

# Pre-Negotiations: A Necessary Pre-Requisite for Success in Diplomatic Negotiations

Written by Elyse Wakelin

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<https://www.e-ir.info/2012/08/15/pre-negotiations-a-necessary-pre-requisite-for-success-in-diplomatic-negotiations/>

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When considering prenegotiations it is necessary to place it in the context of the whole negotiation process. Whilst the prenegotiations stage itself has distinct features with its various stages and uses, it is part of a much wider process. It is suggested that "Prenegotiations provide parties an opportunity to approach and to be involved in the managing of significant issues, including conflicts, without risk of a formal commitment" (Pantev 2000, p.53). This allows parties to prepare themselves for a possible negotiation process whilst not being bound to any decisions or actions, and so providing a way of avoiding formal negotiations which may be counterproductive or useless to parties involved. Furthermore, it has been suggested that it is the prenegotiations period which "enables parties to move from conflicting perceptions and behaviours to co-operative perceptions and behaviours" (Zartman 1989, p.7).

It has been suggested that prenegotiations are a necessary prerequisite for successful diplomatic negotiations; "not just a definitional construct but a preparatory phase without which the negotiation would not have taken place" (Zartman 1989, p.7). In order to fully explore this proposal, it is necessary to consider the following aspects. I shall begin by examining the different definitions of prenegotiations to provide an understanding of what prenegotiations are. Next, it is necessary to consider the different stages of prenegotiations. By gaining a clear understanding of what exactly the prenegotiations stage is, it will be possible to access the main uses of this phase and thus the real impact that it has upon the negotiations process. On the other hand, by analysing the disadvantages of the prenegotiations phase it will be possible to consider whether or not prenegotiations are in fact a prerequisite for successful negotiations. Finally, it will be necessary to consider the overall importance of prenegotiations.

### Case Studies

In order to effectively examine the use of prenegotiations two main case studies have been selected to provide a broad illustration; The Arab-Israeli conflict (also known as the Middle East Crisis) and the North American Free Trade agreement (NAFTA). It is necessary to consider a brief background of these two conflicts and the events leading up to the need for diplomatic negotiations and use of prenegotiations in order to place these examples in context.

The Arab-Israeli conflict, is an ongoing conflict of over one hundred years of political tensions and open hostilities in the Middle East. The central issue of the conflict is over the creation of the modern state of Israel. Despite the fact that the conflict has been occurring for an excess of one hundred years it is worth noting that Israel only became a Sovereign State in 1948. In recent times there has been a shift to a more Israeli- Palestinian focused conflict though most of the Middle-East is still at odds over the territory issue. It is this ongoing conflict which led to the two sets of prenegotiations in the 1970s which resulted in the Camp David Summit which are of relevance.

The second case study, the prenegotiations of NAFTA has its origin in a conflict in 1981 over Canadian energy and investment policies, causing America to communicate plans for retaliatory measures in response to Canada's attempts at trade dependence. This resulted in uncertainty in trade relations. It can be seen that it was America's retaliatory measures, threatening Canada's access to the trade market which resulted in a "dramatic change in Canadian strategic thinking" (Clarkson 1985, p.153). It appears that the "real problem lay in redefining their relationship" (Druckman 1986, p.333), resulting in the need for negotiations.

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## Definitions of Prenegotiations

When defining prenegotiations there is not one standard definition but several variations on a similar theme providing a very broad understanding of the prenegotiations process. Different writers tend to focus on different aspects of the prenegotiations process in order to give their definitions. For example, Saunders suggests that “prenegotiations cover two fundamental needs; the defining of the problem and developing a commitment to negotiation on the part of the parties”, which are followed by a third phase, arranging the negotiations (Zartman 1989, p.2). Moreover, Zartman suggests that “prenegotiations begin when one or more parties considers negotiation as a policy option and communicates this intention to the other party. It ends when parties agree to formal negotiations” (Zartman 1989, p.4). The most notable difference between the two writers’ definitions of the prenegotiations stage of the negotiation process is Zartman’s suggestion that prenegotiations represent a “move from conflicting unilateral solutions for a multilateral problem to a joint search for cooperative multilateral or joint solutions” (Zartman 1989, p.4), whereas Saunders focuses on a more basic definition. These differences can be seen across all the different academic opinion. As a result it can be difficult to gain a concise understanding of exactly what prenegotiations are.

Most academic definitions place prenegotiations to be part of the whole negotiations process. For example, Rothman suggests that

Prenegotiations are an integrated process in which highly placed representatives of parties in conflict prepare for negotiation by jointly framing their issues of conflict, generating various options for handling them cooperatively and interactively structuring substance and process of future negotiations. (Rothman 1990, p.4)

This is comparable to the definitions of prenegotiations as provided by others including Cohen (Cohen 1997), Tomlin (Tomlin 1989) and Druckman (Druckman 1989). However, there appears to be a school of thought which presents a different view of the prenegotiations process. According to Janice Gross Stein, the process of prenegotiation is a separate process to the negotiating process (Pantev 2000, p.56). She suggests that the prenegotiation phase is simply an “important structuring activity... set broad boundaries and identifying the participants” (Stein 1989, p257c). Whilst these are key functions of the prenegotiations stage of the negotiations process which will be further discussed, it is difficult to distinguish these from the overall negotiation process, as they appear to be an integral part of preparations for negotiations and so a necessary prerequisite of the entire negotiations process.

When considering the different definitions of prenegotiations it would seem that the definition provided by Tomlin sums up the general opinion expressed by the different writers. He suggests that “Prenegotiation is the turning point in the relationship between the parties that is followed by a decision on the part of some or all to consider negotiation as a means to pursue goals” (Tomlin 1989, p.21). This definition alongside the acknowledgement that prenegotiations is a preparatory stage allowing the parties to prepare themselves for any forthcoming negotiations by identifying the problem and the participants as well as setting the agenda for discussions provides an understanding of what prenegotiations.

## Stages of Prenegotiations

It can be seen that as in all stages of negotiations, the prenegotiations phase too has stages which it passes through in order to achieve progress. However, the” process of prenegotiations is much less structured and less governed by norms or rules than negotiation...prenegotiation is attractive at the outset in part because it is open-ended and fluid.” (Stein 1989, p.248c). There are two main schools of thought in regards to the different stages of prenegotiations. By considering both it will enable a clear picture of what prenegotiations entail.

Firstly, Saunders suggests that there exist three stages of prenegotiations. He suggests that there is a shared definition of a problem, a commitment to a negotiated settlement and the arranging of the negotiation (Saunders 1984, p.54-55). On the other hand, Tomlin suggests that there are in fact five stages, two of which precede the formal onset of prenegotiations (Tomlin 1989, p22). These consist of problem identification, where leaders consider options and choose negotiation as the preferred one. Next one party makes a commitment to negotiate which represent a shift from whether to negotiate to what to negotiate. There is then a communication of a desire to

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negotiate and then setting the parameters for the negotiation to follow (Tomlin 1989, p.22-26). Fundamentally the two suggested sets of stages of prenegotiations are in content the same, with Tomlin's model broken down into more in depth stages.

By considering the application of Tomlin's model of the stages of prenegotiations, it is possible to gain a clearer understanding of the prenegotiations stage. It can be seen that Tomlin's stages of prenegotiations are representative of the process of prenegotiations as followed by Canada and the US in the NAFTA prenegotiations. In this case the parties followed three stages of prenegotiations, in order to successfully get to the negotiating table of negotiation and the agenda.

The first stage of the prenegotiations in NAFTA was triggered by the 1981 conflict over Canada's trade independence resulting in problem identification. It can be seen that this was then exacerbated by the recession of 1982 being the most severe seen in USA and Canada since the 1930s. This resulted in increased pressures prompting an increased "willingness on the part of the US to move more aggressively to curb imports" (Tomlin 1989, p28). Furthermore, the external affairs trade policy review concluded that they "must get the Canada-US relationship right'- US market fundamentally important to Canadian economic well being" (Tomlin 1989, p.29). It was the economic crisis which ensured that the problem identification in the Canadian American relationship was secure access to the US market whereas for the US problem identification was the unfair trading practices of its major trading partners. (Tomlin 1989, p29-30). This part of the prenegotiations can be clearly linked to the suggestions of both Saunders and Tomlin on problem identification.

The next stage of the prenegotiations process in the NAFTA agreement illustrates the blurring which can occur across the different stages of prenegotiations. It can be seen that political tensions in Canada resulted in the importance for Canada of multilateral trading relationships and diverse trading partners to be reaffirmed and a search for options ensuing (Tomlin 1989, p.30). The Canadian Government then expressed its willingness to pursue a limited free trade agreement with the US. This stage of the prenegotiations illustrates the blurring as suggested by Zartman and Berman (Zartman et al. 1982, p.5) which can occur between the stages of prenegotiations, in this case the searching for options and one party declaring its desire to negotiate to the other.

Finally it can be seen that Canada's decision to pursue sectoral free trade and America's willingness to explore the idea lead to the parties to move into the next stage of prenegotiations stage (Tomlin 1989, p.31). This is representative of the communication of a desire to communicate and the beginning of the setting of the boundaries in order for the negotiation process to continue. In the NAFTA prenegotiations, this stage was prolonged due to American's strong reservations about Canada's preferred type of agreement.

The NAFTA prenegotiations provide a clear example of the difficulties in maintaining clear distinction in the differing stages of prenegotiations. Rather than considering prenegotiations in different stages it is more effective to consider the phase as a whole with the fundamental aims of achieving the different stages of prenegotiations as set out by Saunders and Tomlin. The Arab-Israeli conflict prenegotiations illustrate the fact that the process may not always be structured and can often be complicated. "Neither Israel nor Egypt would commit to negotiate until the risks of the negotiation were reduced with the clarification of the participants, the boundaries of negotiation and the agenda" (Stein 1989, p.250c). As a result the stages of prenegotiations were less clear but yet were still present.

## **Uses of Prenegotiations**

The uses of prenegotiations are central to accessing whether or not prenegotiations are a prerequisite of successful negotiations. It would appear that "prenegotiation focuses on the promotion of a joint solution and a commitment to negotiate" (Stein 1989, p.252c). Furthermore it is suggested that prenegotiations attempt to "create structures for negotiation which make commitment to negotiate possible or attractive" (Stein 1989, p252c). Therefore, prenegotiations are often used in order to facilitate the progression of discussions to the negotiating table. It can be seen that there are four main uses of prenegotiations; the selection of participants, setting boundaries, setting the agenda and management of domestic politics and building of coalitions each of which will be considered in turn.

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## *Selection of participants*

It can be seen that the only function of prenegotiations which both Zartman and Stein thoroughly agree upon is that of selection of the participants of the negotiation phase (Pantev 2000, p.60). This is a key function as it sets out who will and will not be involved in the negotiations process which may ultimately have an impact on any decisions reached in the eventual negotiations. In some cases the participants in the negotiations proceedings are obvious and thus there is little discussion on this issue. For example in the NAFTA prenegotiations, the selection of participants proved to be uncontroversial as the issue involved only the USA and Canada who were to take part in bilateral discussions (Stein 1989, p.253c).

However, there are also times whereby the selection of participants proves to be less straightforward. This is true in the case of the Arab-Israeli conflict, whereby the selection of participants proved to be crucial. It can be seen that those selected to act as participants varied greatly across the two different sets of prenegotiations. The first process of prenegotiations which took place in 1977 included a wide range of participants; US, Soviet Union, Egypt, Syria, Jordan, Saudi Arabia, Palestine Liberation Organisation (PLO) and Israel. Such large numbers of parties and varied interests proved problematic. Thus, in the second set of prenegotiations, after the failure of the first attempted negotiations with strict requirements implemented for participant selection resulting in only Egypt and Israel being participants with the USA acting as observers. Despite a wide range of other parties being key players to the conflict it was not possible to include them in the negotiations, as was decided upon in the prenegotiations. For example, the PLO had a deep interest in the conflict. However, Israel refused to negotiate with the PLO creating a deadlock which was impassable, thus "by the end of September 1977, it was necessary that the PLO was eliminated as a possible participant" (Stein 1989, p.184b).

The two case studies illustrate the different levels of difficulties in selecting the participants. Whilst in the NAFTA prenegotiations the selection of the participants was easy, the Arab-Israeli conflict prenegotiations are evidence of the difficulties which can arise in this function. However, both illustrate the importance of the need to select the participants before arriving to the more substantial negotiation stage.

## *To set boundaries which the negotiation will follow*

It is evident that diplomatic negotiations will struggle to reach a successful conclusion if there is not boundaries for which the negotiations will follow, set before the negotiations begin. Thus, it is a key role of the prenegotiation phase of the negotiation process to set these boundaries in order to prevent difficulties at later stages. It can be seen that in the NAFTA, prenegotiation was used to develop a comprehensive framework for negotiation agreed (Stein 1989, p.253c).

However, the use of prenegotiations to set boundaries can be seen in the Arab-Israeli conflict. The first process of prenegotiation was dominated by a search of principles to guide the negotiation on settlement of the conflict. However the failure of the first set of negotiations showed the need for boundaries in order to reduce the risks, before any of the principal parties would be willing to negotiate (Stein 1989, p.253c). As a result of the failure in the first prenegotiations, the second prenegotiations focused on the creation of much more narrowly defined boundaries. It can be seen that Egypt, Israel and the US learnt a valuable lesson during the two phases of prenegotiations and thus the negotiating boundaries narrowed and procedures fundamentally altered (Stein 1989, p.187b). The reshaping of the boundaries can be seen to have also impacted on the selection of participants with Syria being excluded as a participant. Furthermore, setting the boundaries also impacted the extent to which of the issue of Palestine was to be addressed (Stein 1989, p.188b).

It has been suggested by Watkins that effective framing can be used to create a favourable definition of the problem to be solved and to set out potential solutions. He suggests the "people's perceptions of their interests remain latent and diffuse until they are faced with a choice and they perceive their interests according to how their choices are posed" (Watkins 2001, p.123). This involves several techniques including invoking the common good, linking to core values, heightening concerns about loss or risk, narrowing or broadening the scope and neutralising toxic issues (Watkins 2001, p.123-124). These techniques can be used in the setting of the boundaries in order to achieve

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boundaries which serve favourable to the parties involved but also allow for the successful progression of negotiations. For the Arab-Israeli conflict it is evident that the setting of the boundaries at an appropriate level was fundamental to successful negotiations.

## *Setting the negotiation agenda*

The setting of the agenda is another key function of prenegotiations. It is also arguably the most important function. This is illustrated by Owen Harries who stated that "He who defines the issues and determines their priorities is already well on the way to winning" (Harries 1984, p.58). It is therefore suggested that a clear agenda is the main ingredient for a successful negotiation. It can be seen that agenda formulation can differ across prenegotiations processes in two distinct ways; firstly is the prenegotiations which proceed through its stages by enlarging the agenda. Secondly, are the prenegotiations where what is kept off the table was more important than what was put on it; where prenegotiations are used to narrow the agenda and thus reduce the risk and uncertainty (Stein 1989, p.254c).

It can be seen that both Zartman and Stein refer to the function of prenegotiations in agenda setting, only in different ways and in different contexts. On the one hand, Stein refers to the function as specifying the boundaries of the negotiation to follow and of setting the agenda for the negotiation that follows (Pantev 2000, p.61) whereas, Zartman states that it is the selecting and discarding of alternatives (Zartman 1989, p.11). He suggests that the process of selecting and disregarding alternatives is conducted which involves both the establishment of boundaries and of setting agendas. Whilst, their terminology in explaining the function of agenda setting differs, fundamentally Zartman and Stein agree on the need for agenda setting. Furthermore, three of Tomlin's five stages of prenegotiations appear to break down the agenda setting function; identifying the problem, searching for options and setting the parameters, (Tomlin 1989, p.22-26) reflecting its importance.

In the Arab-Israeli conflict, the agenda began in broad and uncertain terms. However, it can be seen that it was progressively narrowed as the prenegotiations progressed through the blurred stages and further learning took place. Furthermore, the lessons learnt in the first round of prenegotiations also impacted the narrowing of the agenda. According to Stein

The narrowing of the agenda through the elimination or the postponement of the most controversial issues was a critical component in the lessening of the uncertainty and complexity and in the reduction of anticipated costs of negotiation for Israel. Agenda definition was an important part of risk management and a critical prerequisite to negotiate. (Stein 1989, p.255c)

Arguably one of the reasons for the failure of the first set of negotiations was the fact that the agenda was too large and the issues too wide as to effectively be dealt with. By narrowing the agenda, the issue of the conflict became manageable. Thus Zartman suggests that a core function of pre-negotiation involves dividing the problem into a manageable issue susceptible of a negotiated income (Zartman 1989, p.10).

## *Management of domestic politics and coalition building*

During the phase of prenegotiations it is not only necessary to prepare the international arena or the diplomatic negotiations which may follow but it is also necessary to prepare the domestic front. As Putnam states, "negotiations exist as a two level game, the domestic and the international level" (Putnam 1988, p.427-453). "This involves not only changing the public image of the adversary but putting together a domestic coalition of interests to support termination of the conflict" (Zartman 1989, p.10). Prenegotiations also allow political leaders to strengthen domestic support by managing domestic constituencies as well as build domestic coalitions, which are key to public support of negotiation proceedings. In Egypt, the prenegotiations of the Arab- Israeli conflict "permitted President Sadat the time to neutralise growing domestic political opposition through the manipulation of elements within the coalition that provided critical support" (Stein 1989, p.258c). The need for domestic support for negotiations is paramount and prenegotiations offer the ideal time to gain the necessary support.

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In regards to the function of coalition building, it is evident that a process of prenegotiations allows for both the building of domestic and international coalitions by political leaders. The importance of building support both domestic and internationally is highlighted by Zartman (Zartman 1989, p.10). In the Arab- Israeli conflict, the building of coalitions can be seen to have been a key role of the USA. Its role as the third party resulted in the role to secure the support of the USA to form a coalition and to prevent Washington from joining a coalition with the adversary. Furthermore, in January 1978, in the prenegotiations it can be seen that the USA "moved explicitly to a strategy of coalition with Egypt to extract concessions from Israel" (Stein 1989, p193b). The use of international coalitions in negotiations can thus be seen to also be useful for negotiations. It can be seen that initial shifts in trust are made in prenegotiations, parties conduct small tests of trust and construct mechanisms by which trust can be shown and monitored (Zartman et al. 1982, pp.27-41).

## **Other Uses of Prenegotiations**

Whilst, the functions analysed above are the main uses of prenegotiations, there are other functions which suggest that prenegotiations are a prerequisite for successful negotiations. In particular, is in regards to the costs associated with negotiations. It is evident that prenegotiations provide an opportunity for the parties to realise and to contemplate the possible costs and concessions which may be necessary for successful negotiations. Furthermore, it provides an opportunity to learn of and appreciate costs of failure of any negotiations before any firm commitments to negotiate are made (Zartman 1989, p.8). As a result, parties are more aware of the associated costs involved in the negotiations. This has the possibility of reducing the risks associated with the negotiations. Furthermore, prenegotiations also allow a party to "convince the other party that concessions will be required" (Zartman 1989, p.9), thus promote the progression to negotiations. Finally, it can be seen that prenegotiations are "necessary to enable or oblige the parties to sort out their own motives for negotiating in the given context" (Zartman 1989, p.8). By ensuring that a party is fully committed to the negotiations reduces the risk of abandonment at the negotiations stage.

## **Disadvantages of Prenegotiations**

Whilst it is evident that there are many uses to the prenegotiations stage of the negotiating process which prove to be fundamental as illustrated in the case studies above, it is also necessary to consider the negative impact which the prenegotiations may have upon over all negotiation process in order to effectively assess whether or not they are a necessary prerequisite. Essentially, prenegotiations hold no legal requirements and thus allow for easy abandonment of negotiations which could result in grave consequences. As relations between states are often most fragile at this point of the negotiations stage it is necessary to highlight the potential pitfalls of prenegotiations and the effects which they may have.

It is evident that negotiations are often initiated with a sense of urgency to them and thus, the length of time which prenegotiations may take can serve as counterproductive. This is illustrated in the Arab-Israeli conflict, where the negotiations proceeding involved two sets of prenegotiations resulting in the process taking much longer. This can result in interested parties losing interest in the negotiations either deciding the negotiations are in fact not necessary or in even lead them to believe that war is the only in which to solve the conflict. Furthermore, the expression of an unwillingness to make concessions or not accepting the equality of actors at the prenegotiations stage may also put a stop to negotiations reaching the table as parties may develop the feeling of stalemate.

Whilst it is generally necessary to set boundaries in order to aid in the progression of progress such as in the NAFTA agreement, the setting of boundaries may in fact be restrictive and limiting to progress, placing limits on the possible development in international relations rather than allowing for unlimited natural development of progression. On the other hand, it can be seen that the creation of a weak and unclear agenda could complicate matters in latter stages. In the first set of prenegotiations in the Arab-Israeli conflict, the broad agenda contributed towards the failure of the negotiations as it meant that there were too many issues on the table. Furthermore, linked with both the setting of the boundaries and the setting of the agenda is the danger of premature proposals by one of the parties. If a party on considering the possible agenda and boundaries feels that negotiation talks are not necessary and feels that it would be more productive to put forward proposals at the early stage before much learning has occurred, this could damage any future negotiations. It is evident that there will be some possible problems as a result of prenegotiations;

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however it is clear that the disadvantages are outweighed by the positive impact.

## **Importance of Prenegotiations**

“Prenegotiations matters both when parties get to the table and when they do not. It matters because the process provides the participants with significant opportunity for learning about both themselves and about others” (Stein 1989, p.263c). The learning which can occur during prenegotiations proves to be invaluable for the parties involved either for eventual negotiations resulting from the prenegotiations or simply for diplomatic relations. It provides the parties an opportunity to gain new information, learn new technological techniques, and gain a general better understanding of the cause and effect of conflict, thus the ability to reframe a situation (Stein 1989, p.264c).

Evidence suggests that the “greater the reduction of uncertainty and complexity through boundaries, participation and agenda setting” (Stein 1989, p.263c) the more likely that there will be a smooth transition of getting to the negotiations stages with successful outcome. This can clearly be seen in the two case studies highlighted in this essay, with progress achieved much easier once the main stages of prenegotiations were completed. Furthermore, it would seem that prenegotiations are important due to the fact that they allow for a greater identification and clarification of concessions and the opportunity to gain greater and more coherent domestic support.

The Arab-Israeli crisis proves to provide a clear example of the utmost importance of prenegotiations in successful diplomatic negotiations. Whilst it can be seen that the first attempt of prenegotiations technically failed as the proceeding negotiations were unable to reach a successful outcome, the second were a success resulting in the Camp David Summit. However, rather than consider the two sets of prenegotiations as separate events, it is more useful to consider them as a whole process (Stein 1989, p.199b).

It would appear that prenegotiations “contributed in important ways to what happened at the Camp David Summit” (Stein 1989, p.199b). The prenegotiations were themselves triggered by estimates of war and the desire to avoid such an event. The prenegotiations provided an opportunity for the parties involved to attach a high cost to stalemate, as well as the ability to demonstrate a shared perception of the instability and a mutual aversion to war (Stein 1989, p.204b). Furthermore, as analysed above, prenegotiation reduced uncertainty as significant learning occurred by narrowing the number of participants, limiting the agenda and setting the boundaries. It can be seen that the role of the US in the prenegotiations was vital; the overlapping role as a participant and a third party resulted in the ability to push forward the negotiations in the introduction of the Camp David Summit when there was a significant domestic political weakness of Egyptian leaders. The Arab-Israeli conflict shows that the failure of prenegotiations “can be costly not only because negative learning may occur but also because failure can alter the strategic calculations of the participants in favour of the use of force” (Stein 1989, p.204b).

## **Conclusion**

It is evident that “prenegotiations can matter in three important ways” (Stein 1989, p.202b). Firstly it has been suggested that prenegotiations can significantly “affect the process of negotiation which follows” (Stein 1989, p.202b). It is the agenda setting, setting of the boundaries and the selection of the participants which will have a profound effect upon the process of negotiations. Furthermore, is the effect that prenegotiations may have on “long term relationships among the parties” (Stein 1989, p.202b); if sufficient learning takes place then it may serve as a vehicle for dismissing previously held beliefs and expectations removing stereotypes, allowing for better diplomatic relations in the future. A relationship may be modified, redefined, weakened or reinforced (Stein 1989, p.202b). Thirdly, it has been suggested that prenegotiations can have important consequences that are “independent of what happens at the table” (Stein 1989, p.202b).

Having considered the case studies of the prenegotiations in both the NAFTA and the Arab-Israeli conflict it would appear that prenegotiations are a prerequisite for successful diplomatic negotiation. Whilst there are some disadvantages which exist in regards to prenegotiations, these are outweighed by the positive and effective impact which prenegotiations have on the overall negotiations phase. “Today’s deep-rooted human conflicts demand the largest possible framework for marshalling the full array of resources and instruments in the whole body politic”

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(Saunders 1999, p431). Therefore prenegotiations are central, providing parties in conflict the greatest opportunity to access resources and each other in order to reach a successful conclusion.

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Date written: January 2010



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