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Eric Rahman[a] and Siniša Vuković[b]

[a]The Office of International Affairs, The U.S. Department of Justice, Washington, DC, USA; [b]Conflict Management Program, School of Advanced International Studies, Johns Hopkins University, Washington, DC, USA

ABSTRACT

Criminal gangs, while posing the most substantial threat to security in the Western hemisphere, fall outside the scope of contemporary studies in the field of mediation and negotiation. The prevailing wisdom that gangs are unmanageable due to their apolitical nature and the high political cost of dialogue has led to an approach that relies heavily on the security sector. While the security sector can and must play a role, confrontation alone has proven insufficient. The three-step theory presented in this article seeks to explain how and when to engage in dialogue as an alternative means of confronting criminal gangs. The success of this process, a reduction in violence and criminality through the transformation of gang-related conflict, hinges on sequencing and begins with state-sponsored mediation conducted in secret to establish a cease-fire between the gangs, then enters the phase of public negotiation between the state and the gangs, and finally concludes with a process of mainstreaming the reformed structures into society. This theory assumes that mediators can work with the gangs through a process of assisted articulation to develop a negotiating position, opening a zone of possible agreement between the government and the gangs. El Salvador offers a compelling example of how a society steeped in gang violence might pursue dialogue while also highlighting the threats posed to any negotiation.

Globalization, commonly associated with accelerated flows of goods, people, ideas, and technologies, has brought about serious challenges to societies that lack robust institutions, and a rise in criminal activity is paramount among those challenges. While previous conflict management scholarship has provided valuable insights regarding intrastate armed conflicts, it has largely failed to sufficiently address a particular type of nonstate actor—the conventional criminal organization or gang, which includes those non-ideological, nonrepresentative criminal associations—which over previous decades have accounted for an increasing share of violence in many parts of the world. Conflicts are increasingly multidimensional, with

CONTACT Eric Rahman ✉ ericjrahman@gmail.com 🖃 International Affairs Specialist, Office of International Affairs, Department of Justice, 1301 New York Avenue, NW, Washington, D.C. 20005; Siniša Vuković ✉ svukovi1@jhu.edu; sumosika@yahoo.com 🖃 Assistant Professor, Conflict Management Program, School of Advanced International Studies, Johns Hopkins University, Rome 622, 1619 Massachusetts Av. NW, Washington DC 20036.

the majority of violent deaths not directly related to armed struggles, but rather to criminal activities, organized crime, the drug trade, and political and state-led violence.[1] Networked urban centers provide fertile ground for the flourishing of local and transnational criminal networks, and in such context gangs are commonly identified as instigators of violence, instability, and insecurity.[2]

Conventional strategies for confronting gangs primarily rely on law and order measures and state-sanctioned use of force. This is in part because the socially deviant nature of gangs makes them an extremely unpopular negotiating partner. A growing body of literature in the field of mediation and negotiation has grappled with the challenge of finding a suitable way to approach a wide range of similarly unpopular negotiating partners, such as terrorists, insurgents, and/or extremists.[3] Similarly, although with modest attention, a few studies have tried to demystify criminal organizations and explore if negotiation might be used as an alternative (or complementary) method to the dominant security sector approach.[4] Cruz and Durán-Martínez in particular, in their study of gang truces in El Salvador and Colombia, offer a compelling insight into pacts between criminal gangs, finding that such agreements can reduce homicides if the state is involved to administer incentives and gangs exhibit a high degree of internal cohesion.[5] The authors in this instance identified violence as a tactical tool in the bargaining process, which allows for the gangs to improve their bargaining leverage with the government. While this is an important insight, it does not address when the bargaining takes place, in which format, and if there is a logic behind its process-design. More importantly, it fails to address the complex set of factors and conditions that would allow the state to participate in such a dialogue. This article builds on such previous scholarly work by setting up a framework for both the timing and tactics for engaging gangs in negotiation, relying on studies into the nature of criminal gangs and original research into the motivations of gang members. There has yet to be a study that develops a robust theoretical explanation for when and how to negotiate with gangs, and using insights from existing theories of negotiation and mediation, this article attempts to fill that gap and offer an alternative method for confronting criminal violence.

Despite an intense international focus on the scourge of terrorism, gangs remain the primary threat to citizen security, particularly in the Western hemisphere. Between 1980 and 2000 urban violence in developing countries increased by nearly a third, with homicide rates for urban youth in Latin America higher than in any other region of the world.[6] In the Northern Triangle countries of El Salvador, Honduras, and Guatemala, where the gang problem is particularly acute, the U.S. State Department estimates that in 2012 there were as many as 85,000 individuals belonging to one of the two largest gangs, MS-13 and Barrio 18.[7] Across the hemisphere, militarization of police forces and targeting of gang leadership continues to be the dominant approach, and reliance on a confrontational strategy has led to reports of human rights abuses and the overall escalation of violence.[8] How to more effectively confront these organizations is an absolutely critical question, as gangs continue to proliferate not only in Central America, but globally, and pose an increasingly pressing threat to security.[9]

This study examines mediation and negotiation with criminal gangs from the perspective of the state. The argument leaves aside complicating factors of state capture by gangs or diffuse interests within the state apparatus, and rather looks at the state theoretically because of its essential interest, in theory, in safeguarding security and upholding the rule of law. The purpose is to determine a theory of mediation/negotiation with gangs that explains the

timing (i.e., "when to negotiate") and the process (i.e., how to negotiate), with the ultimate objective of reducing violence, abating criminality, and transforming gang-related conflict. The central proposition of this article is that negotiation with gangs requires a *three-step process*, because of the nature of gangs and their relation to society generally. This process includes:

1. State-sponsored mediation to establish a cease-fire between the gangs;
2. A negotiation process between the state and the conflicting gangs; and
3. A process of mainstreaming of reformed criminal structures and incorporating them into society as legitimate and legal actors.

However, before any process can take place, it is essential to assess the ripeness of the situation. Therefore, reflecting on the insights from Zartman's ripeness theory[10] this article begins by detailing which measures and steps must be undertaken in order to induce a perception of a "mutually hurting stalemate" (MHS) among rival gangs, so that they can perceive negotiations as a "way out" of their predicament, and find "mutually enticing opportunities" (MEO) in the process that discourage them from relapsing into violence and criminal activities.

The three-phase strategy for dialogue aims to solve the dilemma of political and ethical risk to the state by sequencing the level of and type of engagement the state has in the dialogue so that negotiations are not only feasible but become an integral component of transforming criminal structures. El Salvador is a particularly compelling case by which to examine the phenomena of gangs and the prospect of negotiated peace. With roughly 50,000 gang members, and over half a million affiliates ranging from lookouts to family members, El Salvador is one of the most violent countries on Earth, with around fifteen murders per day, of which less than 10 percent are ever solved, or even investigated. The case of 2012 El Salvador Gang Truce will be used to assess the applicability of three-step approach, and reflect on its limitations. Findings will most directly relate to gangs in Central America, and specifically in El Salvador, Honduras, and Guatemala, where criminal street gangs have a notable presence. Nevertheless, this article aims to contribute to a deeper understanding of alternative methods for confronting criminal elements globally.

How to Classify Gangs?

Criminal organizations take many forms, from transnational drug-cartels, to poly-criminal organized crime syndicates, or even a local youth gang, and there is a great deal of inter- and intra-regional heterogeneity in the structural make-up of these groups.[11] Compared to other nonstate actors, a distinctive feature for all criminal organizations is the lack of any explicit political agenda or ideological principles. This is a subtle distinction, and as Sundberg, Eck, and Kreutz note in their compilation of a nonstate armed conflict data set, gang-driven territorial conflict may closely resemble ethno-centric territorial conflict depending on the bias of the observer.[12] Although all insurgent movements implicitly subvert ideology to economic concerns—as the viability of any struggle is contingent on an access to available resources[13]—the most important distinction between conventional insurgencies, such as the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia—FARC) in Colombia, and criminal gangs is how and why they re-invest illicit earnings. Illicit financing and markets are an important component of most insurgent struggles; however, the key distinction is that gangs re-invest to strengthen their organization and gain power

for the sake of power, not to more effectively achieve some political objective.[14] More specifically, gangs typically use violence to assert dominance over rival gangs and establish greater market share, or in certain cases to enforce their authority over citizens and local officials in a given territory for the sake of controlling illicit activity in that area. Other types of insurgencies may also use these tactics, but the ends for which the means are employed is the key difference.

Gangs differ from other nonstate armed actors in their motivation for the use of violence and because of this, for most negotiation/mediation theory intuitively fall within the nebulous category of a non-engagable party, often associated with terrorist groups. As a consequence, both scholars and practitioners have shown a tendency to label gangs as narcoterrorists,[15] quasi terrorists,[16] or nonpolitical terrorists.[17] Negotiating with any group that carries the label of terrorism is a tenuous process, carrying significant political costs. Pruitt's work on negotiation with terrorists differentiates four types of terrorist organizations depending on how ideological and representative they are.[18] While for three categories he manages to identify specific terrorist groups— very ideological and very representative exemplified by Al Qaeda and Ku Klux Klan; very ideological and nonrepresentative identified in Red Brigades, Baader-Meinhoff Gang, Gush Emunim, and Aum Shinrikyo; and non-ideological and very representative groups such as the Irish Republican Army, Palestine Liberation Organization, African National Congress, and Liberation Tigers of Tamil Eelam—the category of non-ideological and nonrepresentative terrorist organizations is left void. Gangs are distinct from terrorist organizations in many ways, yet because gangs and terrorist organizations may share similar tactics and propensity to use violence as a means of intimidation, this article argues that gangs can most aptly be placed into the non-ideological/nonrepresentative category of Pruitt's schema.

It is most accurate to consider gangs as nonrepresentative because they exhibit no coherent political strain around which to rally a constituency.[19] Additionally, for the sake of specificity, this study delineates between hybrid groups and explicitly non-ideological gangs. This makes the representative appeal of gangs predominately coercive and not tied to any durable constituency that would remain cohesive without gang patronage or repression.[20] As non-ideological and nonrepresentative actors, gangs have very limited societal support. Typically, these organizations have a core membership and a network that could be considered active supporters, but there are hardly any inactive supporters or those that would support gangs' goals but not methods. To illustrate this point, in May 2013, during the period of the truce, the gangs in El Salvador had an estimated 50,000 members, with an additional 500,000 or so connected to the gangs either through familial networks or as economic beneficiaries.[21] Support drops off sharply after that and the citizens outside of these networks remain extremely hostile to gangs.[22] This means that while gang networks can become relatively large, they are an incredibly polarizing force and cannot be considered a legitimately representative actor.

As gangs are non-ideological they do not go through the period of articulating their grievances, which is a crucial stage for most insurgent movements that then use those grievances as a means to mobilize supporters.[23] Because gangs are non-ideological/nonrepresentative actors with limited societal support, interventions to isolate them will struggle to find a constituency to target, as they are already largely isolated. Most importantly, gangs are a socioeconomic phenomenon that emerge in a governance vacuum. They cannot be eradicated by force without transforming society into a police state when they are deeply entrenched.[24] It would appear that gangs present an intractable problem for society with no means for the state to escalate out of

the conflict, no constituency to de-radicalize, and no opposing political issues upon which to negotiate.

The Three-Step Approach: When and How to Negotiate

Framework

To assess the viability of a negotiation process this article begins with an assumption that conflicts in societies plagued by high levels of gang violence involve, at a minimum, three participating parties: the state, and at least two rival gangs. Figure 1 illustrates the trilateral conflict, showing how each party is in conflict individually with each other, and how a cease-fire between the gangs creates a bilateral conflict.

There are a number of important assumptions that this article makes about the conditions pursuant to dialogue. The assumptions are as follows:

1. The general population is hostile to dialogue with gangs, as civilians are often the victims of, or impacted by, gang-related crimes.
2. Gangs do not project political positions but do have underlying interests that inform their preferences.
3. The state is unable to establish escalation dominance over gangs without fundamentally altering the character of the state.
4. Conflict both exists between gangs themselves, and between gangs and the state.

When to Negotiate?

The process of negotiation is an incredibly difficult one for states to engage in and opening dialogue with gangs can only occur under certain conditions. Much has been written about the theory of "ripeness," which generally assumes that the disputants must perceive an MHS before they begin to look for a way out of the violent conflict, assuming the parties are rational actors that engage in cost–benefit analysis.[25] The MHS represents a dynamic that pushes the parties out of a conflict because they begin to perceive their ongoing confrontational strategies as unbearable. As they become aware that they can no longer escalate into victory, and that a continuation of past strategies will generate catastrophic results, they become
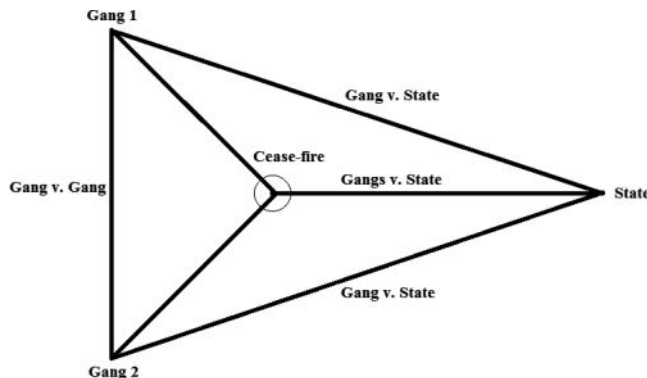

Figure 1. Trilateral conflict between gangs and the State.

amenable to exploring negotiations as an alternative path to achieving their goals. For the purposes of this study it is assumed the state is a rational actor that can judiciously evaluate costs, and desires security for its citizens as an outcome of its conflict with gangs. Rationality can also be assumed for gangs and in fact, because gangs lack a distortional ideological construct underlying their actions, they are more likely than other nonstate armed groups to respond to cost–benefit stimuli in a predictable way. For its part, a gang would view victory explicitly as the unencumbered pursuit of profit through its illicit activities, although as this article posits, there are deeper motivations underlying participation in a gang that creates the possibility for a transmutation of this conception of victory, thereby space for negotiation.

In the case of a trilateral conflict between two gangs and the state, for the conflict to be "ripe" all three parties must feel the hurting stalemate. If the gangs perceive the hurting stalemate but the government does not, the government could hypothetically continue fighting the gangs. For the state to perceive the MHS the hurt felt by society must be translated into the political arena and the electorate a large proportion of citizens must recognize that the government cannot eradicate gang violence through escalation. This is difficult because in the context of a deeply violent, gang-ridden society, the government will likely be facing a legitimacy crisis. Citizens typically recognize that violence stems in part from the government's inability to fulfill its role of maintaining law and order. If security does not increase the public will likely become increasingly disenchanted with the government.[26] The state therefore has the daunting yet necessary task of maintaining legitimacy in the public eye so that when dialogue begins it is afforded some space to act, while not falling into a pattern of escalation with the gangs beyond what is necessary to induce the hurting stalemate perception.

The perception of stalemate on the gang side of the equation looks slightly different because in the context of a trilateral conflict it must exist both horizontally between the gangs, and vertically between the gangs and the state. Gangs desire accumulation of wealth, and territorial control and influence are a means to that end. Therefore, violence must reach the level between gangs at which neither feels it can accumulate further through escalation. Violence must also be sufficiently painful so that the gangs begin to look for a way out of their conflict with each other. A risk at this level is that if an actor perceives that there is more to be gained from not engaging in dialogue and continuing to escalate they are likely to join the ranks of spoilers.[27] If gang #1 for example does not feel this horizontal hurting stalemate with gang #2, but gang #2 and the government both perceive a vertical MHS among themselves, then gang #1 is likely to become a spoiler in any sort of dialogue between the government and gang #2. Therefore, it is crucial that the MHS exists first horizontally between the most substantial gangs in society before any sort of meaningful dialogue can occur either bilaterally or trilaterally.

Each phase of dialogue presented here involves a different set of actors engaging at different levels, and as such the conditions for ripeness at each phase have slightly different requirements. While all three parties in a trilateral conflict must feel the MHS by some stage, it is not necessary that the vertical MHS between the government and the gangs exist before the first phase of mediated bilateral talks between the rival gangs begins. For this, only a horizontal MHS between the rival gangs is required. If negotiations are held in secret with no public knowledge of the proceeding, then it is possible that an enlightened actor on behalf of the government could sponsor secret talks between the parties, without the prior condition

of the public perceiving the stalemate and thus permitting negotiation. As such, a vertical MHS between the gangs and the government is not necessary to begin the first phase of this process, but only if the talks remain absolutely secret. The state has an interest in maintaining the secrecy condition because it provides plausible deniability. This allows the state to coax the general population into recognizing the value of a truce while limiting political fallout that would result from a hostile public learning of negations without proper sensitization, given the assumption of public hostility. Gangs also have an interest in secrecy as a spoiler management technique to limit damage that could be done by rogue cliques, assuming the gang leadership perceives the hurting stalemate and is legitimately looking for a way out.

Once this secrecy condition is no longer met, it becomes necessary for a vertical MHS to exist between the state and the gangs. This condition must be met before the end of the first phase of dialogue because as the mediated talks between the gangs progress, it will become increasingly difficult for the government to obscure its role. If the vertical MHS condition is not met, it is more likely that the gangs have devious reasons for engaging in the talks, and dialogue runs the risk of strengthening the criminal organizations by opening space for collusion.

While the MHS is a useful precondition, it is certainly not sufficient in itself. As parties are pushed out of the conflict by an increasing pain (such as loss of revenue, shrinking territorial control, decapitation of leadership, etc.), they also need to be pulled into the peacemaking process. Parties in conflict need to start considering a negotiated process as an alternative method through which they can still achieve their particular interests. However, the pull appeal of negotiations does not automatically mean that the parties will fully commit to the process and negotiate a solution. In case the negotiations do not provide attractive returns, it is also more likely that the parties will have devious objectives for negotiating.[28] Therefore, the third element of ripening the conflict for resolution must be found in MEO, which have the potential of locking the parties in the bargaining process and inducing them to perceive cooperation as a dynamic that can serve their interests better than the continuation of fighting. The existence of the MEOs does not preclude the existence of the MHS; on the contrary: as the "pain" of an ongoing conflict increases, so does the "gain" of a negotiated solution. Moreover, MEOs with the likelihood of producing a successful negotiation are unique insomuch as they represent gains that are exclusive to the process, promote interdependency between the parties, and are characterized by mutuality. With all this in mind, any negotiation process with criminal gangs is best conducted against the backdrop of a strict enforcement of the rule of law, coupled with signaling of an enticing way out of criminal activities. The relative impact of various levels of state capacity on the state's ability to engage in this type of coordinated strategy is an area for further study beyond the scope of this article. The following three steps are aimed at maintaining the needed momentum to preserve the attractiveness of MEOs, while never undermining the effects of the MHS.

How to Negotiate?

A central tenet of negotiation theory is that effective negotiations focus on *interests* rather than *issues*.[29] In the context of criminal organizations this is a critical distinction because a primary obstacle to engaging gangs in dialogue is that gangs do not typically have articulated interests that drive their conflict. The first step then is to determine the interests that gangs

hold and how these can be translated into a negotiating position. This can be considered a process of *assisted articulation* and is an important prerequisite to the second phase of the negotiation/mediation process during which gangs engage directly with the government.

The forces influencing membership in gangs reflect what leaders of a gang, or its core membership value. There are certain common themes that emerge when considering the factors that drive gang participation, including: (1) sociopolitical alienation/exclusion; (2) the failure of economic opportunities to meet expectations; (3) prestige (the allure of authority and power in a community); (4) identity formation; and (5) a history of exposure to violence.[30] As a result, the first step is to assist the leadership to explore and verbalize the specific concerns of their members that motivate them to join criminal gangs, and which in turn can be translated into negotiable positions. It is of particular importance to expand the focus of potential talks from a mere reduction of gang-related violence, to include a larger societal change agenda.[31] As an example, if both the desire for greater prestige and a lack of economic opportunities are central themes, a demand could be to have an institutionalized role in local governance, or a set level of municipal or central government investment to support local business in gang-controlled territory, which could include job-training programs for former gang members. One difficulty is that gangs will most certainly have their own set of demands that shape negotiations once they are coaxed to the table, such as reduced prison sentences for leaders or territorial demarcation in the bilateral negotiations between criminal organizations. The key to viable negotiations is to construct an agenda for the gangs that is politically feasible and can be framed as the government fulfilling its obligation to develop marginalized neighborhoods, which can become the focal point of negotiations and balance out the other demands.

Contributors to gang viability such as the absence of state presence and weak institutions in vulnerable neighborhoods, entrenched network effects, and illicit markets as a means of finance, are also important components of the process of assisted articulation because they pose both obstacles and opportunities. Engaging gangs in dialogue will need to weigh the opportunity cost that gang members incur when giving up criminal activities such as smuggling, extortion, or robbery. The size of the illicit markets that they tap into inform that cost. Therefore, the process of assisted articulation must take care to keep demands realistic, such as the involvement in local governance or job-training programs described previously. Additionally, entrenched networks offer an opportunity because networks can be easily mobilized for productive purposes once a set of principles have been agreed on. Increasing state presence in many gang communities, especially with respect to basic service delivery, will also address some of the factors that drive gang participation in the first place. This process of assisted articulation is possible if actors focus on the motivations for gang participation and pay heed to the elements that contribute to gang viability.

Step One: State-Sponsored Mediation

The first phase of the process involves the state only tangentially as a sponsor of dialogue between at least two rival gang factions, conducted in secret, with the goal of creating a cease-fire and ending the violence. There are three fundamental aspects of this process, the first being who to include at the table, the second how to manage expectations of the disputing parties, and finally how to structure the talks to make them politically feasible.

The state first needs to decide which gangs and specifically which actors within those groups to engage. An obvious criterion is to include groups based on their relative strength, as a truce that focuses exclusively on smaller, easily engageable players but neglects larger, more powerful actors will have a limited effect on the overall levels of violence. While the state may have little control over which gangs are powerful, if there is any choice in the matter, the government should focus on the gangs that have strong, hierarchical leadership structures over those with flat, atomized structures because the former configuration confers greater command and control within the organizations and therefore a higher probability of a durable truce.[32] This principle also implies that to the degree possible, the state should do all in its power not to weaken the authority of leaders during the mediation period. If a mediated cease-fire is to be sustainable the credibility of the gang leaders with their rank-and-file members must survive a negotiation and the strong leadership networks must remain to avoid fracturing and spoilers.

As mentioned earlier, a notable threat at this stage is that the gangs may engage in talks with each other not because they genuinely intend to seek a way out of their criminal past but rather because they feel it will improve their prospects in their conflict with the state. As the conflict in this case is trilateral, if the state is entirely absent from the first phase of discussions between the gangs, there is a higher likelihood that the discussions will have no incentive to address the state/gang conflict, and a bilateral truce will strengthen the gangs' position relative to the state. Because gangs are nonpolitical entities, direct gang discussions will likely drift toward the exchange of territory and market-share with the aim of reducing the pain of violence while still maintaining criminal activity. It is critical during this stage in the process that the discussions of a cease-fire be perceived by all parties as part of a three-step process and a gateway to the next phase rather than an end in and of itself. This requires manipulation by the state of the incentive structure of the talks to create the MEOs discussed previously and therefore requires the state's indirect involvement. The process of assisted articulation discussed previously mitigates the risk of devious objectives hijacking the cease-fire negotiations by giving voice to the latent frustrations that motivate gang membership and thereby creating a quasi-political consciousness that is actionable in a socially constructive way.

To maintain involvement but keep the talks secret the state can sponsor a mediator to frame the cease-fire dialogue as a "way out" and a means to get to the second phase of direct negotiations. Instead of engaging directly with the gangs, the government should use a surrogate to deflect criticism and maintain a level of plausible deniability. The surrogate can be a government-mandated envoy, who acts in absolute secrecy with no official ties to the government, or a trusted third party with sufficient leverage to coopt gang leadership into negotiations. The state can and must add leverage to its position by continuing pressure on the illicit means of financing and working to shut down illegal markets so as to lower the opportunity cost of switching to legal activities. If gang leaders feel that returning to the status quo is not an option and see reaching the second phase of negotiations with the state as more enticing than collusion, then the state-sponsored mediation has a chance of advancing. In order to keep the gangs at the table into the second phase and ensure that their incentive to negotiate is legitimate, criminal activity must either become, or remain sufficiently painful so that a return to crime is unimaginable. Once this is achieved and the process of assisted articulation is sufficiently advanced it is possible to turn to the second phase.

Step Two: Negotiation

Once a truce or cease-fire is credibly established between the two gangs it is then possible, and necessary, for the government to engage directly. Assuming that the process of assisted articulation was successful, gangs will have established a negotiating position that will include two elements: demands based on the political, economic, and social concerns of their members, as well as demands for amnesty, reduced sentences, and improved prison conditions, as was the case in El Salvador's truce. Although a truce may produce a reduction of violence, it will not implicitly generate a drop in criminal activities altogether. While gangs might not have an immediate interest in dismantling their criminal enterprises, the state certainly does. Therefore, as the process of intra-gang truce or cease-fire is being finalized, the state must move quickly to insert itself into the process more directly, and orient the focus onto larger societal change agenda.[33]

The key for the state during the bilateral negotiation phase is to make the way out of the conflict contingent on adhering to a structured plan to abandon criminality. If gangs are allowed to maintain their criminal operations after engaging in talks with the government the public would undoubtedly perceive that the situation amounts to tacit consent by the state. It is useful in this case to rely on Neumann's distinction between primary and secondary concessions, primary being those related to the stated demands of the organization, and secondary dealing with the personal fate of the groups.[34] Primary concessions in this case are essentially the set of political, economic, and social demands related to elements such as access to basic services in their communities that may have been cut off because of gang activity, or investment in job training programs for youth. Secondary concessions can be used as a means to coerce demobilization. The key for the state is to make questions of amnesty and improved prison conditions contingent on the gangs engaging in a process of demilitarization and de-criminalization of their organizations. The state must make it clear to gang leaders that it cannot feasibly grant amnesty to individuals who will return to their communities and continue to engage in criminal activities. The fate of these leaders and their organizations must be tied to demobilization. A way to strengthen the government's position when it comes to granting secondary concessions is to have negotiations be public. During the first phase of state-sponsored mediation the dialogue must be secret, but during the second phase the relatively hostile public can be used to bolster the government's position vis-à-vis the gangs by lending credibility to their argument that only certain concessions can be granted. Public opinion signals the government's firm reservation point to the gangs, clearly communicating that some justice must be served and criminality will not be tolerated.

While public opinion can be an asset to the state at this stage, it also could be a significant liability if the public rejects any form of dialogue out of hand. The state must therefore steadily coach the public into understanding the rationale for and benefits of the process. These efforts and overtures should begin during the initial secret discussions in the first phase so that the public is sufficiently prepared by the time the second phase is made public. There are various ways in which this can happen; the state could for example work with nongovernmental organizations that promote a more nuanced understanding of gang life and empower them to engage in a public education campaign about the gangs. The state could also engage key institutions to send "trial balloons," testing the public's receptiveness to different messages. Community leaders brought in on confidence could begin framing the issue of dialogue with the gangs as a humane process and a moral imperative that does not legitimize the groups' criminal activities. Sympathetic civil society actors must be mobilized and their voices amplified in public events with

influential community institutions, with their messages focusing on two key themes: the humanity of the gang members, and the lack of an alternative solution.

Step Three: Mainstreaming

The final stage is the process of mainstreaming and the monitoring of implementation. It is important that this final phase be the focus of bilateral negotiations between the state and gangs because the details of the mainstreaming process are an integral part of the incentive package needed to entice gangs to disengage from criminal life. Others have discussed the idea of mainstreaming as a process of "transformation," with some focusing on the political dimension by which former combatants advance their cause as legitimate players within the system.[35] Mainstreaming in this instance refers to the integration of gang networks into society as legitimate structures divorced from their criminal past and serving some positive function within their communities. There are obvious risks to this process of mainstreaming, namely that the allure of criminal markets would encourage recidivism and that the relative weakness of the state in traditional gang-dominated communities would inhibit robust verification of compliance.[36] The presence of guarantors of the peace process, which can provide a physical monitoring presence and incentive for compliance, would help mitigate this risk.

As practice shows, the process of mainstreaming is highly context-dependent. However, it includes two fundamental elements: (1) the new role gang structures play in society must fill the gaps that induced their initial turn to criminality; and (2) the allure of that new societal role and additional opportunities must be substantial enough to out-weigh the opportunity cost associated with criminal enterprises. While structural transformation that mainstreams existing gang associations is a novel concept, one need only look to the demobilization, disarmament, and reintegration process for the FARC in Colombia, or even the transformation of the Farabundo Marti Liberation Front (FMLN) into a viable political party in El Salvador to envision how a former nonstate armed group might transform. Gang members will likely be unqualified for highly skilled, education-intensive work so the state must work to develop skills-based training for former gang members. This process must be multidimensional however, as past research shows that job training programs that do not also address the psycho-social aspects of gang membership are ineffective at preventing gang matriculation.[37]

The state can address the psycho-social aspect of gangs in a post-truce context by allowing gangs to maintain their structures. While in some post-conflict environments it might be wise to disrupt the networks of former insurgent movements by separating demobilized units, because gangs are fueled in large part by the search for identity, belonging, and social capital, gang structures should remain intact. Gangs serve an important social function for the youth that join them and in many contexts actually emerge from long-standing patterns of youth association in their communities.[38] These networks can and should be mobilized in the mainstreaming process for productive purposes without disrupting the deep connection that gangs provide. To ensure that these networks do not relapse into criminal activity the state must also make clear that it maintains a zero-tolerance policy for criminal activity and noncompliance with the negotiated agreement. This also helps the state retain legitimacy in the eyes of the citizens. As previously mentioned, international guarantors should be allowed to participate as monitors to assist the state with compliance enforcement. The state can make it more likely that the opportunity cost of giving up gang behavior is lower by strengthening their efforts against spoilers or splinter groups that refuse to participate,

thereby raising the cost of returning to criminal behaviors. The mainstreaming phase of this strategy will only stand a chance of creating a durable peace if it focuses on ensuring that the opportunities presented are sufficiently enticing and that the new role in society directly addresses the root causes of gang participation.

To manage implementation at this phase, the government should combat spoilers either through force or a public information campaign, and work with a predetermined guarantor of the peace process to field a physical monitoring presence. Spoilers are defined by Stedman as, "leaders and parties who believe that peace emerging from negotiations threatens their power, worldview, and interests, and use violence to undermine attempts to achieve it."[39] "Greedy" spoilers on the gang side of the process, who increase their demands with each concession granted, or "total" spoilers, which will only settle for the complete derailment of the process, must be combated with force. For noncriminal actors in civil society opposed to the process and willing to spoil it, the government obviously cannot and should not use force. Instead, the state must work to coordinate the advocates of the process for a public education campaign during the second, public phase of the negotiations. The involvement of a sufficiently influential and respected guarantor that can deploy physical monitors can be a major asset in this effort.

The Gang Truce in El Salvador

The gang truce in El Salvador, negotiated in secret and announced in March 2012, is the most notable example in the Western hemisphere of using negotiation as an alternative means to confront gang violence. The truce lasted for over a year before collapsing and offers a good case by which to explore the assumptions and hypotheses outlined in this article. The achievements of the initiative are undeniable. For the fifteen months following the announcement of the truce, the homicide rate in the country dropped by 53 percent, a remarkable achievement for what was prior to the truce the second most dangerous country in the world not considered an active war zone.[40] Ultimately the truce proved unsustainable and by early 2014 the country had plunged back into staggering violence. The detractors of the truce are many, the most common criticism being that it only served to strengthen the gangs, echoing the devious objectives for negotiation argument. Critics also allege that while homicides did decrease, other criminal activity persisted and disappearances may have actually risen, although no data exist to substantiate this latter assertion.[41] In fact, empirical research on the effect of the truce on homicide levels and other forms of criminality found that homicide rates decreased substantially without a corresponding rise in other criminal acts.[42] In the end, however, the government withdrew its support for the truce in response to both hostile public opinion before an impending election and institutional pushback from within the government.[43] The following provides a brief background of the proceedings along with analysis of what the truce implies about the theory outlined in this article. It is not intended to be a comprehensive empirical test of the theory but rather an exposition of the theory's potential through a case analysis. Further empirical work to apply the theory outlined in this article to divergent contexts is an area for further research and discussion.

The truce of 2012 was negotiated primarily between the Mara Salvatrucha, or MS-13, and Barrio 18, which are the two largest gangs in the country, with Father Fabio Colindres, a local Catholic Bishop, and Raul Mijango, a former FMLN guerilla, serving as mediators. The government provided the space for the negotiation by allowing the mediators access to gang

leaders held in the maximum-security prisons and ultimately consenting to certain conditions demanded by the gangs. The government's involvement was initially denied when it was first revealed by the Salvadoran news outlet El Faro; however, a 29 August 2017 decision by a Salvadoran criminal court in a case brought against individuals involved in the truce acquitted those involved based on a finding that the truce was, in fact, state policy at the time. The most outspoken proponent of dialogue within the government during the initial, secret phase was General Munguía Payés, a former Defense minister who at the time of the negotiations served as minister of Justice and Public Security.[44] To facilitate the first stage of dialogue with gangs, the mediated truce, the government met the condition of selecting individuals with an enlightened interest in peacemaking, but whose informal relationship to the state could allow the state to maintain the secrecy condition. Raul Mijango for his part had the confidence of the government as a former commander in the FMLN, the guerilla army of the 1980s turned political party in power at the time of the truce. Through his work with the gang members as a private citizen focused on social justice issues Mijango had gained the confidence of key gang members. Father Colindres, although he did not enjoy the explicit blessing of the Catholic Church to negotiate, came from a more conservative religious strain and therefore the government and the gangs both viewed him as an unbiased moral authority.[45] The gangs themselves were represented by thirty individual leaders that served as spokespersons for their respective organizations.

With respect to the ripeness of the Salvadoran situation in 2012 for a negotiated settlement, violence was at historic highs, certainly suggesting the possible existence of a MHS. The gang violence had increased steadily in the decade before the truce, with tensions between the gangs and the government increasing as well. Importantly, MS-13 as early as 2006 showed signs that it perceived itself to be in a hurting stalemate with the government. In 2006 gang leaders reportedly approached key figures at Universidad Centroamericana (UCA), a respected university with a long history of involvement with peace processes, to explore the option of a truce between itself and the government.[46] Additionally, the largest rival of MS-13, Barrio 18, had split into two factions in 2005, the *sureños*, and another that called itself the *revolucionarios* and was considerably more violent than its predecessor, leading to an overall escalation in violence.[47] The state recognized the scale of the crisis and introduced a series of heavy-handed policies beginning in the early 2000s known collectively as "*mano dura*." The gangs responded by altering their tactics, making their networks more sophisticated, and turning more quickly to violence. The violence came to a head in June 2010 when members of Barrio 18, who controlled a local transportation extortion racket, burned a bus with all of its passengers inside over a payment dispute. This incident became seared into the national consciousness, the government quickly criminalized membership in gangs, and the gangs themselves began to realize, both due to the government's response and the existing level of violence fueled by the warring factions, that the conflict was unsustainable.[48] This suggests that the gangs both perceived a vertical hurting stalemate with the state, and as the majority of the violence existed between the gangs, a horizontal MHS likely existed between the gangs as well.

As the MHS likely existed between the gangs, the secrecy condition was being maintained, and the state tacitly supported the involvement of an enlightened actor serving as a mediator of a truce, the conditions were set for the first phase of the dialogue process. The impetus for the formal talks began in 2011 with discussions among civil society and religious leaders concerned about the inability of a confrontational security sector approach to solve the

violence. Conversations focused on how to structure a peace process with the gangs and dur-
ing these initial talks Mr. Mijango and Father Colindres took an active role.[49] With the gov-
ernment's consent, Mijango and Colindres began shuttling between the prisons, serving as
intermediaries between the rival gangs, and ultimately the government. The government
needed to be consulted because it needed to assent to certain conditions the gangs demanded
in exchange for the cease-fire, including transfer of key leaders from maximum to minimum
security prisons, more liberal visitation policies, and the use of cell phones for certain impris-
oned members.[50] On 29 February 2012, the gangs officially agreed to the following points:
(1) to cease all types of hostilities between the two gangs; (2) to cease attacks on members of
the national police; (3) to cease attacks on members of the armed forces; (4) to cease attacks
against members of the penitentiary system; (5) to avoid producing any more civilian casual-
ties.[51] Beyond the cease-fire established by the agreement, a joint statement released by the
leaders of MS-13 and Barrio 18 on 19 March 2012 indicates that the mediators were at least
partially successful in the process of assisted articulation. In the Spanish statement translated
here the gang leaderships state:

> The path to conversion that we have initiated is the result of a profound effort of analysis and
> discussion guided by the facilitators of the church and civil society, which has already begun to
> produce positive things which are of benefit to society. We do not ask to be pardoned for crimes
> already committed, only that the law is fairly applied, that we are treated as human beings, that
> we are supported in the social and productive reintegration of our members giving them work
> and educational opportunities, that they are not discriminated against and not repressed for the
> simple fact of being tattooed without having committed some criminal act.[52]

In the following month the truce was made public by the news outlet El Faro and
although the government initially denied any involvement it became clear very quickly that
it had played a role in sanctioning the process and granting certain concessions. In keeping
with the three-step theory outlined in this article, this would be the point at which the state,
if it perceived an MHS with the gangs, would move into direct negotiations with the gangs,
engaging on a platform established through the assisted articulation process. However, dur-
ing the following months the truce moved into the implementation phase without any direct
negotiation or engagement by the state. Three other large gangs in the country joined the
process and "peace zones" were established during this period. In these zones the gangs
agreed to a total cessation of hostilities and certain organizations were allowed access to
begin serving the community. Police were however barred from entering the communities
as part of the agreement the gangs struck, a controversial move that created tension inter-
nally within the government among different factions.[53] Despite concerns about the ability
of the gangs to control their membership, within a day of the truce being implemented daily
homicides dropped precipitously and stayed low for almost fifteen months.

Unfortunately, after a little over a year the truce began to unravel following a series of fatal
blows. The first of these came in the form of a Supreme Court ruling that removed truce-sup-
porter General Munguía Payés as minister of Justice and Public Security. General Payés was
replaced by Ricardo Perdomo, a staunch opponent of the truce who advocated vigorously for a
return to *mano dura* policies. The state then replaced Mijango and Colindres as intermediaries
with a second camp of mediators who did not enjoy the same legitimacy with the gangs and
denied the former mediators access to the prisons.[54] The third and final blow to the truce was
contextual. Due to the immense hurt that the gangs had inflicted on society, the idea of the gov-
ernment granting any concessions was extremely unpopular and as the 2014 election drew

closer, the right-wing Alianza Rupublicana Nacionalista (ARENA) party used the truce as a means to paint the ruling FMLN party as soft on gangs. In response, and at the urging of those within the government hostile to the truce, the FMLN began to return to its policy of confronting the gangs. The gangs, perceiving this as a breach of the truce conditions began to re-arm in mid-2013 and conditions devolved into a trilateral war between the government and the two largest gangs.

In El Salvador the truce failed in part because there was no hurting stalemate perceived on the side of the government, and therefore the government never truly entered into the second phase of a principled negotiation with the gangs. Instead, the ad hoc implementation of peace zones, and the state's ultimate rejection of the truce were an inevitable outcome of its failure to commit to the process of negotiation. The government could gain politically by escalating in an atmosphere of high public hostility toward gangs. This is in part because in El Salvador the tolerance for pain and violence remains very high and therefore a large enough portion of the electorate never reached the point of recognizing that escalation was untenable.[55] The extreme conditions in the maximum security prison and rampant violence pushed the gang leaders toward a vertical hurting stalemate with the government and horizontally among themselves, but the vertical hurting stalemate with the state was never mutual. It is possible that the gangs did not in fact perceive a complete horizontal hurting stalemate given their reputation for savagery and perceived tolerance for pain. However, overtures by the gangs to civil society actors prior to the truce, and subsequent actions suggest that the gangs are concerned about high levels of violence, despite employing it liberally as a tactic. Gangs in early 2016 offered another truce if the government would relax the *mano dura* approach, but the government declined, demonstrating again the lack of a vertical MHS. The public hostility toward the truce in large part stemmed from a failure of the government to effectively frame the truce as a way out of the gang violence. This in turn drained any political will needed to move the process out of the first phase of mediation into a negotiation based on mainstreaming.

According to the theory outlined in this article, the fact that a horizontal hurting stalemate existed and a vertical one did not should have been sufficient to initiate dialogue, assuming an enlightened state actor advocated for the talks, and mediated cease-fire discussions were conducted in secret. Where the process foundered was twofold: first the government failed to actively prepare the population for the announcement of the truce, and second, the second phase of negotiations between the government and the gangs never truly existed and certainly did not prioritize the social, economic, and political components of a deal that had in fact become part of the gangs' negotiating position. Therefore, interventions in the peace zones were under-resourced and moved too slowly to ween gangs off of criminal activity. The concessions granted by the state were mainly concerned with the conditions within the prisons and keeping the police out of the newly established peace zones. While there were initiatives in certain peace zones in which Mijango and others worked with local businesses and gangs to eliminate extortion in exchange for resumption of municipal services, the efforts were not systematic and in most cases the gangs continued to operate.[56] This condition contributed to the public confidence crisis plaguing the government as the 2014 election neared. By endorsing the truce the government could be accused of the sanctioning criminal behavior that was still occurring, regardless of whether or not this charge was valid. The state also had very little incentive not to return to conflict with the gangs, given the lack of a perceived hurting stalemate. The state in this instance needed to have prepared the

public earlier to shift the perception of gang conflict, and to have engaged the gangs on the socioeconomic aspects of their negotiating position, while simultaneously making it clear that criminal activity would not be tolerated. Ultimately, the inability to transition beyond the cease-fire doomed the truce.

Conclusion

The theory presented in this article seeks to explain how it might be possible to engage in fruitful dialogue as an alternative means of confronting a criminal gang. Gangs, while posing by far the most substantial threat to citizen security in the Western hemisphere, fall outside the scope of traditional theories in the field of mediation and negotiation. The high political cost of engaging in dialogue and the assumption that due to their apolitical character gangs lack a coherent negotiating position has led to an approach that relies heavily on the security sector. While the security sector can and must play an important role in creating a safe and secure environment, confrontation alone has proven insufficient. The case of El Salvador offers a stark example of how a society steeped in gang violence might pursue dialogue while also highlighting the likely threats. As transnational criminal networks continue to expand and gang activity becomes an increasingly pervasive threat to security around the globe, dialogue may offer the best means to diminish the pain these groups inflict. The insights contained in this theory offer some guidance to those searching for an alternative means to produce some sustainable relief from the threat of gang violence and offers a way out of a seemingly intractable conflict.

ORCID

Siniša Vuković ⓘ https://orcid.org/0000-0002-5645-0639

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