

Process Design for Secret Negotiations

This IFIT Practice Brief provides a summary of key concepts and recommendations for the effective design of secret negotiation processes involving states, rebel groups, opposition parties and/or organised crime groups. It is based on a comprehensive review of existing literature, expert interviews and discernible practice.

When seeking a political solution to an armed conflict or political crisis, the parties involved will often have recourse to secret talks, especially at the outset. By “secret”, we are referring to an absence of public awareness of the existence of the talks.

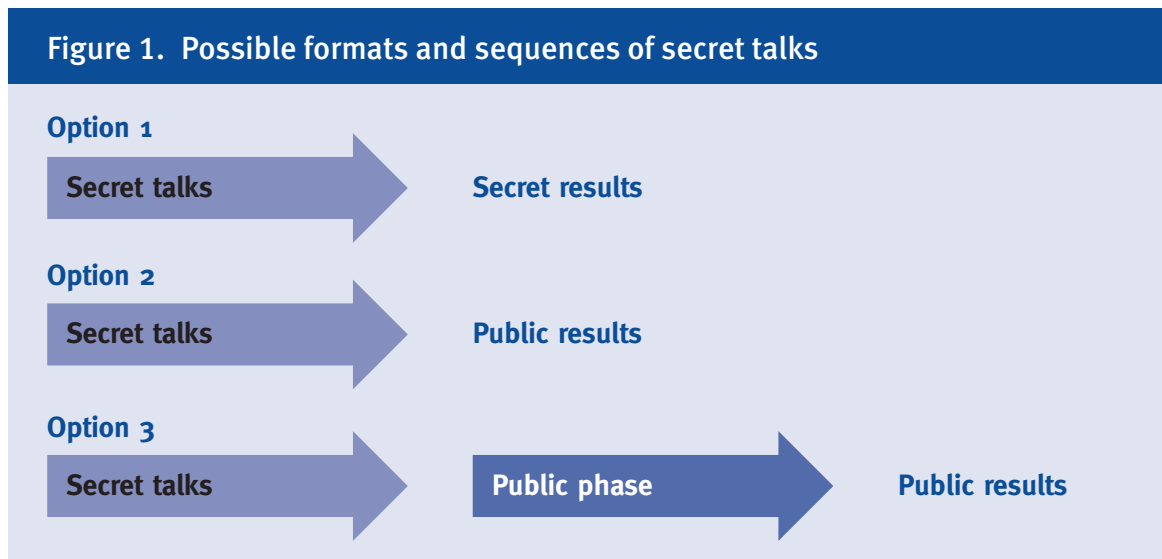
In some cases, both the process and its results are meant to remain secret (e.g., the 2012 process between the government of El Salvador and local gangs). In other cases, the process is meant to be kept secret from start to end, but it is understood and agreed by the parties that the final results will be made public – in whole or in part – once the process is over (e.g., the secret US-mediated talks between Israel and Egypt after the 1973 Yom Kippur war). In a third set of cases, the parties understand that secret talks constitute merely a prelude to a “public” phase, meaning a confidentially-run but publicly-known phase (e.g., the six months of secret talks be-

tween the Colombian government and the FARC in 2012 that served as the prelude to a public phase that lasted until 2016). Of course, a public phase can also be accompanied by a continuous secret track.

None of the three pathways is inherently superior to the other. Instead, the choice will be informed by the parties’ self-assessments of their political, legal or strategic interests, any of which might make public talks or public results undesirable, unachievable or both.

For any of the pathway options, the secret talks can be conducted directly between the parties sitting face-to-face (with or without the involvement of a third-party mediator or facilitator). Alternatively, they can be conducted on a shuttle basis by a third party that speaks separately with each side. Either way, experience shows that secret talks can offer many benefits, including to

Figure 1. Possible formats and sequences of secret talks



prevent sabotage attempts by anti-negotiation spoilers and avoid destabilising forms of public backlash. Provided they are not exposed, secret talks also carry less risk of being pulled into the dynamics of the prevailing conflict or crisis, thus enabling a more protected space for confidence-building between the parties. Thorny questions about formal recognition of the other party may also be unnecessary in a secret process.

Yet, secrecy has its costs. For example, the organisation of secret talks tends to be operationally complex. It can require special logistical measures that public negotiations may not, such as covert transportation of the negotiating parties, the formal suspension of arrest and capture orders, or the arrangement of secret meeting sites. In addition, because secret talks by necessity involve small numbers of people and thus exclude important actors from direct participation, the public legitimacy and sustainability of the outcomes can be more vulnerable to criticism in cases in which the final results are meant to become public.

With these preliminary issues in mind, what follows is a catalogue of important methodological considerations for the effective design of secret negotiations under any of the above formats. The right choices naturally depend on the specifics of the context and the strategic goals of the parties.

1. First contacts with the counterpart & launch of the talks

- Prior to making first contact, have a clear but flexible vision concerning the why and the how of the negotiations. This should include analysis of each side's core interests and expectations, and its comparative ability and willingness to make concessions.
- Entrust the responsibility of making first contact to individuals or institutions with the necessary trust and capability. These could include, for example, intelligence agencies, specialised professional outfits, trusted cultural interlocutors (e.g., religious leaders), or international facilitators.
- Once contact has been established, agree on the conditions for safe travel by the parties to the meeting location(s). In secret talks with illegal armed groups, the talks should occur in a place where they feel secure, given the illegal status

and covert nature of their operations. Sending messages through prisoners or members of the group's diaspora may be necessary (and beneficial) in some cases.

- Establish secure communication mechanisms not only for the formal talks, but also for the internal conversations, information sharing, and strategy formation processes that each side will need to conduct within its own ranks.
- Early on, discuss how the process will be financed and which side will cover which expenses.
- Agree on precautionary measures – such as back-stop rules and communication channels – to handle unexpected events, such as major crises that may impede pre-arranged meetings.
- Guarantee that conditions exist for the physical security of all negotiating parties in the meeting place(s). When such guarantees are difficult to implement, a chain of intermediaries can be an option, provided that 1) there is verification that each intermediary is who he or she claims to be, 2) the messages are sufficiently clear to avoid getting distorted, and 3) the intermediaries can relate to each other as formal equals.
- Provided it would not affect the secrecy of the envisaged process, consider establishing a general legal framework that sets out the scope and limitations of state representatives to meet with illegal armed actors, as a means of creating a stable legal foundation for the talks to occur and advance.
- Use modes of transportation, meeting locations and communications technologies that limit any foreseeable risk of information leaks. This should include specific and strict control measures related to the usage of things like computers, cameras, software, phones, and mobile applications.
- Create a limited list of key actors who are not party to the talks but who should be made aware of their existence (and progress) on the condition of secrecy. Such actions are necessary for actors whose future support may be needed if a public phase ensues or the results are otherwise made public.
- Ensure that one's interlocutors hold decision-making power or have privileged access to those who do, so that the high risk of engaging in secret talks is not undertaken in vain.

- Establish ground rules for the development of the talks, focused on having clarity about procedural aspects and the space for confidence building.
- Establish protocols for handling any potential abandonment or breakdown of the process, such that something close to the status quo ante can be restored. The protocols may include reactivation conditions that would allow the parties to return to original rules and procedures.

2. Logistics conducive to dialogue and confidence building

- Choose meeting locations that allow the parties (as well as any third-party mediator or facilitator) to deepen their understanding of the particular conflict or crisis and the main aspirations of each side.
- Avoid timelines that are too short to enable the extensive dialogue and confidence-building that will be necessary for secrecy to hold and for the talks to advance.
- Avoid meeting sites that would require extraordinary logistical effort for either party or – in the case of direct talks – too close to either’s habitual centre of military or political activity.
- Plan out the details of the “soft” components of the talks, such as seating protocols and dress codes, as well as a schedule that allows times for social interaction (meals, walks, etc.) that might allow critical side conversations to take place.
- Provided it would not would jeopardise the secrecy of the process, agree and coordinate visits by technical experts and relevant third parties who can contribute to the progress of the talks. Clarify, in advance, the specific objectives and substantive parameters of such visits.
- In cases where the results of secret negotiations are not meant to be made public, make the mechanisms and responsibilities for ensuring confidentiality especially exigent, with independent and confidential verification procedures for any alleged breach.
- If necessary, determine how certain members of a delegation eventually will be acknowledged for their work, to avoid the risk of them looking for recognition on their own (e.g., through leaks to the media that could threaten the process and its outcomes).

- Consider, early in the process, how to manage a situation in which the existence of the talks is inadvertently exposed to the public, or intentionally disclosed by third parties. A press line for such an eventuality should be agreed in advance.

3. Content of secret conversations

- Establish a clear, shared vision between the parties about the aims, nature and scope of the negotiation. This may include, among other things, a statement of objectives, a minimal set of procedural rules, and a succinct agenda of issues.
- Clarify as early as possible in the talks whether there is the intention to reveal the final results (in whole or in part) or to move to a public phase.
- Ensure consensus on the importance of keeping discussions out of the media and out of public view, but make time for discussion of the public’s perception of the crisis and of the conflicting parties.
- Instead of imposing a long list of preconditions for the talks, focus on conversations that encourage the parties to consider what actions they are willing to undertake in order to create trust, because most issues or grievances will have a better chance of being resolved once the process gets underway.
- When a process of secret talks is meant to move to a public phase, be sure to discuss the latter’s rules and parameters as early as possible, including: the role of potential mediators or guarantors, the structure of the parties’ delegations, the participation of any outside experts and stakeholders, and the topics that should be left for the public phase.
- Discuss questions of drafting methodology early on. Usually it is best to work on the basis of a single official text, with regular exchanges of physical and digital drafts throughout the process.
- Agree on rules about the relationship between events outside and inside the talks; in particular, agree on which kind of external events, if any, can serve as just cause to suspend or terminate the latter.

4. Integrating secret conversations with any broader process

- When a public phase is envisaged, create a clear sequence of steps (e.g., exploratory phase, public phase, implementation phase) to give direction and clarity to the process. In addition, develop any further procedural regulations that may be necessary or useful.
- Provided they would not endanger the secrecy of the talks, undertake actions that foster a constructive environment and build trust between the parties, such as humanitarian gestures, outreach to affected communities, and avoidance of derogatory terms in public references to the adversary.
- Prepare – separately or jointly – a political and media strategy for the transition to a public phase, including an explanation of the agreements reached in secret and why a new phase is necessary.
- If the results of a secret process are meant to be made public (in whole or in part), agree on mechanisms and messengers for revealing the existence and content of the agreement, with the aim of weakening the impact of foreseeable spoilers. The revealed accord should not come as a surprise to any key actors; if it did, they would become more likely to sabotage or delegitimise the outcome.
- If the process and some or all of its results are meant to remain secret, make preparations for the effective implementation of the agreement while preserving absolute secrecy.

5. Balancing the tension between secrecy and inclusion

- Identify all relevant actors who did not participate in the secret talks – especially those who might disrupt the process or who are likely to play a role in later stages – and determine a strategy to engage them. Also, remember that their personal exclusion from the talks need not result in the exclusion of topics that are known to be important to them.
- For any secret process meant to end in public results, establish timelines and mechanisms that might allow important civic groups and sectors to participate in later stages or in implementation.
- Develop clear and persuasive arguments to combat the simplistic idea that a negotiation process is inherently flawed by virtue of its secret nature. Secrecy is sometimes a sine qua non for talks of any kind to take place.
- Regardless of the complexity of the process and the issues under discussion, be sure to create a simple narrative for the public if the results are meant to become known, recognising that further progress will only occur if there is sufficient public support.

Founded in 2012, IFIT is an independent, international, non-governmental organisation offering comprehensive analysis and technical advice to national actors involved in negotiations and transitions in fragile and conflict-affected societies. IFIT has supported negotiations and transitions in countries including Colombia, El Salvador, Gambia, Libya, Nigeria, Syria, Sri Lanka, Tunisia, Ukraine, Venezuela and Zimbabwe.