Of ATNAs and BATNAs—shedding light on negotiation acronyms

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John Lande has challenged us (Hiro Aragaki and me) to unpack the BATNA concept, which he held to be imprecise, not useful, and even outright mistaken. I already knew that terms which we thought firmly rooted in prescriptive negotiation theory can slip and become unclear. It may even be tempting to discard them, or attribute to them a different meaning than they carried originally. We also certainly can, and should invent new ways of analyzing negotiation situations, and come up with new prescriptions. However, attributing new/different meanings to terms previously defined in a coherent existing theory does not seem to me helpful. Confusion ensues; we are then forced to offer our own definition every time we use these terms,[1] instead of relying on the original, shared meaning. To respond to John's challenge, the three of us had some lengthy exchanges. The discussion led John to change his mind (at least in part), which is nothing less than admirable especially when this happens around a long-held belief.

Many frequently (mis)use other negotiations terms precisely because, unlike BATNA, they seem friendly and deceptively transparent. *Win-win* does not mean everyone wins or gets everything they dreamed of, and *win-lose* does not mean that when you settle in a distributive negotiation one party won and the other lost.[2] These seemingly regular words tempt people to guess at their meaning, and lead to wrong guesses. BATNA is more helpful in this sense: it is neither transparent, nor used in regular speech; outside of our conversation people rarely debate it.

Back to BATNA: context might play a role in our understanding of terms such as "*alternative,*" a component of the BATNA acronym. Unlike John, Hiro, and most readers of this blog, I am not a lawyer. Stakeholders in the public disputes I analyze have several alternative realistic courses of actions, one of which can be litigation. Perhaps in many instances of negotiating in the shadow of the law[3] there is only one realistic

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[1] That happens, for example, with meta-concepts such as "sustainability," "resilience," and even "negotiation" and "mediation," for which almost each individual has a personal definition, gumming up communication unless we take care to start discussions with a round of definitions.

[2] In case anyone forgot the original meaning, *win-win* means that when we exchange proposals, it is possible (for a while, until we reach the Pareto frontier) to make both negotiators better off when moving *from one proposal to the next*. This is, of course, only possible in situations with integrative potential, i.e., with more than one issue at stake. Then, using a specific proposal, it is possible to trade across issues and craft a new package that gives each party more of what he/she wants the most in exchange for something of lesser priority. The negotiators then all prefer the new proposal (aka a *Pareto move*). That is not possible in negotiations over a single issue (distributive, or fixed-pie) where any new proposal entails less for one negotiator if the other gets more. Here too, *win-lose* refers to the move from one proposal to another, not to the final agreement, which in most situations is satisfactory to both parties or they would not accept it. Of course, such purely distributive situations are very rare. More often we care about more than the one issue over which we negotiate—relationships, face, future encounters—of which we might mistakenly not think as issues but across which we do make trade-offs. This adds to the confusion! Those of us who still think of such situations as distributive insist that it is possible to play a distributive negotiation integratively when in fact as soon as we care about more than one issue we are in integrative land!

[3] We owe this expression to Robert Mnookin & Lewis Konrhauser ("Bargaining in the Shadow of the Law: the Case of Divorce," The Yale Law Journal, 1979). It is used in connection with negotiations triggered by a law suit, where the alternative to a negotiated settlement is litigation.

alternative–litigation. This should not affect the meanings of BATNA or other theoretical concepts. Nevertheless, John tells us that "The fact that our intellectual predecessors used language in a certain way should not oblige us to continue to do so if there are better ways of expressing our ideas." I would prefer to hold certain terms steady when rooted in a theory; accordingly, BATNA should continue to mean what it did originally. I also welcome new ways of expression and new ways of figuring out what to do in negotiations. But I fear the confusion sets in when we recycle the old terms into different meanings. But since this may happen anyway, negotiation professionals should periodically have conversations such as ours, to iron out differences for the sake of our students and trainees.

I revisit here some key terms in the negotiation/ADR canon—alternatives to a negotiated agreement (ATNAs), BATNA, and expected value (EV) of a course of action—that we use often without checking that their meaning is shared. In what follows, I go back to original meanings and take up a few analytic distinctions that I consider essential to negotiation theory and practice in general, and to negotiation in the shadow of law. As John and Hiro tell us, negotiations between a plaintiff and a defendant typically have at least the alternative of continuing with litigation, even if both plaintiff and defendant have other alternatives—some more ethically palatable than others.

Alternatives and their Expected Value (EV).

In negotiation theory, as in any other decision context, we are enjoined to weigh which course of action or path to take. When a plaintiff can either negotiate or continue to pursue litigation, the latter is an alternative to a negotiation agreement (ATNA). ATNAs can have one or more possible outcomes. When negotiating for a new car with one dealer, going to another dealer or looking for a used car are ATNAs.

How should the plaintiff decide what to do? Prescriptive negotiation theory (rooted in decision theory) instructs us to compare the outcome we expect from negotiation to the outcome we expect from litigation, and select the course of action from which we expect the higher benefit. However, both negotiation and litigation can have several outcomes. The comparison between negotiation and the litigation ATNA entails evaluating them by taking into account all outcomes of each, and their respective probabilities. One way to do that quantitatively is to compute the expected values (EVs) of negotiation and litigation. The EV of a course of action is an average of all outcome values (of which we are aware), weighted by their probabilities (which must sum to 1). Thus a more probable outcome weighs more than an unlikely outcome:

EV(negotiation) = sum of [outcomes x probabilities]

EV(litigation) = sum of [outcomes x probabilities]

Now compare the two EVs and select the course of action with the higher EV (if we are seeking to maximizing satisfaction from our choice,[4] which is a decision criterion). There are two problems with this approach—one practical and one conceptual.

[4] This is in fact the utility-maximizing decision criterion. We may want instead to minimize regret, or the risk of a loss. Then we would apply other decision criteria, such as minimax (minimize the maximum loss) and maximin (maximize the minimum benefit).

- On the practical side, not all outcomes are quantifiable and reducible to the same metric, and not all probabilities are known with sufficient precision; and, there is no fool-proof way of ensuring that we got our assessments right. Even if informed by precedent or experience, the probabilities we ascribe to the various outcomes are mostly subjective, and so are the values we attribute to the various outcomes. We can be wrong, and as John reminds us, we often are. This does not invalidate the prescribed approach; it just calls for caution and reality checks.[5]
- On the conceptual side, subscribing to this approach is accepting the notion that the EV—an average that almost never materializes—represents well the *value of a course of action*. This would not be true even if we got to "play" the situation numerous times and then obtained the EV using the frequency of outcomes to represent empirical probabilities, more accurate than our subjective ones. In reality we obtain one of the possible outcomes of the chosen action. For example, [6] if the possible outcomes of litigation were $200, $100 and 0 with probabilities .2, .2 and .6 respectively (meaning that 20% of the time we could expect to win $200 or $100, but 60% of the time we would obtain $0) then the expected value of litigation would be:

  EV(litigation) = ($0 x .6) + ($100 x .2) + ($200 x .2) = $60

  But we would never really obtain $60. Moreover, more than half the time we would get $0. We could call this the most likely outcome value (MLOV)[7] for litigation.[8] A plaintiff who considers such an outcome devastating (and not worth the shot at $200) had better pay attention to its high probability and compare it (rather than the EV) to the value of the negotiated agreement, thus minimizing regret[9] instead of maximizing satisfaction.

Now let's say the EV of a negotiated settlement is $150. If seeking to maximize satisfaction, the plaintiff would compare the litigation EV of $60 to $150 and select negotiation as yielding, on average, a better result. As Hiro points out, she should not limit the comparison to her $200 best case outcome in litigation to decide whether to accept a settlement offer of $150. $200 is neither an ATNA nor a MLOV.[10] Negotiation theory prescribes that we should compare the $150 settlement offer against an accurate or realistic expected value (EV) of the litigation alternative. In this example, comparing the negotiation outcome to either the EV or the MLOV of litigation would yield the same decision: go with negotiation. It is not generally true.

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[5] That is sometimes what good mediators do.
[6] This example was offered by John in our discussions, and Hiro also used it.
[7] John has been calling this outcome MLATNA, which may lead to some confusion between courses of action (ATNAs) and one of their specific outcomes.
[8] Since $0 in this case is the worst of litigation outcomes, it has been called a WATNA in some literature. But the alternatives to negotiation are courses of actions rather than any of their specific outcomes. Therefore, it would be more accurate to call $0 what it it–-the worst outcome value (of litigation), or WOV.
[9] Term coined by J. Hannan (1956, in *Contributions to the Theory of Games, Vol. III*, Annals of Mathematics Studies, Vol. 39, Princeton, NJ: Princeton Univ. Press.)
[10] Even though it seems irrational from the perspective of decision theory, in reality many (even in contexts such as international negotiations) do compare negotiation outcomes to their most desired outcome which they hope to obtain by other means. They pass up on the best achievable under the circumstances and hold out for the illusory "best," only to be disappointed. In complex situations, figuring out when the best becomes the enemy of the good is one of the most difficult tasks.

Now where does BATNA come in? In many situations, a disputant has several ATNAs. Then the prescribed approach to a decision is to compare the negotiated agreement to the ATNA with the highest EV. This "best" among ATNAs is the BATNA. In John's example, litigation is the BATNA because it is the only alternative to negotiation under consideration.

Having tried to clarify some terms in use in negotiation theory, I add a couple of "bells and whistles" suggested by my conversations with John and Hiro.

Should considerations such as litigation costs and risk preferences be included in the expected value calculations or do they belong to a separate analysis*?* Those considerations are important! According to theoretical prescriptions we should incorporate them into our calculus of negotiations, ATNAs and their EVs. For example, the litigation costs should be incorporated in the estimated *value* of each litigation outcome, which is not simply the value of the judgment; similarly, negotiation costs should be incorporated in the negotiation EV. Risks belong in our subjective probability estimates. Our risk preferences get reflected in the decision criterion we opt for: if we are risk-neutral or even risk-taking, we go with the action with the EV that maximizes satisfaction (BATNA). Thus a well-assembled BATNA can (and should) include that information. However, if losses loom large, we may seek to minimize the risk of incurring them. We may compare the litigation WOV to the negotiation WOV and select the course of action that has the potential for the lesser evil.

I agree with Hiro that WATNA (although it pleasantly rhymes with BATNA) should also refer to actions, rather than specific outcome values. We would perhaps identify it as the action with the lowest EV. The averaging entailed in the EV calculation could well conceal the fact that another action under consideration, with a lower EV, does not include the possibility of the worst outcome. That is why I believe that the WOV (which is a specific outcome value) should be the one to watch and, as I described, the one to use in conjunction with the criterion of minimizing regret.[11] In such a case, we would want to avoid the action that may lead to the worst outcome even if on average it looks pretty good, and better than other ATNAs.

John's discussion of what the hypothetical Tania would do if she were careful amounts to a type of sensitivity analysis. Such analyses entail asking: by how much does a likelihood (or value) estimate have to change (because of errors or lack of information) to cause us to switch to a different course of action than the one with the highest current EV? In the example above, we could explore which likelihood estimate is the most uninformed, and then fiddle with it, watching what happens to the EV of litigation. If, as soon as we make a small change in one value or likelihood, the EV changes drastically, that spells trouble and calls for a re-evaluation. It means our BATNA depends exquisitely on that value or likelihood estimate instead of being robust (best for a wide range of futures). Then we need more information to firm up estimates.

Having convinced John (by his own account) that ATNAs are alternative courses of action rather than specific outcomes, I think I owe him to concede that, judging by the

[11] Hiro assumes we are all utility maximizers but some of us might surprise and disappoint him, by preferring to minimize regret in some situations. We would still be considered rational as long as we act in ways we perceive to benefit us (or in this case, save us from severe harm).

way they are described in the literature, ATNAs and the BATNA are often thought of as outcomes, perhaps because—unlike litigation—they are often actions with one outcome. Think of our ATNAs to negotiating for the price of a car with a specific dealer: they consist of specific prices offered by other dealers or car sellers, not options whose expected values we have to compute. I am guessing this has led not only to John's and others' misunderstanding, but also to the coinage of other concepts which also mistakenly refer to specific outcomes instead of the course of action that might lead to them. Besides WATNA, such are MLATNA and LATNA.[12] To add insult to injury, there is a difference between "reservation prices," "resistance points," and "BATNA."[13] It seems that we are far from the first to debate these concepts, supporting John's contention that they lack clarity.

During our discussions, John posed a question bound to fascinate the academics we are: How do people act in real life? He is even ready to go out on a limb and suggest none of us know. However, the answer to his question can in no way affect the theoretical prescriptions of how to decide between negotiation and other ATNAs. Something is either correct or it isn't, regardless of how many people use it incorrectly. This is not subject to a majority decision rule. The earth had not been flat all the while that people thought it so. If a lot of people get BATNAs wrong, it proves nothing else than that we are not getting the concept across sufficiently clearly. Nevertheless, finding that a lot of people get BATNA and other negotiation terms wrong is very valuable. It compels us to explore where our teaching goes wrong and prompts us to seek pedagogical remedies.

[12] "Least alternative to a negotiated agreement" (e.g., Jeanne Brett, "Negotiating globally," Jossey Bass 2001). She argues that in conflict management (rather than negotiating transactions or negotiating in the shadow of the law) the disputants' BATNAs are not independent. One party can alter the other's BATNA and therefore, disputants should consider the worst outcome that their opponent can inflict on them (WATNA) or the least preferred one (LATNA)..

[13] Sally Blount White and Margaret Neile (1991). "Reservation prices, resistance points and BATNAs: Determining the parameters of acceptable negotiated outcomes," *Negotiation Journal.* 379–388.