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Achieving Democracy: Implementing the 1992 Salvadoran Peace Accords

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Abstract

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Raymond W. Cox III and Hugo Renderos

Abstract

The literature on negotiations and bargaining has been dominated by academics in business and public administration. Given the interests and orientation of the academic disciplines, it is not surprising that the academic studies predominantly have examined the processes and dynamics at the level of collective bargaining and to a lesser extent organization leadership and management. Dispute resolution has a distinctly intra-organizational character. In 1991 the warring factions in El Salvador came together to negotiate both an end to the fighting, but also to create a framework for the introduction of a democratic government for the country. Over a period of several months the two sides shaped an agreement. Finally in late December of 1991 with a flurry of decisions an agreement was drafted and signed. Twenty years later the country continues to implement the peace accord, but there is no consensus that the task is complete.

Introduction

The basic premise of alternative dispute resolution is that the parties to a disagreement can be brought together to resolve that disagreement (Fisher & Ury, 1981). These processes are ubiquitous at every level of government and are central to much of international relations. From the relatively mundane — an employee grievance — to the momentous — ending wars—dispute resolution processes are used to end disagreements and presumably, once an agreement has been reached, to set the parties on a new path.

The literature on negotiations and bargaining has been dominated by academics in business and public administration (Fisher & Ury, 1981; Lebow, 1996). Given the interests and orientation of the academic disciplines, it is not surprising that the academic studies predominantly have examined the processes and dynamics at the level of collective bargaining and to a lesser extent organization leadership and management. Dispute resolution has a distinctly intra-organizational character.

The focus on intra-organizational and policy disputes has created a rich literature about the negotiations process leading to an agreement (i.e. the grievance is settled; the contract is signed). Similarly, there is a large body of literature on the consequences for future negotiations based upon the way the prior negotiations unfold (Lewicki, Saunders, & Barry, 2009; Shell, 2006). Less well developed is the literature on the aftermath of those

decisions. This gap in the literature is particularly critical when one examines negotiations that are essentially a one-off event, such as negotiating a peace treaty, or most international agreements, where there is a presumption that there will be no follow-on negotiations by the parties. We know that the choices made during negotiations create future problems, but those problems are examined through the lens of future negotiations. The dispute and problem-solving mechanisms are built into the negotiations (Lewicki et al., 2009). This is a somewhat self-referential process in which the parties return to clarify what was meant. Importantly, those mechanisms assume that the process will be much like the original negotiation and may even involve the same actors. In some instances, both sides to the dispute are eager to engage in dispute resolution because that ambiguity is a detriment to current practices and future negotiations. International and national disputes do not have recourse to such problem solving mechanisms. Perceptions of success or failure in such negotiations are judgments about the implementation of the agreement, not the process of reaching an agreement. The failure of a treaty does not produce a renewed discussion about the treaty per se, but rather returns the negotiations to a pre-negotiation stage (Lewicki et al., 2009; Shell, 2006). All bets are off and everyone is back to square one, but potentially under more trying circumstances.

Thus, we posit that the consequences of failed implementation under such circumstances are far more critical and dangerous than under traditional (i.e. labor) negotiations. Traditional dispute resolution follows the same rules as the original negotiations. The process has structured rules, and those rules are understood by the parties to the dispute. Original negotiations under such arrangements are aided by the safety net of the dispute resolution mechanisms. International negotiations rarely have such a safety net (as will be noted later, even the introduction of third parties during or after negotiations may be viewed as a threat). Implementation of such agreements is more complicated and more perilous.

We understand that the negotiation and bargaining process requires compromise and even a certain level of ambiguity (Fisher & Ury, 1981; Shell, 2006). These ambiguities are treated as necessary components of reaching an agreement, yet the consequences of those compromises, and especially the ambiguous language, for implementation are not explored. The problems in implementation are subordinate to the primary goal of an agreement.

This examination of the Peace Accords implemented in El Salvador since 1992 reflect the perilous nature of negotiations without the safety net of structured dispute resolution.

There are many historic accounts of the move from war to peace negotiations and then the long-standing efforts to achieve democratic governance in El Salvador (e.g. Stanley, 1996; Wood, 2001; Wood, 2002). To a large extent the Peace Accords are treated as little more than the transition from war to peace. The war is analyzed and then the efforts to transform the government since are closely examined. The Peace Accords are the starting point for those efforts toward democracy. The analysis starts with the words in the document. Much less is known about the process of negotiations as it unfolded. As a result the potential influences of the negotiations process on implementation of the Accords are ignored.

The incomplete implementation of the Peace Accords is a product of the negotiation process itself—especially in December 1991 when the imperative of reaching an agreement outweighed the ambiguities in the wording of the Accord. Much was left for future elected officials to work out but with little more than an acknowledgement that the details had not been worked out as guidance. Not only were future elected officials left to create a new democracy, they were left to address unresolved problems left over from the negotiations. At a certain level it is a testament to the commitment of all Salvadorans to the ideal of democracy that they continue to work at completing the work of the Peace Accords.

How did this intentionally and unintentionally ambiguous wording in the Peace Accords affect implementation of this momentous document? To answer this question it is necessary to first examine the negotiations process through the template of academic negotiations and bargaining. Fisher and Ury's (1981) classic text on negotiations and bargaining offers that template. Based upon interviews with participants in the Peace Accord negotiations, a sense of how the negotiations unfolded and in particular the tensions and concerns of the two sides will be explored. With this information as background, a critique of the bargaining process can occur, highlighting the areas of ambiguity and compromise. The critique is not to look for fault but to understand the logical consequences of the decisions made (and not made) to reach an agreement. The intent here is to understand why this process, implementing the Peace Accords, after twenty years is still incomplete. That is the task of this study.

Negotiation and Bargaining Fundamentals

Negotiations are a basic means of getting what one party wants from another. It is a two way method of communication designed to reach an agreement when two parties share interests while opposing others (Fisher & Ury, 1981). There are five key elements of negotiations that are pertinent in our study:

1. This is a bi-lateral process
2. The desire to reach an agreement
3. Styles and types of negotiations and how those styles intersect
4. A means to break an impasse during negotiations
5. A potential end-date for negotiations

Bi-lateral Negotiations

Because the point of reference for most of the academic literature on negotiations is contract negotiations in the private sector, these negotiations are general treated as simply two-way processes. As public policy studies related to legislative behavior and environmental policy noted as early as the 1980s (Anderson, 2010), public policy negotiations generally involve three or more interested parties. This more complex arrangement does not change the dynamics discussed below, but it does greatly increase the precarious nature of the negotiations. As the number of active stakeholders increases the likelihood that at least one party does not wish to resolve the problem increases (the current stalemate in the United States Congress in which both political parties are themselves divided is certainly one example).

A Shared Definition of the Goal in Negotiations

Critically, the negotiations process cannot begin until both sides agree to the simple premise that the outcome of the negotiations is a resolution of the questions in dispute. While it may seem obvious that a positive outcome is a necessary starting point for negotiations, particularly in international relations the seemingly simple question of what outcome is sought, may be in dispute (Vietnam, Korea). Unless the outcome envisioned by both sides is a mutually agreed upon vision, very little may get done. In the case of El Salvador “meetings” over the years never evolved into formal “negotiations” because of the lack of agreement on the fundamental question— ending the civil war. Until both sides came to the negotiations table with the intent of reaching agreement, the process of negotiations could not begin. As will be noted in the discussion below, several attempts to negotiate occurred. Meetings were held, but follow-up was lacking. There was for a long time little reason to negotiate. It took longer to *start* negotiations (five years) than to conduct negotiations (eighteen months).

Negotiation Approaches

Fisher and Ury (1981) designed three approaches to negotiations. There is the soft, hard, and the principled methods for negotiating. During any negotiation, all three

negotiating methods come into play (Fisher and Ury). These methods are often seen as methods for “getting your way.” While there is that element to these methods, as presented by Fisher and Ury they are methods for moving the negotiations along. The *art* in negotiation is in using these methods and knowing the right time to apply a method to facilitate negotiations.

Soft negotiations. Soft approach negotiators try to avoid conflict in order to retain an amicable relationship. They also avoid personal confrontations by readily conceding to reach an agreement. The soft approach is more likely to occur at the beginning and ending stages of a negotiation. At the beginning phase negotiators share the sense of the desire to reach a common outcome, promoting a soft or benign approach (Fisher & Ury, 1981). At the end of negotiations, all parties involved have deadlines and timelines to meet. In order to meet these deadlines and timelines, they are impelled to seek agreements with rapid acceptance of language that would otherwise have been debated.

Hard negotiations. An important starting point in negotiations is for the separate parties define for themselves their “bottom line”—the outcomes that must be achieved (or exceeded for an agreement to be accepted). The negotiations “game” requires that initial public proposals be far removed from the bottom line to mask the real goal/outcome. Thus occurs the common phenomenon in which all parties stubbornly cling to extreme positions and adamantly deny the possibility of budging. This approach will recur as negotiations reach the still unacknowledged bottom line (Cox, 1987). Hard negotiations are necessary, but also dangerous. Fisher and Ury (1981) suggest that hard negotiations run the risk of alienating the opposition and thus ending the negotiations before an agreement is reached.

Principled negotiations. The principled stance of a negotiator focuses on basic interests, fair standards culminating in an agreement whereby all parties involved feel the process and results of the negotiations are satisfying to all (Fisher & Ury, 1981). This method consists of four basic principles:

1. Separate the people from the problem: The ability to see each other’s issue from the point of view of the opposing party in a negotiation assists in appreciating the issue more realistically and allows all parties involved to focus on the issue not the parties (Fisher & Ury, 1981);
2. Focus on interests, not the on the positions: Each party’s interests are the prime motivators that force all involved to decide upon an agreement (Fisher & Ury, 1981);

3. Invent options for mutual gain: In complex and difficult situations, it is important and necessary to be creative when inventing options for mutual gain (Fisher & Ury, 1981). By inventing different options for a mutually agreed solution to a negotiation, all interested parties uncover solutions in common. Deciding on a mutually agreed accord becomes easy when shared interests dovetail (Raiffa, 1982); and
4. Use objective criteria when arriving at an agreement: In contrast to using positional bargaining, negotiators accept proposals based upon the use of criteria independent of the preconceived or ideologically-driven views of either side (Fisher & Ury, 1981, p. 11).

Impasse Procedures

Negotiations rarely run smoothly or at a consistent pace. The negotiations may come to a halt because an agreement on an issue may seem impossible. Finding a way out of such impasses is the key to coming to a final agreement. The models for addressing such impasses come from collective bargaining where both mediation and arbitration are recommended as paths to settle disagreements during negotiation (Cox, 1987; Dresang, 2009). Mediation is the process by which a third party enters the negotiations to help the two parties reach an agreement on items at impasse. In contrast, arbitration is a more extreme measure whereby the third party imposes a solution. In the first instance the two “sides” in the negotiation remain in control of the outcome. In the later instance much of the control over the outcome shifts to the third party (Cox, 1987).

Even though it brings the parties closer to a final agreement, the introduction of an arbitrator is rarely viewed by the parties as positive. While the language of international relations implies that outside parties (the United Nations, for example) is a *mediator*, it is not unusual for the parties to the negotiations to see the entrance of a third party into the discussion as a loss of control—in other words, the third party is *perceived* as an arbitrator. While in collective bargaining the introduction of a mediator is generally seen as a neutral or positive occurrence, arbitration is not. In international settings the introduction of a third party is inevitably viewed as a negative. The mere threat of the introduction of a third party is often sufficient to restart movement toward a final agreement (Dresang, 2009; Lewicki et al., 2009; Shel006C, 2006).

Timing

There is an internal rhythm to negotiations (Cox, 1987; Fisher & Ury, 1981). The pace of negotiations quickens near the end. In some settings the “end” represents a defined

date known by all at the start of the negotiations (the expiration of a contract for example). In contrast most international negotiations have no future limit. It is more like writing legislation or a constitution. The future is limitless. The sense that the “end” is approaching and, therefore, negotiations need to speed up, is not something that can be identified until it is happening. This sense that a conclusion is imminent may be the product of conflicting views. The first is a sense that the “tough” issues have been addressed. The second is the sense that unless the parties start settling the matter an (unwelcome) third party may intervene.

The Chronology of the Salvadoran Negotiations

Serious peace negotiations among the parties—the government and the FLMN [Farabundo Marti National Liberation Front]—started in April 1990 (though that first meeting at which “progress” was made was preceded by a critical meeting in September 1989, lasting until its consummation in January 16, 1992. There were brief meetings prior to serious negotiating in 1984, 1986, and 1987 (El Salvador Chronology). The negotiating parties could not establish a framework from which to proceed. The parties could not yet agree on an agenda, timeline, or issues to discuss at the negotiations table. They were not ready to agree.

The first meeting at which both parties were seriously engaged was in September 1989. What had changed between 1984 and 1989? International events were pushing both sides to the conflict toward serious negotiations. Changes both symbolic—the tearing down of the Berlin Wall—and practical—the disintegration the USSR halting military support for the FLMN—would influence the prospects for success of the FLMN. Similarly, US Congressional pressure on President Reagan to abolish military aid to the government, led the government to question its future prospects. Both parties foresaw a military stalemate (El Salvador Chronology).

Events that led up to the September meeting and then afterward, the UN expressed an interest in getting the negotiating parties to agree on an accord. Therefore, a second important meeting took place in Geneva in April 1990; it was at this meeting that timelines and deadlines were discussed. The UN pressed for a role as mediator. The meetings began to gain momentum and were occurring at greater frequency as both parties sought to develop an internal solution without the UN. In May 1990 a meeting took place in Caracas, Venezuela. During this meeting, the agenda and timeline were more clearly defined. A July 1990 meeting in San Jose, Costa Rica allowed the parties to negotiate on human rights issues. While it would be ten months before the parties would again meet to negotiate issues such as

transitional provisions, a truth commission, and political agreements elaborating on constitutional reforms, progress was being made. The San Jose meeting confirmed for the parties that they could negotiate with each other without a mediator. The parties met in New York in December 1991 to refine what had already been negotiated and to produce the document that would be the peace accords. This series of meetings culminated in both parties signing the Peace Accords in Mexico City, Mexico on January 16, 1992 (El Salvador Chronology).

In part because of the scattered timing of the negotiations and in part because topics varied, the composition of the negotiators present at any location varied. When the negotiating parties met in Geneva, each party consisted of four representatives: four members representing the government; three ambassadors; and one former Minister of Finance. On the FMLN side, all four members were former rebel commanders (United States Institute of Peace, 1990). The second time the negotiating parties met government representatives were six in number. This group comprised academicians, armed forces personnel, and high ranking government diplomats. Representatives for the FMLN were again military commanders, but now there were seven present (United States Institute of Peace). When the parties met in San Jose, Costa Rica in July 1990, the same persons who had been in Caracas represented both the government and the FLMN (United States Institute of Peace). The government representatives at the negotiations in San Jose would serve at both Mexico City and New York the following year. In Mexico City only four members represented the FMLN, but a fifth joined the party in New York (United States Institute of Peace). Importantly there was a core of negotiators from both sides that attended virtually all meetings beginning in 1989.

Data Collection

The central question is how the 20+ year effort to create democracy in El Salvador was affected by the processes and practices of the actual negotiations. Explanations of and critiques of the implementation of the peace accords suffer from a lack of information about how and why the accords came to be worded in the way they are. The only way to examine the dynamics of the negotiations that led to the Peace Accords is to get information from the source –persons from the two “sides” to the negotiations. Critically, some of those involved are no longer available. Also, the number of persons, who were participants throughout the process, was never large. Fewer than fifteen persons met these criteria. Two persons, one from each side of the negotiations who were long term participants, were identified and

agreed to be interviewed about the negotiations dynamics. Open-ended interviews of more than an hour each were conducted (in Spanish).

The central purpose of these personal interviews was to provide insight into whether or not the negotiations that produced the Peace Accords unfolded in the way that the literature would suggest. In answering that broad question we gain insight on the following questions:

1. What made conditions in 1989 different than in prior years when negotiations did not continue?
2. How did the choice of who would negotiate shape the outcome of the accords?
3. To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, create a “soft negotiations” environment in which horse-trading of previous positions occurred?
4. To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, lead to the choice to “not decide,” leaving the implementation to the political process after the negotiations were finished?
5. To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, lead to implementation decisions to which neither side was comfortable?
6. To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, result in intentionally ambiguously worded language in the Accords?
7. To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, create a circumstance under which implementation was slowed, or even impossible?

Critique of the Accords

Applying the Fisher and Ury (1981) framework for negotiation to the actual events as described by participants affirms that the negotiations did play out much as would be expected. The cycle of hard and soft, then principled and finally soft negotiations did to a large extent occur. Also the commitment of both parties to continue to negotiate to a conclusion (especially in 1991) should be acknowledged. Also, as anticipated by the Fisher and Ury framework, both intentionally and unintentionally ambiguous language appears in the accords. Such language served to facilitate decisions. In this case things went a step further; there are issues intentionally left out. Both of the interviewees stated that some

themes were not negotiated. The socio-economic issues that had been the core of political unrest since at least the 1930s were left unmentioned because there was no consensus between the negotiating parties on how to address them. Getting an agreement and moving *toward* democracy was more important than the details of the economic character of that future government. Yet, the issue was important enough in the public mind that it could not be ignored completely. Ambiguous language that acknowledged the mandate to address socio-economic concerns without offering any hint of the direction or scope of such solutions found its way into the accords. The following English language translation captures the convoluted passage on economic issues as a way to acknowledge the issue, but clearly shifts the entire burden of offering concrete solutions onto future governments:

a sustained effort and shall be conducted in phases, bearing in mind that the aim is to reach some agreements that are to be implemented immediately to achieve stabilization, others that are designed to tackle the economic and social problems that will ensue from the end of the conflict and still others that are geared specifically to reconstruction. (United States Institute of Peace).

Interestingly, there is some suggestion from the interviews that this ambiguous language was acceptable to both sides, though for quite different reasons. On the one hand the FLMN saw socio-economic reform as a central tenant of their fight, but that did not require those reforms to be in the accords. They were content to leave those decisions to future governments. The government accepted the language because they did not see the wording as a specific mandate to act. They anticipated social and economic issues would not be negotiated, discussed, or considered because these were issues that the government controlled.

Summary of Findings

A summary of the responses by the interviewees to the questions asked above is presented as follows:

1. *What made conditions in 1989 different than in prior years when negotiations did not continue?* The international situation was changing rapidly. Both sides felt the pressure. The demise of the USSR would mean that military support for the FLMN would inevitably end. The US Congress was pressuring President Reagan to abolish military aid to the government. Most critically, both parties foresaw a military stalemate.

2. *How did the choice of who would negotiate shape the outcome of the accords?* The peace accord was negotiated by several groups of representatives from each party. During the two plus years of negotiating, both parties had different representatives sitting at the negotiating table whenever they met. No one on either side was present at all negotiations, though a few were there for most of the talks. Furthermore, neither side was fully united on every issue. Participants on the same “side” held conflicting views. As a consequence, those negotiators signing the final peace accord shaped the accord’s outcome. As noted earlier this is a critical issue that is examined in more detail in another manuscript.
3. *To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, create a “soft negotiations” environment in which horse-trading of previous positions occurred?* The imperative of impending UN intervention created an atmosphere in which both sides traded off positions. Government representatives agreed to recognize and legitimize the legal existence of the opposition as a political party eligible to participate in popular elections. FMLN representatives withdrew its demand for the demilitarization of the armed forces (effectively making it a nation police force).
4. *To what extent did the mutual goal of finishing negotiations lead in December 1991, before threatened UN intervention, to the choice to “not decide,” leaving the implementation to the political process after the negotiations were finished.* Many of the contentious socio-economic issues that had roots going back to the 1930s were not addressed and, according to both interviewees, remain incomplete tasks to this day.
5. *To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, lead to implementation decisions to which neither side was comfortable.* According to both interviewees, both negotiating parties decided to finish the negotiations even though they had not agreed to specific time frames such as phases and time periods of disarmament, reducing the numbers (soldiers) of military power, and whether both parties would execute their part of the agreement as negotiated.
6. *To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, result in intentionally ambiguously worded language in the Accords.* Chapters one (Armed Forces) and five (Socio-Economic) of the peace

accords were purposely drafted in order to obscure the goals and hinder implementation.

7. *To what extent did the mutual goal of finishing negotiations in December 1991, before threatened UN intervention, create a circumstance under which implementation was slowed or even impossible.* The events occurring prior, during, and after writing the peace accords, as detailed in the aforementioned six questions above, demonstrate how each negotiating party was intentionally agreeing to opaquely and ambiguously written peace accord provisions in order to later meet again to further negotiate other terms and conditions. Both parties were consciously finishing the negotiations with an eye toward future deliberations and negotiations without regard for the political capacity to implement them.

Discussion

Implications for Implementation

Agreeing on peace accords to reform an entire political system and drafting a political framework designed to change a country's entire political history is a difficult (possibly impossible) task. When two or more parties consist of more than one individual on each negotiating side, the stakes are high and agreeing on terms as a group becomes challenging for the entire entity. Issues such as intra-group disagreements, conflicts, and divisions come into play. Sometimes group divisions are so pronounced that it causes an entirely new entity, e.g., a new political party, movement, or group, to emerge out of negotiations, or during the implementation phase.

When parties of peace agreements come together, it is inevitable for them to experience delays and misinterpretations. Yet, ambiguity is necessary in order for the negotiating parties involved to settle on a final agreement. The ambiguous wording found in the peace accords is based upon trust and mutual understanding, but also strategic assumptions about who would control implementation. When both negotiating parties agree to an ambiguous wording, they are implicitly accepting that they will meet again and in good faith sign the peace accords. Agreeing to and signing an ambiguous peace accord provides both negotiating parties a belief that, even after signing it, they can come back to it at a later time and work out whatever is left. But both parties act on a second set of presumptions whereby each side believes (hopes? expects?) those future decisions will be based upon different political and socio-economic bases than those that existed in 1991.

Lessons

There are two different versions of whether the Salvadoran peace accords have been fully implemented. One of the parties to the negotiations states that the peace accords have been fully implemented. The other party sees the accords as unfulfilled as long as issues are not addressed. There is ample justification on both sides in the wording of the accords to affirm these conflicting assertions. However, both sides assert that advances in the peace accords implementation have been made. This analysis suggests that advances in the negotiations were made during the negotiating phase of the process, but as with all negotiations, the task of implementation is critical to a summative evaluation of the success of the negotiations. In this there is much left to dispute; the political landscape is quite different today than 20, 50 or 90 years ago. The aspirations of democratic reformers that for so long were denied are tangible today. Nevertheless, the implementation of the accords remains a work in progress. The mandates of the accords still drive political decision-making. The expectations created by that document remain the touchstone for judging progress toward democracy.

Yet another lesson learned from this study is the fact that language ambiguity can work to the advantage of those that seek peace. The advantage it has is that it allows the negotiating parties to move forward while coming back to these ambiguous terms. For example, when the negotiating parties could not reach an agreement, they decided to move on to another theme and come back to this theme later. When the negotiators were able to get back to the topics, sometimes the negotiating parties may have had time to think of ways to word the themes at hand and manipulate them to fit their interests. In some cases the negotiators never got back to the issue, leaving it to the political process.

Next Steps

There is a second element to the negotiations dynamic—the intra-group conflicts that Graham Allison analysed in his examination of the Cuban Missile Crisis (Allison, 1971; Allison & Zelikow, 1999). As suggested above, there were never merely two “sides” to the negotiations. The participants in the peace accords represented organizations that were fairly diverse ideologically and in their expectations of the outcome of the negotiations themselves. A more complete appreciation of the negotiations process and its resulting influence on the implementation requires a separate analysis. That is the next step.

Conclusion

Reforming a political system via peace accords is a difficult task. By every measure the peace accords accomplished its central goals; an end to civil conflict and a shift toward a democratic foundation for politics. The accords are a success. In choosing to ignore certain issues, the political process, not the negotiators inherited the task of policy making and policy resolution. The future is one of democratically addressing political issues. That is as it should be and may well be all that can be expected of the accords. The “incompleteness” of the implementation is now a matter of political decision-making and not one of the accords.

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