Constraints and Incentives in the Investment Regime: How bargaining power shapes BIT reform

Tuuli-Anna Huikuri*

Version prepared for the Brown Bag Seminar at the World Trade Institute, University of Bern, 16th March 2022

Abstract

States have increasingly started to terminate and renegotiate their bilateral investment treaties (BITs). Dominant explanations for the developments have however overlooked the underlying bargaining dynamic of investment treaty negotiations. This paper argues that states that initially were in a weaker position when negotiating the terms of investment protection have the strongest incentives to change their existing BITs. However, their ability to do so is constrained by their bargaining power. Without sufficient changes in bargaining power in relation to the treaty partner, a state will not be able to demand renegotiation or exit old BITs even if they become dissatisfied with them. This paper identifies observable implications of the weaker states' incentives and bargaining power constraints for adjusting their bilateral investment treaty commitments. Leveraging a panel dataset on BITs, interaction effects between bargaining power and incentives stemming from rationalist and bounded rationality assumptions about states' decision-making are analyzed in relation to the occurrence of renegotiations and terminations. It finds that change in bargaining power in relation to the treaty partner is an important factor underlying the weaker states' ability to terminate or renegotiate BITs.

Keywords: bilateral investment treaties; bargaining power; international treaties; international cooperation

* Department of Political Science, University of Zürich, Zürich, Switzerland, huikuri@ipz.uzh.ch.

Acknowledgements

Introduction

The most prominent institutional architecture to regulate international investment today consists of a web of bilateral investment treaties (BITs) and the investor-state dispute settlement (ISDS) practice enabled by them (Bonnitcha, Poulsen and Waibel, 2017). In recent years, the international governance regime has increasingly seen states terminating and renegotiating their investment treaties (Figure 1.) Dominant explanations for the shift argue that the increasingly controversial practice of ISDS is driving the current change: the practice enables foreign investors to bring lawsuits against their host governments in international tribunals and claim compensation when they feel the host has violated the terms of the treaty, turning governments against them (Waibel, 2010; Haftel and Thompson, 2018; Thompson, Broude and Haftel, 2019).

While such disputes were initially thought to mainly arise in situations of direct expropriation such as nationalization, modern ISDS mostly addresses so-called cases of indirect appropriation. There are increasing concerns that investors employ ISDS not only when the host government is intentionally infringing their property rights, but when damage is done to their investments as a by-product of other regulatory efforts, or even strategically to deter unfavorable future policies (Pelc, 2017; Johns, Thrall and Wellhausen, 2020). For example, Argentina became the target of a large number of ISDS-challenges due to its efforts to manage the financial crisis of early-2000s: currency devaluation and other emergency measures hit foreign investors with severe financial losses who responded through legal means.

The declining number of new BITs and the simultaneously increasing ISDS cases have led many to observe that the investment regime is currently undergoing a "backlash" against the dispute settlement mechanism. Governments are pursuing efforts towards greater state regulatory space (Broude, Haftel and Thompson, 2017) by terminating, renegotiating, replacing BITs with investment provisions in new preferential trade agreements (PTAs), or even adopting alternative domestic legal arrangements (Berge and St John, 2021).
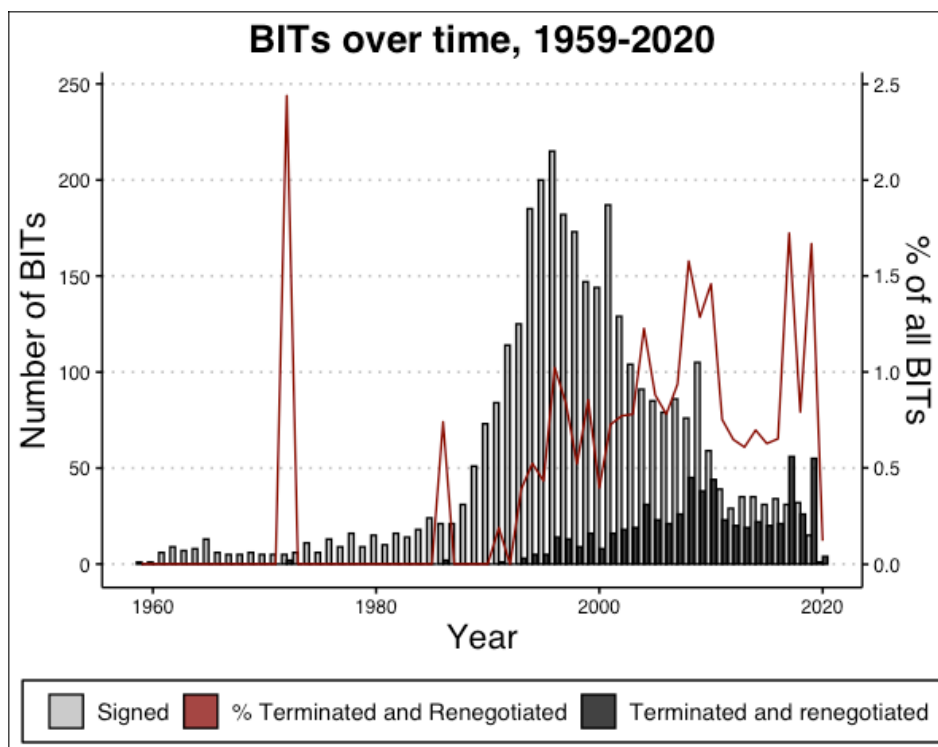
Figure 1. Signed BITs, terminations and renegotiations, and
percentage of deviations of total stock of BITs signed over time

Yet, many states have not taken action to reform their BIT-commitments, while others have only done so selectively. Why do some states keep their investment treaties even when faced with the risks of ISDS? What explains the variation in governments' reform efforts regarding their BITs? The current emphasis on ISDS as an explanation for driving change in the investment treaty regime is overlooking structural dynamics that are well-established in the literature on international cooperation and negotiations. A largely overlooked constraint on government action can help to address this puzzle – the bargaining power dynamic between treaty partners.

The weaker parties in BIT relations tend to be disadvantaged in investment arbitration, and therefore have the strongest incentives to overhaul the existing investment treaties (Schultz and Dupont, 2014; Behn, Berge and Langford, 2017). Especially developing countries are the most frequent respondent states in ISDS cases, while developed Western countries such as the USA, the Netherlands, and the UK are the most frequent home states of claimants (UNCTAD, 2020b). However, developing countries often find their options for BIT reform severely limited. Unless an improvement in their bargaining power has taken place since treaty signature – largely determined by relative economic power – these states are unlikely to have the leverage

to push for change in the terms of investment governance with their stronger counter parts. States that were initially in a weaker bargaining power position in relation to their treaty partners therefore continue to be constrained by their weaker bargaining power position in the BIT regime.

Economic power translates into bargaining power in investment treaty negotiations by improving concrete alternatives to the existing agreements, and generating confidence that such better outside options are realistically achievable in the future (Fisher and Ury, 1981; Lax and Sebenius, 1985). Once in place, any state wishing to escape international investment treaties has to weigh their options in light of the existing treaty. If a state's relative economic position has improved since signing of the BIT, it is more likely to develop a credible exit threat through improved alternatives, and therefore becomes able to demand renegotiation of the agreement or else withdraw from it.

Due to the asymmetric origins of the BIT regime, the treaties disproportionately favor the initially stronger partner states, who were able to push for their favored features in the treaties (Allee and Peinhardt, 2010; Alschner and Skougarevskiy, 2016). Although there are various incentives that may drive stronger states to want to adjust their BITs, such as desires to modernize their terms, their ability to demand reform will not depend on changes in their bargaining power because of their already stronger position at the time of treaty signing. On the other hand, the initially weaker states will benefit from a closing of the relative economic gap, and become more likely to act on any reform incentives following improvement in their bargaining power.

The incentives for the weaker states driving change in BITs are likely to differ depending on the reasons for which they initially signed them. States who joined for boundedly rational reasons are likely to learn about the risks of BITs after facing ISDS-cases and therefore change their minds about BITs (Poulsen and Aisbett, 2013). On the other hand, states who adhered more to the assumptions of rationalist logic and perceived BITs as a tool to attract more investment are likely to initiate reform following changes that attract FDI independent of the legal protections provided by BITs: economic growth and improved law and order can provide incentives for such states to reform BITs. The initially weaker states are, however, only likely to act upon these incentives if the constraint of bargaining power enables their reform efforts.

The theory is supported with evidence from a panel dataset on BITs with data on the timing of their signature, renegotiation, and termination. The findings suggest that the effect of the weaker party facing ISDS cases on BIT termination and renegotiation is conditional on whether there has been a substantial change in the relative economic power between the treaty partners. Results from various different models illustrate that the more the initially weaker party to the BIT has caught up with the stronger party, the larger the effect of an additional ISDS case as respondent is on the probability of BIT reform. Furthermore, economic growth and improved law and order in the initially weaker have a greater positive effect on the likelihood that the BIT gets unilaterally terminated or renegotiated if the two signatory states have decreased their economic power difference.

The main contributions of the paper are twofold. While the consideration of states power, competition, and negotiation dynamics have been at the center of explaining initial emergence and design of BIT (Guzman, 1998; Elkins, Guzman and Simmons, 2006; Allee and Peinhardt, 2010, 2014), a similar framework has not been employed to explain recent developments in the investment treaty regime. This paper contributes to the empirical research on change in international regimes by showing that a background factor of international bargaining power influences the outcomes of BITs for states that face the strongest incentives for overhauling the current system for investment governance.

Furthermore, the investment treaty regime provides an interesting context in which to study which actors exit from international agreements and why. It contributes to the emerging literature on state's exit from international organizations (Gray, 2018; von Borzyskowski and Vabulas, 2019), by highlighting that decisions to sign, renegotiate, or terminate international agreements always involve strategic considerations, even amidst the backlash against globalization (Walter, 2021).

The rest of this paper proceeds as follows. First, it outlines the asymmetric origins of BITs and how trends in ISDS have been described to catalyze changes in the regime. Second, the theory about constraints and incentives of the weaker states surrounding the investment treaty reform is presented along with testable hypotheses. Third, a quantitative study using a panel dataset on BITs is presented, along with measures for bargaining power and different incentives. Third, results of empirical analysis focusing on interaction effects between constraints and incentives in predicting deviation from an existing BIT are presented. The final section concludes.

The origins of BITs and their reform

Decision to sign

From the very first investment treaty between Germany and Pakistan in 1959, BITs were meant to protect the interests of foreign investors abroad, and therefore, enhance foreign direct investment (FDI) into states which otherwise may have been left without benefits of this specific form of economic cooperation. In particular, developing countries hoped to attract badly needed capital by signing BITs with major capital exporters during the economic downturn of the 1980s and 1990s, which was also a time of stagnant international bank lending (Simmons, 2014).

Two broad strands of research on the origins of the BIT-regime adopt different assumptions about the decision-making processes of states when first signing BITs. Adopting some of the rationalist and unitary-state assumptions, international relations literature has theorized of BITs as instruments for addressing cooperation problems surrounding international investment (Abbott and Snidal, 1998; Koremenos, Lipson and Snidal, 2003; Koremenos, 2005). In particular, the rational design paradigm has considered the strong dispute settlement features a prime example of an enforcement mechanism for continued international cooperation, or an escape clause allowing temporary deviation from treaty obligations but preserving long term cooperation (Rosendorff and Milner, 2001; Allee and Elsig, 2016). BITs have been theorized to provide host states a credible commitment device to "tie their hands" regarding fair treatment of foreign investors, and BITs could lead to the race-to-the-bottom dynamic amongst developing countries competing for foreign capital (Salacuse, 1990, 2017; Guzman, 1998; Salacuse and Sullivan, 2005; Elkins, Guzman and Simmons, 2006; Tobin and Rose-Ackerman, 2011).

On the other hand, the bounded rationality perspective asserts that real-world leaders are likely to resort to mental short-cuts optimizing time and effort, and therefore likely to fall into cognitive biases in their decision-making (Poulsen 2015). BITs were, according to this logic, not a classically rational choice by states, but merely a boundedly rational one – perhaps due to their status as focal points for arranging governance of investments (Poulsen 2019). While rationalist states in a world of complete information could be expected to accept ISDS as a fundamental part of how BITs work and enhance credible commitments, and even anticipate

the occasional arbitration with foreign investors, boundedly rational states might be more likely to turn against BITs after facing disputes with investors. ISDS can provide a vital learning mechanism regarding the true risks BITs entail (Poulsen and Aisbett, 2013).

Decisions to sign, keep, or reform BITs are also often influenced by non-economic considerations. States may be more motivated to sign economic agreements with foreign policy and military allies (Powers, 2004; Long and Leeds, 2006), or with countries that have good reputations (Gray, 2013; Gray and Hicks, 2014). There may also be ideological reasons for which states choose to cooperate with certain partners over others, with some states willing to sign and maintain agreements with autocrats or populists (Debre, 2021a, 2021b; Voeten, 2021). Furthermore, various domestic political dynamics have been found to influence BIT signing, such as attempts to signal competence to domestic audiences in the face of a civil conflict (Billing and Lugg, 2019), or to enhance leadership survival in autocracies (Arias, Hollyer and Rosendorff, 2018). Despite BITs continuing to be highly technical instruments, decisions regarding them are fundamentally political beyond their international legal and economic purposes.

Investment dispute settlement and "backlash"

In 2017, the lowest number of BITs were negotiated since 1983 and the number of terminations exceeded new agreements for the first time (UNCTAD, 2018, p. 88). Because BIT terminations and renegotiations closely follow the trend of accumulating ISDS disputes, many have accepted that increasing instance of investment arbitration is driving BIT reform efforts (Figure 2.)
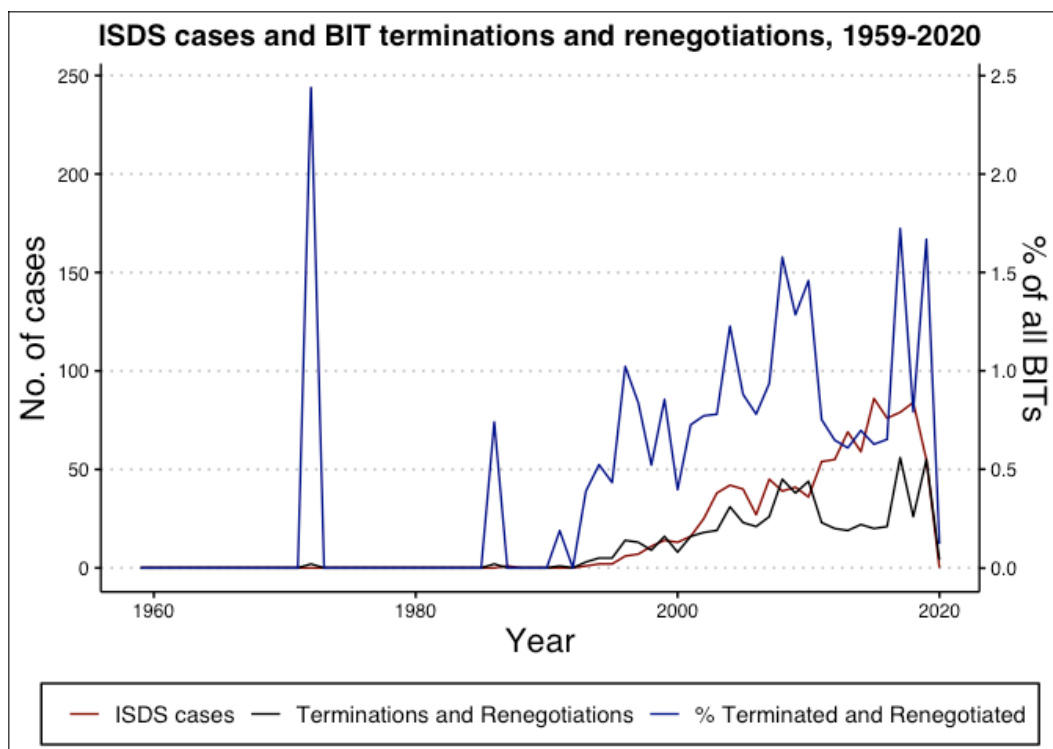
Figure 2. ISDS cases, BIT terminations and renegotiations over time

However, many states have not pursued reform of their BITs despite facing ISDS cases. Although Argentina has been a respondent in the largest number of ISDS disputes, 62 reported by UNCTAD, it has not terminated any of its BITs, and only renegotiated one.[1] Likewise, when Ecuador decided to take radical action in response to accumulating legal challenges based on its investment treaties, it unilaterally denounced a large number of BITs between 2008 and 2010. However, at the time, it decided to keep some of the treaties that had resulted in a large number of legal disputes, most notably the BIT with the United States. States have therefore been selective in their efforts to reform BITs, with greater caution paid regarding BITs with important economic partners.[2] Given the explanatory power attributed to ISDS experience in the current literature, it is remarkable that the majority of states that have faced ISDS have not terminated *any* BITs, while some states have terminated and renegotiated treaties despite none, or relatively few arbitration cases faced.

---

[1] Argentina's ISDS experience and unexpected approach towards BITs has been researched through in-depth case studies, see for example Calvert (2018) and Haftel and Levi (2020).

[2] Overall, the association between ISDS cases a state has faced and how many BITs they have resorted to unilaterally terminate or renegotiate is weak, see Figure A1 in Online Appendix.

Strategies for changing BITs

When a state wants to pursue changing the terms of its BITs, it has several strategies at its disposal. First, it can exit the agreement by conducting unilateral termination according to the provisions of the BIT in question. The downside is that while this dissolves any obligations towards new investors under the treaty, unilateral termination triggers the so-called sunset clause, ensuring that the terms of the treaty stay in force for investments made prior to termination usually between 10 and 15 years afterwards (Harrison, 2012).

More importantly, unilateral termination of BITs can also signal to foreign investors an unwillingness to guarantee their protections in the future. Foreign investors often rely on cues regarding the investment climate and credit worthiness of target countries (Brooks, Cunha and Mosley, 2015; Shim, forthcoming). Signing BITs can be thought of as having provided a signal to investors lacking adequate information about the investment conditions in prospective host countries, because the risk of ISDS is greater in countries with bad investment climates (Tobin and Rose-Ackerman, 2011). Exit from BITs, in turn, can be interpreted by investors as preparation to limit exposure to investment arbitration, and therefore increase uncertainty over the government's intentions regarding investment regulation, potentially discouraging investment.[3]

Unilateral termination of BITs can also send a hostile signal to the partner state, who might interpret the exit as defection from a cooperative equilibrium, damaging the reputation of the state as a reliable partner in international cooperation (Axelrod, 1984; Axelrod and Keohane, 1985; Oye, 1986). Furthermore, the unilateral withdrawal from BITs and ISDS arbitration centers such as the Centre for Settlement of Investment Disputes (ICSID) became adopted by left-wing governments in Latin America through the 2000s (Calvert, 2018a). Any other states also considering taking unilateral action regarding BITs risk becoming associated with such governments, which used harsh rhetoric against the investment treaty regime, ISDS, and multinational companies (Gray, 2013). Concerns over hostile signalling through unilateral BIT terminations are therefore a serious cost of pursuing the strategy.

---

[3] It has also been found that terminating BITs may exclude states from receiving financing from institutions such as IMF and the World Bank, which implicitly consider BITs a part of providing sufficient legal guarantees for the treatment of investors (Mossallam, 2015).

Given the costs on unilateral termination, states can attempt to reach an agreement with their bilateral partner to adjust the terms of the BIT. They can renegotiate or amend the existing BIT, negotiate a new replacing agreement, or mutually agree to terminate it.[4] However, initiating any adjustments to BITs can be challenging especially for the initially weaker parties. If the initially stronger state continues to benefit from the agreement, it has little incentive to re-open BIT negotiations, or mutually terminate it.[5] Especially the traditionally major capital exporters tend to prefer to keep their investment protections unchanged with developing country partners, at least until an alternative instrument can be drafted and proposed at their own initiative.[6]

Any adjustment of existing BITs requires the treaty signatory states to reach an agreement, and therefore, they face the same challenges as renegotiation: as long as one state continues to prefer keeping the old provisions in place, renegotiation or mutual termination are unrealistic options especially for the initially weaker states seeking BIT reform. Often, unilateral termination of the BIT is the only realistic strategy available for the initially weaker states.

Why some states terminate and renegotiate BITs while others do not?

Bargaining power constraints

BITs are fundamentally shaped by the underlying asymmetric negotiations. Crucially, the state with stronger bargaining power in relation to the opponent shapes the treaty to more closely resemble its preferences, while the weaker party in negotiations is largely a rule-taker (Allee and Peinhardt, 2010, 2014; Alschner and Skougarevskiy, 2016). At the onset of the BIT regime, the treaties in protection of foreign investments were designed by powerful, capital exporting states. European countries, and later the United States, were leading the way in designing legal

---

[4] States can replace old BITs by negotiating a new investment treaty or a more comprehensive economic agreement with investment provisions. After conclusion of a new agreement, the old BIT ceases to be in force (Bernasconi-Osterwalder *et al.*, 2020). Because negotiation processes take time, effort, and diplomatic resources, recent policy discussions have also explored less costly ways for reshaping the investment treaty regime, for example, through issuing joint interpretative statements for arbitration proceedings (Poulsen and Gertz, 2021).

[5] While mutual termination of BITs through an exchange of notes (*note verbal*) would arguably be the least costly means to adjust terms of investment cooperation, it is empirically a rare instance. Most of the mutually terminated BITs have been intra-EU BITs, following the Achmea ruling by the European Court of Justice that arbitration clauses in BITs are incompatible with EU law (Foucard and Krestin, 2018).

[6] The Council of the European Union gave the EU Commission a mandate to begin to negotiate the creation of a multilateral investment court in 2018, which manifests a European effort to replace the system of ad hoc arbitration tribunals (Bungenberg and Reinisch, 2020).

protections for investors, often in regions of political instability.[7] This asymmetry resulted in expansive protections for foreign investors from the powerful, largely capital exporting states, such as the strong ISDS-mechanism, sunset clauses ensuring treaty protections long after possible treaty termination, and vague definitions of investments and investor nationality.

If these underlying asymmetric power relations change, we should also expect a change in BITs themselves. Recent years have seen an increasing importance of new actors in the global economy. China as well as other emerging economies have increasingly taken an active role in economic negotiations for the first time, with states such as India, Indonesia, South Africa among those who have unilaterally terminated large numbers of their BITs.[8] It is likely that as such states undergo substantive changes in their economies and also begin to export more capital, they become more interested in actively shaping their rules of investment governance (Haftel, Kim and Bassan-Nygate, 2021).

We should expect changes in the economic power dynamic result in changes in BITs because economic power translates into bargaining power in investment treaty negotiations. Economic power improves concrete alternatives to the existing agreements, and generates confidence that better outside options are realistically achievable in the future. Economically stronger states tend to enjoy greater opportunities in the global economy. Foreign investors are particularly interested in investing in developing countries with large economies in pursuit of larger returns for their investments, and hence their governments are also motivated to sign BITs with them (Chakrabarti, 2001; Neumayer, 2006). All else equal, negotiating an economic agreement with an economically powerful partner is considered a promising opportunity for any government, leading fast growth economies to become attractive as new economic partners. It is therefore the greater access to such potentially improved alternatives for investment and economic partners that translates economic power into bargaining power (Fisher and Ury, 1981; Lax and Sebenius, 1985).

---

[7] Because investors form powerful interest groups in most democratic states, their governments are motivated to serve their interests. These states took the lead with their drafted model agreements, and the terms of investment governance were largely dictated by such countries and imposed on their treaty partners in the developing world (Salacuse, 1990: 655–75). On the role of the bureaucrats of European capital exporting countries in shaping the investment regime, see St John (2018).

[8] The newly found activism has also become evident through the increasing popularity of South-South BITs, for example the United Arab Emirates having signed 10 new BITs since 2018 with non-Western partners.

States' bargaining power in international negotiations can also stem from various different sources. Domestic audiences can effectively limit the extent to which compromises can be made, narrowing the bargaining window available at the international level (Putnam, 1988). Because the options available regarding international negotiations may shift depending on what is ratifiable domestically, state leadership as well as coalitions that provide them with political power can also shape the bargaining power of a government (Mattes, Leeds and Matsumura, 2016). State capacity and bureaucratic quality of governments can also strongly shape negotiation outcomes, especially with regards to BITs (Berge and Stiansen, 2016; Berge, 2021). Such differing sources of power in negotiations can make for different international bargaining outcomes. However, given the extent to which global economic asymmetries have shaped the BIT regime, it is precisely changes in the economic power symmetries that are likely account for the largest shifts in bargaining power dynamics in the aggregate.

When a state experiences an improvement in its economic power, its existing agreements need to continue to be favorable in comparison to the new potential alternatives brought by economic improvement. If a state views the terms of the existing BITs as worse than could be achieved through outside options, it develops a credible exit threat – a possibility that unless the terms of cooperation are adjusted to meet its preferences, the dissatisfied party will exit from the agreement (Bergès and Chambolle, 2009; Slapin, 2009). In practice, change in the relative economic power over time between signatory states is effective in creating a credible exit threat, because especially the stronger states are most likely to observe improvement in the weaker states bargaining power when they catch up with them economically.

Development of exit threat by a signatory state makes both unilateral termination and renegotiation of BITs more likely. For unilateral termination, the state needs to believe that it is better-off without the BIT in place, a possibility that increases in likelihood the stronger its perceived alternatives become. Likewise, renegotiation becomes more likely if the partner state becomes aware of the emerging exit threat, and is willing to accommodate the new demands to preserve the cooperative agreement. However, the change in bargaining power alone is unlikely to be sufficient in explaining whether renegotiation or unilateral termination of a BIT is the likely outcome. In empirical testing, whether bargaining power is a determinant of both terminations and renegotiations is investigated separately. Furthermore, some of the possible factors which might make unilateral termination more likely over successful renegotiation are also explored.

Although both signatory states might want to push for change in BITs, it is primarily the initially weaker party that becomes more likely to initiate reform of their BITs following an improvement in its bargaining power. Because the initially stronger parties were already in a position to demand changes in existing agreements or else walk away from them, their ability to initiate changes in investment treaties is not dependent on further improvement in their bargaining power, like that of their weaker counter parts. One would therefore expect the initially weaker states to be more responsive to changes in the underlying bargaining power dynamic.

The bargaining power dynamic influences states' decisions regarding BITs regardless of the reasons for which they signed BITs in the first place: once in place, there are consequences if agreed-on obligations are abandoned, and states have to consider the associated costs and benefits. Afterall, it is a different matter to deviate from an established agreement than it is to join one in the first place (Mossallam, 2015). Bargaining power change can therefore explain when an initially weaker state is able to initiate change in their treaties by lifting some of the constraints on the government's decision-making. Next, states' incentives for BIT reform beyond bargaining power are outlined.

States' incentives for reform

While the reasons for why individual governments seek reform in their international agreements vary, it is possible to identify common incentives across states. Although many states have begun to recognize the need for rethinking investment governance, it has been primarily developing and emerging economies that have taken the lead in BIT termination and renegotiation (UNCTAD, 2020a). This is because the primary concern of developed countries continues to be the provision of protections for their investors in host countries (Neumayer, 2006), and they continue to enjoy the benefits from BITs they negotiated in a stronger bargaining position. Developed countries have so far initiated multilateral discussions toward adjusting the terms of investment agreements amongst themselves, and have therefore been less likely to push for reform in individual BITs especially with developing country partners.

Initially weaker states' incentives

Factors that incentivize weaker states to change their BITs are likely to differ depending on whether they signed them as a result of a rationalist cost-benefit analysis, or because of boundedly rational decision-making. If the decision to sign BITs initially was made based on mental short-cuts, ISDS-cases can generate learning effects that break the bounded rationality underlying the agreement. Once governments become targets of ISDS lawsuits, the underlying boundedly rational logic of BITs becomes questioned: instead of defaulting to the old cognitive biases, increased efforts are made to carefully consider the costs and benefits of the BIT. This dynamic can explain the lack of enthusiasm towards signing more investment treaties since the legal disputes have started to accumulate (Poulsen and Aisbett 2013). Experienced ISDS cases as respondent are therefore likely to form the strongest incentive driving their decision to terminate or renegotiate old BITs.[9]

How exactly weaker states will want to adjust their BITs in response to learning through ISDS is however not obvious. States have been found to pursue larger state regulatory space in BITs as a result of ISDS experience (Thompson, Broude and Haftel, 2019), and others have increased the precision of their legal language (Manger and Peinhardt, 2017). However, some initially weaker states might be willing to accept stronger investor protections due to their shifting status from mostly capital recipient towards a sender of FDI (Haftel, Kim and Bassan-Nygate, 2021). Regardless of exactly what kind of change is pursued, experiencing ISDS is likely to initiate a review and re-consideration of the old investment instruments, and hence increase the likelihood of change in them.

Because the initially weaker states' BIT policies are likely to be constrained by their bargaining power in relation to the partner state, the effect of learning through ISDS on BIT outcomes will likely be conditional on bargaining power change. When the two parties have approached each other in their relative economic power, it is expected to empower the initially weaker state and make them able to act upon their reform incentives. It is therefore likely that if the economic gap between the parties has decreased, the chance of BIT reform also increases when interacted with the initially weaker party's ISDS experience.

---

[9] Although governments can also learn about the risks of ISDS by being the home states of disputing investors, governments are usually not involved in such arbitrations. Sometimes companies even treaty-shop and establish "mail box companies" in states with favorable investment agreements (van Os and Knotterus, 2011; Chaisse, 2015; Thrall, 2021), and hence have little connection to their home governments beyond legal affiliation.

H1:   BIT is increasingly likely to get terminated or renegotiated when the initially weaker signatory state has faced ISDS cases and the relative economic power difference has decreased since treaty signature

There are distinct incentives that are likely to drive the behavior of states that initially signed BITs according to rationalist assumptions in an effort to attract FDI. They can develop other means to appear attractive to investors, and hence make old BITs futile in this task: high economic growth may result in an ability to attract investors regardless of whether or not the state is a signatory to BITs.[10] Additionally, improved law and order domestically may serve the same purpose as BITs to secure property rights of foreign investors, decreasing uncertainty and investment risk, and therefore making the treaties futile and unnecessarily risky.

Like the incentives emerging in response to facing ISDS, the bargaining power constraints however influence whether or not the emergence of these incentives can be acted upon by the initially weaker states. Interaction effects between factors that capture these incentives and bargaining power change are therefore expected to correspond to higher likelihood of change in the old BIT.

Hypothesis 2:   BIT is increasingly likely to get terminated or renegotiated when the weaker signatory state has experienced high economic growth and the relative economic power difference between signatory states has decreased since treaty signature

Hypothesis 3:   BIT is increasingly likely to get terminated or renegotiated when the weaker signatory state has improved its law and order and the relative economic power difference between signatory states has decreased since treaty signature

---

[10] Despite many governments' perceptions, whether or not BITs have been successful in attracting FDI in the first place has been a controversial question both in research and policy. For a summary of the empirical challenges, see Bonnitcha, Poulsen and Waibel, 2017 Ch. 6.

Initially stronger states incentives

In contrast to the weaker states, the stronger parties are less likely to face incentives to renegotiate or terminate BITs, as their investors continue to enjoy the protections provided in them. Stronger states are unlikely to develop incentives for reform in light of improvements in economic conditions like their weaker counterparts; however, they may also become incentivized to adjust BITs in response to ISDS cases. Concerns that regulation of investments for the protection of the environment or public health may result in international arbitration have become increasingly pressing also in developed countries.[11]

Stronger states may therefore also recognize the need to update or make treaty terms more precise in light of new regulatory needs, especially if the domestic political opinion favors stronger regulation of foreign investment. However, it has so-far manifested mostly in discussions over investment agreements amongst Western developed states, such as the Transatlantic Trade and Partnership Agreement (TTIP) (Hamilton and Pelkmans, 2015), and the decisions at the EU-level to eventually fade out all intra-EU BITs. In the past, states have attempted to keep their investment treaty commitments relatively consistent with each other, making use of model templates when negotiating their BITs (Berge and Stiansen, 2016; Allee and Elsig, 2019). Therefore, if the investment rules amongst developed countries get adjusted, the initially stronger states might also become eventually inclined to adjust their BITs with others for greater consistency.

Data and methods

The employed dataset is based on the UNCTAD International Investment Agreements Navigator, which includes information on the timing of termination and renegotiation of BITs.[12] The unit of analysis is the individual treaty-year, embedded in country dyads: for example, both the Indonesia-Netherlands BIT (1968) and the Indonesia-Netherlands BIT

---

[11] For example, Germany's efforts to transform towards renewable energy sources by banning nuclear energy initiated ISDS cases with foreign investors in the energy sector (*Vattenfall AB and others v. Federal Republic of Germany*, 2011). Likewise, Australia found itself in legal problems with Philipp Morris and other tobacco companies following its policy to enhance public health by only allowing plain cigarette packaging (*Philip Morris Asia Limited v The Commonwealth of Australia*, 2017). Recently, the coal phase-out plan by Netherlands provoked an arbitration case in ICSID by a German energy company RWE (Wehrmann, 2021).

[12] The status information of BITs in the dataset are reported as they stood on the 15h April 2020, when the data was collected.

(1994) are included as separate treaties in the dataset, belonging in the same Indonesia-Netherlands -dyad. The treaties have observations from the year the BIT entered into force until the year it gets terminated or renegotiated, or until 2019 in case the BIT does not experience either event.

The data structure has two main advantages. It enables the identification of the unique negotiation year of the treaty, which is leveraged for constructing the measure capturing bargaining power change. Furthermore, the data structure allows the employment of BIT fixed effects in modelling, isolating the effects of interest from any treaty-specific features. The dataset includes 2,623 unique BITs within 2,481 dyads, and a total of 51,702 treaty-years ranging from 1962 to 2019. Because the theorized bargaining power dynamic is only expected to explain outcomes of BITs that have the power of international law, only BITs that have entered into force are included.

To capture the bargaining power dynamic between BIT signatory states, two strategies are adopted. First, the signatory states are ordered according to which one was likely the stronger party in the BIT negotiations initially. Following the literature on the power-dynamics at the onset of the BIT-regime, the primary coding rule identifies the state with a larger volume of FDI exports in the year of BIT signature as the stronger party.[13] However, to account for the access to and power of technical knowledge and expertise in economic negotiations, if the party with smaller exports was a member of the OECD, the OECD member is coded as stronger. 90% of the dyads can be ordered according to these two rules. To include additional dyads, especially with developing countries for which export data is limited, two additional coding rules are employed: if one of the states was a member state of the EU in the year of BIT signature while the other was not, it is coded as the stronger party. If the dyad cannot be ordered by these rules, the party with higher gross domestic product (GDP) in the year of signature is coded as stronger.

Second, change in bargaining power, the main variable capturing constraints, is measured employing GDP data only. This is because GDP data has the best coverage both in the timeseries as well as the cross section, and therefore results in a sufficient coverage for the variable. Measure ***Relative power change*** therefore captures the difference between the parties'

---

[13] Larger capital exporters were likely less dependent on any given BIT due to their attractiveness to potential alternative economic partners, and hence stronger according to the bargaining power as outside options -approach.

logged GDP compared to what it was in the year of BIT signature (Equation 1). Negative values correspond to a decreased economic gap between the parties.[14]

$$\Delta BP_{it} = [log(GDP_{stronger,\ t0}) - log(GDP_{weaker,\ t0})] -$$
$$[log(GDP_{stronger,\ t\_year\ of\ signature}) - log(GDP_{weaker,\ t\_year\ of\ signature})]. \qquad 1.$$

The measure is not suitable in assessing bargaining power change in situations where one party overtook the other in terms of economic power, a situation concerning a small subset of treaty-years (1,061 out of 51,702).[15] These instances are not included in the main Relative power change variable, but they are noted separately with a binary variable *Overtook*, which captures if a state had a lower GDP in the year of BIT signature but a larger GDP in the year of observation than the partner state.

The main outcome variable *Deviation* is binary, capturing whether or not the BIT is renegotiated, amended, unilaterally terminated, or terminated by consent. When incentives align with the lifting of bargaining power constraints, the BIT is expected to deviate from staying in force, whether through renegotiation or unilateral termination.[16] To investigate possibly differing attributes of *Unilateral termination* and *Renegotiation*, their occurrence is also captured by respective binary variables.

To measure the theorized incentives for each signatory state, *ISDS respondent cum.* measures the number of cumulative ISDS cases brought against the states separately. I include ISDS cases based on BITs as well as other instruments, as legal challenges by foreign investors are likely to change states' incentives regardless of which instrument was used to bring the suit. It is also possible that states learn from other countries' ISDS experiences as well as their own,

---

[14] Substantively, one unit decrease in relative power change is equivalent to Party 1 having had 10 times the GDP of Party 2 on the year of BIT signature and ended up with equal economic power in the year of observation. Although large, there are four country dyads which experienced such dramatic change at least in one observation year in the data.

[15] There are 88 dyads where the initially weaker party has overtaken the initially stronger party in terms of GDP, and 17 dyads where the initially stronger party has overtaken the initially weaker party, at least in one observation year.

[16] The data includes instances of BIT amendments reported as Amendment Protocols by UNCTAD, as well as renegotiations that have not been reported to have taken force. Some BITs have also been replaced by PTAs rather than new BITs, which are also included in the variable. Instances of termination by consent are also included in the main outcome variable, as it signals that an agreement regarding reform has been reached by the parties. Exclusion of mutual terminations does not substantively change the results.

possibility accounted for by year fixed effects. As a robustness check, I also investigate the effect of each state having faced any ISDS cases, captured by a binary variable ***ISDS respondent any***. Although governments are unlikely to initiate BIT reform following cases where they were home states because governments are rarely involved in disputes their companies initiate, I also test for any possibile learning effects with the variable ***ISDS home cum***, measuring cumulative cases as home state respectively for each signatory state. ***Economic Growth*** is captured by the annual GDP percent growth rate measure from World Development Indicators, and ***Law and Order*** variable comes from the PRS Group's researcher dataset, where it is measured in 6-point scale with higher values capturing more positive conditions from the perspective of potential foreign investors (PRS Group, 2020).

Additional attributes of BITs outcomes

To account for other possible factors driving BIT-policy decisions, a set of control variables are included. Because the amount of FDI a government exports may influence its willingness to change investment treaties, variable ***FDI outflows*** is included to measure the volume of FDI exported by the government as a percentage of its GDP. Although the developments concerning intra-EU BITs are recent, it is possible that some of the latest terminations in the dataset result from them. I therefore control for ***Intra-EU***, which is coded 1 if both of the parties are EU members.

Change in the political regime might make leaders more receptive to citizens' demands, and it is captured by variable ***Democratization***, which is a binary variable taking the value 1 the state has experienced an increase in their democracy score of 3 or more the past three years.[17] Likewise, because governments which are sensitive to citizens' and NGOs' activism and any opposition to ISDS practice are more likely to initiate reform of BITs, ***Democratic accountability*** captures higher accountability with increasing values on a six-point scale from the PRS researcher dataset. Further, the ***Socioeconomic conditions*** in each partner state are measured by a variable on a 12-point scale, higher values indicating stronger conditions, because overall living conditions in a country may be associated with more vocal participation in the policy-making processes and hence influence elite decision-making.

---

[17] The measure is constructed using the Quality of Government dataset Freedom House/Imputed Polity2 -measure (Theorell *et al.*, 2020).

Changes in state leadership can also create incentives for new leaders to abandon foreign policies of their successors, and shifts in domestic supporting coalitions can also influence economic and foreign policy decision-making (Mattes, Leeds and Matsumura, 2016). I therefore control for changes in the ruling government, which might induce policy changes in BITs with variable *Leader transition*, coded as 1 if there is at least one leadership transition in a given year and 0 otherwise. Further, *SOLS change* captures changes in the political leader's supporting societal coalition, coded as 1 if there is at least one SOLS change that lasts longer than 30 days in the year and 0 otherwise (Leeds and Mattes, 2021). Further, a variable *Government stability* from the PRS dataset is included to account for the possibility that governments may engage in short-term planning if their political survival is uncertain, and hence make decisions without regards for medium and long-term societal consequences.

In addition, governments might have ideological attitudes towards international regimes which can explain their actions towards BIT commitments, and differ how responsive they are to civil society sentiment as a result (Calvert, 2018a; Montal, 2019). Some states can also gain domestic political benefits from taking a strong stand against ISDS, such as in the Ecuador's leftwing leadership through the two Correa governments (Conaghan, 2008; Becker, 2013). *Leftist executive* is a binary measure capturing whether or not the executive of the country is labelled as communist, socialist, social democratic or left-wing in the Database of Political Institutions (Cruz, Keefer and Scartascini, 2021), as left-wing movements have been especially proactive in initiating BIT reform.

In addition, the factors driving renegotiation and termination of BITs are likely to differ. As more states have opted to unilaterally terminate their BITs, this might also incentivize other states to follow suit, possibility controlled for by year fixed effects in the employed models.[18] While the success of renegotiation is likely to depend on various negotiation dynamics, *Bureaucratic quality* is likely to lower the costs and increase the likelihood of renegotiation success. It is accounted for by the variable from PRS dataset, higher values corresponding to higher strength an expertise to govern without drastic changes in policy.

---

[18] Government representatives frequently share their experiences in investment treaty reform in policy discussion platforms such as those hosted by the UNCTAD, the South Centre, and the International Institute for Sustainable Development (IISD), presenting possibilities for policy-diffusion.

Finally, whether the bargaining power dynamic also influences the contents of BITs rather than merely the instance of BIT termination and renegotiation is examined. I capture whether there has been a change in the direction of larger state regulatory space (SRS) using data from Thompson, Broude and Haftel (2019). Because desire for greater SRS might motivate many states to seek BIT reform, the impact of shifting bargaining power can also influence the extent to which it is achieved. **Delta SRS ISDS** captures change in SRS in ISDS provisions, while **Delta SRS Subs.** measures changes in substantive treaty provisions based on the SRS value of the initial BIT and its replacement. Positive values in these variables indicate an increase in SRS and negative values indicate a decrease. All the variables are summarized in Table A1 in the Appendix.

Method

The main model presented is a linear probability model with fixed effects for each individual BIT and year. Linear probability model is chosen as the main model for the ease of interpretation of the interaction effects of interest.[19] To ensure that the rarity of events in the data does not influence the results, survival analysis is conducted using a Cox Proportional Hazard model. To acknowledge variation in the different BIT outcomes, I also substitute the outcome variable to assess the effect of hypothesized variables on unilateral terminations and renegotiations separately.

I address further concerns of endogeneity by employing fixed effects and lagging all independent variables by two years, indicated by the *t-2* subscript. The treaty-fixed effects α_{ij} address the concern that design features in BITs or the relationship between the partner states may be driving the results by controlling for all time-invariant factors that are specific to the treaty or the country dyad.[20] The year fixed effects δ_{t-2}, on the other hand, enable accounting for any year-specific trends that are constant across entities but vary over time, such as general trends in the world economy, overall accumulation of ISDS-disputes or BIT terminations, or

---

[19] Although the fixed-effects logit model does not allow for estimation of average marginal effects of interests for interpreting the hypothesized interaction effects (Baltagi, 2014, Ch. 5; Wooldridge 2010: 622), I also present the results for a fixed effects logit model in Table A3 in the Appendix.

[20] Treaty fixed effects address the problem of large amounts of data that would be otherwise required to control for a multitude of factors, such as unique treaty features (i.e. how strict the dispute settlement provisions are, termination provisions, colonial history between partner states, or diplomatic or cultural factors) that do not vary over the study period in a significant majority of the cases.

any major world events in a specific year. The main model estimated is presented by Equation 2

$$Deviation_{ijt} = \beta_0 + \beta_1 \Delta BP_{ijt-2} + \beta_3 X_{it-2} + \beta_4 X_{jt-2} + \beta_5 X_{ijt-2} +$$
$$\Delta BP_{ijt-2} * X_{it-2} + \Delta BP_{ijt-2} * X_{Jt-2} + \alpha_{ij} + \delta_{t-2} + u_{ijt-2} \qquad 2.$$

where $Deviation_{ijt}$ is the dependent variable whether or not the BIT between states i and j on a year t gets terminated or renegotiated. ΔBP_{ijt-2} is the relative economic power change since the initial year of treaty signature. X_{it-2} and X_{jt-2} are sets of time- and state-varying observable variables, while X_{ijt-2} is a set of time- and dyad-varying variables. α_{ij} is the treaty fixed effect, δ_{t-2} is the year fixed effect, and u_{ijt-2} is the idiosyncratic error.

The main goal is therefore to investigate whether there are interaction effects between bargaining power constraints and variables capturing the weaker state's incentives when estimating the likelihood of BIT deviation. Because different treaties can be nested within the same country dyads, this dependence of treaty-year observations may be a cause of concern for consistency of the standard errors. I account for this by clustering standard errors at the dyad-level. Although there is significant overlap between BIT and dyad fixed effects, I run the models using both as a robustness check.[21]

Results

Interaction effects

The key finding of the analysis is that there are interaction effects with the relative power change variable across different incentives for the weaker state. In all models conducted, decreasing relative economic power gap amplifies the effect of the initially weaker states' reform incentives – number of ISDS cases as respondent, economic growth, and law and order. In other words, bargaining power change between the treaty partners is found to condition the impact of other developments on investment treaty reform. The results from the main linear probability models are reported in Table 1.

---

[21] Table A3 in the Appendix.

Table 1. Linear probability models with dyad-clustered SEs in parentheses, DV = BIT deviation

	Model 1	Model 2	Model 3	Model 4
Independent effects				
Relative power change $_{t-2}$	**0.1059*****	**0.1077*****	**0.1122*****	**0.1577***
	(0.0255)	(0.0311)	(0.0330)	(0.0621)
ISDS Respondent cum. (stronger) $_{t-2}$	**0.0006*****	**0.0005****	**0.0005****	-0.0001
	(0.0002)	(0.0002)	(0.0002)	(0.0003)
ISDS Respondent cum. (weaker) $_{t-2}$	**0.0006*****	**0.0007****	**0.0006****	**0.0009***
	(0.0002)	(0.0002)	(0.0002)	(0.0004)
GDP growth (stronger) $_{t-2}$	**0.0003****	**0.0003.**	**0.0003***	-0.0001
	(0.0001)	(0.0001)	(0.0001)	(0.0005)
GDP growth (weaker) $_{t-2}$	**0.0002***	0.0001	0.0001	0.0001
	(0.0001)	(0.0001)	(0.0001)	(0.0004)
Law and order (stronger) $_{t-2}$	**0.0030***	**0.0051***	**0.0049***	0.0008
	(0.0014)	(0.0021)	(0.0021)	(0.0030)
Law and order (weaker) $_{t-2}$	**0.0036***	**0.0056****	**0.0059****	**0.0115*****
	(0.0014)	(0.0020)	(0.0021)	(0.0029)
Interaction effects (H1-H3)				
Relative power change*ISDS Respondent cum. (weaker) $_{t-2}$	**-0.0043*****	**-0.0045*****	**-0.0044*****	**-0.0074***
	(0.0012)	(0.0013)	(0.0013)	(0.0027)
Relative power change*GDP growth (weaker) $_{t-2}$	**-0.0021*****	**-0.0025****	**-0.0025****	**-0.0090*****
	(0.0006)	(0.0008)	(0.0008)	(0.0023)
Relative power change*Law and order (weaker) $_{t-2}$	**-0.0220*****	**-0.0217****	**-0.0233****	**-0.0392***
	(0.0064)	(0.0079)	(0.0084)	(0.0154)
Controls				
FDI outflows % of GDP (stronger) $_{t-2}$		-0.0000	-0.0000	-0.0001
		(0.0000)	(0.0000)	(0.0001)
FDI outflows % of GDP (weaker) $_{t-2}$		0.0000	-0.0000	0.0000
		(0.0000)	(0.0000)	(0.0001)
Democratization (stronger) $_{t-2}$		0.0008	0.0006	**-0.0181.**
		(0.0092)	(0.0096)	(0.0108)
Democratization (weaker) $_{t-2}$		-0.0050	-0.0052	-0.0004
		(0.0042)	(0.0044)	(0.0061)
Democ. accountability (stronger) $_{t-2}$		-0.0012	-0.0011	-0.0015
		(0.0020)	(0.0020)	(0.0037)
Democ. accountability (weaker) $_{t-2}$		-0.0019	-0.0018	**-0.0064***
		(0.0013)	(0.0013)	(0.0021)
Socioeconomic conditions (stronger) $_{t-2}$		**0.0022***	**0.0020***	**0.0028.**
		(0.0009)	(0.0010)	(0.0016)
Socioeconomic conditions (weaker) $_{t-2}$		**0.0021****	**0.0021***	-0.0012
		(0.0008)	(0.0008)	(0.0014)
Government stability (stronger) $_{t-2}$			0.0004	0.0011
			(0.0007)	(0.0011)
Government stability (weaker) $_{t-2}$			-0.0004	-0.0009
			(0.0006)	(0.0010)
Leader transition (stronger) $_{t-2}$			**-0.0050.**	-0.0036
			(0.0027)	(0.0048)
Leader transition (weaker) $_{t-2}$			**-0.0041.**	-0.0038
			(0.0023)	(0.0036)
SOLS change (stronger) $_{t-2}$			**0.0085***	0.0077
			(0.0036)	(0.0064)
SOLS change (weaker) $_{t-2}$			0.0030	-0.0045
			(0.0029)	(0.0040)
Leftist executive (stronger) $_{t-2}$				-0.0013
				(0.0034)
Leftist executive (weaker) $_{t-2}$				**-0.0084***
				(0.0042)
Bureaucratic quality (stronger) $_{t-2}$				0.0049
				(0.0062)
Bureaucratic quality (weaker) $_{t-2}$				0.0003
				(0.0047)
Intra-EU				**-0.011.**
				(0.0068)
Year + BIT FEs	✓	✓	✓	✓
Num. obs.	31996	24387	23915	9554
R^2 (full model)	0.1188	0.1524	0.1522	0.1730
Adj. R^2 (full model)	0.0598	0.0829	0.0822	0.0840
Num. groups: Year	34	33	33	33
Num. groups: BIT number	1967	1798	1768	868

***p < 0.0001; **p < 0.001; *p < 0.01; · p < 0.05

The results contribute to the discussion on the effect of ISDS on the backlash against BITs. Most notably, the impact of ISDS experience *depends* on bargaining power change. The interaction effect between relative power change and ISDS Respondent for the weaker party is negative and statistically significant, supporting Hypothesis 1. Relative power change between the parties in favor of the weaker state results in a larger effect of an additional investment dispute the weaker party faces on the likelihood of deviating from the BIT.

Figure 3 shows graphically the marginal effect of the three incentive-variables of the weaker party on deviation from the BIT for different levels of the relative power change, as reported in Model 4 in Table 1.[22] Narrowing of the relative power gap corresponds to greater positive effect of the weaker party's incentives on BIT deviation.

---

[22] Histogram of the relative power change variable is presented in Figure A2 in the appendix.
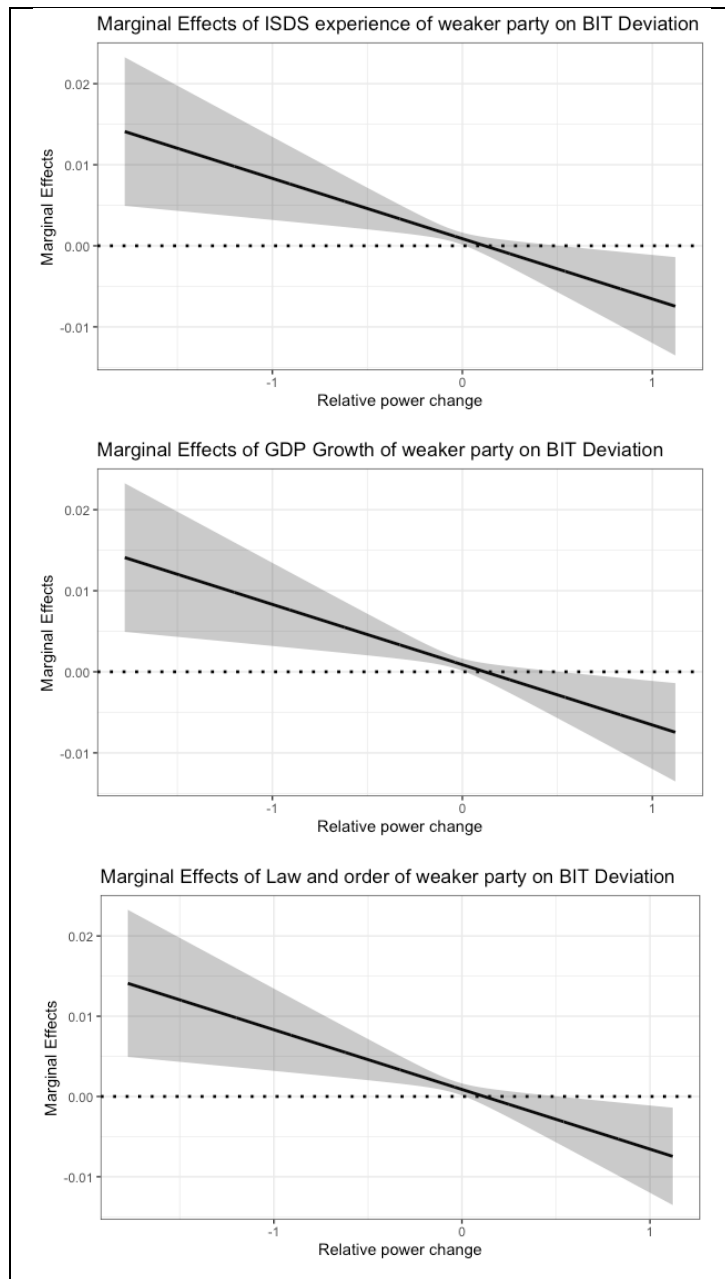
Figure 3.   Marginal effects of initially weaker state's incentives on BIT Deviation by Relative power change, LMP with year and BIT FEs, SEs clustered by dyad (Model 4. Table 1.)

It is remarkable that the broad, structural bargaining power variable has a detectable effect on the specific policy-decisions regarding BITs. Substantively, an economic power change of approximately -0.144 (1st quartile of the distribution) had taken place when South Africa unilaterally terminated a BIT with Germany in 2014 since signing the treaty in 1995. The linear prediction for the effect of an additional ISDS case against the initially weaker state in such BITs increases the likelihood of its deviation by 0.2%.[23] On the other hand, economic power change of magnitude of 0.02 (3rd quartile) took place between the signatory states such as South Korea and Bangladesh between their BIT signature in 1986 and 2019. Such widened power gap negates the effect of an additional ISDS case against the weaker state, making no difference to the likelihood of BIT reform (effect size of 0.04%, not statistically significant at 95% confidence level). Changed power dynamics therefore determine whether faced ISDS cases make any difference to whether the BIT stays in place or not.

Results in Figure 3. suggest a puzzling finding that additional ISDS cases faced by the weaker state make BITs less likely to get renegotiated or terminated at higher levels of relative power change. If the theory is correct, and decreasing bargaining power difference enables weaker states to act on their reform incentives, we would not expect any effect when the power asymmetry has worsened. To test this, Model 4 from Table 1 is run separately for two subsets of the data: treaty-years where the weaker party has gotten relatively weaker (12,781 observations) and where the weaker party has caught up (25,883 observations). In the former subset where relative power change is larger than zero, the interaction effect has disappeared, while it remains negative and statistically significant for relative power change values smaller than zero (Figure 4.) Indeed, it is precisely the closing bargaining power gap that amplifies the effect of ISDS experience on BIT outcomes.

---

[23] The equivalent difference made for the non-cumulative measure of ISDS experience is 0.7%. For cases where the initially weaker party has caught up a lot with their stronger counter parts (relative power change < -1), such as China with European partners Austria, Denmark, and Norway, the effect size of ISDS respondent is 0.6%.

Marginal Effects of ISDS experience of weaker party on BIT Deviation, subsets
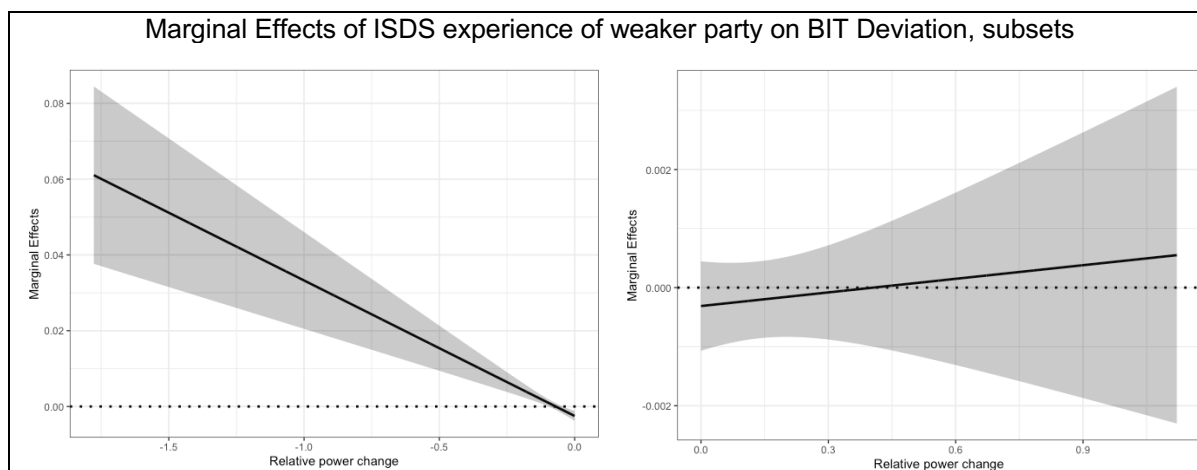
Figure 4.   Marginal effects of initially weaker state's incentives on BIT Deviation by Relative power change in two subsets of the data, where bargaining power gap has closed and where it has increased since BIT signature. Interaction effect is not statistically significant for positive values of relative power change. LMP with year and BIT FEs, SEs clustered by dyad (Table 1. Model 4.)

Negative interaction effects are also detected for measures capturing economic growth and law and order of the initially weaker state, providing support for Hypotheses 2 and 3. Closing the bargaining power gap creates conditions where economic growth as well as improved law and order in the initially weaker state correspond to increased chance of BIT reform.

Because the handful of states who have overtaken their partner in terms of economic power should be expected to be the most empowered to overhaul existing international agreements, the analysis is replicated accounting for such instances, of which there are only a small number of cases (Table A2 in the Appendix). Although no interaction effects are detected in models where the relative power change variable is substituted with the overtook-variable, the independent effect of overtaking is positive and statistically significant, as is the law and order -variable for the initially weaker party, increasing the likelihood of change in BITs.[24] It is likely that states who alter the bargaining power dynamic the most are also the most likely to also initiate changes in their economic agreements.

A series of robustness checks is conducted to confirm the results of hypothesis testing. The linear probability model with two-way fixed effects may be sensitive to the limited variation in the outcome variable. To ensure that the rarity of instances of termination and renegotiation

---

[24] The results are however not robust to clustering standard errors by dyad, as there are only a small number of country-pairs where such a large shift in relative economic power change has taken place.

of BITs in the data is not a concern, survival analysis using a Cox Proportional Hazard model is conducted. In addition, the BIT fixed effects are substituted with dyad fixed effects in one specification, and fixed effect logistic regression is also estimated.[25] Finally, the theorized dynamic should be expected to manifest best where the asymmetric bargaining power dynamics have been the greatest. I therefore subset the data to include only North-South BITs.[26] All the estimated models return negative and statistically significant coefficients for the hypothesized interaction effects between relative power change and the weaker party's incentives.

Independent effects

In addition to the results from hypothesis testing, a set of observations are noted from the independent effects of the main variables. Although one should expect small effect sizes for broad societal and macroeconomic factors on specific policy decisions, the independent effect of facing ISDS cases has a remarkably small effect on the likelihood of BIT termination or renegotiation. Models 3 and 4 reported in Table 1. attribute less than 0.01% increase in the probability of change in the BIT per additional ISDS dispute of the initially weaker state. The equivalent coefficient for the initially stronger state ceases to be statistically significant in the fully restricted model. This is somewhat surprising given the explanatory power attributed to experiencing ISDS in the literature.

Considering the possibility that the cumulative ISDS respondent experience may not be the only determinant of learning, the fully restricted model is replicated with alternative measures for ISDS experience.[27] The effect of the initially weaker state facing larger numbers of ISDS cases has a larger and statistically significant effect, with some 0.3% increase in the probability of BIT deviation per additional ISDS case. It is possible that larger waves of arbitration faced have a stronger impact on a government than the cumulative ISDS experience.[28] The other two measures, ISDS respondent any and cumulative ISDS home experience, do not have a statistically significant effect on BIT change for either signatory party. This is likely because states have formed new BITs with different partners even after already experiencing their first

---

[25] Table A3 in the Appendix.
[26] North-South BITs are identified as those where the initially stronger party was a member of the OECD while the initially weaker party was not, constituting 32,062 of the BIT years in the dataset. Table A4 in the Appendix.
[27] Table A5 in the Appendix.
[28] While the larger numbers of ISDS cases for the initially stronger state have a negative effect on the likelihood of BIT termination or renegotiation in one specification, the effect is not detected in any of the other models.

ISDS case, and hence it is likely to have little impact on newer agreements. The non-effect of ISDS home country experience is also in line with the findings of previous research, suggesting that states only learn and react to the risk of BITs after being in the receiving end of lawsuits.

The effect of law and order in the initially weaker party has a consistently positive and statistically significant effect on BIT deviation in all models conducted. The finding suggests that as the initially weaker party improves the strength and impartiality of its legal system and the popular observance of law (PRS Group, 2020, p. 5), the BIT becomes increasingly likely to get unilaterally terminated or renegotiated. One score increase in the 6-point discrete scale is associated with an increase of between 0.5% and 1.15% in the different linear probability models. While the economic growth of the stronger party is associated with increased probability of BIT deviation, its independent effect is not particularly stable across different models and specifications.

Although relative power changes present an important conditioning factor in the BIT regime, there is only partial evidence for its independent effect on treaty outcomes. The independent effect of the bargaining power change variable is positive and statistically significant in the models reported in Table 1; however, the effect is highly conditional of the ISDS variable employed for the signatory parties (Table A5 in the Appendix). It appears that while rational choice theory would expect states to adjust their international agreements in light of shifting bargaining power, the effect is not consistently detectable. Instead, as the results of interaction effects indicate, relative power change conditions the effects of other factors, especially for those disadvantaged in bargaining.

Termination vs renegotiation

Because termination and renegotiation are likely to differ in their determinants, additional analysis is conducted with unilateral termination and renegotiation as separate dependent variables. The results reported in Table 2. compare the strictest linear probability model with two-way fixed effects for the different binary outcomes of deviation, unilateral termination, and renegotiation.[29]

---

[29] Because of the rarity of instances, and the Leftist executive -control variable having a large amount of missing data, it is left out from the specifications presented in Table 2.

The results for the different types of outcomes reveal how different sources of power in the negotiation dynamic shape BITs. Relative power change, ISDS experience, and improved law and order in the initially weaker state make unilateral termination of the BIT more likely. However, it is the initially stronger state's ISDS experience, economic growth, and bureaucratic quality that are associated with increased likelihood of successful renegotiation. Furthermore, the hypothesized interaction effects are only statistically significant for unilateral terminations.

These findings suggest that the initially stronger states are more effective in pushing through renegotiation of the terms of investment cooperation, powered by their already strong position as well as likely superior negotiation technical skill and resources. On the other hand, the bargaining power dynamic is better at predicting unilateral terminations, because often the only option for the initially weaker states is to take unilateral action to exit the agreement to achieve change in their terms. These findings have also implications for the study of other state exits from international agreements and negotiations, as more treaty terminations can be expected in situations with highly asymmetrical negotiation dynamics.

Table 2. Comparing BIT outcomes, LPMs with dyad-clustered SEs

	DV: Deviation	Uni. term.	Renegotiation
Relative power change $_{t-2}$	**0.1127***	**0.0819***	0.0296
	(0.0333)	(0.0240)	(0.0217)
ISDS Respondent cum. (stronger) $_{t-2}$	**0.0005**	**0.0003.**	**0.0002***
	(0.0002)	(0.0002)	(0.0001)
ISDS Respondent cum. (weaker) $_{t-2}$	**0.0006**	**0.0006***	0.0000
	(0.0002)	(0.0002)	(0.0001)
GDP growth (stronger) $_{t-2}$	**0.0003***	0.0000	**0.0003***
	(0.0001)	(0.0001)	(0.0001)
GDP growth (weaker) $_{t-2}$	0.0001	0.0001	0.0000
	(0.0001)	(0.0001)	(0.0001)
Law and order (stronger) $_{t-2}$	**0.0049***	0.0023	0.0023
	(0.0022)	(0.0015)	(0.0016)
Law and order (weaker) $_{t-2}$	**0.0058**	**0.0040**	0.0018
	(0.0021)	(0.0013)	(0.0016)
Relative power change*ISDS Respondent cum. (weaker) $_{t-2}$	**-0.0044***	**-0.0041***	-0.0003
	(0.0013)	(0.0012)	(0.0006)
Relative power change*GDP growth (weaker) $_{t-2}$	**-0.0025**	**-0.0017**	-0.0008
	(0.0008)	(0.0006)	(0.0005)
Relative power change*Law and order (weaker) $_{t-2}$	**-0.0235**	**-0.0150**	-0.0083
	(0.0084)	(0.0058)	(0.0059)
FDI outflows % of GDP (stronger) $_{t-2}$	-0.0000	0.0000	-0.0000
	(0.0000)	(0.0000)	(0.0000)
FDI outflows % of GDP (weaker) $_{t-2}$	-0.0000	0.0000	-0.0000
	(0.0000)	(0.0000)	(0.0000)
Democratization (stronger) $_{t-2}$	-0.0005	-0.0036	0.0030
	(0.0096)	(0.0038)	(0.0089)
Democratization (weaker) $_{t-2}$	-0.0052	-0.0011	-0.0042
	(0.0044)	(0.0019)	(0.0040)
Democ. accountability (stronger) $_{t-2}$	-0.0011	**0.0019.**	**-0.0032***
	(0.0020)	(0.0011)	(0.0016)
Democ. accountability (weaker) $_{t-2}$	-0.0018	**-0.0017***	-0.0001
	(0.0013)	(0.0009)	(0.0010)
Socioeconomic conditions (stronger) $_{t-2}$	**0.0018.**	0.0004	**0.0013.**
	(0.0010)	(0.0006)	(0.0007)
Socioeconomic conditions (weaker) $_{t-2}$	**0.0021***	0.0006	**0.0014***
	(0.0008)	(0.0005)	(0.0006)
Government stability (stronger) $_{t-2}$	0.0004	0.0006	0.0001
	(0.0007)	(0.0005)	(0.0005)
Government stability (weaker) $_{t-2}$	-0.0003	0.0001	-0.0005
	(0.0006)	(0.0004)	(0.0005)
Leader transition (stronger) $_{t-2}$	**-0.0050.**	-0.0007	**-0.0047***
	(0.0027)	(0.0016)	(0.0021)
Leader transition (weaker) $_{t-2}$	**-0.0041.**	**-0.0056***	0.0015
	(0.0023)	(0.0009)	(0.0022)
SOLS change (stronger) $_{t-2}$	**0.0084***	0.0005	**0.0083**
	(0.0036)	(0.0023)	(0.0028)
SOLS change (weaker) $_{t-2}$	0.0031	**0.0029.**	0.0002
	(0.0030)	(0.0016)	(0.0025)
Bureaucratic quality (stronger) $_{t-2}$	**0.0085***	-0.0013	**0.0097**
	(0.0043)	(0.0032)	(0.0030)
Bureaucratic quality (weaker) $_{t-2}$	0.0010	0.0004	0.0006
	(0.0029)	(0.0015)	(0.0026)
Intra-EU $_{t-2}$	0.0006	**0.0104***	**-0.0094***
	(0.0054)	(0.0052)	(0.0016)
Year + BIT FEs	✓	✓	✓
Num. obs.	23915	23915	23915
R^2 (full model)	0.1522	0.1205	0.1825
Adj. R^2 (full model)	0.0822	0.0478	0.1149
Num. groups: Year	33	33	33
Num. groups: BIT number	1768	1768	1768

***p < 0.0001; **p < 0.001; *p < 0.01; · p < 0.05

Although relative economic power change does not predict the instance of BIT renegotiation, it shapes the state regulatory space following BIT reform. The interaction effect between relative power change and the initially weaker party's experience as ISDS respondent has a negative and statistically significant effect on both Delta SRS Substantive as well as Delta SRS ISDS.[30] Although the increase in state regulatory space is partially a result of the initially weaker states unilaterally terminating BITs, in the aggregate, states establish less restrictive terms for investment regulation following the initially weaker party's ISDS experience if the economic power gap has narrowed. In addition, bureaucratic quality of both states leads to lager SRS, highlighting its importance as an additional source of power in investment treaty negotiations.

Conclusion

ISDS experience has so far dominated the analysis of changes in the BIT regime. The regulation of international investment is, however, not uniquely exempt from the dynamics of international negotiations: bargaining power considerations are inevitably present whenever inter-state agreements are negotiated. The rationalist account relying on changes in the bargaining power dynamic can provide important insight into on-going changes in the BIT regime. Many different factors influence states' incentives regarding their investment treaty commitments, ranging from experience with ISDS to becoming otherwise attractive for international investors, and to domestic political factors. Yet, it is important that actors' ability to act upon their incentives will be constrained by power considerations in the international arena – especially with regards to international investment, shaped by asymmetric inter-state relations.

The results from the presented empirical analysis illustrate how the impacts of various factors motivating especially the initially weaker party in the negotiation relationship to reform BITs depend on bargaining power changes. Experience as respondents in ISDS cases are likely to incentivize states to abandon old BITs, as they are likely to learn from the consequences of investment treaties when facing lawsuits from investors. While the ISDS cases faced by the signatory parties have an independent effect on the likelihood of BIT reform, in line with existing research, if the relative power difference between the parties has gotten smaller,

---

[30] Table A6 in the Appendix.

additional ISDS cases faced by the initially weaker party increase the likelihood of BIT termination. Furthermore, if there has been no catching up, or the bargaining power asymmetry has worsened, facing additional ISDS cases by the weaker state does not have any impact on the probability of the old BIT to cease to remain in place.

Interaction effects between relative power change on the one hand, and measures capturing economic growth and improved law and order on the other, likewise have a statistically significant effect on terminating or renegotiating BITs. Weaker states who were likely to initially have signed BITs in the hopes of attracting FDI are likely to seek their reform when they become otherwise favorable for foreign investors. Higher economic growth and improved law and order in the weaker state increase the likelihood of termination or renegotiation of the old BIT more the smaller the economic power difference between the states has gotten. Although the effect sizes detected are small, it is remarkable that bargaining power factors create a detectable impact on such specific policy-outcomes as investment treaty negotiations.

Differences are found in the predictors of unilateral termination and renegotiation of BITs. While the ISDS experience, economic growth, and bureaucratic capacity of the initially stronger state increase the likelihood of successful renegotiations, the initially weaker state's ISDS experience and improved law and order are associated with increased probability of unilateral termination of the BIT. It is likely that the states that continue to be the stronger parties in the bilateral relations are most successful in adjusting the terms of investment treaties when they develop an interest in doing so. This might also explain why the interaction effects between relative power change and weaker states incentive variables do not have a statistically significant effect on BIT renegotiation. However, when a change in BITs does take place, they are more likely to allow for greater state regulatory space following the initially weaker state's ISDS experience if it also has caught up economically with the partner.

The current academic and policy discussion surrounding the investment regime has been largely focused on the legal aspects of investment treaty arbitration and the implications for states' regulatory autonomy. Undoubtedly, better understanding of the legal and technical detail on behalf of policymakers as well as researchers about the regime is certainly called for. However, there are plenty of existing tools of studying international economic governance, inter-state bargaining, and treaty-based cooperation that have largely been overlooked in the often legally-dominated space. Decades of international relations theory indicate that structural

factors matter for international outcomes, and they can also help in explaining states' behavior regarding BITs otherwise left unexplained.

The implications of changing bargaining power dynamics are likely to become more important in the future for the BIT regime. With the dispersion of information on the risks of ISDS and inadequacies of the current investment treaty regime underway, improved alternatives for attraction and regulation of FDI, as well as domestic pressures towards reform, more states are likely to become incentivized to move towards a new model of investment governance. On the other hand, the analysis shows that the impact of these developments will depend to some extent on international bargaining power considerations. When relative power changes have been small, the impacts of the motivations for reform on BITs remain modest. However, we are likely to see new actors becoming more active in the arena of international economic agreements if relative economic power differences decrease between traditional investment treaty partners.

Important questions for further inquiry also emerge from the findings, expanding the research agenda on the investment treaty regime. In addition to the employed economic power -based measures, there is a range of other possible factors that constitute bargaining power in the world economy. In addition to access to alternative agreements, partners, and sources of capital, the interplay of such international bargaining power sources with domestic sources of bargaining power can make for different bargaining outcomes altogether. In addition, future research on factors that determine whether either unilateral denunciation or renegotiation can further improve the explanatory power of models of BIT reform, and interrogate the strategic choice faced by states that have to decide the best course of action in pursuit of better terms for their economic cooperation.

The findings from the investment treaty regime can also inform scholars and practitioners beyond the specific issue area. Shifting power dynamics in the world economy are also likely to result in changes in other international governance regimes, as some actors are able to engage in serious negotiations often for the first time. Furthermore, the findings imply that decisions to withdraw from international agreements always involve a strategic element: even when facing strong incentives to exit, such incentives do not always automatically result in political action.

Data availability

Replication dataset for the conducted analysis will be made available online, along with the code employed.

Competing interests

The author declares no competing interests.

References

Abbott, K.W. and Snidal, D. (1998) 'Why States Act through Formal International Organizations', *The Journal of Conflict Resolution*, 42(1), pp. 3–32.

Allee, T. and Elsig, M. (2016) 'Why do some international institutions contain strong dispute settlement provisions? New evidence from preferential trade agreements', *The Review of International Organizations*, 11(1), pp. 89–120.

Allee, T. and Elsig, M. (2019) 'Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements', *International Studies Quarterly*, 63(3), pp. 603–613.

Allee, T. and Peinhardt, C. (2010) 'Delegating Differences: Bilateral Investment Treaties and Bargaining Over Dispute Resolution Provisions', *International Studies Quarterly*, 54(1), pp. 1–26.

Allee, T. and Peinhardt, C. (2014) 'Evaluating Three Explanations for the Design of Bilateral Investment Treaties', *World Politics*, 66(1), pp. 47–87.

Alschner, W. and Skougarevskiy, D. (2016) 'Mapping the Universe of International Investment Agreements', *Journal of International Economic Law*, 19(3), pp. 561–588.

Arias, E., Hollyer, J.R. and Rosendorff, B.P. (2018) 'Cooperative Autocracies: Leader Survival, Creditworthiness, and Bilateral Investment Treaties*', *American Journal of Political Science*, 62(4), pp. 905–921.

Axelrod, R. and Keohane, R.O. (1985) 'Achieving Cooperation under Anarchy: Strategies and Institutions', *World Politics*, 38(1), pp. 226–254.

Axelrod, R.M. (1984) *The evolution of cooperation*. New York: Basic Books. Available at: https://catalog.hathitrust.org/Record/000242964.

Baltagi, B.H. (2014) *Econometric Analysis of Panel Data*. Wiley Global Education.

Becker, M. (2013) 'The Stormy Relations between Rafael Correa and Social Movements in Ecuador', *Latin American Perspectives*, 40(3), pp. 43–62.

Behn, D., Berge, T.L. and Langford, M. (2017) 'Poor States or Poor Governance: Explaining Outcomes in Investment Treaty Arbitration', *Northwestern Journal of International Law & Business*, 38, p. 333.

Berge, T.L. (2021) *State Capacity in the International Investment Treaty Regime*. University of Oslo.

Berge, T.L. and St John, T. (2021) 'Asymmetric diffusion: World Bank "best practice" and the spread of arbitration in national investment laws', *Review of International Political Economy*, 28(3), pp. 584–610.

Berge, T.L. and Stiansen, Ø. (2016) *Bureaucratic Capacity and Preference Attainment in International Economic Negotiations. Negotiating BITs with Models*. SSRN Scholarly Paper ID 2851454. Rochester, NY: Social Science Research Network.

Bergès, F. and Chambolle, C. (2009) 'Threat of Exit as a Source of Bargaining Power', *Recherches Économiques de Louvain/ Louvain Economic Review*, 75(3), pp. 353–368.

Bernasconi-Osterwalder, N. *et al.* (2020) *Terminating a Bilateral Investment Treaty*. Internatioanl Institute for Sustainable Development.

Billing, T. and Lugg, A.D. (2019) 'Conflicted Capital: The Effect of Civil Conflict on Patterns of BIT Signing', *Journal of Conflict Resolution*, 63(2), pp. 373–404.

Bonnitcha, J., Poulsen, L.N.S. and Waibel, M. (2017) *The Political Economy of the Investment Treaty Regime*. Oxford University Press.

von Borzyskowski, I. and Vabulas, F. (2019) 'Hello, goodbye: When do states withdraw from international organizations?', *The Review of International Organizations*, 14(2), pp. 335–366.

Brooks, S.M., Cunha, R. and Mosley, L. (2015) 'Categories, Creditworthiness, and Contagion: How Investors' Shortcuts Affect Sovereign Debt Markets', *International Studies Quarterly*, 59(3), pp. 587–601.

Broude, T., Haftel, Y.Z. and Thompson, A. (2017) 'The Trans-Pacific Partnership and Regulatory Space: A Comparison of Treaty Texts', *Journal of International Economic Law*, 20(2), pp. 391–417.

Bungenberg, M. and Reinisch, A. (2020) *From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court: Options Regarding the Institutionalization of Investor-State Dispute Settlement*. Springer Nature.

Calvert, J. (2018a) 'Civil Society and Investor–state Dispute Settlement: Assessing the Social Dimensions of Investment Disputes in Latin America', *New Political Economy*, 23(1), pp. 46–65.

Calvert, J. (2018b) 'Constructing investor rights? Why some states (fail to) terminate bilateral investment treaties', *Review of International Political Economy*, 25(1), pp. 75–97.

Chaisse, J. (2015) 'The Treaty Shopping Practice: Corporate Structuring and Restructuring to Gain Access to Investment Treaties and Arbitration', *Hastings Business Law Journal*, 11(2), pp. 225–306.

Chakrabarti, A. (2001) 'The Determinants of Foreign Direct Investments: Sensitivity Analyses of Cross-Country Regressions', *Kyklos*, 54(1), pp. 89–114.

Conaghan, C.M. (2008) 'Ecuador: Correa's Plebiscitary Presidency', *Journal of Democracy*, 19(2), pp. 46–60.

Cruz, C., Keefer, P. and Scartascini, C. (2021) *The Database of Political Institutions 2020 (DPI2020)*. Inter-American Development Bank.

Debre, M.J. (2021a) 'Clubs of autocrats: Regional organizations and authoritarian survival', *The Review of International Organizations* [Preprint].

Debre, M.J. (2021b) 'The dark side of regionalism: how regional organizations help authoritarian regimes to boost survival', *Democratization*, 28(2), pp. 394–413.

Elkins, Z., Guzman, A.T. and Simmons, B.A. (2006) 'Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960–2000', *International Organization*, 60(4), pp. 811–846.

Fisher, R. and Ury, W. (1981) *Getting to Yes: Negotiating an agreement without giving in*. Random House.

Foucard, C. and Krestin, M. (2018) *The Judgment of the CJEU in Slovak Republic v. Achmea – A Loud Clap of Thunder on the Intra-EU BIT Sky!*, *Kluwer Arbitration Blog*. Available at: http://arbitrationblog.kluwerarbitration.com/2018/03/07/the-judgment-of-the-cjeu-in-slovak-republic-v-achmea/.

Gray, J. (2013) *The Company States Keep: International Economic Organizations and Investor Perceptions*. Cambridge: Cambridge University Press.

Gray, J. (2018) 'Life, Death, or Zombie? The Vitality of International Organizations', *International Studies Quarterly*, 62(1), pp. 1–13.

Gray, J. and Hicks, R.P. (2014) 'Reputations, Perceptions, and International Economic Agreements', *International Interactions*, 40(3), pp. 325–349.

Guzman, A.T. (1998) *Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*. SSRN Scholarly Paper ID 2176003. Rochester, NY: Social Science Research Network. Available at: https://papers.ssrn.com/abstract=2176003.

Haftel, Y.Z., Kim, S.Y. and Bassan-Nygate, L. (2021) 'High-Income Developing Countries, FDI Outflows and the International Investment Agreement Regime', *World Trade Review*, pp. 1–17.

Haftel, Y.Z. and Levi, H. (2020) 'Argentina's curious response to the global investment regime: external constraints, identity, or both?', *Journal of International Relations and Development*, 23(4), pp. 755–780.

Haftel, Y.Z. and Thompson, A. (2018) 'When do states renegotiate investment agreements? The impact of arbitration', *The Review of International Organizations*, 13(1), pp. 25–48.

Hamilton, D.S. and Pelkmans, J. (eds) (2015) *Rule-Makers or Rule-Takers?: Exploring the Transatlantic Trade and Investment Partnership*. Available at: https://rowman.com/ISBN/9781783487127/Rule-Makers-or-Rule-Takers?-Exploring-the-Transatlantic-Trade-and-Investment-Partnership.

Harrison, J. (2012) 'The Life and Death of BITs: Legal Issues Concerning Survival Clauses and the Termination of Investment Treaties', *The Journal of World Investment & Trade*, 13(6), pp. 928–950.

PRS Group (2020). 'International Country Risk Guide Methodology'.

UNCTAD (2020a). 'International Investment Agreements Navigator'. UNCTAD Investment Policy Hub. Available at: https://investmentpolicy.unctad.org/international-investment-agreements.

UNCTAD (2020b). 'Investment Dispute Settlement Navigator'. UNTAD Investment Policy Hub. Available at: https://investmentpolicy.unctad.org/investment-dispute-settlement.

Johns, L., Thrall, C. and Wellhausen, R.L. (2020) 'Judicial economy and moving bars in international investment arbitration', *The Review of International Organizations*, 15(4), pp. 923–945.

Koremenos, B. (2005) 'Contracting around International Uncertainty', *American Political Science Review*, 99(4), pp. 549–565.

Koremenos, B., Lipson, C. and Snidal, D. (2003) *The Rational Design of International Institutions*. Cambridge University Press.

Lax, D.A. and Sebenius, J.K. (1985) 'The power of alternatives or the limits to negotiation', *Negotiation Journal*, 1(2), pp. 163–179.

Leeds, B.A. and Mattes, M. (2021) 'Change in Source of Leader Support (CHISOLS) Dataset: User's Manual'. Available at: http://www.chisols.org/uploads/1/1/2/6/11264284/chisolsusermanualv5.0.pdf.

Long, A.G. and Leeds, B.A. (2006) 'Trading for Security: Military Alliances and Economic Agreements*', *Journal of Peace Research*, 43(4), pp. 433–451.

Manger, M.S. and Peinhardt, C. (2017) 'Learning and the Precision of International Investment Agreements', *International Interactions*, 43(6), pp. 920–940.

Mattes, M., Leeds, B.A. and Matsumura, N. (2016) 'Measuring change in source of leader support: The CHISOLS dataset', *Journal of Peace Research*, 53(2), pp. 259–267.

Montal, F. (2019) *Race against the regime: Policy responses to international investment arbitration*. University of Minnesota.

Mossallam, M. (2015) *Process Matters: South Africa's Experience Exiting its BITs*. SSRN Scholarly Paper ID 2562417. Rochester, NY: Social Science Research Network. Available at: https://papers.ssrn.com/abstract=2562417.

Neumayer, E. (2006) 'Self-Interest, Foreign Need, and Good Governance: Are Bilateral Investment Treaty Programs Similar to Aid Allocation?', *Foreign Policy Analysis*, 2(3), pp. 245–267.

van Os, R. and Knotterus, R. (2011) *Dutch Bilateral Investment Treaties: A gateway to 'treaty shopping' for investment protection by multinational companies*. Amsterdam: The Centre for Research on Multinational Corporations (SOMO). Available at: https://www.somo.nl/dutch-bilateral-investment-treaties/.

Oye, K.A. (1986) *Cooperation under Anarchy*. Princeton University Press.

Pelc, K.J. (2017) 'What Explains the Low Success Rate of Investor-State Disputes?', *International Organization*, 71(3), pp. 559–583.

Philip Morris Asia Limited v The Commonwealth of Australia (2017). Available at: https://www.italaw.com/cases/851.

Poulsen, L.N.S. (2015) *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries*. Cambridge University Press.

Poulsen, L.N.S. (2019) 'Beyond Credible Commitments: (Investment) Treaties as Focal Points', *International Studies Quarterly* [Preprint]. Available at: https://doi.org/10.1093/isq/sqz079.

Poulsen, L.N.S. and Aisbett, E. (2013) 'When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning', *World Politics*, 65(2), pp. 273–313.

Poulsen, L.N.S. and Gertz, G. (2021) *Reforming the investment treaty regime: A 'backward-looking' approach*. Chatham House. Available at: https://www.chathamhouse.org/sites/default/files/2021-03/2021-03-10-reforming-investment-treaty-regime-poulsen-gertz.pdf.

Powers, K. (2004) 'Regional Trade Agreements as Military Alliances', *International Interactions*, 30(4), pp. 373–395.

Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, 42(3), pp. 427–460.

Rosendorff, B.P. and Milner, H.V. (2001) 'The optimal design of international trade institutions: Uncertainty and escape', *International Organization*, 55(04), pp. 829–857.

Salacuse, J.W. (1990) 'BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing Countries', *The International Lawyer*, 24(3), pp. 655–675.

Salacuse, J.W. (2017) 'Of Handcuffs and Signals: Investment Treaties and Capital Flows to Developing Countries', *Harvard International Law Journal*, 58, p. 127.

Salacuse, J.W. and Sullivan, N.P. (2005) 'Do BITs Really Work: An Evaluation of Bilateral Investment Treaties and Their Grand Bargain', *Harvard International Law Journal*, 46, p. 67.

Schultz, T. and Dupont, C. (2014) 'Investment Arbitration: Promoting the Rule of Law or Over-empowering Investors? A Quantitative Empirical Study', *European Journal of International Law*, 25(4), pp. 1147–1168.

Shim, S. (forthcoming) 'Who is Credible? Government Popularity and the Catalytic Effect of IMF Lending', *Comparative Political Studies* [Preprint].

Simmons, B.A. (2014) 'Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment', *World Politics*, 66(1), pp. 12–46.

Slapin, J.B. (2009) 'Exit, Voice, and Cooperation: Bargaining Power in International Organizations and Federal Systems', *Journal of Theoretical Politics*, 21(2), pp. 187–211.

St John, T. (2018) *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences*. Oxford, New York: Oxford University Press.

Theorell, J. *et al.* (2020) 'The Quality of Government Standard Dataset, Version Jan20'. University of Gotenburg. Available at: http://www.qog.pol.gu.se doi:10.18157/qogstdjan20.

Thompson, A., Broude, T. and Haftel, Y.Z. (2019) 'Once Bitten, Twice Shy? Investment Disputes, State Sovereignty, and Change in Treaty Design', *International Organization*, 73(4), pp. 859–880.

Thrall, C. (2021) 'Spillover Effects in International Law: The Case of Tax Planning and Investor-State Dispute Settlement', in. Available at: https://calvinthrall.github.io/assets/taxplanning_v4.pdf.

Tobin, J.L. and Rose-Ackerman, S. (2011) 'When BITs have some bite: The political-economic environment for bilateral investment treaties', *The Review of International Organizations*, 6(1), pp. 1–32.

Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany (2011).

Voeten, E. (2021) *Ideology and International Institutions*, *Ideology and International Institutions*. Princeton University Press.

Waibel, M. (2010) *The Backlash Against Investment Arbitration: Perceptions and Reality*. Kluwer Law International.

Walter, S. (2021) 'The Backlash Against Globalization', *Annual Review of Political Science*, 24(1), pp. 421–442.

Wehrmann (2021) *RWE sues Netherlands for two billion euros compensation over the state's 2030 coal exit*, *Clean Energy Wire*. Available at: https://www.cleanenergywire.org/news/rwe-sues-netherlands-two-billion-euros-compensation-over-states-2030-coal-exit.

Wooldridge, J.M. (2010) *Econometric Analysis of Cross Section and Panel Data*. MIT Press.

UNCTAD (2018).'World Investment Report 2018: Investment and New Industrial Policies'. Available at: https://unctad.org/webflyer/world-investment-report-2018.

Appendix
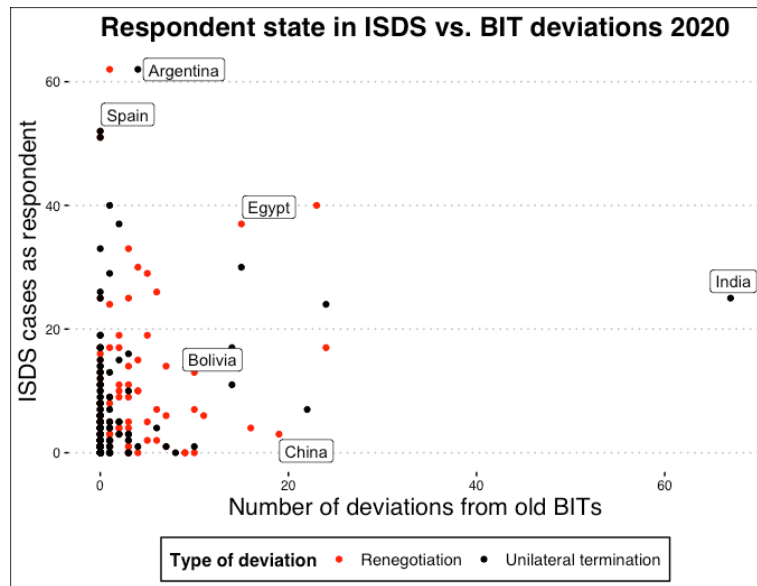
**Figure A1.** States by number of ISDS cases they have been respondents in and the number of terminated and renegotiated BITs they were parties to in 2020.[31]

---

[31] The pattern looks similar when terminations and renegotiations are counted as proportion of the country's total BITs with the exception of Bolivia, which has the second largest proportion of terminations with 90% of its BITs terminated in 2018.

Table A1. Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Max
Deviation	51,702	0.01	0.09	0	1
Renegotiation	51,702	0.004	0.06	0	1
Unilateral termination	51,702	0.003	0.06	0	1
Relative power change	43,435	-0.06	0.18	-1.78	1.15
Overtook (stronger)	45,044	0.005	0.07	0.00	1.00
Overtook (weaker)	49,672	0.02	0.13	0.00	1.00
ISDS Respondent (stronger)	51,702	3.65	8.54	0	62
ISDS Respondent (weaker)	51,702	3.61	7.09	0	62
ISDS Respondent cum. (stronger)	51,702	3.65	8.54	0	62
ISDS Respondent cum. (weaker)	51,702	3.61	7.09	0	62
ISDS Respondent any (stronger)	51,702	0.47	0.50	0	1
ISDS Respondent any (weaker)	51,702	0.60	0.49	0	1
ISDS Home cum. (stronger)	51,702	10.66	20.85	0	182
ISDS Home cum. (weaker)	51,702	0.78	2.34	0	35
ISDS total cum.	51,702	326.06	298.49	0	1,023
GDP growth (stronger)	51,267	2.82	3.79	-62.08	123.14
GDP growth (weaker)	50,347	4.16	5.12	-62.08	149.97
Law and Order (stronger)	49,281	4.79	1.04	1.00	6.00
Law and Order (weaker)	42,435	3.64	1.07	0.00	6.00
FDI outflows % of GDP (stronger)	50,372	4.39	14.44	-89.66	301.25
FDI outflows % of GDP (weaker)	46,273	1.42	11.04	-89.66	301.25
Democratization (stronger)	40,715	0.004	0.06	0.00	1.00
Democratization (weaker)	39,719	0.02	0.13	0.00	1.00
Democ. accountability (stronger)	49,281	5.05	1.47	0.00	6.00
Democ. accountability (weaker)	42,435	3.78	1.60	0.00	6.00
Socioeconomic conditions (stronger)	49,281	7.65	1.89	0.54	11.00
Socioeconomic conditions (weaker)	42,435	5.47	1.88	0.00	11.00
Government stability (stronger)	49,281	7.97	1.53	2.17	12.00
Government stability (weaker)	42,435	7.88	1.71	0.67	12.00
Leader transition (stronger)	48,180	0.23	0.42	0.00	1.00
Leader transition (weaker)	47,555	0.18	0.38	0.00	1.00
SOLS change (stronger)	48,180	0.11	0.31	0.00	1.00
SOLS change (weaker)	47,555	0.10	0.30	0.00	1.00
Leftist executive (stronger)	36,888	0.43	0.49	0.00	1.00
Leftist executive (weaker)	24,788	0.55	0.50	0.00	1.00
Bureaucratic quality (stronger)	49,281	3.18	0.92	0.00	4.00
Bureaucratic quality (weaker)	42,435	2.01	0.79	0.00	4.00
Intra-EU	51,702	0.06	0.23	0	1
Delta SRS ISDS	3,768	-0.01	0.70	-1.00	1.00
Delta SRS Subs.	3,768	0.20	0.36	-0.32	0.83
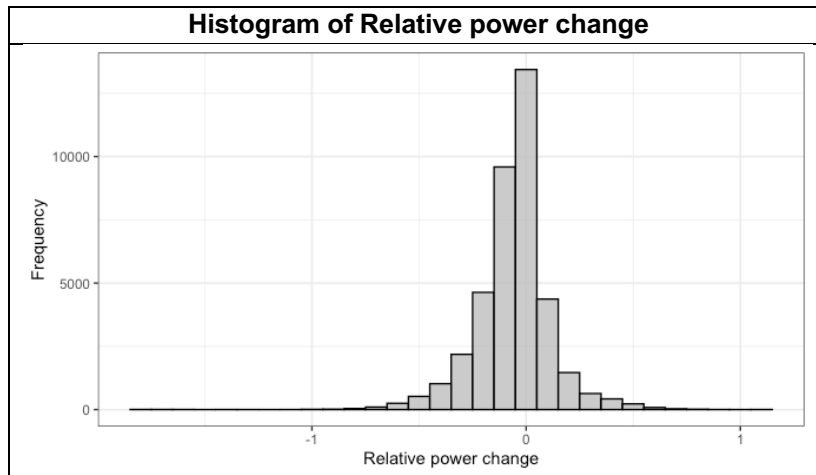
Figure A2. Frequency of observations relative power variable at different levels

Table A2. Analysis with Overtook -measure, LPM models, DV = BIT deviation

	LPM1	LPM2	LPM3	LPM4
Overtook (weaker)	**0.0162****	-0.0179	**0.0246***	0.0246
	(0.0060)	(0.0256)	(0.0121)	(0.0212)
Overtook (stronger)	0.0050	0.0050	0.0030	0.0030
	(0.0154)	(0.0154)	(0.0319)	(0.0102)
ISDS Respondent cum. (stronger)	**0.0005*****	**0.0005*****	-0.0000	-0.0000
	(0.0001)	(0.0001)	(0.0002)	(0.0003)
ISDS Respondent cum. (weaker)	**0.0008*****	**0.0008*****	**0.0009*****	**0.0009*****
	(0.0001)	(0.0001)	(0.0002)	(0.0003)
GDP growth (stronger)	**0.0003***	**0.0003***	0.0003	0.0003
	(0.0002)	(0.0002)	(0.0005)	(0.0004)
GDP growth (weaker)	0.0000	0.0000	0.0002	0.0002
	(0.0001)	(0.0001)	(0.0004)	(0.0003)
Law and order (stronger)	**0.0029***	**0.0029***	0.0007	0.0007
	(0.0014)	(0.0014)	(0.0028)	(0.0023)
Law and order (weaker)	**0.0053****	**0.005*****	**0.0108*****	**0.0108*****
	(0.0013)	(0.0013)	(0.0026)	(0.0025)
Overtook (weaker)*ISDS Respondent cum. (weaker)		-0.0001		
		(0.0005)		
Overtook (weaker)*GDP growth (weaker)		0.0004		
		(0.0007)		
Overtook (weaker)*Law and order (weaker)		0.0087		
		(0.0062)		
FDI outflows % of GDP (stronger)			-0.0001	-0.0001
			(0.0001)	(0.0001)
FDI outflows % of GDP (weaker)			0.0000	0.0000
			(0.0001)	(0.0001)
Democ. accountability (stronger)			-0.0007	-0.0007
			(0.0029)	(0.0027)
Democ. accountability (weaker)			**-0.0035***	**-0.0035***
			(0.0017)	(0.0017)
Socioeconomic conditions (stronger)			0.0006	0.0006
			(0.0013)	(0.0012)
Socioeconomic conditions (weaker)			-0.0002	-0.0002
			(0.0013)	(0.0011)
Government stability (stronger)			0.0011	0.0011
			(0.0011)	(0.0010)
Government stability (weaker)			-0.0006	-0.0006
			(0.0010)	(0.0008)
Leader transition (stronger)			-0.0015	-0.0015
			(0.0043)	(0.0038)
Leader transition (weaker)			-0.0055	**-0.0055.**
			(0.0037)	(0.0031)
SOLS change (stronger)			0.0042	0.0042
			(0.0050)	(0.0051)
SOLS change (weaker)			-0.0006	-0.0006
			(0.0046)	(0.0035)
Leftist executive (stronger)			-0.0010	-0.0010
			(0.0025)	(0.0028)
Leftist executive (weaker)			**-0.0086****	**-0.0086***
			(0.0029)	(0.0036)
Bureaucratic quality (stronger)			0.0009	0.0009
			(0.0063)	(0.0049)
Bureaucratic quality (weaker)			-0.0018	-0.0018
			(0.0045)	(0.0034)
Year + BIT FEs	✓	✓	✓	✓
Dyad-clustered SEs				✓
Num. obs.	32802	32802	11841	11841
R^2 (full model)	0.1149	0.1150	0.1275	0.1275
Adj. R^2 (full model)	0.0568	0.0568	0.0478	0.0478
Num. groups: Year	34	34	34	34
Num. groups: BIT number	1979	1979	934	934

$^{***}p < 0.0001$; $^{**}p < 0.001$; $^{*}p < 0.01$; $^{.}p < 0.05$

Table A3. Comparing Linear probability models, Cox PH model, and Fixed Effects Logit model, DV=BIT deviation

	LPM1	LPM2	Cox PH	FE Logit
Relative power change $_{t-2}$	**0.1122*****	**0.0850****	**4.1054*****	**-10.9903***
	(0.0290)	(0.0279)	(1.2291)	(4.3016)
ISDS Respondent cum. (stronger) $_{t-2}$	**0.0005***	0.0002	**0.0292*****	**6.6841****
	(0.0002)	(0.0002)	(0.0054)	(2.1344)
ISDS Respondent cum. (weaker) $_{t-2}$	**0.0005***	**0.0005***	0.0112	**14.4765*****
	(0.0002)	(0.0002)	(0.0084)	(1.5402)
GDP growth (stronger) $_{t-2}$	**0.0003***	**0.0004***	**0.0380*****	**0.1137.**
	(0.0001)	(0.0001)	(0.0045)	(0.0656)
GDP growth (weaker) $_{t-2}$	**0.0002***	**0.0002.**	**0.0231*****	**-0.1346***
	(0.0001)	(0.0001)	(0.0047)	(0.0415)
Law and order (stronger) $_{t-2}$	0.0025	0.0018	-0.0701	-0.3605
	(0.0016)	(0.0016)	(0.0895)	(0.5337)
Law and order (weaker) $_{t-2}$	**0.0035***	**0.0034***	**0.1863****	**0.5532.**
	(0.0016)	(0.0015)	(0.0705)	(0.3084)
Relative power change*ISDS Respondent cum. (weaker) $_{t-2}$	**-0.0043*****	**-0.0039***	**-0.1891*****	**-9.8139*****
	(0.0012)	(0.0012)	(0.0539)	(1.3798)
Relative power change*GDP growth (weaker) $_{t-2}$	**-0.0023*****	**-0.0026*****	**-0.1697*****	**-0.2701.**
	(0.0007)	(0.0007)	(0.0229)	(0.1455)
Relative power change*Law and order (weaker) $_{t-2}$	**-0.0242***	**-0.0224***	**-0.7380***	**-2.4825***
	(0.0074)	(0.0073)	(0.3133)	(0.9248)
FDI outflows % of GDP (stronger) $_{t-2}$	-0.0000	-0.0000	-0.0042	0.0350
	(0.0000)	(0.0000)	(0.0056)	(0.0232)
FDI outflows % of GDP (weaker) $_{t-2}$	0.0000	0.0000	-0.0014	**0.1750***
	(0.0001)	(0.0001)	(0.0084)	(0.0791)
Democ. accountability (stronger) $_{t-2}$	0.0019	0.0007	**0.2159***	-0.0866
	(0.0015)	(0.0016)	(0.0871)	(0.4662)
Democ. accountability (weaker) $_{t-2}$	-0.0002	-0.0005	**0.1178***	**1.1290***
	(0.0009)	(0.0009)	(0.0562)	(0.3552)
Socioeconomic conditions (stronger) $_{t-2}$	**0.0016***	**0.0020***	**0.0971***	**0.9883*****
	(0.0007)	(0.0007)	(0.0486)	(0.2208)
Socioeconomic conditions (weaker) $_{t-2}$	**0.0015***	0.0006	-0.0122	**0.3874***
	(0.0007)	(0.0007)	(0.0413)	(0.1714)
Government stability (stronger) $_{t-2}$	0.0004	-0.0002	**-0.1213***	-0.0085
	(0.0006)	(0.0007)	(0.0484)	(0.1488)
Government stability (weaker) $_{t-2}$	-0.0002	-0.0005	**-0.0632.**	0.1196
	(0.0005)	(0.0005)	(0.0372)	(0.1566)
Leader transition (stronger) $_{t-2}$	-0.0021	-0.0014	**-0.4419.**	-0.2271
	(0.0024)	(0.0025)	(0.2493)	(0.3435)
Leader transition (weaker) $_{t-2}$	**-0.0046***	**-0.0054***	**-0.7009***	-0.1186
	(0.0019)	(0.0019)	(0.3254)	(0.3769)
SOLS change (stronger) $_{t-2}$	0.0051	0.0041	**0.8054***	**1.3353***
	(0.0032)	(0.0033)	(0.2879)	(0.4148)
SOLS change (weaker) $_{t-2}$	0.0034	**0.0046.**	**0.6552.**	**1.0977***
	(0.0025)	(0.0025)	(0.3702)	(0.5196)
Bureaucratic quality (stronger) $_{t-2}$	0.0039	0.0033	**-0.2838***	-1.0205
	(0.0032)	(0.0041)	(0.1182)	(1.6881)
Bureaucratic quality (weaker) $_{t-2}$	0.0007	0.0009	-0.1199	0.4720
	(0.0023)	(0.0022)	(0.0965)	(0.7907)
Year FEs	✓	✓		
BIT FEs	✓			✓
Dyad FEs		✓		
Num. obs.	29116	29116	29116	29116
R^2 (full model)	0.1238	0.0868		
Adj. R^2 (full model)	0.0617	0.0252		
Num. groups: Year	34	34		
Num. groups: BIT number	1871			
Num. groups: Dyad		1784		
AIC			5501.5370	228.2673
R^2			0.0061	0.0399
Num. events			284	284

***p < 0.0001; **p < 0.001; *p < 0.01; ·p < 0.05; LPM1 SEs clustered at dyad-level; reported coefficients of Cox PH model are the betas of the hazard model, positive values corresponding to increased hazard of BIT deviation

Table A4. Comparing LPM results with a subset containing only North-South BITs

	LPM1	LMP, North-South
Relative power change	**0.1614***	**0.3280***
	(0.0533)	(0.0767)
ISDS Respondent cum. (stronger)	-0.0000	-0.0002
	(0.0003)	(0.0004)
ISDS Respondent cum. (weaker)	**0.0007***	-0.0001
	(0.0003)	(0.0004)
GDP growth (stronger)	0.0001	-0.0000
	(0.0004)	(0.0006)
GDP growth (weaker)	0.0001	0.0002
	(0.0003)	(0.0003)
Law and order (stronger)	0.0005	-0.0034
	(0.0023)	(0.0031)
Law and order (weaker)	**0.0077***	**0.0074***
	(0.0023)	(0.0028)
Relative power change*ISDS Respondent cum. (weaker)	**-0.0071***	**-0.0158***
	(0.0025)	(0.0041)
Relative power change*GDP growth (weaker)	**-0.0097***	**-0.0091 ***
	(0.0022)	(0.0028)
Relative power change*Law and order (weaker)	**-0.0362 ***	**-0.0925***
	(0.0129)	(0.0197)
FDI outflows % of GDP (stronger)	-0.0001	-0.0000
	(0.0001)	(0.0002)
FDI outflows % of GDP (weaker)	0.0000	-0.0001.
	(0.0001)	(0.0000)
Democ. accountability (stronger)	0.0000	0.0006
	(0.0026)	(0.0044)
Democ. accountability (weaker)	**-0.0034***	-0.0026
	(0.0016)	(0.0021)
Socioeconomic conditions (stronger)	0.0014	0.0028.
	(0.0012)	(0.0017)
Socioeconomic conditions (weaker)	-0.0011	**-0.0030***
	(0.0011)	(0.0014)
Government stability (stronger)	0.0013	0.0004
	(0.0010)	(0.0013)
Government stability (weaker)	-0.0003	0.0008
	(0.0008)	(0.0011)
Leader transition (stronger)	-0.0014	0.0018
	(0.0038)	(0.0057)
Leader transition (weaker)	**-0.0052.**	-0.0056
	(0.0031)	(0.0040)
SOLS change (stronger)	0.0049	0.0025
	(0.0052)	(0.0072)
SOLS change (weaker)	-0.0017	0.0016
	(0.0034)	(0.0046)
Leftist executive (stronger)	-0.0004	0.0027
	(0.0028)	(0.0033)
Leftist executive (weaker)	**-0.0068***	**-0.0100***
	(0.0033)	(0.0045)
Bureaucratic quality (stronger)	0.0033	0.0054
	(0.0047)	(0.0064)
Bureaucratic quality (weaker)	-0.0002	-0.0009
	(0.0032)	(0.0041)
Year + BIT FEs	✓	✓
Num. obs.	11594	8094
R^2 (full model)	0.1365	0.1643
Adj. R^2 (full model)	0.0562	0.0818
Num. groups: Year	34	34
Num. groups: BIT number	928	669

$^{***}p < 0.0001$; $^{**}p < 0.001$; $^{*}p < 0.01$; $^{.}p < 0.05$

Table A5. Comparing different ISDS measures, Linear Probability models with dyad-clustered SEs, DV = BIT deviation

	Model 1	Model 2	Model 3	Model 4
Independent effects				
Relative power change	0.0606	**0.1577***	0.0200	0.0390
	(0.0518)	(0.0621)	(0.0609)	(0.0569)
ISDS Respondent (stronger)	**-0.0023****			
	(0.0007)			
ISDS Respondent (weaker)	**0.0030****			
	(0.0010)			
ISDS Respondent cum. (stronger)		-0.0001		
		(0.0003)		
ISDS Respondent cum. (weaker)		**0.0009***		
		(0.0004)		
ISDS Respondent any (stronger)			0.0029	
			(0.0058)	
ISDS Respondent any (weaker)			0.0054	
			(0.0045)	
ISDS Home cum. (stronger)				-0.0001
				(0.0002)
ISDS Home cum. (weaker)				0.0031
				(0.0020)
GDP growth (stronger)	0.0003	-0.0001	0.0001	0.0001
	(0.0005)	(0.0005)	(0.0005)	(0.0005)
GDP growth (weaker)	0.0002	0.0001	0.0002	0.0002
	(0.0004)	(0.0004)	(0.0004)	(0.0003)
Law and order (stronger)	0.0025	0.0008	0.0022	0.0014
	(0.0030)	(0.0030)	(0.0030)	(0.0030)
Law and order (weaker)	**0.0083****	**0.0115*****	**0.0084****	**0.0089*****
	(0.0026)	(0.0029)	(0.0026)	(0.0026)
Interaction effects				
Relative power change*ISDS Respondent (weaker)	**-0.0256***			
	(0.0100)			
Relative power change*ISDS Respondent cum. (weaker)		**-0.0074****		
		(0.0027)		
Relative power change*ISDS Respondent any (weaker)			0.0183	
			(0.0222)	
Relative power change*ISDS Home cum. (weaker)				-0.0017
				(0.0073)
Relative power change*GDP growth (weaker)	**-0.0079*****	**-0.0090*****	**-0.0075****	**-0.0075****
	(0.0023)	(0.0023)	(0.0023)	(0.0024)
Relative power change*Law and order (weaker)	**-0.0242.**	**-0.0392***	**-0.0229.**	-0.0220
	(0.0135)	(0.0154)	(0.0138)	(0.0134)
Controls	✓	✓	✓	✓
Year + BIT FEs	✓	✓	✓	✓
Num. obs.	9554	9554	9554	9554
R^2 (full model)	0.1701	0.1730	0.1677	0.1684
Adj. R^2 (full model)	0.0808	0.0840	0.0782	0.0789
Num. groups: Year	33	33	33	33
Num. groups: BIT number	868	868	868	868

***p < 0.0001; **p < 0.001; *p < 0.01; ·p < 0.05

Table A6. The effect of bargaining power on SRS in new BITs

DV:	Delta SRS Subs.	Delta SRS Subs.	Delta SRS ISDS	Delta SRS ISDS
Relative power change	**-1.1260****	-0.3846	-0.6540	-0.7141
	(0.3829)	(0.7637)	(0.8010)	(0.9130)
ISDS Respondent cum. (stronger)	-0.0005	0.0030	0.0009	0.0037
	(0.0023)	(0.0028)	(0.0033)	(0.0035)
ISDS Respondent cum. (weaker)	0.0057	**-0.0293***	0.0082	**-0.0353****
	(0.0079)	(0.0119)	(0.0101)	(0.0135)
GDP growth (stronger)	**-0.0182*****	**-0.0206****	**-0.0294*****	**-0.0348*****
	(0.0041)	(0.0068)	(0.0060)	(0.0085)
GDP growth (weaker)	-0.0019	0.0007	0.0030	-0.0056
	(0.0032)	(0.0063)	(0.0056)	(0.0067)
Law and order (stronger)	-0.0271	-0.0443	-0.0395	**-0.1045.**
	(0.0246)	(0.0416)	(0.0396)	(0.0551)
Law and order (weaker)	**-0.0654****	**-0.1135****	**-0.0856***	**-0.1620*****
	(0.0253)	(0.0375)	(0.0400)	(0.0441)
Relative power change*ISDS Respondent cum. (weaker)	-0.0329	**-0.1099****	-0.0358	**-0.1389****
	(0.0269)	(0.0376)	(0.0480)	(0.0475)
Relative power change*GDP growth (weaker)	0.0144	0.0093	-0.0163	0.0477.
	(0.0132)	(0.0195)	(0.0312)	(0.0259)
Relative power change*Law and order (weaker)	**0.2968*****	0.1499	**0.3911.**	0.2633
	(0.0878)	(0.1557)	(0.1997)	(0.1932)
FDI outflows % of GDP (stronger)		**0.0029***		**0.0034***
		(0.0012)		(0.0015)
FDI outflows % of GDP (weaker)		0.0116		0.0096
		(0.0117)		(0.0146)
Democ. accountability (stronger)		0.0222		-0.0042
		(0.0293)		(0.0369)
Democ. accountability (weaker)		**0.0325.**		0.0149
		(0.0192)		(0.0259)
Socioeconomic conditions (stronger)		-0.0013		0.0013
		(0.0184)		(0.0237)
Socioeconomic conditions (weaker)		-0.0025		0.0028
		(0.0212)		(0.0289)
Government stability (stronger)		0.0229		0.0176
		(0.0142)		(0.0194)
Government stability (weaker)		**-0.0287***		**-0.0277.**
		(0.0130)		(0.0152)
Leader transition (stronger)		**-0.0918****		**-0.1148****
		(0.0333)		(0.0430)
Leader transition (weaker)		0.0444		0.0596
		(0.0287)		(0.0369)
SOLS change (stronger)		**0.0649.**		0.0637
		(0.0375)		(0.0469)
SOLS change (weaker)		-0.0189		-0.0421
		(0.0359)		(0.0443)
Leftist executive (stronger)		-0.0114		-0.0531
		(0.0346)		(0.0496)
Leftist executive (weaker)		0.0120		-0.0095
		(0.0467)		(0.0539)
Bureaucratic quality (stronger)		**0.1258***		**0.2226****
		(0.0613)		(0.0832)
Bureaucratic quality (weaker)		**0.0976.**		**0.1886***
		(0.0538)		(0.0848)
Year FEs	✓	✓	✓	✓
Num. obs.	1994	844	1994	844
R^2 (full model)	0.3301	0.5809	0.3638	0.5947
Adj. R^2 (full model)	0.3160	0.5505	0.3504	0.5653
Num. groups: Year	32	32	32	32

***p < 0.0001; **p < 0.001; *p < 0.01; ·p < 0.05