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**How No-Deal Options Can Drive Great Deals:
Another Look at BATNAs**

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*“When others sense your willingness to walk away, your hand is strengthened...It is a useful lesson in negotiation...Sometimes you are better off not getting to yes.”
--Robert Rubin, former Secretary of the U.S. Treasury and co-Chairman, Goldman Sachs²*

In 1999, the Pacific Maritime Association (PMA), an association of 72 diverse shipping lines and terminal operators in West Coast ports from San Diego to Seattle, sought an agreement with the International Longshore & Warehouse Union (ILWU) union to introduce certain new information technologies.³ Fearful of job loss but wielding the awesome power to reduce or stop all U.S. seaborne trade flowing through the West Coast—some \$6 billion per week—the union flatly refused and began an informal job slowdown. Lines of loaded container ships backed up in West Coast harbors, causing massive supply chain disruptions. Those dependent on ocean shipping—from Wal-Mart and Home Depot to time-sensitive agricultural interests—quickly pressured the PMA to make a deal, any deal. The PMA, a fragmented organization of both huge and minor shipping players, soon dropped its technology demands, but vowed to reintroduce them in the 2002 talks.

Imagine that you were Joseph Miniace, PMA’s president and CEO, licking your wounds shortly after the 1999 debacle, now contemplating the upcoming 2002 negotiations. You might think something was badly wrong with your negotiating style—and you might indeed be correct. Taking decisive action to remedy the problem, you might quickly enroll in a seminar to remake you into a better listener, a more insightful interpreter of body language, and a much more persuasive negotiator. Your eyes might be opened as the earnest instructor extolled the virtues of the bold new “win-win” approach relative to the bad old “win-lose” game that your union counterparts seemed bent on playing. But somewhere, a little voice would probably be telling you that the union’s capacity to shut down \$6 billion worth of U.S. foreign trade per week would again triumph over your new, revamped negotiation skills. And you would be right. So what to do instead?

Many people see savvy tactics and smooth persuasion “at the table” as the key to making good deals. When they look for negotiating advice, they think they are looking for more effective interpersonal guidance. So do most of the books you can grab just before your flight or the airline magazines you glance at once on board. And those who study negotiation more seriously often stress this people and process dimension: probing

for real interests, adapting your style to the situation, improving communication, deciding who should make the first offer, thinking through moves and countermoves, framing proposals and arguments, defending against dirty tricks, avoiding cross-cultural gaffes, and so on. Indeed, a good interpersonal approach “at the table” can help a deal and a bad interaction can kill it. Yet while important, such actions make up only a part of the negotiating game.

In our fuller, “3-D” approach to negotiation, which we describe elsewhere in more detail, this first dimension—tactics and interpersonal process at the table—is by far the most familiar.⁴ The second dimension moves from process to substance: 2-D “deal design” is the art and science of diagnosing the economic and noneconomic value latent in a situation and crafting agreements to unlock it for the parties. The third dimension, or 3-D “setup,” determines the game within which you’ll be making your 1-D and 2-D moves. How well-crafted your 3-D actions are “away from the table” can determine whether you’ll be negotiating within the most promising possible setup: whether the right parties will deal with the right issues in the right sequence by the right process under the right expectations at the right time at the right table or tables—and facing the right no-deal prospects.

This latter 3-D setup element--your preferred no-deal option--is your “BATNA,” negotiation jargon for your **B**est **A**lternative **T**o **N**egotiated **A**greement. A phrase introduced by the bestseller, *Getting to Yes*, your BATNA reflects the most promising course of action you would take if you were to say no to the proposed deal.⁵ Depending on the situation, your BATNA may involve simply walking away and doing without any agreement, going to another supplier or potential buyer, making something in-house rather than procuring it externally, going to court rather than settling, forming a different coalition or alliance, bombing Serbia, or invading Iraq. Equally important is the *other* side’s BATNA, their best alternative to a negotiated agreement: how good or bad relative to possible deals, and whether it is improving or deteriorating.

Armed with this insight, let us return to the predicament of Joseph Miniace, CEO of the Pacific Maritime Association as he contemplated the 2002 talks, with what might charitably be described as an “awful BATNA:” another devastating union slowdown or strike. A new power suit, a commanding voice, a steely gaze, and a computer whiteboard ready for joint brainstorming would not, at least by themselves, do the trick. Instead, Miniace began an *internal* campaign, with months of patient visits to the PMA’s 72 member firms, to restructure its unwieldy board that had operated by consensus. This meant “fewer labor relations executives—who had a vested interest in making sure contract negotiations ran smoothly—and . . . more operating executives who understood the economic consequences of repeated concessions. It also meant getting the biggest players on the board.”⁶ With new, top-level executive members on the restructured board, voting weighted by shipping tonnage so the major players had decisive influence, and an extensive internal educational campaign on the critical future importance of the new technology, Miniace began an external outreach effort.

He first coordinated closely with Robin Lanier, former president of the International Mass Retailers Association, who was closely linked to shippers, large importers, and retailers such as Wal-Mart. Lanier voiced the concerns that her constituency repeatedly expressed in terms of port technology:

We had a congestion problem; we had an infrastructure problem . . . here were these very sophisticated importers who have web-based and EDI-based supply chain management systems, and you got to the port and it all kind of fell apart. If . . . you want to know where your container is at all times, once it got to the port [your efforts were thwarted] because of a lack of information technology . . . We had no idea how labor worked at the port. We did not go into this thinking we're going to pick a fight with labor.⁷

Then Miniace and his team arranged Washington D.C. visits to the Departments of Commerce, Treasury, Labor, Transportation, Homeland Security, and the Office of the U.S. Trade Representative. According to Miniace, PMA's message was consistent:

We told every single person [we met with] that we want nothing from them. We want you to understand what we are doing. We explained what happened to us in the last negotiations. This was the impact. This is what is on the table this time, and why it is important. We warned them that we could not take a slowdown this time. If [the union opts for a slowdown], we'll have to shut it down.⁸

Finally, the PMA hired a prominent public relations staff to start getting their message out to the media and the wider public. If push came to shove, a better informed and restructured board along with energized business and political allies would put the PMA in a far stronger position, despite belated "external" efforts by the union in response. Ultimately, the PMA won a much better technology agreement after a negotiating drama that entailed many steps, missteps, some arguably needless confrontations, and a call to the longshoremen by Homeland Security chief, Tom Ridge, interpreted by the top union negotiator as saying "If you stall this [negotiation], you're going to be viewed as economic terrorists."⁹ Finally, to get the ports back in operation, President Bush invoked the Taft-Hartley Act and called for federal mediation in response to a union slowdown and port lockout by the PMA.

But, for our purposes, the preparatory part of this episode—a multi-prong internal and external initiative--underlines the critical importance of actions away from the table, in this case to bolster your BATNA and, in some cases, to worsen that of your counterpart. As the lead union negotiator for the Longshoremen somewhat ruefully observed, "It used to be that the negotiation took place at the table."¹⁰

While the basic notion of BATNAs is widely familiar—your willingness and ability to credibly "walk" is a well-known source of bargaining power--we've often observed even veteran negotiators treating their no-deal options more like last resorts than primary elements of preparation and tactics. Typical of many negotiators, Joseph Miniace--hired as the shippers' CEO in 1995--had taken none of the steps we described

to prepare for the disastrous 1999 talks; his BATNA-enhancing actions were directed toward 2002. In this article, we will sketch some of the wider roles of BATNAs as part of a sophisticated 3-D strategy.

If asked whether you should agree to a particular deal, assessing your BATNA sharpens the decision by giving you the relevant threshold: “as compared to what?” And the other side’s BATNAs play a similar role in their calculations. Like understanding the parties and their interests, BATNAs are foundational to successful negotiation: defining necessary conditions for any deal, determining how extensive a role—if any—negotiation can play in a situation, strongly influencing outcomes, and often suggesting 3-D actions *away* from the table to set up more promising situations.

➤ **Assess each side's BATNA to determine the existence and location of a zone of possible agreement.**

How you value your BATNA sets the bar—in terms of the full set of your interests—that any agreement must exceed to be acceptable. Doing “better” in terms of each party’s interests than the BATNA is a necessary condition for an agreement. As such, BATNAs imply the existence or absence of a Zone Of Possible Agreement (ZOPA), another bit of jargon we’ll find very useful. The ZOPA simply means the set of possible agreements that is better for each side, given its interests, than its BATNA.

To be more concrete, move from the complexities of union-shipper negotiations to a simple buy-sell situation in which both parties care solely about money. Each side’s outer negotiating limits are based on the value each side places on an agreement just better than its BATNA (the best course of action vis-à-vis one’s negotiating counterpart in the event of no agreement). The seller’s BATNA is to sell to a third party; the buyer’s BATNA is to buy elsewhere. More specifically, suppose the would-be seller already has an acceptable outside offer. Similarly, suppose the buyer can procure an equal item elsewhere. Finally, suppose that the seller’s minimum is well below the buyer’s maximum. Then a potentially profitable ZOPA exists—agreement can be better for each side than its reservation price, which is the value just preferable to its BATNA—and the negotiation process will determine whether, how, and where the parties will end up within it. If Joe is selling his ski condo and has an offer for \$450 thousand while Betty would pay up to \$500 thousand for it rather than buy another or do without, then a Joe-Betty ZOPA exists between \$450- and \$500 thousand. (Of course, a ZOPA need not exist in general...and each side typically only knows its “end” of the ZOPA.)

By contrast, if price is the sole interest of the parties and if the seller’s minimum exceeds the buyer’s maximum, then *no* set of at-the table (“1-D”) tactics will bridge the gap and *no* purely price deal will be possible between those two parties. Joe-the-condo-seller and would-be-buyer-Betty would not make a deal if Joe already had a \$500 thousand offer while Betty could buy what she wanted elsewhere for \$450 thousand. Of course, each side typically knows only its own limits, and must continually assess and update its assessment of the other side’s. (And many negotiators have only a hazy sense of their BATNAs or how to value them.) This holds true for much more complex BATNAs—assessing the value and cost of going to court, pursuing an alternative

acquisition target, recruiting someone else, taking a strike, and so on--than the simple buy-sell price deal we've just used to clarify the idea.

Sometimes BATNAs can be invisible—unless you are actively looking for them. Consider a more subtle case where understanding the other side's "internal" BATNA proved decisive. In this example, we advised an American firm during its lengthy negotiations with a major Japanese company to create a large-scale joint venture under Japanese control. In effect, creating this joint venture represented a sale of about two-thirds of the U.S. firm, permitting it to concentrate on what it felt to be another business line with higher potential. During this excruciatingly detailed, two-year process, the negotiations stopped several times as a function of what the Japanese negotiators described as the "breakdown of its consensus process." Each time, however, the Japanese resumed negotiations with a stronger and stronger consensus on the central role of the deal to its long-term global strategy.

When a European firm unexpectedly made a tender offer for the entire American business, the Japanese firm had to decide whether to drop out of the process or seek to acquire the whole firm. With a positive decision from the Japanese firm to go forward, negotiators for the U.S. firm reassessed the Zone of Possible Agreement on price: the least that the U.S. firm would accept and the most the Japanese company would pay for majority control of the part of the U.S. business to be contributed to the J.V. Obviously, the ZOPA depended on financial valuations, including the strategic benefits and costs to each side of completing the transaction. Yet, at the very last moment before the U.S. board was about to authorize its negotiators to proceed in the final deal process, we pressed again about the Japanese BATNA. We quickly reviewed the other strategic options open to the Japanese firm and confirmed their undesirability.

This second look, however, began to focus attention on the *internal* consequences of no deal to our counterparts. Having worked through a two-year exhaustive consensus process, virtually everyone at the Japanese company—from the major owners to the board to senior managers and to all those subunits that had required a two-year process of persuasion—was deeply committed to doing this deal. As a cash-rich firm, minimizing the price of the deal was important but not central. Armed with this understanding, the U.S. negotiators were able to leverage the nearly irresistible organizational momentum in the Japanese entity that had built up over two years of mentally integrating the U.S. operations into its long-term strategy. Rather than face the extreme internal organizational costs of "losing"—its "internal" BATNA at the final stage of the negotiations--the Japanese firm was willing to pay an extraordinarily high amount for the firm, far more than would have been the case absent the frustratingly lengthy consensus process. One American negotiator described how, in effect, the Japanese entity had "fallen in love" over time with its target...and paid accordingly. The high price, however, would not have been likely had the U.S. negotiators thought of the transaction in conventional valuation terms. Instead, the other side's consensus process, if clearly recognized by the U.S. side as affecting its BATNA, was used extend the ZOPA well beyond what would otherwise have been justifiable.

- **Changes in BATNAs are often associated with changes in negotiating “power,” in that better expected outcomes frequently derive from improved BATNAs. And worsened BATNAs often lead to worsened outcomes. As such, at a minimum, protect your BATNA, consider improving it, and be very careful not to worsen it (except in extraordinary cases).**

Not only do BATNAs define the minimum, necessary conditions for a deal to exist—that each side’s interests must be served at least as well in a deal as by its BATNA—your ability and willingness to “walk away from the table” often is associated with negotiating influence. Think of the PMA-longshoremens case we discussed earlier. Although many people associate the ability to inflict or absorb damage with bargaining power, a good BATNA is often more important. Roger Fisher has dramatized this point by asking which you would prefer to have in your back pocket during a negotiation over compensation with your boss: (1) a gun, or (2) a terrific job offer from another very desirable employer and bitter competitor to your current firm? Further, as WebTV founder Steve Perlman succinctly observed with respect to tough bargains: “if you can’t walk away, you can’t negotiate” and “he who cares least, wins.”¹¹ Of course, you cannot always walk away, especially from long-term partnerships and relationships, but your apparent willingness to do so generally confers real advantage.

Not only should you assess your own BATNA, you should also think carefully about the other side’s. Doing so can alert you to surprising possibilities. In one instance, we advised an international consumer products company hoping to sell a poorly performing division for a bit more than its depreciated asset value of \$7 million to one of two potential buyers. Realizing that these buyers were fierce rivals in other markets, we speculated that both parties might be willing to pay an inflated price to keep the other from getting the division. In other words, the BATNA of each buyer was not simply doing without the acquisition—but, much worse, meant that its bitter rival *would* get it. So, working carefully with the seller, we made sure that each suitor knew the other was looking, kept both sides “warm” in the process, while continually cultivating the interest of both. In a testament to the power of BATNAs—and a negotiating approach that used them strategically--the division sold for \$45 million.

Indeed, the importance of adding parties to or otherwise shifting no-deal options in what may appear as a two-party negotiation is virtually an article of faith among top negotiators. As a senior AOL executive remarked, “You would never do a deal without talking to anyone else. Never.”¹² Martin Lipton, virtual dean of the New York takeover bar, compared the effects of adding another interested party “at the front end” of acquisition negotiations with simply negotiating more effectively with your initial counterpart “at the back end” of the process. Lipton even roughly quantified the added value of adding competing negotiator with greater negotiating skill in the initial 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%. At the back end you’re talking about one or two percent.”¹³

Similarly, after leading a string of alliances and acquisition negotiations that vaulted Millennium Pharmaceuticals from a 1993 startup to a multibillion-dollar firm less than a decade later, then-chief business officer Steve Holtzman explained the rationale for adding parties:

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.¹⁴

Indeed, transforming a two-party negotiation into an active auction with many bidders vying for your deal can be a potent strategy.¹⁵ But beyond adding parties to improve your BATNA by creating competition through a formal or informal auction, moves away from the table can also shore up an apparently weak position. Like Joseph Miniace's moves to prepare for the shipper-union negotiations, such actions may give you a better walk-away option; they may also worsen the other side's BATNA.

For example, near the beginning of efforts to obtain agreement from Swiss banks to compensate Holocaust survivors who claimed that these banks had unjustly held their families' assets since World War II, former Seagrams head, Edgar Bronfman, met with a virtual stonewall from top Swiss banking executives in Zurich. Believing that these restitution issues had been settled years ago and that they were on strong legal ground, the bankers were not forthcoming; Bronfman and his colleagues felt arrogantly dismissed. Yet eight months later, entrepreneurial action by Bronfman, the World Jewish Conference, and others, the negotiations had expanded dramatically to the detriment of the Swiss. Now the bankers faced a *de facto* coalition of interests that credibly threatened 1) the lucrative Swiss share of the public finance business in states such as California and New York; 2) the divestiture by huge U.S. pension funds of stock not only in Swiss banks, but in all Swiss-based companies; 3) a major merger between Swiss Bank Corporation and UBS over a "character fitness" license vital to doing business in New York; 4) expensive and intrusive class-action suits brought by some of the most formidable U.S. class action lawyers; and 5) the wider displeasure of the U.S. government, which had become active in brokering a settlement.

Without detailing the steps leading to such a dramatically worsened Swiss BATNA, it should not be surprising that an agreement resulted, including a Swiss commitment to pay \$1.25 billion to survivors. This was an almost unimaginable outcome at the outset of the small, initially private negotiations, but easily understandable in the context of the radically reshaped game that came to include a large coalition of parties, with various sources of leverage, pressing the bankers for a deal.¹⁶

By the same token, inadvertently worsening your BATNA can be a disastrous negotiating move. For example, to raise urgently needed cash, the chief executive of a Canadian chemical manufacturer decided to sell a large but "non-strategic" division and assigned his second-in-command to negotiate the sale at the best possible price. A logical buyer was an Australian firm, the canny chairman of which knew the Canadian

chemicals chairman from days together in a British prep school. During a chair-to-chair conversation, the Australian said that his firm was indeed potentially interested, though utterly consumed at the moment with other strategic priorities. However, if the Canadian firm would grant him nine month exclusive negotiating rights to “confirm its seriousness” about the sale, the Australian would “divert the necessary management resources” to making it happen. The chair-to-chair exclusive agreement was struck. Following this agreement, pity the poor second-in-command, charged with disposing with this division for a high price on an urgent basis, as he jetted off to Sydney, with no meaningful alternative to whatever the Australians offered.

There are cases in which you may wish to consciously worsen your BATNA, but this should be done with great care if at all. Ancient armies sometimes burned their bridges or torched their fleets so that their own escape would be impossible and a battle to the death their only option. Ideally, this would deter potential foes who would know the desperate fighters they would face. In other cases, people worsen their own BATNAs to bind themselves to staying with a deal—since the alternative has been designed to be so bad. AT&T and British Telecom, for instance, formed Concert, a massive 50-50 joint venture of pooled assets to provide international telephone and internet service. AT&T for example, contributed its 50 largest international customers. AT&T and BT sought to force themselves to make Concert work, in part by ensuring that the venture contained *no* exit provisions, not even routine arbitration.¹⁷ At the point during which their three-year cooperation seemed irretrievable and was losing £150 million per quarter, however, AT&T and BT decided to part. Without exit provisions or procedures, this led to nightmarish negotiations to unwind 21 subsidiary ventures in 230 countries, 47,000 miles of fiber optic cable, at least a billion dollars in new technology investments, as well as headquarters with over 400 staff—all in an soured atmosphere of failure and the keen knowledge that each party would need these international assets for its post-Concert strategy. In short, sometimes there are strategic reasons to consider worsening your BATNA, but they should be weighed warily.

➤ **Assess each side's BATNA to diagnose the potential role for negotiation in the situation.**

Finally, notice that BATNAs help to distinguish those situations in which negotiation has a major potential role from those in which it will likely play little or no role. Imagine for a moment that one utterly dominant player can costlessly achieve its objectives vis-à-vis another player. Imagine the Mack truck barreling down the highway in a “negotiation” with a bug over which party will move out of the way, or the Godfather’s “offer you can’t refuse.” Then negotiation has virtually no meaningful role since the dominant player has a terrific BATNA and the other player a most unattractive one.

To see another class of situation in which negotiation has little role, imagine an economist’s perfectly competitive market with a large number of buyers, a large number of sellers, and a pure commodity product. Should one party try to negotiate a better price with another, the second party’s BATNA would simply be a deal at the market price.

In short, a meaningful role for negotiation vanishes the closer the situation becomes to costless dominance or a perfect market. By contrast, the negotiation potential increases (1) the less any given player can fully achieve its objectives at no cost by unilateral action or (2) the less perfect the market, meaning smaller numbers and different kinds of buyers and sellers, more avenues for product differentiation, and so on. In either case, a BATNA assessment suggests the extent of negotiation's potential role in a given situation, from nil to vast.

In summary, negotiators too often get caught up in 1-D intense tactical interplay "at the table." Yet you continually face a choice in negotiation whether to concentrate on interpersonal moves that will improve prospects at the table—or whether to spend scarce time, energy, and resources on improving your BATNA. A sophisticated negotiator always weighs these classes of 3-D moves away from the table. By contrast, a naive negotiator often draws the analytic circle too narrowly, focusing only on interpersonal tactics at the table.

BATNAs can range from walking away and doing without, to seeking an alternative negotiating partner, to self-help, to simply continuing the process, and to aggressive action. A necessary condition for each side to do a deal is that, measured by the full set of each side's interests, the deal be better than its BATNA. As such, BATNAs determine whether a zone of possible agreement exists, and if so, its location. Improving your BATNA or worsening that of the other side often greatly influences the outcome of the negotiation. An analysis of BATNAs furnishes an important guide to the potential role for negotiation at all as well as the actions one might take away from the table.

Many years ago, the eminent British economist, Alfred Marshall, developed a theory that neatly addressed a long-standing controversy in economics: are prices determined by the cost of production or the value to ultimate users? In explaining his theory, Marshall used an analogy: it is as useless to argue about whether costs of production or use-value determine price as it is to argue over which blade of a pair of scissors actually cuts the paper. Likewise, in negotiation, moves at the table to improve the possible agreement and BATNA-changing moves away from the table combine to drive the outcome.

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² For these quotes and many other descriptions of Rubin's approach to negotiations, see his memoir *In and Uncertain World*, (Rubin and Weisberg, 2003, pp. 118, 168)

³ Our description of these negotiations between the longshoremen and shippers, along with all the relevant facts quotes that follow comes from the detailed 2004 Harvard

Business School case series, “Showdown on the Waterfront: The 2002 West Coast Port Dispute,” (McGinn and Witter, 2004a b).

⁴ We have developed this approach in more detail in a 2003 *Harvard Business Review* article, “3-D Negotiation: Are You Playing the Whole Game?” (Lax and Sebenius, 2003). It will be elaborated in a book, *3-D Negotiation: Creating and Claiming Value for the Long Term* to be published by Harvard Business School Press.

⁵ Due to our friends, Roger Fisher, Bill Ury, and Bruce Patton, in their bestselling brief on cooperative negotiation, *Getting to Yes* (1981; 1991). This concept has a venerable history, which we trace in earlier writings (Lax and Sebenius, 1985 1986).

⁶ McGinn and Witter (2004a: 9)

⁷ *ibid.*, p. 11.

⁸ *ibid.*

⁹ *ibid.*, p. 14.

¹⁰ *ibid.*, p. 12.

¹¹ For this quote and a fuller discussion of Perlman’s approach, see the Harvard Business School case, “Steve Perlman: Negotiating WebTV (B),” (Sebenius and Fortgang, 1999).

¹² See (Rivlin, 2000).

¹³ This quote and an extended discussion of related bargaining implications can be found in Subramanian (2003: 1).

¹⁴ See “Strategic Deal-making at Millennium Pharmaceuticals,” (Watkins, 1999: 12).

¹⁵ See Bulow and Klemperer (1996).

¹⁶ This example is summarized from information in John Authers, William Hall, and Richard Wolffe, “Banks Pay a High Price for Putting the Past Behind Them,” *Financial Times* (London Edition), September 9, 1998, p. 4.

¹⁷ This example is drawn from Dan Roberts and Richard Waters (2001a; 2001b).