Negotiating BITs with Models: The Power of Expertise

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Abstract

The international investment regime is experiencing a legitimacy crisis. One of the central questions in the debate is: To what extent can states' dictate the outcomes of the bilateral investment treaties (BITs) they sign? Through the use of novel text-as-data analysis, this paper leverages states' public regulatory preferences as expressed through Model BITs to examine what drives success in BIT negotiations. Building on negotiation theory, we make the case for how bargaining power in BIT negotiations is more likely to derive from expertise in states' bargaining institutes, rather than economic resources and force. When comparing the verbatim distance within a large sample of Model BIT-concluded BIT pairs, we find that effective and meritocratic bureaucracies, and the ability to shield special interest from access to the negotiations, drive negotiating success. Our analysis also shows that economic resources, when controlling for expertise, has little or no effect on negotiation outcomes. Our findings have significant implications for how future studies of international economic negotiations should be structured, and how we think about power in economic diplomacy.

1 Introduction

In the last few years the international regime for investment has come under heavy criticism. Allegations of non-egalitarian power structures in the underlying treaties and private investment tribunals that favour wealthy multinationals are commonplace. With its over

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3500 BITs and preferential trade and investment agreements (PTAs) with strong enforcement provisions, the investment regime is peculiar. To date, investors have filed close to 800 claims for reparation under ITA.[1] Most of the claims have been brought in the last 15 years and they have instigated a vociferous debate around the legitimacy of the regime for investment (see e.g. Ma 2012, Waibel et al. 2010).[2] One of the core questions of this legitimacy debate is who makes the rules in BITs? Critics argue that developing countries are pressured to agree with inappropriate laws under BITs (Gwynn 2016), while others note that the dynamism and decentralisation of the current investment regime makes it possible for all governments to negotiate, update and/or modify their agreements (Pauwelyn 2014). But due to the closed-door nature of BIT negotiations the underlying questions remain largely unanswered: *What determines the outcomes of* BIT *negotiations?*

Previous studies highlight the role of power in determining outcomes of BIT negotiations, as has been discussed in many areas of international cooperation.[3] In a 2014 World Politics symposium power asymmetry in economic diplomacy in particular was assessed. One study found that States' ability to include strong enforcements provisions in BITs depended on economic power (Allee and Peinhardt 2014), and another that developing countries are more likely to tie their hands under unfavourable BITs than developed (Simmons 2014). Yet, qualitative accounts of bilateral international negotiations suggest that what actually constitutes bargaining power when States' negotiators meet is expertise, not resources alone, because power in negotiations concerns the ability to change the perceptions of ones adversary. These observations can be reconciled with insights from on negotiation theory (Zartman and Rubin 2002), and if found to be correct they suggest we should move towards BIT accounts that include persuasion and the quality of States' bargaining institutes rather than coercion and resource-based power alone.

In this paper we apply a power-as-expertise approach to the study of success in BIT negotiations. That is, we theorize how differences in bureaucratic quality and control of public corruption affect the generation, maintenance and use of expertise in states' governance systems – and in turn explain degrees of success in BIT negotiations. We also assume

[1]The PluriCourts Investment Treaty Adjudication Database PITAD (Behn, Berge and Langford 2016) had 790 registered ITA claims as of September 2016.

[2]The rise of ITA has also spawned a vast literature on the evolution of investment treaty law. See e.g. Alvarez and Sauvant (2011), Brown and Miles (2011), Echandi and Sauvé (2013), Vandevelde (2010).

[3]See for example a range of hallmark studies of how certain states exert a relatively large influence on the set-up and functioning of international organizations: Drezner (2008) on international regulatory regimes in general, Gruber (2000) in the context of supranational institutions governing money and trade, and Copelovitch (2010) on the lending practice of the IMF.

that expertise increases states' ability to leverage resources in BIT negotiations. Our analysis makes a number of advances on previous scholarship. First, we allow for dyad-specific power asymmetry between the parties to a BIT instead of focusing solely on the capacity of the presumptively strong or weak party. Secondly, instead of assuming developed and developing countries' preferences *ex ante*, we utilize public bargaining drafts called Model BITs to measure states' ideal type BIT preferences.[4] Third, we apply a novel text-as-data approach to measure success in BIT bargaining (Alschner and Skougarevskiy 2016).

In our analysis we find that that both bureaucratic quality and control of public corruption are important explanators for success in BIT negotiations. Moreover, when controlling for differences in bureaucratic quality in our models, we find little evidence for the importance of economic resources as predictors of success in BIT negotiations, nor do we find that negotiating expertise increases states' ability to leverage resources in BIT negotiations. The findings are robust to alternative model specifications and alternative measures of bureaucratic quality and public corruption control.

The article is structured as follows. First we elaborate on the investment regime, and the rationale for BIT-making. Second, we discuss the use of Model BITs in BIT negotiations, and how they represent states' ideal-typical BITpreferences. Third, we discuss various notions of power in negotiations, and make the case for why power as expertise is particularly relevant in the context of BIT negotiations. Fourth, we introduce a formal theory of power as expertise. We discuss how bureaucratic quality and control of public corruption is related to expertise, and how expertise is related to outcomes in BIT negotiations. Fifth, we present our research design and analysis.

2 Dynamics of the investment regime

The BIT narrative has changed over the years, and researchers have slowly moved away from studying the effects of BITs on FDI (see e.g Hallward-Driemeier 2003, Egger and Pfaffermayr 2004, Neumayer and Spess 2005, Salacuse and Sullivan 2005, Kerner 2009, Aisbett 2009, Allee and Peinhardt 2012), domestic institutions (Ginsburg 2005) and investment disputes (Freeman 2013) – towards studying BIT diffusion (Elkins, Guzman and Simmons 2006, Jandhyala, Henisz and Mansfield 2011) and treaty-bargaining (Allee and Peinhardt 2010;

[4]It should be noted this method of measuring ideal type preferences in BIT negotiations was also recently proposed in an unpublished working paper by Allee and Lugg (2016). Our paper has been developed in uncoordinated parallel with their paper.

2014, Simmons 2014, Poulsen 2014; 2015, Alschner and Skougarevskiy 2016).

The standard rationale for BITs starts with the fact that multinational investors are subject to hazards when investing abroad. These hazards decrease expected profit margins through imposing transaction costs on operations (Williamson 1985, North 1990). At the same time, with global competition for capital countries may wish to craft business friendly policies to attract investment. This creates a paradox. Before the investment it might be rational to lure investors with concessions such as tax holidays, regulatory exemptions and special production zones (Kobrin 1987). But after the investment it may be rational to renege on those concessions, creating what is known as the time inconsistency problem. The challenge for the investor is to assess whether states' pre-investment commitments are credible. The greater the sunk costs of the investor, the larger the commitment problem becomes (Vernon 1971). And the worse the institutions to protect property in the capital importing country, the less credible that country's commitment is. Countries trying to attract capital therefore need some mechanism to exhibit *ex ante* commitment to protecting multinational investors' property. In the absence of well-functioning domestic institutions, BITs are often viewed as a credible commitment device.

Almost all existing research on why countries sign BITs view the treaties as devices to overcome such commitment problems. Moreover, they are framed within a classic North-South framework, dividing the world into capital-exporters (developed countries) and capital-importers (developing countries). Based on this division they make *ex ante* assumptions on two levels. First, they base their notion of power asymmetry in BIT bargaining on a capital-exporter versus capital-importer dichotomy. Whereas this dichotomy may have been a fair reflection of reality in the early days of the regime when North-South BITs were predominant, we believe the rise of multinational corporations from developing countries (Sauvant 2009), South-South BITs (Poulsen 2010) and North-North mega-regional PTAs like the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP) makes it less suited today. Second, the studies derive (static) treaty preferences from this dichotomy. In short, they assume that negotiation success for capital-exporters is when they achieve BITs with strong investor protection, while success for capital-importers is when they conclude BITs which retain their room to regulate. Capital exporters wish to avoid the costs of protecting their investors abroad through various forms of diplomatic espousal, while capital-importers wish to retain room to re-regulate their economy as industry structure is transformed.

The source of power in this two-way bargaining game is almost always equated with economic resources, and capital-exporters are viewed as the dominant parties in BIT negotiations by way of their dominant economic capacity. The larger a negotiating party's domestic group of investors is (i.e. their home market), the more investment may the capital-importing treaty partner expect (Allee and Peinhardt 2010). The use of the North-South dichotomy has also led researchers to focus on the power and preferences of either capital exporters (Allee and Peinhardt 2014) or capital-importers (Simmons 2014), avoiding the issue of dyad-specific power constellations.

While we accept that there might be a dual convergence of BIT preferences amongst relative capital-exporters and capital-importers – we believe that allowing for heterogeneity in treaty preferences is important. Moreover, we fully agree that terms and commitments in BITs are a function of interests and bargaining power, and that economic resources may be on such source of bargaining power – we believe that current research has overlooked another critical determinant of negotiation success: negotiation expertise.

3 BITs and Models

BITs are essentially agreements that set reciprocal terms and conditions for investment between pairs of states, usually allowing for dispute-resolution through an ITA mechanism to ensure enforcement.[5] Although BITs appear largely similar when assessed at face value, there are "significant differences concerning their substantive details" (UNCTAD 2006: xi). Moreover, there are huge differences in the relative coherence within states' treaty networks, which is indicative of a fundamental asymmetry in BIT negotiations (Alschner and Skougarevskiy 2016: 14).

[5]Most BITs cover the following areas: definition of investor and investment (who is protected), admission and establishment (when is protection given), expropriation (lawfulness and compensation), standards of protection (absolute and relative rights), and investor-state dispute settlement (adjudication and enforcement). For a more thorough review of the structure of BITs, see Dolzer and Schreuer (2008).

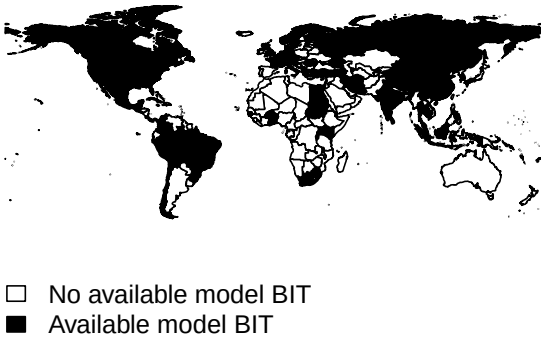


Figure 1: Countries with publicly available model BITs

An interesting trait of BIT negotiations is that many countries make Model BITs publicly available. Model BITs are essentially countries' starting point when entering BIT negotiations. Models may be prepared by one or both country parties to a negotiation, and the use of models have proved to be efficient when developing extensive BIT networks.[6] The use of Model BITs is widespread. Developed economies such as Switzerland, Netherlands, Germany, United Kingdom and US use them; transition economies like Guatemala, India, Turkey and Malaysia use them; and developing economies such as Benin, Burkina Faso and Uganda use them. Figure 1 depicts all the countries in which we have managed to identify use of Model BITs.

The fact that Model BITs are made public is interesting. Given the high stakes and general degree of secrecy in economic diplomacy, it would perhaps have been more rational to keep preferences undisclosed. But in practice, the use of model BITs serve multiple functions. They facilitate the negotiations around the legal content of treaties, whilst at the same time reducing drafting and negotiation costs for countries involved. For governments using them, Model BITs may also contribute to achieving a certain degree of uniformity across ones treaty universe, as has been demonstrated in the development of the US' BIT program (Schill 2009: 91).[7] The bottom line is that Model BITs represent, "inter alia, an expression of a states' investment policy, [and] its negotiation position on the protection of foreign investment" (Brown 2013: 2).[8] As such, Model BITs should be much better portals

[6]Big BIT signers such as Germany (Dolzer and Kim 2013), Switzerland (Schmid 2013) and China (Shan and Gallagher 2013) all use model BITs when negotiating investment treaties. As of 2013, Germany had signed 139 BITs (of which 130 were in force), Switzerland had signed 130 (116 in force), and China had signed 130 (101 in force).

[7]By visiting the Mapping BITs$^{\beta}$ website, one can explore the internal consistency of BIT networks over time for all states engaged in BITs. See: `http://mappinginvestmenttreaties.com`.

[8]This does not mean that Model BITs *are* states ideal type preferences. Models are most likely "live"

to understanding a country's BIT preferences than the North-South dichotomy.

4 Power and negotiation

Understanding the context in which power is exercised is crucial to answer our research question, because what constitutes power depends on the arena on which power is to be exercised. We believe that current studies of BIT signing do not account for the fact that bilateral negotiations are close, social encounters. In essence, they involve two parties, with two (usually) clear sets of preferences, and one common goal: reaching an agreement (Zartman 1995). Power in bilateral negotiations do therefore not necessarily align with the classic realist account of power as force,[9] or the neorealist view of power as resources.[10] But, even if one accepts the premise that resources matters in BIT negotiations,[11] countries are likely to differ in their ability to leverage their resources on the one side, and withstand their adversary's leverage on the other.

To build our theory we therefore start with a definition of power applicable to explicitly to negotiations. Power in negotiations is "action by one party intending to produce movement by another" (Zartman and Rubin 2002: 8).[12] This way of viewing power differs from

documents that negotiators continuously amend. We address this measurement error in Section 5.2 below.

[9] *Power as force* lies at the basis of the realist school in international relations (see e.g. Waltz 1959), and is usually associated with military strength or variations of gunboat diplomacy. In BIT negotiations Allee and Lugg (2016), find that power measured by military capabilities predicts BIT success very well. At the fundamental level, we find it reductionist to assume that power exercised by way of violence or constraint is the key to success in narrow economic negotiations. The days of gunboat diplomacy and trade wars is long past. Moreover, and as pointed out by Jönsson (1981: 249), failures of predicting negotiation outcomes based on force-type power sources can often be attributed "to the mistaken belief that resources useful in one issue-area will be equally useful in a different one."

[10] *Power as resources* is at the base of neorealists' view on power in negotiations (see e.g. Organski 1968, Knorr 1975, Stoll and Ward 1989). This notion of power is widely applied in empirical studies of BIT negotiations, usually with the key power resource being the size of home markets as a proxy for the potential foreign investment they bring to the negotiation table (Elkins, Guzman and Simmons 2006, Allee and Peinhardt 2010, Simmons 2014, Allee and Peinhardt 2014, Allee and Lugg 2016). See also Büthe and Milner (2014) for the effect of economic resources on preferential trade agreements being ratified.

[11] Resources is a simple way to conceptualize a country's ability to move its negotiating party, and there is a certain logic to it. If we accept that a well-functioning BIT is one that is conductive to investment between the two parties to the treaty, a country that is in need of investment should be willing to give more concessions in negotiations with a country that has a large domestic business sector to export then in negotiations with one that has little investment to export. However, the general problem with assuming resources as power is that size alone is not ability. As we highlight, BIT negotiations is a highly social endeavour. If size alone was power, parties should be able to calculate ahead of time who would win and lose in negotiations, and as such they should avoid negotiations with countries to which they are inferior. But small and weak states often fare relatively well in BIT negotiations.

[12] And negotiation may be defined as: "joint decision-making under conditions of conflict and uncertainty, in which divergent positions are combined into a single outcome. Each of two or more sides attempts to obtain what it wants through the exchange of information, typically in form of offers and counter-offers" (Zartman and Rubin 2002: 12).

classic political science definitions of power which are focused on outcomes (Dahl 1957). Instead, our definition allows us to analyse power as purposeful action taken by the parties to a BIT negotiation. And, given that BIT negotiations entail several rounds of bargaining, the exchange drafts and counter-drafts, and face-to-face negotiations around particularly difficult provisions, there should be ample room for persuasion. As put by UNCTAD itself, "the key point to be stressed is that each negotiation is a unique and peculiar process requiring flexibility and accommodation" (1998: 28).

One benefit of this bargaining situation from a scholarly point of view is that many potentially conflating variables are automatically held constant. There are always two countries involved, and there is always a substantive focus on rules governing investment. Moreover, success of the parties in bilateral negotiations is easier to calculate than in multilateral negotiations (Zartman 1995). The dyadic nature of BITs thus makes the negotiations a more isolated laboratory in which to study treaty bargaining.

4.1 The 1987 US-Canada FTA

Before we present our theory and analysis, it should be noted that our claim is not that countries' resources are in no way related to outcomes in BIT negotiations. Rather, we believe that expertise matters too, both separately and in conjunction with a country's resource base. A brief anecdote is illustrative.

In a case study of the negotiations between the United States (US) and Canada on their 1987 FTA,[13] Winham and DeBoer-Ashworth (2002) point out that Canada – the inferior party to the negotiations in terms of both population and economic capability – still managed to achieve significant concessions from the US. Canada, by virtue of its inferiority, entered the negotiations with an interest in establishing a rule-based (rather than power-based) relationship with the US. They viewed a strong dispute settlement mechanism in the treaty as a way to achieve this. And surprisingly to commentators at the time they achieved just that. In Chapter 19 of the treaty the parties agreed to replace judicial review by national courts in cases of anti-dumping and countervailing with binational panel reviews.

In their analysis of the negotiations, Winham and DeBoer-Ashworth note that in the pre-negotiation phase the US appeared to leverage its superior resources to encourage Canada to participate in the negotiations. But once the negotiations actually began 'a threshold was

[13]The 1987 US-Canada FTA was the forerunner to what later became the North American Free Trade Agreement (NAFTA).

crossed in which a perceived asymmetric economic-power relationship did not automatically translate into an asymmetric negotiating-power relationship' (2002: 48). The reason is that in economic negotiations, the main goal is to establish an agreement. And the moment the US agreed to sit down and negotiate with Canada, it signalled a wish to give-and-take in the way negotiations usually run. So resources may be important to get your adversary to sit down at the negotiation table, but once you are there the relationship changes. Instead of force and coercion, skill and expertise become the currency of power, used to influence the perceptions of your counter-party.

In summary, the general problem with applying notions of power based on resources when explaining outcomes of BIT negotiations is not that these factors are unrelated to concluded BITs. Rather, resources matter, but provide an incomplete explanations for the issue at hand. In the context of BITs, a more complete account of power includes *expertise*. Expertise is important in international cooperation in general, but it is especially important in social encounters like BIT negotiations. Our theoretical framework is therefore centred on state characteristics conducive to the generation, development and retention of expertise.

5 Theory and analysis

Our theory of what enables some countries to determine the content of concluded BITs departs from decision analytic techniques. But our general claim is simple: Countries with negotiating expertise should be able to negotiate treaties that are more in line with their preferences than countries that lack such expertise. Figure 2 depicts the general tenets of our theory by using a version of Schelling's (1960) binary choice diagram.[14]

Consider that Country$_A$ and Country$_B$ are negotiating a BIT. After they have swapped Model BITs and established a draft document, they start resolving the formulations that have been put in brackets. After initial exchanges of counter-drafts, the parties arrive at the transfer of funds provision.[15] Because Country$_A$ is worried about depletion of its foreign currency reserves, it wishes to maintain the right to impose exchange controls on foreign investors. Let Country$_A$'s perceived pre-negotiation valuation of exchange controls be r. Unlike Country$_A$, Country$_B$ is instead worried about investors' right to transfer

[14]The adaptation of the diagram is presented in Zartman and Rubin (2002: 11-12).

[15]This is a provision where there are often very conflicting opinions (Vandevelde 1998: 632). The negotiators in the 2004 US-Chile FTA had grave difficulties finding middle ground on the transfer of funds provision. They spent nearly two years negotiating back and forth before they found a solution (Ffrench-Davis et al. 2015: 335-336).

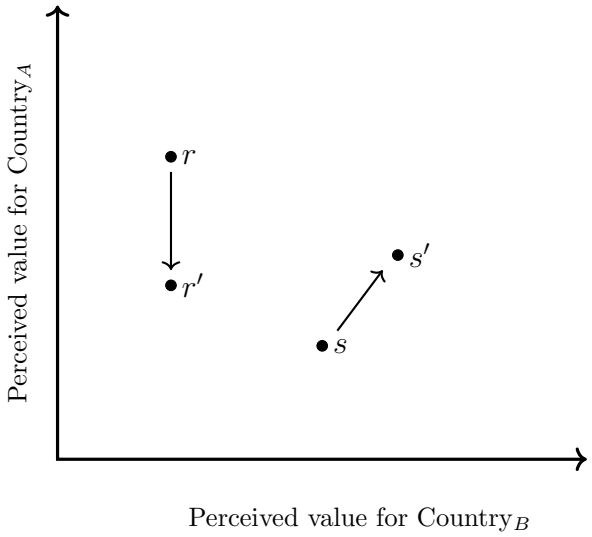


Figure 2: From pre-negotiation to post-negotiation perceptions

investments and returns into freely convertible currencies, perhaps because it has a large domestic business community that invests abroad. Let Country$_B$'s perceived pre-negotiation valuation of unrestricted transfer of funds be s.

As negotiations on how to solve the conflicting considerations evolve, both negotiators try to convince the other that their specific perception of how the transfer of funds provision should be worded is the most reasonable. In this interaction, Country$_B$'s negotiator slowly manages to reassure Country$_A$'s negotiator that concerns over foreign currency depletion are overwrought. At the same time, Country$_B$'s negotiator makes the case for why free transfer of funds are conducive to inward investment, perhaps by leveraging Country$_B$'s home-base of investors. If, through this interaction, Country$_B$'s negotiator manages to decrease the perceived value of exchange controls for Country$_A$'s negotiator from r to r', at the same time as increasing Country$_A$'s perceived value of free transfer of funds from s to s', the parties should agree on a transfer of funds provision that is more in line with Country$_B$'s pre-negotiation preferences than Country$_A$'s. And as such, Country$_B$ has exhibited the type of negotiating expertise vis-à-vis Country$_A$ that our power definition implies: Country$_B$'s negotiator has produced movement in the perceptions of Country$_A$'s negotiator. Our general proposition in this paper is that power of this sort stems from negotiations-specific expertise.

5.1 Hypotheses and variables

We propose two hypotheses around how governance traits of a country affects it negotiating expertise and consequently success rate in BIT negotiations, and one hypothesis on how

expertise may be used to leverage economic resources in BIT negotiations. Success in our analysis is defined as the ability to conclude BITs that are similar to the Model BIT used in negotiations, as elaborated on in Section 5.2.

Our hypotheses are based on a view of good governance as impartiality in the exercise of authority. 'Impartiality' in this context concerns the implementation of policies by government officials without taking into consideration interest that are not beforehand stipulated in the policy or the law, and impartiality is 'first and foremost an attribute of the actions taken by judges, civil servants, politicians, and the like' (Rothstein and Teorell 2008: 170). The underlying assumption is that systems where the non-elected government apparatus is impartial from executive or special (private) interest capture, are more conducive to the generation and maintenance of expertise. Thus, although it is difficult to identify which personnel the parties to a BIT negotiation used to negotiate *ex post*, we can say something about the context the personnel exist in. Our first hypothesis concerns the general quality of countries' bureaucracies.

> *Hypothesis 1*: The stronger and more impartial a country's bureaucracy, the closer their concluded BITs will resemble their Model BIT.

There are a couple of reasons for why we expect to find support for this hypothesis. First, a strong and impartial bureaucracy provide a more efficient and stable negotiating climate. Bureaucracies are often though of as shock absorbers that minimize the effects of abrupt policy change. Thus, the more impartial a bureaucracy is, the less should sudden shifts in the political situation affect negotiators' ability to uphold stable preferences throughout a BIT negotiation. And because we know that BIT negotiations can be lengthy procedures,[16] stability of preferences throughout the negotiations should be important for success.

Second, impartial bureaucracies function as a retrieval systems or institutional memories in states. They retain information about previous procedures carried out or overseen by the state. To be able to draw on the experiences from previous BIT negotiations may be important for negotiators in the future – especially if the negotiators change often.

Third, impartial bureaucracies are more likely to base their hiring procedures on merits, and to employ internal promotion procedures, than politically or private interests-dependent bureaucracies. This has at least two effects. First, merits-based hiring (i.e. conditioning

[16]The US-China BIT negotiations has for example been underway since 2008, and are at the time of writing still not concluded (Hufbauer, Miner and Moran 2015).

hiring on a civil service exam or university degree) produce a capable pool of civil servants. Second, the stability provided by internal promotion procedures should foster effectiveness through intensified information sharing and the establishment of lasting ties between civil servants (Rauch and Evans 2000: 52). Thus, states that select their negotiators from a pool of merit-based employees, and with an institutional climate that fosters knowledge generation, should be more successfully in BIT negotiations than states where civil servants hired on the basis of nepotism or partisanship.

To capture this relatively broad notion of impartial and strong bureaucracies we apply the *Bureaucratic Quality* (BQ) index from the International Country Risk Guide (ICRG). The BQ index captures the degree to which "the bureaucracy has the strength and expertise to govern without drastic changes in policy or interruptions in government services" at the same time as having "an established mechanism for recruitment and training" (The PRS Group 2012: 7).[17]

Our second hypothesis is related to a particularly harmful trait of some bureaucracies: public sector corruption. Public sector corruption involves using ones public position to achieve private gain, and is a violation of impartiality through discriminatory exercise of power (Kurer 2005: 230). The hypothesis reads:

> ***Hypothesis 2***: The less public sector corruption there is in a country, the closer their concluded BITs will resemble their Model BIT.

The underlying assumption of this hypothesis is that by allowing parties with strong personal interests in certain policies (i.e. the contents of a BIT) undemocratic access to decision-making processes, which provisions a state pushes in which negotiations should be volatile. The expected result is less success in BIT negotiations, as measure by the coherence between Model BITs and concluded BITs.

In addition, Shleifer and Vishny (1993) and Djankov et al. (2002) suggest that countries with high levels of corruption often end up maintaining inefficient governance procedures because corrupt individuals within the countries finds it easier to maximize the gains (i.e. opportunity for bribery and embezzlement) in inefficient than in efficient systems. A public sector with little corruption should therefore cater for a more effective and impartial bureaucrats, and a more well-functioning systems in terms of knowledge retrieval, generation and maintenance, than public sectors hampered with corruption.

[17] See: `http://www.prsgroup.com/wp-content/uploads/2012/11/icrgmethodology.pdf`.

To capture this specific notion of corruption we apply the *Public sector corruption* (PSC) index from the Varieties of Democracy (V-DEM) dataset (McMann et al. 2016). The PSC index captures the extent to which "public sector employees grant favors in exchange for bribes, kickbacks, or other material inducements, and how often [...] they steal, embezzle, or misappropriate public funds or other state resources for personal or family use" (Coppedge et al. 2016: 67).

Our third and last hypothesis concerns how expertise and economic resources as separate sources of power in BIT negotiations interact. As was exemplified in the the general theory, we expect the effect of economic resources (such as a large domestic business sector) on success in BIT negotiations to be conditioned by negotiating expertise. The general argument is that the more negotiating expertise a country has, the better it should be at leveraging resource-based power when negotiating. The hypothesis reads:

> ***Hypothesis 3***: The stronger and more impartial a country's bureaucracy, the more should a large domestic business sector lead to success in BIT negotiations.

To address this hypothesis, we generate two interaction terms where BQ index is multiplied by gross domestic product (GDP) in the first and gross capital formation (GCP) in the next. Data on GDP and GCP is taken from the World Bank's *World Development Indicators*. Moreover, as highlighted in most current empirical analyses of BIT-making (see e.g. Allee and Peinhardt 2014, Simmons 2014), economic resources may have a separate effect on success as a proxy for the potential future FDI a negotiator brings to the table. We therefore include GDP and GCF as conrol variables in all of our models as well. GCF captures the amount of capital invested per year in a country, and is therefore a more direct measure of investment activity than GDP. All economic variables are taken from the World Bank's *World Development Indicators*.

5.1.1 Confounding influencers

We also control for a number of other aspects that may confound the BIT negotiating success. To account for any issue-specific learning effect, we include two controls. First, the parties' experience from previous negotiations should affect their negotiating capacity. The more treaties you have concluded, the more in-depth knowledge do you have of the dynamics of the negotiations and the nitty gritty details of the treaty texts. To control for

this learning effect, we generate a cumulative count of how many previous BITs the parties to the negotiations have concluded at the time of concluding a BIT in our sample.

The second learning effect regards exposure to disputes. As demonstrated by Poulsen and Aisbett (2013), countries tend to change their approach to BITs after they experience an investor claim. To control for this phenomenon we generate a cumulative count of how many ITA claims each party to the case has experienced at the time of concluding the BIT in question. The data on known ITA claims is taken from the PluriCourts Investment Treaty Adjudication Database (PITAD) (Behn, Berge and Langford 2016).

The use of Model BITs may also in and of itself be a source of negotiating power. If only one party to the negotiations brings a Model, that party will most likely have a larger say in the structure of the initial draft the parties negotiate around. In short, the dynamic of negotiations where both parties bring Model BITs to the table, is likely to differ from negotiations where just one party uses a Model. We therefore create a dummy variable that captures whether both parties to the negotiation or just one has a model.

An issue with using Model BITs as measures of preferences over time is that they are "live" documents. That means that they are often amended without public disclosure. And even though some countries have published multiple Models over the years (See Table A1 in the Appendix), one would assume that older Model BITs are less valid measures of countries' preferences than new ones. To account for this we include a variable that counts the number of years all Models have been in force at the time of conclusion of a matched BIT. For countries with multiple Models, we always let the former Model expire when a new Model is published.

We also control for confounding aspects pertaining to the negotiating parties historic ties, such as shared cultural origins and legal systems. If the parties have close ties in other arenas than investment, or similar judicial and governance systems, the assumption is that those ties would increase the chance that the parties baseline preferences are conform. We therefore include one dummy variable captures whether the parties are from the same political-geographic region or not. The regions are taken from the V-DEM dataset (Coppedge et al. 2016: 378).[18] We also include one variable that that captures whether the parties share

[18]The ten regions are: Eastern Europe and Central Asia (post-Communist; including Mongolia); Latin America (including Cuba and the Dominican Republic); The Middle East and North Africa/MENA (including Israel and Turkey); Sub-Saharan Africa; Western Europe and North America (including Cyprus, Australia and New Zealand); East Asia; South-East Asia; South Asia; The Pacific (excluding Australia and New Zealand); The Caribbean (including Belize, Haiti, Guyana and Suriname).

legal systems. This variable is taken from La Porta, Lopez-de Silanes and Shleifer (2008).[19]

The last control is for having a large home-base of international investors. Presumably, outgoing investors will likely try and pressure their governments to conclude BITs that are structured in a certain way (Allee and Peinhardt 2014). A larger investor lobby may also influence the vigour with which preferences are upheld in BIT negotiations. We therefore include a variable that captures the percentage of the worlds' largest multinational corporations that are headquartered in the two parties to the BITs in our sample.[20] Descriptive statistics for the dependent, independent and control variables are reported in Table A2, and the correlations are reported in Figure A1 – both in the Appendix.

Unless otherwise noted, all variables presented here are used in relative terms in our analyses, meaning that we subtract variable values for non-Model states in any pairing from the Model state's value.[21] This is because we believe that it is the relative difference in expertise and economic resources that drive outcomes in BIT negotiations, and because it is this specific asymmetry that we wish to measure. Thus, in BIT dyads where the model country has a higher value on an independent variable of interest, the observed value will be positive. In the opposite case, where the partner country scores better than the Model country, it will be negative.

5.2 Methodology

Our research strategy has two steps. First, we use a text-as-data methodology pioneered by Alschner and Skougarevskiy (2016) to generate a measure of negotiation success based on the similarity of Model BITs' verbatim, and that in concluded BITs.[22] The general measurement proposition we make is that the similarity between a Model BIT and a concluded BIT is a good measure of how well aligned the the outcome of a BIT negotiation is with states' pre-negotiation preferences. Second, this distance measure is then used as dependent variable in a series of regressions exploring the relationship between negotiating expertise and success in BIT bargaining.

[19]The legal systems are French, English, German, Scandinavian or Socialist legal traditions.

[20]These data were obtained directly from Clint Peinhardt, and are taken from the *Forbes* magazine's annual list of the world's largest multinational corporations. To standardise the list across years, all corporations with revenues above $5 billions 1980 US dollars (Allee and Peinhardt 2014: 64-65).

[21]In the regressions tables below we use Δ to denote such differences between the Model BIT state and its negotiating partner on our variables of interest.

[22]See also the Alschner and Skougarevskiy's interactive website where anyone can explore the consistency and divergence in the investment treaty universe: `http://mappinginvestmenttreaties.com/`.

5.2.1 Data

The first step of our research was to gather all Model BITs we could find. We identified 92 Model texts in total, on which we have information on year of commenced use for 87 Models. Most of the texts were downloaded from UNCTAD's Investment Policy Hub.[23] We also identified 25 additional texts in various book volumes (Dolzer and Stevens 1995, Dolzer and Schreuer 2008; 2012, Gallagher and Shen 2009, Brown 2013) in UNCTAD's old international investment instrument compendiums, and through direct contact with relevant ministries in countries that use Model BITs.[24] Of the 87 models in our dated sample, only 66 Model texts are matched against concluded BITs. Thus, 21 models were dropped either because they were shelved, or because we have no available concluded BIT to match it against.[25]

To examine if countries' adopt each others Model BITs we charted the textual distance, as measured by Jaccard similarity coefficients (see below), between all the English language Model BITs in our applied sample (Figure 3). As there are very few dark squares besides the diagonal, there seem to be substantial variation across different states' Model BITs.

Next, we downloaded all texts of concluded BITs that are available through UNCTAD's Investment Policy Hub, and transformed concluded and Model BIT PDFs to clean text files with optical recognition software. To measure the degree of negotiation success, we following Spirling (2012) and Alschner and Skougarevskiy (2016) in using an unsupervised measurement approach based on dividing each text into 5-character substrings (*5-grams*) and calculating the Jaccard distance between the sets of 5-grams. The Jaccard distance is based on the Jaccard similarity coefficient, which is defined as the size of the intersection between the two sets of 5-grams divided by the union of the sets of 5-grams. To get a measure of distance, we subtract the Jaccard similarity coefficient from 1. Denoting the 5-gram for text i as G_i, the Jaccard distance J between a Model BIT M and BIT B is given by:

$$J(M, B) = 1 - \frac{|G_M \cap G_B|}{|G_M \cup G_B|} \tag{1}$$

Theoretically, $J(M, B)$ ranges from 0 – in the case of complete similarity between the two texts – to 1 in the case of complete dissimilarity. This approach has a number of advan-

[23] See: `http://investmentpolicyhub.unctad.org`.

[24] A full list of where each Model BIT was obtained is on record with the authors.

[25] Table A1 in the Appendix lists all Model texts used in our analysis, and the number of concluded BITs matched per Model BIT.

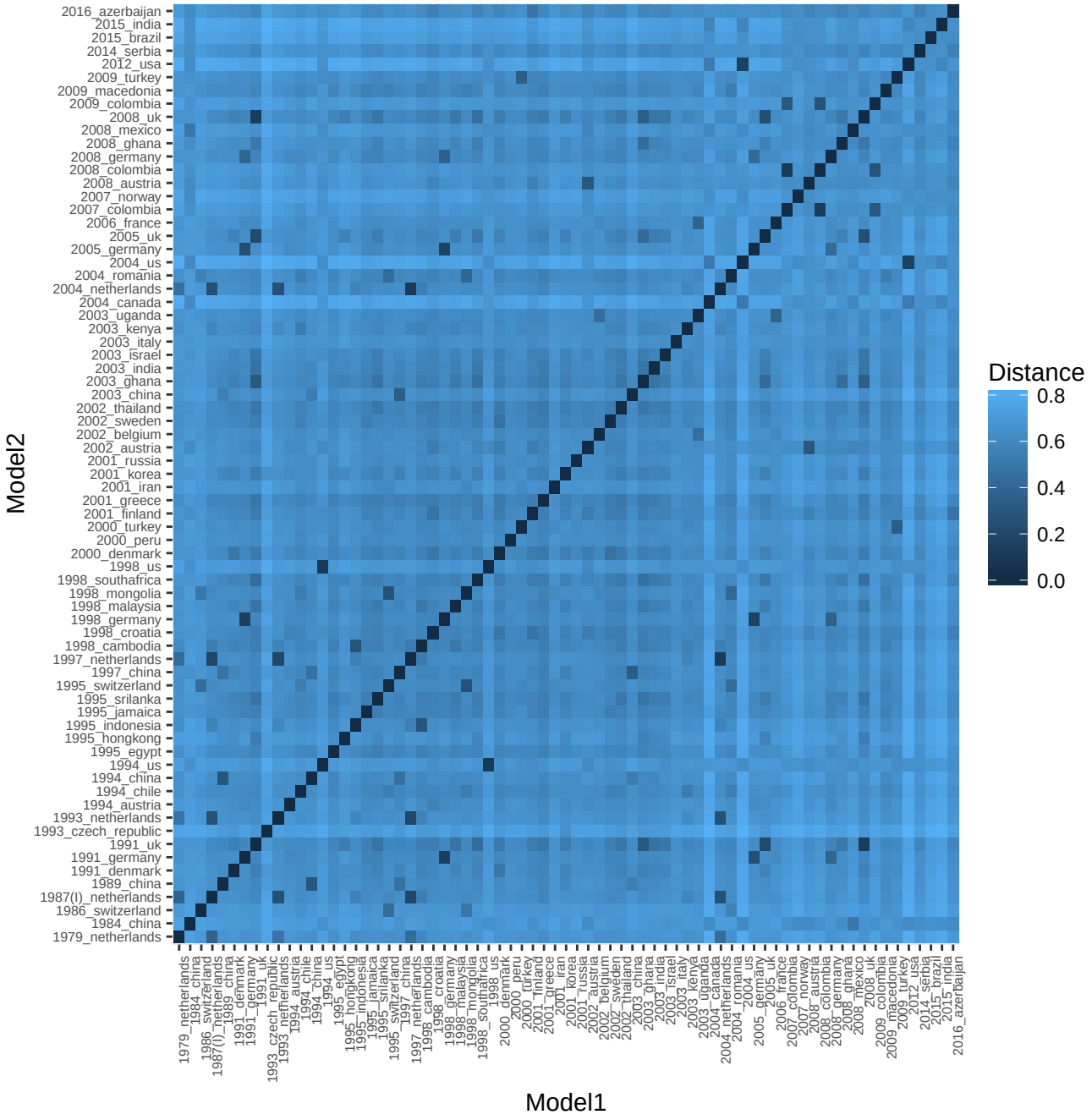


Figure 3: Heat map of distances between English language model BITs

tages over more typical bag-of-word approaches to text-as-data-analysis. Most importantly, because we compare sets of 5-grams rather than the frequency of certain terms, we are better able to capture differences in the ordering of words. Our ability to capture the context of certain phrases is also increased by the fact that our approach does not require removal of stop-words or reliance on extensive pre-preprocessing of strings that may obscure the meaning of legal phrases (Alschner and Skougarevskiy 2016: 8-9).

After matching Model BITs and concluded BITs, our units of analysis become 685 treaty pairs. In cases where both parties to the BIT use model BITs, the BIT enters the data twice, but with different values on the dependent variable.[26] Figure 4 displays the average Jaccard distances and standard deviations for English language Model BITs with at least one matched BIT in our sample. The more successful model treaties belongs to Austria (2002 and 2008), the Netherlands (2004) and the US (2004). Moreover, the relative success of the 1991 British model treaty is perhaps particularly interesting given the high number of BITs that have been negotiated based on this model (24 in our sample). On the other hand of the spectrum, we find models of countries such as Peru (2000), China (1984), Jamaica (1995) and Mongolia (1998). While the difference in the success of the former and latter group of models can be seen as consistent with current narratives focusing on economic resources, it also worth noting the larger variation in the middle of the spectrum and the large standard deviation for some model treaties.

5.2.2 Estimation

We consider a number of strategies to account for hierarchical nature of our dependent variable, where several negotiated BITs are nested in the same Model. Our main approach is to acknowledge that there probably are differences in the rigorousness with which states apply their models. From off-the record conversations with negotiators and people close to the negotiations in certain countries, we know that there are differences in the degree to which states 'tie' their negotiators to Model BITs. We therefore estimate model treaty fixed effects (FE) models, with standard errors clustered on Model BIT. By including a dummy variable for each model treaty, we can control for any unobserved factors at the model treaty level that may bias the results. However, with this strategy our estimates are only based on variation between BITs negotiated on the same Model. As such, FE estimation constitutes relatively strong tests of our hypotheses. The varied number of

[26]There are 47 instances of pairs where both parties have a Model BIT in our sample.

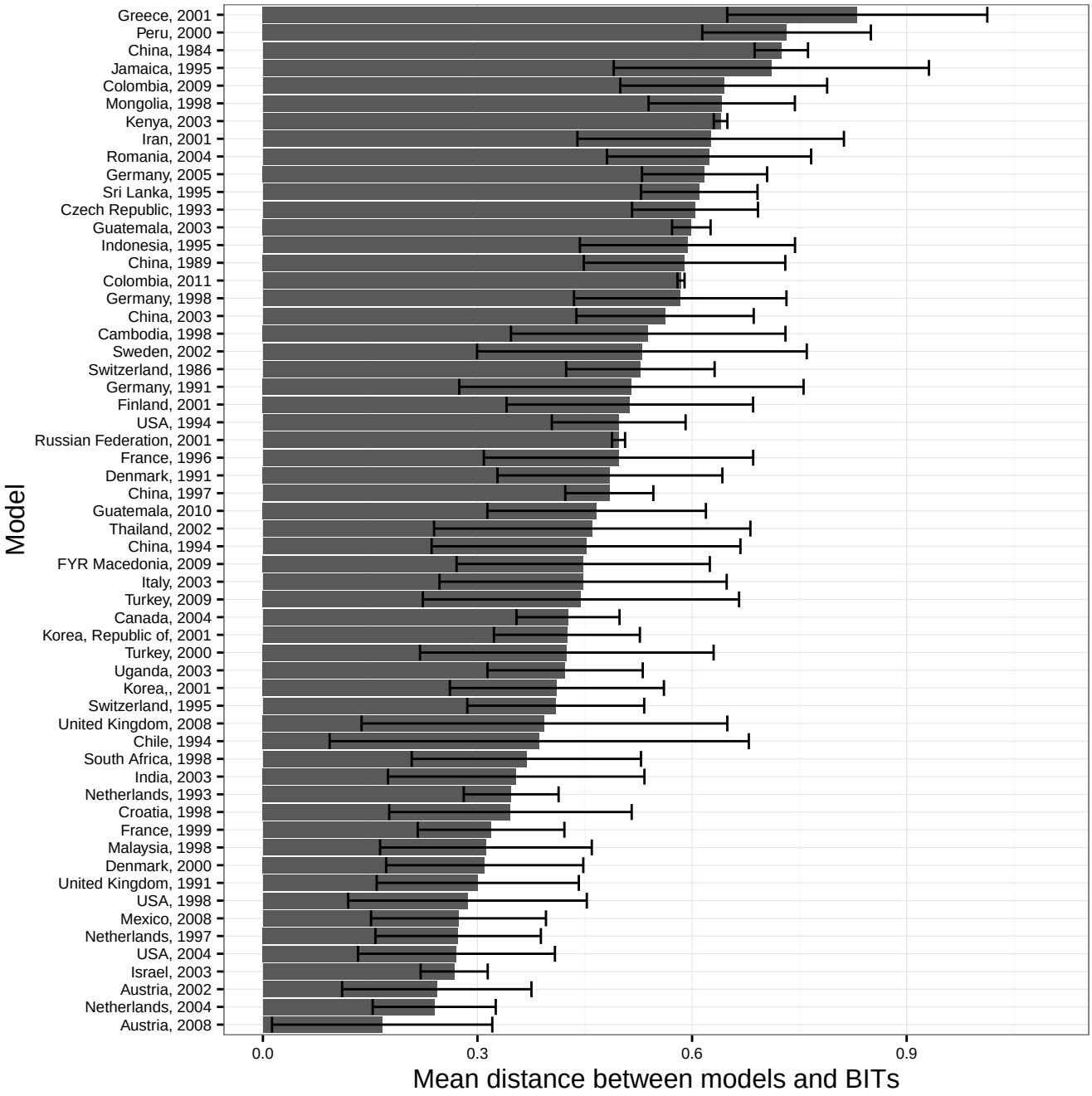


Figure 4: Mean distance between models and treaties.

observations across regression models is due to missingness in the independent variables. In our robustness checks, we also estimate pooled models with standard errors clustered on Model BITs, random effects models, and models using alternative proxies for bureaucratic quality and public sector corruption.

5.3 Analysis

The results from our primary analyses using Model BIT fixed effects is presented in Table 5.3. Results from a series of robustness checks are presented in Tables A3 to **??**. But the main tendency is that we find strong support for our power as expertise hypotheses across all estimations. The further ahead of the partner state in bureaucratic quality the Model state is, the more of its Model BIT verbatim is reproduced in the concluded BIT, and the same goes for the control of public sector corruption. However, we find little support for our hypothesis that high levels of negotiating expertise, as proxied by bureaucratic quality and control of corruption, conditions the effect of economic resources.

When engaging with the findings more in depth, there are a number of different results that stand out. First, model 1 in Table 5.3 is a baseline model estimated only with our control variables. Given the amount of studies that find states' economic resources to impact BIT negotiating success, we would have expected high, positive differences between Model states' and Partner states' GDP and GCF to reduce the distance between Model BITs and concluded BITs. But neither variable is statistically significant. This non-finding remains robust throughout Models 2-5, where the power as expertise hypotheses are tested. Thus, it seems like economic resources do not matter as much in BIT negotiations as studies assuming preferences based on the North-South dichotomy finds.

In model 2 in Table 5.3 we test *Hypothesis 1*. The estimate indicates that an increase in the Model state's bureaucratic capacity relative to that of the partner state, decreases the distance between Model BIT and concluded BIT. The finding is significant at the 95 % level. Thus, we find support for out first hypothesis. Whether states have bureaucracies with expertise-maximising internal procedures or not seems to shape the outcomes of BIT negotiations strongly.

In model 3 we test *Hypothesis 2*, and we find and even stronger and more significant support for the assumed relationship between public sector corruption and success in BIT negotiating. Because the variable runs from low to high levels of corruption, the coefficient

Table 1: Fixed Effects Regression models

	Dependent variable:				
	Jaccard Distance, standardized				
	(1)	(2)	(3)	(4)	(5)
Δ Bureaucratic quality, standardized		-0.154^{**}		-0.155^{**}	-0.167^{***}
		(0.061)		(0.061)	(0.061)
Δ Public sector corruption, standardized			0.200^{***}		
			(0.059)		
Δ GDP, standardized	−0.166	−0.179	−0.164	−0.195	−0.175
	(0.130)	(0.154)	(0.140)	(0.161)	(0.159)
Δ Bureaucratic quality* Δ GDP				−0.027	
				(0.064)	
Δ GCF, standardized	−0.058	−0.019	−0.060	−0.017	−0.047
	(0.053)	(0.064)	(0.052)	(0.064)	(0.072)
Δ Bureaucratic quality* Δ GCF					0.081
					(0.058)
ITA exposure, model state	0.322	0.444^{*}	0.385	0.437^{*}	0.448^{*}
	(0.222)	(0.236)	(0.295)	(0.238)	(0.246)
ITA exposure, partner state	0.206^{*}	0.151	0.225^{*}	0.151	0.139
	(0.112)	(0.116)	(0.118)	(0.117)	(0.116)
Δ BITs signed	0.002	−0.00000	0.001	−0.0001	−0.0001
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Years since model	0.023^{*}	0.019	0.025^{**}	0.019	0.021
	(0.014)	(0.018)	(0.013)	(0.018)	(0.018)
Δ Share of MNCs	-2.729^{*}	−1.389	−1.870	−1.738	−1.536
	(1.653)	(1.773)	(1.735)	(2.053)	(1.822)
Same legal origin	-0.301^{***}	-0.290^{***}	-0.331^{***}	-0.296^{***}	-0.286^{***}
	(0.076)	(0.081)	(0.078)	(0.079)	(0.081)
Same region	-0.263^{**}	−0.214	−0.183	−0.217	−0.203
	(0.130)	(0.139)	(0.142)	(0.138)	(0.138)
Partner state has model	0.312^{**}	0.370^{**}	0.305^{**}	0.365^{**}	0.391^{***}
	(0.141)	(0.151)	(0.152)	(0.150)	(0.149)
Constant	-1.231^{***}	-1.092^{***}	-1.031^{***}	-1.099^{***}	-1.117^{***}
	(0.052)	(0.086)	(0.066)	(0.090)	(0.085)
Model fixed effects	Yes	Yes	Yes	Yes	Yes
Observations	583	482	541	482	482
R^2	0.536	0.549	0.548	0.549	0.552
Adjusted R^2	0.471	0.471	0.480	0.470	0.474
Note:					*p<0.1; **p<0.05; ***p<0.01

should be interpreted as follows: An increase in the Model states' public sector corruption vis-à-vis the partner state's corruption level, increase the distance between Model BIT verbatim and concluded BIT. The finding is significant at the 99 % level. Thus, the more widespread corruption is in the public apparatus of a country, the less successfully will that country be in negotiating BITs.

In models 4 and 5, we test *Hypothesis 3*, whether a positive effect of economic resources on BIT negotiating is contingent upon high levels of negotiating expertise. We find no support for this hypothesis, regardless of whether we use a wide perception of economic resources (GDP) or a more investment-centered one (GCF). Moreover, the effect of the BQ index remains largely unchanged after the interaction terms are entered. Although this finding is somewhat surprising, it is in line with our general theory. Studies of BIT negotiations have been overly preoccupied with preconditions for negotiations, rather than the assets that facilitate success at the negotiating table.

There are also a number of interesting findings when looking at the performance of our control variables across Models 1-5. First of all, note that none of our three learning variables (the model and partner ITA exposure dummies, and the ΔBIT signed) seem to have much of an effect. One way of interpreting this is that the generation and retention of expertise within state apparatuses is more important than issue-specific learning. Second, we find that having the same legal origin has a strong and significant effect on how closely concluded BITs resemble Models, but coming from the same region does not. Even though these variables tap into some of the same underlying closeness-of-ties variation, our findings indicate that having judicial systems with the same inherent structure is more important than other cultural ties. Third, if both parties to the negotiations use Model BITs, concluded BITs tend to diverge more from the Models we match them against. Within legal traditions, the efficacy of using Model BITs has been discussed in the context of certain countries BIT programs for years (Brown 2013), and this finding underlines how having operational preference Models makes states more capable of influencing treaty texts they negotiate. This is also in line with our assumption, and indicates that when there are explicit pre-negotiation preferences on both sides of the table, both parties have to engage in more accommodation.

5.4 Robustness

In Tables A3-A5 in the Appendix, we apply various re-specifications and alternative operationalisations of our variables of interest to test the robustness of our findings. The main message is that our findings seem robust to both alternative model specification and alternative proxies, but we comment on each model in brief. First, in the pooled OLS regressions presented in Table A3 the main tendency is that the effects found in FE models are reproduced, only with stronger effect estimates. Note also that even though pooled OLS is a weaker test of our hypotheses, none of the economic resource variables attain statistical significance, either alone or as contingent upon negotiation expertise. This finding underlines our discussion around how relevant economic resources really are in BIT negotiations.

Second, in Table A4 we present five random effects models. In these regressions each Model BIT is given its own intercept, but the intercepts are assumed to fall within a common Gaussian distribution.[27] All our main findings remain robust to this model specification.

Third, in Table A5 we apply two alternative measures of bureaucratic quality and public sector corruption to those applied in our main analysis. The former is swapped for the Government Effectiveness index from the World Bank's World Governance Indicators (WGI),[28] and the latter with the Control of Corruption index, also from WGI.[29] While these variables are closely analogous to the ones applied in our analyses, they have significantly less coverage. Our main findings are robust to alternative operationalisations.

6 Conclusion

This paper uses negotiation theory and a relational notion of power to analyse what drives success in BIT negotiations. To measure states' preferences we use public bargaining drafts called Model BITs, and we apply a novel text-as-data approach to measure the distance between a large sample of Model BITs and concluded BITs. These distances are used as measures of relative success in any given BIT negotiation.

[27] As such this approach is a middle way between the pooled OLS and FE models, as the estimates of our random effects model are based on the full variance of our data but controls for unobserved heterogeneity at the model treaty level.

[28] The Government Effectiveness index captures "perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies." (Kaufmann, Kraay and Mastruzzi 2010: 4).

[29] The Control of Corruption index captures 'perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests' (Kaufmann, Kraay and Mastruzzi 2010: 4).

We find strong support for our theory of how power in negotiations stem from expertise, but we find little support for our hypothesis that the effect of economic resources is contingent upon negotiation expertise. Moreover we find that economic resources has no independent effect on outcomes in BIT negotiations either. The totality of our results stand in stark contrast with most current empirical studies of BIT-making, building on realist and neo-realist notions of power. As such, we believe our research contributes to the way in which we should think about power in international economic negotiations. More specifically, our findings indicate that it is important to consider the *context* in which negotiations take place. As negotiation theory has stated for decades, the fora in which negotiations are held determine the dynamics of the negotiation. And the dynamic of the negotiation determines how pressure may be applied by the parties (Zartman 1995). As such, we believe the bilateral nature, as well as the degree of social contact, accommodation and flexibility associated with BIT negotiations should be accounted for in empirical analyses of what drives the outcomes of these negotiations. Our findings yield strong support to this view.

Our research also contributes to a number of other academic and policy debates. First, the wider implication of our analysis is that insulating and nurturing impartial, merits-driven bureaucracies is important to gain access to rule-writing at the international level. The same goes for battling public sector corruption. There is also a point to made for how much more effective it is for states to use explicit preferences such as Models when they engage in BIT negotiations, than entering the negotiations with more intangible preferences. From an academic point of view, our study underlines the importance of allowing for heterogeneity in preferences. It is not that long ago that BITs were usually though of as uniform constructs with uniform economic and political effects. Our application of the text-as-data methodology pioneered by Alschner and Skougarevskiy (2016) is one way of working more closely with heterogeneity.

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A Models BITs and Negotiated Treaties

Table A1: Number of BITs signed under each Model BIT

Model state	Year of model	BITs signed under the model
Austria	2002	7
Austria	2008	2
Bolivia, Plurinational State of	2002	1
Brazil	2015	1
Cambodia	1998	9
Canada	2004	7
Chile	1994	2
China	1984	15
China	1989	25
China	1994	8
China	1997	15
China	2003	20
Colombia	2008	1
Colombia	2009	3
Colombia	2011	2
Croatia	1998	28
Czech Republic	1993	13
Denmark	1991	15
Denmark	2000	12
Finland	2001	35
France	1996	18
France	1999	4
Germany	1991	5
Germany	1998	15
Germany	2005	8
Germany	2008	1
Ghana	2003	1

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Table A1: Number of BITs signed under each Model BIT

Model state	Year of model	BITs signed under the model
Greece	2001	6
Guatemala	2003	4
Guatemala	2010	2
India	2003	30
Indonesia	1995	33
Iran	2001	9
Israel	2003	7
Italy	2003	4
Jamaica	1995	2
Kenya	2003	2
Korea,	2001	12
Korea, Republic of	2001	15
Macedonia, The former Yugoslav Republic of	2009	3
Malaysia	1998	6
Mexico	2008	2
Mongolia	1998	16
Netherlands	1993	8
Netherlands	1997	38
Netherlands	2004	5
Peru	2000	3
Romania	2004	3
Russian	2001	1
Russian Federation	2001	2
South Africa	1998	23
Sri Lanka	1995	9
Sweden	2002	6
Switzerland	1986	22
Switzerland	1995	48
Thailand	2002	9

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Table A1: Number of BITs signed under each Model BIT

Model state	Year of model	BITs signed under the model
Turkey	2000	20
Turkey	2009	8
Uganda	2003	2
United Kingdom	1991	24
United Kingdom	2005	1
United Kingdom	2008	2
USA	1994	8
USA	1998	5
USA	2004	2

B Descriptive statistics

Table A2: Descriptive statistics

Statistic	N	Mean	St. Dev.	Min	Max
Jaccard distance	675	0.00	1.00	−2.16	2.80
Δ ICRG Bureaucratic quality	537	0.00	1.00	−2.56	2.09
Δ Public sector corruption	623	0.00	1.00	−1.72	2.58
Δ GDP (in millions)	634	0.00	1.00	−3.75	8.61
Δ Gross capital formation	609	0.00	1.00	−5.53	3.59
ITA exposure, model state	675	0.05	0.22	0	1
ITA exposure, partner state	675	0.09	0.28	0	1
Δ BITs signed	671	23.61	26.96	1	165
Years since model	675	2.98	2.80	0	16
Δ Share of MNCs	675	0.02	0.05	−0.27	0.40
Same legal origin	654	0.29	0.45	0	1
Same region	672	0.09	0.29	0	1
Partner state has model	675	0.13	0.34	0	1

C Additional Results

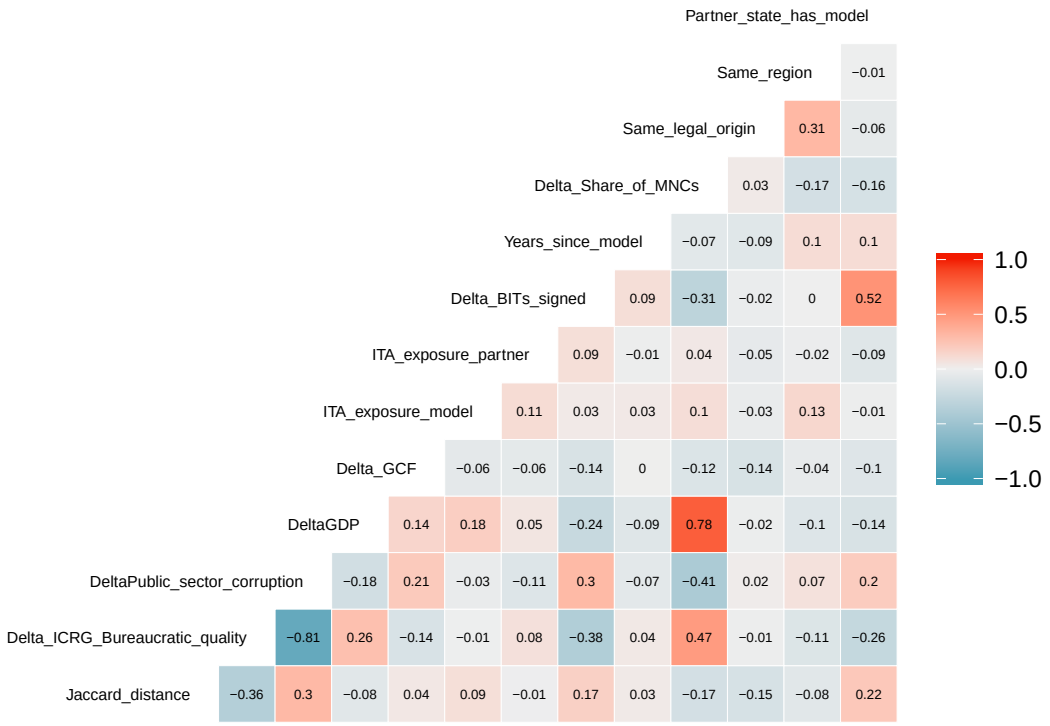


Figure A1: Bivariate correlations

Table A3: Pooled Regression models

	Dependent variable:				
	Jaccard Distance, standardized				
	(1)	(2)	(3)	(4)	(5)
Δ Bureaucratic quality, standardized		-0.336^{***}		-0.312^{***}	-0.328^{***}
		(0.086)		(0.085)	(0.082)
Δ Public sector corruption, standardized			0.305^{***}		
			(0.075)		
Δ GDP, standardized	0.145	0.035	0.043	0.032	0.013
	(0.122)	(0.122)	(0.123)	(0.125)	(0.120)
Δ Bureaucratic quality* Δ GDP				0.102^{**}	
				(0.040)	
Δ GCF, standardized	−0.009	−0.019	−0.042	−0.013	−0.013
	(0.064)	(0.074)	(0.063)	(0.074)	(0.072)
Δ Bureaucratic quality* Δ GCF					−0.068
					(0.043)
ITA exposure, model state	0.350^{*}	0.371^{*}	0.392	0.277	0.412^{**}
	(0.210)	(0.193)	(0.245)	(0.198)	(0.193)
ITA exposure, partner state	0.021	0.069	0.099	0.096	0.072
	(0.115)	(0.116)	(0.111)	(0.114)	(0.116)
Δ BITs signed	0.003	−0.001	0.0004	−0.002	−0.001
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Years since model	−0.004	0.008	0.009	0.012	0.007
	(0.015)	(0.015)	(0.014)	(0.015)	(0.015)
Δ Share of MNCs	-4.412^{*}	−0.863	−1.217	−1.274	−0.587
	(2.558)	(2.545)	(2.478)	(2.528)	(2.485)
Same legal origin	−0.218	−0.231	-0.263^{*}	−0.221	−0.243
	(0.148)	(0.166)	(0.160)	(0.166)	(0.164)
Same region	-0.335^{*}	-0.445^{**}	−0.341	-0.442^{**}	-0.429^{**}
	(0.195)	(0.201)	(0.227)	(0.201)	(0.200)
Partner state has model	0.385^{***}	0.402^{***}	0.349^{**}	0.427^{***}	0.374^{***}
	(0.141)	(0.133)	(0.145)	(0.134)	(0.133)
Constant	0.056	0.117	0.025	0.097	0.104
	(0.163)	(0.157)	(0.145)	(0.157)	(0.153)
Observations	583	482	541	482	482
R^2	0.102	0.178	0.167	0.188	0.182
Adjusted R^2	0.086	0.159	0.150	0.167	0.161
Note:					*p<0.1; **p<0.05; ***p<0.01

Table A4: Random Intercept Regression models

	Dependent variable:				
	Jaccard Distance, standardized				
	(1)	(2)	(3)	(4)	(5)
Δ Bureaucratic quality, standardized		-0.215^{***}		-0.210^{***}	-0.220^{***}
		(0.059)		(0.059)	(0.059)
Δ Public sector corruption, standardized			0.225^{***}		
			(0.052)		
Δ GDP, standardized	−0.046	−0.053	−0.064	−0.062	−0.045
	(0.082)	(0.092)	(0.084)	(0.092)	(0.092)
Δ Bureaucratic quality* Δ GDP				0.059	
				(0.045)	
Δ GCF, standardized	−0.048	−0.010	−0.054	−0.011	−0.023
	(0.042)	(0.047)	(0.044)	(0.047)	(0.049)
Δ Bureaucratic quality* Δ GCF					0.045
					(0.044)
ITA exposure, model state	0.448^{**}	0.573^{***}	0.510^{**}	0.556^{***}	0.568^{***}
	(0.184)	(0.194)	(0.200)	(0.194)	(0.194)
ITA exposure, partner state	0.153	0.112	0.177	0.120	0.108
	(0.119)	(0.123)	(0.124)	(0.123)	(0.123)
Δ BITs signed	0.003^{*}	0.0004	0.001	0.0001	0.0003
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Years since model	0.018	0.015	0.022^{*}	0.017	0.016
	(0.013)	(0.015)	(0.013)	(0.015)	(0.015)
Δ Share of MNCs	−2.161	−0.726	−0.954	−0.453	−0.858
	(1.538)	(1.681)	(1.583)	(1.691)	(1.687)
Same legal origin	-0.272^{***}	-0.241^{**}	-0.302^{***}	-0.236^{**}	-0.237^{**}
	(0.082)	(0.095)	(0.087)	(0.095)	(0.095)
Same region	-0.259^{**}	−0.224	−0.194	−0.225	−0.221
	(0.129)	(0.144)	(0.139)	(0.144)	(0.144)
Partner state has model	0.310^{***}	0.363^{***}	0.300^{***}	0.373^{***}	0.375^{***}
	(0.109)	(0.118)	(0.111)	(0.118)	(0.118)
Constant	0.014	0.044	−0.012	0.009	0.042
	(0.119)	(0.117)	(0.118)	(0.120)	(0.118)
Observations	583	482	541	482	482
Log Likelihood	−718.403	−599.158	−669.483	−600.493	−600.841
Akaike Inf. Crit.	1,462.806	1,226.317	1,366.966	1,230.986	1,231.682
Bayesian Inf. Crit.	1,519.593	1,284.808	1,427.074	1,293.655	1,294.351
Note:					*p<0.1; **p<0.05; ***p<0.01

Table A5: Robustness checks using the World Bank's Governance indicators: Fixed Effects Regression models

	Dependent variable:			
	Jaccard Distance, standardized			
	(1)	(2)	(3)	(4)
Δ Government effectiveness, standardized	-0.343^{***}		-0.344^{***}	-0.343^{***}
	(0.091)		(0.091)	(0.091)
Δ Control of corruption, standardized		-0.297^{***}		
		(0.090)		
Δ GDP, standardized	−0.096	−0.110	−0.127	−0.095
	(0.117)	(0.120)	(0.133)	(0.117)
Δ government effectiveness* Δ GDP			−0.070	
			(0.069)	
Δ GCF, standardized	−0.034	−0.045	−0.031	−0.037
	(0.071)	(0.074)	(0.071)	(0.094)
Δ government effectiveness* Δ GCF				0.008
				(0.078)
ITA exposure, model state	0.381	0.355	0.398	0.382
	(0.300)	(0.296)	(0.303)	(0.301)
ITA exposure, partner state	0.342^{**}	0.383^{***}	0.341^{**}	0.342^{**}
	(0.143)	(0.146)	(0.143)	(0.144)
Δ BITs signed	-0.003^{*}	-0.003^{*}	-0.004^{*}	-0.003^{**}
	(0.002)	(0.002)	(0.002)	(0.002)
Years since model	0.041^{**}	0.038^{**}	0.042^{***}	0.041^{***}
	(0.016)	(0.017)	(0.016)	(0.016)
Δ Share of MNCs	-4.744^{*}	−4.579	-5.784^{**}	-4.802^{*}
	(2.657)	(2.803)	(2.787)	(2.658)
Same legal origin	-0.227^{*}	-0.226^{*}	-0.241^{*}	-0.227^{*}
	(0.134)	(0.135)	(0.135)	(0.134)
Same region	−0.139	−0.130	−0.160	−0.138
	(0.202)	(0.202)	(0.198)	(0.203)
Partner state has model	0.469^{***}	0.486^{***}	0.463^{***}	0.471^{***}
	(0.169)	(0.168)	(0.168)	(0.165)
Constant	-0.800^{***}	-0.842^{***}	-0.819^{***}	-0.803^{***}
	(0.117)	(0.119)	(0.126)	(0.112)
Model fixed effects	Yes	Yes	Yes	Yes
Observations	353	353	353	353
R^2	0.558	0.553	0.559	0.558
Adjusted R^2	0.467	0.462	0.466	0.465
Note:				*p<0.1; **p<0.05; ***p<0.01