Guarantees and Conflict Settlement Negotiations

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I. Introduction

Guarantees are an essential, if at times under-appreciated element of conflict settlement processes. They are important to bridge gaps in trust between conflict parties and to build their confidence in both the negotiation process and its outcome. This paper focuses particularly on process guarantees; that is, on the mechanisms and arrangements that can support parties' compliance with the 'rules of the game' agreed between them for the negotiation process. Such rules of the game are usually enshrined in pre-negotiation agreements and cover the consensus among the parties involved in the negotiations on the various dimensions of such a process. As such they straddle the boundary between substantive and procedural issues and shape, to a considerable extent, also the outcome of the negotiation process they are to guarantee.

The paper begins by outlining briefly the principal dimensions of a negotiation process and then discusses various options for structuring a negotiation process and for guarantee mechanisms and arrangements that can be applied to ensure that parties have confidence in the negotiation process once they decide to engage with each other constructively to find a peaceful settlement to their dispute.

II. Dimensions of Conflict Settlement Negotiations

Conflict settlement negotiations have a number of dimensions, many of which are subject to agreement between the conflict parties and, as appropriate, mediators, and thus may require guarantees. These dimensions include issues related to format, facilitation and mediation, purpose, participation, agenda, timetable, working method, confidence-building measures, as well as to the ratification and implementation of a negotiated agreement. There is a significant degree of interdependence between these dimensions. Decisions on participation will shape the items on the agenda of negotiations (parties will negotiate what they care about) and the feasibility of particular timelines (parties with high capacity will be able to negotiate more quickly and effectively compared to those whose capacity needs to be built prior to negotiations). If issues are negotiated sequentially, parties may be encouraged by successes at some points in the negotiations, while being frustrated by stalled or deadlocked negotiations at others. Negotiating several issues in parallel minimizes the risk of complete deadlock, but increases the complexity of negotiations because of the interdependence of the issues being negotiated. A fixed timeline with a deadline by which negotiations need to be concluded increases the pressure on parties to engage constructively and effectively but risks sub-optimal outcomes of negotiation processes, whereas open-ended negotiations create opportunities for parties to negotiate thoroughly and achieve a sustainable agreement, but it may also enable them simply to drag negotiations out until they eventually falter completely. Shuttle diplomacy, proximity talks, and face-to-face negotiations all have their role to play over time depending on the degree to which parties are willing to engage with each other directly and constructively. Committing to holding a referendum on any negotiated settlement or tying it to approval by a (newly) elected parliament may appear democratic, but at the same time increases the risk that parties defect from the settlement and campaign against it in a referendum or election campaign.

As a consequence, it is essential that conflict settlement negotiations are carefully designed to ensure an outcome that reflects, and addresses, parties' core interests and demands and that will be sustainable over time as a settlement to their dispute. As part of such a design of the negotiation process, consideration needs to be given to mechanisms and arrangements that ensure that the design of the negotiation process, once agreed, is fully implemented and that parties in the negotiations continue to adhere to it.

Such guarantees can take the form of either a formal pre-negotiation agreement or a set of principles, proposed, for example, by the mediator, to which parties subscribe and which the mediator is then authorized

to uphold. An example of the former is the 1994 "Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca" in which the parties agreed on a range of parameters for their negotiations, including agenda setting, mediator mandate, civil society involvement, the role of the Group of Friends, disclosure procedures, time frame, and verification mechanisms.

An example of a set of principles are the 1996 Principles of Democracy and Non-violence (the so-called Mitchell Principles) that committed the parties in the Northern Ireland negotiations "to democratic and exclusively peaceful means of resolving political issues; to the total [and independently verified] disarmament of all paramilitary organisations; to renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations; and to agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree."

While different in nature and scope, both lay down a number of important rules governing some of the dimensions for the negotiation process and incorporate a degree of verification for at least some of these rules. Moreover, formal agreements generally incorporate principles to which the parties commit, i.e., which they accept as binding rules for the process they are about to enter into. The more detailed assessment that follows will focus on how pre-negotiation agreements address the range of dimensions of negotiation processes and thus offer an overview of the different options that can be used to structure negotiation processes and commit parties to abide by agreed rules.

III. Pre-negotiation Agreements: Issue and Options

3.1 Defining the purpose

Agreeing on a purpose for negotiations is the first, and thus foundational, important step for parties and indicative of a shared understanding of what a negotiation process is meant to achieve. It also demonstrates their joint commitment to achieving this purpose. Pre-negotiation agreements at times explicitly state a specific purpose. For example, the 1991 Geneva Agreement between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) noted:

> 1. The purpose of the process shall be to end the armed conflict by political means as speedily as possible, promote the democratisation of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society.
>
> The initial objective shall be to reach political agreements which the basis for a cessation of the armed conflict and of any acts that infringe the rights of the civilian population, which will have to be verified by the United Nations, subject to the approval by the Security Council. Once that has been achieved, the process shall lead to the establishment of the necessary guarantees and conditions for reintegrating the members of FMLN within a framework of full legality, into the civil, institutional and political life of the country.

Apart from the general statement of purpose in paragraph one above, the agreement also includes an element of guarantee by establishing, in paragraph two, a two-stage process of achieving this overall purpose and by making transition from stage one (political agreements) to stage two (reintegration of FMLN members) subject to verification and approval by the UN. This specific arrangement introduces a degree of conditionality (the parties have to complete stage one before they can proceed to stage two) and offers a specific guarantee in the form of UN verification of parties' compliance with the agreement in stage one.

More general definitions of the purpose of negotiation processes are also quite common and are frequently offered in preambles or introductory statements of pre-negotiation agreements. For example, the "Basic Agreement for the Search for Peace by Political Means" between the Government of Guatemala and the URNG, signed in Oslo in March 1990, notes that the two parties "agree to initiate a serious process which will culminate in the attainment of peace and the enhancement of functional and participatory democracy in Guatemala."

3.2 Negotiation formats

The question of what format is best suited for negotiations is highly context-dependent and follows directly from establishing their purpose. That said, choosing a format for negotiations is one of the fundamental issues that parties need to agree on, or at times agree to, if particular formats are suggested by third-party actors. Formats can range from strictly secretive direct negotiations among a small number of high-level representatives of the conflict parties, to proximity talks and shuttle diplomacy, and to broad-based constitutional conventions and national dialogues involving a wide range of actors, including from civil society. Formats may change over time and may combine different types of engagement. For example, negotiations among leaders may be combined with (periodic) input from a wider range of actors that will normally be non-binding at the negotiation stage but require some form of approval of negotiated outcomes by (newly elected) parliaments or constitutive assemblies, or in popular referenda. The choice of negotiation formats also involves a decision on whether negotiations should be mediated or facilitated and if so, how and by whom (see below).

Leaving aside the question of facilitation and/or mediation for the moment, there are a number of useful examples of how to structure negotiation processes relying on a mix of different formats of engagement. In the "Agreement on the procedure for the search for peace by political means", between the Government of Guatemala and the Unidad Revolucionara Nacional Guatemalteca (URNG), signed in Mexico City in April 1991, both parties agreed "to hold negotiations through direct meetings" while also allowing for the possibility of "[i]ndirect meetings … between the parties through the Conciliator and in the presence of the Observer". This format is reconfirmed in principle in the January 1994 "Framework Agreement for the Resumption of the Negotiations Process between the Government of Guatemala and the Revolucionara Nacional Guatemalteca", but this latter agreement also establishes an assembly of non-governmental organisations to discuss, in parallel to the negotiations between the Government of Guatemala and the URNG substantive issues on the agenda "with a view to formulating positions on which there is consensus" among the participants in the assembly and inform the negotiations between the parties by transmitting to them "the recommendations and guidelines [which] shall not be binding." At the same time, agreements reached in the negotiations were to be discussed in the assembly with a view to "endorse such agreements so as to give them the force of national commitments, thereby facilitating their implementation." The 1994 Agreement, however, notes that negotiated agreements, even if they are not endorsed by the assembly, "shall continue to be valid." Taken together, the 1991 and 1994 agreements, thus, establish a dual process of secret negotiations of agreements between the conflict parties and of a parallel popular consultation and endorsement process.

Other aspects of the format of a negotiation relate to decisions about whether negotiations are to be held in plenary format of all representatives of the parties or in specific working groups to which parties delegate some representatives to deal with particular issues only and whether issues on the agenda are to be negotiated in parallel or sequentially, and if the latter in what sequence. Frequently, these questions are keft to subsequent agreements of the parties at the outset of their negotiations. For example, the "Modalities for the Implementation of the Ceasefire Agreement in the Democratic Republic of Congo" annexed to the 1999 Lusaka (Ceasefire) Agreement leaves it to the Congolese parties to agree "the timetable and rules of procedure of the inter-Congolese political negotiations."

3.3 Facilitation and mediation

Given the often deep mistrust between parties that are about to enter into a negotiation process, they often rely on the provision of facilitation and/or mediation services by outsiders. Beyond the actual agreement on whether such services should be sought, it is also essential for parties to agree on the mandate of a facilitator or mediator. Such mandates normally include, in different combinations, the authority to convene meetings (time and venue), consult parties individually, consult external actors (such as donors, groups of friends), consult other stakeholders (such as civil society organisations not directly participating in negotiations), propose an agenda and/or timeline for negotiations, draft texts to advance negotiations (noting areas of agreement and/or disagreement), and liaise with media. The appointment of ex-officio mediators (such as chair persons or secretaries-general of regional and international organisations or their special envoys, eminent persons, or heads of state or government of specific countries such as regional or great powers or donors or their designated representatives) can add a further element of assurance to the parties that the

negotiation process will be conducted impartially and seen through to a successful conclusion. Thus, the 1991 Geneva Agreement on the peace process in El Salvador, specifically provides

> 2. The process shall be conducted under the auspices of the Secretary-General [of the United Nations], on a continuous and uninterrupted basis.
>
> 3. … the negotiating process … shall involve two types of complimentary activities: direct dialogue between the negotiating commissions, with the active participation of the Secretary-General or his Representative, and an intermediary role of the Secretary-General or his Representative between the parties…
>
> 4. … The only public information on … progress shall be that provided by the Secretary-General or his Representative.
>
> 5. The Secretary-General, at his discretion, may maintain confidential contacts with Governments of States Members of the United Nations or groups thereof that can contribute to the success of the process through their advice and support.

In a similar vein, the 1991 Mexico City "Agreement on the procedure for the search for peace by political means" between the Government of Guatemala and the URNG, drawing on the earlier Oslo Agreement, defines the role and powers of the Conciliator as follows:

> 9. Under the Oslo Agreement, it is the function of the Conciliator to propose initiatives to the parties and to facilitate and sustain dialogue and negotiation, imparting momentum to that process and summarising points of agreement and disagreement between the parties. To that end, he has the power to propose initiatives and solutions for discussion and agreement and may do whatever else is necessary to the proper fulfilment of his mission. In addition to any other powers conferred on him in other sections of this document, the Conciliator shall: (a) convene the agreed meetings; (b) act as depositary for any documents that may result from the negotiation and provide certified copies thereof to the parties; (c) designate his advisers; and (d) order adjournments of the meetings.

In the subsequent 1994 Mexico City "Framework Agreement for the Resumption of the Negotiating Process" the Conciliator's original role was assigned to an independent, international mediator:

> The parties have agreed to request the Secretary-General of the United Nations to appoint a representative to serve as moderator of the bilateral negotiations between the Government and URNG. The parties agree that the moderator may make proposals to facilitate the signing of a firm and lasting peace agreement.

The agreement on a UN-appointed mediator (rather than merely an observer in previous agreements on negotiation formats between the parties), must be seen in the context of the parties' emphasis on national and international verification mechanisms and thus their need to establish guarantees to enable them to re-commit to the negotiation process:

> Verification is a vital element in ensuring compliance with and respect for the agreements. Consequently, the parties reiterate that all the agreements must be accompanied by appropriate national and international verification mechanisms. The experience and authority of the United Nations confer a high degree of reliability on international verification by the Organisation. The two parties agree to request the United Nations to verify all the agreements, in both their substantive and operational aspects.

In the 2008 "Memorandum of Understanding between the Zimbabwe African National Union (Patriotic Front) and the two Movement for Democratic Change Formations", the parties agreed to have their dialogue facilitated and assigned the Facilitator (South African President Thabo Mbeki on behalf of the AU and SADC) an additional role as guarantor of a future agreement:

5. Facilitation
The Dialogue shall be facilitated in accordance with the SADC and AU resolutions.
[…]
7. Venue
The Dialogue shall be conducted at such venues as shall be determined by the Facilitator in consultation with the representatives of the Parties.
[…]
11. The role of the SADC and AU
The implementation of the Global Political Agreement that the Parties will conclude shall be underwritten and guaranteed by the Facilitator, SADC and AU.

In their "Agreement on the Functions of the Conciliation Commission", the Government of Nicaragua and YATAMA ("Sons of Mother Earth") as the political representative of the indigenous population of Nicaragua's Atlantic Coast region agreed that a commission comprised of external religious figures be set up:

4. The functions of the Commission shall be to:
   4.1. Facilitate communication between the parties.
   4.2. Formally chair meetings and serve as moderator in the talks. To this effect, normal rules of parliamentary procedure shall be applied. In order to speed up the discussion, the commission shall try to clarify issues that may lend themselves to misunderstandings, and shall make lists of points of mutual interest to be discussed in due time.
   4.3. Oversee the favourable progress of talks.
   4.4. Oversee and bear witness to compliance with the agreements.
   4.5. Make recommendations.
   4.6. Arrange the time and place for meetings.

3.4 Participation

As can be expected, parties to a pre-negotiation agreement are obvious participants in subsequent negotiations. Reaffirming their participation in these future negotiations, however, serves the purpose of formally acknowledging and recognising each other's role, thus implying an acceptance of each other's place at the negotiation table. The 2008 Zimbabwean Memorandum of Understanding illustrates such an approach well:

1. Definitions
[…]
'The Parties shall mean ZANU-PF and the MDC formations led by Morgan Tsvangirai and by Arthur Mutambara, respectively.
[…]

In addition, parties to pre-negotiation agreements, at times, also may agree on broadening participation in negotiations to others, thereby implicitly inviting them to do so and conferring a particular status on such other parties. This can be one of equal participant in negotiations or of a consultative role alongside negotiations. An example of the former is the June 2003 Accra "Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia" which reconfirms the role of the signatories to the pre-negotiation agreement and assigns a role in negotiations to further actors as follows:

8. Political Reconciliation. The signing of this agreement shall be followed immediately by the engagement of the GOL, LURD and MODEL with all other Liberian political parties and stakeholders in dialogue, to seek, within a period of thirty days, a comprehensive peace agreement.

Similarly, the 2001 "Declaration of Fundamental Principles accepted by the Congolese Signatories to the Lusaka Agreement" determines:

5. The inclusion of the political opposition and the representatives of the Forces Vives of the nation in the inter-Congolese political negotiations, within which all participants have equal status.

The other option, including other parties through a consultative process in negotiations, is illustrated by the March 1990 Oslo Agreement on Guatemala (reconfirmed subsequently in slightly altered format in the 1994 Mexico City Framework Agreement):

> The National Reconciliation Commission shall, by mutual agreement with URNG, create the mechanisms required for the convening, preferably in June 1990, of the necessary meetings between the Unidad Revolucionaria Nacional Guatemalteca and representatives of the country's popular, religious and business sectors, as well as other politically representative entities, with a view to finding wasy of solving the nation's problems.

Apart from deciding on the (conditions of) inclusion into a negotiation process, it is also crucial to determine the authority that negotiators have. The greater their authority to conclude agreements (which may still be subject to parliamentary or popular ratification (see below), the more likely it is that a negotiation process will conclude quickly and successfully. This point is made forcefully in the 1991 Mexico City Agreement in the Guatemala peace process:

4. The Government of Guatemala and URNG undertake to be duly represented in the negotiations by high level delegates, in order to negotiate and conclude political agreements in accordance with the existing constitutional framework and with the El Escorial agreements.

3.5 Agenda setting

In many peace processes, agendas for talks are highly contested as they derive from particular interpretations of the conflict and its causes (i.e., what issues need to be addressed to achieve a sustainable settlement) and potentially shape the outcome of negotiations (i.e., which 'solutions' will not be considered). As such, agenda setting in pre-negotiation agreements can be direct and indirect. Direct agenda setting involves an agreement on specific areas to be considered by the parties during negotiations. In the context of the peace process in El Salvador, the parties achieved agreement on a "General agenda and timetable for the comprehensive negotiating progress" in May 1991, following up on, and reflecting, their earlier agreement in April that year on some more general principles, including the overall objective of their negotiations, their format, and facilitation by the UN Secretary-General. The general agenda included seven areas in which political agreement was to be achieved, as well as the requirement to agree on the modalities of a cessation of the armed conflict, and, mapping onto the areas of political agreement, eight dimensions in which the parties were to seek consensus on the reintegration of FMLN members. The agreement specifically notes:

> The sequence of the items listed [i.e., areas of agreement] for each phase does not imply a strict order of consideration and may be changed by mutual consent.

Crucially, thus, the agreed agenda determines a sequence in which the different areas are to be negotiated (and, by implication, that they should be negotiated sequentially rather than in parallel), while offering parties a guarantee against unilateral change by making changes to the agreed sequence dependent on mutual consent.

The 2003 Accra Agreement on Liberia identifies ten specific issues that a peace agreement to be negotiated subsequently must include, hence setting an agenda for parties' negotiations:

(a) Deployment of an international stabilisation force
(b) Commencement of a Disarmament, Demobilisation and Reintegration programme
(c) Restructuring of the security forces (security sector reform)
(d) Human rights issues / reconciliation
(e) Humanitarian issues
(f) Socio-economic reforms

(g) Reconstruction / rehabilitation
(h) Creation of a democratic space
(i) Formation of a transitional government […]
(j) Elections

In terms of in-built guarantees, the commitment to the deployment of an international stabilisation force is crucial as a hard security guarantee during the negotiation process and for the subsequent peace agreement.

A similar detailed agreement on the agenda of negotiations is included in the 2008 Zimbabwean Memorandum of Understanding:

> 4. Agenda
> The Parties have agreed to the following Agenda:
>
> 4.1 Objectives and Priorities of a new government
> (a) Economic
> (i) restoration of economic stability and growth
> (ii) Sanctions
> (iii) Land question
>
> (b) Political
> (i) New constitution
> (ii) Promotion of equality, national healing and cohesion, and unity
> (iii) External interference
> (iv) Free political activity
> (v) Rule of law
> (vi) State organs and institutions
> (vii) Legislative agenda priorities
>
> (c) Security
> (i) Security of persons and prevention of violence
>
> (d) Communication
> (i) Media
> (ii) External radio stations
>
> 4.2 Framework for a new Government
>
> 4.3 Implementation mechanisms
>
> 4.4 Global political agreement

Indirect agenda setting happens through reference to general principles that are to guide the approach by the parties to negotiations. This can happen either by reference to already existing agreements, relevant resolutions by regional and international organisations, specific regional and international standards, and general principles of international law. A comprehensive illustration of such an indirect approach to agenda setting to guide settlement negotiations are the July 1988 “Principles for a peaceful settlement in Southwestern Africa” which commit the governments of Angola, Cuba and South Africa to implement UN Security Council Resolution 435/78 (withdrawal of South African troops and free elections in Namibia) and confirm an agreement between Angola and Cuba to accept on-site verification of their troop withdrawal from Namibia. The parties further commit themselves, among other things, to respecting the sovereignty and territorial integrity of states, and the right of the peoples of the southwestern region of Africa to self-determination and non-interference in their internal affairs. These and other firm commitments by the parties thus limited negotiations to the modalities of a ceasefire and comprehensive troop withdrawal as well as the organisation of elections leading to Namibia’s independence.

Another agreement that indirectly shapes the agenda of talks in a similar way is the 2001 "Declaration of Fundamental Principles Accepted by the Congolese Signatories to the Lusaka Agreement" which reaffirms "the sovereignty and territorial integrity of the Democratic Republic of Congo". In almost identical fashion, in the July 2005 "Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur", the parties commit to respecting the "unity, sovereignty, territorial integrity and independence of the Sudan".

Finally, in some agreements the parties commit to the incorporation into a future agreement of particular human rights instruments. This, too, is an indirect method of shaping part of the agenda and the agreement itself. An instructive example of how far-reaching such an approach can be is the Annex to the 1994 Washington Agreement between Bosnia and Herzegovina and Croatia which lists no less than 19 human rights instruments to be included in the future Constitutional Agreement for the Federation of Bosnia and Herzegovina.

Agenda setting can also be left to facilitators/mediators. Thus, as noted earlier, one of the tasks of the conciliation commission set up under the 1988 "Agreement on the Functions of the Conciliation Commission" between the Government of Nicaragua and YATAMA is to

> 4.2. Formally chair meetings and serve as moderator in the talks. To this effect, normal rules of parliamentary procedure shall be applied. In order to speed up the discussion, the commission shall try to clarify issues that may lend themselves to misunderstandings, and shall make lists of points of mutual interest to be discussed in due time.

3.6 Timetables for negotiations

Committing themselves to a timetable according to which a negotiation process should be completed indicates parties' seriousness about achieving a negotiated agreement to end their disputes. Timetables can be established in absolute terms (i.e., giving precise dates by which specific elements of a negotiation process, or wider peace process, need to be completed) or relative to particular milestones (e.g., number of days/months following the signature of the pre-negotiation agreement and/or subsequent to completing different stages in the negotiations). By way of illustration, the Esquipulas II agreement on a "Procedure for the establishment of a firm and lasting peace in Central America" between the presidents of the five Central American countries (Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica) provided for a timetable relative to the signing of the pre-negotiation agreement and requiring the completion of specific phases of the peace process in these countries as follows:

> Within a period of fifteen days from the signing of this document, the Central American Ministers of Foreign Affairs shall meet as an Executive Commission to regulate, encourage and facilitate compliance with the agreements contained in this document…
>
> Ninety days after the signing of this document, the commitments with regard to amnesty, a cease-fire, democratization, termination of aid to irregular forces or insurrectionist movements, and the non-use of territory to attack other States, as defined in this document, shall enter into force simultaneously and be made public.
>
> One hundred and twenty days after the signing of this document, the International Verification and Follow-up Commission shall review the progress made in complying with the agreements set forth in this document.
>
> One hundred and fifty days after the signing of this document, the five Central American Presidents shall meet to receive a report from the International Verification and Follow-up Commission and shall take the relevant decisions.

Notably, there is an in-built international guarantee mechanism in these timetable provisions, mandating the verification of parties' compliance by an International Verification and Follow-up Commission, including "the Secretary-General of the Organisation of American States, or his representative, the Secretary-General of the United Nations, or his representative, and the Ministers of Foreign Affairs of Central America, the Contadora

Group and the Support Group" and tasked with "verifying and monitoring fulfilment of the commitments set forth in this document."

Another example of a precise timeline relative to the signature of an agreement, at least for the beginning of negotiations, is the following provision in the 2001 Kuala Lumpur "Agreement on the general framework for the resumption of peace talks between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front":

> Article V
> The Parties shall agree to hold the first formal meeting of the panels at a mutually agreed venue within three months from the signing of this agreement.

In contrast, the "General agenda and timetable for the comprehensive negotiating progress" agreed by the parties in the El Salvador peace process in May 1991 can serve as an example of the use of more specific dates in setting a timetable for negotiations, stating that:

> …the government of El Salvador and FMLN agree that the initial objective set forth in paragraph 1 of the Geneva Agreement of 4 April 1990 should be achieved by the middle of September 1990, provided that agreements are reach which are synchronised, have implementation timetables and can be verified where appropriate, so as to ensure that all the components of the initial objective are duly coordinated.

It is also important to note that the provisions on the timetable, similar to the Geneva Agreement that preceded it, reiterates verification and requires that subsequent agreements also include implementation timetables (which, in conjunction with verification procedures, can serve as guarantee mechanisms in negotiated settlements).

Similarly precise in terms of setting a deadline by which negotiations are to conclude is the following provision in the March 2002 EU-facilitated Belgrade Agreement between Serbia and Montenegro ("Starting Points for the Restructuring of Relations between Serbia and Montenegro"):

> The Constitutional Charter shall be submitted to the Parliaments for deliberation by the end of June 2002 at the latest.

The June 2003 Accra Agreement on Liberia determines a particularly tight timetable:

> 8. Political Reconciliation. The signing of this agreement shall be followed immediately by the engagement of the GOL, LURD and MODEL with all other Liberian political parties and stakeholders in dialogue, to seek, within a period of thirty days, a comprehensive peace agreement.

Similarly precise and tight is the timetable prescribed in the July 1992 "N'Sele Ceasefire Agreement between the Government of the Rwandese Republic and Rwandese Patriotic Front, as Amended at Gbadolite, 16 September 1991, and at Arusha, 12 July 1992":

> Article VI
> The political negotiations culminating in the peace agreement shall proceed pursuant to the following calendar:
> 1. Commencement of the political negotiations: 10 August 1992
> 2. Completion of the political negotiations and signing of the peace agreement: not later than 10 October 1992
> 3. Completion of the implementation of the mechanisms and conclusions agreed upon pursuant to the peace agreement: not later than 10 January 1993

Agreements on timetables, frequently, go hand-in-hand with broader commitments of the parties to negotiating in a constructive and timely manner. Thus, according to the 1991 Mexico City Agreement:

6. The Government of the Republic of Guatemala and URNG agree not to abandon the negotiating process unilaterally and to pursue it without interruption…until the negotiation agenda is exhausted. They undertake to act in good faith in an atmosphere of complete mutual respect and reiterate their express determination to reach political agreements for achieving a firm and lasting peace that will bring the internal armed conflict in Guatemala to an early, definitive end.

3.7 Working methods

In general, negotiations are conducted on the assumption that any agreement will require the consent of all participants. Nonetheless, a number of pre-negotiation agreements specifically emphasise the need for consensus. For example, the 2001 "Declaration of Fundamental Principles accepted by the Congolese Signatories to the Lusaka Agreement" confirms:

7. Consensus as the means for adopting all decisions regarding issues discussed during the inter-Congolese political negotiations.

In the 1985 Bogota Accord, the Government of Nicaragua and MISURASATA agreed on the following procedure, implying the need for consent among parties and guarantors:

3.5. All agreements in the course of the negotiation process must be signed by all members of both delegations and countries and organisations present as guarantors.

The 1991 Mexico City Agreement for the peace negotiations in Guatemala similarly specifies:

8. The Conciliator…shall conduct meetings in accordance with the usual standards of debate. No recordings hall be made of the meetings, nor shall minutes be taken. Any agreements reached shall be formalised in documents discussed and approved by the parties and shall be signed by the Conciliator, the Observer, the delegates of the parties, and the members of the National Reconciliation Commission.

Establishing a consensus rule in a pre-negotiation agreement implies an acceptance by parties not to take unilateral decisions or apply unilateral measures in relation to any item on the negotiation agenda and thus works as a guarantee mechanism in this respect aimed at demonstrating a commitment to a negotiated, mutually agreed outcome and helps build parties' confidence in each other and the negotiation process.

3.8 Confidence-building measures

Many pre-negotiation agreements also include a range of specific confidence-building measures to accompany, and facilitate, a negotiation process. These can be unilateral commitments by one or both of the parties or joint undertakings. Crucially, they can act as guarantees in the sense that progress on an agreed agenda for negotiations can be tied to delivery of certain confidence-building measures, thus promoting compliance with an agreement on negotiations. Alternatively, failure to live up to specific commitments may carry certain penalties, such as a (temporary) suspension of negotiations, the exclusion of a party from negotiations for a period of time or the withdrawal of specific benefits extended by external actors, thus deterring non-compliance.

Sometimes, parties to pre-negotiation agreements specifically acknowledge the importance of confidence-building measures before making specific commitments. Thus, the June 2003 Accra Agreement for Liberia notes that the parties:

> Also determined to adopt confidence-building measures so as to create a conducive environment for the negotiation of a general framework for the resolution of the crisis in Liberia
>
> [agree that]

5. Humanitarian. The Parties shall provide security guarantees for safe and unhindered access by humanitarian agencies to vulnerable groups, free movement of persons and goods, as well as fir the return and resettlement of refugees and internally displaced persons.

Among confidence-building measures, security guarantees have a prominent role to play. In this context, a range of provisions in the July 1992 N'Sele Ceasefire Agreement on Rwanda are of interest. It defines the terms of the ceasefire and establishes a "neutral military observer group under the supervision of the Secretary-General of the OAU" for the purposes of monitoring and verifying the ceasefire, composed of five officers each from the parties to the agreement and 40 officers form other African countries. Separately, it creates a Joint Political Military Commission of five representatives each from the government and the RPF, as well as representatives from the OAU, Burundi, Tanzania, Uganda, Zaire, Belgium, France, and the United States. Their task is defined as follows:

3. The Joint Commission shall have the following mandate:
   - To ensure the follow-up of the implementation of the Ceasefire Agreement.
   - To ensure the follow-up of the implementation of the Peace Agreement to be signed at the conclusion of the political negotiations.

In establishing these two separate bodies, the N'Sele Ceasefire Agreement decouples violations of the ceasefire and of the ceasefire agreement (additionally enshrined in explicit definitions of what constitutes a violation of either in Article VII) and thus does not put the entire agreement at risk in the face of a singular ceasefire violation. Moreover, the mandate of the Joint Commission creates a mechanism with international participation that contributes to guaranteeing both the negotiation process and any subsequent agreement, thus providing for continuity in promoting parties' compliance with agreements reached.

Similar provisions are made in the 2003 Accra Agreement on Liberia. On the one hand, the Agreement identifies as the first of ten specific issues that the future peace agreement must include the deployment of an international stabilisation force. This must be seen in conjunction with two further provisions:

3. Joint Verification Team (JVT). To establish an ECOWAS-led JVT comprised of two representatives from each of the parties plus representatives of the UN, AU, and ICGL.

[…]

6. Joint Monitoring Committee (JMC). To establish a JMC to supervise and monitor the ceasefire. The JMC will be chaired by a representative of ECOWAS and include equal representation form the Parties, as well as representatives of the UN, AU and ICGL. The JMC will report daily to ECOWAS Headquarters and will investigate reports of ceasefire violations by the Parties.

While the Accra Agreement also includes a precise list of nine issues that would represent ceasefire violations, it does not identify what authority either the JVT or JVC, or any of the other international actors represented in them, would have to impose sanctions on parties found in violation of the ceasefire under these terms.

In contrast to the lack of a more precise clarification of the process of imposing any sanctions in the Accra Agreement, a useful example of confidence-building measures clearly linked to both incentives and potential penalties are the following provisions in the 2002 Belgrade Agreement between Serbia and Montenegro, which preserve an existing status quo in principle, make changes dependent on proper accounting for parties' interests, and offer both incentives for compliance and possible sanctions for non-compliance:

> The level of economic reforms reached in Serbia and Montenegro shall be a proceeding point for regulating mutual economic relations.
>
> The member states shall be responsible for unhindered operation of a common market, including the free flow of people, goods, services and capital.

> Harmonisation of the economic systems of the member states with the EU economic system shall overcome the existing differences, primarily in the spheres of trade and customs policies.
>
> In both regards, economic reforms that have already been carried out in the member states shall be taken into full account, while solutions that would provide for the quickest integration into the European Union shall be accepted. Transitional solutions in harmonising trade and customs policies should take into account the interests of the member states.
>
> The European Union shall assist in the accomplishment of these objectives and monitor the process on a regular basis.
>
> The modalities for the achievement of these objectives shall be elaborated in parallel with the Constitutional Charter.
>
> If one of the member states believes that the other does not live up with commitments under this agreement concerning the operation of a common market and the harmonisation of trade and customs policies, it shall reserve the right to raise the matter with the EU in the context of the Stabilisation and Association Process with the view to the adoption of appropriate measures.
>
> The EU shall guarantee that, if other conditions and criteria for the Stabilisation and Association Process are fulfilled, the agreed principles of constitutional organisation shall not be an obstacle to a rapid conclusion of the Agreement on Association and Stabilisation.

The 1985 "Bogota Accord" between the Government of Nicaragua and the Miskitu, Sumu, Rama Sandinista Aslatakanka Organisation (MISURASATA) combines individual and joint commitments to confidence building by the parties. The government officially recognised the identity and rights of the indigenous and Creole peoples of the Atlantic region, including a right to far-reaching autonomy to be enshrined in a new constitution; committed itself to cease immediately all forms of repression, including release of prisoners and the opening of food and medical supply lines. In turn, MISURASATA expressed "full and total disposition to participate actively and decisively to avoid that external forces to the Nicaraguans have influence of any nature in the solution of the internal problems affecting the ethnic groups of the Atlantic Coast and of all Nicaragua." The parties jointly committed to a ceasefire and agreed to work towards establishing conditions conducive to the return of refugees and IDPs. Perhaps the most significant confidence-building measure in this context, which simultaneously introduced a mechanism of guarantee into the negotiation process, was the

> Creation of a tripartite Commission formed by seven members: two delegates from the Government of the Republic of Nicaragua, two delegates from MISURASATA and three delegates form the guarantors. This commission will oversee the fulfilment of the accords and will serve as an arbitrator in any incident or anomalies in the process of the implementation of this "Bogota Accord". The powers, the duties and the organisation of the commission itself will be agreed by both delegations and will be part of this Accord.

While confidence building to some extent is about positive measures that accompany a negotiation process, it is often equally significant for parties to make formal arrangements with respect to particular actions that they agree not to take. In relation to all-important security issues, Israel-Jordan "Agreed Common Agenda" of September 1993 determined that both sides agreed to "refraining from actions or activities…that may adversely affect the security of the other or may prejudge the final outcome of negotiations."

A similar provision is included in the 2008 Zimbabwean Memorandum of Understanding:

> 9. Decisions by the Parties
> The Parties shall not, during the subsistence of the Dialogue, take any decisions or measures that have a bearing on the agenda of the Dialogue, save by consensus. Such decisions or measures include, but are not limited to, the convening of Parliament or the formation of a new government.

More specifically, this Memorandum of Understanding also determines:

> 10.2 Hate Speech
> The Parties shall refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or undermine each other.

At times, formal negotiations cannot get under way because one or more of the parties and their representatives may fear arrest and prosecution. In such circumstances, granting at least temporary immunity is an essential step towards creating confidence into a negotiation process. This is provided, for example, in the June 2006 Dar es Salaam "Agreement of Principles towards Lasting Peace, Security and Stability in Burundi":

> Article II
> Provisional Immunity for the Members of the Palipehutu-FNL and its Transformation into a Political Party
> 4. From the start of the effective implementation of the ceasefire, the members of the Palipehutu-FNL shall enjoy provisional immunity. A procedure for the release of political prisoners and prisoners of war shall also start.

Similar arrangements on an amnesty, pardons, and prisoner releases and exchanges are included in the 1996 Moscow "Agreement between the President of the Republic of Tajikistan, E. S. Rakhmonov, and the Leader of the United Tajik Opposition, S. A. Nuri". They are further reconfirmed in the "Protocol on the main functions and powers of the Commission on National Reconciliation", appended to this agreement, which establishes this commission as a mechanism to monitor parties' compliance with the Moscow Agreement. The role of the Commission as a guarantee mechanism is further strengthened by mandating its close cooperation with the UN Observer Mission in Tajikistan and the OSCE Mission in the country.

Finally, in some peace processes, negotiations may stall and be resumed at a later date according to a new agreement. In such cases, the question arises on how to deal with previous agreements, and it is then quite common to include, as a further confidence-building measure, to reaffirm such pre-existing agreements. For example, the 2001 Kuala Lumpur Agreement in the Mindanao peace process notes

> Article IV
> The Parties commit to honour, respect and implement all past agreements and other supplementary agreements signed by them. Details of implementation shall be discussed by the Panels.

3.9 Ratification and implementation

A final point of significance dealt with in most pre-negotiation agreements is how the pre-negotiation agreement and the envisaged outcome of negotiations are to be ratified and/or implemented. This is partly dependent, of course, on the outcome that is envisaged at the conclusion of a negotiation process. If negotiations are to lead to specific new laws, these will require parliamentary debate and approval, constitutional amendments or entire new constitutions will normally require endorsement by parliament and/or a popular referendum. It is also conceivable to imagine a referendum on a peace agreement as such which then mandates the passage of laws and constitutional amendments by parliament.

These different options can be illustrated by reference to a range of examples. The 2002 Belgrade Agreement between Serbia and Montenegro was to be submitted for debate to the parliaments of Serbia and Montenegro and to the federal parliament. This debate was then to inform the deliberations of a Constitutional Commission tasked with drafting a constitutional charter for sequential approval first by the republican parliaments and then by the federal parliament.

The 1994 Washington Agreement on the framework for the Bosniak-Croat Federation of Bosnia and Herzegovina determines the following procedure:

> The Constitution of the Federation will be promulgated by a Constituent Assembly, which shall consist of those representatives elected at the 1990 elections to the Assembly of the Republic of Bosnia and Herzegovina whose mandate is still valid. Approval of the Constitution shall require consensus between the delegation of the Croat people, comprising all representatives of Croat nationality, and the delegation of the Bosniak people, comprising all representatives of Bosniac nationality.

The 1985 Bogota Accord in Nicaraguan peace process foresees the following ratification procedure:

> 3.5. […] The Final Treaty must be signed by the President of the Republic of Nicaragua and by the Indigenous Chief of MISURASATA, [and] after that must be subjected to the process of advice and popular and state ratification.

In contrast, the 2005 "Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur" does not Include a specific ratification procedure (other than, implicitly, through existing provisions of constitutional amendment), and determines:

> 14. Agreements reached by the Parties shall be presented to the people of Darfur to secure their support through Darfur-Darfur dialogue and consultation.
> […]
> 16. All agreements reached by the Parties shall be incorporated into the National Constitution.

As part of the Kenya National Dialogue and Reconciliation, the parties agreed in March 2008 on a framework of "general parameters and principles for the establishment of a constitutional review process" as follows:

> The parties accept that the constitution belongs to the people of Kenya who must be consulted appropriately at all key stages of the process, including the formation of the process itself, the draft, the parliamentary process and any final enactment.
>
> There will be five stages in the review of the Constitution and there will be a consultation with stakeholders in each stage:
>
> 1. An inclusive process will be initiated and completed within eight weeks to establish a statutory Constitutional Review including a timetable. It is envisaged that the review process will be completed within 12 months from the initiation in Parliament.
>
> 2. Parliament will enact a special 'constitutional referendum law' which will establish the powers and enactment processes for approval by the people in a referendum.
>
> 3. The statutory process will provide for the preparation of a comprehensive draft by stakeholders and with the assistance of expert advisers.
>
> 4. Parliament will consider and approve the resulting proposals for a new constitution.
>
> 5. The new constitution will be put to the people for their consideration and enactment in a referendum.

IV. Conclusion

Negotiation processes are commonly structured around nine different dimensions: purpose, format, facilitation and mediation, participation, agenda, timetable, working method, confidence-building measures, as well as for the ratification and implementation of a negotiated agreement. In each of these dimensions, parties to pre-negotiation agreements can avail themselves of different options both in terms of how to structure future negotiations and what mechanisms and arrangements to include in order to offer guarantees that they will abide by the rules of the game thus established.

Such guarantees are essential to give parties confidence in the process and its outcome, and they can range from informal and non-binding agreements and understandings to legal, constitutional and international guarantees to promote compliance and deter non-compliance. While the promise of such guarantees, on paper at least, is often significant, guarantees have limitations and cannot normally make up for a lack of genuine commitment by the parties to negotiate sincerely and in good faith.

Guarantees work best when they are linked to clear monitoring and verification procedures against agreed standards of what constitutes compliance and non-compliance; when they link specific mechanisms to particular issues; when they include elements of international commitment (but are not limited to internationalisation alone), and when they emphasise promotion of, and rewards for, compliance over deterrence against, and punishment for, non-compliance.

Particularly important in this context is this dimension of internationalisation. On the one hand, international assistance is often crucial in providing rewards for compliance, and occasionally applying sanctions for non-compliance. However, international involvement hardly ever equates with an enhanced capability or will to enforce guarantees, but may assist in breaking deadlocks and resuming negotiations. Yet, as international involvement is unlikely to be indefinite or always quickly available, guarantees that rely on domestic mechanisms and procedures are essential complements to international mechanisms. This is particularly important with a view to guarantee mechanisms and procedures that reach beyond the negotiation process into an actual settlement. In other words, parties' commitment to the full range of guarantees in a pre-negotiation agreement and a commitment to extend such guarantees into an actual settlement are vital to build mutual confidence and overcome gaps in trust that may exist at the beginning of a peace process.

Guarantees often materialise over time in a range of sequential informal and formal agreements that advance a peace process from talks about talks to actual negotiations and finally to a settlement and its implementation. This incremental process reflects both the complexity of the issue at hand, as well as the need to build trust between parties. In turn, such a gradual process is also indicative of growing confidence among and between the parties in the negotiations to which they committed and in their end result and underscores the importance of incorporating guarantees into agreements as a means to assure parties that agreements negotiated in good faith offer a path to peaceful and sustainable conflict settlements.

[*] The views expressed in this paper are those of the author alone, who writes in his capacity as an independent academic, and not of any other organisation or individual.