



ROLE-PLAY SIMULATION ON LAND INVASION NEGOTIATION

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ABSTRACT

This article addressed the Brazilian government-owned land invasion negotiation case, aiming at improving the negotiation skills of government negotiators, scholars, decision-makers, and practitioners through a two-party, multiple-issue role-play simulation. The case involved an energy company director, and a military organization commander, regarding the Grant for Real Right of Use (GRRU). Key findings pointed out the necessity of improving (i) legal boundaries; (ii) value creation to design solutions to complex issues to achieve mutual benefit agreements; (iii) integrative strategies, such as understanding the other party's underlying interests, to avoid the case judicialization, and consequent loss for all parties. Further implications suggest the case replication to other scenarios such as governmental acquisitions. A complete set of instructions, case mechanics, and applications compile the present work.

Keywords: Teaching materials, law, land invasion, integrative, Negotiation

INTRODUCTION: -

Invasion on state-owned land is always a sensitive case and hot topic research. The negotiations are usually complex and involve plenty of legal constraints. Nevertheless, when there are perceived benefits for both sides, the Grant for Real Right of Use (GRRU) might be applicable. In this article, we investigated a real case scenario on the Union land invasion by presenting a Type II negotiation (Dias, 2020), including a two-party, multiple-issue, role-play simulation. A complete set of instructions is enclosed, as shown in the Annexes section. This article addressed a single case study involving the Military Organization Commander (MOC) and the Private Energy Company Director (PECD) as the unit of analysis (Yin, 1988). The names of the companies were changed for compliance issues, including the names of the participants, omitted to

preserve the case confidentiality. Nevertheless, the case is foreseen by the Brazilian Federal Constitution 1988, Article 22, regarding the Union's Exclusive Competence (Brasil, 1988).

The article encloses the teaching notes set (see the Appendixes). We aimed at providing teaching material on land invasion negotiation, helpful to teachers, scholars, lawyers, professors, instructors, mediators, decision-makers, and practitioners. The topic on teaching materials has attracted scholar attention on recent years (Dias, M.; Andrade, S.; Silva, M. R.; Teles, G.; Mello, B.; Moura, R.; Salazar, A.; Sotoriva, L.M.; Mariotti, A; Filho, C., 2021; Dias, Lopes, Teles, Pereira and Castro, 2020; Dias, 2020, 2019; Dias & Lopes, 2019; Dias & Teles, 2018; Dias & Duzert, 2017; Dias & Navarro, 2017).

Negotiation comes from Latin *nego* = deny, and *otium* = leisure, and has been defined over the past decades as “a process in which individuals work together to formulate agreements about the issues in dispute. This process assumes that the parties involved are willing to communicate and to generate offers, counteroffers, or both.” (Rubin and Brown, 1975, p.461). Negotiation is also defined as the “information and power to affect behavior within a “web of tension.” (Cohen, 1980, p.4), or ultimately, a “form of decision making in which two or more parties talk with one another in an effort to resolve their opposing interests (Pruitt, 1981, p. xi). The field of research has been extensively studied over the past century (Dias, 2020, 2020b, 2019; Raiffa, 1982; Ury, 2015; Cohen, 1980; Sebenius, 1992; Moore, 2003; Fisher Ury and Patton, 1981; Salacuse, 2008; Duzert and Zerunyan, 2015; Susskind and Field, 1996; Susskind & Cruikshank, 1987). The process of Negotiation has also been classified under different approaches. In this article, we followed the Four-Type Negotiation Matrix (Dias 2020), as illustrated in Figure 1, as follows:



Figure 1: The Four-Type Negotiation Matrix. Source: Dias, 2020. Reprinted under permission.

The teaching case addressed a Type II negotiation, where the two parties, the (i) military organization commander and (ii) the private company director, negotiate over the Union's land invasion, to be described and discussed in other sections. In sequence, methods, as well as research limitations, are presented.

METHODS AND RESEARCH LIMITATIONS: -

This study is a land invasion negotiation case involving two parties, as described in the previous section. We followed the inductive rationale and the interpretive approach. The present research is limited to the following Brazilian government acquisition legislation on Grant for Real Right of Use (GRRU), as related in Table 1:

Table 1

Brazilian legislation on Grant for Real Right of Use (GRRU).

Legal Device	Description
Art. 22, engraved I, from CF/88 Decree-Lei 271/1967	Jurisdiction in private to the Union It has, among other topics, "on the granting of use and airspace."
Art. 1,225, XII of the Civil Code, as a result of Law 11,481/2007	Lists the GRRU among the real rights species
Civil Code, in art. 1473, IX	It provides that the GRRU may be mortgaged, provided that it is limited to the period fixed for the duration of the concession (Art. 1473, § 2, CC)
Law 11.481/2007 included in Art. 22, § 1, III of Law 9.514/1997	Real right of use may be the subject of fiduciary disposal, limited to the duration of the concession (art. 22, § 2, Law 9.514/1997). It provides for the exemption of costs for "the first registration of real right constituted in favor of beneficiary of land regularization of social interest in urban areas and in rural areas of family farming" (art. 290-A, I). It also provides that the GRRU is the object of registration (art. 167, I, 40) and its extinction is the subject of registration (art. 167, II, 29).
Law 6.015/1973 was also amended by Law 11.481/2007	It deals with the chances of dispensing from bidding
General Law of Bids (14.133/21, art. 74	General Instructions for the Use of Real Estate Jurisdiction to army command
IG 10-03	
Ordinance Cmt Ex No. 693, of 08.29.2012	Amends the General Instructions for the Use of Jurisdictional Real Estate Property to the Army Command (IG 10-03)
Ordinance No. 003-DEC, 14.08.2008	In addition, the Regulatory Instructions for the Use of The Federal Property of The Federal Government Jurisdiction to the Army Command (IR 50-13) are added.

This case is also limited and supported by Goffman's dramaturgical theory (1959, 1961) and Karpman's drama triangle (Karpman, 1968). Finally, the case is limited to the Brazilian legislation on GRRU. Other countries and their specific laws should be investigated in separate studies.

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The Energy Company bought, in good faith, land for R\$ 100,000.00 to build an electric power transmission tower. However, the operation proved to be false. The Energy Company was deceived, buying a Union land, instead. The tower was built to connect a photovoltaic plant to a distribution substation on land belonging to the Union, within the Army area.

The fact was double checked, the advisor for legal affairs set up a meeting at the barracks' headquarters to discuss what happened with the energy company. The first meeting took place in an environment of tranquility, being scheduled for both to show their domanical documentation on the ground a week later. The company's engineers and their topography technicians, the Commander, the legal advisor, and topography technicians of MO participated in this meeting. On that occasion, the engineers refused to sign the meeting minutes, which was promptly challenged by the MO Commandery, who informed that he would bring down the company's tower. However, the engineers immediately called their headquarters at São Paulo state, who instructed them to sign the minutes of the previous meeting.

A new meeting took place seven days later to discuss a possible solution for the deadlock: the tower was built and ready to operate but in an irregular situation. In a second meeting, the energy company presented, and MO confronted the documents. They both discovered that the company had bought the land by a fraction of its real price. The MO documentation proved that the Union held that property.

The company's lawyer immediately acknowledged the error and asked MO to suggest how to solve the problem without losing all of its built work and all of its projects already licensed in the various government agencies. The solution came through the Grant for Real Right of Use (GRRU), a special government concession, which proved to be the best instrument to regularize the situation. This way, the company would not remove the tower, and the Union could benefit from compensation in value collected from the National Treasury, either with materials or services for the benefit of MO.

The next step involved the land evaluation process, by which special a commission would determine the real price of the property, and that would pass through the Legal Circumscription of the Union, which would approve the agreement. The proposal was accepted promptly. Thirty days later, as agreed, his company applied for a GRRU, starting the process. The MO evaluated the property as provided for in the legislation within the following five months, reaching the amount approved by the Board of Equity in R\$ 750,000.00 for 30 years of the concession. This amount represented more than 600% of the amount unduly paid for the land, totaling R\$ 100,000.00. The legal sector has informed the energy company that the price was not negotiable because it is an irregular occupation on Union land. On the other hand, the MO commander had severe issues with an obsolete power grid on the Army's facilities. Once the payment could be made in services, raw or manufactured materials, or cash, they started a negotiation. The agreement was reached, the Energy company paid R\$ 750,000.00 to overhaul the Army's power grid. The energy company obtained the land concession for a 30-year contract.

DISCUSSION: -

Invasion on state-owned land invasion. Given its complexity, it was conceived to address a Type II negotiation (Dias, 2020) on Grant for Real Right of Use (GRRU), involving plenty of legal issues. The case was also designed for face-to-face classroom interactions or executive training sessions. However, it might be used in remote training sessions due to the coronavirus social mobility restrictions.

The present role-play simulation has implications in the following fields of study, not limited to (i) e-business negotiation (Dias, M. & Duzert, 2017); (ii) retail business (Dias, M. et al., 2015; Dias, M. et al., 2015, 2014, 2012); (iii) carmaker industry (Dias, M., Navarro and Valle, 2013, Dias, M. , et al., 2014; Dias, M. , et al., 2013); (iv) negotiations with the government (Dias & Navarro, 2018); (v) craft beer industry (Dias, M. and Falconi, 2018; Dias, M., 2018); (vi) Non-governmental organizations dealing with governments (Paradela.; Dias, M.; Assis; Oliveira, J.; Fonseca, R. (2019); (vii) governmental business relations (Dias, M. & Navarro, 2017); (viii) public agents (Dias, M., 2018); (x) generational interactions negotiations (Aylmer & Dias, M., 2018); (xi) streaming video industry negotiating with the government (Dias, M., & Navarro, 2018); (xii) aircraft manufacturer industry (Dias, M., Teles, and Duzert, 2018; Dias, M. and Duzert, 2018); (xiii) mining industry (Dias, M., & Davila, 2018); (xiv) debt collection negotiations (Dias, M., 2019, 2019b; Dias, M. and Albergarias, 2019); (xv) civil construction versus public projects (Dias, M., 2016), among others.

The role-play simulation is limited to the Brazilian legislation in force. Other countries should abide by the local legislation. Furthermore, the case is limited to a Type II negotiation. Negotiations Types I, III, and IV are not the scope of the present research.

FUTURE RESEARCH AND CASE LIMITATIONS

We encourage investigating other types of negotiations for future research, such as Types I, III, and IV. We also recommend the study of GRRU in other countries to compare whether each country's specifics might somehow impact the negotiation process.

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APPENDIX I

Teaching notes

Scenario: the case illustrates the difficulties faced by the parties with the Brazilian government-owned land invasion negotiation case, aiming at improving the negotiation skills of government negotiators, scholars, decision-makers and practitioners through a two-party, multiple-issue role-play simulation. For other countries, different laws and particular issues, such as different negotiation processes, should be considered.

Mechanics: parties should take 30 min to 1 hour to read the case and to prepare themselves to negotiate. Negotiation mapping is strongly encouraged to be used additionally to help planning the negotiation—45 min to 1 1/2 hour of negotiation plus 45 min. to one-hour debriefing session. In total, one hour and a half to three hours' total time for this exercise.

Major Lessons: to migrate from distributive into integrative negotiations; to map and focus on underlying interests; to practice empathy towards each other; to protect information with secrecy clause on contracts; to develop promptness in creating mutual value to be later distributed. To find joint solutions through cooperative behavior and joint fact findings.

Objectives: this exercise intends to discuss the role of lawyers in a distributive, Type II negotiation, involving two parties and multiple issues.

MAIN FEATURES	
Time required	1 hour - 2 hours
Number of participants	2 parties, commander and director
Groups involved	No
Agent present	No
Third part present	No



◆◆ MILITARY ORGANIZATION COMMANDER ◆◆

CONFIDENTIAL INFORMATION

You are the Commander of your Military Army Organization (MO), responsible for negotiating with the Director of the Energy Company, who built an electrification tower that would connect a photovoltaic plant to a distribution substation on land belonging to the Union, within its jurisdictional area.

As soon as the fact was verified, you asked your legal advisor to mark a meeting at headquarters to talk to the energy company. Thus, the first meeting took place in an environment of tranquility, being scheduled for both to show their domanical documentation on the ground a week later, participated in this meeting, the company engineers and their topography technicians, you, the legal advisor, and topography technicians of MO.

On that occasion, the engineers refused to sign the minutes, which was promptly challenged by you, who informed that he would bring down the company tower. However, the engineers immediately called their board in São Paulo, who instructed them to sign the meeting minutes.

Seven days later, in a new meeting, you, this time more prepared for negotiation, found that the Royal Resoluble Use Right Concession (GRRU) would be the best instrument to regularize the situation. In this way, the company would not need to remove the tower, and the Union could benefit from compensation in

value collected from the National Treasury, materials, or services for the benefit of the MO. The company presented the documentation and MO also, finding that the company had bought the fraction of the land of an irregular confrontation for R \$ 100,000.00, since the documentation of The MO proved that the Union held that property.

The company, which this time brought with it a lawyer, immediately acknowledged the error and asked MO to suggest how to solve the problem without losing all of its built work and all of its projects already licensed in the various government agencies. The legal basis for the Royal Resoluble Use Law Grant (GRRU) is illustrated in Table 1, as follows:

Table 1
Legislation that disciplines the GRRU

Legal Device	Description
Art. 22, engraved I, from CF/88 Decree-Lei 271/1967	Jurisdiction in private to the Union It has, among other topics, "on the granting of use and airspace."
Art. 1,225, XII of the Civil Code, as a result of Law 11,481/2007	Lists the GRRU among the real rights species
Civil Code, in art. 1473, IX	It provides that the GRRU may be mortgaged, provided that it is limited to the period fixed for the duration of the concession (Art. 1473, § 2, CC)
Law 11.481/2007 included in Art. 22, § 1, III of Law 9.514/1997	Real right of use may be the subject of fiduciary disposal, limited to the duration of the concession (art. 22, § 2, Law 9.514/1997). It provides for the exemption of costs for "the first registration of real right constituted in favor of beneficiary of land regularization of social interest in urban areas and in rural areas of family farming" (art. 290-A, I). It also provides that the GRRU is the object of registration (art. 167, I, 40) and its extinction is the subject of registration (art. 167, II, 29).
Law 6.015/1973 was also amended by Law 11.481/2007	
General Law of Bids (14.133/21, art. 74	It deals with the chances of dispensing from bidding
IG 10-03	General Instructions for the Use of Real Estate Jurisdiction to army command
Ordinance Cmt Ex No. 693, of 08.29.2012	Amends the General Instructions for the Use of Jurisdictional Real Estate Property to the Army Command (IG 10-03)
Ordinance No. 003-DEC, 14.08.2008	In addition, the Regulatory Instructions for the Use of The Federal Property of The Federal Government Jurisdiction to the Army Command (IR 50-13) are added.

From that time, you suggested that the company request the Grant of Real Right of Resoluble Use, a process by which a commission would evaluate the property, and that would pass through the Board of Assets and then, by the Legal Circumscription of the Union, which would approve the agreement. As soon as the company learned of the alternative, it immediately agreed. Everything was recorded in minutes.

Thirty days later, as agreed, the company applied for a Grant of Royal Right of Resoluble Use, starting the process.

MO assessed the property as provided for in the legislation within the following five months, reaching the amount approved by the Board of Equity in R\$ 750,000.00.

In an internal meeting with the advisor for legal affairs of the MO, it was clarified that there was no possibility on the part of the MO to accept a higher or lower value than that evaluated because it is a public good. You fear that the company does not accept the amount because of the difference of more than 600% concerning the amount paid to the false owner, leaving the Command only the legal route to solve the problem.

At the same time, you have several problems in your medium and low voltage network that are obsolete. You also realize that the negotiation can be an opportunity to solve at once all the problems of the electricity network of MO, definitively budgeted at R \$ 800,000.00. In summary, your options, alternatives, and ZOPA for trading are, respectively:

ZOPA: R\$ 750.000,00 a R\$ 800.000,00

Option 1 - Grant of the Right of Resoluble Use (GRRU) nthe amount ofR\$ 750,000.00 for land use in the next thirty years. Energy company pays cash.

Option 2 - Grant of the Right of Resoluble Use (GRRU) the amount OfR\$ 750,000.00 for land use in the next thirty years. Energy company pays with services.

Option 3 - A combination of the above options.

Alternatives: (i) continue the case administratively; (ii) pursue the case by judicial means; (iii) disassemble the tower.

Prepare to negotiate by videoconference with the Director of the Energy Company.



PART 2

◆◆ DIRECTOR OF THE ENERGY CMOPANY◆◆

CONFIDENTIAL INFORMATION

You are the Director of the Energy Company, responsible for negotiating with the Commander of the Military Organization (MO). His company built an electrification tower to connect a photovoltaic plant to a distribution substation on land belonging to the Union, within the Army area.

As soon as the fact was verified, the advisor for legal affairs set up a meeting at the barracks' headquarters to talk about what happened with the energy company. The first meeting took place in an environment of tranquility, being scheduled for both to show their domanical documentation on the ground a week later. The company's engineers and their topography technicians, the Commander, the legal advisor, and topography technicians of MO participated in this meeting.

On that occasion, the engineers refused to sign the minutes, which was promptly challenged by the MO Commander, who informed that he would bring down the company's tower. The engineers immediately called you in Sao Paulo, who instructed them to sign the meeting minutes.

Seven days later, in a new meeting, you, this time more prepared for negotiation, found that the Royal Resoluble Use Right Concession (GRRU) would be the best instrument to regularize the situation.

In this way, his company would not need to remove the tower, and the Union could benefit from compensation in value collected from the National Treasury, either with materials or services for the benefit of MO. His company presented the documentation and MO also, it was found that the company had bought the fraction of the land of an irregular confrontation for R \$ 100,000.00, since the documentation of the MO proved that the Union held that property.

His company's lawyer immediately acknowledged the error and asked MO to suggest how to solve the problem without losing all of its built work and all of its projects already licensed in the various government agencies. The legal basis for the Royal Resoluble Use Law Grant (GRRU) is illustrated in Table 1, as follows:

Table 1
Legislation that disciplines the GRRU

Legal Device	Description
Art. 22, engraved I, from CF/88 Decree-Lei 271/1967	Jurisdiction in private to the Union It has, among other topics, "on the granting of use and airspace."
Art. 1,225, XII of the Civil Code, as a result of Law 11,481/2007	Lists the GRRU among the real rights species
Civil Code, in art. 1473, IX	It provides that the GRRU may be mortgaged, provided that it is limited to the period fixed for the duration of the concession (Art. 1473, § 2, CC)
Law 11.481/2007 included in Art. 22, § 1, III of Law 9.514/1997	Real right of use may be the subject of fiduciary disposal, limited to the duration of the concession (art. 22, § 2, Law 9.514/1997). It provides for the exemption of costs for "the first registration of real right constituted in favor of beneficiary of land regularization of social interest in urban areas and in rural areas of family farming" (art. 290-A, I). It also provides that the GRRU is the object of registration (art. 167, I, 40) and its extinction is the subject of registration (art. 167, II, 29).
Law 6.015/1973 was also amended by Law 11.481/2007	It deals with the chances of dispensing from bidding
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Ordinance No. 003-DEC, 14.08.2008	

The MO Commander suggested that the company request the Grant of Real Right of Resoluble Use, a process by which a commission would evaluate the property, and that would pass through the Board of

Assets and then by the Legal Circumscription of the Union, which would approve the agreement. As soon as you company heard about the alternative, you agreed immediately. Everything was recorded in minutes.

Thirty days later, as agreed, his company applied for a Grant of Royal Right of Resoluble Use, starting the process. MO evaluated the property as provided for in the legislation within the following five months, reaching the amount approved by the Board of Equity in R\$ 750,000.00 for 30 years of the concession.

This amount is more than 600% of the amount unduly paid for the land, totaling R\$ 100,000.00. The legal sector has informed you of your company that you cannot try to negotiate for less value because it is an irregular occupation on Union land. At the same time, you know that om's medium and low voltage power grid is obsolete. You also realize that the negotiation can be an opportunity to solve at once all the problems of the electricity network of MO, definitively, with cost in R \$ 550,000.00, which can be passed on to MO for R \$ 800,000.00, So for you it is better to pay with services than R \$ 750,000.00 in cash. In summary, your options, alternatives, and ZOPA for trading are, respectively:

ZOPA: R\$ 550. 000,00 to R\$ 750.000,00

Option 1 - Grant of the Right of Resoluble Use (GRRU) the amount ofR\$ 750,000.00 for land use in the next thirty years. Energy company pays cash.

Option 2 - Grant of the Right of Resoluble Use (GRRU) the amount OfR\$ 750,000.00 for land use in the next thirty years. Energy company pays with services.

Option 3 - A combination of the above options.

Alternatives: (i) continue the case administratively; (ii) pursue the case by judicial means; (iii) disassemble the tower.

Prepare to negotiate by videoconference with the MO Commander.

