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Organised Crime Groups, Criminal Agendas, Violence and Conflict:

Implications for Engagement,
Negotiations and Peace Processes

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Acronyms and abbreviations

AVRP	Armed Violence Reduction Programme
BiH	Bosnia and Herzegovina
CVR	Community Violence Reduction
CPS	Criminalised Power Structure
DPKO	Department of Peacekeeping Operations (DPKO)
DDR	Disarmament, Demobilization and Reintegration
DTO	Drug Trafficking Organisation
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MEO	Mutually Enticing Opportunities
MHS	Mutually Hurting Stalemate
NIAC	Non-International Armed Conflict
NSAG	Non-State Armed Group
OAS	Organization of American States
SOC	Serious Organised Crime
UNTOC	United Nations Convention against Transnational Organized Crime

Summary

Organised crime actors can be spoilers in peace processes or partners in peace. Policymakers and practitioners have in some cases engaged in a strategic trade-off – accepting organised crime as part of the political settlement to achieve short-term stability. However, the relationship between illicit markets and conflict can deepen over time, entrenching criminal structures in the post-conflict state. As Kemp and Shaw (2014, p. 16) argue, ‘failure to integrate issues of organised crime into mediation strategies and peace processes will leave the international community with a potentially dangerous blind spot.’

Negotiating with organised crime groups and addressing criminal agendas in peace processes has become a reality in practice. There is, however, limited research on negotiating with criminal actors in peace processes. In seeking to address this gap, this paper reviews scholarly and practitioner literature across a wide range of research disciplines.¹ Key findings from this evidence review include:

- Confrontation approaches have failed to resolve the problem of serious organised crime (SOC) and, in some cases, have fuelled more violence and criminality.
- Organised crime groups that have strong internal cohesion and hierarchical leadership are more likely to be considered potential partners in negotiation.
- Negotiation can be a necessary approach when criminal groups have strong territorial control – serving as *de facto* authorities that fill governance gaps.
- Socio-economic and financial opportunities, and legal leniency, can encourage criminal actors to come to the negotiating table and agree on a deal.
- A criminal group’s demand for legal leniency tends to be higher when they are expected to make larger concessions, such as to disarm and demobilise.
- It is challenging to determine an ‘end state’ to a criminal group and to achieve complete resolution of the criminal agenda.
- Lack of political will, inadequate resources, and weak long-term planning constrain positive outcomes of negotiation processes and deal implementation.
- Negotiators and mediators need to mitigate the risks of moral hazard and strengthening of criminal groups.
- The lack of broad public support for negotiating with SOC actors can undermine and destroy such processes.
- A balance is needed between satisfying the interests of victims and of perpetrators to avoid alienating victims and producing public backlash for negotiated deals.
- Many negotiations tend to occur in secret, yet lack of transparency can undermine the legitimacy and sustainability of outcomes.

¹ These include political science, criminology, peace and conflict studies, terrorism, non-state armed groups (NSAGs), disarmament, demobilisation and reintegration (DDR), transitional justice, and international law.

This review demonstrates the importance of creating a framework for engaging with criminality and organised crime groups that extends beyond confrontation – allowing for accommodation and incorporating a wider societal change agenda through transformation. This requires an understanding of when to address SOC and engage criminal groups in peace processes; how to motivate actors to negotiate, conclude and implement deals; how to increase the likelihood of positive outcomes; and how to mitigate risks associated with negotiation. Drawing on a wide breadth of interdisciplinary literature, this paper aims to provide insights into these crucial questions.

The case studies illustrate key themes and findings from this review (see Appendix 1). In El Salvador, ineffective confrontation, the internal cohesion of gangs, and an opportune moment contributed to the the successful conclusion of a gang truce. It ultimately failed, however, due in large part to public outrage that translated into political pullback. In Colombia, negotiations with the FARC² produced an innovative transitional justice mechanism that, alongside security guarantees, served as an effective inducement for disarmament. In contrast, the absence of a requirement to disarm and demobilise was a key criticism of negotiations with gangs in Jamaica, where violence has continued. In Mali and in Kosovo, international actors were initially hesitant to address organised crime in peace processes, yet this was subsequently recognised as contributing to longer-term instability, resulting in new strategies to address SOC actors.

For a visual summary of this review's findings, see the summary charts in Appendix 2.

² *Fuerzas Armadas Revolucionarias de Colombia–Ejército del Pueblo* (the FARC).

1. Introduction

Organised criminal groups have perpetrated violence in some contexts to a scale resembling experiences of war. Linkages between serious organised crime, politics, and violent conflict are well established in the literature. SOC can be fuelled by conflict, contribute to the persistence of conflict, or exist independently of conflict. Combinations of organised crime, illicit wealth and political power are especially complex to address. Law-and-order approaches have failed to resolve the problem of SOC, particularly when actors involved in organised crime oversee policymaking or play integral roles in security and justice institutions. Repressive tactics have also been counterproductive, escalating violence, and in some cases, raising sympathy and support for the targeted criminal group. Such support may already exist for groups that have gained legitimacy by filling governance gaps and providing services to communities.

Out of options, state actors have turned to negotiation with criminal actors in peace processes – in situations of urban violence and in civil wars. International peace operations have also begun to recognise the necessity of addressing organised crime and criminal agendas at the negotiating table and in stabilisation and peacebuilding missions. Yet, there is little guidance on when negotiation may be a preferable option; on how to negotiate or mediate with actors deeply invested in illicit economies; and on factors and conditions that can contribute to the success or failure of the process and implementation of agreements. This shortfall exists in practice, with limited discussion of SOC in the guidelines and independent mission statements of peace operations, and in analytical and empirical research.

A siloed approach to research and practice has contributed in large part to this deficiency. Peace and conflict studies, including conflict management and peace mediation, have focused on political violence and armed conflicts related to contested forms of state and territorial sovereignty – with limited examination of criminal violence, criminal governance, and negotiation with criminal organisations or gangs (Ferreira and Richmond, 2021; Freeman & Felbab-Brown, 2021; Rahman & Vuković, 2019). The absence of transitional justice experts from negotiations with criminal groups has further hindered the sharing of lessons and possibility of a more comprehensive approach to negotiation (Freeman & Felbab-Brown, 2021). Similarly, disarmament, demobilisation and reintegration (DDR) practitioners have yet to recognise their relevance in debates on creating legal alternatives for organised crime actors (Shaw & Reitano, 2017). Political science and political violence literature also tends to exclude the study of organised crime as these organisations and their violence are still often not recognised as political (Barnes, 2017).

Of the research that does exist, much of it centres on engagement with criminal gangs. Even here, empirical evidence on truces – the conditions that give rise to them and their effects – is limited (Cruz, 2019). The controversial nature of engagement with such actors has contributed to the insubstantial evidence base as officials are less likely to admit that they negotiate with criminals (Cruz, 2019).

This evidence review paper seeks to address this gap in research on addressing illicit economies and SOC, and negotiating with criminal actors, during peace processes. It adopts an interdisciplinary approach, drawing on a mix of scholarly and practitioner literature, spanning political science, criminology, peace and conflict studies, terrorism, non-state armed groups (NSAGs), disarmament, demobilisation and reintegration (DDR), transitional justice, and international law. There is much discussion in the literature of this need to ‘work across sectors and beyond professional silos’ (Carl, 2016, p. 44).³ The review searched for studies within these different disciplines that specifically cited organised crime or related wording.⁴ Exploring and pooling together analysis and evidence across the areas of study, this paper identifies common themes, issues, criteria, and characteristics of engaging with SOC and criminal actors in peace processes, which have been used to structure this report and its findings.

First, this review lays out the overlap between organised crime, violence, and conflict (section 1); and between SOC actors and other NSAGs (section 2). The linkages between crime and conflict provide the context in which organised crime actors and other armed groups overlap in strategy, activities, and at times, motivation. This demonstrates the complexities involved in addressing SOC in conflict environments. Second, the paper sets out three key approaches to addressing SOC and criminal actors in conflict environments and urban settings discussed most often in the literature: confrontation, accommodation (or negotiation), and transformation (sections 4-6). Research on addressing SOC through these three approaches often emphasises the inadequacy of confrontation alone, identifying elements indicating when negotiation may be preferable and necessary. Third, the paper highlights findings from the literature on accommodation and transformation, discussing why parties may want to negotiate and what they expect to achieve (section 7); and what factors influence the success or failure of outcomes of these processes, based on experiences from various countries (section 8).

Fourth, this review discusses the intersections of SOC and international humanitarian law (IHL), and SOC and transitional justice – two key emerging areas of research concerning when to negotiate and factors influencing outcomes. IHL is an area still widely debated in terms of its application to SOC actors, but which could provide guidance on when such actors should form part of a peace deal or agreement (section 9).

³ Ferreira and Richmond (2021) argue that criminal governance requires a peace settlement framework involving the full range of peacemaking activities (including conflict resolution, mediation, peacekeeping, peacebuilding and statebuilding). The vast field of peace mediation and the theory and practice of transitional justice can provide knowledge and lessons for improved negotiations with criminal groups (Freeman & Felbab-Brown, 2021). Scholars have also suggested that research on organised criminal violence could benefit from existing work on rebel groups and other NSAGs (Freeman & Felbab-Brown, 2021; Kalyvas, 2015); and from drawing on terrorism research (Phillips, 2018). Similarly, there is a need to mainstream crime prevention and mitigation strategies into peacebuilding and conflict prevention work in a much more systematic way (Global Initiative & USAID, 2022).

⁴ The search strategy relied in large part on Google, Google Scholar and particular NGO sites, inputting different combinations of ‘organised crime’, ‘illicit economies’, ‘gangs’, ‘mafia’, ‘criminal groups’, ‘criminal networks’, ‘criminal governance’, ‘criminal agenda’, ‘criminal violence’, ‘urban violence’, ‘social violence’, ‘war economies’, ‘crime-conflict nexus’, and ‘functionality’ – alongside varying combinations of ‘conflict’, ‘confrontation’, ‘repression’, ‘law-and-order’, ‘negotiation’, ‘accommodation’, ‘dialogue’, ‘engage’, ‘mediation’, ‘transformation’, ‘mainstreaming’, ‘truce’, ‘peace agreement’, ‘peace deal’, ‘settlement’, ‘peace processes’, ‘stabilisation’, ‘peacekeeping’, ‘peacebuilding’ or ‘peace operations’. The names of different research disciplines (for example, transitional justice, IHL, NSAGs, DDR, terrorism) were also added. Searches were also conducted on sub-topics identified from the initial research (for example, ‘ripeness’, ‘MHS’ (Mutually Hurting Stalemate), ‘internal cohesion’, ‘legal leniency’ and so on). Searches also incorporated specific geographic areas. Further literature was identified through snowballing.

The field of transitional justice, while long having debated issues relevant to accommodation with SOC actors, has only recently gained attention in the study of organised crime as holding insights that can make negotiation and peacemaking with SOC actors more effective (section 10). Finally, the paper explores risks and challenges associated with negotiation with criminal groups. The application of IHL and transitional justice has specific risks, discussed in sections 9 and 10. The review reveals various other risks and challenges of negotiation in general, evident from the literature, focusing here on the risks of strengthening SOC actors; displacing violence; and lack of public support (section 11).

Existing evidence on negotiation with SOC actors is primarily based on single case studies, rather than systematic or comparative studies. In addition, studies tend to centre on the same small subset of cases, thus producing an availability bias (Freeman & Felbab-Brown, 2021).⁵ El Salvador and Colombia were selected as case studies for this report as they are among the small subset for which there is sufficient and reliable literature to draw upon, and these case studies are found in Appendix 1. In addition, they provide useful illustrations of the key themes and findings from this review. To address the issue of ‘bias’, efforts were made to provide examples of experiences from outside these two countries. As such, the case studies section includes shorter profiles of Jamaica, Mali, and Kosovo. There are also brief country examples, from different parts of the world, throughout this report, relevant to each section.

⁵ The Institute for Integrated Transitions (IFIT) has in recent years engaged in academic research and field work (interviews with experienced negotiators, observers, and experts) that identifies and draws on a wider range of case studies in relation to negotiation with violent criminal groups, thus starting to address the gap in comparative research. IFIT’s first comprehensive report on the topic looks at diverse cases from Latin America and the Caribbean (Felbab-Brown, 2020), while the second one draws on a global set of case studies (Freeman & Felbab-Brown, 2021).

2. The crime-conflict nexus: implications for peace processes

Criminal violence is so widespread and brutal that the effects in some cases can resemble experiences of war (Freeman & Felbab-Brown, 2021). Rahman and Vuković (201, pp. 935-936) emphasise that ‘conflicts are increasingly multi-dimensional, with the majority of violent deaths not directly related to armed struggles, but rather to criminal activities, organised crime, the drug trade, and political and state-led violence.’ This section looks at the linkages between crime, violence, conflict and politics – demonstrating the complexities of peace processes and the frequent need for negotiating teams and peace missions to acknowledge and address organised crime in conflict settings.

2.1. Linkages between crime, violence, and conflict

There is an extensive body of literature that points to the various ways in which organised crime and violent conflict can be linked. At the same time, Dininio (2015) cautions against automatically assuming such a connection: relationships among criminal and conflict actors can be cooperative, conflictual, or remain entirely separate.

Conflict creates space, opportunities, and needs for organised crime (Steenkamp, 2017). Caparini (2019) and Steenkamp (2017) argue that war can produce greater organised crime by weakening a state’s law enforcement capacity and causing hardships among local populations, which can drive them to meet their needs through illicit activity. Sampaio (2019) finds that rebels may strike deals with gangs and local militias to provide local security as part of their conflict strategy. Steenkamp (2022) states that existing organised crime groups, in turn, may cooperate with armed actors to gain access to recruits, markets and political influence. In addition, wars may create new markets and environments for the smuggling of weapons, exploitation of natural resources, and human trafficking. Wars can also normalise violence, contributing to greater social permissiveness concerning violence and crime (Di Salvatore, 2019).

There is evidence which supports the view that **organised crime, in turn, facilitates conflict** (De Boer & Bosetti, 2017a). Pinson (2022) and Steenkamp (2017) note that NSAGs are often involved in illicit economies to obtain funds to buy weapons, pay combatants and control populations. Earning a profit may also provide NSAGs with an incentive to continue the conflict (Pinson, 2022). Additionally, Steenkamp (2017) argues that criminal actors that play a governance role during conflict can make resolution more complex by undermining state-society relations.

Organised crime networks and illicit economies often persist into the post-conflict phase (Steenkamp, 2022). Pinson (2022) notes that the widespread availability of surplus arms can obstruct peacebuilding efforts; while Barnes (2017) stresses that many former combatants never fully demobilise, with some subsequently joining criminal organisations. This propensity for continued criminal violence has been well

documented in urban areas in Latin America, a region with 81% of its population in urban settings (Sampaio, 2019, p. 184). In Colombia, for example, former paramilitaries remobilised as criminal organisations after the peace negotiations in the early 2000s, engaging in many of the same violent and illicit activities as before (Barnes, 2017). Ferreira and Richmond (2021) argue that such urban social violence also requires a peace settlement.

Syria

The state has diverted much of its resources to the war, ongoing since 2011, which has reduced its capacity for maintaining law and order and containing illicit economic activity. Sanctions against the Syrian government since 2011, and the general economic catastrophe that has accompanied the war, have also contributed to hardships for Syrians.⁶ This, in turn, stimulated a demand for grey and black market goods and provided incentives for the smuggling of consumables. Drug production and trafficking have also provided employment opportunities for civilians in need. Such illicit activities have provided insurgents with funds to buy weapons, pay recruits, and engage in local service delivery in exchange for protection, loyalty, and cooperation from local communities. This, in turn, has further fragmented and undermined the central authority.

Source: Steenkamp, 2017

2.2. SOC actors as spoilers and partners in peace

Given the frequency of a crime-conflict nexus, there is **growing recognition that peace processes need to recognise organised criminality as a driver of conflict and spoiler in peace processes** (van der Lijn, 2018; Steenkamp, 2017; Banfield, 2014). A 'peace process' involves 'a series of talks, agreements and activities designed to end war or violence between two groups'⁷. It can include formal and informal mechanisms, and various actors over a long period of time. De Boer and Bosetti (2017a) emphasise that SOC actors can be both spoilers and partners in peace. Wanis-St John and Mac Ginty (2022), in turn, argue that all actors with the potential to act as spoilers to an agreement should be included in the peace process. Van der Lijn (2018) and Kemp and Shaw (2014) also stress that if criminal groups are *de facto* authorities with legitimacy and power over local populations and/or the host government, their voices need to be heard.

The Global Initiative and USAID (2022) emphasise that **organised crime is carried out not only by criminals but can also involve political actors and political processes**. The Global Organised Crime Index documents that 'state-embedded actors' (those working within the state) are the most dominant perpetrators of organised crime

⁶ For further discussion on the effects of sanctions on the economy and general public, see other SOC ACE research: Fazli, S. (2022). *Narcotics smuggling in Afghanistan: Links between Afghanistan and Pakistan*. SOC ACE Research Paper No. 9. Birmingham, UK: University of Birmingham. <https://www.birmingham.ac.uk/documents/college-social-sciences/government-society/publications/narcotics-smuggling-in-afghanistan-paper.pdf>; Hoang, T. (2022). *Human trafficking in the Afghan context: Caught between a rock and a hard place?* SOC ACE Research Paper No. 10. Birmingham, UK: University of Birmingham. <https://www.birmingham.ac.uk/documents/college-social-sciences/government-society/publications/human-trafficking-in-the-afghan-context-paper.pdf>

⁷ Berghof Foundation. Peace process. <https://berghof-foundation.org/themes/peace-process>

(GITOC, 2021, p. 17). Dziedzic (2016a) supports this view, coining the term ‘criminalised power structures’ (CPS) to describe the combination of illicit wealth and political power that acts as a key spoiler of peace and stability. De Boer and Bosetti (2017a) find that in some cases, the state deliberately allows, tolerates, and even sets up the conditions that enable these criminal-political systems to thrive. Caparini (2022) and GITOC (2021) add that the presence of criminal actors in state institutions, and of political actors closely linked to organised crime, is a significant obstacle to countering such crime due to their role in policymaking and implementation. Research on contexts in which CPS are present (such as Haiti, Kosovo, and Sierra Leone) finds that stabilisation missions have routinely arrived unprepared to confront them (Dziedzic, 2016a).⁸

2.3. Balancing short-term and long-term stability

Bosetti et al. (2016) claim that **international actors face a dilemma that any effort to tackle organised crime risks creating instability**. Much research (Bhatia, 2021; van der Lijn, 2018; Steenkamp, 2017; Bosetti et al., 2016) indicates that policymakers and peace operations have engaged in a strategic trade-off – accepting organised crime as part of the political settlement (or avoiding it at least in the early stages) to achieve short-term stability and an accelerated peace process. Bhatia (2021) and van der Lijn (2018) argue that this approach also recognises that some criminality can be beneficial to peacebuilding processes, particularly where SOC actors are service providers and/or illicit activities provide sources of livelihoods.⁹

Some studies have also suggested that **engaging with SOC actors can potentially form part of a ‘bribing for peace’ mechanism** (Jonsson, Brennan & O’Hara, 2016). Cockayne (2013a) finds that access to or laundering of criminal rents can incentivise actors to support a political settlement. Jonsson et al. (2016) support this view with research on Tajikistan’s civil war, where divisions of spoils from the drug trade were used to ‘buy off’ rebels, leading to the 1997 peace agreement and ensuing stability.

Many scholars (Pinson, 2022; van der Lijn, 2018; Shaw & Reitano, 2017; Steenkamp, 2017; Bosetti, Cockayne, & de Boer, 2016) argue, however, that unaddressed, **the relationship between illicit markets and conflict deepens over time, which could entrench organised criminal structures in the post-war state**, subverting the recovery process and democratic development. Pinson (2022) specifies that the continued operation of criminal networks without accountability may decrease trust in public institutions, undermining post-conflict governance. Caparini (2022) and Dziedzic (2016) also find that transitioning authority to local institutions, without addressing embedded linkages to organised crime, is likely to undermine capacity building and peacebuilding.

Dziedzic (2016b, p. 388) reveals that a key contributing factor to the 50% rate of return to conflict in five years after international intervention in all the cases examined is the

⁸ For further discussion, see Appendix 1, Kosovo case study.

⁹ For further discussion, see sub-section 6.1. on Functionality.

lack of mission preparedness to deal with CPS spoiler threats.¹⁰ Bosnia and Herzegovina (BiH) and Kosovo are often cited as examples where missions were unprepared and unwilling to deal with CPS, due in part to concerns that it would undermine relative stability. This allowed organised crime to become more embedded (van der Lijn, 2018; Dziedzic, Mercean, & Skendaj, 2016).¹¹

Cockayne (2013b) argues that a key challenge for international actors and mediators is to determine precisely when criminal agendas threaten the success of peace processes, and what they can do about it. It is thus important for such actors to engage upfront in a thorough threat assessment of serious and organised crime to develop better preparedness.¹² Dziedzic (2016b) cautions, however, that there is no discussion in the Department of Peacekeeping Operation's (DPKO) guidelines suggesting that CPS might be a spoiler. Further, in none of the cases examined by Dziedzic (2016b) was the threat posed by CPS recognised and addressed when the international mission mandate was written. Dziedzic (2016b) proposes that in order not to overburden peace operations with the task of eliminating all organised crime, a compromise may be to focus attention solely on SOC intertwined with political structures, neglecting other forms of organised crime in the short term (Dziedzic, 2016b).¹³

Haiti

There are long-established links between gangs and political power in Haiti (Beer, 2016). MINUSTAH's¹⁴ DDR programme was widely criticised for not realising that, from March 2004, the threat to stability came not from rebel armed groups, at which DDR programmes are traditionally targeted, but from local gangs and criminal violence, which were significant potential spoilers (Beer, 2016; Cockayne, 2009). The development of the Joint Mission Analysis Cell enabled the cultivation of a network of paid informants that provided intelligence relating to the activities of urban gangs, allowing gangs to be confronted (Beer, 2016; Cockayne, 2009). The strategy was only a partial success, however, because the gangs only constituted half the CPS equation, leaving untouched the elites that had mobilised the gangs as instruments of political power (Beer, 2016).

The crime-conflict nexus, and its connection to politics, has produced dilemmas for peace missions and others working in conflict-affected contexts and situations of urban violence, including whether to address criminality and engage with SOC actors. This decision is complicated by the stabilising role that organised crime can play at times. There is growing consensus that, to achieve sustainable peace and stability, SOC cannot be ignored. Linkages between crime, conflict and politics have also produced an overlap between SOC actors and other armed groups, discussed in the following section.

¹⁰ Based on case studies of Bosnia, Guatemala, Kosovo, DRC, Sierra Leone, Afghanistan, Iraq, Colombia, and Haiti.

¹¹ See Appendix 1, Kosovo case study.

¹² For information on the Serious and Organised Crime Threat Assessment (SOCTA), see: <https://www.europol.europa.eu/publications-events/main-reports/socta-report>

¹³ For further discussion on addressing SOC and short-term and long-term stability see Appendix 1: Mali case study and Kosovo case study.

¹⁴ *Mission des Nations Unies pour la stabilisation en Haïti.*

3. The overlap: SOC actors and other NSAGs

The terms ‘organised crime groups’ or ‘criminal organisations’ refer broadly to structured groups of individuals that profit from engaging in criminal or illicit activities (Rahman & Vuković, 2019; Cruz & Durán-Martínez, 2016; Wennmann, 2014). They can take many forms, including transnational drug trafficking cartels, poly-criminal organised crime syndicates, and local gangs – in some cases intersecting with paramilitaries, militant groups, or even state agents (Freeman & Felbab-Brown, 2021; Rahman & Vuković, 2019; Cruz & Durán-Martínez, 2016; Wennmann, 2014). In macro-criminal networks, there will be overlaps between government, business, and criminal structures and a multiplicity of violent actors (Felbab-Brown, 2020). This section looks at the ways in which SOC actors and ideological non-state armed groups can overlap in terms of strategies, activities and, at times, motivations. This, in turn, can result in intersecting approaches and similar tactics to addressing SOC actors and other NSAGs.

Serbia

The Zemun Clan, a large structured criminal group, initially started with trafficking of stolen upmarket vehicles. The group then joined with another major group, the Surčin Clan, subsequently focusing exclusively on the more lucrative narcotics trade. During and immediately after the civil wars in the former Yugoslavia, the clan enjoyed the support of various state institutions. Individuals with battlefield experience were recruited to perform the most brutal tasks for the group, including abductions and executions of competitors. The clan also aimed to take over key levers of power in the government. In 2003, they orchestrated the assassination of Serbian Prime Minister, Dr. Zoran Đinđić. The immediate motive was that the members of the clan had sensed a threat from the new political coalition, led by Đinđić, which had been preparing a repressive campaign against them.

Source: Radovanović, 2018

3.1. Ideological, political, and criminal agendas

Much of the literature (Freeman & Peña, 2022; Felbab-Brown, 2020; Caparini, 2019; Phillips, 2018; Kalyvas, 2015) highlights the **common view that organised crime groups lack an ideological profile** and grand political aims (such as overthrowing the government), unlike conventional armed groups. Rather, they are seen as mainly interested in preserving the political status quo and co-opting existing political institutions to gain profit (Freeman & Peña, 2022; Kalyvas, 2015).

Yet, political and criminal motives may be closely intertwined, as observed in research on the crime-conflict nexus (see sub-section 1.1) (Caparini, 2019; Steenkamp, 2017; De Boer & Bosetti, 2017a; Cockayne, 2013b). De Boer and Bosetti (2017a) suggest viewing organised crime as a ‘strategy’, instead, that is adopted by criminal

organisations and conflict actors (whether state or non-state). Sampaio (2019) echoes this view, noting that political armed groups can transition into criminal activity. Schuberth (2015) supports this with evidence from Haiti, where gangs shifted from political to criminal violence. This was attributed to the decline in political sponsorship (after a period of political turmoil in 2004), which prompted gangs to seek alternative revenues through criminal means (Schuberth, 2015).

Badillo and Mijares (2021) find evidence of the converse, where armed groups with criminal intentions have politicised over time. Their comparative analysis of six Latin American cases reveals that three of the organised crime groups studied became politicised – due in large part to the state’s approach to combating them through extreme security measures. This incentivised them to adopt a political discourse, to be seen not simply as criminals.

Van der Borgh (2019), Barnes (2017) and Kalyvas (2015) argue that **even if criminal groups lack a political strategy or agenda, their activity can have political implications**. Criminal groups have developed collaborative and competitive relationships with the state, which have garnered them substantial political authority (van der Borgh, 2019; Barnes, 2017). Felbab-Brown (2020) provides support for this view with evidence from Colombia, where negotiators understood that while the Gulf Clan¹⁵ lacked a political nature, their territorial control and provision of services to communities was political in effect.

Based on a global set of case studies, Freeman and Felbab-Brown (2021) argue that **much of the theory and practice of peace negotiations with militant groups can, and should, be applied to negotiations with criminal groups**. Felbab-Brown’s (2020) research on negotiations in Latin America and the Caribbean finds that negotiations between governments and criminal groups resemble those undertaken with insurgents or militants, in terms of knowledge requirements and challenges. These challenges include risks associated with managing the emergence of strong opposition and powerful spoilers; ensuring unity of the negotiating team; and managing trade-offs between transparency and secrecy. She also identifies common strategic and tactical calculations common in both types of negotiations (Felbab-Brown, 2020, p. 38):

- maximising sources of leverage before and during the process;
- setting out an agenda with clear objectives and ground rules;
- identifying internal or external red lines as early as possible;
- using sanctions for defections and non-compliance;
- having a common underlying public message; and
- paying attention to questions of identity, dignity and honour.

¹⁵ The Gulf Clan has been referred to in various literature as a criminal organisation, drug cartel, paramilitary group, and/or gang network.

3.2. Crime-terror nexus

The two categories of ‘crime’ and ‘terrorism’ are often distinguished based on motivation, with the view that terrorist groups are motivated by ideological and political aims, while criminal groups pursue profit (Omelicheva & Markowitz, 2021a and 2021b; van Santen, 2018). Perliger and Palmieri (2022) find, however, that **terrorist groups have intensified their cooperation with criminal entities**, or their independent engagement in criminal activities. Omelicheva and Markowitz (2021a) specify that criminal and terrorist groups have used each other's expertise, skills, networks, and institutional structures for mutual advantage (for instance, terrorist groups providing security for criminal cartels in exchange for cash). They also find that groups recruit from the same milieus, with terrorist organisations benefiting from recruiting former criminals, with experience in violent and clandestine behaviour, and access to criminal networks. Links to acts of terrorism have the potential, however, to render SOC actors unpopular with local populations.

Crime-terror studies have explored the emergence of **hybrids, involving the full convergence of criminal and terrorist groups** (see Omelicheva & Markowitz, 2021a). This is based on the view that systematic involvement of a terrorist group in criminal activities or a sustained relationship between terrorist and criminal groups will shift the terrorists’ ideological agendas to profit-seeking motivations, and vice versa among organised criminal actors. For example, Omelicheva and Markowitz (2021a) find that the Abu Sayyaf movement, an extremist separatist terrorist movement in the Philippines, which established links with Al Qaeda and ISIS, first began to engage in kidnapping and drug trafficking to raise revenue. However, the group transformed into a criminal organisation where profit motivations became primary.

Omelicheva and Markowitz (2021b) outline that terrorist groups are considered more likely to engage in criminal activity when the terrorist groups’ leadership is less ideological or in disarray; when the group has a loose-knit decentralised structure; and when it attracts a sizeable following of young and less ideological members.

The adoption of criminality can thus be a strategy for NSAGs that are not considered to be primarily organised crime groups, such as rebel groups or terrorist groups, just as political rhetoric could be adopted by criminal actors. The degree to which groups engage with criminality or political ideology will affect the way in which they are perceived and labelled, which will be discussed in the following section.

4. Confrontation, labelling and proscription

This section explores how the labelling of groups, and whether they are proscribed or not, can dictate the particular approach to addressing them. Groups labelled as ‘criminal’ or ‘terrorist’ and that are proscribed are more likely to face confrontation, a primarily law-and-order based approach.

4.1. Labelling and proscription

There is much literature (Matesan, 2022; van der Lijn, 2018; Cruz & Durán-Martínez, 2016; Cockayne, 2013a) which states that **if armed groups are considered political actors, they are more likely to be seen as partners for peace, whereas labelling actors as criminals or terrorists can dictate a confrontation approach.** Research (Ari, 2022; Kirkpatrick, 2021; Cruz & Durán-Martínez, 2016) also finds that governments often label actors differently depending on whether they want to negotiate with them. Arevalo de León and Tager (2016) add that, in some cases, any contact with ‘terrorist’-labelled groups by mediators can be considered a criminal offence.

Matesan (2022) and Kirkpatrick (2021) assert that the **demonisation of terrorist groups and/or the criminalisation of political identities can turn public opinion against them**, such that the public reject negotiation. Bergmann (2022) finds evidence of this in El Salvador, where gang members have been portrayed as ‘evil and incorrigible’ people, which has been a key obstacle to reintegration efforts. Felbab-Brown (2020) states that negotiations with criminal actors in such contexts, if known, are likely to be controversial. Kemp and Shaw (2014) argue that to create space for mediators to engage with such actors, it is important not to label them as ‘criminals’.

The **dehumanisation and villainisation of certain groups, alongside legal constraints on engagement, can undermine the ability to find a way out of conflict** (see sub-section 5.2 Ripeness) (Matesan, 2022; Arevalo de León & Tager, 2016; Altpeter, 2015). Various studies (Arevalo de León & Tager, 2016; Santamaría, 2016; Briscoe, 2015) recommend that a peacebuilding approach to criminal activities needs to consider lifting legal limitations on engagement.

Kirkpatrick (2021) argues further that **decriminalisation (such as de-proscribing organisations, or releasing prisoners) could also be used as a bargaining tool to leverage concessions on other issues.** He cautions though that decriminalisation alone is unlikely to affect the embedded criminal narrative. Rather, as Arevalo de León and Tager (2016) and Santamaría (2016) suggest, trained mediators with the experience and capacity to change the narrative and community’s perceptions can be essential.¹⁶

¹⁶ For further discussion, see sub-section 11.3 Political and public support – strategic communication.

Colombia

At the start of negotiations with the *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (the FARC), the national government emphasised their political nature, despite their engagement in criminal activities (Cruz & Durán-Martínez, 2016). The Uribe administration (2002-10) subsequently referred to the FARC instead as 'narco-terrorists' – blocking any peace conversations (Machuca Pérez, 2022). Santos (2010-18), Uribe's successor, moved away from this characterisation, announcing the beginning of the peace negotiation process. Nonetheless, the narco-terrorist discourse remained prominent during the peace referendum campaign, winning the vote, and showing the profound legacies of labelling and war narratives (Machuca Pérez, 2022).

4.2. Confrontation

Wennmann (2014) classifies engagement with criminals into three types of strategies: **confrontation, accommodation, and transformation**. Confrontation seeks to suppress criminals through law enforcement and militarised responses; accommodation strategies aim to broker agreements with criminal groups to ensure some form of socio-political stability; and transformation processes seek to integrate the criminal group into the legal social order and to address socio-economic development.

There is much literature (Freeman & Peña, 2022; Rosen, 2021; Felbab-Brown, 2020; Rahman & Vuković, 2019) on **governments' preference for law-and-order measures in dealing with gangs and other organised criminal groups – often supported, or even demanded, by the public**. The most well-known contemporary example of the confrontation approach is the *mano dura* ('hard hand') tough-on-crime policing campaigns, introduced in Central America in the early 2000s for dealing with gang violence. They focused on repression and incarceration (Roque, 2017; Arevalo de León & Tager, 2016; Rodgers & Jensen, 2015).

Freeman and Peña (2022) and Rahman and Vuković (2019) find that public aversion to negotiation with criminal groups is due in large part to the extreme violence that they commit; to their perceived socially deviant nature; and to long-established labelling of such groups as criminals. Freeman and Peña (2022) add that this aversion increases when state institutions are weak and lacking in legitimacy, with state-led negotiations under such circumstances perceived as collusion. They also find that there are public concerns that laxness or compromise will only encourage further crime.

There is much evidence, however, that points to the ineffectiveness of confrontation approaches in fragile and violent contexts (van der Borgh & Savenije, 2019; Arevalo de León & Tager, 2016; Schubert, 2016; Kalyvas, 2015). In the most benign situations, such policies have displaced violence from one part of a city to another; while in the worst cases, state repression has become an independent driver of violence, as criminal groups respond with more violence. Felbab-Brown (2020), Schubert (2016), and Wennmann (2014) find support for the latter in the Northern Triangle (Guatemala, Honduras and El Salvador), where *mano dura* policies have increased levels of lethal violence, the organisation and strength of criminal networks,

congestion in prisons, and human rights violations. Similarly, Pereda (2018), Barnes (2017) and Kalyvas (2015) find in the case of Mexico that government-led crackdowns have caused a large escalation of violence in many regions. Trudeau's (2022) study on aggressive policing in Brazil finds, in turn, that reversals on tough-on-crime policies produce reductions in civilian deaths.¹⁷ In the case of El Salvador, Whitfield (2013) finds that confrontation approaches can also be compromised by the absence of adequate police reform and properly functioning judiciaries.

These failures and limitations in the confrontation approach, alongside recognition of the role that SOC actors can play as spoilers in peace processes, have contributed to the rise of alternative approaches to address SOC – primarily accommodation through negotiation, discussed in the following section.

¹⁷ Following a police killing of a teenage boy, the governor of Rio de Janeiro suspended raids (highly militarised police strikes targeting criminal group leaders), which led to sweeping declines in police use of lethal force (injuries and deaths from shootings decreased by 63% and 60%, respectively); and to an abrupt reduction in civilian homicides by at least 58%, without any substitution effect towards non-violent property crimes (Trudeau, 2022, p. 6).

5. Accommodation: when to negotiate

Despite limited success in fighting organised crime through confrontation, Trudeau (2022) finds that few states have relinquished these policies, due in part to concerns over public reactions to negotiation. However, the unintended consequence of producing more violence can, as van der Borgh and Savenije (2019) argue, make accommodation with criminal groups an attractive option. The Global Initiative Against Transnational Organised Crime (2016, p. 26) finds that: ‘it is rare that resolutions to entrenched criminal markets can be found without some form of negotiation with the dominant actors’.

Freeman and Felbab-Brown (2021) suggest that in some cases, confrontation can contribute to processes of accommodation by using the threat of powerful law enforcement to drive criminal groups to the negotiating table and to serve as state leverage in bargaining. Whitfield (2013, p. 4) notes in the case of El Salvador that dialogue can complement law enforcement, providing a ‘mix of carrots and sticks, sanctions and incentives’. This section discusses contexts in which negotiation may become a more likely option – focusing on: where SOC actors exhibit territorial control; where the conflict situation is ripe; and where there is prior experience of negotiating with criminal groups.

5.1. SOC actors exhibit territorial control and governmental-like power

Felbab-Brown (2020) and Cockayne, de Boer and Bosetti (2017) find that **negotiation can be a necessary approach when the power of criminal groups over local populations, markets and territories is strong** and state capacity or integrity is weak. Similarly, various studies (Perea, 2022; Ferreira & Richmond, 2021; Reitano, 2020; and Kemp & Shaw, 2014) assert that if criminal groups are *de facto* authorities with legitimacy and political capital among local populations, they may be seen as viable players in negotiations. In such contexts, criminal governance can fill the void of weak state capacity, with local populations relying on criminal actors for daily survival (Caparini, 2022; Ferreira & Richmond, 2021). Santamaría (2016) suggests, additionally, that the distinction between SOC actors using territorial control primarily for patronage or for predation (such as extortion) may influence the degree to which peacebuilders seek to engage criminal groups.

Freeman and Felbab Brown (2021) cite Mexico, El Salvador, Honduras, Brazil, Colombia, Trinidad and Tobago, Jamaica and South Africa as examples where criminal groups govern large rural areas and/or poor urban neighbourhoods. Applebaum and Mawby (2018) focus on El Salvador, finding that the gangs’ territorial control has granted them the ability to carry out traditional state activities: levying taxes, determining election outcomes, and controlling mobility. Felbab-Brown (2020) finds that the territorial presence of gangs in Haiti have required international peace NGOs to engage with them.

5.2. Ripeness and mutually hurting stalemate

Zartman identifies the concept of a ‘ripe’ moment in conflict as the point when parties have reached a ‘mutually hurting stalemate’ (MHS). MHS occurs ‘when parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful for both of them’ (Zartman, 2001, p. 8). Van den Eertwegh (2016) argues that it may be more challenging to determine when criminal actors reach their part of the MHS, than with other NSAGs, as criminal groups are not seeking a particular victory.

Rahman and Vuković (2019) and van den Eertwegh (2019) articulate the concept of **‘stalemate’ in a criminal context as a moment when SOC actors reach a point of disillusionment, with the realisation that they are stuck in perpetual cycles of violence**. Freeman and Felbab-Brown (2021) identify other motivations for criminal groups to negotiate as exhaustion and miserable conditions on the run. They stress the importance of waiting for such a ripe moment, when a hurting stalemate is reached. Sanchez and Illingworth (2017) find evidence of a MHS contributing to the start of negotiations in El Salvador, with both sides exhausted after decades of fighting, without being any closer to a final resolution.

Rahman and Vuković (2019) add that **for the state to perceive a MHS, the hurt felt by society must be translated into the political arena**: it must not only be the case that confrontation policies are failing, but also that a large proportion of the electorate recognises that the government cannot eradicate gang violence through confrontation and escalation. They relay further that in the context of a conflict between multiple gangs and between gangs and the state, the perception of stalemate must exist both horizontally between the gangs, and vertically between the gangs and the state.

Matesan (2022) cautions that **arriving at a ripe moment can be difficult in the case of SOC actors, due to public opposition to negotiation and proscription of groups**, which can sabotage otherwise ripe moments. MHS may also be inadequate to draw parties to negotiation, requiring mutually enticing opportunities (MEO) as well (Rahman & Vuković, 2019; Zartman, 2001).¹⁸

5.3. Demonstration effect

Freeman and Felbab-Brown (2021) find that **the stimulus for negotiations may be negotiations elsewhere (in the past and present)**. For example, El Salvador’s negotiations with the *maras* (gangs) in 2012, and its initial success in dramatically reducing homicides, prompted Honduras to consider similar talks in 2013. Experience can also be transferred from one context to another – for example, an OAS (Organisation of American States) diplomat involved in negotiations brought lessons directly from the Salvadoran process and encouraged the Honduran government to negotiate (Felbab-Brown, 2020). The Honduran talks also had their own precedents, with religious leaders

¹⁸ For discussion on MEOs, see sub section 7.3 Incentives and inducements.

having had prior experience of mediating during *mará* violence in the country, though a lasting ceasefire could not be reached (Felbab-Brown, 2020).

On the reverse side, **failure to reach agreement or deliver subsequent benefits can be costly, as knowledge of the failure dampens the willingness of others to attempt negotiations** with criminal groups (Freeman & Felbab-Brown, 2021; Felbab-Brown, 2020). Felbab-Brown (2020) finds that the government in Honduras was ultimately deterred by the unravelling of the gang truce and peace processes in El Salvador. She states further that the El Salvadorean government itself was deterred, rejecting overtures for new negotiations, instead returning to its *mano dura* approach.¹⁹

While prior experience with negotiation, a ‘ripe’ moment, and SOC groups with strong territorial control can be integral to the start of negotiations and possible conclusion of a peace deal, sustainable peace can be undermined by inadequate attention to broader transformation processes, discussed in the next section.

¹⁹ For further indications of when to negotiate, see section 8 on Factors influencing outcomes.

6. Transformation and functionality²⁰

This section looks at how criminality and SOC groups can provide benefits to group members and to the communities in which they operate – and the need to address this functionality through transformation processes. In such contexts, it is important to provide credible, alternative solutions when seeking to counter organised crime, which could include the transformation of SOC groups into legal entities.

6.1. Functionality in benefits to communities

There is an extensive body of literature (Freeman & Peña, 2022; Omelicheva & Markowitz, 2021a; Felbab-Brown, 2020; Reitano, 2020; van Santen, 2019; van der Lijn, 2018; Dulin, 2017; Garson, 2013) which finds that **criminal groups may play a governance role when state capacity or integrity is low – providing concrete goods and services** (such as security, justice, health, education and humanitarian relief) to communities. Cruz and Rosen (2020), Felbab-Brown (2020) and van der Borgh (2019) find that gangs in Central America have built up strong territorial control in many cities and marginalised communities, where the state is weak or absent, providing basic social services. Similarly, Omelicheva and Markowitz (2021a) find that insurgent groups in Colombia have used the proceeds from their criminal activity to provide scarce public goods to marginalised and impoverished populations. Ferreira and Richmond (2021) stress, however, that the functionality and benefit to communities is more often a side effect of the main purpose of profiting from illicit business.

Arratia Sandoval and Garrido Quiroz (2019) emphasise further that **illicit economies can provide livelihoods to large segments of the population** who lack alternatives. Omelicheva and Markowitz (2021a) and Jonsson et al. (2016) argue that the resource structure within the broader illicit economy is important here.²¹ Drug cultivation, for example, is labour-intensive, with the potential to employ hundreds of thousands of people, affording SOC actors greater political capital than those relying on economies based on non-intensive labour, such as human trafficking or wildlife poaching.

Felbab-Brown (2017) finds that **the poorer the country and the fewer legal jobs, the greater the population's dependence on the illicit economy**, and the greater the political capital accrued by belligerents for sponsoring it (for example, the Taliban

²⁰ Corruption and crime persist because they perform functions for people, which researchers define as 'functionality': 'the ways in which corruption [and crime] provide solutions to the everyday problems people face, particularly in resource-scarce environments, problems that often have deep social, structural, economic and political roots'. Marquette, H., & Peiffer, C. (2020). Corruption functionality framework. *Washington, DC: Global Integrity*. <https://ace.globalintegrity.org/wp-content/uploads/2021/01/GI-ACE-Research-Paper-Corruption-Framework.pdf>

²¹ Discussion of resource structure in the literature does not seem to extend to whether sources of SOC funding (for example, if proceeds come from local extortion or extend to the global financial system) should influence the approach to addressing criminal agendas (such as localised processes or sanctions).

derived political support from protecting poppy fields in Afghanistan). In contrast, in a wealthy country with abundant legal economic opportunities, the local population is more likely to object to the illicit economy (for example, the Provisional Irish Republican Army lost legitimacy with its Catholic base when it became involved in local drug distribution).

Western Balkans

A new trend of networked groups, connected to drug-related crime, emerged during transitions in the region. Drug traffickers often hired various independent criminals for a limited time, performing simple tasks (such as keeping watch over 'safe houses' used by fugitives), who were then changed for other similar individuals. Such individuals were given housing accommodation, food, money for expenses and a certain fixed fee. Organised criminal groups were seen almost as a legitimate employer by the 'employees', their families, and the community, rather than as a threat to society.

Source: Radovanović, 2018

6.1.1. Implication for peace processes

Freeman and Peña (2022) and Global Initiative and USAID (2022) stress that **the functionality of organised crime must inform any serious effort to negotiate reduced violence, with a requirement to map out alternative solutions** to their functional role. Peace processes that threaten these benefits are resisted, sometimes violently (Global Initiative & USAID, 2022). Similarly, various studies (Freeman & Peña, 2022; Radovanović, 2018; Dulin, 2017; Wennmann, 2014) point to the inadequacy of strict law-and-order approaches in such contexts.

Santamaría (2016) argues, based on research on social violence in Mexico, that **criminal groups that maintain a less predatory and more protective relationship with communities are more likely to exhibit commitment to dialogue**. She finds that engaging criminal actors who depend on violence and predation for their survival instead poses operational challenges. Planta and Dudouet (2015) echo this view, claiming that it can be difficult to engage in negotiation with actors whose relationship with the population has been built exclusively on repression and violence. In El Salvador, for example, Applebaum and Mawby (2018) state that gangs have waged violent campaigns to control key routes for illicit trade and engaged in mass extortion of businesses, providing few services and rarely reinvesting in communities. In Syria, Brisco (2015) notes that warlords have sought to balance the need to extract revenues from local populations with the requirement that they do not alienate them through excessive coercion and violence, to ensure that they do not lose legitimacy.

6.2. Functionality in criminal group membership

Radovanović (2018) finds that **'ordinary criminals', at lower levels of criminal organisations, are often younger men and women who have grown up in difficult financial circumstances** and in a social group heavily affected by unemployment and poverty. For them, organised crime becomes an attractive choice of career, supported by

family (Radovanović, 2018). Similarly, Caparini (2019) finds that in the context of poorly planned and implemented DDR programmes, demobilised individuals who lack other means of livelihood may turn their expertise in violence towards criminal purposes.

Various studies (Freeman & Peña, 2022; Felbab-Brown, 2020; Kalyvas, 2015) reveal that **criminal groups may also foster a deep sense of group identity and belonging** through internal codes, symbols, physical appearance styles, and induction rituals. Van Santen (2019a) finds that this is particularly important where state institutions have been weakened during civil war and the state no longer makes citizenship meaningful, such as in Central America. In El Salvador, for example, belonging to a criminal gang provides members with status, respect, and a sense of identity and belonging denied to them in society (van der Borgh & Savenije, 2019; Dudouet, 2014). In Colombia, the FARC derived social benefits (for example, legitimacy, authority and respect) from regulating and engaging in criminal activity (De Boer & Bosetti, 2017b; De Boer, Garzón-Vergara & Bosetti, 2017).

Applebaum and Mawby (2018) find that women may join gangs for many of the same reasons that men do, such as a need for a sense of belonging, recognition, and economic survival. They find additionally, however, that women gang members more frequently experience violence within the family and that younger women may join gangs to cope with child abuse and sexual violence.

6.3. Transformation: addressing root causes and providing alternatives

There is much discussion in the literature (Rahman & Vuković, 2019; Vuković & Rahman, 2018; De Boer & Bosetti, 2017b; Arevalo de León & Tager, 2016) on the need for policymakers, practitioners and researchers to understand the:

- root causes behind joining criminal groups;
- opportunity costs that members incur when giving up criminal activities; and
- inducements that can outweigh these costs.

6.3.1. Security

Schuberth (2016) argues that **replacing the security function that gangs fulfil for their community requires some form of security sector reform** to (re)establish state monopoly over the legitimate use of force. He stresses that it is essential to expand state security provision into areas formerly abandoned by law enforcement agencies, to avoid a dangerous 'governance void' left by demobilisation efforts. Drawing on the example of DDR in Medellín, Colombia, he finds that demobilisation left behind power vacuums in certain neighbourhoods previously under the control of the groups demobilised, which produced increasing rates of violence and fierce battles over control of these areas.

6.3.2. *Economic opportunities*

Various studies (Rahman & Vuković, 2019; Vuković & Rahman, 2018; De Boer & Bosetti, 2017b) emphasise the need to **provide criminal actors with credible economic opportunities, alternative sources of livelihood, and options for criminal organisations to transition into lawful order**. Similarly, Bhatia (2021), van den Eertwegh (2019), and Felbab-Brown (2017) emphasise the importance of providing realistic economic alternatives for communities dependent on illicit economies.²² They argue that without such alternatives, efforts to suppress such economies may encourage the local population to support the belligerents, producing a re-escalation of violence. Reitano (2020) cautions that states have yet to develop effective alternative livelihoods for militia groups engaged in illicit activities – suggesting that peace processes involving SOC actors should draw on lessons from DDR.

Rahman and Vuković (2019) find that **skills-based training for former gang members can be essential**. The stakeholders can be individuals, but they can also be collective entities, as in the case of small economic enterprises run by the gangs and their families collectively, developed in El Salvador as part of the municipal ‘peace covenants’ that followed the gang truce (see Arevalo de León & Tager, 2016). Reitano (2020) and Schubert (2016) advocate also for programming that disincentivises at-risk populations from joining gangs in the first place, such as youth. Based on research on Prevenir (2009-18), a public employment programme for young people at risk across Central America, Ortiz (2019) finds that outcomes were constrained due to dependence on external donations. Similarly, in El Salvador, socio-economic projects, which were supposed to complement the local truce, never fully materialised due to lack of political will and resources, and resistance from local government and the public for such programming (van der Borgh, 2019; Umaña, de León, & Tager, 2014).²³

6.3.3. *Identity and belonging*

Rahman and Vuković (2019) and De Boer and Bosetti (2017b) stress that **reintegration programmes require alternative avenues through which ex-combatants can build social and political capital**, with particular attention to youth. In El Salvador, non-imprisoned leaders of the main gangs admitted that the gang truce would be difficult for younger members, who yearned for status and respect, to accept (van der Borgh & Savenije, 2019). Dudouet (2014) notes that gang members in El Salvador have sought to maintain their distinct identity. In some Latin American contexts, Felbab-Brown (2020) finds that the *maras*’ own ‘red lines’ have included refusal to be disbanded.

Vuković and Rahman (2018) emphasise that **the state can address the psycho-social aspect of gang membership in a post-truce context by allowing gangs to maintain their structures**. In El Salvador, for example, Whitfield (2013) states that the government accepted the gangs’ refusal to dismantle their structures so long as they no longer committed crimes. Rahman & Vuković (2019) and van der Lijn (2018) outline

²² There is also an extensive literature base on alternative development/livelihoods, for example in Afghanistan, Colombia and Thailand.

²³ For further discussion, see Appendix 1: El Salvador case study.

'mainstreaming' as a strategy in which organised crime groups leave their criminal activities behind and are slowly inserted into society as legitimate structures, serving some positive function within their communities. Cockayne (2013b) draws on experience from Latin America and the Caribbean to demonstrate that criminal group structures could be used as the basis for new, legitimate business and social enterprises, which can help to protect group identity.

Ecuador

The government decided to legalise some gangs: the Sacred Tribe Atahualpa of Ecuador (STAE), the Ñetas, and the Masters of the Street have been able to keep their identity (including distinctive clothes) and social cohesion, as well as associate with each other in public (Freeman & Peña, 2022). The mainstreaming of these groups contributed to significant decline in homicides (Freeman & Peña, 2022). NGOs and other members of civil society helped to facilitate these transformations, enabling street gangs to undertake collective conversions by making use of certain gang characteristics (such as teamwork, mutual respect, support and protection) for positive social ends (Planta & Dudouet, 2015). Methods of incentivising gang cooperation have been innovative: for example, sustained reductions in homicidal violence within a community entitled gang leaders to tickets in a lottery for goods or bursaries they could disburse to their supporters. The aim was to retain the social capital of the gangs, while integrating them into legitimate civic and economic life (Cockayne, 2013b).

Peace processes seeking to counter organised crime thus need to recognise the functionality that criminality can serve – to SOC group members and the communities in which they operate. In so doing, it is essential to design interventions that seek to fill the gaps that can be created by the disbandment or transformation of such groups and the abandonment of criminal activity. Whether or not groups are dismantled and some or all types of criminality abandoned is often a key negotiating issue. The following section looks at the varying objectives of SOC actors and state parties at the negotiating table and the implications this has for the type of deal negotiated.

7. Objectives and characteristics of negotiation

SOC actors and state parties come to the table for different reasons. This section explores the varying objectives and demands of actors – and the implications this has for the incentives required to bring key parties to the negotiation table and inducements needed to conclude a deal.

7.1. Motivations, objectives and asks

7.1.1. Criminal groups

What motivates criminal groups to negotiate is connected to what they expect to attain in negotiations and what they perceive as achievable (Felbab-Brown, 2020). Research on a global set of cases of negotiation with violent criminal groups reveals variation in the types of ‘asks’ or demands, including (Freeman & Felbab-Brown, 2021, p. 18):

- legalisation (for example, *maras* in El Salvador);
- temporary ceasefire (for example, the gang truce in Jamaica);
- jobs or apprenticeships (for example, negotiations in Belize);
- legal leniency (for example, negotiations between the Colombian government and Urabeños);
- better public services for marginalised communities (for example, negotiations with gangs in Brazil);
- cultural and identity recognition (for example, martial arts gangs in Timor-Leste);
- education and training opportunities (for example, the Latin Kings and the Ñetas in Ecuador); and
- an end to extradition (for example, Colombia’s negotiation with the Extraditables).

Felbab-Brown (2020) finds that **militant/rebel groups and criminal groups with ideological elements are generally more likely to ask for greater benefits** that extend beyond prison leniency, such as jobs and other economic opportunities – evident from negotiations with criminal groups in Latin America and the Caribbean. In turn, governments tend to display greater reluctance to negotiate transformative results in the case of absence of or limited ideological elements (Felbab-Brown, 2020).

De Boer and Bosetti (2017b) find evidence that **criminal groups often adjust their strategies to achieve the best possible outcome for disarming and giving up their criminal agendas**. Freeman and Felbab-Brown’s (2021) research supports this view, noting that a criminal group’s demands for legal leniency (such as more lenient prison terms – Colombia; transformation into a legal entity – Ecuador) will generally be higher when they are expected to demobilise and disarm at the conclusion of a negotiation, as opposed to remaining armed as part of a temporary truce or ceasefire. They find that the

more common inclination, however, is for criminal groups to refuse disarmament, stemming in large part from fear of being attacked by defectors, traitors or criminal groups not involved in the negotiations. In such cases, security guarantees may provide an effective inducement (see sub-section 7.3).

El Salvador, Colombia, and Honduras

El Salvador: During negotiations surrounding the 2012 truce, imprisoned *mara* leaders' requests were mostly modest. They did not ask for prison release nor shorter terms, requesting pardons only for old or seriously ill and imprisoned members. Their demands centred on welfare measures for their families and communities and improvements in prison conditions. They also demanded an end to torture and other abuses by security forces against gang members and their communities. More controversial and ambitious demands included: revocation of the anti-gang law; the end of witness immunity for securing convictions of gang members; and withdrawal of the armed forces from internal security duties.

Colombia: During the 2017-18 negotiations, the Gulf Clan asked for judicial leniency and asked to avoid extradition to the United States. They also asked for better socio-economic opportunities for their members and rural populations where the gang operated. Following in the footsteps of the FARC, they asked that their members be allowed to stay together in three or four disarmament concentration areas during and after the negotiations, and to receive collective 'resocialisation' benefits.

Source: Felbab-Brown, 2020

7.1.2. Government and external actors

Freeman and Felbab-Brown (2021) find that **violence reduction was a common objective** in all examined negotiations, whether nationwide (such as in El Salvador) or in particular neighbourhoods (such as in Haiti). Some processes also involved more ambitious goals, such as the end of certain criminality and/or the mainstreaming of criminal groups (Freeman & Felbab-Brown, 2021).

Alongside a desire to achieve a reduction in violence, **the government may be motivated to negotiate due to failed confrontation policies** and exhaustion of alternative policy options (see sub-section 4.2 on confrontation); or as part of a larger social transformation agenda (Freeman & Felbab-Brown, 2021). In Ecuador, for example, the government sought to address marginalisation and to reintegrate criminal groups into legal entities that no longer engage in criminality (Freeman & Felbab-Brown, 2021). Cruz (2019) suggests that states may also negotiate with criminal groups with the objective of regaining sovereignty over territories.

There is much research (Freeman & Felbab-Brown, 2021; Rahman & Vuković, 2019; van den Eertwegh, 2016) that suggests that **a key objective of negotiations with criminal groups should be to engage in a larger societal change agenda** – to help citizens and communities become less dependent on criminal groups, while generating greater public trust in the state. The objective of violence reduction, if not accompanied with the effective dismantling of criminal groups, should be accompanied by the reinforced goals of institutional strengthening, civic empowerment, and a development agenda that reduces the dependence of communities on criminal actors (Freeman & Felbab-Brown, 2021).

7.2. Implications for the type of deal negotiated

Felbab-Brown (2020) finds that **negotiations with criminal groups tend toward pragmatic and limited goals**, rather than more transformational ones – drawing on experience from Latin America and the Caribbean. She suggests that the smaller asks of largely criminal groups, with minimal or no ideological dimensions, could explain why it is more common to see smaller deals stemming from negotiations with such groups (such as temporary truces, ceasefires, or gaining intelligence on local groups and access routes through controlled territory). Freeman and Felbab-Brown (2021) also find, drawing on a global set of cases, that the different objectives of actors involved will affect whether the deal negotiated is a limited deal, centred on accommodation; or a more comprehensive agreement, involving broader processes of transformation. They stress that preparation and planning for negotiation must, in turn, distinguish between cases with limited goals and those with more transformative goals. Limited deals may, however, be less likely to produce sustainable peace.²⁴

Freeman and Felbab-Brown (2021) and Cruz and Durán-Martínez (2016) argue that determining **an end state may be more challenging in negotiations with violent criminal groups** than with rebel/militant groups. They state that while the latter are more likely to benefit from disarmament and dissolution – in exchange for some form of political integration and rehabilitation, criminal groups may benefit from reducing violence, but not from dissolution or mainstreaming. Van den Eertwegh (2019) also suggests that, for them, victory is defined more by the continuation of profit-seeking and a certain lifestyle than by the achievement of an overarching ideological goal.

As such, Cockayne (2013b) argues that **negotiations with criminal groups are unlikely to result in a complete resolution of the criminal agenda**. Similarly, Radovanović (2018) finds that there is no end state to criminality, as even where offenders are taken out of circulation through imprisonment, others will be able to continue coordinating a criminal group, or a particular activity within such a group, from prison. Case studies on Latin America and the Caribbean support the view that negotiations with criminal groups are unlikely to end all major crime (Freeman & Felbab-Brown, 2021).

Despite difficulties with determining and achieving an end state, Cockayne (2013b) and Whitfield (2013) suggest that it is important to clarify the desired end state at the start of or during engagement with criminal actors. For example, is the end state the abandonment of all criminal activity, or is it the reduction of violence alongside continued access to criminal rents and/or legal leniency? (Cockayne, 2013b). Felbab-Brown (2020) finds that while some negotiators in Latin America and the Caribbean believe that reintegration should not be offered without total dismantling of the criminal group, others view deal-making as appropriate so long as there is no blanket amnesty.

²⁴ For further discussion, see sub-section 8.4 on Factors influencing outcomes: longer-term planning.

7.3. Incentives and inducements

Kemp and Shaw (2014) find that **incentives and inducements can influence whether SOC actors are spoilers or supporters of peace**. Similarly, Matesan (2022) states that mediators can create MEOs that promote trust among parties and confidence in the peace process and potential outcomes. Comparative research on El Salvador and Medellín finds that criminal pacts can produce swift violence reduction when the state or its representatives provide effective, tangible incentives to criminal groups (Cruz & Durán-Martínez, 2016). Whitfield (2013) reveals that gang leaders in El Salvador exhibited a willingness to change, induced in part by the provision of incentives, which enabled dialogue to progress.

Freeman and Peña (2022) note that **incentives and inducements should be closely related to what criminal groups might expect to attain** in the negotiation itself. Related to this, Rahman and Vuković (2019) recommend that a key initial step should be to determine the interests and objectives that gangs hold and how these can be translated into a negotiating position. Freeman and Felbab-Brown (2021) note that the demands made on criminal actors will shape the extent to which governments may need to make larger concessions and provide greater inducements. To serve as an effective inducement, Guzman and Holá (2019) advocate that provisions should operate in a way such that a reasonably rational party, after weighing the costs and benefits, will conclude that they have more to gain by cooperating with an agreement, rather than avoiding it. Specifically, Cockayne et al. (2017) suggest that inducements can seek to compensate for the political and social capital derived from criminal activity. Freeman and Peña (2022) and Vuković and Rahman (2018) also recommend that details of the mainstreaming process form part of the incentive package to encourage gangs to abandon the criminal agenda.

The **provision of incentives and inducements should not be seen as a question of identifying a criminal group's 'price' for peace**, however, as this risks generating moral hazard (Bosetti et al., 2016) (see sub-section 11.1.1). Rahman and Vuković (2019) and Bosetti et al. (2016) suggest that a strategy to avoid this is to construct an agenda that frames government concessions as fulfilling its obligation, for example, to develop marginalised neighbourhoods, rather than to appease criminal groups.

7.3.1. Security guarantees

Cockayne et al. (2017) and De Boer and Bosetti (2017b) find that security guarantees given to ex-combatants in Colombia, their families and affected communities was essential to continued talks and the eventual peace agreement between the FARC and the government. They note that many group members and their families possessed intimate knowledge of trafficking routes and illicit networks, making them targets for violence from rival criminal groups, thus dependent on security guarantees.

7.3.2. Economic and financial opportunities

Bosetti et al. (2016) and Kemp and Shaw (2014) state that **inducement strategies for criminal groups have more to do with socio-economic considerations than in the case of other NSAGs**, who may be motivated by political interests. Targeted socio-

economic programming could include vocational training, mentoring programmes, cognitive behavioural therapy, and support to businesses in territory under the control of the criminal group (Rahman & Vuković, 2019; De Boer & Bosetti, 2017b). Whitfield (2013) cautions, however, that prioritising gang members for business opportunities and capacity building can cause tensions with law-abiding citizens. Bosetti et al. (2016) emphasise, based on experience with gang truces in Latin America and Haiti, the importance of going beyond short-term, small-scale development projects, to deeper economic transformations that restructure criminal actors' incentive structures.

Raineri and Galletti (2016) argue that policymakers need to recognise, however, that **development programming can be limited in its ability to compensate for the profits, lifestyle, and economic and social mobility, afforded by criminal activities** – based on experience from Mali. Classic development schemes and traditional forms of amnesty thus risk being inadequate incentives and inducements if they do not provide the legal protection that organised crime actors often need or desire for their illicit assets and/or businesses (IFIT, 2020; Raineri & Galletti, 2016).

Creative solutions that address these needs could include measures to transfer financial capital from the illicit to formal sector, such as profit repatriation schemes, free trade areas, tax holidays (temporary tax breaks), and tax amnesties (IFIT, 2020; Raineri & Galletti, 2016; Cockayne, 2013b). A tax amnesty, which IFIT (2020) finds has yet to be adopted in negotiation contexts, legitimises illicit assets, allowing the declarant to keep them in exchange for the new tax revenue that the state acquires. IFIT (2020) cautions though that while such protection may provide an effective incentive for SOC actors to enter peace negotiations and an inducement to conclude a deal, there is a risk that regular taxpayers may feel unfairly penalised, while criminal actors are rewarded.

7.3.3. Legal leniency

Kirkpatrick (2021) and Cockayne (2021) stress that the adoption of **legal leniency or decriminalisation** (for example, reduced or alternative sentencing, amnesty, release of prisoners, law reform, or de-proscribing organisations) **as a bargaining tool in negotiations with criminal actors raises not only practical, but also normative concerns**. Such forms of leverage can be highly controversial and deeply opposed by the public, with the view that justice is being compromised (Kirkpatrick, 2021). Cockayne et al. (2017) emphasise, however, that the question of what inducements to offer in return for a transition back to justice and lawful order has been a central question of the field of transitional justice. As such, transitional justice has the potential to offer lessons for the managed exit of perpetrators of large-scale criminal violence back into legal order (Cockayne et al., 2017; van den Eertwegh, 2016).²⁵

²⁵ For further discussion, see section 10. SOC, transitional justice and peace processes.

7.4. Tailoring negotiation to leaders and rank and file

There is limited discussion in the literature on how to address differences among leaders and the rank and file, and on the implications for peace processes. Dulin (2019) suggests that negotiation between the state and higher ranking functionaries is important as the latter can subsume the rank and file, while the opposite may not be the case. This may only hold, however, where groups have a united structure and strong leadership (see sub-section 8.1). Felbab-Brown (2020) and Garson (2013) stress instead the need to bargain with both leaders and rank and file members. In the case of gang truces, Garson (2013) argues that agreements with gang leaders may be effective in reducing violence, but unsustainable if nothing is put in place for the criminals at street level. In such circumstances, the latter may have no incentive to disengage from illicit activity. It may be particularly challenging to encourage mid-level members to disengage from illicit economies. They may not be enticed by amnesty and political integration (see text box below), nor from economic alternatives that may co-opt lower ranking members but are inadequate to compensate mid-level criminals for abandoning criminality.

Colombia

Tailoring incentives and programmes to the various profiles of FARC members was important, as the incentives provided to FARC leadership, such as running for political office, would not work for mid-level commanders and lower-level foot soldiers (De Boer et al., 2017). Research on the policy of illicit crops in Colombia suggests too that there should be a separation of high ranks and lower coca growers: the peace agreement made a clear distinction between drug trafficking organisations (DTOs) and the people involved in the weakest links of the coca production chain, establishing a differential criminal treatment for the small coca growers (Acero & Machuca, 2021). Under this framework, peasants involved in the illegal economy would not face criminal proceedings – a distinct move away from the prior approach, in which small growers were classified as criminals or guerrilla collaborators and prosecuted (Acero & Machuca, 2021).

The types of deals negotiated with SOC actors vary in large part due to the different objectives and ambitions of parties to the negotiation. This, in turn, affects the incentives and inducements needed, the types of deals concluded, and the outcomes of negotiation processes. Outcomes of negotiation processes are affected further by other identifiable factors, such as strong leadership, third-party mediators and longer-term planning, explored in the following section.

8. Factors influencing outcomes

Prior experiences with negotiation have had varied outcomes: they can be limited (for example, a ceasefire and temporary lull in violence) or far-reaching (for example, as part of a comprehensive, multi-sectoral transformative plan, as in Ecuador) (Freeman & Felbab-Brown, 2021). This section discusses various factors that can influence the outcomes of negotiation processes. Outcomes may vary not only due to differing scopes of ambition and objectives in negotiation processes, but also due to the cohesiveness of groups; the balance of power of the actors involved; the involvement of third parties; and capacities to neutralise spoilers (Freeman & Felbab-Brown, 2021). Outcomes can also be undermined by failure of the government to deliver on socio-economic support, which may frustrate members of the criminal group (see sub-section 6.3.2 on economic opportunities); or by public backlash, which results in political pullback (see sub-section 11.3 on political and public support).

8.1. Internal cohesion and leadership

8.1.1. Criminal groups

Freeman and Felbab-Brown (2021) and Cruz and Durán-Martínez (2016) argue that **criminal groups that have achieved a greater degree of internal cohesion and stronger leadership are more likely to be able to compel the state to negotiate** and to be considered a potential partner in negotiation. Much research (Freeman & Felbab-Brown, 2021; Felbab-Brown, 2020; Rahman & Vuković, 2019; Cruz & Durán-Martínez, 2016) finds that cohesive criminal groups with hierarchical leadership also have a better chance of achieving durable implementation of agreements than diffuse and decentralised groups that are prone to splintering and fragmentation. Hierarchical leadership structures can achieve greater command and control and prevent defections better than flat, looser structures (Felbab-Brown, 2020; Rahman & Vuković, 2019; Cockayne et al., 2017). Comparative research on El Salvador and Medellín finds that criminal pacts can produce swift violence reduction when criminal organisations have cohesion and leadership that facilitate effective territorial control (Cruz & Durán-Martínez, 2016).

Felbab-Brown (2020) and Cruz and Durán-Martínez (2016) find that in contrast, **groups lacking in cohesion may find it more difficult to ensure compliance among members and to enforce the deal's implementation**. Wanis-St John and Mac Ginty (2022) suggest that governments may also find it challenging to negotiate with fragmented militant and criminal groups, with the prospect of having to repeat negotiations with previously excluded splinter groups. In Haiti, for example, international NGOs found it difficult to negotiate lasting agreements, given fragmentation within local gangs and continually changing alliances and relations between the gangs (Felbab-Brown, 2020). To assess the potential for criminal groups to engage effectively with the state in peace processes, Cruz and Durán-Martínez (2016)

and Santamaría (2016) stress the importance of analysing and profiling a group's organisational capabilities and internal cohesiveness.²⁶

Freeman and Felbab-Brown (2021) caution that **the negotiation process itself risks producing fragmentation**. Colombia's Gulf Clan, for example, exhibited vertical integration; however, negotiations with the state led to the emergence of three factions (one favouring continued talks, one opposed, and one neutral) (Felbab-Brown, 2020). In Medellín, pacts collapsed and homicides resumed when criminal organisations lost cohesion through the dismantling of their leadership (Cruz & Durán-Martínez, 2016).

Rahman and Vuković (2019) recommends that **the state should do all in its power not to weaken cohesion or the authority of leaders during the negotiation process**.

Freeman and Felbab-Brown (2021) find, however, that the capacity to prevent or manage risks of criminal groups' internal fragmentation can be limited. In some cases, the government or third party took steps to reduce the fragmentation risk. In Colombia, for example, the government demanded a video from Otoniel, the top leader of the Gulf Clan, affirming his commitment to the talks (Freeman & Felbab-Brown, 2021).

At the same time, Freeman and Felbab-Brown (2021) suggest that **fragmentation may not necessarily be a deciding factor in the success or failure of negotiation efforts** and deal implementation. In Ecuador, for example, although approximately 30% of gang members did not accept the terms of the deal and continued engaging in criminality and violence, most members were still able to achieve violence reduction and transformation. Katz, Harriott and Hedberg (2022) find a reverse example in Jamaica, where strong leadership and organisation of gangs were still unable to produce successful outcomes.

8.1.2. Government and external actors

Cruz and Durán-Martínez (2016) stress that **state homogeneity can also be a key factor in enabling negotiation, the conclusion of a deal, and its implementation**. Such cohesion, they argue, signals the state's credible commitment to the peace process, which, in turn, can encourage criminal actors to engage. Felbab-Brown (2020) supports this view, finding that divisions within negotiating teams and within government can undermine the prospect of a deal and its implementation. Cruz and Durán-Martínez (2016) specify that if a deal is implemented by a government agency but without the leadership of an elected official or the compliance of police forces, it is unlikely to produce the credible commitment required for criminals to reduce violence.

International actors can also be highly divided regarding talks with criminal groups, with the United States often being vocal, particularly with cases involving Central and South America (Felbab-Brown, 2020). In the case of El Salvador, for example, USAID supported negotiations with the *maras* and contemplated financial support for some of the propositions, whereas other branches of government, particularly law enforcement agencies, were strongly opposed (Felbab-Brown, 2020).

²⁶ This could form part of a larger mapping of criminal groups, for example through a serious and organised crime threat assessment: <https://www.europol.europa.eu/publications-events/main-reports/socta-report>

El Salvador

Research on negotiating with gangs in El Salvador suggests that the ensuing truce was possible only when rival gangs achieved an internal level of coordination in their responses vis-à-vis the state and were able to offer a reliable response to the government's interests (Cruz, 2019). A series of statements by gang leaders demonstrated coherence in their positions, indicating that gangs had the capacity to raise or lower their acts of violence (Whitfield, 2013). Other research finds that while imprisoned leaders were considered highly cooperative and motivated, this was not necessarily the case for the members at large, who became increasingly divided (Felbab-Brown, 2020). The evidence is unclear, however, on whether the subsequent collapse of the negotiated truce can be attributed to this weakness in top-level control (Felbab-Brown, 2020). The immediate drop in violent deaths of about 40% that accompanied the deal suggests that top leadership had sufficient control at the time: as such, weakness in leadership cannot be an adequate nor static explanation (Felbab-Brown, 2020: 12).

Government disunity also played a role in the collapse of the negotiation process. As talks with the *maras* progressed, the government became increasingly split between those who supported the process (such as the president) and those who did not (such as the attorney general and top people in the security ministry) (Felbab-Brown, 2020). The absence of clear parameters set by the government resulted in fears that the truce would undermine the rule of law (Whitfield, 2013). Other research finds that the loss of consistency in the government's response contributed in turn to loss of cohesion within criminal organisations (Cruz & Durán-Martínez, 2016).

For further discussion, see the case study on El Salvador in Appendix 1.

8.2. Relative power and resources

Parties to a peace negotiation may have control over different sources of power, which provide them with different degrees of bargaining strength and leverage in achieving concessions (Felbab-Brown, 2020; Guzman & Holá, 2019). Sampaio (2019) notes that criminal groups with territorial control can threaten to generate disorder to compel bargains with the state. Similarly, Felbab-Brown (2020) suggests that the ability to inflict intense violence is a source of relative power for criminal groups, which often drives the state to negotiation. She also suggests that access to resources can enable a criminal group to expand its territorial presence, which in turn, can enable it to fill governance gaps – and possibly become a more likely partner in peace.

Wennmann (2014) states that **the relative power between organised crime groups and state institutions is likely to determine the bargaining outcome** in many conflict and crime-affected contexts. Freeman & Felbab-Brown (2021) and Wennmann (2014) suggest, however, that the balance of power may work against the government as negotiations are more often needed in contexts where state institutions are weak or absent, allowing organised crime groups to flourish. Felbab-Brown (2020) reveals that there is disagreement, among prior negotiators in Latin America and the Caribbean, as to whether one should negotiate with criminal groups while in a relatively weak

position. Some argued that the state should not negotiate in circumstances of extreme institutional weakness as it lacks a minimal capacity of credible threat; whereas others argued that the state may have no other realistic option. A noted compromise was to combine negotiations with efforts to strengthen state institutions (Felbab-Brown, 2020).

8.3. Effective third-party mediators

Various studies (Matesan, 2022; Freeman & Felbab-Brown, 2021; Cruz & Durán-Martínez, 2016) find that **the ability of mediators to build trust and confidence among parties and in the peace process, mitigate commitment problems, and provide monitoring mechanisms, has probably contributed to the success of pacts** in reducing violence. Freeman and Felbab-Brown (2021) identify another success factor of neutral third parties, which is their ability to display understanding and empathy toward the criminal groups' circumstances. This, in turn, could contribute to changing the narrative (see sub-section 11.3.2 on strategic communication).

Freeman and Felbab-Brown (2021) find, however, that unlike standard peace negotiations, **there is a scarcity of mediation support from international NGOs and multilateral institutions in the case of negotiations with criminal actors**, based on a global set of cases. This, they argue, can result in inadequate planning and process design, which can hinder the ability of such negotiation processes to advance and create durable agreements. Further, Whitfield (2013) states that insufficient attention was paid during the truce process in El Salvador to engaging civil society organisations and actors who had significant experience in working with gang members.

Various studies (Felbab-Brown, 2020; Arias, 2019; Cockayne, 2013b) find, however, that **local civic actors have emerged as effective mediators in negotiation with criminal groups**. Arias (2019) states that the more criminal groups are embedded in communities, the more opportunities there are for civic groups to try to channel their activities in more positive directions. Felbab-Brown (2020) and Cockayne (2013b) identify Catholic clergy as a civic actor that frequently engages with criminal groups in Latin America, for example in national level processes (as in El Salvador and Honduras) and local levels (such as temporary ceasefires or the delivery of humanitarian assistance). They suggest that the Church holds clout due to its impartiality; presence in marginalised and crime-affected communities; service provision; and because many drug traffickers are Catholics and respect bishops. Experiences in Honduras and El Salvador reveal that the greater the unity within the local Catholic Church, the greater the likelihood of mediation success (see Cockayne, 2013b) (see sub-section 8.1 on internal cohesion).

Freeman and Felbab-Brown (2021) find that the academic community has played direct and important roles in the design and execution of negotiations with gangs in Ecuador. Specifically, they outline that their involvement helped reduce the political risks of the process, brought analytic rigour, increased neutrality and confidence, and ensured monitoring and use of data and evidence. Felbab-Brown (2020) also finds that women were critical actors in promoting the need for dialogue in El Salvador, visiting *mara* members in prison and becoming key messengers for de-escalation. She emphasises however, that women were largely neglected in subsequent talks. Similarly, Whitfield

(2013) notes that the perspectives of women in gangs were not reflected in conversations, with male prisoners comprising the most visible dialogue partners. Applebaum and Mawby (2018) find that **the role of women as actors in organised crime or peace processes is also rarely discussed** in the literature. Yet, understanding the roles women play can introduce new ways to influence the outcomes of negotiation with criminal groups (Felbab-Brown, 2020; Applebaum & Mawby, 2018).

While third-party mediation can be an important variable in successful outcomes, Cruz and Durán-Martínez (2016) note that there is **other evidence that third-party mediation cannot account for sudden homicide reductions**. Looking at El Salvador and Medellín, for example, the rapid homicide drops occurred without the involvement of mediators from civic organisations or any other significant third-party intervention (Martínez-Reyes & Navarro-Pérez, 2021; Cruz & Durán-Martínez, 2016). In addition, prior experiences in these same places with pacts involving civic actors, such as churches and NGOs, were unsuccessful (Cruz & Durán-Martínez, 2016).

Arias (2019) and Dudouet (2014) find that **civic actors often engage in mediation without official recognition, security guarantees or protection**, which brings various risks. They may lose legitimacy by engaging with violent actors and may even face charges of associating with criminal or terrorist actors and involvement in illicit activities. They may also be blamed should negotiations break down (Arias, 2019). Dudouet (2014) argues that appropriate international support, including funding and recognition, might help to legitimise and protect their engagement.

8.4. Longer-term planning

Cruz and Durán-Martínez (2016) state that **gang truces and criminal pacts will be limited in their ability to reduce criminality in the long term if they fail to address deep rooted causes of violence** and gang formation. Similarly, Cockayne et al. (2017) and Wennmann (2014) suggest that agreements addressing criminal agendas need to set in motion longer-term transformation processes that alter the conditions that enabled armed groups to extract benefits from criminal activity in the first place. Experiences from El Salvador, Mexico, Brazil and Haiti indicate that while negotiations can contribute to violence reduction, they are less likely to endure if unaccompanied by strategies that address root causes or strengthen governance (Felbab-Brown, 2020).

Aligned with these findings, Rahman and Vuković (2019) and Muggah, Carpenter and McDougal (2016) emphasise the **importance of expanding the focus of dialogue from a mere reduction of criminal violence, to include a larger societal change agenda** that addresses underlying structural causes. Similarly, van der Borgh and Savenije (2016) and Whitfield (2013) highlight the improvised nature of the truce process in El Salvador, the challenges this created, and the need for greater attention to strategies and policies that link to longer-term goals. Santamaría (2016) adds that a peacebuilding approach that looks at root causes cannot be adopted only in principle but requires a way to operationalise it. However, Freeman and Felbab-Brown (2021) find that there is little evidence of the kind of rigorous actor mapping, interest analysis, contingency planning or negotiation infrastructure that are common in the development and design of modern peace negotiation processes. They also argue that negotiation is more likely

to be an important tool for reducing criminal violence if it forms part of a comprehensive local or national strategy.²⁷

Ecuador

The process in Ecuador is an outlier among cases involving engagement with criminal actors. It was a subset of a much larger national transformation process, which, arguably, is a central explanatory variable of the engagement's perceived success. From 2007 to 2017, the country undertook a broad agenda of reforms to citizenship and state institutions, including a shift from a repressive, coercion-centred approach to public safety to a citizen-centred concept; police reform; and introduction of new gun laws. The dialogue and accords reached with criminal groups – *pandillas* (gangs) such as the Latin Kings, the Ñetas and the Masters of the Street) – were part of this larger agenda. This, in turn, gave the *pandillas* confidence in the process and in the credibility of the government. The government provided former group members with educational and legal employment opportunities; and allowed for the transformation of some gangs into legal associations that maintained their identity, with members willing to abandon further participation in violence and criminality.

Source: Freeman & Peña, 2022; Freeman & Felbab-Brown, 2021

Longer-term planning, resources and political support to address root causes are considered essential to effective outcomes. Alongside strong internal cohesion and hierarchical leadership of criminal groups, they can increase the likelihood of adherence to agreements. In contrast, failure to address the functionality that criminality serves may frustrate members of the criminal group, and result in their defection from the deal. The effectiveness of outcomes can also be attributed to the inclusion of all relevant parties to an agreement. Inclusion of SOC groups in peace agreements could possibly be prescribed by international humanitarian law, as explored in the following section.

²⁷ For further discussion, see 6.3. on transformation and addressing root causes.

9. SOC, international law, and peace processes

Freeman and Peña (2022) assert that while there is a long-established body of international law that regulates armed conflicts and war, there is no clear counterpart to encourage, support and sustain peace negotiations. International humanitarian law (IHL), they state, is the one area of international law that recognises the possibility of legal concessions to end wars, indicating the possibility of accommodation.²⁸ This section looks at the how organised crime actors and SOC can be viewed under IHL and the implications that this has for whether they should form part of peace negotiations and agreements.

9.1. Engagement with NSAGs and IHL

For violence to be considered a non-international armed conflict (NIAC), it must extend beyond 'situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence' (Article 1 (2) of the Additional Protocol II to the Geneva Conventions).²⁹ **An armed conflict exists and relevant IHL norms apply if the level of violence is sufficiently high, and the groups engaged in violence are sufficiently organised** (Article 1(1) of Additional Protocol II to the Geneva Conventions)³⁰:

- the hostilities must reach a **minimum level of intensity**, as when the conflict is of a collective nature or when the government must use military force rather than police forces against the non-government group; and
- the non-governmental groups must be considered 'parties to the conflict' in that they possess **organised armed forces** (that is, demonstrate responsible command and territorial control that enables them to 'carry out sustained and concerted military operations' and to implement IHL).

According to the well-established formulation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Tadić*, 'an armed conflict exists whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.'³¹

²⁸ Article 6(5) of Additional Protocol II to the Geneva Conventions (AP II) provides: 'At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.' Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II): <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and-0>

²⁹ Protocol II, *Ibid*

³⁰ *Ibid*

³¹ ICTY, Prosecutor v. *Tadić*, IT-94-1-AR72, Appeals Chamber, Jurisdiction, 2 October 1995, para 70.

Felbab-Brown (2020) emphasises that **in situations of armed conflict, it is a core policy for humanitarian NGOs to dialogue with all actors in the places in which they operate, including criminal and other armed groups.** The UN General Assembly stresses that engagement with armed groups is essential to negotiate humanitarian access and to respond to the civilian population's needs without consideration of political or other factors (Sassòli, 2020). NGOs may thus need to routinely negotiate access to spaces governed by criminal groups (Felbab-Brown, 2020).

Sassòli (2020) outlines the work of Geneva Call, an NGO that seeks to obtain concrete commitments from armed groups to respect humanitarian rules through persuasion and dialogue.³² The organisation's original idea was to obtain formal 'Deeds of Commitment' from armed groups, signed by a group's high-level military and political leaders during a signing ceremony. Such deeds are the result of negotiations, whereby Geneva Call not only explains existing IHL prohibitions but also listens to the group's humanitarian problems, aspirations, and the challenges it faces. Sassòli (2020) claims that when leaders of an armed group return to fighting after this process, they no longer view themselves as mere criminals but as serious parties to an armed conflict with obligations under IHL.

9.2. International law, IHL, and organised crime

The UN Convention Against Transnational Organised Crime (UNTOC)³³ is the main international legal instrument for addressing organised crime.³⁴ Freeman and Peña (2022) assert that the UNTOC and its protocols appear one-dimensional, however, providing states with a single option of confrontation and punishment.

Research on legal challenges posed by organised crime, conducted by Perret and García Otero (2020) finds also that existing **international legal regimes regulating the use of force seem inappropriate for addressing organised crime.** On the one hand, International Human Rights Law (IHRL), which applies in situations without the existence of an armed conflict, does not adequately address situations where the state faces criminal groups, with the ability to challenge state authority and control territory. On the other hand, IHL applies only in situations of armed conflict, which does not necessarily apply to organised crime. However, the case of Colombia (see sub-section 9.2.2, text box) indicates that **if criminal groups are considered to be parties to an armed conflict under IHL, there could be a stronger legal grounding for them to be included in negotiation and peace deals** (Perret & García Otero, 2020).

There are two key areas of research in relation to IHL and organised crime: (1) whether criminal activity is sufficiently intertwined with conflict as to render IHL applicable; and

³² Common Article 3, which gives impartial humanitarian bodies a right to offer their services to parties to NIACs, including armed groups, provides the legal basis for Geneva Call's work (Sassòli, 2020).

³³ **The United Nations Convention against Transnational Organized Crime**, adopted by General Assembly resolution 55/25 of 15 November 2000: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

³⁴ States that ratify the UNTOC commit to several measures to fight transnational organised crime, including the criminalisation of money laundering, corruption and obstruction of justice; the adoption of new frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance and cooperation (see Freeman & Peña, 2022).

(2) whether criminal activity is of an intensity that it is indistinguishable from 'conventional' armed conflict.

9.2.1. Can SOC be considered sufficiently connected to hostilities to warrant the application of IHL?

The first research stream relates to the conflict-crime nexus (Crawford, 2015). Longworth (2022) highlights that **IHL could potentially be directly applicable to criminal conduct where there is a sufficient nexus between the conduct and the conflict**, particularly when perpetrated by the parties to the armed conflict.

The distinction in IHL – that wartime activities are not criminal acts 'so long as these acts are done as acts of war'³⁵ – presupposes that a distinction can be made between illegal acts that are solely for criminal gain (suggesting law enforcement) and acts that serve a wartime purpose (suggesting the possibility of direct participation in hostilities and the potential for an accommodation approach) (see Crawford, 2015). Perret and García Otero (2020) and Crawford (2015) state, however, that this is often a complicated and challenging task, which has been subject to extensive debate. The debate has arisen, for example, in situations where ongoing hostilities are funded or otherwise intertwined with high-level criminal activities (such as drug trafficking or illicit trade in gemstones) (Crawford, 2015).

The argument, as presented by Perret and García Otero (2020) is that while drug trafficking on its own does not represent a threat to parties to the armed conflict, the revenue from drug trafficking could provide financial support to a party of the conflict. As such, this could call for the application of IHL to those involved in trafficking activities. Crawford (2015) stresses that this is still an unsettled area of law and research, however, with some experts finding it too broad an application of IHL.

Colombia and Sierra Leone

Colombia: The bulk of the FARC's funding has been reported as deriving from the drug trade. The US' position was that the drug trade was targetable under IHL. This has been rejected by a number of experts as too broad a categorisation to say that all persons engaged in criminal activities that sustain warfare could be targeted under IHL as direct participants in hostilities.

Source: Crawford, 2015

Sierra Leone: Diamond smuggling became essential to achieve the parties' military objectives during the armed conflict in Sierra Leone (1991-2002). Those objectives, in turn, became increasingly shaped by greater involvement in diamond smuggling – leading to further violence and mistreatment of civilians. Lessons from Sierra Leone indicate that the applicability of IHL in these circumstances could provide relief to address the impacts of the conflict on the civilian population.

Source: Longworth, 2022

³⁵ See the New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949, cited in Crawford (2015).

9.2.2. *Can SOC become indistinguishable from 'conventional' armed conflict?*

A second, less explored, strand in the literature examines situations where the criminal activity is of a scope and intensity that renders it indistinguishable from 'conventional' armed conflicts, thus requiring the application of IHL (Crawford, 2015). Széles (2017) cautions that despite similarities between organised criminal groups and armed groups participating in armed conflict, the applicability of IHL must be carefully examined in each situation, looking for example at the precise ways in which violence is carried out.

Arguments for the application of IHL to SOC actors

Based on the criteria to determine if NSAGs are parties to a NIAC, outlined in jurisprudence and legal commentary (see sub-section 9.1), **organised crime groups can be seen to fall under the scope of IHL when they produce violence that reaches a level of intensity and achieve organisational complexity** (such as being under responsible command; the ability to exercise sufficient control to implement IHL) **that creates a situation of armed conflict** (see Freeman & Peña, 2022; Kalmanovitz, 2022; Applebaum & Mawby, 2018).

Some scholars increasingly consider that gang and other criminal violence may rise to a level beyond 'situations of internal disturbances and tensions', particularly in some situations in Latin America (see Cockayne, 2013b). Széles (2017) highlights that organised criminal groups are so large and powerful in Colombia, Honduras, and El Salvador, having continually rampaged through cities for days with the risk of provoking social and political strife. Research on 'new wars' in El Salvador, conducted by Applebaum and Mawby (2018) suggest that gang violence in the country matches the level of intensity and organisation required to be considered armed conflict. In the case of Mexico too, widespread, protracted, and high-intensity criminal violence has often prompted such states to respond with military force, which has, in turn, prompted some scholars to suggest that these activities should be designated as NIAC or insurgencies (Crawford, 2015). Kalyvas (2015) too states that the number of homicides in Mexico surpasses thresholds that researchers use to classify armed conflicts as civil wars.

Kalmanovitz (2022) and Cockayne (2013b) find that some of these situations of violence have been qualified as NIACs by legal and security experts, sometimes by states, and in rare cases, by the ICRC. In the case of Colombia, for example, five of the six overlapping NIACs identified by the ICRC for 2021 involve non-state groups that appear to be primarily criminal, with unclear ideological orientations (see Kalmanovitz, 2022).

While determinations of the level of violence need to be made in each context, the irrelevance of the motivations of armed actors is a well-established principle under all legal assessments (Geneva Conventions, *Tadić*, ICRC) (see Kalmanovitz, 2022; Crawford, 2015). Kalmanovitz (2022) suggests that this may be due to difficulties in distinguishing between political and criminal motives, which Sassòli (2019) argues could lead to time-consuming debate. Determining what counts as a political objective could also be controversial at a diplomatic level: for example, it may be difficult to justify engaging the FARC but not the Taliban in Afghanistan (Kalmanovitz, 2022; Sassòli, 2020). Nonetheless, Bradley (2020) finds that in practice, the ICRC is still often more cautious about entering into dialogue with groups whose motives are primarily criminal.

Edward (2015) finds that **it could also be problematic to distinguish between political and criminal motives because the suffering of civilian populations is the same**, regardless of whether violence has been committed by a drug trafficker or a member of the armed forces. Sassòli (2020) echoes this point that making distinctions between ‘good’ and ‘bad’ armed groups would mean that civilians could be deprived of protection not because they are not in need, but because their suffering stems from groups whose methods or ideology are rejected by the international community.

Freeman and Peña (2022) and Bradley (2020) note that the ICRC has been expanding its understanding of what constitutes a humanitarian crisis to include contexts of urban violence, referencing the high numbers of fatalities. As such, it has been widening its field of action to areas that could fall below the threshold of armed conflict, with the view that it is the level of ‘humanitarian consequences’ that is deemed the crucial factor in giving legitimacy to ICRC involvement (Bradley, 2020).

Arguments against the application of IHL to SOC actors

Case law points to a high threshold of violence to qualify as an armed conflict that SOC actors may not reach. The ICTY in *Haradinaj* noted that, in deciding as to the existence of an armed conflict, a number of factors relating to the ‘intensity’ of the violence would need to be examined, such as: the types of weapons used, the numbers of persons involved in the fighting, the extent of material destruction, and the numbers of civilians fleeing the combat zones.³⁶ Mrkšić et al. outlined various indicative factors: ‘daily combat, usually involving artillery, mortars, armoured vehicles, including tanks, weapons such as multiple rocket launchers and anti aircraft batteries, as well as infantry weapons, and at times air and naval forces’³⁷ (Crawford, 2015). These findings point to the importance of context-specificity in such determinations (see the case of Mexico, below).

Kalmanovitz (2022) and Hellestveit (2015) argue that **the extended application of IHL to organised criminal groups could trigger a disproportionate military approach** by the state. Similar to arguments against the confrontation approach and potential negative consequences (see sub-section 4.2), military action and increased state violence could fuel further escalations in violence and increase popular support for those subjected to state repression (Hellestveit, 2015).

³⁶ ICTY, Prosecutor v *Haradinaj* et al., Case No. IT-04-84, Trial Judgment, 3 April 2008, at para. 49.

³⁷ ICTY, Prosecutor v *Mrkšić* et al., Case No. IT-95-13/1-T, Trial Judgment, 27 September 2007, at para. 419.

Mexico and Colombia

Mexico: The existence of a NIAC would, *prima facie*, seem met in the case of drug cartels in Mexico and state use of military force. However, while the level of violence and casualties have been significant, the armed engagements between the cartels, or between the cartels and the government, have not definitively amounted to the kind articulated in various ICTY jurisprudence (for example, ‘daily combat’ in the sense envisaged in Mrkšić et al., discussed above). Further, the Mexican armed forces have been deployed in response to the drug violence largely in a law enforcement capacity – arresting cartel members and interdicting drug shipments – rather than in a typical military capacity.

Source: Crawford, 2015

Colombia: The 2012 legal framework for peace in Colombia, outlining the terms of a possible peace negotiation, excluded criminal groups (BACRIMs) from the framework, because criminals were not considered to be part of the Colombian armed conflict. In January 2014, the International Criminal Court (ICC) stated that the BACRIM group, *Urabeños*, had reached a level that merited monitoring. It found that the group was organised enough and ‘could become part of the armed civil conflict’ but that the level of conflict between the BACRIM and the state forces, or between the BACRIM and the guerrillas, was still not ‘sufficiently intense’ to be considered an armed conflict. Several organisations (such as International Crisis Group and Human Rights Watch) suggested, however, that criminal groups should be considered part of the ongoing NIAC. In May 2016, the Colombian government argued that IHL applied, stating that these groups are organised armed groups.

Source: Perret & García Otero, 2020

International humanitarian actors have experience of negotiating with criminal actors with territorial control for humanitarian access. Criminal groups could also potentially be considered parties to an armed conflict in situations with a strong conflict-crime nexus or where criminal activity is at a high level of intensity – imparting a legal grounding to include them in peace processes. Transitional justice, discussed in the subsequent section, is another field of study that can provide a framework for legal justification of whether or not to include SOC in peace deals and/or to provide legal leniency to SOC actors.

10. SOC, transitional justice, and peace processes

Transitional justice concerns whether and how societies address the legacies of large-scale, systematic and/or widespread past abuses, and restore the rule of law in post-conflict or post-authoritarian contexts. This can be through a comprehensive policy with core transitional justice elements such as truth, justice, reparations and guarantees of non-recurrence (Mayans-Hermida & Holá, 2022; Freeman & Felbab-Brown, 2021).

Freeman and Felbab-Brown (2021), Slye (2020) and Cockayne (2013a) emphasise that **common criticisms about negotiating with organised criminal groups** – that it undermines the rule of law, disrespects victims and may incentivise people to enter into crime – **are similar to challenges long addressed by the field of transitional justice**. Based on lessons from El Salvador, Whitfield (2013) stresses the urgency of thinking through the extension of transitional justice tools to environments in which the aim is to move away from the presence of criminal violence. This section explores key aspects of transitional justice that are relevant to SOC, to negotiation with SOC actors in peace processes, and to final deals and implementation.

Freeman and Felbab-Brown (2021) argue that transitional justice's key concepts (for example, striking a balance between accountability and reconciliation, between prevention and punishment goals, and between victim and perpetrator interests) and mechanisms (such as conditional amnesties, truth-telling, reparations, and restorative justice) are also applicable to negotiations with organised criminal groups. Additionally, Slye (2020) notes that the provision of legal leniency to criminal actors could provide positive incentives for the participation of criminal groups and contribute to trust-building between parties to negotiation. He also suggests that the acceptance of any ensuing agreement is affected by the presence or absence of elements of transitional justice, including criminal accountability, legal leniency, truth-telling and reparations.

10.1. Legal leniency

Cockayne et al. (2017) emphasise that **negotiation with organised criminal groups may force a society to ask difficult questions about what norms are negotiable**: for example, are policymakers prepared to offer drug traffickers amnesty in return for them abandoning the trade (such as in the case of Colombia)? Or as Arratia Sandoval and Garrido Quiroz (2019) ask in the case of Mexico, should criminal actors ever be offered amnesty for reprehensible acts, such as murder, torture and kidnapping?

These questions relate to the establishment of 'red lines', with some practitioners, scholars and policymakers arguing that certain crimes can never be eligible for legal leniency (Felbab-Brown, 2020). Research on negotiations with the Gulf Clan in Colombia reveals, for example, that full amnesty and impunity were ruled out in the bargaining process, allowing only for sentence reductions (Felbab-Brown, 2020). Cockayne (2013b) notes that red lines may also be drawn regarding the position held by the actor: where a commander is potentially liable for the conduct of his subordinates,

access to amnesties may need to be limited to rank and file below a certain threshold in the chain of command.

Freeman and Felbab-Brown (2021) outline that **legal demands of criminal groups have ranged from the limited (such as improvements to prison conditions and shorter prison terms in Brazil) to the expansive (such as the Gulf Clan's demands for amnesty in Colombia)**. They provide a structural explanation for this variation, arguing that the greater the concessions a group is willing or expected to make in a negotiation process, the greater its expectation for legal leniency and vice versa. Thus, a criminal group's demands for legal leniency tend to be higher when they are expected to demobilise and disarm at the conclusion of a negotiation, rather than remaining armed as part of a temporary truce.

As with other inducements, Arratia Sandoval and Garrido Quiroz (2019) assert that the **provision of legal leniency can help to promote a certain level of commitment** on the part of the criminal actors benefiting from such leniency. They find that **it is unclear, however, whether amnesties or other legal leniency will result in the termination of criminal activities**. The reasoning is that, while the provision of amnesty to political armed actors is very likely to achieve disarmament, in the case of criminality even if those amnestied terminate their activities, the profit incentive would persist. As such, new criminals would take up their role and the illicit activity would continue.

Planta and Dudouet (2015) and Cockayne (2013b) caution that **any policy of legal leniency, particularly amnesty, risks alienating victims of criminal violence** and the general public. This is particularly the case when there are already legal restrictions on engagement with criminal actors; and when governments have long contributed to a discourse of criminalisation (see sub-section 4.1). The public may feel that the rule of law is being compromised (Cockayne, 2013b).

In turn, Arratia Sandoval and Garrido Quiroz (2019) note that **governments, who fear a potential public opinion backlash, may be wary of supporting such a policy**. Freeman and Felbab-Brown (2021) find that in some negotiations with violent criminal groups (such as in Jamaica), governments did not offer legal leniency, preferring to continue with prosecution. They find some evidence that there were no negative consequences: the lack of leniency for serious crimes, such as homicides, did not result in the criminal groups' repudiation of negotiations, as might have been expected (Freeman & Felbab-Brown, 2021).

Mexico

During his election campaign in 2018, the new president of Mexico, Obrador, proposed to grant an amnesty to those involved in drug production and trafficking, with the hope of ending the 'war on drugs'. This involved a drastic shift from the prior law-and-order approach, instead adopting tools used in 'conventional' peace processes, such as DDR and transitional justice. There were concerns, however, that granting amnesty would confer unjustified legitimacy and power to criminals. There were also concerns that amnesty would be incapable of fully addressing the problem of violence since new criminals could emerge to replace those amnestied.

Source: Arratia Sandoval & Garrido Quiroz, 2019

10.2. Conditionalities

Amnesty and other forms of **legal leniency are considered extraordinary benefits, which Slye (2020) suggests should only be provided in return for something equally significant**, such as truth-telling (see also sub-section 10.3). Drawing on negotiations in Latin America and the Caribbean, Felbab-Brown (2020) finds that while unlikely to prevent all public backlash, the adoption of conditionalities can add some legitimacy and justice to the process, which may help to lessen backlash.

Freeman and Felbab-Brown (2021) assert that transitional justice teaches that **conditionalities (with accompanying monitoring systems) can also serve as effective commitment mechanisms**. Agreements on legal leniency for criminal actors are thus more likely to be effective if they have: (1) clearly stated conditions of eligibility, and (2) conditions of retention.

Conditions of eligibility include truth-telling, apology, victim compensation, and/or demobilisation and decriminalisation of criminal organisations (Freeman & Felbab-Brown, 2021; Rahman & Vuković, 2019). Regarding demobilisation and decriminalisation, Rahman and Vuković (2019) note that the state must make clear to gang leaders that it cannot grant amnesty to individuals who will return to their communities and continue to engage in criminal activities.

Slye (2020) and Cockayne et al. (2017) identify legal leniency conditional on criminal truth-telling as a way to advance some degree of justice for victims (see sub-section 10.3). Under such circumstances, applicants for amnesty are required to provide information about past and ongoing criminal activity, to facilitate prosecution of non-participants; and/or to reveal the location of graves. Cockayne et al. (2017) find, however, that there has been limited innovation in the adaptation of truth and reconciliation commissions to deal with large-scale organised criminal violence.

Conditions of retention outline clear costs for non-participation in the amnesty programme, with breach resulting in revocation of the negotiated legal benefit (Freeman & Felbab-Brown, 2021; Cockayne, 2013b). Slye (2020) advises that positive incentives should thus be harmonised with negative incentives, including the credible threat of prosecution should parties fail to fulfil their obligations. Freeman and Felbab-Brown (2021) find that such conditions increase the chance that the criminal group will take the implementation of the accord seriously. An alternative way to structure legal leniency, suggested by Cockayne (2013b), is to pursue prosecution, but to then suspend the application of sentences conditional on good behaviour, as has occurred in some Latin American cases.

10.3. Balancing victim and perpetrator interests

While attention to victims has clear intrinsic value, it also has instrumental value. Freeman and Felbab-Brown (2021) argue that **unless deals with criminal groups are complemented by attention to victims, there is likely to be limited public support for legal leniency** and the prospect of negotiation with the criminal group can fail to materialise. Victimised communities, as key constituencies, can vehemently condemn

negotiations and any prospect of leniency, as in El Salvador's and Honduras's negotiations with the *maras* (Freeman & Felbab-Brown, 2021; Felbab-Brown, 2020). Cockayne (2013a) stresses that further thought and planning is required to address how victims of criminal violence can receive effective remedies. Slye (2020) points to reparations, for example, as a mechanism to provide relief to victims whose rights have been violated by organised criminal groups.

Drawing on a global set of cases of negotiation with violent criminal groups, Freeman and Felbab-Brown (2021) find, however, that **victims' interests were rarely front and centre: they were not direct participants in negotiation with criminal groups nor were they granted material or other types of reparation** as part of the negotiation. Still, they find that attention to victims' interests and rights, while not at the forefront, was not entirely absent. In highly localised negotiations with criminal groups, negotiators developed ways to address victims' needs and demands in some way. For example, in Jamaica, a female victim of robbery had property restored by a gang leader due to the mediator's intervention; and in some Ecuadorian neighbourhoods, former gang members were brought to apologise to their victims (Freeman & Felbab-Brown, 2021). Negotiations with the Gulf Clan in Colombia was a rare instance where an explicit point was made of demanding reparations for the victims (Felbab-Brown, 2020).

In research conducted on public support for peace agreements, Tellez (2019) finds that **civilians will evaluate an agreement based on how its provisions deliver justice to the 'perpetrators' or 'victims'** in the conflict. They see victims 'getting their due' (either through criminal justice against the perpetrator or through restorative mechanisms) as a key aspect of justice. He finds evidence from the peace process in Colombia that criminal justice provisions have some of the largest effects on the probability that citizens will support an agreement during a peace referendum. Selective punishment for human right violators and punishment for all FARC members produced a roughly 9% increase in the probability that an agreement is chosen when compared with the baseline of no jail time (Tellez, 2019, pp. 835-836). Transitional justice provisions that take into account the interests of victims (such as reparation) are also influential: distributive and restorative justice provisions³⁸ produce a roughly 7% increase in the probability that an agreement is supported when included (Tellez, 2019, p. 836).

Similarly, Freeman and Felbab-Brown (2021) find in their case studies of negotiation with criminal groups that **greater attention to the interests of victims – a core emphasis of transitional justice – may have brought better results**. Felbab-Brown (2021) notes that opponents of negotiations with criminal actors have been able to point to shortfalls in attention to victims to rally criticism against the process and any negotiated deals. She adds further that failure to protect victims' rights in dialogue with criminal groups can thus be a missed opportunity to increase public buy-in. Slye (2020) adds that there is no need to wait for a negotiated deal to start addressing harms suffered by victims. Rather, providing early relief and compensation can contribute to building trust between the state

³⁸ In this study, restorative justice includes symbolic reparation, such as having perpetrators publicly acknowledge their crimes, in the form of apologies; and distributive justice includes material reparation, whereby victims receive compensation for their trauma, for the death of relatives, or for the loss of property (Tellez, 2019).

and the local community by signalling that the process is concerned not only with the organised criminal groups, but also with victims (Slye, 2020).

Colombia

In November 2016, the government and the *FARC* reached a historical peace agreement to end over fifty years of war (Guzman & Holá, 2019). The state worked with the *FARC* and international advisors to develop a system that would allow the guerrilla leaders to lay down their arms, and not be judged by the ordinary justice system, but serve alternative sentences, through restorative sanctions for the most serious crimes (Aguirre, 2022). These transitional justice provisions have triggered very critical reactions, which have undermined support for the peace agreement. Leaders of the opposition fiercely rejected the accord since those considered the most responsible would not be sentenced to prison terms (Guzman & Holá, 2019). Opposition also emerged among the public in urban areas (Tellez, 2019). From a more pragmatic perspective, however, this design may have been the only alternative to war (Guzman & Holá, 2019).

Legal leniency was given on the condition of truth-telling. Law 975/2005 established that demobilised former combatants subject to criminal prosecution, or who have admitted to participating in a crime, could apply for a more lenient sentence. They would then be obligated to offer a confession; state their level of involvement with the organisation; reveal whether they had violated human rights or humanitarian law; and provide any other information of public interest, particularly regarding the location of graves. Applicants cooperating fully could benefit from a considerable reduction in their conviction (Espindola, 2021).

Improvements to legal leniency, including through conditionalities that provide some benefit to victims and their families, can serve as a galvanising force for peace (Tellez, 2019). Research conducted during the Colombian peace processes finds evidence that while justice-related provisions are important, improvements in public approval can be made at the margins, through provisions that improve the social welfare of victims, thereby increasing the chances that an agreement is supported (Tellez, 2019).

For further discussion, see the Colombia case study in Appendix 1.

The field of transitional justice can provide helpful guidance to the challenges of addressing organised crime and SOC actors in peace processes. The risk of backlash for legal leniency for such crimes has resulted in the drawing of ‘red lines’ in some cases and in efforts to attach conditionalities that serve the needs of victims, an important aim in itself. The next section highlights other challenges and risks to including criminality in negotiation agendas and negotiating with SOC actors.

11. Challenges, risks and trade-offs

Felbab-Brown (2020) and De Boer and Bosetti (2017b) emphasise that **addressing criminal agendas is not a technical exercise, but a tremendously political undertaking**, which can be tremendously controversial. As such, policymakers and practitioners need to apply conflict sensitivity and be cognisant of all the potential effects, including potentially counterproductive ones; for example (De Boer & Bosetti, 2017b):

- Will targeting a particular criminal actor or activity fuel more violence?
- Will negotiation with criminal actors incentivise them to ramp up violence to achieve more concessions?
- Will suppression or abandonment of particular illicit economies result in their displacement to other areas?

This section explores key challenges and risks involved in addressing criminality and negotiating with SOC actors in peace processes, focusing on the risks of strengthening SOC actors, displacing violence, and lack of public support. It also points to discussion of strategies to mitigate these risks.

11.1. Promoting moral hazard and strengthening SOC actors

11.1.1. Moral hazard

Kemp and Shaw (2014) and Cockayne (2013b) caution that **engaging in mediation and negotiation with criminal actors produces the danger of ‘moral hazard’ – rewarding and possibly incentivising bad behaviour**. Felbab-Brown (2020) echoes this point, noting that negotiation with criminal actors may risk emboldening others to engage in illegal activities. Drawing from experiences in Latin America, Arratia Sandoval & Garrido Quiroz (2019) finds that drug trafficking organisations may perceive that by becoming violent enough, they can come to the negotiating table with the government and seek further concessions. Similarly, Muggah et al. (2016) find that in the case of truces in Central America and the Caribbean, gangs have occasionally increased violence prior to agreements, aiming to improve their negotiating positions.

Felbab-Brown (2020) finds that **negotiators in most of the Latin American and Caribbean cases examined did not appear particularly concerned with the risks** of moral hazard and the dangers of strengthening criminal groups, focusing on the short-term imperative of bringing down high levels of violence. Freeman & Felbab-Brown (2021) also acknowledge the risk of moral hazard, but argue that this should not necessarily result in a decision not to negotiate with criminal groups. They claim that: ‘Equal or worse problems can stem from perpetuating exhausted, unproductive law enforcement policies that fail to curb violence [and] consign communities to systems of criminal violence and governance’ (Freeman & Felbab-Brown, p. 30).

Bosetti et al. (2016) suggest that **to mitigate the risk of moral hazard, negotiators could seek to develop an effective inducement strategy that does not equate to identifying a criminal group's 'price' for peace.** Freeman & Felbab-Brown (2021) advise that adopting non-violent dispute resolution mechanisms and rules for addressing breaches in negotiated agreements can also help to reduce the risk of moral hazard.

11.1.2. Strengthening criminal groups

While a criterion identified for effective negotiation with criminal groups is pre-existing internal cohesion (see sub-section 8.1), many scholars and practitioners argue that **government negotiation with criminal groups can also contribute to stronger cohesion and leadership** (Katz et al., 2022; Felbab-Brown, 2020; van der Borgh & Savenije, 2019; Cruz and Durán-Martínez, 2016). Katz et al. (2022) and Schubert (2022) emphasise that negotiation between the state and criminal actors can strengthen such groups by legitimising their leaders as trustworthy dialogue partners. Similarly, Martínez-Reyes and Navarro-Pérez (2021) find that the Salvadorean government legitimised gangs as political actors through negotiation. Freeman and Felbab-Brown (2021, p. 31) claim in addition that: 'Deals that do not result in a group's transformation or dismantling tend to increase the group's social and political capital vis-à-vis rivals, local populations and politicians and governments.'

Felbab-Brown (2020) and Garson (2013) caution that in such instances, **criminal groups can reassert control, extend their influence and expand their extraction of rents** in communities – while, at the same time, reducing levels of violence. Katz et al. (2022) also find that the strengthening of criminal groups through negotiation has been associated in some instances with greater criminality. Various scholars have found in other situations that gang truces are likely to result in more gang violence in the long-term due to enhanced internal cohesion (see Katz et al., 2022). In the case of El Salvador, Felbab-Brown (2020) notes that the negotiating team sought to facilitate trust, dialogue, and control of gang leaders over their members, by transferring leaders from maximum-security prisons to ordinary ones. This was greatly criticised, however, due to the risk that it could strengthen gangs and their ability to coordinate new crimes.

Schubert (2016) and Cockayne (2013b) point to additional concerns **that truces and other agreements may empower violent criminal actors at the expense of less violent civic organisations.** They assert that in negotiation contexts, criminal actors may be given a stronger voice than non-violent institutions which may in some cases enjoy greater legitimacy within their neighbourhoods.

Katz et al. (2022) advise that to counter these risks, **negotiators and policymakers should try to ensure that any greater cohesion of criminal groups created by engagement with them is directed toward more positive, productive, non-violent behaviours,** rather than further criminal activities. Freeman & Felbab-Brown (2021) also recommend that negotiators should always seek to walk away with some gain, particularly in relation to institutional strengthening, victim support and/or community empowerment.

Mexico and Jamaica

Mexico: Accommodation between the state and criminal groups has effectively controlled the behaviour of such groups for decades. However, it has also contributed to the growth of a series of major cartels under the protection of the state. Thus, while accommodation has been successful in reducing levels of armed violence, it has led to infiltration of the state, weakening of state institutions and continued injustices.

Source: Wennmann, 2014

Jamaica: Gang leaders agreed to sign the Greater August Town truce agreement (2008) only if it were ratified in public, with the media present. This indicates that the process was perceived by gang leaders as a way to enhance their reputation with the community and with government. The ultimate failure of the truce may be due to the greater desire of leaders to be seen as important actors, rather than a genuine desire to implement the truce.

Source: Katz et al., 2022

11.2. Displacing violence, hidden violence, and societal cleavages

11.2.1. Rise in other forms of criminality

Rahman and Vuković (2019) and Cruz and Durán-Martínez (2016) find that **pacts with criminal groups tend to promote violence reduction, but not necessarily the elimination (or even reduction) of criminal activity**. Similarly, Freeman and Felbab-Brown (2021) state that criminal groups taking part in ceasefires did not explicitly agree to forgo all criminal activities. In many of the global cases examined in their research, groups persisted in local extortion, robberies, and drug retail.

Drawing on experience from Latin America, Schubert (2016) reveals that mediation efforts focused exclusively on reducing the number of homicides, leaving other violent criminal activities untouched. In the case of El Salvador, Freeman and Felbab-Brown (2016) and Cruz and Durán-Martínez (2016) note that while murder rates decreased for a certain duration after the *maras* deal, crimes such as extortion remained at high levels; and other serious violent crimes, including rape, increased during the same time period. Different findings have emerged, however, in some of the contexts explored by Freeman and Felbab-Brown (2021): during temporary ceasefires in Jamaica and Trinidad and Tobago, violent robberies, rapes and extortion sometimes also temporarily declined.

11.2.2. Hidden violence

Cruz and Durán-Martínez (2016) find that **armed criminal groups in El Salvador and Medellín, Colombia have not reduced actual violence, but only its visibility** by hiding or disappearing bodies, sometimes burying them in mass graves. Santamaría (2016) advocates for a more comprehensive peacebuilding approach that extends beyond the containment of violence – incorporating a regulatory framework that

facilitates broader accountability to address hidden violence and increased criminality outside homicide.

11.2.3. Geographic displacement

Waugh and Yousef (2022) caution that **negotiations to reduce violence may also create the risk that violence and organised crime simply move to new locations**. They note that criminal groups and networks are highly adaptable and flexible, with the ability to move into new geographic and commercial areas as required. Muggah et al. (2016) find in the case of Central America and the Caribbean that after truces are agreed, violence tends to spill over to new, previously unaffected, neighbourhoods and cities. Similarly, ceasefire deals and the implementation of peace agreements in Mali and Colombia also triggered the movement of organised crime actors and activities to new spaces (Waugh & Yousef, 2022).

11.2.4. Societal cleavages

Waugh and Yousef (2022) also caution that **clampdowns on organised criminal groups risk exacerbating existing tensions between ethnic groups and/or networks**. In Mali and Kosovo, for example, they note that criminal networks have been able to overcome societal divides and ethnic tensions, and the potential for inter-group violence and conflict, by providing strong and unifying economic incentives and patterns of cooperation. As such, any efforts to force or encourage criminal actors to abandon their activities may risk producing insecurity, violence and conflict if they fail to take into account these functions of organised crime (Waugh & Yousef, 2022).

11.3. Political and public support

Drawing on experience from Latin America and the Caribbean, Felbab-Brown (2020) finds that the **lack of broad political or public support for negotiating with criminal groups can undermine and destroy the effort**. She specifies that efforts to foster a broad support base include: managing polarisation, building domestic and international coalitions, taking account of victims' rights and perspectives, and neutralising powerful spoilers.

Santamaría (2016) attributes public support for law-and-order approaches to a history of state confrontation and criminalisation discourses (see sub-section 4.1). In Colombia, for example, Machuca Pérez (2022) argues that the return to a long-standing narrative of labelling the FARC as 'narco-terrorists' ultimately resulted in the peace agreement losing the popular vote in the referendum.

In El Salvador, Felbab-Brown (2020) also finds that **political polarisation contributed to lack of public support** for negotiation with gangs. She notes that President Funes lacked a strong party to support negotiations with the *maras*, leaving them vulnerable to attacks by political rivals, who condemned not only the process' alleged lack of transparency, but also the very idea of negotiating with criminals. This, in turn, solidified public doubts about the process and increased public backlash.

11.3.1. *Secrecy versus transparency*

Much research (Freeman & Peña, 2022; Freeman & Felbab-Brown, 2021; Kirkpatrick, 2021; Felbab-Brown, 2020) finds that **public repudiation of negotiation processes, alongside proscription and bans on engaging with certain criminal and terrorist groups, can result in secret talks** (at least initially) – as has been the case in many contexts. The research also finds that secrecy has the benefits of bypassing the challenge of legal recognition, and enabling a protected space for early trust and confidence-building among parties. It also helps to prevent early sabotage by outsiders, destabilising forms of public backlash, and the risk of spoilers (Freeman & Peña, 2022; Freeman & Felbab-Brown, 2021; Felbab-Brown, 2020).

Freeman and Felbab-Brown (2021) caution, however, that **a key risk with secret talks is that they exclude important actors, which can undermine transparency, and the legitimacy and political sustainability of the outcomes**, once the results become public, such as in El Salvador. Felbab-Brown (2020) finds that negotiators in Latin American and Caribbean contexts disagreed widely as to what an appropriate balance between secrecy and transparency was and how to achieve it. Van Santen (2019a) notes that an OAS mediator involved in negotiations in San Salvador said that the lack of inclusivity at the start of negotiations, which would have provided clarity and transparency for the public, meant the truce was conducted without the support of the middle class. Her research reveals that middle-class San Salvadorans were receptive to social approaches to gangs provided their security fears were addressed. Thus, early city-wide inclusive public engagement could have increased support for the process, instead of fear created by a lack of transparency. Freeman and Felbab-Brown (2021) also stress that it can be beneficial to engage in private outreach to influential but excluded actors early in the process.

Felbab-Brown (2020) notes that **secret negotiations also bear the risk of accidental disclosures and deliberate leaks** to officials with power, aiming to sabotage the process. Secrecy also has financial and practical costs: the set-up tends to be operationally complex, requiring special logistical measures that public negotiations may not need, including covert transportation of the parties and arrangement of secret meeting sites (Freeman & Felbab-Brown, 2021).

Felbab-Brown (2020) clarifies that **the duration of planned secrecy can vary**: in some cases, the entire negotiation process is conducted in secrecy, with agreement in some instances that the final results will be made public at the conclusion. In other cases, the secret talks constitute only a preliminary component of the process, leading to a publicly-known phase. Rahman & Vuković (2019) advise that the hostile public may be brought into the process (after an initial secret phase) with the purpose of strengthening the government's position that only certain concessions can be granted. They claim that public opinion can serve as an indicator of the government's 'red lines' to gangs, clearly communicating that some forms of criminality will not be tolerated nor allowed legal leniency. This runs the risk, however, that the public rejects any form of dialogue out of hand. As such, Rahman and Vuković (2019) emphasise that the state must have a strategy to gain the support of the public.

11.3.2. Strategic communication

Felbab-Brown (2020), De Boer and Bosetti (2017b), and Santamaría (2016) assert that **public perceptions and attitudes against negotiations with criminal groups, while challenging to overcome, could potentially be countered through strategic messaging** and the creation of simple but persuasive narratives for public consumption. Freeman and Felbab-Brown (2021) and Rahman and Vuković (2019) advise that the state could work with civil society actors that promote a more nuanced understanding of gang life and empower them to engage in a public education campaign about the gangs. They suggest that a simple but persuasive narrative – which focuses on the humanity of gang members and the lack of an alternative solution – could help to sensitise the public and explain the rationale for negotiations. Freeman and Felbab-Brown (2021) specify that this could include discussion about the origins of gang members, many of whom may enter criminal groups from abusive home environments and situations of poverty, with others brought in and kept in coercively.

Cockayne et al. (2017) and Bosetti et al. (2016) emphasise that the **choice of messenger or spokesperson is important**. Cockayne et al. (2017) identifies the media as an important actor that can influence public opinion by demonising or normalising criminal actors through its choice of discourse, calling for a proactive media management strategy. Rahman and Vuković (2019) suggests that that the voices of sympathetic civil society actors should be mobilised and amplified in public events with influential community institutions. Santamaría (2016) also recommends that trained mediators could contribute to changing a community's perceptions of how to respond to violence.

Rahman and Vuković (2019) suggest further that **efforts to engage in strategic messaging should begin early on**, during initial phases in which discussions may be held in secret, such that the public is sufficiently prepared by the time dialogue is made public. They also advise that such messaging could be delivered by key institutions on a trial basis, while testing the public's receptiveness to different messages.

El Salvador

Assessment of the truce process finds that the lack of transparency allowed for conspiracy theories to proliferate (Garson, 2013). A negotiator stated that the lack of transparency in the early stages left the process vulnerable to allegations of state corruption (Felbab-Brown, 2020). Most other team members contended, however, that if publicly known in the early stages, negotiations would never have got off the ground (Felbab-Brown, 2020).

Negotiators also found that the absence of a communication strategy was a significant mistake, particularly as the media in the country had tended to focus on the violence inflicted by gang members (Felbab-Brown, 2020; Bosetti et al., 2016). In the absence of any prior sensitisation of the public, or development of a ready narrative, the surprise revelation of negotiations by the media garnered tremendous negative publicity and controversy, which eventually overwhelmed the process (Felbab-Brown, 2020).

Negotiating with criminal groups is controversial with notable challenges and risks. Promoting greater violence and criminality is a key risk and concern. Lack of public support is also a key challenge that can unravel state support for negotiation processes. It can necessitate negotiation in secrecy, with trade-offs for transparency and potentially legitimacy. Efforts to gain public support include the development of strategic messaging and persuasive, alternative narratives about criminal groups.

12. Conclusion and future research

12.1. Summary conclusion

There is much research that discusses ways in which organised crime, politics, and violent conflict can be linked. These linkages can necessitate engagement with SOC actors and criminal agendas in dialogue and peace processes. This is not without controversy. The labelling of groups as ‘criminal’, and their violent acts, can dictate support for confrontation. In many cases, such an approach, on its own, has produced more violence, which can make accommodation with criminal groups preferable. Negotiation can not only be preferable, but also necessary where criminal groups have strong control over territories and populations – serving as *de facto* authorities with legitimacy (Ferreira & Richmond, 2021; Felbab-Brown, 2020; Cockayne et al., 2017; Kemp & Shaw, 2014). If SOC actors are considered to be direct participants in hostilities in the context of an armed conflict, which is advocated by some scholars in certain contexts, this could also prescribe dialogue with them.

There is an extensive body of literature that discusses the functionality of criminal activity and organised crime groups, such as when they provide livelihoods and fill governance gaps, and the importance of providing alternative ways to fill these gaps through transformation processes (Freeman & Peña, 2022; Omelicheva & Markowitz, 2021a; Felbab-Brown, 2020; Reitano, 2020; Rahman & Vuković, 2019; van Santen, 2019; van der Lijn, 2018; Vuković & Rahman, 2018; De Boer & Bosetti, 2017b; Dulin, 2017; Garson, 2013). Research finds that negotiations with criminal groups tend toward pragmatic and limited goals, however, such as violence reduction, rather than more transformational ones (Felbab-Brown, 2020). Where efforts are made to achieve a more comprehensive deal, with provisions for socio-economic reform, outcomes are often limited due to inadequate political will and/or funding.

Where criminal groups are required to demobilise and disarm as part of a more comprehensive deal, their demands for concessions, such as legal leniency, tend to be higher (Freeman & Felbab-Brown, 2021). However, any policy of legal leniency risks alienating victims of criminal violence and the general public (Planta & Dudouet, 2015; Cockayne, 2013b). The lack of broad public support for negotiating with criminal groups – stemming in large part from a history of confrontation approaches and criminalisation discourses – is noted in much of the literature as a key challenge that can undermine and destroy such processes (Felbab-Brown, 2020; Santamaría, 2016). Greater attention to the needs of victims and to the creation of new narratives about criminal groups could alleviate public backlash to some extent.

Outcomes of negotiation processes and deal implementation may vary due to the differing scope of objectives and inducements in negotiation processes, and varying levels of political commitment and public support. There is also consensus in the literature that organised crime groups that have strong internal cohesion and hierarchical leadership are more likely to be considered potential partners in negotiation, who are better able to enforce an agreement (Freeman & Felbab-Brown,

2021; Felbab-Brown, 2020; Rahman & Vuković, 2019; Cockayne et al., 2017; Cruz & Durán-Martínez, 2016). At the same time, negotiation processes themselves may strengthen criminal groups, which runs the risk of leading to greater criminality.

This paper highlights the constant delicate balance required in addressing organised crime and negotiating with SOC actors in peace processes. How this balance is navigated will greatly influence the outcomes of such processes. Seeking guidance and garnering lessons from prior experiences and other disciplines is essential, which has been a key aim of this review.

12.2. Areas for future research

There are many avenues for future research and guidance. Academic literature on negotiations and agreements with criminal groups is still generally lacking (Schultze-Kraft, 2018; Cruz and Durán-Martínez, 2016). There is also a need for practical guidelines for negotiators and mediators working with actors engaged in illicit economies. There are some specific, notable, shortfalls in research, which if addressed, could provide valuable contributions. These include:

Greater application of lessons from particular research disciplines to SOC: Given the breadth of topics covered in this review, it has not been possible to perform a ‘deep dive’ into relevant disciplines.³⁹ Comprehensive examination of the extensive body of transitional justice research could, for example, offer greater practical guidance and creative solutions concerning organised crime in transitional contexts (for example: negotiating restorative justice for victims; adopting truth-telling to reveal important information, produce narratives, and as an emotive process; balancing retributive, distributive, and transformative justice; linking transitional justice and DDR processes; public outreach strategies; and civil society participation). Similarly, a detailed examination of NSAG literature may give more insight into the differing functions of SOC actors, and why some may engage in predatory behaviours (such as extortion) in certain contexts and others more benevolent behaviours (such as service delivery). This has implications for how they are perceived by communities and in peace processes.

Planning for the longer-term: There is mention in the literature of sequencing engagement with criminal groups; for example, Vuković and Rahman (2018) outline a staged process for gang truces, which begin with: (1) negotiating a ceasefire among gangs, followed by (2) accommodation between gangs and government, and lastly (3) mainstreaming processes that incorporate more transformative goals. However, there is limited guidance on how to plan for movements toward more ambitious goals. In the case of Ecuador, which serves as an outlier case, the gang truce formed part of a longer-term transformation and integration plan (Freeman & Felbab-Brown, 2021). There is minimal discussion in the research, however, of how to design reverse situations, where a limited agreement transitions into a more comprehensive one. The purposeful inclusion of DDR and transitional justice provisions, that form part of ‘conventional’

³⁹ This includes looking at research that may not specifically cite ‘organised crime’, but could nonetheless be analytically relevant to engaging with SOC and criminal actors.

peace processes, in deals with criminal actors could represent a move to a more comprehensive approach (see Arratia Sandoval & Garrido Quiroz, 2019). The development of 'peace zones' after the gang truce in El Salvador also represents a way to move from limited goals to a broader peace process.

Gendered approaches and identity issues: There is very limited discussion of gendered approaches and the application of a women, peace and security lens to organised crime and peace processes. Women may have different needs that gangs fulfil and may play different roles within gangs. They can also contribute to promoting the need for dialogue among gang members. Understanding the roles women play can introduce new ways to influence the outcomes of negotiation with criminal groups (Felbab-Brown, 2020; Applebaum & Mawby, 2018). There is also limited discussion of conflict identities and how such identity cleavages could gain prominence with the suppression and/or disbandment of gangs that have provided a unifying gang identity and/or unifying economic opportunities (Waugh & Yousef, 2022). Research into this area could determine the degree to which it is a concern and if identified as so, ways in which to counter this potential unintended consequence.

Greater geographic reach: The development of comprehensive case studies beyond El Salvador and Colombia (and Latin America and the Caribbean generally) is necessary to account for varying contexts of conflict and urban violence, and the ways this may influence the degree of criminal-political integration and processes of negotiation and peacemaking with SOC actors. In addition, while there is common recognition of the transnational nature of organised crime, there does not seem to be much consideration in the literature of how this could limit the effectiveness of negotiation outcomes and peace processes at a local or national level. Exploring the implications of cross-border and regional networks could provide useful insights into how to address the absence of binding constraints of agreements outside national borders.

Appendix 1: Case studies

El Salvador

El Salvador endured a civil war from 1980 to 1992, which left over 70,000 dead and thousands of others injured and displaced (Cruz & Durán-Martínez, 2016, p. 205). Following the peace accords, the country experienced an exponential increase in violence, attributed in large part to the presence of thousands of unemployed combatants, wide circulation of weapons, and pervasive social trauma (Cruz & Durán-Martínez, 2016). Street gangs, locally called *maras*, became visible in the early 1990s when hundreds of migrant youths returned to Central America from southern California. These transnational gangs are actively present in urban areas, spanning Canada, the United States, Mexico, Guatemala, El Salvador, and Honduras (Cruz & Durán-Martínez, 2016). There are two separate networks operating in El Salvador: Mara Salvatrucha (MS-13) and Barrio 18 (Cruz & Durán-Martínez, 2016). Their extractive criminal activities cover the national territory, extorting money from local businesses, with leaders managing operations from prisons (Cruz & Durán-Martínez, 2016; Umaña et al., 2014). Between 2001 and 2011, El Salvador experienced levels of violence comparable only to war zones (Umaña et al., 2014).

The initial political response to gangs was neglect, until the early 2000s, when the government began engaging in repression and mass incarceration of street gangs under the *mano dura* programme (Roque, 2017; Cruz & Durán-Martínez, 2016). There have been many critiques of this approach: Rosen (2021), Felbab-Brown (2020), and Cruz (2019) argue that rather than lead to the disappearance of gangs and violent criminal activities, it brought together large numbers of gang members in prison, which reinforced gang structures, enabling them to better organise. There were increases in violence and criminality, with extortion (to sustain the gang) gaining importance (van der Borgh, 2019; Cruz & Durán-Martínez, 2016).

A series of events facilitated the 2012-13 negotiations leading to the gang truce:

- ***Failed confrontation:*** After the failure of *mano dura* policies, authorities viewed dialogue with gangs as the only feasible alternative (Cruz & Durán-Martínez, 2016).
- ***Ripeness:*** Violence at the time was at historic highs, suggesting the possibility of a mutually hurting stalemate, with the interests of the state and gangs aligning to reduce the levels of violence (Cruz, 2019; Rahman & Vuković, 2019). Other research suggests, however, that there was no hurting stalemate perceived on the government's side, seen as a contributing factor to the ultimate failure of the truce, with the government not fully committed to the process (Rahman & Vuković, 2019).
- ***Demonstration effect:*** The negotiation with the *maras* had precedents in short truces negotiated during prior holidays, such as Christmas 2001. Multiple church and NGO groups had also sought in the past to negotiate truces and launch crime prevention, rehabilitation and reintegration efforts, though they were often limited in duration (Felbab-Brown, 2020).

- *Gang cohesion and leadership*: The confinement of the leaders of the two main gangs in a single prison facility enabled an internal level of coordination in their responses vis-à-vis the state, which in turn allowed for pressure to be applied to government and made the prospect of a truce more likely (Cruz, 2019; Cruz & Durán-Martínez, 2016). Importantly, the imprisoned leaders demonstrated that they carried enough authority to ensure high levels of compliance among their members to significantly reduce violence required by the truce (Dudouet, 2014).
- *Secrecy*: Since dialogue with gangs was a sensitive topic among the public, it was safer to conduct in secrecy. This strategy consisted of a combination of frontstage politics that publicly emphasised continued repression of gangs, and backstage politics that were secretive and pragmatic (van der Borgh & Savenije, 2019).

Gang leaders in prison, particularly those in high security prisons, were interested in better prison conditions and easier access to their families (van der Borgh & Savenije, 2016). The truce, negotiated within the maximum security prison of Zacatecoluca, for example, included the transfer of about 30 gang leaders from high to lower security prisons (Cruz, 2019; van der Borgh & Savenije, 2019; Cockayne et al., 2017). The provision and fulfilment of these incentives was key to building trust between negotiators and gang leaders (Felbab-Brown, 2020). The gangs committed to reduced levels of violence, with an emphasis on reducing homicides (Cruz, 2019; Van Der Borgh & Savenije, 2019; Cockayne et al., 2017).

In March 2012, a truce was reached between the three principal Salvadorean street gangs (MS-13 and the two factions of Barrio 18), supported by the minister of justice and public security (JPS). The transfer of gang leaders to ordinary prisons enabled close coordination with others imprisoned and more fluid communication with neighbourhood gang members, increasing the leadership's ability to control their gang members and reduce the number of homicides committed (van Der Borgh & Savenije, 2019). As such, **the greater vertical integration of gang organisations produced by the truce is also the feature that increased the possibility of successful violence reduction.** There was an immediate, notable decline in homicides (Katz et al., 2022; Kania, 2021; Felbab-Brown, 2020; Rahman & Vuković, 2019; van Der Borgh & Savenije, 2019; Cruz & Durán-Martínez, 2016). For the fifteen months following the signing of the truce, the homicide rate in the country dropped by 53% (Rahman & Vuković, 2019, p. 946).

Negotiations with gangs were kept secret, however, until *El Faro*, a digital newspaper, published the story in March 2012 to explain the surprising reduction in homicides, triggering a political scandal (Cruz, 2019; van der Borgh & Savenije, 2019). The fact that the truce was brought to the public accidentally by the media, and the secrecy with which the process had occurred, gave room to a spiral of rumours and suspicion (Roque, 2017). Even civil society groups that had traditionally opposed the *mano dura* approach to social violence became critical as the lack of transparency around the truce made them suspicious of its origins and intentions (Umaña et al., 2014).

Outcomes were limited primarily to a reduction in homicides. The lack of requirement and commitment to stop criminal activities other than homicide, such as extortion, allowed such activities to continue in gang-controlled territories, and even increase (Freeman & Felbab-Brown, 2021; Cockayne et al., 2017; Cruz & Durán-

Martínez, 2016). Homicidal violence too, while reduced, was in some cases hidden. Interviews with two Barrio 18 members revealed that disappearances were a new tactic (Cruz & Durán-Martínez, 2016). There was also no requirement for demobilisation (Cruz, 2019; Cruz & Durán-Martínez, 2016). It is likely that the truce was made possible because of these limited objectives. In turn, there were no demands on the part of gang members for amnesty, reduction in prison sentences of jailed gang members, or suspension of prosecution of criminal activities (Umaña et al., 2014).

In June 2012, the Secretary-General of the OAS agreed to be the guarantor of the ceasefire. Later that year, the **mediators advanced a proposal for a government plan called 'Special Peace Zones' or 'Municipios Santuario' (Sanctuary Municipalities) – representing an effort to move toward a broader peace process.** These were based on Covenants for Peace signed by municipalities, national authorities, and the gangs, which would turn these zones into territories where violence and armed operations between gangs, and **all types of criminal activities, including extortion, would be banned** (Cruz, 2019; van der Borgh & Savenije, 2016; Wennmann, 2014). In exchange, government authorities acting in partnership with civil society organisations would develop prevention and gang rehabilitation programmes for local youth, and terminate massive night-time police raids (Cruz, 2019). The first municipality to join the initiative, Ilopango, is generally seen as the most successful attempt at creating a peace zone: members of both gangs were involved in different projects (such as road construction); and the central government supported a reintegration programme for unemployed youth (van der Borgh & Savenije, 2016).

Despite efforts to achieve a broader peace process, from May 2013 onwards, there was a steady increase of homicides. By early 2014, murder numbers were almost back at pre-truce levels; by 2015, El Salvador had the highest homicide rate in the western hemisphere (Cruz, 2019; van der Borgh & Savenije, 2016). The implementation of the peace zones was riddled with problems and had limited impact (Felbab-Brown, 2020; Cruz & Durán-Martínez, 2016; van der Borgh & Savenije, 2016). **Similar to the process of arriving at the gang truce, the development of peace zones was highly improvised;** there was no plan to stipulate how government officials and gang structures would cooperate at local levels in the peace zones; how the process would be monitored and by whom (van der Borgh & Savenije, 2016).

The change in minister of JPS in June 2013 led to a review of the government strategy and a shift away from the process, with politicians beginning to distance themselves from the truce (Cruz & Durán-Martínez, 2016; Cruz, 2019; van der Borgh & Savenije, 2016). The opposition parties attacked the government's support of the mediators, while Public Prosecutor Martínez repeatedly labelled gang members as 'terrorists', announcing that he would start a series of investigations into the involvement of (former) government officials in negotiation (van der Borgh & Savenije, 2016; Umaña et al., 2014). These legal shifts made it easier for the state to return to a confrontational approach against the gangs (Applebaum & Mawby, 2018).

The government thus never invested the money it had promised – failing to deliver on socio-economic development: infrastructure, clinics, schools, and jobs for the 14 intended peace zones in gang territories (Felbab-Brown, 2020; van der Borgh, 2019; Cruz & Durán-Martínez, 2016; van der Borgh & Savenije, 2016). The provision of

socio-economic projects for gang members was also particularly controversial at the local government level (van der Borgh, 2019). Without such support, however, it was difficult for gang members to abandon extortion practices and to develop an alternate image of what gang life entailed after the truce (van der Borgh, 2019; van der Borgh & Savenije, 2016). **The failure to deliver this socio-economic programming, in turn, undermined the ability of gang leaders to convince more sceptical members about the benefits of the truce.** Members outside of prisons complained that it had not brought them any tangible benefits (van der Borgh & Savenije, 2016). In turn, lower-level commanders increasingly returned to violence, going against the directives of their leaders (Felbab-Brown, 2020).

Colombia – the FARC

Colombia stands out in repeatedly negotiating with criminal groups since the 1980s. Prior to the 1990 talks with Escobar and Los Extraditables, Medellín’s mayors regularly negotiated with cartels, even designating a member of their team specially for negotiations with cartels and other criminal groups (Felbab-Brown, 2020). In the case of negotiations with the FARC, **the inclusion of organised crime issues in the negotiation agenda and in the final peace accord (2016) demonstrates recognition by the government and insurgents that the country has a serious organised crime problem** that needs to be addressed; and that both parties to the negotiations are either complicit in, or involved with, organised criminal activities and structures (Schultze-Kraft, 2018). Criminal agendas were not only a threat to the peace process, but also to the social fabric of the country (De Boer & Bosetti, 2017b).

Illicit activities, such as drug trafficking, illegal mining, kidnapping and extortion have long sustained armed actors in Colombia (De Boer et al., 2017). As the FARC became increasingly dependent on criminal rents for economic and political power, it became **difficult to disentangle the group’s political motivations from its criminal interests** (De Boer et al., 2017). The confluence of criminal acts with political motives gave rise to the term ‘parapolitics’, challenging the integrity of state institutions, particularly at the local level (De Boer et al., 2017).

Illicit activities have also helped to sustain the legitimacy of the FARC: by regulating coca production, resolving disputes, and delivering extra-judicial justice, the armed group was able to provide marginalised communities under its control with protection and access to livelihoods (De Boer et al., 2017; Felbab-Brown, 2017). Its political capital plummeted, however, after it displaced independent traffickers from the territories it controlled, demanded a monopoly on the sale of coca leaves, and set a ceiling on prices (Felbab-Brown, 2017).

The reopening of negotiations between the FARC and the Colombian government in 2012 was due in part to the realisation on both sides that a military victory could not be achieved (Schultze-Kraft, 2018; De Boer et al., 2017). FARC’s commander-in-chief, Cano, believed that while the FARC could carry on with the war, they could not win it (Schultze-Kraft, 2018). Similarly, the government viewed military defeat of the insurgents as elusive. Continuing with the armed struggle was thus seen as more costly than negotiation (Schultze-Kraft, 2018).

In August 2012, the government of President Santos and the FARC signed a framework agreement laying out the agenda of a political effort to end the armed conflict and build peace. Confidential bilateral negotiations were launched in Oslo, Norway, moving subsequently to Havana, Cuba (Schultze-Kraft, 2018). Both parties were cognisant that any leak could destroy the possibility of reaching the stage of formal negotiations (Schultze-Kraft, 2018). As the talks progressed, the government and the FARC released a string of joint communiqués and provisional accords on each of the items contained in the framework agreement (Schultze-Kraft, 2018). **The issue of accountability was relegated to a popular referendum to approve the agreement.** Revisions were made after the first version was voted down in the October 2016 referendum. The final peace agreement was ratified by congress in December 2016 (Schultze-Kraft, 2018).

Key objectives of the Havana Agreement were: ending the war; and promoting economic and social change that address drug trafficking and rural underdevelopment (Aguirre, 2022). Government provision of credible security guarantees to the FARC's membership (and the communities in which they were operating) – offering to take action against any illegal armed groups that threatened the FARC – was integral to convincing the FARC to lay down their arms and commit to the peace process (Aguirre, 2022; De Boer & Bosetti, 2017b). The government also gave the FARC the ability to participate in politics as a legal, registered political party following disarmament, and access to the health care system (Aguirre, 2022). Ex-combatants were allocated special areas in which to regroup and reorganise (Agiurre, 2022).

In addition to agreeing to disarm, the FARC agreed to leverage its criminal insight to combat illicit economies, while the government agreed to create viable alternatives to illicit economies for FARC members and local communities (such as peasants forced to plant coca due to a lack of other options) (Aguirre, 2022; De Boer & Bosetti, 2017b). The National Comprehensive Programme for the Substitution of Illicit Crops (PNIS) was linked to Rural Reform adopted in the peace agreement, recognising that illegal crops are related to conditions of agrarian inequality (Aguirre, 2022; Acero & Machuca, 2021). Ex-combatants were also guaranteed income for two years and a series of productive projects (Aguirre, 2022).

The agreement included significant innovations to deal with criminal agendas in the context of peace negotiations, particularly in relation to transitional justice (De Boer et al., 2017) (see section 10). The FARC's involvement in criminal markets forced negotiators to find practical ways to distinguish between criminal acts committed for individual and profit-related motives, and criminal acts committed for political purposes (illicit drug trafficking to fund the insurgency) with the latter eligible for amnesty (De Boer et al., 2017). The FARC agreed to reveal its assets and to use proceeds to contribute to reparations programmes for victims, seen as a way to convince the public that the FARC was committed to peace (De Boer et al., 2017). The peace agreement also provided for differential criminal treatment for high-level, drug trafficking organisations and low-level, small coca growers, suspending criminal proceedings against the latter (Acero & Machuca, 2021).

The Peace Agreement has been successful in reducing violence, disarming the FARC (completed in June 2017), and establishing a creative transitional justice mechanism that seeks to balance the interests of victims and perpetrators (see sub-section 9.3) (Aguirre, 2022). Although there were concerns about whether the FARC's leadership would be capable of convincing the rank and file to abandon an armed struggle and disengage from a lucrative criminal trade, it demonstrated strong command and control evident in the drastic reduction in violent acts against state forces (by 90% between December 2012 and August 2016) (De Boer et al., 2017, p. 9).

A key failure of the process, however, has been inadequate attention to socio-economic and security sector reforms (Aguirre, 2022). There was slow progress with PNIS, which was directly linked to poor implementation of rural reform (Aguirre, 2022; Acero & Machuca, 2021). Failure to make progress on rural reform was due in large part to the lack of political will in the government of Iván Duque, Santos' successor, who tried to limit the peace agreement to disarmament of the FARC (Aguirre, 2022). The continued lack of economic options for peasants has encouraged continued coca crop cultivation and the growth of organised crime (Aguirre, 2022). Further, the state lacked the capacity to follow through on its security guarantees, with a worrying number of social leaders assassinated and criminal organisations moving into FARC-controlled territory, leaving populations vulnerable to criminal control (De Boer & Bosetti, 2017b).

Lack of internal cohesion within the government has played a key role in the unravelling of the peace process. The political opposition, led by former president Uribe, attacked the process, particularly the provisions that addressed drug trafficking, labelling the FARC again as 'narco-terrorists' (Machuca Pérez, 2022; Acero & Machuca, 2021). The Colombian Armed Forces also continued to label FARC combatants as criminals (Machuca Pérez, 2022). This was compounded by the US government keeping the FARC on its list of terrorist organisations, despite the peace agreement. The persistence of the narco-terrorist discourse during the peace referendum campaign contributed to rejection of the agreement, demonstrating the profound legacy of war narratives (Machuca Pérez, 2022).

Another area of concern relates to subsequent calls from organised crime groups (such as the Gulf Clan) for negotiated settlements with the state, following the example of the peace negotiations with the FARC (Felbab-Brown, 2020; De Boer et al., 2017). Thus, instead of reducing organised crime and its impact on society, the peace agreement may have emboldened organised crime actors to aspire for a political dialogue and settlement with the state – with the motivation of evading prosecution while consolidating control over illicit economies (De Boer et al., 2017). The government negotiated with the Gulf Clan in 2017-18: while refusing to consider the suspension of extradition that the cartel sought, it engaged in lengthy negotiations about other aspects of legal leniency (Freeman & Felbab-Brown, 2021). This controversial process produced opposition and powerful spoilers; ultimately, not resulting in a deal (Freeman & Felbab-Brown, 2021).

Jamaica

Greater August Town, located on the north-eastern outskirts of the city of Kingston, is a low-income area with high rates of youth unemployment and a history of gang-related violence. Political support in Greater August Town is divided between the Peoples' National Party (PNP) and the Jamaica Labor Party (JLP); some gangs are aligned with the PNP and others with the JLP, often resulting in political boundaries overlapping with gang turf (Katz et al., 2022).

The Greater August Town gang truce (2008) was preceded by frequent and intense violence (Katz et al., 2022). Truce negotiations began in June 2008 and lasted for about three weeks. The gangs sought to leverage their violence-making capabilities and demanded payment for peace, in the form of 'work', and start-up funds for proposed micro-businesses (Katz et al., 2022). Those demands were rejected by the negotiators on the grounds that they would not 'buy peace', seeking to avoid the risk of moral hazard (Katz et al., 2022).

Ultimately, **the expectations and agenda of the negotiations and the truce were modest and narrow** (Freeman & Felbab-Brown, 2021). The absence of DDR policies was a key criticism of the agreement (Katz et al., 2022). Gangs were not required to give up their weapons, which members claimed were necessary for their own protection since the police were considered ineffective in responding to violence in their communities (Katz et al., 2022). Those involved in negotiations cautioned against political actors engaging with criminal groups in the absence of a requirement for disarmament and/or demobilisation (Freeman & Felbab-Brown, 2021).

The negotiation process was mediated by the Peace Management Initiative, a national NGO. Members of local and national law enforcement forces were aware of truce negotiations and showed their support in public (Freeman & Felbab-Brown, 2021). Despite sporadic inter-gang incidents, Freeman & Felbab-Brown (2021) state that the truce held for three years before it broke down, and violence returned. Analyses of the gang truce reveal a significant decline in homicides after the truce was implemented; however, Katz et al. (2022) suggest that this decline was attributed to the larger nationwide decline in violence, rather than to the gang truce itself. The creation of police-established buffer zones between the warring gangs also had the unintended consequence of displacing violence to other communities (Katz et al., 2022).

The return to violence can be attributed in part to lack of incentives and commitment to abide by the agreement. Third party negotiators did not have the means to hold gangs accountable, nor tangible benefits to distribute to the gang or community (Katz et al., 2022). Some of the gangs or gang members may have had greater interest in participating in the rhetoric surrounding the gang truce for the purpose of enhancing their reputation, than in actually implementing the truce (Katz et al., 2022). In addition, gang leaders may not have had the organisational capacity and degree of leadership to regulate violence and change gang member behaviour. However, this may not be a defining factor of failure as gangs in Jamaica, including some of those in Greater August Town, have been found to be fairly organisationally sophisticated and to possess strong leadership (Katz et al., 2022).

Mali

Drug trafficking in Mali has funded armed rebellions and fuelled inter-ethnic and inter-clan conflict over control of drug trafficking routes in Northern communities (van Santen, 2019). Armed clashes can be directly linked to the control of the routes and drug cargoes, with linkages commonly found between the conflict movements and criminal networks (Raineri & Galletti, 2016). **The proceeds of drug-trafficking have financed the local governance of Northern communities** in the absence of effective state governance, with local communities having become dependent on armed groups to perform local government functions (such as service delivery, welfare, security and justice provision) (van Santen, 2019). In addition, the trafficking of licit goods (like fuel, subsidised foodstuffs, and cigarettes) has been a key part of the economic and livelihood strategy for local communities (van Santen, 2019). Thus, what outsiders perceive as ‘criminal conduct’ has represented a local resilience strategy that enjoys social legitimacy (Raineri & Galletti, 2016).

Malian legislation does not recognise organised crime, only the offence of participating in an association of wrongdoers or in a terrorist group. This has contributed to a legal framework that links organised crime and terrorism, translating into the notion of ‘narco-terrorism’, which has shifted resources to the fight against terrorism (Raineri & Galletti, 2016). Sociological research on managing organised crime through local peace mediation suggests that efforts to address organised crime using confrontational law enforcement strategies, without providing alternative sources of local governance, fuelled grievances against the state (van Santen, 2019).

In 2015, the Mali government and armed groups concluded the Agreement on Peace and Reconciliation in Mali (the Agreement), to end years of violent conflict in parts of the country. **The deep connections between drug-trafficking, local governance and the funding of the Northern rebellion were ignored, however, during the peace process**, with a focus on technical state security reform (van Santen, 2019).

Raineri and Galletti (2016) suggest that Malian actors and their international partners failed to adequately address organised crime, in part due to the assumptions that its prevalence could exert a stabilising effect in the short term, and that Mali could not deal with too many enemies at once. However, the difficulties faced by all signatories in implementing the Agreement support the view that without addressing the underlying causes of Mali’s ‘economy of violence’, it would be difficult to achieve sustainable peace (Raineri & Galletti, 2016).

The UN Multidimensional Mission in Mali (MINUSMA), established in 2013, has only in more recent years acknowledged the problem of organised crime, in its 2018 and 2022 mandates (Caparini, 2022). It focuses in large part on capacity building of the justice sector. Caparini (2022) argues, however, that such capacity building is likely to have limited effects as authorities in state institutions remain closely linked to organised crime and illicit trafficking. An Effectiveness of Peace Operations Network study of MINUSMA finds that ignoring organised crime, which is interlinked with daily insecurity and conflict dynamics, in the peace process has enabled the continued operation of organised criminal networks linked to armed groups (Caparini, 2022).

Third party non-state mediators have attempted to facilitate local level mediation that addresses the drug-trafficking issues left out of the international peace process (van Santen, 2019). Such mediation can shift attention away from international security issues and target local conflicts more effectively, over a longer time frame (van Santen, 2019).

Kosovo

Opportunistic and nationalist elites devised a strategy of recruiting criminals into the war effort in the early 1990s to ethnically cleanse opponents and create homogenous nation states (Nielsen, 2012). This resulted in the fusion of organised crime and state security services. Serbia experienced considerable difficulties recruiting young men into the army in 1991 and 1992, which resulted in the Milošević regime relying on criminal elements instead (Nielsen, 2012). The long-term effect was that criminal groups took possession of the state, challenging it and at times also exceeding it in strength (Nielsen, 2012).

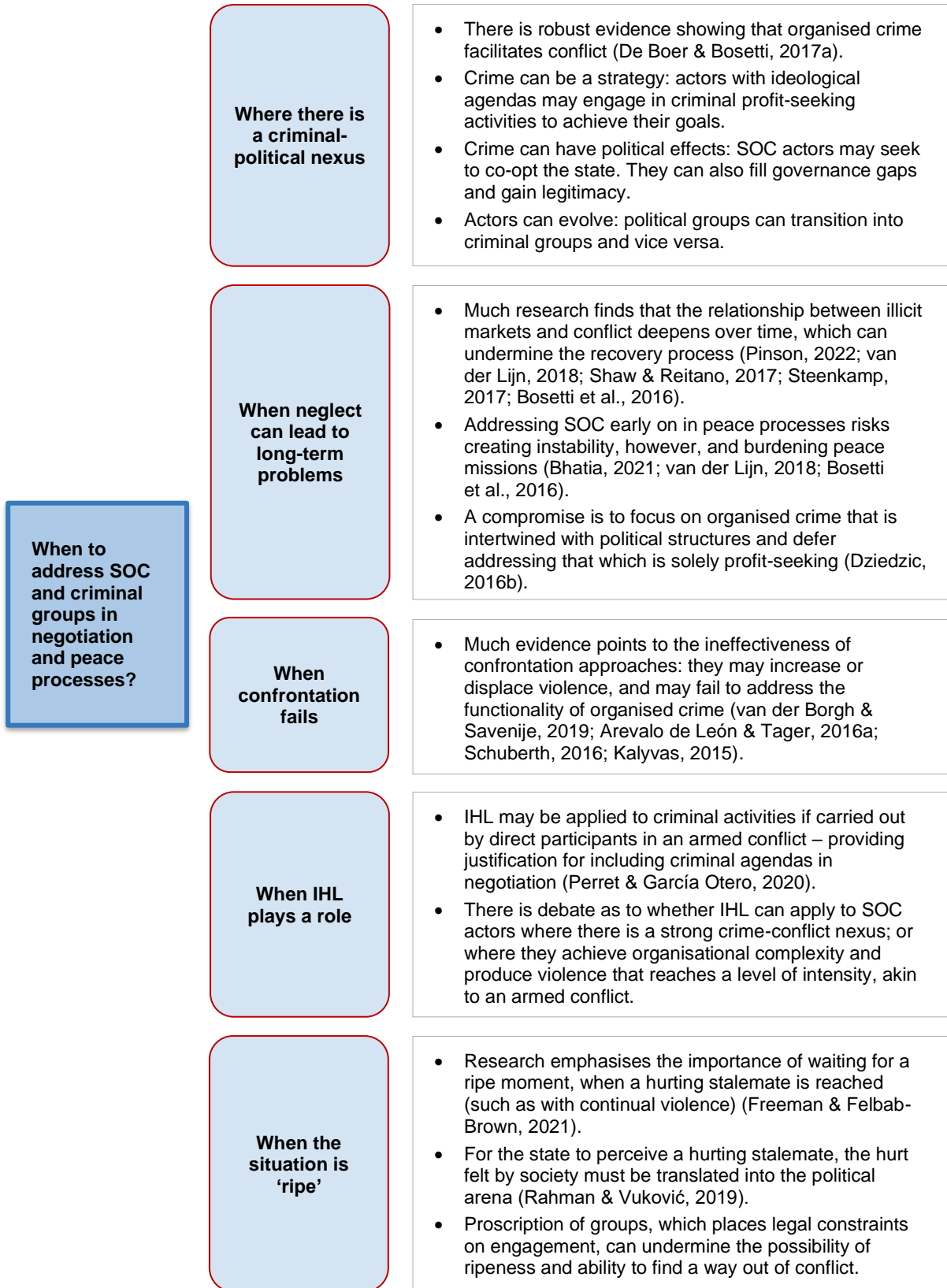
In the decade between the elimination of Kosovo's autonomy in 1989 and its independence in 1999, **illicit activity became integral to survival for many**, particularly during Milošević's crackdown (Kemp et al., 2013). High unemployment created a pool of young men willing to take part in illegal activities and young women vulnerable to human trafficking; while the instability caused by the war created a more permissive environment for criminality (Kemp et al., 2013). Further, **criminal activity – particularly drug smuggling – was a lucrative source of revenue for the Kosovo Liberation Army (KLA)** to fund its separatist struggle (Mandić, 2022; Kemp et al., 2013). Mandić (2022, p. 49) argues that organised crime became preeminent in the separatist movement to such an extent that such criminality 'co-opted the separatist movement and created a parastate of its own'. The KLA eliminated rivals, solidified its leadership by force and violently confronted the host state (Mandić, 2022).

The **initial failure of the UN Mission in Kosovo (UNMIK) to recognise the merging of criminal and political actors, and criminal and political goals, in the separatist movement was as Dzedzic et al. (2016a) argues: a key blind spot that threatened the peace process**. It resulted in the tendency to view organised crime as an independent problem, which was not a priority for the peace process but rather to be left alone so as not to destabilise a fragile region (Dzedzic et al., 2016; Kemp et al., 2013). However, as criminal actors continued to consolidate their positions, they became an increasing threat to security, hindering a political settlement and efforts to promote the rule of law (Kemp et al., 2013). The reaction of the international community subsequently became more robust, with the establishment of the Kosovo Organised Crime Bureau, whose tasks included legal reform, capacity building against transnational organised crime, cooperation with other law enforcement agencies, and integration of the Kosovo Police Service into the fight against organised crime (Kemp et al., 2013).

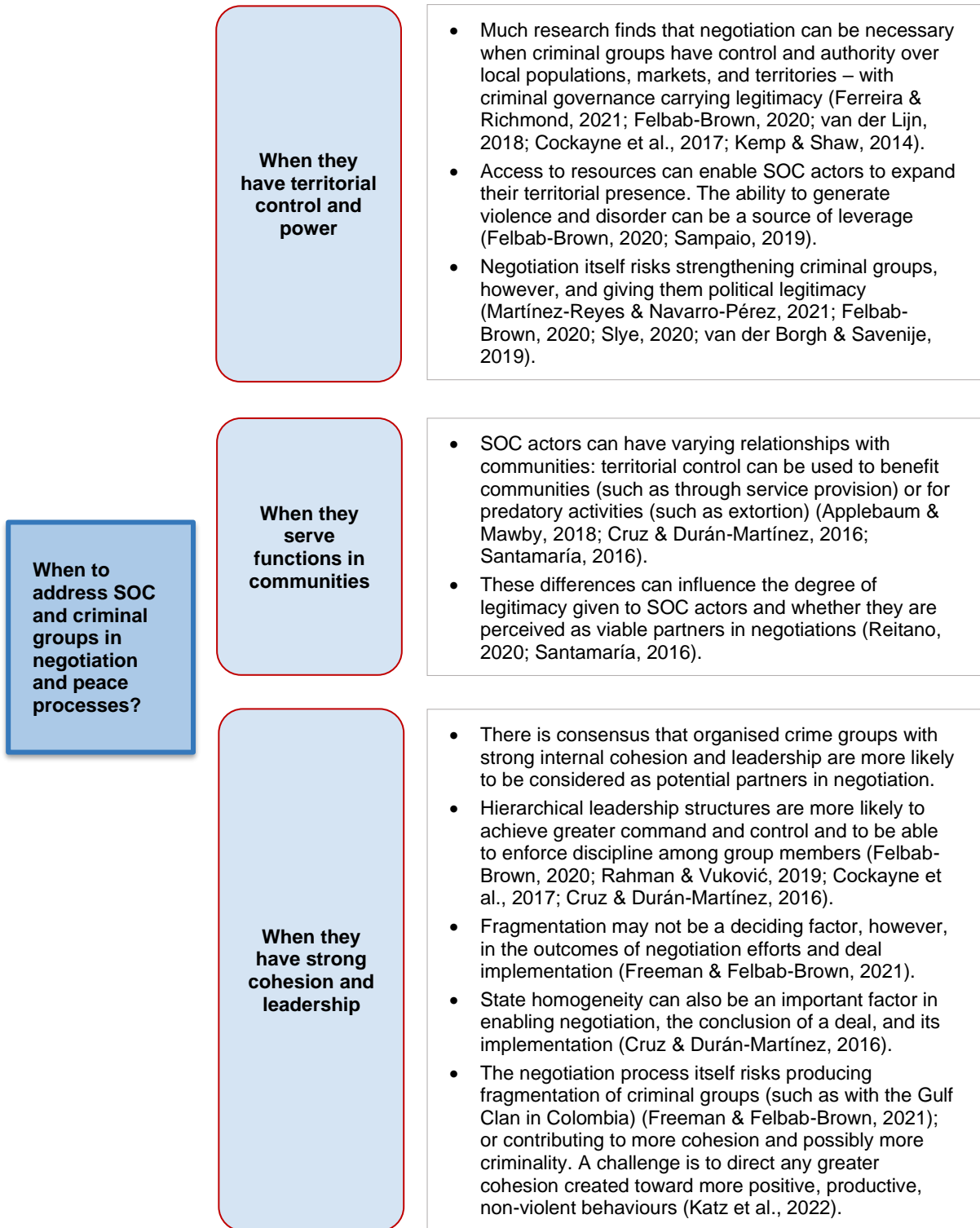
Dziedzic et al., (2016) find that **international recognition of criminalised power structures within the KLA, and the need to tackle organised crime, was quickly followed by recognition that the KLA's interests were negotiable** (Dziedzic et al., 2016). This led to negotiation of the 'Undertaking' (less than a month after the inception of the mission) that obligated the KLA to transform itself into an unarmed civil defence force, through which it could legally and peacefully pursue its unmet war objectives (Dziedzic et al., 2016). UNMIK, in turn, sought to establish more attractive, peaceful and licit alternatives in the competition for power and wealth, branded as 'conflict transformation' (Dziedzic et al., 2016). This strategy has been largely considered a success, with the abandonment of the use of violence by KLA extremists against the Serb community, domestic political opponents, and neighbouring states with contiguous Albanian populations (Dziedzic et al., 2016). There is still a need to better develop the country's institutional capacity to resolve disputes peacefully and generate wealth through legal means (for example, free and fair elections, rule of law, and an enabling environment for a market-based economy), in order to help ensure that public revenues are not captured by criminal-political networks and illicit revenue no longer determines who governs (Dziedzic et al., 2016).

Appendix 2: Summary Charts

Environment

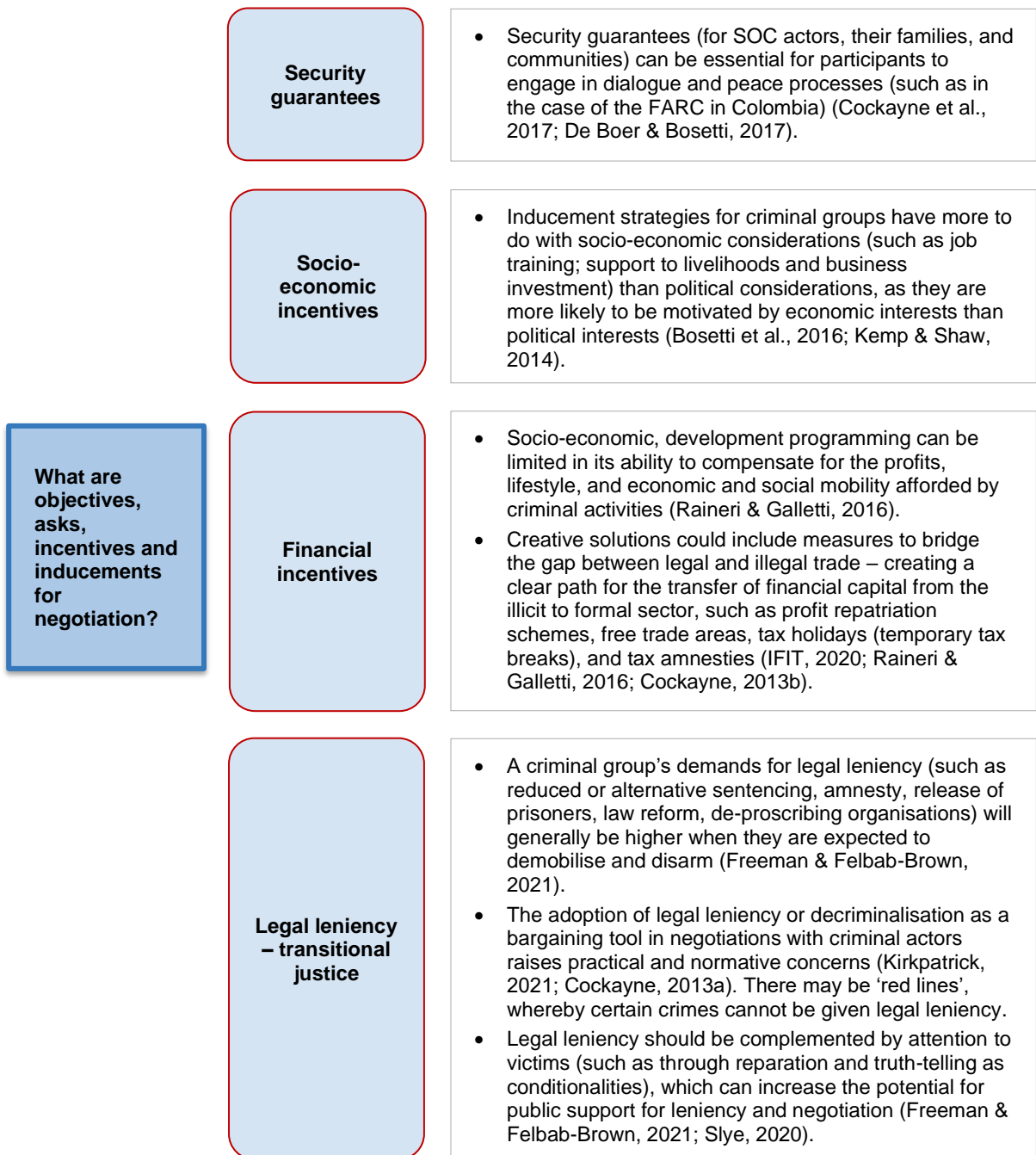


Group characteristics



Negotiation processes

Rebel/militant groups and criminal groups with ideological elements are more likely to ask for greater benefits than those without such elements, based on experience from Latin America and the Caribbean (Felbab-Brown, 2020).



Implications for the deal

The scale of the deal

- The smaller asks of criminal groups, with minimal or no ideological dimensions, can explain why it is more common to see smaller deals from negotiations with such groups (such as temporary truces and ceasefires) (Felbab-Brown, 2020).
- Much research emphasises that any agreement addressing criminal agendas needs to set in motion longer-term transformation processes addressing root causes, without which positive outcomes can be limited (Felbab-Brown, 2020; Rahman & Vuković, 2019; Cockayne et al., 2017; Muggah et al., 2016; Wennmann, 2014).
- Negotiation of agreements may require a staged process – moving from shorter-term accommodation to longer-term transformation – with the gradual building of trust and confidence between the parties and with the public (Vuković & Rahman, 2018; Cockayne et al., 2017).
- Incorporating DDR, transitional justice, and targeting the reduction of all criminality, rather than solely homicide (such as with ‘peace zones’ in El Salvador) can shift negotiation with criminal actors from limited deals toward broader peace processes (Arratia Sandoval & Garrido Quiroz, 2019; Santamaría, 2016).
- Ecuador is an outlier among cases of engagement with criminal actors: it formed part of a larger national transformation process, which could explain the engagement’s perceived success (Freeman & Peña, 2022; Freeman & Felbab-Brown, 2021).

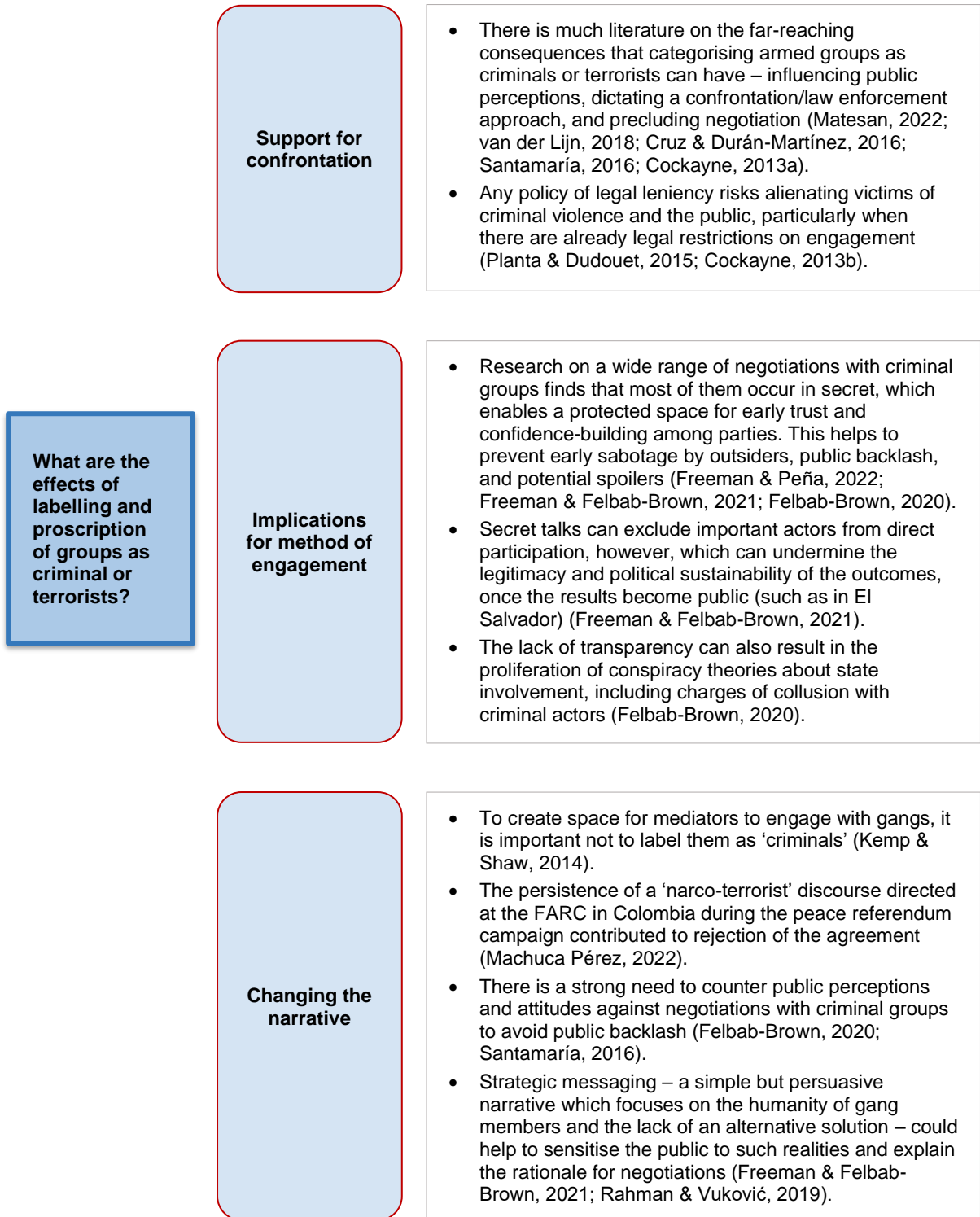
The end state

- Determining an end state can be more challenging in negotiations with criminal groups – particularly those that engage solely in predatory behaviour – than with other NSAGs, whose end state can be defined by disarmament and demobilisation and possibly political integration (Freeman & Felbab-Brown, 2021; Cruz & Durán-Martínez, 2016).
- Negotiations with criminal groups may result in violence reduction, but are less likely to result in a complete resolution of the criminal agenda (Rahman & Vuković, 2019; Cruz & Durán-Martínez, 2016; Cockayne, 2013b).
- Even in more ambitious situations, where criminal groups transform into legal associations, some types of crime are likely to persist or return (Freeman & Felbab-Brown, 2021).

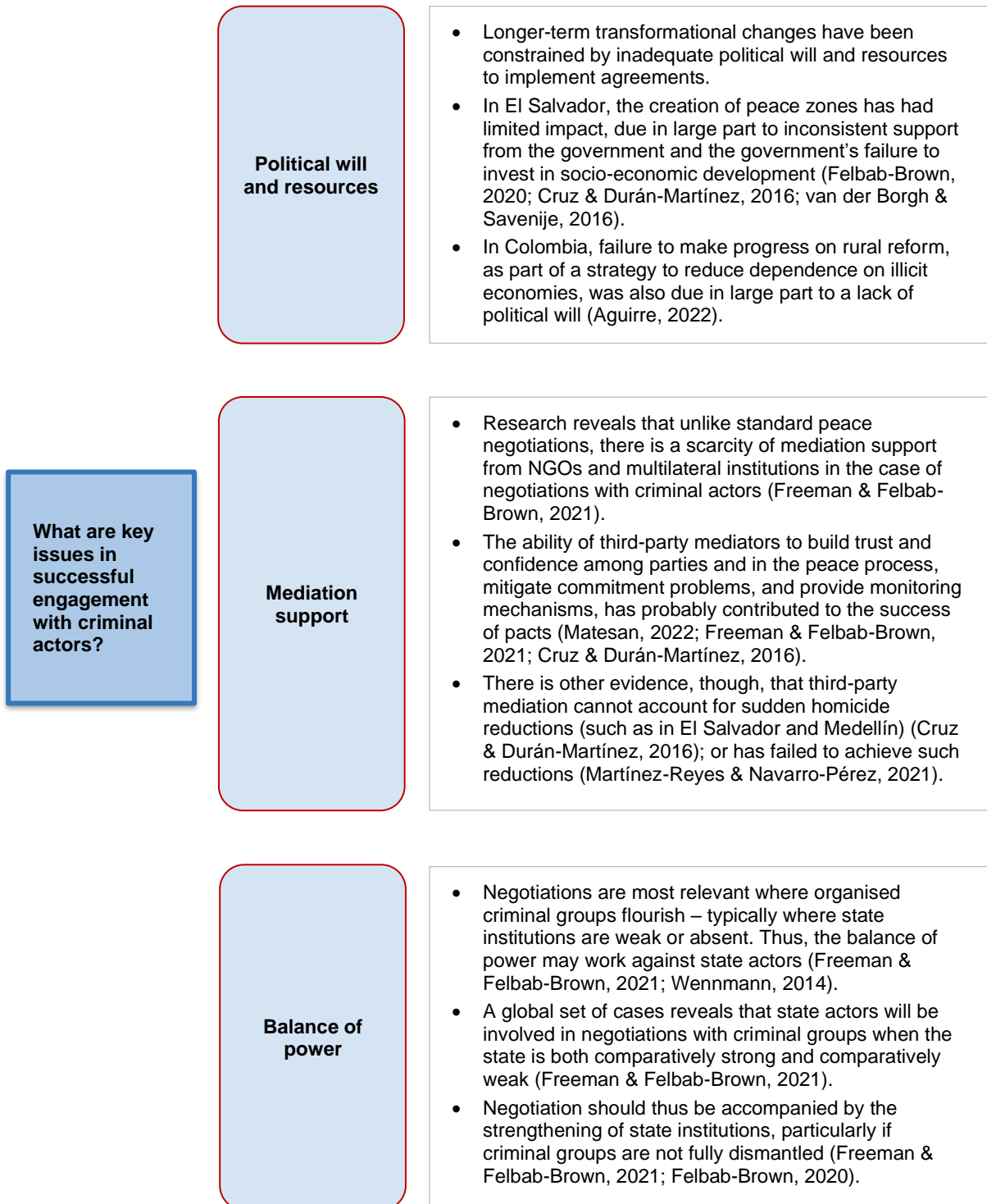
Addressing functionality

- Efforts to negotiate reduced violence require mapping out alternative solutions to the functional role that organised crime and illicit economies fulfil (Freeman & Peña, 2022; Global Initiative & USAID, 2022).
- Without realistic economic alternatives for organised crime group members and communities dependent on illicit economies, efforts to aggressively suppress such groups and economies are unlikely to be effective (Bhatia, 2021; Felbab-Brown, 2017).
- Research demonstrates that reintegration programmes must also address psycho-social, identity dimensions that gangs and organised criminal groups can fulfil – seeking alternative avenues to build social and political capital (Rahman & Vuković, 2019; De Boer & Bosetti, 2017; De Boer et al., 2017).

Challenges for negotiation with criminal actors (1)



Challenges for negotiation with criminal actors (2)



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