Conflicted Capital: The Effect of Civil Conflict on Patterns of BIT-signing

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Abstract

Why do developing countries commit to costly international agreements? Massive arbitral awards and the discovery that rich countries write investment rules has led to a newfound appreciation of the costs of bilateral investment treaties (BITs). Yet, developing countries continue to sign them. This paper advances a novel argument for why some governments sign potentially costly agreements. We argue that civil conflict changes the decision calculus of governments by rendering them domestically insecure. This insecurity makes governments more willing to sign agreements, like BITs, that sacrifice future policy autonomy. BITs can attract foreign direct investment (FDI) and signal competence, which have important domestic political benefits. BITs are also attractive post-conflict since they can be copied quickly from past templates and require few *ex ante* policy changes. Empirical tests of over 150 countries from 1960-2013 demonstrate that governments sign more BITs after civil conflict. Additional tests indicate that post-conflict BITs can increase FDI inflows, especially after devastating conflict. Our results provide a unique perspective on why governments cede sovereignty to international institutions.

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1 Introduction

Scholars and practitioners see capturing a slice of the global market for Foreign Direct Investment (FDI) – $1.8 trillion dollars of capital in 2015 – as important for developing countries to promote economic growth and integrate into the global economy (UNCTAD 2016). There is, however, no focal international organization governing the flow of FDI. Instead, over the past 50 years, governments have signed nearly 3,000 Bilateral Investment Treaties (BITs), in effect creating a decentralized legal regime for the protection of investment. BITs are thought to increase signatory FDI flows since they include legal obligations that "tie the hands" of governments to respect sunk investments (see Salacuse and Sullivan 2005; Buthe and Milner 2009; Kerner 2009). Yet, BITs are costly: governments must surrender their future policy autonomy and submit to provisions – including the possibility of being sued at international arbitration bodies – that can lead to direct and consequential damages.

In recent years, the high-profile rise of investor state dispute settlement (ISDS) has led many to question whether the benefits of BITs outweigh the costs. Several countries – notably Indonesia, South Africa, and Poland –have begun to reevaluate their BIT programs, in some cases repudiating past agreements (see Jakarta and Donnan 2014; Peterson 2015; Schlemmer 2015; Waldoch and Onoszko 2016). Despite these concerns, governments continue to sign BITs.[1] Early explanations of BIT-signing focused on credible commitment making on the part of capital-seeking developing countries (Salacuse and Sullivan 2005; Elkins, Simmons, and Guzman 2006). But some more recent explanations focus on the power and preferences of rich, capital exporters (Allee and Peinhardt, 2010; Allee and Lugg 2016a). These approaches generate different predictions concerning the desirability of BITs. The credible commitment approach suggests that BITs help developing country governments constructively engage the world economy, whereas the power and preferences approach suggests that BITs are often lop-

[1] 25 new BITs were signed in 2015 according to UNCTAD's International Investment Agreement (IIA) database.

sided, which can undermine state sovereignty and lead to costly arbitration.

How can we make sense of these different perspectives on the desirability of BITs? Why, given the potentially steep costs of BITs, do developing countries continue to sign them? We offer a unique perspective explaining why governments sign BITs. We posit that governments face a trade-off when deciding whether to sign a BIT: they must balance their future policy autonomy against the potential benefits of the agreement. During normal times, governments can be selective and bargain hard for the preservation of their autonomy. However, the onset of civil conflict fundamentally changes a government's calculus. Conflict makes governments insecure, which forces a reevaluation of the policy autonomy they are willing to sacrifice and the time-horizon of their policy choices. After civil conflict, governments discount the costs of policy autonomy relative to the short-term political and economic gains that BITs may provide.

The policy choices that leaders make during and immediately after conflict can determine whether a state plunges into a cycle of poverty and violence – the poverty-conflict trap – or attains economic recovery and stability (Blomberg and Hess 2002; Collier et al., 2003; Flores and Noorudin 2009; Walter 2015). In this context, BITs are desirable policy choices. Not only can they generate capital flows to help boost the economy, but they also signal to domestic audiences that the government is actively working to strengthen the economy. Furthermore, several design features of BITs make them unique. First, BITs can be negotiated and signed quickly. Recent research demonstrates that governments frequently "copy-paste" agreement language (see Allee and Elsig 2015; Allee and Lugg 2016b). BITs, therefore, can be negotiated and signed quickly by diplomats and often en-masse (see Poulsen 2015). Second, the costs of BITs are slow to be realized since arbitration depends upon a case being brought and typically take several years to work through the system (see Schreuer 2004).

Empirical analyses demonstrate the plausibility of our argument. Results of negative binomial regression models across a broad sample of countries from 1960 and 2013 indicate that governments in the post-conflict setting sign more BITs than other governments. Further,

regression estimates indicate that BITs signed in the post-conflict period attract more FDI than BITs signed at other times. However, this effect is conditional on the intensity of conflict that precedes BIT signing.

The argument and evidence advanced here increases our understanding of why governments accede to costly international institutions like BITs. Extant research on BITs tends to prioritize one side of ledger – either the costs or benefits – without appreciating that their appeal likely changes with the domestic conditions facing governments. Similarly, understanding how conflict impacts the incentives of governments helps us better understand how and when states engage with international institutions more generally. This corroborates recent scholarship showing that domestic conditions such as crises have important effects on government behavior (e.g. Simmons 2014). We suggest that certain institutions – BITs in this case – may be especially appealing due to inherent design features. We also add an important dimension to the literature on post-conflict recovery. Our findings suggest that some governments view engagement with international economic institutions as a key aspect of their overall effort to break the conflict-trap and that these efforts can be efficacious.

2 The Rise of BITs

Many governments view generating FDI inflows as central to their economic development plans. Total flows have increased dramatically in recent years and the share destined for developing countries has increased to about 50 percent of the total in recent years (UNCTAD 2016). International organizations like the World Bank and UNCTAD tout the benefits of fostering investment friendly policies and most governments have followed suite by opening Investment Promotion Agencies (IPAs) and enacting policies specifically aimed at attracting FDI (see Morisset and Andrews-Johnson 2004; Jensen et al., 2014).[2] Research has

[2] The role of international organizations in this process is perhaps best captured by the growing role and importance of indicators measuring investment climates cross-nationally. The World Bank's "Doing Business In" indicators are perhaps the best known.

largely confirmed that FDI benefits developing countries, particularly when it promotes technology transfer and jobs in export-oriented sectors of the economy (see Alfaro et al., 2004; Hansen and Rand 2006; Lee and Chang 2009).

One approach that many countries have taken to increase their FDI inflows is to sign legally binding BITs. After the first BIT was signed in 1959, they began to replace earlier devices like Friendship, Commerce, and Navigation (FCN) treaties that sought to protect rich country investment in the developing world. BITs, however, go much farther than these earlier treaties and customary international law in that they grant several important legal rights to investors. They include, but are not limited to: protection against expropriation, national treatment, most-favored nation status, streamlined entry and exit, and dispute settlement at arbitration bodies like the International Centre for the Settlement of Investment Disputes (ICSID) (see Dolzer and Schreuer 2012; UNCTAD 2007).[3]

From the 1960's through 1980's, BIT signing was limited, with most being signed between Western-European governments and poor states in the developing world, many of them former colonies (see Jandhyala et al., 2011). Beginning in the 1990's the use of BITs proliferated widely, with nearly 2,600 agreements signed by the mid-2000s alone (UNCTAD 2015). However, the pace of BIT signing has decreased somewhat in recent years, with most observers citing an increased appreciation of the costs of BITs as a key factor (See Jandhyala et al., 2011; Simmons 2014). UNCTAD (2015) has called this an "era of re-orientation" in the regime.

The literature tends to offer two broad explanations for the spread of BITs. The first approach stresses the incentives of developing country governments who desire to attract FDI inflows. According to this approach BITs represents a "credible commitment" to respect FDI once it is sunk in a host country (e.g. Buthe and Milner 2009 & 2014; Haftel 2010; Kerner 2009; Tobin and Rose-Ackerman 2010). They "tie the hands" of governments through their

[3] There are several possible venues for ISDS arbitration, including: the London Court of International Arbitration, the International Chamber of Commerce, and the Hong Kong International Arbitration Centre. ICSID, however, is by far the most used forum. As of September 2016 ICSID has heard 739 cases, of which approximately 26.5% have been decided against states. http://investmentpolicyhub.unctad.org/ISDS

explicit recourse to uncontested international law. This solves a time-inconsistency problem by assuring would-be investors that their investments will not be harmed by future policy changes (see Salacuse and Sullivan 2005; Kerner 2009). This reduces uncertainty for investors and allows capital to be efficiently (and safely) invested based on underlying economic factors. This logic has been extended to show that developing country governments became embroiled in a competition for capital during the 1990's that caused them to emulate their peers and sign many BITs (see Elkins, Guzman, and Simmons 2006; Jandhalya et al., 2011). Nonetheless, underlying these traditional explanations is the notion that BITs increase the credibility of governments and that extant patterns of BIT signing were driven by capital-seeking developing countries.

A more recent approach to understanding BIT-signing emphasizes the preferences of rich, capital-exporters in the developed world. Allee and Peinhardt (2010, 2014) find that stronger ISDS clauses are often thrust open developing countries in the context of asymmetric bargaining. Allee and Lugg (2016a) find that powerful countries are able to copy their preferred legal language from their "model BITs" when negotiating with poorer governments. Additionally, Alschner and Skougarevskiy (2016) show that developing countries are typically "rule takers" and Manger and Peinhardt (2014) show that capital-exporters are behind greater legal precision in the regime overall. These studies argue that the legal content of BITs is often favorable to rich country interests, which suggest that their preferences drove the spread of these agreements.

This shift in theorizing from a southern to a northern driven dynamic has served to highlight the costs of BITs – particularly of ISDS arbitration – for many governments. A recent study on ICSID cases, for example, finds that the average claim is roughly $490 million (usd) with an average award size of $87 million (Rosert 2014)[4]. Additionally, there have been several high profile claims in the billions of dollars, most notably the controversial $1.77 billion (usd) Occidental Petroleum decision versus Ecuador (see Vis-Dunbar 2013). Poulsen and Aisbett

[4] Claims are typically larger than the final arbitral awards. However, arbitral bodies often apply interest to claims, which can serve to inflate some award amounts.

(2013) find that some governments reduce their BIT-signing activity after being hit by an investment claim. Furthermore, others cite the growing costs of BITs as an explanation for the slowdown in the pace of signing in recent years (Jandhyala et al., 2011). Beth Simmons (2014), for example, argues that many governments acquiesced to "asymmetrical arbitration" without fully working through the costs and benefits. Further, Poulsen (2014, 2015), citing a growing appreciation of the costs, argues that bounded rationality approaches might best explain why many governments signed up to what seem now like lop-sided agreements.

A newfound appreciation of the costs appears to be motivating governments to reconsider their BIT programs. In a high-profile example, South Africa undertook a 3-year review of its BIT program and concluded that they were unnecessarily impinging on state sovereignty (see Carim 2013). The review itself states "the Executive entered into agreements that were heavily stacked in favor of investors without the necessary safeguards to preserve flexibility in a number of critical policy areas" (Department of Trade and Industry, 2009).[5] In response to the report the government passed an investment bill that terminated several early generation BITs and vowed to replace ISDS provisions (in past and future BITs) with a domestic legal framework (see Schlemmer 2015).[6] In response to an arbitration claim valued at over $1 billion (usd), Indonesia terminated 9 BITs and has stated its intent to terminate 58 remaining treaties (Jakarta and Donnan 2014; Peterson 2015).[7] Additionally, Poland recently announced it may cancel some BITs with EU countries (Waldoch and Onoszko 2016) and Australia briefly considered abandoning ISDS, in response to plain packaging arbitration brought by Philip Morris (Fitzgerald 2015). Overall, UNCTAD argues that governments are going through a "period of reflection, review and revision", noting that BITs are not "harmless political declarations" (2015).

Despite the newfound concerns with the costs of BITs, many studies find that they

[5] The report can be found here: https://pmg.org.za/policy-document/161/
[6] As of this writing South Africa has terminated BITs with the UK, Netherlands, Switzerland, Germany, France, Denmark, Austria, Belgium-Luxembourg, and Spain.
[7] The ICSID case Churchill Mining PLC and Planet Mining Pty Ltd v Republic of Indonesia is still pending as of the writing of this article. Case details can be found here: https://icsid.worldbank.org/apps/ICSIDWEB/cases/pages/casedetail.aspx?CaseNo=ARB/12/14%20and%2012/40

increase FDI inflows into developing countries (Buthe and Milner 2009; Kerner 2009; Salacuse and Sullivan 2005; Kerner and Lawerence 2014) and attracting FDI remains a key objective of most developing countries (UNCTAD 2016). Nonetheless, these flows are often conditional on compliance (Allee and Peinhardt 2011), ratification of the treaties (Haftel 2011) and partner choice (see Peinhardt and Allee 2012). Additionally, Tobin and Rose-Ackerman (2011) demonstrate that BITs may not be substitutes for weak institutions, as the credible commitment mechanism seems to imply, but rather serve as complements to domestic institutional reforms more generally.

In order to further understand the logic behind BIT-signing, several studies have begun to explore domestic political considerations. For example, Mazumder (2015) and Arias, Hollyer, and Rosendorff (2015) find that BITs prolong government tenure in autocracies, suggesting that there are domestic political advantages to BIT-signing. Additionally, Jensen and co-authors (2014) find that politicians are able to claim credit for MNC investment decisions. These insights stem from a long line of work in comparative political economy that posits a link between the domestic political incentives facing governments and the policy choices ultimately selected (Olson 1991; Jensen 2008; Bueno de Mesquita et al., 2005). This link is strengthened by formal models showing how domestic politics make international agreements more likely (e.g. Morrow 1991) and by empirical evidence showing that economic agreements signal policy competence to domestic audiences (e.g. Mansfield et al. 2002; Mansfield and Milner 2012).

A newfound appreciation of the costs backed by a growing sense that domestic political factors may underlie their use, points to an acute need for more theorizing on the determinants of BITs. Although some countries have denounced or intend to renegotiate their treaties, new agreements continue to be signed and most previous agreements remain in place.[8] Twenty-three new BITs were signed in 2015 and over 50 countries are currently revising their model agreements in anticipation of future rounds of treaty making (UNCTAD 2016). This points to

[8] Most agreements contain "sunset clauses" that continue to protect investment for a set amount of time (typically 10-20 years) after the treaty is no longer in force.

an acute need to understand why some governments are willing to accept the costs of international institutions, like BITs.

3 Civil Conflict and Political Survival

Domestic political crises are important determinants of government behavior (Acemoglu and Robinson 2006; Przeworski et al., 2000; Boix 2003; Haggard and Kaufman 1995). One of the most profound crises a government can face is large-scale political violence. Conflict leads to significant economic destruction and leaves in its wake persistent societal and economic ills (Collier, 1999; Collier et al., 2003; Collier and Hoeffler 2004).[9] If these losses are not recouped quickly countries risk falling into a "crisis" or "conflict" trap in which the economic impact of one crisis increases the probability of future crises (e.g. Cerra and Saxena, 2008; Blattman and Miguel, 2010; Hegre and Sambanis, 2006). This creates an acute dilemma for governments.

The fate of a government is closely linked to domestic economic performance in most countries. In particular, the survival of the political elite depends on their ability to distribute resources to key domestic constituencies (Bueno de Mesquita 2005). But generating economic growth and stability in the post-conflict setting is difficult. In order to distribute rents and maintain the loyalty of a winning coalition, governments need to fill the investment gap left from recent conflict and signal to supporters that future resources will be forthcoming. Generating capital indigenously is often hard in the aftermath of civil war (see Collier et al., 2003) and given the inherently long-term nature of foreign investment, most MNCs will perceive significant risks if a country has experienced recent conflict.

One way for a government to strengthen the economy is to enact policies that credibly commit the government to pursue investor-friendly policies and maintain stability (Flores and Nooruddin, 2009; Appel and Loyle, 2012). Given the importance of domestic institutions in

[9] Current estimates put the long-term damage of the average civil war at about 250% of GDP (see Colier 1999; Collier and Hoeffler, 2007).

generating economic growth (Barro, 1996; Sala-i Martin, 1997) political elites can attempt to alter the domestic-institutional landscape in order to attract investment and foster patterns of political participation that favor stability. However, domestic institutional change is typically slow (e.g. Acemoglu et al, 2001) and market actors often take time to revise their expectations about policy environments (e.g. Tomz 2007). Furthermore, many "good institutions" – including those associated with property rights protections like multiple veto-points and audience-cost generating elections – may be impractical to develop in the short term. Sudden democratization, for example, can result in instability (Huntington, 2006), which may increase the risk of civil war recurrence (Flores and Nooruddin, 2009, 2012) and the likelihood of interstate conflict (Mansfield and Snyder, 1995, 2007).

Enacting the right policies to facilitate economic growth and hence the longevity of the government is not straightforward. Growth is dependent on many long-term institutional changes and can be negatively impacted by developments in the global economy. Governments, therefore, occupy a precarious position after civil conflict: their political survival depends on quick economic recovery, but there are few viable short-term policy options.

In an effort to attract growth-enhancing foreign investment, governments in this situation can turn to signing BITs. They contain legally binding provisions for the protection (and facilitation) of FDI, including recourse to international arbitration bodies for aggrieved investors, which makes them a credible commitment to market actors. The main drawback, however, is that this commitment comes at a price: the government must surrender future policy autonomy and open themselves to potentially costly arbitration.

During normal times governments covet their sovereignty and are reluctant to accede to international institutions that infringe on their policy autonomy (e.g. Waltz 1979; Mearsheimer 1994). According to this perspective, developing country governments should only sign BITs

if the potential benefits a BIT will generate are enough to offset the costs of lost policy autonomy. Since most BITs take place between a poor "host" state and a rich "home" state, the expectation is that the strength of the legal commitments in the agreement should reflect the leverage that the richer state has over the poorer state (see Allee and Peinhardt 2010). When a poor country bargains with a large capital exporter like the United States or Germany, they are likely to accede to a relatively lop-sided agreement, whereas the agreement should be more equal if the negotiations are with a similarly sized partner.

The key insight is that governments should only sign BITs that satisfy a utility function with respect to the trade-off between the gains the agreement might generate and the lost autonomy of the legal commitment. During normal times, governments can be selective about BIT partners and should bargain hard so that they do not sacrifice too much sovereignty in any final, negotiated agreement.

Civil conflict changes the nature of this trade-off facing governments. Leaders in the aftermath of civil conflict are insecure and face dim prospects for economic growth. In effect, the time horizon of their anticipated rule is much shorter after conflict than before, which drastically changes their policy incentives with regards to international institutions (Blake 2013). This insecurity shifts the preferences of the government making them much more likely to cede sovereignty in exchange for the potential short-term benefits that BITs can provide. In effect, governments become "BIT-takers" after civil conflict and will seek out BITs that were previously infeasible.

Any influx of capital into the country should help jump-start economic growth. Capital accumulation is a prime mechanism for generating growth in neo-classical growth models (see Barro 1997) and FDI is thought to be particularly valuable when it leads to local technology transfers (e.g. Alfaro et al., 2004). The beneficial effects of capital on the economy should help a government's longevity. Economic growth can be used to provide benefits to the

government's supporters and recent research has shown that adroit leaders can claim credit for the investment decisions of MNCs (e.g. Jensen et al., 2014). For democratic governments, economic growth and employment serve as important public goods that can help maintain their rule (Bueno de Mesquita et al., 2005). But even in autocracies, the economic impact of a BIT can be diverted to providing rents to the government's supporters (Mazumder, 2015). Further, there is ample reason to believe that international organizations and business analysts take into account developing country participation in BITs when they make assessments of their overall credibility (Dreher and Voigt, 2011), which can send an important signal to international market actors. In sum, the direct economic effects of a BIT should help a government, regardless of regime type, stay in power after a civil war.

The desirability of a BIT is not limited to its direct economic benefits. A variety of research into international economic agreements has shown that visible international treaties are important due to the signal they send to domestic audiences. Mansfield and Milner (2012) argue that PTAs have an important effect on domestic politics by reassuring the public that the government is enacting credible foreign economic policies (see also Mansfield et al., 2002; Milner and Kubota 2005). They also argue that this informational role of economic agreements is particularly pronounced after periods of economic crisis (Mansfield and Milner 2014). There is ample reason to believe that BITs can play a similar informational role as PTAs. They were touted by a variety of western, liberal IOs and were signed by many in the developing world as a commitment to policies associated with the "Washington consensus" (see Poulsen 2015). Furthermore, most negotiated treaty texts are collected and published by the government and by UNCTAD, and treaty signature is often reported on by news agencies in both home and host states.

Beyond the positive economic and signaling effects several design features of BITs make them particularly attractive for governments. A first advantage is the quickness with which they can be negotiated after conflict. BITs are heterogeneous in the number and type of

commitments they specify (Allee and Peinhardt 2014), but they are much shorter and there is considerably less variation in their content than in other economic integration agreements a government may wish to negotiate and sign. For example, the average length of a BIT is in the 3,000 word range, whereas, the average PTA is over 14,000 words long and many newer-generation agreements exceed 100,000 words.[10] Furthermore, capital-exporters often publish and maintain so-called model BITs that they make available prior to negotiations (see Brown 2013).[11] The content of these model treaties represents the ideal preferences of the government and can be pulled off the shelf in negotiations. A government can open diplomatic channels with a model-wielding capital exporter and circumvent much of the hard bargaining that would need to take place in normal times and for other types of agreements. This claim is buoyed considerably by recent research demonstrating the ubiquitous copy-pasting in PTAs (Allee and Elsig 2015; Allee and Lugg, 2016b) and between model and negotiated BITs (Allee and Lugg 2016a). Additionally, research by Poulsen (2015) shows that governments often sign treaties on relatively short diplomatic visits or at summit meetings.

BITs are a relatively quick and easy policy device for governments emerging from civil conflict. Government agents can seek out partners with models or similar preferences and then sign treaties during relatively routine diplomatic visits by either adopting the other government's model or copy-pasting from older treaties. Furthermore, since BITs are international treaties, diplomats can sign them on short-foreign stays or at summit meetings. These treaties can then be touted to the government's supporters in a demonstration of activity and competence.

Another desirable feature of BITs is that one of the primary costs of the treaty – the possibility of international arbitration – is unlikely to be realized in the short-term. Unlike many other international agreements, BIT signatories typically do not have to make any *ex ante* policy adjustments (Haftel 2010) and there is often a long process to trigger arbitral proceedings in a BIT. First, there is a waiting period, which can last up to a year, and then the

[10] We analyze approximately 650 BITs and find that their mean length is 3,380 tokens (words with punctuation removed). In contrast, the mean length of approximately 438 PTAs contained in the DESTA database is 14,340. It is important to note, that many of the PTAs analyzed are older-generation bi-lateral agreements between developing countries. Newer generation PTAs are typically in the 100,000 word plus range.

[11] These models typically undergo a public review period where domestic industries and other interested parties can recommend changes to treaty language (see UNCTAD 2015).

parties have to decide on the venue and a variety of other rules and procedures (Schreuer 2004). The arbitration itself can also be lengthy, with the average ICSID case taking 3.6 years (Sinclair et al., 2009). The cost structure of BITs means that a cash-strapped government with a short-time horizon can accede to BITs without having to worry about the costs in the short-term.

The economic and political effects of BITs make them particularly desirable for governments who have recently experienced civil conflict. Leaders should be more willing to sacrifice sovereignty when their tenure is insecure and will actively seek out BITs, which can be signed quickly and with limited negotiating effort. The economic effects of BITs can help reward key domestic constituencies and send a positive signal that the government is enacting policies that will create favorable economic conditions. Relative to domestic institutional reform and other economic agreements, like PTAs, BITs can be signed with relative ease on short diplomatic visits. Overall, BITs represent a rational response by governments facing a unique governance dilemma generated by civil conflict.

3 Data and Methods

In order to test the effect of civil conflict on BIT-signing, we motivate and test several regression models. The primary dependent variable is coded from the United Nations Conference of Trade and Development (UNCTAD) International Investment Agreement (IIA) database.[12] *BITs Signed* tracks the count of BITs signed per country in a given year between 1960 and 2013. Depicted in Figure 1, this variable is significantly right-skewed with the average country signing between zero and one BIT per year.[13]

[Figure 1 about here]

Years Since Any Conflict is our primary independent variable and is derived from the UCDP/PRIO Armed Conflict dataset (Pettersson et al. 2015). It represents the number of years

[12] The total number of BITs in the dataset between 1960 and 2013 is 2807.
[13] A full set of summary statistics are presented in Table A.1 in the appendix.

since the incidence of any civil conflict within a country. Incidence here is defined as an ongoing conflict incurring at least 25 battle deaths. This variable takes the value of 1 in the year after a conflict's end and counts subsequent years of peace thereafter. Importantly, the relationship between *Years Since Any Conflict* and *BITs Signed* is curvilinear since highly developed countries where conflict is unlikely tend to sign BITs with developing countries where conflict is more prevalent. We model this non-linearity explicitly by including the variable *Years Since Any Conflict Sqd.*

In a separate set of tests, we included the variable *Years Since High Intensity Conflict* and its square. This variable tracks the number of years since a civil conflict incurring at least 1,000 battle deaths. As conflict intensity increase, the economic destruction incurred likely increases. This variation therefore allows for testing of heterogeneity of post-conflict BIT signing behavior stemming from variation in conflict intensity.

A number of control variables enter the model in order to isolate the effect of the primary independent variable. In the baseline specification, *Polity* is included to control for regime type. This variable ranges from -10 (autocratic) to 10 (democratic) and captures variation in political institutions cross-nationally and over time (Marshall et al. 2014). Democratic regimes may be more receptive to international liberalization and the signing of international economic agreements. However, autocratic regimes may be more prone to utilize BITs as substitutes for their domestic institutional structure (Neumayer and Spess 2005). Given the potential for regime type to influence *BITs Signed* in both directions, no initial expectation is made. Second, *ln(per Capita GDP)* is included to control for variation in levels of development and propensity to sign BITs. For example, poor, capital-scarce countries may be generally more apt to sign BITs in an effort to make up for their weak market position. Finally, a dummy variable for membership in the Organization for Cooperation and Development (OECD) is included to control for the specific characteristics of highly developed countries, who tend to sign BITs as capital exporters rather than capital importers (Ellkins et al. 2006).

In the next specification, we include a variable for the total number of preferential trade agreements signed by the country – *Total PTAs* – in order to control for a state's general propensity to engage in the international political arena. It is expected that this variable will be positively related to BITs per year. Additionally, *Global BITs* is added to control for international diffusion mechanisms (Ellkins et al. 2006). These variable tallies the total number of BITs signed in the global economy in a given year and should yield a positive coefficient. In the third specification, *Net Trade* and *Net Oil Exports* are included to control for variation in economic structure. Importantly, each specification is estimated separately and then jointly in order to assess the robustness of the estimates. Finally, we estimate the full model swapping in *Law and Order* for *Polity*. This measure ranges from 0 to 6 and is compiled by the PRS Group to track variation in strength of legal and political institutions within a country. Credible commitment logic implies that states with poor reputations for law and order will be particularly likely to substitute international law by signing BITs.

Given the count nature of the dependent variable, we employ a negative binomial regression model (Long 1997). The negative binomial is preferable to other types of count models for at least three reasons. First, if a country signs one agreement with another country in a given year, they cannot (under normal circumstances) sign another agreement in that same year with the same country. Effectively, each BIT signed per year reduces the potential supply of additional BITs. Second, signing a BIT with one country makes a signee more likely to sign BITs with additional countries. Finally, the dependent variable is overdispersed, making the use of a standard poisson distribution inappropriate; the negative binomial corrects for this issue.[14]

[14] The presence of overdispersion was confirmed using the `dispersiontest` in the `AER` package in R. The dispersion parameter α from the baseline model was estimated to be 2.40.

4 Results

Our primary regression results are presented in Table 1. Model 1 presents the baseline negative binomial estimates. As indicated by the negative coefficient on the *Years Since Any Conflict* variable, as time progresses post-conflict, countries tend to sign fewer BITs, all else equal. However, the positive sign on the variable *Years Since Any Conflict* Squared implies that this negative relationship turns positive after a number of years post-conflict. Both of these variables are statistically significant at the 0.01 level. Turning to the control variables, *Polity* is positively related to the number of BITs signed and is statistically significant at the 0.05 level. *Ln(GDP per Capita)* is also positive and strongly significant, while the *OECD* dummy variable is strongly negative.

[Table 1 about here]

Figure 2 plots the predicted number of BITs signed at varying levels of *Years Since Any Conflict*. As recommended by Hanmer and Kalkan (2013), all other variables are held at their observed values in the sample. Confidence intervals (95 percent) are plotted around the estimated curve. Governments emerging from conflict are predicted to sign more than 1 BIT per year. As time progresses, the predicted count falls to its minimum at around 0.7 BITs near year 20. At this point, the curve begins the positive turn towards its maximum at around 2 BITs per year. Thus, only countries with the greatest years of peace in the sample sign more BITs than those recovering from civil conflict.

[Figure 2 about here]

Figure 3 plots the marginal effects of 5-year discrete changes in *Years Since Any Conflict.*[15] A country moving from the immediate post-conflict period to 5 years post-conflict is estimated to

[15] Confidence intervals (95 percent) are plotted around marginal effect estimates. All intervals that do not cross the

sign nearly 0.20 less BITs per year. Compared to a country 5 years post-conflict, a country 10 years removed is estimated to sign around 0.12 less BITs per year. Additional 5-year increases away from conflict diminish the marginal effect of similarly. After 25 years of peace, the marginal effect of a 5-year discrete change turns positive. In sum, as countries move away from the immediate post-conflict period, the marginal effect of *Years Since Conflict* decreases until around 30 years of peace.

Depicted in Figure 4, the marginal effects of 5-year discrete changes in *Years Since High Intensity Conflict* are substantively similar.[16] Interestingly, leaders emerging from highly destructive conflict exhibit slightly less pro-BIT behavior in the post-conflict setting. This finding suggests that governments who have experienced considerable destruction in their societies may lack the diplomatic capacity to engage in the same level of BIT-signing as governments who have experienced a less destructive conflict.

[Figure 3 about here]

To make the substantive significance of these estimates clear, consider the following examples. Imagine a non-OECD democratic country with a per capita income of around $1,500. This is comparable to countries like Nicaragua and Indonesia between 2000 and 2010. In the period between conflict termination and 5 years of peace, this hypothetical country is expected to sign nearly 7 total BITs. Compare this to the interval between years 20 and 25 post-conflict for the same country in which it is estimated that only 4 total BITs will be signed. Thus, a 20-year shift away from conflict nearly halves the predicted number of BITs signed. Compare this further to the estimated behavior of countries typically considered to be strongly pro-BIT like South Korea in the early 1990s. This type of country had experienced a relatively long period of sustained peace (around 40 years for South Korea), was moving up the development ladder -- per capita income

vertical line at zero indicate a statistically significant estimate at the 0.05 level.

[16] Table A.2 presents a full table of negative binomial regression estimates employing *Years Since High Intensity Conflict* and its square.

was over $12,000, and democratic institutions were beginning to take hold. Between years 40 and 45 post-conflict, this South Korea-like country is predicted to sign just over 5 BITs. Our estimates therefore indicate that a developing country in the immediate post-conflict period exhibits stronger pro-BIT behavior than even the most prototypical BIT-signing countries.

These results may provide an explanation for what Simmons (2014) has called `BIT signing sprees'. Consider the example of Georgia in which civil strife ended in 1994. Leaders signed 19 total BITs in the next 5 years. The same pattern holds for Croatia, where leaders signed 37 BITs in the post-conflict period between 1996 and 2001, and in El Salvador where 10 BITs were signed between 1993 and 1998 after the end of conflict. Note, however, that this effect is not limited only to emerging democracies. For example, Indonesian President Suharto signed 29 BITs after conflict in Aceh ended in 1993. Additionally, Egyptian President Hosni Mubarak signed upwards of 40 BITs in the late 1990s as conflicted raged against the Muslim Brotherhood.

Models 2-6 in Table 1 assess the robustness of these results. The introduction of *Total PTAs* and *Global BITs* in Model 2 only decreases the magnitude of the primary coefficients, but does not disturb their direction or statistical significance. Both additional variables are positively signed and significant at the 0.01 level. In Model 3 *Net Trade* and *Net Oil Exports* are both negative and highly significant. As before, *Years Since Any Conflict* and its square remain correctly signed and statistically significant at the 0.01 level. As clear from Model 4, including all additional controls in the same model also does not sway the results. Finally, the introduction of an alternative measure for domestic institutions in Model 5 - *Law and Order* - to the full model results in consistent estimates. In sum, the general results from the baseline model are robust to the introduction of additional controls for international political engagement, domestic economics, and alternative measures of domestic institutions.

5 BITs and FDI Post-Conflict

Our results indicate that leaders tend to sign more BITs in the post-conflict period. It is not obvious, however, that this increased tendency to engage in the international arena is beneficial. A vibrant debate remains about the potential conditional nature of BIT effectiveness (Rose-Ackerman and Tobin 2005; Kerner 2009, Neumayer and Spess 2005; Buthe and Milner 2014; Haftel 2010). Moreover, there is a growing concern, mostly by developing countries, over whether the benefits of BITs outweigh the costs (Simmons 2014; Poulsen and Aisbett 2013; Poulsen 2015).

To test the effectiveness of BITs post-conflict, we rely on two measures of FDI, both log-transformed. The first is *FDI Stock,* which measures the total value of direct investment held by foreign investors in a given country-year. The second – *FDI Flows* – tracks the net value of financial transactions between multinationals and a given foreign country in a given year.[17] The independent variable *BIT Count* captures the cumulative number of BITs signed by a given country up to a given year. *Years Since Any Conflict* is included and is measured as described prior.

Additionally, the interaction between *BIT Count* and *Years Since Any Conflict* is included to model the conditional effects of BIT effectiveness across varying years of peace. As before, *Years Since High Intensity Conflict* is modeled as well to capture heterogeneity in conflict destruction.

Control variables include *Polity, ln(pcGDP),* and *ln(Population).* Country fixed-effects are used to control for time-invariant characteristics of each country. Therefore, the model captures only the effect of additional BITs on FDI *within* each country as the number of years since conflict increases. Further, a lagged dependent variable is included to control for previous levels of FDI. All FDI models are estimated using OLS and include panel-corrected standard errors (Beck and Katz 1995).

[17] As argued by Kerner (2014), different measures of FDI can vastly change the results of empirical tests. Therefore, we employ both common measures to avoid establishing relationships specific to various definitions of FDI.

Presented in Table 2, Columns 1 and 2 employ the *ln(FDI Stock)* as the dependent variable, while columns 2 and 3 use *ln(FDI Flows)*. In all specifications, lagged FDI is a significant and positive predictor of FDI. Further, *BIT Count* is positive and significantly related to FDI in all specifications but model 3. More importantly for our purposes, however, are the interactive effects between *BIT Count* and both measures of time since conflict. As recommended by Brambor et al. (2006), we rely the marginal effects plots in Figure 4 to interpret these effects.

[Table 2 and Figure 5 about here]

Panel (a) in Figure 4 presents the marginal effect of *BIT Count* on *ln(FDI Stock)* across *Years Since Any Conflict* and *Years Since High Intensity Conflict.* As indicated by the slightly negative slope, as *Years Since Conflict* increase, the positive effect of *BIT Count* diminishes as *Years Since Conflict* increase. The confidence intervals (95 percent) around this line indicate that this relationship is significant at the 0.05 level. However, this effect is clearly of minimal substantive significance given the slight negative slope. The marginal effect of *BIT Count* across *Years Since High Intensity Conflict,* on the other hand, strongly decreases as *Years Since High Intensity Conflict* increases. This relationship is statistically significant at all values of *Years Since High Intensity Conflict.* Thus, additional BITs appear to significantly increase FDI stock in the post conflict period, but the relationship is conditional on the intensity of conflict.

Panel (b) in Figure 4 indicates broadly similar results with *ln(FDI Flows)* as the dependent variable. There is no discernable interactive effect between *BIT Count* and *Years Since Any Conflict* FDI. However, the strong negative slope across *Years Since High Intensity Conflict* indicates that BITs signed in the years after drastic civil conflict result in greater FDI inflows than BITs signed at other times. This result remains statistically significant at the 0.05 level across most values of *Years Since High Intensity Conflict.*

These results suggest that civil conflict conditions the effectiveness of BITs in an important way. BITs appear to increase a government's ability to attract FDI in normal times, but BITs signed after a destructive conflict increase FDI to an even greater extent. BITs, therefore, seem to be particularly valuable for governments in the post-conflict setting. Not only might these post-conflict BITs help leaders signal to their domestic audiences, they seem to help attract new capital into the country. In sum, although civil conflict thrusts leaders into an acute governance dilemma, BITs seem to act as a viable option to increase capital flows and avoid falling into further economic and political crisis.

6 Conclusion

A newfound appreciation of the costs of BITs has lead many governments to wonder whether they are worthwhile in the long run. More generally, scholarship in international relations has sought to address the issue of why states willingly accede to potentially costly international agreements in the first place. But, it is only recently that scholarship has begun to unpack the domestic sources of such costly behavior. Our argument – that civil conflict changes the decision calculus of governments with respect to BITs – is novel and contributes to this growing body of research. Our work also contributes to literature on the design of international institutions, the growing literature on post-conflict economic recovery, and studies on the FDI effects of BITs.

Current explanations on the determinants of BITs tend to privilege the costs or benefits without taking into account how dynamic domestic processes affect government incentives over time. We believe that the attractiveness of any internationally binding policy choice should vary considerably over time. This helps explain why governments find signing a BIT

appealing at one point, but end up revaluating the costs at a later date. This corroborates recent findings by Simmons (2014) and Mansfield and Milner (2014) who demonstrate that crises affect patterns of international economic engagement. Future studies should look for similar dynamics across different types of international institutions and seek to develop alternative causal pathways that link crises and leaders' economic policy choices.

The findings also add to the literature on the rational design of international institutions (Koremenos et al., 2001), which has only recently begun to be applied to BITs (e.g. Peinhardt and Allee 2014). Our results suggest that certain unique design features – like negotiating speed and cost structure – may make agreements like BITs particularly viable instruments after domestic political crises. Recent research into the content of economic treaties indicates that actors can chose to copy-paste language from previous agreements (Allee and Elsig 2015; Allee and Lugg 2016b), which should allow them to quickly use certain treaty instruments when facing unique situations and short time horizons. It seems particularly promising to link variation in the content of economic treaties with the domestic circumstances surrounding their negotiation.

Our study also adds an important dimension to the literature on post-conflict reconstruction. Up to this point, studies have mostly focused on the political and social steps that states should take in order to help post-conflict recovery and these studies have often privileged an active role for outside assistance and democratization (e.g. Collier et al., 2003). We take a different approach by contemplating the incentives and economic policy options available to governments. Our results demonstrate that the unique post conflict environment may substantively alter how governments adjudicate between rival policy options and indicate that, perhaps paradoxically, rapid engagement with the global economy is a viable option. Preliminary tests show that governments that sign BITs after conflict are able to attract much-needed capital into their countries.

Finally, we add to an emerging debate that views international economic treaties like BITs as products of bounded rationality (e.g. Jupille et al., 2013; Poulsen 2014 & 2015). Our findings suggest that BITs can be a rational policy response to the unique governance scenario leaders face. But, we see no reason why our framework cannot also account for insights from

this literature. Future studies should explore the microfoundations of BITs that are signed during times of crisis to explore broadly the processes that government officials employ to adjudicate between rival policy options. Furthermore, this will cast light on whether governments were aware of the potential costs of these agreements, but chose to discount them. Post-conflict BITs may, for example, be particularly likely to trigger costly legal arbitration down the road as governments find it hard to abide by commitments they made when under duress. Regardless, our results show that the FDI effects of post-conflict BITs are positive – albeit conditionally – suggesting that they may be particularly useful for governments in the short-term.

Overall, our study offers a novel mechanism for why some governments sign BITs. The findings illustrate the utility of exploring the nexus between international organization and conflict, demonstrating the viability of crisis as an important source of foreign economic policy. We believe that the post-conflict environment alters the decision-making calculus of governments as they evaluate rival economic policy options. Perhaps surprisingly, the unique domestic incentives facing governments may lead them to pursue engagement with international economic institutions. Only time will tell whether this manner of engagement ultimately proves beneficial.

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Tables and Figures

Figure 1: Density Plot of BITs Signed

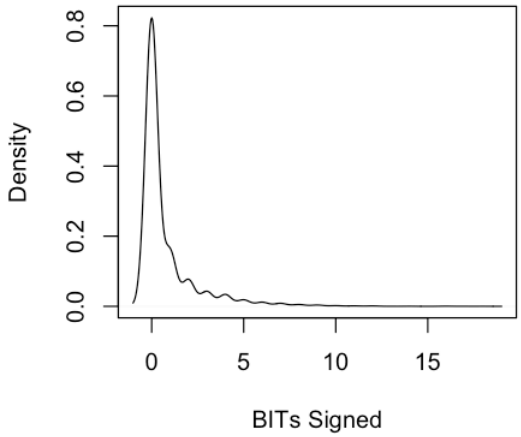


Figure 2: Predicted Count of BITs Signed and Years Since Any Conflict

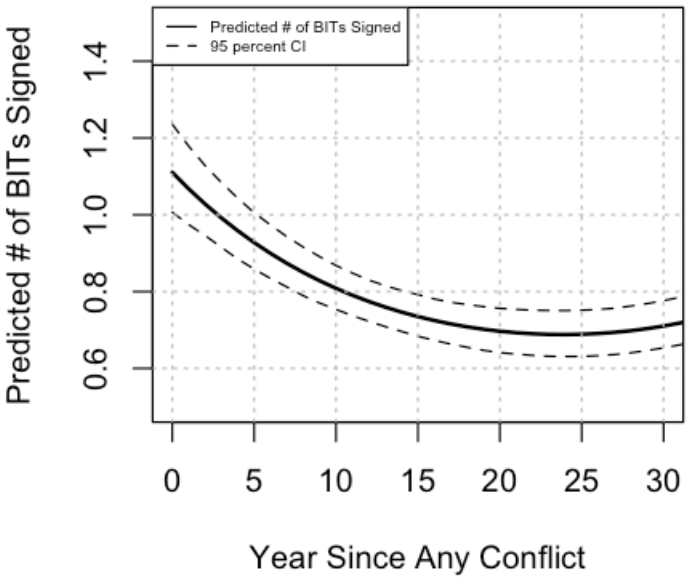


Figure 3: Marginal Effects of Discrete Changes in Years Since Any Conflict on BITs Signed

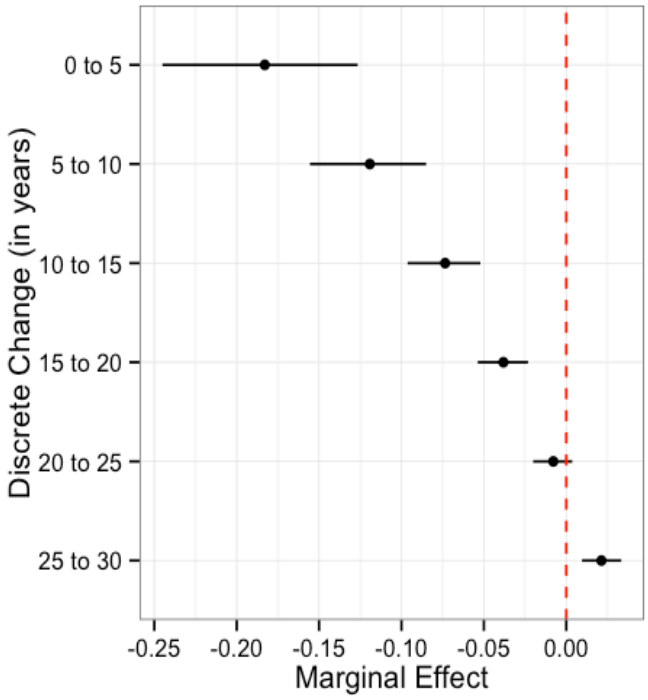


Figure 4: Marginal Effects of Discrete Changes in Years Since High Intensity Conflict on BITs Signed

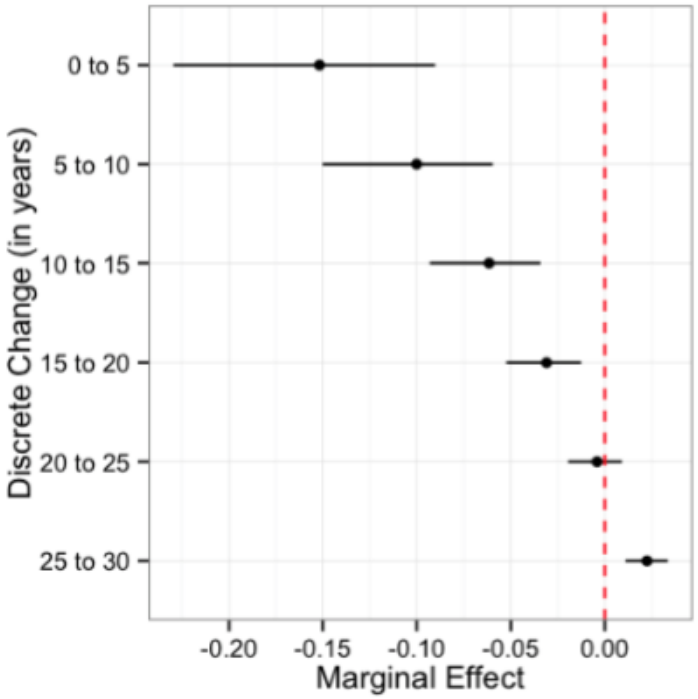
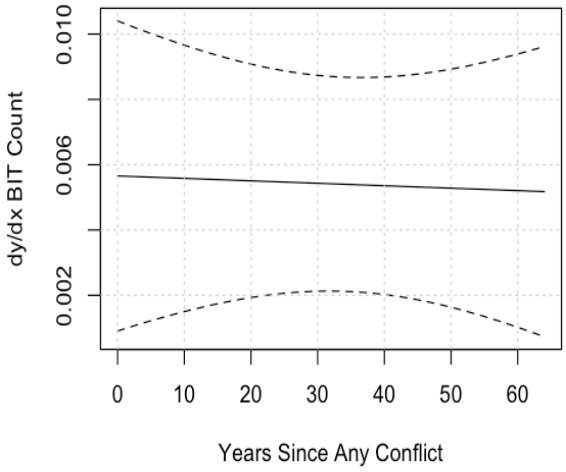
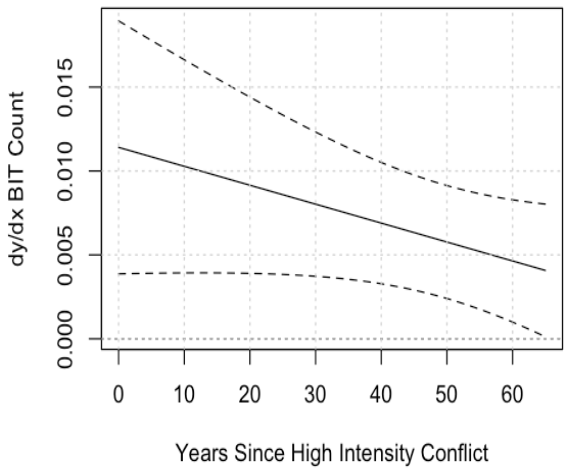


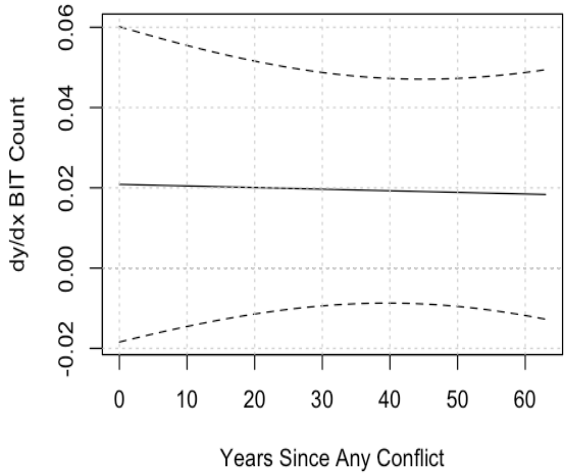
Figure 5: Marginal Effects of BIT Count and Years Since Conflict

(a) FDI Stock





(b) FDI Flows



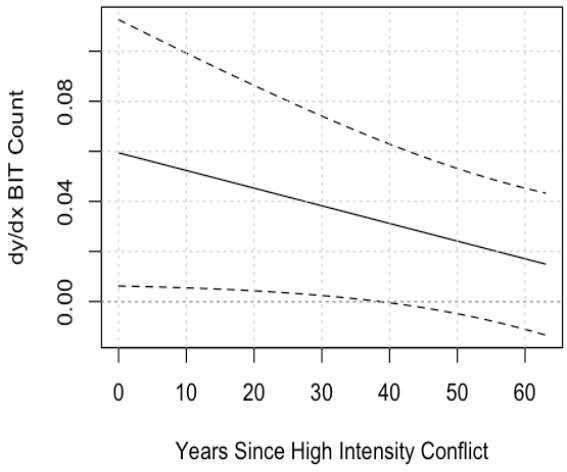


Table 1: Negative Binomial Regression Models, BITs Signed and Years Since Conflict

	Dependent variable:				
	BITs Signed				
	(1)	(2)	(3)	(4)	(5)
Years Since Conflict	−0.040***	−0.016***	−0.026***	−0.018***	−0.018**
	(0.005)	(0.004)	(0.005)	(0.005)	(0.005)
Years Since Conflict Sqd	0.001***	0.0003***	0.0004***	0.0002***	0.0002***
	(0.0001)	(0.0001)	(0.0001)	(0.0001)	(0.0001)
Polity	0.028***	−0.001	−0.005	−0.012***	
	(0.004)	(0.004)	(0.005)	(0.004)	
Law and Order					0.312**
					(0.028)
ln(Per Capita GDP)	0.312***	0.263***	0.309***	0.314***	0.157**
	(0.024)	(0.021)	(0.025)	(0.023)	(0.026)
OECD	−0.776***	−0.298***	−0.232**	−0.317***	−0.689**
	(0.094)	(0.088)	(0.103)	(0.103)	(0.107)
Total PTAs		0.016***		0.009***	0.013**
		(0.002)		(0.002)	(0.002)
Global BITs		0.007***		0.005***	0.004**
		(0.0002)		(0.0002)	(0.0002)
Net Trade			−0.002***	−0.002***	−0.003**
			(0.001)	(0.001)	(0.001)
Net Oil Exports			−0.0001***	−0.0001***	−0.00004**
			(0.00002)	(0.00002)	(0.00002)
Constant	−2.318***	−3.477***	−1.657***	−3.019***	−2.690**
	(0.179)	(0.159)	(0.177)	(0.176)	(0.188)
Observations	5,680	5,678	3,236	3,236	2,769
Log Likelihood	-6,958.829	-6,239.136	-5,213.774	-4,969.323	-4,312.474
Akaike Inf. Crit.	13,929.660	12,494.270	10,443.550	9,958.645	8,644.948

Table 2: BITs, Years Since Conflict, and FDI

	Dependent variable:			
	ln(FDI Stock)		ln(FDI Flows)	
	(1)	(2)	(3)	(4)
lag(FDI)	0.79***	0.79***	0.27***	0.26***
	(0.01)	(0.01)	0.04)	(0.04)
BIT Count	0.01**	0.01***	0.02	0.06**
	(0.002)	(0.004)	(0.02)	(0.03)
Years Since Any Conflict	0.004		−0.01	
	(0.004)		(0.03)	
BIT Count*	−0.0000		−0.0000	
Yrs Since Any Conflict	(0.0001)		(0.0003)	
Years Since High Intensity Conflict		0.002		0.01
		(0.004)		(0.02)
BIT Count*		−0.0001		−0.001*
Yrs Since High Intensity Conflict		(0.0001)		(0.0004)
Polity	0.03***	0.02***	0.03	0.01
	(0.01)	(0.01)	(0.04)	(0.04)
ln(pcGDP)	0.55***	0.55***	2.04***	1.85***
	(0.12)	(0.13)	(0.68)	(0.66)
ln(Population)	−0.34*	−0.40**	−1.18	−1.66
	(0.18)	(0.20)	(1.55)	(1.39)
Observations	2,598	2,598	809	809
R^2	0.72	0.72	0.12	0.12
Adjusted R^2	0.67	0.67	0.10	0.10
Note:				*p<0.1; **p<0.05; ***p<0.01
				Country fixed-effects included
				Panel-corrected standard errors in parentheses

Appendix

Table A.1: Summary Statistics of Key Variables

Statistic	N	Mean	St. Dev.	Min	Max
BITs Signed	5,628	0.93	1.84	0	18
Years Since Any Conflict	5,628	19.91	17.08	0	64
Years Since High Intensity Conflict	5,628	27.91	16.89	0	64
Polity	5,628	1.35	7.45	−10	10
ln(Per Capita GDP)	5,628	7.76	1.59	4.48	11.38
OECD	5,628	0.18	0.39	0	1
Total PTAs	5,626	7.73	11.86	0	76
Global BITs	5,626	138.07	134.73	3	437
Net Trade	5,319	71.12	48.92	4.98	531.74
Net Oil Exports	3,293	−27.50	1,204.38	−11,448.42	7,298.70
Law and Order	2,886	3.73	1.46	0.00	6.00

Table A.2: Negative Binomial Regression Models, BITs Signed and Years Since Conflict

	Dependent variable:				
	BITs Signed				
	(1)	(2)	(3)	(4)	(5)
Years Since High Intensity Conflict	−0.035***	−0.005	−0.028***	−0.013**	−0.006
	(0.006)	(0.005)	(0.006)	(0.005)	(0.006)
Years Since High Intensity Conflict Sqd	0.001***	0.0001	0.0003***	0.0001	0.00002
	(0.0001)	(0.0001)	(0.0001)	(0.0001)	(0.0001)
Polity	0.025***	0.001	−0.004	−0.010**	
	(0.004)	(0.004)	(0.005)	(0.004)	
Law and Order					0.288***
					(0.028)
ln(Per Capita GDP)	0.279***	0.251***	0.295***	0.305***	0.157***
	(0.024)	(0.021)	(0.025)	(0.023)	(0.026)
OECD	−0.678***	−0.316***	−0.173*	−0.316***	−0.679***
	(0.093)	(0.088)	(0.100)	(0.102)	(0.105)
Total PTAs		0.017***		0.011***	0.014***
		(0.002)		(0.002)	(0.002)
Global BITs		0.007***		0.005***	0.004***
		(0.0002)		(0.0002)	(0.0002)
Net Trade			−0.002***	−0.002***	−0.003***
			(0.001)	(0.001)	(0.001)
Net Oil Exports			−0.0001***	−0.0001***	−0.00003*
			(0.00002)	(0.00002)	(0.00002)
Constant	−2.125***	−3.463***	−1.360***	−2.858***	−2.627***
	(0.182)	(0.165)	(0.185)	(0.184)	(0.200)
Observations	5,680	5,678	3,236	3,236	2,769
Log Likelihood	-6,957.152	-6,245.499	-5,213.357	-4,969.190	-4,317.638
Akaike Inf. Crit.	13,926.300	12,507.000	10,442.720	9,958.379	8,655.275
Note:					*p<0.1; **p<0.05; ***p<0.01