

Chapter 10

Breaking a Negotiation Deadlock through Intangibles¹

Based on an interview with William Ury

Deadlocks are nothing new in negotiation. However, when parties take a positional approach to negotiation, with very high stakes involved, and with much of the negotiation playing out in the public sphere, the stage is set for a perfect storm of confounding and self-defeating behavior. When this confluence of events comes together in just the right way otherwise attainable objectives remain elusive.

This was indeed the case when my colleague, William Ury, heard from the daughter of one of the people embroiled in this negotiation quagmire. She implored Ury to get in touch with her father to try to help him out of this seemingly endless trap. Ury agreed, but with some trepidation, wondering what he could offer. After meeting with the father and asking some critical questions, Ury could begin to see a possible way through the conundrum. This is the story.

Background and the Negotiation Challenge

Abilio dos Santos Diniz, a retail tycoon from Sao Paulo Brazil, is the son of a Portuguese immigrant. Diniz's father founded Grupo Pao de Acucar in 1948 in Brazil. Under Diniz's management, Grupo Pao de Acucar became Brazil's largest retailer with revenue of \$24.9 billion in 2012. How Diniz got to this point and where the negotiation in question comes from has to do with a French company called Groupe Casino.

The relationship between the two companies began in 1999, when Groupe Casino acquired 24.5% of the voting capital of Grupo Pao de Acucar for \$854 million. In 2000, Diniz transitioned the company into Companhia Brasileira de Distribuição, which became one of the largest retail chains in Brazil. Then in

2005, Diniz sold another large stake to Groupe Casino for an estimated \$860 million and subsequently stepped down as CEO. However, he remained on as the Chairman of the Board. In 2012, Grupo Casino took control of Grupo Pão de Açúcar and Diniz no longer had operational functions within the group but remained as Chairman. At this point the relationship between Diniz and Grupo Casino began to sour badly. In 2016, Diniz became a significant shareholder of Carrefour SA, also a French company, and Casino's biggest competitor.²

Diniz' connection with Casino became increasingly belligerent, especially when it came to his relationship with the French retailer's CEO, Jean-Charles Naouri. The fight over control of Brazil's largest retailer, and its 150,000 employees, was at stake. To say that the negotiation had a high public profile was, well, an understatement.

The issue in question was that Diniz had agreed to transition the business over to Naouri at a certain point, but then reconsidered and decided against it. This led to a public disagreement that ended in a fight born out through the mainstream media and social media. Both men solicited the help of numerous lawyers from across the world -- spending millions of dollars to deal with the issue of control of the company. Accusations escalated to claims of corporate espionage. Character assassinations in the press of both men occurred frequently. The Financial Times newspaper went so far as to call the issue perhaps the biggest cross continental business dispute in recent history.³

The issue was likely to go on for an additional eight years, Diniz's remaining tenure on the board. Diniz had just about resigned himself to that reality...until he sat down with Ury. Then things began to change after a pivotal conversation between the two men.

Preparing to Negotiate

Ury met with Diniz in his living room one afternoon in Sao Paulo. As they talked, Diniz's young children wandered in and out. Ury inquired in classic advisor fashion "What is it exactly that you want?" Diniz response was very focused on the five or six tangible things he sought, such as a good price for his stock, elimination of the three year non-compete clause, and issues pertaining to the corporate headquarters. It was a very matter of fact list that would be commonly sought after in these types of negotiations. However, Ury knew that there was almost always another dimension to negotiations -- the intangible or psychological realm.⁴ He knew he needed to probe there to get to the real root of the problem.

Ury pushed Diniz a bit, "I understand those things, but what do you *really* want?" Diniz looked at him for a while...trying to grasp what Ury was seeking to

comprehend. After a bit more explanation from Ury, Diniz said “freedom”.⁵ Ury nodded, feeling his question answered. Freedom – in its most broad sense -- was the underlying intangible need trying to come through. Having done his homework, Ury knew that Diniz had been kidnapped in 1989 by some urban guerillas.⁶ It was a very high profile situation that was front page news. If that was not traumatic enough, he was held by his captors in a coffin for a week. Only by a miracle did the police find him. So the concept of freedom was not mentioned casually. It had the deepest of meanings for Diniz.

Ury wanted to make sure he was not reading too much into the word freedom. “What does freedom mean to you?” he queried further. This time, Diniz did not need to think. “Freedom to spend time with family and freedom to do business deals, which are the things I love.” Ury could certainly resonate with that. He answered, “I am not sure I can get you all of the specific things you mentioned, but maybe I can help with winning you the freedom you want.”

Two months later Ury was able to secure a meeting in Paris with a friend and business mentor of Naouri in Paris, an eminent French banker named David de Rothschild. Rothschild sat on the board of Naouri’s company. Ury was joined by his colleague David Lax, an experienced business negotiation expert who had been working closely on the case with Ury. This is where the real negotiation began.

The Negotiation

In a private room at an elegant French restaurant the first Monday in September, Rothschild began by asking Ury very simply, “Why are you here?” Ury replied in French “parce que la vie est trop courte” meaning “life is too short”. Rothschild, somewhat puzzled, asked “What do you mean?” Ury continued “Life is too short for these battles where everyone loses – the protagonists, their families, the employees of the company, even the countries.” This situation had become very toxic and was being felt far beyond the two companies. In fact, the ripple effect was so great that the French and Brazilian presidents got involved because it was hampering commercial relations at the governmental level. As Ury portrayed it, “the conflict had achieved mythic proportions.”⁷

To this point, there had been eighteen months of negotiation with no movement at all. All that had happened was a hardening of positions and a ratcheting up of the rhetoric. Virtually everyone thought the problem could not be solved because the process to that point had all been about someone winning and someone losing. Neither man could afford to lose.

Rothschild was intrigued by what Ury was getting at, “So, how would you approach this?” That was the opening Ury needed. Ury did not get into the details. Instead, he asked for something very simple -- agreement on two intangible principles: Freedom and Dignity.⁸ Ury shared that he believed both men wanted to be free to live their lives again and neither wanted, nor could afford, to appear to lose in this scenario. Ury looped back to the concept of dignity and emphasized its critical importance in this case. Rothschild signaled that he understood and would take this to Naouri. Rothschild asked when Ury and Lax were heading back to the US. They explained they were planning to leave the following day. The meeting ended shortly thereafter.

Later that day Rothschild called Ury back and asked if he could delay his trip and come back to his office the following day because there was more to discuss. Ury agreed to change his plans. The next day, Lax and Ury met together with Rothschild for a short 45 minute meeting. Rothschild asked Ury what he really meant by freedom and dignity -- together they crafted a half-dozen deal terms that would reflect those two principles. One of the main issues, for example was a three year non-compete clause. Ury explained that given Diniz’s age (76), three years was considerable. Previous negotiations had sought to reduce the three year time period by a third or a half, but the principle of freedom implied zero years – the total elimination of the non-compete clause. The principle of dignity meant that neither party should be perceived as the loser, which was very important since the conflict was so public. Ury and Lax outlined with Rothschild an approach that did not include a single number because, as Ury shared, “someone will appear to win, and someone will appear to lose, if we use numbers”. The voting shares would be traded for non-voting shares using a 1 for 1 formula with no discount and, hence, no numbers. The intention was to keep the psychological interests front and center.

Having made substantial progress Ury rerouted himself and flew back to Sao Paulo instead of the US. He subsequently met with Diniz on Wednesday morning and shared what he had explored with Rothschild. By Friday the parties, with Ury’s help, had the outlines of a deal that both men were happy with. Before finalizing everything Ury had asked Diniz’s team – is there anything more you want to ask for? They couldn’t think of anything. Diniz specifically shared the following, “I got everything I wanted, but most importantly, I got my life back.”⁹ Naouri, Rothschild reported, had also declared his full satisfaction with the agreement. It was a genuine mutual gains agreement with a win as well for the families, the employees, and the larger community.

The principles of freedom and dignity underpinned the document both men signed sitting in a law office in Sao Paulo. In addition to the agreement, Ury and Lax had proposed releasing a joint statement from both men wishing each other well and success into the future. The men agreed.

Ury then went with Diniz and Naouri to the company to share the deal with the top executives of the company. In front of everyone, Diniz and Naouri wished each other well. The media who attended the subsequent press conference could not believe what they were witnessing, but the agreement held.

Later that evening Ury joined Diniz at his home for dinner. Several dozen lawyers showed up at Diniz's house from around the world to work on arbitration hearings connected to the case. Diniz happily shared word of the agreement, but sadly for them, that was the end of the work on the case.

Lessons Learned

This example demonstrates how quickly a negotiation can escalate when the stakes are high, the process transpires in the public sphere, and both parties need to save face. Without a dramatic reframing this negotiation would likely have ended in stalemate and with both sides unhappy.

Lesson 1: Dig down for intangible interests rooted in psychological concepts

First, of course, the key to solving this very tough negotiation was to dig down to the roots of the problem, which lay not in money, but in core principles of what made these two men human. Freedom and dignity. All the negative emotions that had spilled into this negotiation were a result of these two needs not being met. In fact, to take that a step further, the freedom and dignity of the men were actively trampled upon by the other. Whether this was done willingly, or incidentally as a result of the actions taken, is immaterial. The impact was the same.

Along with these important psychological issues came a series of assumptions both sides made that fueled the escalatory cycle. As Diniz said to Ury in one of their early conversations, "Maybe I should just resign myself to the fact that I am going to have to fight this until the day I die." This prevailing mindset, along with the lawsuits and other zero sum ways of thinking, focused on the money and the non-compete clause, which fueled the problem.⁹

Lesson 2: Use of principles and objective criteria

Second, Ury and Lax resisted the trap of centering on the dollars and cents that all the others who previously tried to negotiate this matter focused on. How did they go about doing this? By fixing their minds on principles and objective criteria. As was previously mentioned, the principles of freedom and dignity were

critically important. Equally important was using objective criteria so that both men could claim victory and save face.

Lesson 3: Reframing and pivoting

Finally, this case required Ury holding up a mirror to the participants, reframing the challenge, and pivoting in a different direction. As Ury shared “If you change the way people see the problem you can change the conversation.”¹⁰ The parties had been looking at the problem as a nail and, as such, they all brought their hammers. This would have led to a seemingly never ending problem that would have cost them all many millions of dollars and left them very unsatisfied in the end. While the reframing alone would not have solved the problem, it opened the door to other possibilities.