of some of the Church negotiators and kept changing with time. For example, one explained that even though he had long been involved in negotiating gang truces, he opposed the 2012 talks for their lack of transparency and inclusiveness. He participated as a negotiator only when changes in the government occurred. However, contrary to the position of other members of the team, he insisted that the talks could only be justified if they sought a broad process of gang pacification. Ultimately, he became so uncomfortable that he sought to prevent the Catholic Church from endorsing the talks.¹⁰⁶

In contrast, the 2017–2018 negotiations with the Gulf Clan featured strong Colombian government unity and top-level support. A senator and a former minister handled the negotiations' first phase. The vice president took over the second phase, supported by the initial negotiators and a team of government lawyers and top-level justice ministry officials. The team was small and tight.

Unity is naturally equally important for the criminal group. Their negotiators need to bargain with leaders and rank-and-file members or they will have serious problems. A prime example is when the negotiations with the Gulf Clan started, at which time the government considered the group "monolithic." As talks progressed, military pressure was maintained, resulting in the deaths of several of the group's leaders. Suddenly, rifts emerged. To pre-empt subversion of the process and preserve future implementation possibilities, the government demanded a video from Otoniel, the top leader, affirming his commitment to the talks. He provided the video, but the government wisely permitted him to keep it as an internal communication (thus also protecting itself from too early publicity about the talks).¹⁰⁷

In El Salvador, the *maras* and their *clicas* lacked a unified view of the negotiations. The imprisoned leaders were deemed highly cooperative and motivated. In the words of an official involved in the talks, “the *mara* leaders in prison had a positive attitude and wanted to collaborate; they didn’t want to see their children make the same mistakes.”¹⁰⁸ But for several reasons, including changes in the negotiating team and lack of compliance from the government, the *clicas* and members at large became increasingly divided. Some factions wanted a lasting truce and full reintegration into society; others were entering a more violent criminal phase.¹⁰⁹ After a year, the process collapsed.

In the case of Haiti, the constant instability and fragmentation within local gangs were major obstacles to the efforts of the international NGO specialised in peace and social inclusion. An interviewee commented: “The gang members were very emotional and, as a result, the alliances and relations between the gangs were very fluid. Friends one day were enemies the next.”¹¹⁰ Making agreements stick proved even harder when, after the 2010 earthquake, many criminals broke out of prison or were returned from U.S. prisons. This created splinter groups and an even more unpredictable and opaque criminal market.

Social and political support

The lack of broad social or political support for negotiating with criminal groups can easily doom the effort. Creating consensus includes many elements, from managing polarisation to taking account of victims’ rights and perspectives, building domestic and international coalitions and neutralising powerful spoilers.

Political polarisation

Highly polarised political systems make coalition building difficult. This was the case with the Salvadoran *mara* deal. President Mauricio Funes lacked a strong party to support the negotiations and shelter them from attacks by rival political centres. A member of the negotiating team sought agreement of all parties to reduce the risk of a successor government abandoning the effort.¹¹¹ But as presidential elections approached, opposition parties became worried about the popularity of the government due to the deal’s success in reducing homicides. Consequently, they started condemning not only the process’ alleged lack of transparency, but also the very idea of negotiating with criminals, thus hardening latent doubts among key sectors of society. The environment became so toxic that key government negotiators, including the head of the federal police and the justice and security minister, were brought before the Supreme Court for negotiating with criminals and dismissed from their posts. Such actions deterred other officials from embracing the talks and undermined the *mara* leaders’ trust in the process. As consensus crumbled, other sectors, including the Catholic Church, also came to oppose the process.¹¹²

In contrast, what helped Colombia in 1990 reach a deal with Escobar and *Los Extraditables* was a far smaller level of fragmentation and political polarisation. The comparative public consensus of the time, underpinned by a pervasive sense of desperation across the political spectrum, allowed the deal to survive even the scandal of Escobar’s prison escape.¹¹³ This sharply contrasted with the negotiations with the Gulf Clan, which ultimately failed due to a divided Congress unable to push forward an acceptable law enabling the submission of the Clan’s members to justice.

Attention to victims

Victims are key constituencies; as such, the lack of focus on their rights and needs in many negotiations with criminal groups is an element of vulnerability that opponents of negotiations can exploit and a source of further injustice. An international expert involved with gang processes in El Salvador, Honduras and the U.S. pointed out: “With murder rates in the high tens per hundred thousand, there are very many victims of brutal criminal violence. Yet processes of negotiations with the *maras* and *pandillas* accord them very little sympathy. All the focus is on the victimisers, and none on the victims.”¹¹⁴ Though his characterisation is perhaps too stark, among the cases in this study (not to mention other regional cases forming part of the literature review), it was only in Colombia’s negotiations with the Gulf Clan that an explicit point was made of demanding reparations for the victims.

Not elevating and protecting victims’ rights in talks with violent criminal groups is a missed opportunity to increase public buy-in. Even nongovernmental groups with substantial local legitimacy are vulnerable to this overemphasis on criminals and under-attention to victims. It may be one reason why the international NGO specialised in peace and social inclusion in Haiti encountered some resentment and became criticised for paying criminals to be non-violent.¹¹⁵

Of course, many criminal group members may have once been victims themselves. There are ample stories of forcible recruitment of minors, assassinations of family members and other tragedies that may have precipitated entrance into a group. A diplomat who accompanied the El Salvador and Honduras processes said: “Early on, we went into the communities of the gangs. And I saw the immense violence and devastation of the communities. It struck [us] that all the men were gone. There were just women. All the men were either dead, in jail, hiding, or trying to make it to the United States Worse, one of the unintended consequences of the anti-*pandilla* laws has been that younger and younger kids are pulled into the gangs and asked to commit terrible atrocities.”¹¹⁶ Yet, such stories often fall on deaf ears when criminals terrify entire societies.

In any case, knowing that criminal groups have no incentive to negotiate if they cannot gain some legal leniency, there is every reason to incorporate a support component for civilian victims in the negotiating agenda. Doing so will not silence public outcry, but will at least add some legitimacy and justice, thus helping diminish the controversy.¹¹⁷

International community

Internationals can be highly divided regarding talks with criminal groups, with the U.S. often having a dominant voice. Parts of the U.S. government were reportedly open initially to El Salvador’s negotiations with the *maras*. The U.S. embassy, particularly USAID, contemplated financial support for some dimensions of the proposals emerging from the talks. However, other branches, particularly law enforcement agencies, were strongly opposed, according to a key negotiator; he said they were concerned that a deal would undermine their long efforts to improve law enforcement capacities in the Northern Triangle, in which they had invested heavily. Though the negotiator never saw such evidence, the Drug Enforcement Administration (DEA) was concerned that the *maras* were involved in international drug trafficking and were connected to Mexico’s Sinaloa Cartel.¹¹⁸ Policy options were further restricted by the 2012 U.S. designation of MS-13 as terrorists, following an executive order extending such designation to transnational organised crime groups.¹¹⁹

In Honduras, such issues were less pronounced, perhaps because the negotiating process with the *maras* died in its early stages. As in El Salvador, the OAS was the lead member of the international community and at times the effort's driver. Though the UN was interested in the process, it reportedly took a back seat and never became too involved.¹²⁰

In Haiti, the U.S. – which had forces on the ground – was not particularly interested in the efforts of the international NGO specialised in peace and social inclusion and reportedly did not object to its handouts of goods to gang members. The NGO believed the permissive attitude may have reflected the fact that the gangs were very poor, and the U.S. did not classify them as organised crime groups.¹²¹

Yet a decade and half later, permissiveness for bargaining with criminal and militant groups has shrunk. International NGOs now complain of “the criminalisation” of humanitarian aid. Representatives of the humanitarian NGO in Haiti, for example, noted that aid provision clashes with a growing number of international and domestic regulations. They perceive international institutions and governments as more rigid in applying laws against financing and material support to terrorist and criminal groups, without considering the context or blurry lines between civilians, combatants and criminals.¹²² If the trend continues, talks with criminal groups will likely be increasingly hampered – or secret.

Yet, exceptions are still possible. In its negotiations with the Gulf Clan, for example, Colombia was acutely concerned the U.S. might object. The Colombian government thus kept in constant conversation with its U.S. counterparts, knowing they would not accept easily any weakening of its resolve to cooperate with U.S. counternarcotics policies and objectives in Colombia or possible extradition of traffickers.¹²³

Of course, Colombia may have enjoyed uniquely auspicious circumstances in 2017–2018, as it was seen as a strategic U.S. partner in Latin America, and the Obama administration supported the FARC negotiations and softened its attitude toward supply-side drug policies. But it is not clear that many other governments or NGOs would be as able to pre-empt or deflect U.S. criticism for talking with criminal groups. Russia and China, positioned as even tougher on drugs and crime than the U.S., may similarly seek to prevent negotiated deals with criminal groups, even as they may themselves deal with such groups.¹²⁴

Potential local spoilers

Negotiations and deals with criminal groups sometimes produce potent local spoilers, especially when they threaten to expose corrupt state agencies. In Colombia's talks with the Gulf Clan, some members of the government's team identified factions of the police and military as spoilers. Since it was assumed that any deal would require that surrendering members disclose not just their crimes but also their corruption networks, those factions became highly threatened. When Congress debated the new *sometimiento a la justicia* legal framework, they mobilised intense opposition, producing a call for far tougher penalties than those agreed with the AUC paramilitaries. In response to lobbying calculated to sour the Gulf Clan on a deal, the Congress created non-starter demobilisation prerequisites.¹²⁵

Negotiations with criminal groups in other places also featured powerful local spoilers. For example, a negotiator in Honduras's talks with the *maras* identified “the highly corrupt Honduran police” as detrimental to the image of the talks and as a key spoiler intent on subverting any

deal so as to maintain the flow of money it received from the *maras*' drug dealing.¹²⁶ Similarly, the representative of the international peace and social inclusion NGO operating in Haiti highlighted the country's politicians as key opponents, who feared the NGO's influence in the slums would weaken their power.¹²⁷ But while the range of local spoilers of a negotiation process is potentially vast, and may encompass anyone from politicians to police or even a criminal group's rival factions, a good negotiator will be especially attentive to those who stand the most to lose from a potential deal.

Strategic communication

The public is not always meant to be aware of negotiations with an armed group, as secrecy can enable early confidence-building and prevent public backlash, thorny questions about formal recognition of the other party, and sabotage attempts by anti-negotiation spoilers.¹²⁸ But when the process is meant to be public, an effective communications strategy is critical to building political support. Such a strategy entails careful considerations of labelling, as well as a broader outreach.

Labelling

Negotiations with any armed actor, if known, are bound to produce substantial controversy. In no small measure, this is because many illegal armed groups have long been vilified as beyond redemption and because they have caused much suffering and harm. Many of the cases in this paper sought to pre-empt or reduce political backlash by not calling the activity "negotiations." The international negotiator involved in the Salvadoran and Honduran processes referred to them as "conversations."¹²⁹ Similarly, the Colombian negotiators with the Gulf Clan insisted that the process was not a political negotiation, but rather a process to give the group an option to disarm.¹³⁰ The NGOs interviewed in Haiti also eschewed the term.

When Colombia made enormous concessions in 1990 to Escobar and *Los Extraditables*, including ending extraditions to the U.S., the key negotiators likewise sought to label the process in less explosive terms. They used plea bargain language, emphasising the government's prosecutorial strength and evoking a process widely used and accepted in the U.S. for dealing with top-level criminals.

The sensitivity of the term "negotiation" with criminal groups – even in processes culminating in a deal and when the government thought it was negotiating from strength – is another demonstration of the enormous normative and political sensitivities such deals entail. The very idea of negotiating with such groups is not widely accepted.

Transparency versus secrecy

By necessity, any negotiation with an armed group will begin with high secrecy, not least for the interlocutors to assess each other and agree on possible rules and an agenda before formal talks. The question is whether, when and how to leave that secrecy. IFIT has observed:

In some cases, both the process and its results are meant to remain secret (meaning the public is kept unaware of the existence of the talks) ... In other cases, the process is meant to be kept secret from start to end, but it is understood and agreed by the parties that the final results will be made public – in whole or in part – once the process is over

... In a third set of cases, the parties understand that secret talks constitute merely a prelude to a 'public' phase, meaning a confidentially-run but publicly-known phase ...¹³¹

The decision about which of these three options is most realistic and appropriate is made case by case.

In the Salvadoran example, a negotiator who entered the process with the *maras* after it was made public was deeply dissatisfied with what he perceived as a lack of transparency in the initial stages, which he felt left the process vulnerable to allegations of state corruption.¹³² He wanted much fuller public disclosure of the details of the negotiations from the start. Yet, most other team members contended that if publicly known in the early stages, they would never have gotten off the ground. One argued the talks “would have failed within a month [since] people dislike and reject having to negotiate with gangs.”¹³³ A diplomatic official involved agreed that many dimensions had to remain secret until a deal was at least close to finalisation.¹³⁴

However, another interviewee noted that the process was not a total secret: “[W]e had guarantors such as the OAS and the Red Cross, and the media were allowed to enter the prisons and talk with the *mara* leaders.”¹³⁵ He also noted that the intelligence services informed the government of details, thus increasing transparency. Yet, even he admitted that the negotiations were significantly undermined by lack of an adequate communication strategy. Thus, when an article about the negotiations and the transfer of thirty MS-13 and *Barrio 18* gang members to lower security prisons in El Salvador was reported by the leading newspaper *El Faro*, it exposed the absence of this strategy and resulted in tremendous damage to the process.¹³⁶ In the context of a national media environment already saturated with images of *mara* violence, the negative publicity and controversy overwhelmed the process.

In the negotiations with the *maras* in Honduras, the process was public early on. At the prompting of the *maras*, who sought visibility, members of the Honduran Catholic Church gathered local and international media and announced the initiative. Yet, this backfired, as many citizens rejected the idea of negotiating with criminals, a sentiment fanned by the country’s conservative media.¹³⁷

Premature publicity can undermine not only a government’s or an NGO’s negotiations with criminal groups, but also negotiations between the gangs. Secrecy or a minimum of confidentiality is necessary to create space and time for the negotiators, including the gangs, to build some trust and ascertain ground realities, such as acceptable turf divisions and access routes. In the view of a former U.S. government official involved in such efforts in Los Angeles and abroad, attempted inter-gang ceasefires in Boston, Los Angeles, Chicago, and Baltimore were highly dependent on secrecy: “The less public they were, the more effective they were. The more public they became, the less likely they were to hold as outraged publics undermined them.”¹³⁸

The harder question regarding criminal groups is how to maintain secrecy at all. It is hard not merely because of accidental disclosures, but also due to deliberate leaks to officials with power and motive to sabotage an embryonic process. Like a vicious circle, the pervasive corruption that undermines public trust in state institutions also undermines potential support for negotiations with criminal groups, poisoning initiatives and feeding conspiracy theories. Given these risks and dynamics, a prudential measure is to identify and constructively engage relevant actors not yet involved but who might need to play a role later. Another is to create a simple but persuasive narrative for the public if results are meant to become known eventually.¹³⁹

Case Outcomes and Side Effects

Two of the cases examined produced a substantial deal: Colombia's negotiations with Escobar and *Los Extraditables*, and El Salvador's with the *maras*. But reaching even a limited or partial deal is only the beginning of a new process. It can generate medium and long-term risks of varied intensity for society and government, including an increase in power of the criminal group. If not well managed, both reaching a deal and failing to do so can also spawn negative contagion effects and moral hazards.

Short-Term Outcomes and Power Shifts

The cases examined reveal a mix of short-term outcomes. The humanitarian NGO in Haiti succeeded in negotiating with gangs and state actors for the safety of its facilities, personnel and patients and for access to slums the gangs controlled. No violations of agreed terms or security incidents were large enough to close operations; nor did it have to violate its operating principles. Yet, representatives confessed qualms about side effects. They noted that any negotiation gives gangs some legitimacy and inflates their sense of importance, so risks empowering them vis-à-vis local communities and other power structures. One added that arrival of any actors distributing benefits, including jobs or health care, to local communities where there is a strong criminal presence can sometimes stimulate new conflict or crime as the groups seek to appropriate the benefits.¹⁴⁰

As for the peace and social inclusion international NGO in Haiti, it actively sought to change local power balances to favour any actor who could deliver reduced violence, and it succeeded when distributing goods and services as rewards. Even if this seemed to work short term, its long-term effects are uncertain. Handout beneficiaries did not necessarily disengage from crime, particularly if they lacked stable, legal jobs.¹⁴¹

In rural Mexico, the clergyman who negotiated safe access for politicians to areas controlled by criminal groups received the groups' permission, but three female political candidates were assassinated, one presumably because she violated the groups' condition that candidates not give handouts. She had persisted in distributing cement blocks from her party after being warned. The other two candidates, the clergyman said, are believed to have been assassinated by political rivals from their own party. Nonetheless, he assessed the negotiations as successful for reducing violence at least temporarily, crediting them, for example, with reopening schools. But even when the schools were open, the fear of children getting caught in gang crossfire discouraged parents from sending their children.¹⁴²

Negotiations between Brazilian prison authorities and gangs during violent takeovers at times led to positive short-term and limited results (e.g., deals in which the gangs ended a takeover or suspended riots in exchange for a benefit, such as allowing visitations).¹⁴³ However, decades of such deals, including in the last several years, have not prevented the recurrence of riots. The

precedents inadvertently but dangerously encourage more riots to generate more concessions by authorities. An interviewee observed that “the violence may temporarily go down, but the gangs’ power increases tremendously and allows them to spread throughout Brazil and Latin America.”¹⁴⁴ He urged better conditions in prisons as a matter of principle and to prevent rather than respond to riots.

Colombia’s negotiations with Escobar and *Los Extraditables* resulted in a deal removing Escobar from the streets, preventing U.S. extradition and suspension of a violent campaign against the state. At the time, an ex-Colombian official noted, the government’s main worry was to stop the violence “regardless of major downsides to agreeing” and to “buy time for long-term institutional strengthening.”¹⁴⁵ However, the deal became particularly painful when Escobar escaped prison. Colombia then went after him fiercely, including with Cali cartel aid, and eliminated many of his mid-level people.¹⁴⁶

Fast forward to the 2017–2018 failed negotiations with the Gulf Clan, and the situation was quite different. Compared to most other cases examined, Colombia – having strengthened its institutions dramatically over three decades – negotiated from unusual strength. The Clan’s hierarchy was relatively tight, an auspicious condition for a deal and its implementation. However, the process failed to culminate in a deal; an unfortunate outcome since the Clan was responsible for many assassinations of social leaders.¹⁴⁷

In El Salvador, by contrast, a deal was reached and gang violence dropped significantly. Even while talks were underway, the *maras*’ homicides per day declined from 14 to 5–6, ultimately attaining a 52% annual decline.¹⁴⁸ However, implementation failed. Among other things, the government did not deliver promised socio-economic development: infrastructure, clinics, schools and jobs to the 14 intended peace zones (*municipios sin violencia*) in gang territories. It reportedly lacked both resources and will, hampered by vested interests, bureaucratic rivalries, corruption, and political infighting.¹⁴⁹ In addition, lower-level commanders stopped complying with top leaders’ directives and increasingly returned to violence.

As is typical of efforts to bring the state to the slums, structural obstacles were also enormous, including creating jobs amid poverty – the result of underdevelopment, low human capacity, poor legal compliance and inadequate business infrastructure.¹⁵⁰ In many of the 14 selected municipalities, the state’s intervention amounted mostly to diagnosing needs; in some, it did not do even that. Internationals tried to support the promised development by engaging the private sector; for example, working with Microsoft to hire some gang members, with shoe companies to set up factories and with a company to bring in electricity lines.¹⁵¹ In parallel, some government efforts focused on removing tattoos to destigmatise ex-gang members and facilitate their legal employment. As a result, some 500 gained legal jobs and kept them when violence again increased.¹⁵² This was an accomplishment, but small for a country estimated to have tens if not hundreds of thousands of gang members. Yet, the overall development effort rapidly halted as the gangs never relinquished control of the municipalities. And although for a while violence remained low, extortion by the *maras* persisted and even intensified, being at the core of their funding stream.¹⁵³

The deal’s negotiators remain today highly divided in their assessment of the deal and the desirability of more. One says the process transformed the *maras* into political actors: a “very problematic outcome.” Moreover, it ended up criminalising both negotiations and negotiators: “The gangs ended up more consolidated, and the mediators ended up seen as criminals.”¹⁵⁴ However,

the OAS diplomat who accompanied the talks saw the deal positively: “We made mistakes, but the deal was an unmitigated success. Violence returned because root causes – institutional weakness, the absence of a vision of a better future, and the absence of legal livelihoods and people’s dependence on illicit economies – never got resolved. If El Salvador wants to reduce violence, it will have to have to go for another peace process with the *maras*. It has no other option.”¹⁵⁵

In the 2013 Honduran effort to negotiate a ceasefire with its gangs, violence declined early in the process – the talks were deemed to “make the gangs calmer” – but the government failed to embrace the talks, the public balked, and the process soon stalled. Assassinations and extortions by and between the *maras* increased, and the law enforcement agencies failed to deter.¹⁵⁶

Moral Hazard and Contagion Effects

The experience of obtaining concessions from the state or other negotiation interlocutors may tempt criminal groups to adopt the habit of threatening violence to demand more concessions. This is a familiar moral hazard of negotiation with an armed group. Amounting to blackmail, it can be eradicated only when the group is disbanded by defeat or negotiation. Negotiators have to live with the moral hazard from start to end, aware that modelled behaviours, good or bad, may be set for other criminal groups.

But beyond such explicit blackmail, it is likely that any negotiation between the state and a criminal group, or between non-state actors and a criminal group, will significantly increase various dimensions of the criminal group’s power unless it is fully disbanded as a result of the negotiations. Without full disbandment at the end of the process, negotiating with criminal groups leaves them strengthened, even if their behaviour becomes less violent.

Negotiators in most of the cases examined did not appear greatly concerned with such dilemmas. Faced with few policy alternatives, they simply focused on the short-term imperative of bringing out-of-control violence down – whether for its own sake, or in conjunction with one of the strategic objectives discussed earlier.

The risk that negotiation failure or other negative outcomes may create a poorer environment for negotiations elsewhere or in the future likewise received short shrift. Yet, such contagion effects do emerge, perhaps in even greater number and variety than those arising in negotiations with militant groups, of which there are many more known precedents and failures. In particular, controversial precedents can dampen the willingness of others to attempt negotiations with criminal groups. The most obvious example from the cases examined is Honduras 2013, when the government was deterred by the unravelling of El Salvador’s process and the resultant toxic atmosphere. As a former U.S. official involved in gang processes in Central America put it, “negotiations, especially in Central America, became the third rail of politics. Perhaps that is the most hurtful outcome of El Salvador’s gang truce: such processes have now counterproductively become a political litmus test.”¹⁵⁷

Deterred by the political toxicity of the 2013 deal, El Salvador rejected overtures for new negotiations and intensified repressive policies, again promoting *super mano dura* laws. It also condemned contact with gang members, including by church mediators and negotiators. Seeking to prohibit new talks, the government threatened to prosecute mediators and negotiators and arrested some.¹⁵⁸ Violence by and between *maras* and state has continued, and the contagion effect has endured.

Concluding Observations

One of this paper's most relevant findings concerns the stark differences among those involved in negotiations with criminal groups as to the process' objectives and redlines, which in turn impact the feasibility and desirability of undertaking negotiations. The limited consensus among interviewees reinforces the validity of two premises that motivated this IFIT project: 1) negotiations with criminal groups are even more contentious than those with militants; and 2) further research is needed and eventually a usable policy framework and community of practice encompassing persons who have negotiated with unconventional armed groups of a wide variety, including criminal groups.

Whether and What to Negotiate with Criminal Groups

Though the interview sample was biased toward those who presumably favour negotiating with criminal groups, most sounded a cautious note about their desirability, emphasising different objectives and redlines they considered appropriate. Some believed the state should never negotiate a grand bargain akin to El Salvador's *mara* truce, arguing against any deal that offered reintegration without total dismantling of the group.¹⁵⁹ Others thought such deals were appropriate if there was no blanket impunity, and if any negotiated legal leniency formed part of a larger package addressing root causes of criminality, such as socio-economic underdevelopment and marginalisation.¹⁶⁰ Others believed certain crimes can never be eligible for legal leniency.¹⁶¹ This was viewed as necessary, normatively and strategically, since "if you don't hold gangs accountable, you lose credibility with them."¹⁶²

For a majority of the interviewed negotiators, violence reduction was perhaps the only valid objective.¹⁶³ For others the objective was problematic, particularly if achieved through mere rearrangement of turf among the criminal groups, an outcome condemned as "mafia peace."¹⁶⁴ Nevertheless, some negotiators considered such a peace the only feasible objective in much of Latin America.¹⁶⁵ Some went even further, arguing that lasting reductions in violence could be achieved without other forms of criminality (e.g., extortion or robberies) being reduced or eliminated.¹⁶⁶

Other differences in perspectives centred on more philosophical and psychological questions. Some believe it is possible and appropriate to negotiate with any criminal group, regardless of behaviour.¹⁶⁷ In one case, it was noted that merely listening to them could calm groups' behaviour and reduce tensions and violence.¹⁶⁸ Other negotiators insisted that some groups are inappropriate to negotiate with, such as those with insufficient control structures.¹⁶⁹ One interviewee rejected any bargaining with criminal groups who have become too violent and "psychologically warped."¹⁷⁰

Nevertheless, examined cases such as El Salvador, Mexico, Brazil and Haiti suggest that negotiations can contribute to a reduction of violence; at the same time, they appear less likely to be enduring when unaccompanied by strategies that address root causes or strengthen governance.

Modalities of Negotiation with Criminal Groups

A majority of negotiations with criminal groups appear to take place in secret. But for negotiation processes of which the public is meant to become aware, interviewees consistently identified the need to build public support. For some, the implication was that for negotiations with criminal groups to be successful, there must be public consultation and an up-front pact committing all political parties to support the negotiation.¹⁷¹ However, as noted earlier, some negotiations that reached a controversial agreement, such as between the Colombian government and *Los Extraditables*, took place without such a consensus. Moreover, it is not obvious that negotiations at lower levels, such as between NGOs and criminal groups, would benefit from such visibility or arrangements.

The issue of public support was also connected by many to having a communication strategy that goes beyond playing Twitter catchup. They disagreed widely, however, as to what an appropriate balance between secrecy and transparency was and how to achieve it.

Many emphasised a united negotiating team, though there was wide disagreement on how large it could be before hampering unity. Opinions reflected the difficult balance between inclusiveness and efficiency. Some warned sharply against large teams.¹⁷² Others focused on risks of under-inclusion.¹⁷³ There was a similar division on third-party mediation (e.g., Colombia came close to success with the Gulf Clan without mediators).

There was also much disagreement about the tools and systems for bargaining with criminal groups. Some rejected “paying” to secure violence reduction or access to territories;¹⁷⁴ others premised much of their strategy in part on providing material rewards.¹⁷⁵ Some highlighted the need to identify and work through and with important influencers, such as local mayors and women, rather than seek to reorient power on the ground.¹⁷⁶ Others actively sought to empower new actors (though some recoiled from that level of intrusiveness into local political, economic, and social arrangements).¹⁷⁷

There was also frequent disagreement on the threshold issue of whether one should ever negotiate with criminal groups while in a relatively weak position. Some argued that in circumstances of extreme institutional weakness, the state is in no position to negotiate since it lacks a minimal capacity of credible threat. Others argued that sometimes the state has no other realistic option, even if the public is sceptical or opposed.¹⁷⁸ Yet, it was also noted that the effort to negotiate in such cases must be coupled with an attempt to strengthen state institutions; otherwise, the bargain quickly turns bad and a lawful social order never materialises. But this middle ground was rejected by those who asserted that “[n]egotiations with criminal groups are only ethically viable when the state has the upper hand politically and militarily. The state has to be superior.”¹⁷⁹

Finally, some interlocutors, including those who advocated talking with any criminal group, insisted that a country’s laws should never be fashioned or altered to facilitate talks with such actors.¹⁸⁰ Others strongly defended changing laws if necessary to advance peace-related goals.¹⁸¹ Still others sought to strike a balance, arguing that no “abdication” of criminal law should ever occur, but “a framework for the administration of justice and accountability” could be negotiated.¹⁸²

Parallels with Other Types of Negotiation

While negotiations with criminal groups may take place for less than noble purposes, the fact is that even when the purposes are benevolent, the outcomes are uncertain in the short term and potentially fraught with deleterious cascade effects. Yet, whether conducted clandestinely or out in the open, negotiations are already one part of how governments, religious bodies and NGOs deal with criminal groups that terrorise society. When state capacity or integrity is weak and the power of criminal groups over local populations and territories is strong, negotiating with criminal groups may simply be a necessary option.

Perhaps the most striking finding in this regard was the high overlap between the challenges that materialise in negotiations with criminal groups and those that materialise in negotiations with militant groups. These include risks associated with managing the emergence of strong domestic and international opposition and powerful spoilers (on the government side, but also the armed group's); ensuring unity of the negotiating team and a minimum of leverage in the world beyond the negotiating table (e.g., through stronger law enforcement or conditional withdrawals of legal or economic benefits) in order to have more leverage at the table; and managing trade-offs between transparency and secrecy, inclusion and efficiency, aspiration and realism.

The greatest differences between criminal and militant group negotiations are in the presumed motivations of the former and the impact this has on possible process end-goals. All else being equal, criminal groups with ideological elements may be more willing than others to contemplate negotiating with a government – and more likely to find a willing counterpart. Yet, this subcategory is also more likely to ask for greater benefits than prison leniency: jobs and opportunities, for example. By contrast, the greater the absence of ideological elements, the greater the reluctance of any government to negotiate transformative results. This may explain why in negotiations with criminal groups, it is more common to see smaller asks and smaller deals – temporary truces and ceasefires. Smaller deals also run fewer risks of increasing the criminal group's influence and power.

Whatever the case, the interviews conducted for this paper revealed that the knowledge requirements for negotiating with criminal groups do not appear to vary significantly from those involved in negotiating with militants. Variables such as scope of territorial control, troop strength and size, capacity to prevent defections, control of the local violence market, level of centralisation in group operations, capacity for infiltrating state bodies and level of community support, are as relevant to calculations to negotiate with a criminal group as with a militant group. And in both cases, the process may change the power and perspective of the criminal group, causing rifts and fragmentation, or alternatively imbuing it with a vision of a different, “better future.”¹⁸³

AGENDA FOR FURTHER RESEARCH

Any study is limited in number of interviews, amount of research and breadth of cases. In this instance, the limits were deliberate: the aim being to cover principally one region, draw especially on first-person interviews and be an agenda-setting discussion document for follow-on research, consultations and writing also covering other regions. While further case studies and interviews may not comprehensively answer the uncommon question of whether, when and how to negotiate with criminal groups, they will allow a more complete understanding of the key choices and main outcomes when negotiations have taken place – not only abroad, but also in additional cases within the Latin American context.

One such case, for which this paper sought interviews with those who negotiated with criminal gangs, is Ecuador's 2007 decision to legalise some of the country's several hundred previously illegal street gangs – namely, the Sacred Tribe Atahualpa of Ecuador (STAE), the *Netas*, and the Masters of the Street. The legalisation allowed the gangs to keep their identity (including distinctive clothes) and social cohesion, as well as associate with each other in public. It also gave access to education and employment funds as well as increased state services dedicated to street gangs. In exchange, the gangs were to stop criminal activity.¹⁸⁴ A significant decline in homicides followed, a result also due to police reform and increased effectiveness, including adoption of community policing.¹⁸⁵

Before the legalisation, STAE alone was believed responsible for a third of homicides.¹⁸⁶ Following it, gangs stopped being abused by the police, and members learned to interact with officials, access state resources and even enter government. The positive outcomes were sustained for over a decade, producing a virtuous cycle. Instead of narratives and skills based in violence, skills in writing grant proposals formed, and positive narratives of dialogue with government came to be valued.¹⁸⁷ Other gangs began seeking legalisation after watching STAE thrive economically, politically and socially.

Ecuador enjoyed highly auspicious circumstances that enabled it to take this approach and achieve these outcomes (which regrettably have since dissipated).¹⁸⁸ In 2005 and again in 2006 and 2007, the gangs brokered truces with each other, leading to reductions in violence and giving the government confidence to try legalisation.¹⁸⁹ Secondly, the *pandillas* were nowhere as strong as the Northern Triangle *maras* and did not hold society in a comparable grip of terror. Thirdly, President Rafael Correa's election brought a sense of new politics, including a campaign on citizens' rights that diluted the taboo of working with street gangs. Fourthly, a commodities boom brought middle class expansion, decreased inequality and reduced poverty in neighbourhoods with long gang presence. The flush of money also enabled funding of socioeconomic programs for gang members.

Following Ecuador's example, Panama under President Juan Carlos Varela started in 2014 the *Barrios Seguros* (Safe Streets) initiative. *Pandilla* members willing to abandon crime and accept social reintegration were offered amnesty and job training.¹⁹⁰ By 2016, this served more than

4,100 people.¹⁹¹ These *pandillas* were much weaker and less violent than Northern Triangle *maras*, as well as separate from more organised, widespread crime groups in Panama. Yet, by 2019, outcomes were less positive, with overall gang violence and murder rates up significantly.¹⁹²

Ecuador and Panama are part of the future research agenda for this IFIT project, as are many other cases from different parts of the world where confidential interviews will be conducted with those who negotiated with or between criminal groups.¹⁹³ The additional research will increasingly be honed on negotiations that aimed at reaching truces, ceasefires, disarmament regimes and other *outcomes meant to reduce or end widespread violence*. Government or other negotiations that amounted to self-serving pacts to enable continued (or increased) violence and corruption under modified arrangements and alliances will be left out. The latter type cases cannot answer the questions at the heart of this inquiry, which is focused on *negotiation as an intentional, public-interest peacebuilding option for policymakers*. As such, we will not examine cases such as the WWII bargain between the U.S. military and the Sicilian mafia (in which the latter gave invasion forces intelligence in return for population and occupation control);¹⁹⁴ Chiang-Kai Shek's deal with China's most notorious criminal and drug-trafficking group, the Green Gang, to control labour unions and resist the Japanese invasion;¹⁹⁵ or the *gran pacto* believed to exist between the 1950s and mid-1980s, through which Mexico permitted criminal groups to engage in drug trafficking to the U.S. and other criminal activity provided they limited violence and refrained from drug trafficking domestically, obeyed the authoritarian government and its party and were available to support periodic repression by the state and party politicians.¹⁹⁶ However, there are always cases in the grey zone of intentions, and these will be examined for possible inclusion.

With that in mind, below are some of the critical research questions that will be focused upon in the next and final phase of this IFIT project. These have been partially answered in this discussion paper but will be more comprehensively answered in the future policy framework.

1. The typical end-state for a negotiation with a politically or religiously motivated militant group involves the group exchanging use of violence for the chance to pursue its goals peacefully in the political arena. What end-states make sense for a negotiation with archetypal criminal groups? What could the group or its factions eventually become or "transform" into?
2. Despite the absence of a primarily political or religious motivation, criminal groups may foster a deep sense of identity through internal codes, symbols and physical appearance styles. How can these be leveraged in a negotiation?
3. Are "comprehensive" settlement negotiations possible and desirable with criminals, or only "limited" ones? If the latter (for temporary truces, ceasefires, etc.), how can these be leveraged as confidence-building measures or starting points for broader transitions to lawful order?
4. If both coercion and inducement are needed to create conditions for negotiations, must the weighting of policy nevertheless be heavily coercive vis-à-vis criminal groups?
5. By what means can a government identify representative and authoritative interlocutors on the side of criminal groups with whom to explore negotiations? And how can it deal, on an interim basis, with criminal infiltration of its own institutions (and the intelligence breaches this enables)?

6. In relation to the phases of any negotiation process aimed at reducing violence, what useful and direct roles can be played by community leaders and family members (especially female members) in criminal group-controlled areas and activity?
7. What constructive roles can the international community play, if any, in supporting, exploring or facilitating talks with criminal groups?
8. What role can or should transitional justice tools, such as conditional amnesties, reduced and suspended sentences, restorative justice processes, truth-seeking and truth-telling bodies, victim reparations, and vetting processes, play as part of an effective negotiation with criminal groups?

In seeking more robust answers to these questions, the following analytic premises will continue to guide research:

1. Unlike militant groups, criminal groups usually seek not to replace the government but to influence and/or weaken state institutions so there is an improved environment in which to pursue their principal (but not exclusive) objective of illicit self-enrichment, using diverse forms of violence and state capture.
2. The design and goals of any negotiation must take into account that criminal groups' violence is directed against both the state and competitor groups (and their support communities).
3. Negotiations with criminal groups require a combination of "sticks" (coercive measures) and "carrots" (inducements), no matter the balance of power between the parties.
4. Individuals who belong to criminal groups may a) enter for a wide variety of reasons, based on push and pull factors; b) participate very differently once inside, both in terms of rank and operational duties; and c) have divergent demands and capacities to exit.
5. A wide range of strategic and tactical calculations common to negotiation with any armed actor will be equally relevant with criminal groups, including: maximising sources of leverage before and during the process; setting out an agenda with clear objectives and ground rules; identifying internal or external redlines as early as possible; using sanctions for defections and noncompliance; having a common underlying public message; and paying attention to questions of identity, dignity and honour and not merely the substantive elements to be agreed.

Pursuing these premises further and answering the key research questions will allow us to offer the well-structured, creative and practical recommendations policymakers increasingly need to undertake the fraught but sometimes necessary challenge of negotiation with criminal groups.

Endnotes

1. Author's and IFIT team's interviews, September 2019.
2. Fisher, R., Ury, W. and Patton, B. (1991), *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed., Houghton Mifflin.
3. Vanda Felbab-Brown, "Focused Deterrence, Selective Targeting, Drug Trafficking and Organized Crime: Concepts and Practicalities", Modernizing Drug Law Enforcement, Report No. 2, International Drug Policy Consortium, February 2013, <https://www.brookings.edu/research/focused-deterrence-selective-targeting-drug-trafficking-and-organized-crime-concepts-and-practicalities/>; Felbab-Brown, "Battling Drug Trafficking Organizations: Law Enforcement Lessons from Colombia for Mexico", *Revista*, February 2012; "The Violent Drug Market in Mexico and Lessons from Colombia", Foreign Policy at Brookings, Policy Paper No. 12, March 2009, http://www.brookings.edu/~media/Files/rc/papers/2009/03_mexico_drug_market_felbabbrown/03_mexico_drug_market_felbabbrown.pdf; Felbab-Brown, "Mexico's Out-of-Control Criminal Market", The Brookings Institution, March 2019, https://www.brookings.edu/wp-content/uploads/2019/03/FP_20190322_mexico_crime-2.pdf; "AMLO's Security Policy: Creative Ideas, Tough Reality", The Brookings Institution, March 2019, https://www.brookings.edu/wp-content/uploads/2019/03/FP_20190325_mexico_anti-crime.pdf.
4. See, for example, Mats Berdal and David Malone, eds., *Greed and Grievance: Economic Agendas in Civil War* (Lynne Rienner, 2000); Berdal and David Keen, "Violence and Economic Agendas in Civil Wars: Some Policy Implications", *Millennium: Journal of International Studies*, 26 (3), 1997: 795-818; and Cynthia J. Arnson, and I. William Zartman, eds. "Rethinking the Economics of War: The Intersection of Need, Creed, and Greed" (Woodrow Wilson Center Press, 2005); Felbab-Brown, *Shooting Up: Counterinsurgency and the War on Drugs* (The Brookings Institution, 2009); and Michelle Hughes and Michael Micklaucic, eds., *Impunity: Countering Illicit Power in War and Transition* (National Defense University, 2016); Moises Naím, *Illicit: How Smugglers, Traffickers, and Copycats Are Hijacking the Global Economy* (Random House, 2006); Felbab-Brown, "Afghanistan Affections: How to Break Political-Criminal Alliances in Contexts of Transition" (United Nations University, April 2017); Felbab-Brown, "Myanmar Maneuvers: How to Break Political-Criminal Alliances in Contexts of Transition" (United Nations University, April 2017); Felbab-Brown, "The Hellish Road to Good Intentions: How to Break Political-Criminal Alliances in Contexts of Transitions" (United Nations University, April 2017); Louise Shelley, "The Nexus of Organized International Criminals and Terrorism", *International Annals of Criminology*, 1 (2), 2002: 85-93; Tamara Makarenko, "The Crime-Terror Continuum: Tracing the Interplay Between Transnational Crime and Terrorism", *Global Crime*, 1 (1), 2004: 129-145.
5. Daniel Byman, "Talking with Insurgents: A Guide for the Perplexed", *Washington Quarterly*, 32(2): 125-137, 2009; Scott Atran, *Talking to the Enemy: Faith, Brotherhood, and the (Un)Making of Terrorists* (HarperCollins, 2010); Robert Mnookin, *Bargaining with the Devil: When to Negotiate, When to Fight?* (Simon and Schuster, 2010); I. William Zartman and Guy Olivier Faure, *Engaging Extremists: Trade-Offs, Timing, and Diplomacy* (U.S. Institute of Peace, 2011).
6. Shivit Bakrania, "Policy Responses to Criminal Violence in Latin America and the Caribbean", 2013, <http://gsdrc.org/docs/open/hdq934.pdf>; Walter Kemp, Mark Shaw, and Arthur Boutellis, "The Elephant in the Room: How Can Peace Operations Deal with Organized Crime?" (International Peace Institute, 2013), <https://www.ipinst.org/2013/06/the-elephant-in-the-room-how-can-peace-operations-deal-with-organized-crime>; Kemp and Shaw, "From the Margins to the Mainstream: Toward an Integrated Multilateral Response to Organized Crime" (International Peace Institute, 2014), https://www.ipinst.org/wp-content/uploads/publications/1409_margins_to_mainstream_toc.pdf.
7. Teresa Whitfield, "Mediating Criminal Violence: Lessons from the Gang Truce in El Salvador", Oslo Forum Papers, Center for Humanitarian Dialogue, June 2013, <https://www.files.ethz.ch/isn/166558/Mediating-Criminal-Violence.pdf>; Igor Dubinsky, "How Bad Boys Turn Good: The Role of Law in Transforming Criminal Organizations into Legitimate Entities by Making Rehabilitation an Economic Necessity", *DePaul Business and Commercial Law Journal* 5(2), 2007: 379-426; James Cockayne, John de Boer and Louise Bosetti, "Going Straight: Criminal Spoilers, Gang Truces and Negotiated Transitions to Lawful Order" United Nations University, Crime-Conflict Nexus Series: No. 5, April 2017, <https://cpr.unu.edu/going-straight-criminal-spoilers-gang-truces-and-negotiated-transitions-to-lawful-order.html>; Achim Wennmann, "Negotiated Exits from Organized Crime: Building Peace in Conflict and Crime-Affected Contexts", *Negotiation Journal*, 30(3), July 2014: 255-273; David Brotherton and Rafael Gude, "Social Inclusion from Below: The Perspectives of Street Gangs and Their Possible Effects on Declining Homicide Rates in Ecuador", Inter-American Development Bank, March 2018, <https://webimages.iadb.org/publications/2019-01/>

[Social-Inclusion-from-Below-The-Perspectives-of-Street-Gangs-and-Their-Possible-Effects-on-Declining-Homicide-Rates-in-Ecuador.pdf](#); and James Cockayne, “Strengthening Mediation to Deal with Criminal Agendas”, Oslo Forum Papers, Center for Humanitarian Dialogue, 2013, <https://www.hdcentre.org/wp-content/uploads/2016/07/Strengthening-mediation-to-deal-with-criminal-agendas-December-2013.pdf>.

8. The *Extraditables* was an organization created by Colombian drug lords, mainly Pablo Escobar, that opposed extradition to the U.S. Its motto was “We prefer a grave in Colombia than a prison in the United States”.

9. The “Northern Triangle” refers to the three Central American countries of Guatemala, El Salvador and Honduras.

10. See, for example, Clare Ribando Seelke, “Gangs in Central America”, Congressional Research Service, <https://fas.org/sgp/crs/row/RL34112.pdf>; Steven Dudley, “MS-13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction”, 2018, <https://www.insightcrime.org/wp-content/uploads/2018/02/MS13-in-the-Americas-InSight-Crime-English-3.pdf>; and Dudley, *MS-13: The Making of America’s Most Notorious Gang* (Hanover Square Press, 2020).

11. A new assessment indicates that estimates of *maras* strength in El Salvador before negotiations were too low, that they were perhaps as many as 400,000, making it impossible for the government to arrest all. Whitfield: 10.

12. Author’s and IFIT team’s interview, ex-Los Angeles official and Northern Triangle gangs expert, October 2019.

13. Mark Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press, 2009); David Kennedy, *Don’t Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-city America* (Bloomsbury, 2011); Anthony Braga, “Getting Deterrence Right?”, *Criminology and Public Policy*, 11(2), 2012: 201-210; Braga and David Weisburd, “The Effects of Focused Deterrence Strategies on Crime: A Systematic Review and Meta-analysis of the Empirical Evidence”, *Journal of Research in Crime and Delinquency*, 49(3), 2011: 323-358; David Kennedy, Daniel Tompkins and Gayle Garmise, “Pulling Levers: Getting Deterrence Right”, *National Institute of Justice Journal*, 236, 1998: 2-8.

14. Author’s and IFIT team’s interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.

15. Enrique Desmond Arias, *Criminal Enterprises and Governance in Latin America and the Caribbean* (Cambridge University Press, 2018); Benjamin Lessing, *Making Peace in Drug Wars: Cartel and Crackdowns in Latin America* (Cambridge University Press, 2017); Maria Alves and Philip Evanson, *Living in the Crossfire: Favela Residents, Drug Dealers, and Police Violence* (Temple University Press; 2011); Enrique Desmond Arias and Corinne Davis Rodrigues, “The Myth of Personal Security: Criminal Gangs, Dispute Resolution, and Identity in Rio de Janeiro’s Favelas”, *Latin American Politics and Society*, 48(4),

2006: 53-81; and Ben Pengalese, “The Bastard Child of the Dictatorship: The *Comando Vermelho* and the Birth of the ‘Narco-culture’ in Rio de Janeiro”, *Luso-Brazilian Review*, 45(1), 2008: 118-143.

16. This is different from the Central American *maras*, which secure most financing from hand-to-mouth extortion and robberies.

17. See, for example, Benjamin Lessing, “Inside-Out: The Challenge of Prison-Based Criminal Organizations”, The Brookings Institution, September 2016, <https://www.brookings.edu/research/inside-out-the-challenge-of-prison-based-criminal-organizations/>; and Ryan Berg, “Breaking Out: Brazil’s First Capital Command and the Emerging Prison-Based Threat”, American Enterprise Institute, March 2020, <https://www.aei.org/research-products/report/breaking-out-brazils-first-capital-command-and-the-emerging-prison-based-threat/>.

18. Author’s and IFIT team’s interview, Brazilian expert on gangs, October 2019.

19. Author’s and IFIT team’s interview, ex-Colombian official (Official C), October 2019.

20. Ibid.

21. Author’s and IFIT team’s interview, Catholic cleric involved in negotiations with Mexican criminal groups, October 2019.

22. Ibid.

23. Author’s and IFIT team’s interview, officials of international NGO in Haiti, October 2019.

24. Vanda Felbab-Brown, Harold Trinkunas, and Shadi Hamid, *Militants, Criminals, and Warlords: The Challenge of Local Governance in an Age of Disorder* (Washington, DC: The Brookings Institution Press, 2017); Vanda Felbab-Brown, “In Nigeria, We Don’t Want Them Back’: Amnesty, Defectors’ Programs, Leniency Measures, Informal Reconciliation, and Punitive Responses to Boko Haram,” in *The Limits of Punishment: Transitional Justice and Violent Extremism*, United Nations University, May 2018.

25. In other places where the NGO operates, such as Afghanistan, its authority with armed actors would be weakened by foreign staff. In other words, this variable is not always positive for negotiation.

26. Author’s and IFIT team’s interview, officials of international NGO in Haiti, October 2019.

27. Author’s and IFIT team’s interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.

28. Felbab-Brown, “Law Enforcement Actions in Urban Spaces Governed by Violent Nonstate Entities: Lessons from Latin America”, *FIU/WHEMSAC*, September 2011, <https://digitalcommons.fiu.edu/whemsac/49/>; Felbab-Brown, “Human Security and Crime in Latin America: The Political Capital and Political Impact of Criminal Groups and Belligerents Involved in Illicit Economies”, *FIU/WHEMSAC*, September 2011, <https://digitalcommons.fiu.edu/whemsac/40/>; Felbab-Brown, “A

- State-Building Response to Organised Crime, Illicit Economies, Hybrid Threats, and Hybrid Governance”, in Virginia Comolli (ed.), *Organized Crime and Illicit Trade: How to Respond to This Strategic Challenge in Old and New Domains* (Palgrave MacMillan, 2018): 1-21; Felbab-Brown, “The Threat of Illicit Economies and the Complex Relations with State and Society”, in *ibid*: 121-134; and Felbab-Brown, *Shooting Up*.
29. Felbab-Brown, *Shooting Up*.
 30. Author’s and IFIT team’s interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
 31. IFIT team’s interview, El Salvador ex-official involved in *mara* negotiations, November 2019.
 32. IFIT team’s interview, another former Colombian government official (Official B), November 2019.
 33. Author’s and IFIT team’s interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
 34. IFIT team’s interview, another former Colombian government official (Official B), November 2019.
 35. “Mexico’s Everyday War: Guerrero and the Trials of Peace”, International Crisis Group, 4 May 2020.
 36. Felbab-Brown, “Mexico’s Out-of-Control Criminal Market”.
 37. Author’s and IFIT team’s interview, Catholic Church clergyman involved in Mexico negotiations, October 2019.
 38. Felbab-Brown, “Battling Drug Trafficking Organizations”; Felbab-Brown, *Shooting Up*; and Mark Bowden, *Killing Pablo: The Hunt for the World’s Greatest Outlaw* (Grove Press, 2001).
 39. Author’s and IFIT team’s interview, Catholic Church clergyman involved in Mexico negotiations, October 2019.
 40. Author’s and IFIT team’s interview, facilitator Colombian-designated facilitator in Gulf Clan negotiations, October 2019; IFIT team’s interview, another ex-government official (Official B), November 2019.
 41. Author’s and IFIT team’s interview, international NGO officials in Haiti, October 2019.
 42. *Ibid*.
 43. Author’s and IFIT team’s interviews, clergyman engaged in *mara* negotiations in Honduras, October 2019; Catholic Church clergyman involved in negotiations in Mexico, October 2019.
 44. Escobar sought to negotiate immunity with the U.S., offering to provide intelligence on leftist guerrilla groups. Michael Isikoff, “Medellin Cartel Leaders Offered U.S. A Deal” *The Washington Post*, July 20, 1988.
 45. Author’s and IFIT team’s interview, Colombian negotiator with the Gulf Clan (Official C), October 2019; and IFIT team’s interview, another ex-Colombian official (Official B), November 2019.
 46. IFIT team’s interview, Official B, November 2019.
 47. Author’s and IFIT team’s interview, Official C, October 2019; and IFIT team’s interview, Official B, November 2019. In Nigeria, similarly, political deals to end violence which were underpinned by payments and job generation for criminal groups, as well as for militia and insurgent groups, created powerful contagion effects. Criminal groups and the militias and militant groups explicitly refer to such past deals in their demands for similar negotiated legal recognition, legitimation and placement on the state’s payroll. Felbab-Brown, “In Nigeria, We Don’t Want Them Back”, and “Militias (and Militancy)”.
 48. Author’s and IFIT team’s interview, clergyman involved in the El Salvador *mara* negotiations, September 2019.
 49. For details, see Whitfield: 9.
 50. Author’s and IFIT team’s interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019; and clergyman engaged in *mara* negotiations in Honduras, October 2019.
 51. Author’s and IFIT team’s interview with a clergyman engaged in *mara* negotiations in Honduras, October 2019.
 52. Author’s and IFIT team’s interview, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
 53. Author’s and IFIT team’s interview, clergyman involved in the El Salvador *mara* negotiations, September 2019.
 54. Author’s and IFIT team’s interview, Catholic Church clergyman involved in negotiations in Mexico, October 2019.
 55. Author’s and IFIT team’s interviews, cleric engaged in *mara* negotiations in Honduras, October 2019; cleric involved in negotiations with criminal groups in Mexico, October 2019.
 56. Author’s and IFIT team’s interview, government-designated facilitator in negotiations with the Gulf Clan, October 2019.
 57. Author’s and IFIT team’s interviews, cleric engaged in *mara* negotiations in Honduras, October 2019; cleric involved in negotiations with criminal groups in Mexico, October 2019.
 58. Author’s and IFIT team’s interview, cleric involved in negotiations in Mexico, October 2019.
 59. Author’s and IFIT team’s interview, cleric engaged in *mara* negotiations in Honduras, October 2019.
 60. Author’s and IFIT team’s interview, government-designated facilitator in Gulf Clan negotiations, October 2019.
 61. Author’s and IFIT team’s interview, international NGO official in Haiti, October 2019.
 62. Author’s and IFIT team’s interview, cleric involved in negotiations in Mexico, October 2019.
 63. Author’s and IFIT team’s interview, international NGO officials in Haiti, October 2019.

64. Author's and IFIT team's interview, citizens' safety international NGO representative negotiating in Haiti, October 2019.
65. IFIT team's interview, ex-El Salvador official involved in the negotiations with the *maras*, November 2019.
66. Author's and IFIT team's interview, clergyman involved in the El Salvador *mara* negotiations, September 2019.
67. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
68. Ibid.
69. IFIT team's interview, ex-El Salvador official involved in negotiations with the *maras*, November 2019.
70. Author's and IFIT team's interview, clergyman engaged in *mara* negotiations in Honduras, October 2019.
71. Author's and IFIT team's interview, ex-Colombian (Official A), October 2019.
72. Author's and IFIT team's interview, Colombian-designated facilitator in Gulf Clan negotiations, October 2019.
73. Author's and IFIT team's interview, international NGO official in Haiti, October 2019.
74. For examples of limited but more nefarious goals in negotiations with criminal groups, see: Felbab-Brown, *Aspiration and Ambivalence: Strategies and Realities of Counterinsurgency and State-building in Afghanistan* (The Brookings Institution Press, 2013); Felbab-Brown, "Water Theft and Water Smuggling: A Growing Problem or Tempest in a Teapot?" (The Brookings Institution, March 2017); James Cockayne, *Hidden Power: The Strategic Logic of Organized Crime* (Oxford University Press, 2016); Felbab-Brown, "Bringing the State"; Arias, "The Impact of Organized Crime"; and Felbab-Brown, *Shooting Up*.
75. Author's and IFIT team's interview, Brazilian expert on gangs, October 2019.
76. Bowden.
77. Author's and IFIT team's interview, Colombian negotiator with the Gulf Clan (Official C), October 2019; and IFIT team's interview, another ex-Colombian official (Official B), November 2019.
78. IFIT team's interview, another ex-Colombian official (Official B), November 2019. In turn, Colombia asked that the Gulf Clan provide reparations to its victims, a demand the Cartel conceded, though details were not specified.
79. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019; IFIT team's interview, ex-El Salvador official involved in *mara* negotiations, November 2019.
80. Paolo Luers, "El cuadro completo del diálogo sobre violencia", <http://columnatransversal.blogspot.com/2012/07/el-cuadro-completo-del-dialogo-sobre-la.html>.
81. Author's and IFIT team's interview, clergyman engaged in *mara* negotiations in Honduras, October 2019.
82. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019.
83. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
84. Author's and IFIT team's interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
85. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
86. For more on gang structure, see Miguel Cruz, "Government Responses and the Dark Side of Gang Suppression", in Thomas Brunneau, Lucia Dammert and Elizabeth Skinner (eds.), *Maras: Gang Violence and Security in Central America* (University of Texas Press, 2011): 137-157.
87. IFIT team's interview, another ex-Colombian official (Official B), November 2019.
88. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019; ex-El Salvador official involved in *mara* negotiations, November 2019.
89. IFIT team's interview, ex-El Salvador official involved in *mara* negotiations, November 2019.
90. Author's and IFIT team's interview, clergyman engaged in *mara* negotiations in Honduras, October 2019.
91. Author's and IFIT team's interview, international NGO officials in Haiti, October 2019.
92. Ibid.
93. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019. It would give the handouts to selected community leaders, who may or may not have been gang leaders or members. The leaders would pass them to the community. Pricier items such as computers and motorcycles were distributed by lottery system, not directly to an individual.
94. Author's and IFIT team's interview, international NGO officials in Haiti, October 2019. While actively seeking to alter behaviour by handouts and affect community power structures, the NGO considered it essential to respect local culture to an extent, e.g., mandating that staff spoke Creole as many poor Haitians did not speak French. But overall, instead of neutrality and impartiality, this NGO actively sought behavioural change, basically paying for peace.
95. Author's and IFIT team's interview, international NGO officials in Haiti, October 2019.
96. Any such incident would have necessitated the NGO liquidating its Haitian operations, but kidnapping was rife then, with gangs and other criminals even attacking school busses, killing drivers and selling children back to their parents for \$1,000.

97. Author's and IFIT team's interview, government-designated facilitator for Gulf Clan negotiations, October 2019, and IFIT team's interview, another ex-government official (Official B), November 2019.
98. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019. See also, José Luis Sanz and Carlos Martínez, "¿Vos deharías tu familia? La Mara Salvatrucha no se vas a desaparecer," *El Faro*, October 8, 2013.
99. Author's and IFIT team's interview, Catholic Church cleric involved in negotiations in Mexico, October 2019. The cleric also felt he was receiving subtle but ominous pressure from federal government officials to dissuade further engagement with the criminal groups. At the same time, he had the support of high-levels of the Catholic Church in Mexico; local politicians relied on him as their negotiator with the groups; and he found emotional fulfillment in believing that local people were grateful to him for negotiating on their behalf.
100. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
101. IFIT team's interview, another ex-government official (Official B), November 2019. There was, for example, lack of clarity about where the attorney general could temporarily put 100 armed criminals who sought leniency and how to process the cases.
102. Liam Stack and Kirk Semple, "Trump Says US Will Designate Mexican Drug Cartels as Terrorist Groups", *The New York Times*, November 26, 2019.
103. Creating a sense of inclusion can be done by a wide variety of means that balance the separate imperatives of unity and efficiency. See IFIT, "Process Design Tips for Political and Peace Negotiations", 2017.
104. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
105. IFIT team's interview, ex-El Salvador official involved in the negotiations with the *maras*, November 2019.
106. Author's and IFIT team's interview, clergyman involved in the El Salvador *mara* negotiations, September 2019.
107. IFIT team's interview, an ex-Colombian official (Official B), November 2019.
108. IFIT team's interview, ex-El Salvador official involved in negotiations with the *maras*, November 2019.
109. Author's and IFIT team's interview, clergyman involved in the El Salvador *mara* negotiations, September 2019.
110. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019.
111. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
112. IFIT team's interview, ex-El Salvador official involved in the *mara* negotiations, November 2019.
113. Author's and IFIT team's interview, ex-Colombian official (Official C), October 2019.
114. Author's and IFIT team's interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
115. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019. The NGO partially neutralised criticism from Brazilian military deployed under MINUSTAH, other NGOs and UN branches by enlisting representatives of local communities in its operation areas to meet its critics.
116. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
117. IFIT, "Rethinking Peace and Justice", 2019, details how to balance tension between peace and justice, victims and victimisers.
118. Author's and IFIT team's interviews with a diplomat directly involved in the El Salvadoran and Honduran negotiations with gangs, September 2019. The State Department nevertheless assessed that the *maras* "tend not to be a major component of the logistics supply chain for Mexican, Colombian, and other drug trafficking organizations". "International Narcotics Control Strategy Report 2013".
119. Office of the Press Secretary, White House, "Executive Order 13581 – Blocking Property of Transnational Criminal Organizations", July 25, 2011. Other rifts existed internationally. The OAS was in constant tension with the UN Development Project (UNDP), which it perceived as jealous it was not the lead international negotiating partner.
120. Author's and IFIT team's interview, clergyman engaged in *mara* negotiations in Honduras, October 2019.
121. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019.
122. Author's and IFIT team's interview, international NGO officials in Haiti, October 2019.
123. IFIT team's interview, another ex-Colombian official (Official B), November 2019.
124. Felbab-Brown, *The Extinction Market: Wildlife Trafficking and How to Counter It* (Hurst and Oxford University Press, 2017); Felbab-Brown and Harold Trinkunas, "UNGASS 2016 in Comparative Perspective: Improving the Prospects for Success", The Brookings Institution, April 29, 2015, <http://www.brookings.edu/~media/Research/Files/Papers/2015/04/global-drug-policy/FelbabBrown-TrinkunasUNGASS-2016-final-2.pdf?la=en>; and Mark Galeotti, ed., *Russian and Post-Soviet Organized Crime* (Routledge, 2002).
125. Author's and IFIT team's interview, Colombian-designated facilitator in negotiations with the Gulf Clan, October 2019. For any leniency deal to be reached, the Clan

- was required, for example, to specify all its crimes and victims; failing which, it would lose all benefits.
126. Author's and IFIT team's interview, Catholic church clergyman involved in Mexico negotiations, October 2019.
127. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019.
128. See generally IFIT, "Process Design for Secret Negotiations", 2019.
129. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
130. Author's and IFIT team's interviews, Colombian-designated facilitator in Gulf Clan negotiations, October 2019; IFIT team's interview, another ex-Colombian official (Official B), November 2019.
131. See generally IFIT, "Process Design for Secret Negotiations", 2019.
132. Author's and IFIT team's interview, clergyman involved in the El Salvador *maras* negotiations, September 2019.
133. IFIT team's interview, ex-El Salvador official involved in the negotiations with the *maras*, November 2019.
134. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
135. IFIT team's interview, ex-El Salvador official involved in the negotiations with the *maras*, November 2019.
136. Author's and IFIT team's interviews with a diplomat directly involved in the El Salvadoran and Honduran negotiations with gangs, September 2019; and Oscar Martínez, Carlos Martínez, Sergio Arauz and Efrén Lemus, "Gobierno negoció con pandillas reducción de homicidios," *El Faro*, March 14, 2012.
137. Author's and IFIT team's interview, clergyman engaged in *maras* negotiations in Honduras, October 2019.
138. Author's and IFIT team's interview with a former government official of Los Angeles and expert on gangs of the Northern Triangle, October 2019.
139. See generally IFIT, "Process Design for Secret Negotiations", 2019.
140. Author's and IFIT team's interview, international NGO officials in Haiti, October 2019.
141. Author's and IFIT team's interview, Brazilian NGO official in Haiti, October 2019.
142. Author's and IFIT team's interview, Catholic Church cleric involved in negotiations in Mexico, October 2019.
143. Author's and IFIT team's interviews, regional government official in Brazil; Brazilian expert on gangs, both October 2019.
144. Author's and IFIT team's interview, Brazilian expert on gangs, October 2019. An ex-U.S. official expert on Northern Triangle gangs similarly said intervention on the peer or group level with such gangs, including negotiations, would strengthen the gangs and might backfire, even if sometimes reducing violence temporarily. Author's and IFIT team's interview, October 2019.
145. Author's and IFIT team's interview, another ex-government official (Official C), October 2019.
146. Bowden; and Felbab-Brown, *Shooting Up*.
147. Author's and IFIT team's interview, government-designated facilitator in the negotiations, October 2019. The subsequent government of President Iván Duque was not interested in continuing the negotiations.
148. Beatriz Castillo, "Le politización pondría en peligro tregua: Mijango", *DiarioCoLatino*, March 13, 2013.
149. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
150. Felbab-Brown, "Bringing the State."
151. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019. Microsoft was also willing to hire residents of the *municipios*.
152. Ibid.
153. IFIT team's interview with a former official of the government of El Salvador involved in the negotiations with the *maras*, November 2019. On top of this, the Funes government failed to build broad-based societal and cross-party political support, thus leaving it exposed and weak when the negotiations were made public. The arrival of a new government only worsened the toxic environment. Meanwhile, on the side of the *maras*, the imprisoned leadership proved unable to control their mid-level street commanders sustainably. Violence returned in an ascending spiral, and the gangs were ultimately strengthened.
154. Author's and IFIT team's interview, clergyman involved in the negotiations, September 2019.
155. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019. He also argued that an important, mostly ignored success was overcoming the hatred of the *maras* toward each other and habituating them to sitting in the same room and for the first time considering with each other how to stop the violence.
156. Author's and IFIT team's interview, clergyman engaged in the negotiations, October 2019. A 2005 cease-fire among the *maras* held for about three months but collapsed as one gang entered the territory of another, and retaliatory violence ensued.
157. Author's and IFIT team's interview, ex-Los Angeles official and Northern Triangle gangs expert, October 2019.
158. Ibid.
159. Author's and IFIT interviews, regional government official in Brazil, October 2019; and cleric involved in Salvadoran negotiations, September 2019.

160. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
161. Author's and IFIT team's interviews, clergyman involved in El Salvador *mara* negotiations, September 2019; ex-Los Angeles official and expert on Northern Triangle gangs, October 2019; diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
162. Colombian government negotiator with Gulf Clan (Official C), October 2019; another ex-Colombian official (Official B), November 2019.
163. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019; ex-Los Angeles official and expert on Northern Triangle gangs, October 2019; Brazilian NGO official in Haiti, October 2019.
164. Author's and IFIT team's interview, clergyman involved in El Salvador *mara* negotiations, September 2019.
165. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations with gangs, September 2019; ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
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167. Author's and IFIT team's interviews, Catholic church clergyman involved in negotiations in Mexico, October 2019; clergyman engaged in *mara* negotiations in Honduras, October 2019.
168. Author's and IFIT team's interview, Catholic church clergyman involved in negotiations in Mexico, October 2019.
169. Author's and IFIT team's interview, ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
170. Author's and IFIT team's interviews, regional government official in Brazil, October 2019; Brazilian expert on gangs, October 2019.
171. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
172. IFIT team's interviews, ex-El Salvador official involved in *mara* negotiations, November 2019; ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
173. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
174. Author's and IFIT team's interview, international NGO official in Haiti, October 2019.
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176. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019; ex-Los Angeles official and expert on Northern Triangle gangs, October 2019.
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178. Author's and IFIT team's interviews ex-Los Angeles official and expert on Northern Triangle gangs, October 2019; diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
179. IFIT team's interview, ex-Colombian government official (Official B), November 2019.
180. Author's and IFIT team's interview, Catholic Church clergyman involved in negotiations in Mexico, October 2019.
181. Author's and IFIT team's interviews, clergyman engaged in negotiations in Honduras, October 2019; Colombian negotiator with the Gulf Clan (Official C), October 2019; and ex-Colombian official (Official A), October 2019.
182. IFIT team's interview, another ex-Colombian official (Official B), November 2019.
183. Author's and IFIT team's interviews, diplomat directly involved in Salvadoran and Honduran negotiations, September 2019.
184. See, for example, Brotherton and Gude.
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COVER PHOTO: REUTERS/Ulises Rodriguez
Walter Geovani Salguero and other members of El Salvador's Mara Salvatrucha (MS-13) gang pledge not to commit violent acts in a pact negotiated with the church, civic organisations, and government officials.

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