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# **BATNAs in Negotiation: Common Errors and Three Kinds of “No”**

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**Abstract:** *The best alternative to a negotiated agreement (“BATNA”) concept in negotiation has proven to be immensely useful. In tandem with its value in practice, BATNA has become a wildly successful acronym (with more than 14 million Google results). But the initial characterization of this concept in Getting to Yes (Fisher, Ury, and Patton 1991) as well as many later interpretations can be problematic, limiting, and even misleading in several ways, which this article analyzes and illustrates. First, early characterizations could be easily read to imply that one’s BATNA could not itself be a negotiated agreement. Second, and more seriously, common descriptions of one’s BATNA as the “best outside option, independent of the other side” needlessly limit its applicability, especially in the many bargaining relationships in which BATNAs are inherently interdependent. Third, BATNAs are often mistakenly described mainly as “last resorts” relevant only in case of impasse or “if the other side is more powerful.” Other uses of the term “BATNA” such as the common question, “How do I negotiate if I have no BATNA?” reflect misconceptions. Although savvy negotiators and analysts generally avoid these pitfalls, the less sophisticated can go astray. This article offers robust correctives to these misimpressions and relates these to three different kinds of “no” in negotiation: a “tactical no,” a “re-set no” that permits away-from-the-table moves to favorably alter the underlying setup, and a “final no.”*

**Keywords:** negotiation, BATNA, bargaining, zone of possible agreement, reservation price, reservation value

## **Introduction**

As one’s “best alternative to a negotiated agreement,” the “BATNA” concept in negotiation has proved to be an immensely useful tool. It is widely accepted that a more attractive BATNA generally increases one’s bargaining power.<sup>1</sup> A minimally necessary condition for an agreement to be mutually acceptable is that each side prefers the deal to its BATNA. Thus, the attractiveness of each party’s BATNA determines whether a zone of possible agreement (ZOPA) – the range within which any mutually acceptable deal must fall – even exists and, if it does, where such a zone is located (see Fisher, Ury, and Patton 1991 and, e.g., Raiffa 1982, and Lax and Sebenius 1986). (If either party prefers its BATNA to any proposed deal, then no zone of possible agreement exists.) In tandem with its value in practice, BATNA has become a wildly successful acronym. Searching

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for it using the Google search engine produces more than 14 million results, compared to fewer than four hundred thousand for its bestselling source, *Getting to Yes: Negotiating Agreement without Giving In* by Roger Fisher, William Ury, and Bruce Patton (1991).

The initial articulation of the BATNA notion along with many later interpretations, however, can be problematic, limiting, and even misleading. Although savvy negotiators and analysts generally avoid these pitfalls, the less sophisticated can go astray in at least three ways, which I analyze below. In addition, conceptual precision at the core of one's field is generally a good thing.

The basic concept underlying BATNAs in negotiation has a long intellectual history, including in game theory as "threat" or "disagreement" points, as David Lax and I (1985) have elsewhere traced. In essence, the best alternative to a negotiated agreement provides a minimum criterion for evaluating a possible deal: "as compared to what?" This can mean walking away, making something instead of negotiating to buy it, selling to a different customer than your current counterpart, going to court, forging an alternative alliance, taking a strike, and so on.

As these examples illustrate, your BATNA is not a number or a term sheet in your current negotiation, but instead the course of action that you would take rather than ultimately accepting a proposed deal in the talks at hand. You should never take a deal that does not serve your interests at least as well as that alternative course of action/BATNA. To figure out the minimally acceptable set of terms to in the negotiation at hand, you must "price" or "value" your BATNA in those terms. Loosely, in a buy-sell situation, your BATNA implies your minimum (the least you would ultimately accept as a seller) or your maximum (the most you would ultimately pay as a buyer). More formally, the common terms "reservation price" or "reservation value" mean the least attractive set of terms in the current negotiation—which could be a simple price or a combination of provisions—that is still better for you than choosing your best alternative course of action/BATNA. (Far more sophisticated BATNA-related analyses and prescriptions have been developed – for multiparty and coalitional negotiations, for situations with uncertain and dynamic aspects, etc. – but they are beyond the scope of this brief article, which focuses on getting BATNA basics right.<sup>2</sup>)

Whether or not they explicitly refer to BATNAs, skilled practitioners routinely stress the importance to negotiators of persuading the other side that you are able and willing to walk away – ideally to something appealing. For example, Robert Rubin, former United States Treasury Secretary and Goldman Sachs co-chair, said "When others sense your willingness to walk away, your hand is strengthened . . . Sometimes you are better off not getting to yes" (Rubin and Weisberg 2003: 118, 168). Steve Perlman, the founder of Web TV founder and a serial entrepreneur, articulated the common view, bluntly asserting (in my view, too strongly): "If you can't walk away, you can't negotiate" (Sebenius and Fortgang 1999: p. 7.) Another observations that goes hand in hand with this one is that it is important of to develop your BATNA *before* you negotiate. As a senior official of AOL asserted "You would never do a deal without talking to anyone else. Never" (Rivlin 2000).

In the course of transforming the pharmaceutical startup Millennium Pharmaceuticals into a multibillion dollar enterprise, Steve Holtzman, who was then the

company's chief business officer, explained several rationales for enhancing Millennium's BATNA by adding parties early in the process: "Whenever we feel there's a possibility of a deal with someone, we immediately call six other people. It drives you nuts, trying to juggle them all, but it will change the perception on the other side of the table, number one. Number two, it will change your self-perception. If you believe that there are other people who are interested, your bluff is no longer a bluff, it's real. It will come across with a whole other level of conviction" (Watkins 1999: p. 12).

The BATNA acronym has proven catchy with both academics and practitioners. It originated in *Getting to Yes* with the following explanation: "The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are these results? What is that alternative? What is your BATNA – your best alternative to a negotiated agreement? That is the standard against which any proposed agreement should be measured" (Fisher, Ury, and Patton 1991:104). But as appealing and sensible as this concept may be, problems of interpretation and applicability often arise.

## **Common Errors**

### ***Nitpicky Semantic Problem Number One: Implying That One's BATNA Cannot Be a Negotiated Agreement.***

Pause, and look back for a moment at the above characterization: the best alternative *to* a negotiated agreement, "the results you can obtain *without negotiating*" (Fisher, Ury, and Patton 1991: 104, emphasis added). Or, look at helpful advice from the same book (Fisher, Ury, and Patton 1991:103): "Develop your BATNA. Vigorous exploration of what you will do if you do not reach agreement can greatly strengthen your hand." But again, "*if you do not reach agreement.*" In other words, your BATNA, as literally characterized, is something *other* than a negotiated agreement (just walking away?).

As is widely understood – but *not* from the defining words in *Getting to Yes* – your BATNA will often be *another* negotiated agreement; your best alternative to a negotiated agreement with party A may be a *better* agreement with party B. This need *not* be the "results you can obtain without negotiating" or the best alternative "*to* a negotiated agreement" as the original characterization suggests. Implicitly and obviously, to sort out this minor bit of semantics, one's BATNA must be properly understood as the best alternative "with respect to the negotiation *at hand*" and not with respect to *any* negotiated agreement elsewhere.

### ***More Serious Problem Number Two: Characterizing Your BATNA as Your Best Outside Option, Independent of the Other Side***

Most BATNA formulations direct your attention to what you can achieve *outside* the current negotiation and *independent* of your counterpart. Here's William Ury in *Getting Past No* (1991: 21-22, emphasis in original): "Your BATNA is your walkaway alternative. It's your best course of action for satisfying your interests *without* the other's agreement". J. Guhan Subramanian (Program on Negotiation 2012:3, emphasis added) framed the BATNA concept with a question: "if your current negotiation reaches an

impasse, what's your *best outside option*?" More popularly, from *Beyond Intractability* (Spangler 2012) and countless similar sources: your BATNA "is the best you can do if the other person refuses to negotiate with you – if they tell you to 'go jump in a lake!' or 'Get lost!' . . . It is the best you can do *without them*."

While often useful, this common and unambiguous focus on BATNAs as *your outside options* can run into trouble when, as a practical matter for purposes of given interactions, many negotiators are locked in relationships with their counterparts and their no-agreement options are inherently *interdependent*. (Lax and Sebenius 2006: 92) Think of a reasonably content married couple or successful business partners negotiating an issue of keen mutual interest on which they have different preferences. Think of the sole supplier of an essential component negotiating with a customer who is the only producer of a highly profitable product that relies on the component. Think of the sales-oriented audience for the well-known *Harvard Business Review* article entitled, "Negotiating with a Customer You Can't Afford to Lose" (Keiser 1988). Or in a more adversarial setting, think of a powerful longshoremen's union negotiating with West Coast shippers (Lax and Sebenius 2012). "Outside options" for "satisfying your interests *without* the other's agreement" are extremely limited in such cases.

During these kinds of negotiations and after the dust settles, the odds are that the two parties will still be together. It is unlikely to be useful to conceptualize your BATNA in such cases as your "tell them to go jump in a lake" possibilities, "your best outside option," or "your best course of action for satisfying your interests *without* the other's agreement."

Certainly the parties to these negotiations in fact *do* have genuine outside options that are ultimately independent of the other side – divorce, a dissolved partnership, a dropped product line, and non-port jobs and the Panama Canal (rather than the ports of San Diego, Los Angeles, and Seattle). But as a practical matter, pure outside "go jump in a lake" options that they can exercise independent of the other party may have limited tactical or strategic value in such cases. During and following their negotiations, the parties must continue to interact and will usually remain together. Using one's BATNA to "force" a deal *tactically* (but with the expectation of continued relations) is very different from using it for genuine *strategic* "escape" from the relationship (Walton, Cutcher-Gershenfeld, and McKersie 1994).

In such situations, instead of thinking of your BATNA in terms of "your outside options" that are "independent of the other party," consider a potentially different question: "What are the full consequences of saying my 'no' to the other side's proposal (and possibly, continuing to negotiate, with or without a pause)? How can I most accurately play out and perhaps most effectively influence how these consequences of my saying "no" will affect each side's interests (preferably positively for you and negatively for them)?" While hardly "outside options independent of the other party," such consequences can include costs or risks borne by each side, foregone benefits, altered settlement possibilities, damage to the relationship, third-party effects, and so on.

Suppose, for example, that the passage of time strengthens your financial position in a commercial deal while quickly bankrupting the other side. Then, rather than conceptualizing your BATNA in terms of your "outside options independent of the other

party,” *your BATNA might be to keep negotiating with the same counterpart while continuing to say no* until your relative situation has sufficiently improved. And even if saying no while still negotiating affects both sides equally or even favors the other side – an empirical matter to be determined by comparing the various possible choices – continuing to negotiate may remain the best alternative to agreement.<sup>3</sup> Prescriptively, the minimally acceptable agreement for you should have at least the expected value (to you) of whatever would happen if you did say “no.”<sup>4</sup>

### ***Even More Serious Problem Number Three: Treating Your BATNA Mainly as a Last Resort***

Conceptualizing one’s BATNA mainly as a kind of last resort, as negotiators often do, can be unnecessarily limiting. Francesca Gino (Program on Negotiation 2012: 7) framed it thus: your BATNA is your “fallback alternative, in the event that the parties fail to reach an agreement.” Deepak Malhotra, similarly observed (Program on Negotiation 2012: 1): “A negotiator’s BATNA is the course of action he will pursue if the current negotiation results in an impasse.” (Subramanian, cited above, also linked one’s BATNA with “impasse.”) Fisher, Ury, and Patton (1991: 97) even introduced the concept of BATNA as the answer to a revealing question, applicable only in specific circumstances of asymmetric power: “What if they are more powerful? (Develop your BATNA...)” – inadvertently implying that if the power scales are tipped in your favor, there is a lesser or no role for a BATNA.

To the contrary, you should evaluate – and possibly enhance – your BATNA not only as a last resort or just when “they are more powerful,” but as an essential element of preparation for every negotiation, once you have assessed the full set of your interests and envisioned the possibility of a valuable agreement. Martin Lipton, a renowned corporate lawyer and specialist in merger and acquisition (“M&A”) negotiations, was explicit about the value of enhancing one’s BATNA by soliciting other parties at the *start* of negotiations. He even roughly quantified the incremental value of involving an additional competitor early in the M&A process relative to greater negotiating skill toward the end of the original two-party deal: “The ability to bring somebody into a situation is far more important than the extra dollar a share at the back end. At the front end you’re probably talking about 50 percent [from adding a competitor, enhancing your BATNA]. At the back end, you’re talking about 1 or 2 percent [from greater negotiating skill]” (Subramanian 2003: 691). And, of course, you should evaluate *the other side’s* BATNA and consider whether actions to worsen it are warranted.

Available alternatives to agreement often shift during negotiation as a function of changes in information, the underlying situation, the actions of third parties, or other factors. For example, suppose you learn that you just won a new car while negotiating with a dealer to replace your existing clunker. Say that a judge rules against one side on a key preliminary motion while the disputants are negotiating toward an out-of-court settlement. These dynamic shifts call for continually updating your BATNA assessments, *not* awaiting impasse to do so when the other party is more powerful.

Suppose that *you* are “more powerful” in the sense that you have a terrific BATNA and they have a lousy one. That BATNA imbalance should play a quietly potent

role from the very beginning of the process. If properly played, the odds are good that you'll do better than if your BATNA was worse and theirs better.

Indeed, as very a *first* resort, you should estimate how well each side's BATNA serves its interests. This is essential to determine the minimum acceptable threshold for any proposed deal. The set of agreements that are better for each side than its BATNA, as measured by its interests, defines the ZOPA. As a practical matter, while assessing BATNAs is a vital step in preparation for negotiation, exploring interests and inventing creative possible solutions is often more effective when BATNAs are in the background . . . rather than being continually brandished.

Of course, BATNAs often play other key roles *during* negotiations, not just in the case of impasse. Consider a fairly obvious but garden-variety example. Suppose that you adopt a problem-solving approach to a business dispute, but the other side stonewalls and stubbornly insists on an extreme position as the only possible resolution. You probe for underlying interests and suggest mutually preferable options. At a certain point during the negotiations, however, perhaps well before any final impasse is reached, you judge that your cooperative approach is not working. At that point (or before), you may choose to hire high-powered legal counsel, engage consultants to buttress your case, and pre-emptively file suit in a highly favorable court jurisdiction – not only about the issue you are negotiating but perhaps on related issues – either for leverage or with the idea of proposing a “global” settlement of the issues that now affect both parties, both the “original” issues and those issues about which your suit was brought. Or, rather than actually filing suit, you may decide to persuasively warn the other side that this course of action is increasingly likely.

Depending on how successfully you frame your actions to avoid irrational escalation, the other side may now face a credibly worsened BATNA, while yours has been enhanced. With these moves, you may be able to reach a much better deal than was available before your warning or legal actions. Your actions did *not* need to await impasse. And assessing each side's legal options should have been part of your background preparation even *before* negotiating.

Notice three aspects of this simple example that relate to the three potential problems with the BATNA concept I have identified here.

First, with respect to problem #number 1, while this example does not violate the strict characterization of your BATNA as what you could achieve *without* negotiating, the whole point of such BATNA-related actions is to influence what you can accomplish *by* negotiating. In fact, *negotiating* to settle the “BATNA/suit” may heavily influence your “primary/original” negotiation.

Second, recall the implication from “problem number two” that your BATNA should be an “outside option” that is “independent of your counterpart.” Here, by contrast, your BATNA is tightly linked to your counterpart. With a threatened lawsuit in the background, your *de facto* BATNA may be to keep negotiating with the stubborn party, hoping his or her stance will soften. Moreover, if separate negotiations to settle the original dispute *and* to settle the lawsuit are required, you may also negotiate whether to combine the two processes. Thus the two of you would be intimately linked both in negotiation and litigation. Thinking of BATNAs as “outside options, independent of the



parties” is not strictly wrong—you could still have a permanent impasse in the original negotiation and a legal judgment in the second—just potentially misleading in this case and many others like it.

Third, with respect to problem number three, in this example one’s BATNA need not play a role only at impasse, as a last resort, or mainly when “the other party is more powerful.” This example demonstrates that, while indeed an irrevocable breakdown of negotiations may trigger a resort to your BATNA, your no-deal options can and often should play important roles before and during negotiations as well. An ongoing tension typically arises between the use of one’s BATNA as a *tactic* (to get a better deal in the current negotiation without a real intention to pursue one’s no deal option) and a *strategy* (a genuine willingness, if a good enough deal is not available, to choose an option other than agreement with your current counterpart – especially when doing so implies “escape” by severing the relationship) (Walton, Cutcher-Gershenfeld, and McKersie 1994).

Savvy analysts and practitioners generally avoid these three problems/limitations. But many students and more “experts” than one might expect fall prey to potentially serious misunderstandings when they interpret BATNAs to exclude negotiation (“the results you can achieve without negotiating”), when they think only in terms of outside options that are independent of the other party, and when they see their BATNA as relevant only as a last resort, at impasse, or when the other side is more powerful.

### ***Additional Misconceptions***

Other misconceptions are rife. For example, I often run across versions of the plaintive question “But what if I have no BATNA?” Examples include articles geared toward practitioners, such as one entitled “Negotiating When There Is No BATNA” (Pollack 2013) and another, in which the author, offering advice on a salary negotiation, describes a negotiator who “lacked confidence due to his non-existent BATNA” (Wood 2011). Even in a scholarly article (Conlon, Pinkley, and Sawyer 2014:331-332) whose authors certainly know better (and later make their correct understanding clear), we find the statement: “If Terry has no job currently, one might argue that in terms of a BATNA, Terry has none whatsoever.” Moreover, the table explaining their experiments has “No BATNA” as one of six options.

“No BATNA?” If you refuse a deal, *some* active or passive course of action, desirable or not, is open to you. Nothing in the BATNA concept calls for it to be a *good* option: no deal with your counterpart may still realistically imply getting fired with no further employment prospects, doing jail time, or giving up your kingdom. Indeed, after a “no,” continuing to negotiate may be your best alternative to agreement (along with seeking to develop outside possibilities). The prescriptions remain the same, even if the question about “no BATNA” is phrased illogically: 1) assess your BATNA and theirs, good or poor, fixed or changing over time, 2) determine if a zone of possible agreement exists (and if so, where it is), and 3) consider enhancing your BATNA, and, possibly, worsening theirs.

## Three Kinds of “No ”

One reason, David Lax and I chose to largely avoid the BATNA acronym in our book, *3-D Negotiation* – in favor of the phrase “no-deal option” – was to avoid these distressingly common misconceptions and misuses of this valuable concept. We typically ask what happens in the event of no deal during negotiation as well as at a possible impasse: do you walk away, continue negotiating, build up your no-deal option, and/or worsen theirs? If you say “no”, what set of possibilities is likely to unfold? How good or bad is this course of action for you and the other side(s)? (Lax and Sebenius 2006). But we seek to avoid the mistaken implications highlighted above: that your no-deal option does *not* involve negotiation, that it should mainly be thought of as an *outside option independent of the other side*, and that it is primarily a *last resort* or only relevant if you feel weak.

Given the value and runaway success of the phrase BATNA, we do not seek to banish it from the realm of negotiation analysis and practice. It is just too useful and memorable. At a minimum, however, we should be clear that when you say “my BATNA is . . .,” it is not a global statement. Instead, you should implicitly mean your best alternative “with respect to” a specific counterpart, a particular proposed agreement or class of agreements, and/or a definite time period or stage in the negotiation process.

Indeed, we’d like to see this important concept routinely characterized and explained more accurately. In tandem with the term BATNA, it might help to explicitly refer to “three nos” as distinct reasons to refuse a proposed negotiated agreement.

First is a “tactical no,” simply turning down a proffered deal in hopes of generating a better offer later in the process.

Second, is a “re-set no.” Like the lawsuit example above, this “no” may occur at any stage of the process. It can entail moves “away from the table” to improve your own no-deal option and/or worsen that of the other side. You often employ the “re-set no” with the intention of continuing to bargain or returning to active negotiation with your original counterpart, but in a setup that you have more actively modified to be more conducive to reaching your preferred deal.<sup>5</sup>

Third, you may utter and mean a “final no,” or the course of action you’d take if a sufficiently desirable agreement simply does not seem feasible with your counterpart.

If and when you utter a “tactical no,” a “re-set no,” or a “final no,” you should assess the implications by analyzing the same questions: how you envision and evaluate the process playing out from the point of actually conveying your “no”? What does this mean for your minimum conditions going forward? Theirs? The prospects for a more favorable deal? And so on.

In short, a great virtue of a focus on one’s BATNA is the discipline of systematically asking of any possible deal: “as compared to what?” The acronym has proved irresistible but common descriptions can be problematic or worse. It would enhance clarity to emphasize that, typically, one’s BATNA is only meaningful with respect to a specific counterpart and class of possible deals with that counterpart. And some tweaks that distinguish among the three types of “no” could enhance the value of “BATNA” even further.

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<sup>1</sup> Often true, but the concept of bargaining “power” is notoriously tricky. And improving one’s alternatives to negotiated agreement need not imply an improved bargaining position. For example, in negotiating with one’s spouse, letting it be known that you have cultivated an excellent alternative to him or her – just in case the current deal doesn’t go your way – may well backfire. Similarly, burning your bridges may worsen your no-deal option, but enhance your bargaining power by credibly demonstrating your willingness to fight. For a much more nuanced discussion of “power” in negotiation, see, especially, chapters six and ten in Lax and Sebenius 1986.

<sup>2</sup> For guides to this extensive literature, see Lax and Sebenius 1985, 1986; Lax 1985, Raiffa 1982; Raiffa, H., J. Richardson and D. Metcalfe 2002; and Lax and Sebenius 2006.

<sup>3</sup> David Lax and James Sebenius (1985: 165) made this point explicitly.

<sup>4</sup> Analytic techniques for making this assessment are beyond the scope of this short article, but can be found in Raiffa 1982 and Lax and Sebenius 1985.

<sup>5</sup> In *3-D Negotiation*, David Lax and I (20016) systematically analyze several elements of a negotiation – the parties, issues, interests, no-deal options/BATNAs, as well as the sequence and basic process orchestration – not as givens, but as choice variables that may be favorably modified by conscious tactical choice. Such actions to change a negotiation’s setup can produce a more promising situation for reaching a target agreement.

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