Never Let Me Go: Exit Clauses in International Investment Agreements

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March 1, 2023

Abstract

Growing literature examines when states exit international institutions and why. International agreements, however, differ in how easy it is for signatory states to withdraw from them. Why do some states sign up to treaties that are difficult to terminate, while others prefer treaties that are easy to withdraw from? We investigate this question in the context of bilateral investment agreements, exploiting variation in the flexibility of their exit clauses. We argue that the regime type as well as capital importer-exporter dynamics explain states' preferences over flexibility in investment treaty termination. In general, democracies prefer agreements that are easier to terminate to reflect any changes in domestic political preferences and because democracies face less credibility costs. However, when capital importing states are autocratic, capital exporting states, *regardless of their regime type,* prefer hard exit clauses to lock in their partner state for a longer time. To test our argument, we have constructed an original dataset of termination features in over 2,500 international investment treaties and found supportive evidence for our claims. The paper contributes to the understanding of durability in international institutions, as well as negotiations over economic agreements.

1. Introduction

Growing international relations literature examines when states exit international institutions and why.[1] International institutions, however, differ in how easy it is for signatory states to withdraw from them. For instance, the International Monetary Fund (IMF) specifies that any member can withdraw from the Fund anytime, while the Asian Infrastructure Investment Bank (AIIB) stipulates that any member state can withdraw six months after a written notice. The Paris Agreement features a stricter termination clause, which states that no member state can withdraw during the first three years. Different termination clauses are, therefore, critical for understanding when and why states (cannot) exit international institutions.

Exit clauses are a unique treaty-design feature, distinct from substantive flexibility of an agreement.[2] While substantive agreement flexibility indicates flexibility under the terms of the agreement, flexibility in exit clauses reveals how long a state is stuck in the agreement – however flexible its terms. Despite the extensive literature that has explored the rationales behind flexibility[3] and informality[4] in the design of international agreements, we lack understanding of how long states intend to keep agreed-on terms in place and why. Given the level of flexibility in an agreement, when do states prefer strict exit clauses over lenient ones?

We investigate the question in the context of bilateral investment treaties (BITs), which form the primary international regime governing the relations between of foreign investors and host governments. Past scholarship has used investment treaties to empirically investigate

[1] von Borzyskowski and Vabulas, 2019; Walter, 2021; Weyrauch, 2022
[2] The distinction between the flexibility regarding the termination or redesign of an institution, and flexibility within an existing institutional framework, have also been called transformative and adaptive flexibility respectively (Koremenos, Lipson and Snidal, 2001; Blake, 2013).
[3] Rosendorff, 2005; Helfer, 2006; Koremenos, 2016
[4] Vabulas and Snidal, 2013; Roger, 2020; Roger and Rowan, 2022

important questions on international politics, such as whether powerful states determine contents of international agreements[5], legalization of global governance[6], and dynamics of negotiation, renegotiation, and termination of international agreements.[7] With their near-universal coverage and thousands of agreements in place, BITs also provide a fruitful context in which to study exit clauses for various reasons. First, we exploit variation in a unique design feature in investment agreements: while some BITs can be terminated anytime, others allow for exit only after an initial commitment period, ranging from five years to multiple decades. Further, some treaties with the strictest termination provisions only allow for a short time-period during which unilateral termination is possible: this unique termination feature also known as the tacit renewal clause automatically renews the agreement unless one party exits the treaty within a pre-specified time-window.

Figure 1 presents the histograms of the three categories of BIT exit clauses over time: (1) "*Anytime*", where signatory states can withdraw anytime (Figure 1-a), (2) "*Anytime after initial*", where signatory states are locked into the agreement for a set initial period (e.g. 10 years) but can withdraw any time after the initial period (Figure 1-b), and (3) "*Termination window"* where the treaty automatically renews unless signatory states notify termination in a pre-specified time window (Figure 1-c). Figure 1 confirms that BITs vary greatly in terms of exit flexibility. It also shows that although BITs with the most flexible exit clause ("Anytime") are very rare, recent BITs increasingly include such highly flexible exit clauses. The observation is consistent with the recent developments in the investment treaty regime, whereby governments seek more flexibility and

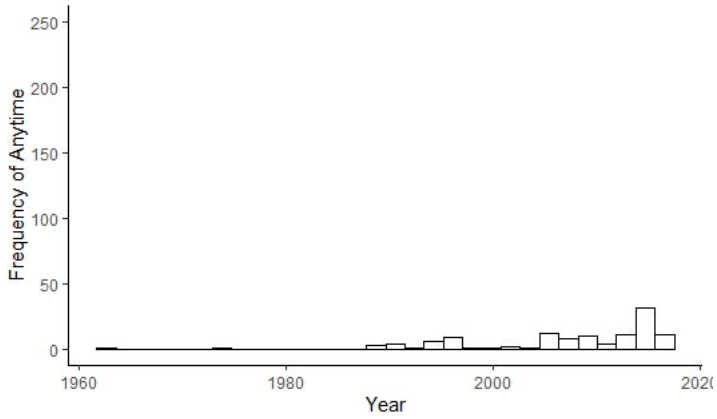
[5] Allee and Peinhardt, 2014
[6] Blake, 2013; Manger and Peinhardt, 2017
[7] Haftel and Thompson, 2018; Thompson, Broude and Haftel, 2019; Huikuri, 2022

state regulatory space (SRS) in BITs after having learned about their risks through investor-state disputes.[8]

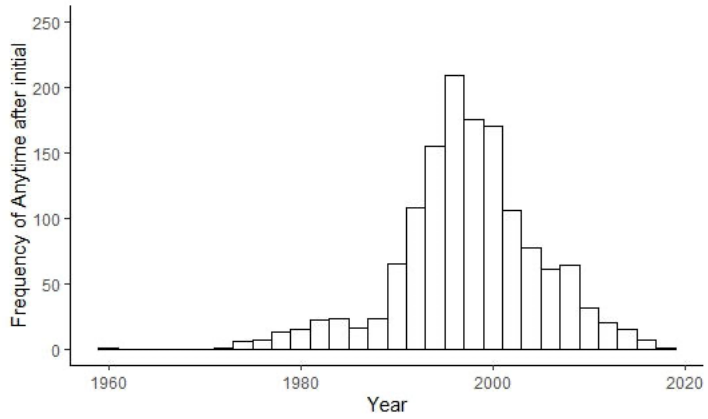
In addition to the interesting variation, because of their bilateral nature, BITs also make it possible to identify whose preferences are most likely reflected in their designs. In contrast, it is difficult to pinpoint each state's preference on exit clauses in multilateral agreements because of the large number of signatory states and a lack of transparency in rule-making procedures. Finally, unlike trade agreements or international organizations where a state's withdrawal is rare, termination of BITs has become increasingly common amidst the backlash against international investment arbitration[9], making termination a theoretically relevant issue. For instance, India terminated forty-nine BITs in 2017 and revised their exit clauses when it renegotiated them. These cases confirm that exit clauses in BITs are not included for the sake of legal requirements, and states do pay attention to them.

[8] Poulsen and Aisbett, 2013; Thompson, Broude and Haftel, 2019
[9] Waibel, 2010; Alschner, 2022

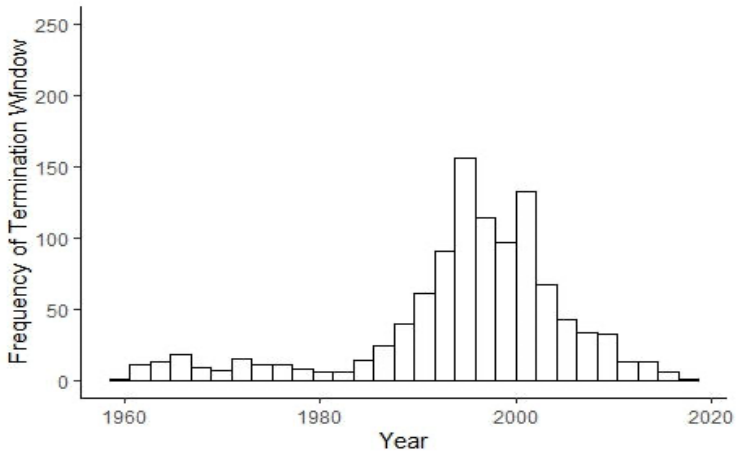
Figure 1: Variations in the flexibility of termination Clauses in BITs



a. Histogram of BITs that states can exit anytime



b. Histogram of BITs that states can exit anytime after initial period



c. Histogram of BITs that states can exit only within pre-specified termination window

To explain variation in flexibility of exit clauses in BITs, we examine both the domestic political environment of each signatory state and the dyadic relations between the signatory states. We theorize that states' preferences based on their regime types and their capital exporter-importer relations jointly shape the exit clauses in BITs. First, we argue that democracies are more likely to demand flexible termination clauses. BIT termination generates reputational, financial, and diplomatic costs; however, these costs are lower for democracies than autocracies because democracies have complementary domestic institutions. At the same time, fluid core electorates in democracies make democratic governments less willing to sign hard-to-exit BITs. Altogether, democracies should prefer BITs with easy exit clauses. Second, we argue that the capital exporter-importer relations within the dyadic BIT relations moderates a state's preferences over BIT design. Capital exporting states assess the domestic environment in the capital importing states because democratic domestic institutions mitigate political risks faced by foreign investors in host countries.[10] Therefore, capital exporters want BITs that force autocratic governments to commit to BITs for a long term, while they are less likely to push for strict exit clauses in BITs with democratic capital importing partners. Autocratic capital importers are also more likely to accept stricter termination clauses in BITs than their democratic counterparts because autocratic regimes have less to gain from BIT termination overall. Therefore, the more autocratic the capital importer in the country dyad is, the stricter termination clauses its BIT has, regardless of the regime type of capital exporter.

[10] Jensen, 2008

Table 1. Categorizing the flexibility of exit clauses

Flexibility	Category	Details
Low	Termination window	A signatory state can withdraw from the BIT only within a pre-specified period, usually 6 months before the initial term expires, and if the window is missed, the treaty gets automatically renewed.
Medium	Anytime after initial	A signatory state cannot withdraw from the treaty during the initial period but can withdraw anytime afterwards.
High	Anytime	A signatory state can withdraw from the BIT anytime.

To test our theoretical priors, we have constructed an original dataset on exit clauses by manually coding 2,536 BITs that are available in UNCTAD Investment Agreements Navigator.[11] We categorize the exit clauses into three groups based on the degree of flexibility as shown in Table 1. OLS and multinomial logit models suggest consistent evidence in support of our theoretical predictions that preferences over exit clauses in BITs are a function of regime type and exporter-importer relations, even after controlling for other factors suggested by the existing literature, including the substantive flexibility of the treaty, time trend, and country-specific factors. BITs between democratic partnerships are much more likely to contain easy exit clauses than BITs that include at least one autocratic state. Moreover, the higher the level of democracy in the capital importing state, the more flexible termination clauses the BITs have, regardless of the regime type of an exporting country.

This study advances our understanding of international institutions in several ways. First, it joins the extensive literature on BITs by bringing exit clauses – an underexplored dimension –

[11] We thank Nemo Krueger and So Jeong Noh for excellent research assistance.

to scholarly attention with an original dataset. While much ink has been spent on the general degree of constraint BITs impose on FDI host countries' regulatory autonomy, very little understanding exists on exit clauses which bind both host and home countries of investors to the agreed terms in the treaty. Our study illustrates that BITs contain varying exit clauses and provides initial evidence that signatory state's regime type and capital-importer relations shape their preferences for exit flexibility.

Second, we contribute to the growing literature on exits from international institutions. Recent study finds that more democratic countries are more prone to withdraw from intergovernmental organizations.[12] Our findings that BITs containing democracies include easier exit clauses extend the literature by showing that democracies are, in fact, considering their termination possibilities from the onset of an agreement negotiation. In other words, democracies are more likely to sign agreements with flexible exit clauses, and they are more likely to withdraw from them than their autocratic counterparts.

Lastly, this study adds to the rich literature on rational design of international institutions. One consensus in the literature is that flexibility in an agreement makes cooperation more sustainable by providing room to reflect changing environments and uncertainty about the future. Our findings add nuance to the well-established idea by showing that the preference for flexibility depends on the severity of the commitment problem its partner state faces. If the domestic environment of a state presents serious threats to cooperative commitments, then its partner state has incentives to lock in the agreement for longer term by demanding stricter termination clauses.

[12] von Borzyskowski and Vabulas, 2019

Therefore, flexibility in agreement exits is an outcome determined jointly by concerns regarding a partner state's commitments as well as their own needs for flexibility.

2. Exit clauses in bilateral investment treaties (BITs)

Exit clauses are distinct agreement design feature, independent of the substantive flexibility of a treaty. BITs vary in the extent to which they impose constraints on state sovereignty, some limiting state regulatory space more than others.[13] States' preferences over BIT flexibility vary: for example, leaders with longer time horizons sign BITs with less binding provisions to preserve flexibility in case of future changes in economic and political circumstances.[14] States are also willing to accept more binding BIT conditions during worse economic conditions to facilitate inward FDI,[15] and prefer stricter investor-state dispute settlement provisions when they have powerful domestic interest groups preferring strong investment protections.[16] If more flexibility is included in the agreement instead, governments have more room to maneuver within the bounds of the agreement without fundamentally changing it, for example by relying on pre-designed escape clauses.[17]

In contrast, termination of an agreement is a complete 'exit' from treaty-based cooperation.[18] While variations in agreement flexibility indicate how easily a state can divert from

[13] Broude, Haftel and Thompson, 2017; Thompson, Broude and Haftel, 2019
[14] Blake, 2013
[15] Simmons, 2014
[16] Allee and Peinhardt, 2014
[17] Rosendorff and Milner, 2001
[18] Although exit from an agreement can be seen as a stage in a longer negotiation process (Verdier, 2021), termination of an agreement generates costs distinct from simply relying on an in-built escape clauses, designed to allow temporary deviation from the cooperative agreement (Rosendorff and Milner, 2001).

the rules of the agreement, flexibility in termination clauses reveals how long a state is stuck in the agreement. In other words, signatory states are trapped in the agreed-upon rules, regardless of the overall flexibility of the agreement, if the agreement has hard-to-escape termination clauses. Preferences for flexibility in exit clauses, thus, should be a function of how certain a state is about its preferences in the level of substantive flexibility. Even when a state finds the general level of flexibility in a treaty optimal at *t*, it will still demand easy exit clauses if it is unsure if it will like the flexibility at *t+1*.

While exit clauses are a specific feature of international agreements, distinct from their substantive flexibility, scholarly attention on exit clauses has been rather scarce. Recent events such as Brexit, the US withdrawal from UNESCO and Paris Agreement have prompted scholarly attention to exits from international institutions, including exit clauses; however, the literature is still thin.[19] Few studies that have examined exit clauses take a functionalist view and treat exit clauses as an insurance against future uncertainty.[20] For instance, Koremenos and Nau (2010) argue that treaties that address an underlying "commitment problem" are more likely to have longer waiting periods than treaties that do not have such a goal because an early withdrawal by one state reduces the payoffs to the remaining states in the agreement. While we agree that preferences for flexibility in exit clauses is a function of the needs for insurance against uncertainty, we find that the functionalist view does not provide satisfactory explanation for varying degrees of exit clauses in the same issue area, foreign investor protection in the case of BITs, that address the same commitment problem. The functionalist view, thus, should be complemented with a more

[19] von Borzyskowski and Vabulas, 2019. For exit clauses, only recently have studies emerged taking them into account in the study of IO survival (Debre and Dijkstra, 2021; Dassler, Heinkelmann-Wild and Huysmans, 2022).
[20] Helfer, 2005; Koremenos and Nau, 2010; Koremenos, 2016

nuanced argument that addresses both domestic political environment and power dynamics between signatory states.

Although studies that directly look at exit clauses are rare, rational institutional design literature and exit from IOs literature suggest a few factors that could help us explain varying preferences for flexibility in exit clauses. First, one established understanding in the literature is that domestic political environments, especially regime type, is a critical factor that shapes a state's preferences for concluding and exiting international agreement. Democracies are more cooperative commercially because domestic institutions, including elections, prompt democratic rulers to be more cooperative internationally than their nondemocratic counterparts.[21] At the same time, depth and flexibility of cooperation goes hand in hand.[22] Thus, while democracies want more cooperative agreements, they might also have stronger preferences for easy exit clauses. Moreover, democracies are also more likely to exit from intergovernmental organizations than nondemocracies.[23] Thus, although there is little direct investigation into the role of regime type in exit clauses, they are a potentially important explanatory factor because democratic governments are more likely to care about the flexibility in treaty termination than autocratic governments.

Another key driver of institutional design that the literature has identified is disparity in power among signatory states. While all signatory states join an institution expecting some kinds of benefits, not all of them have equal power to determine the institution's rules.[24] In the case of BITs, the role of power disparity in their design is clear: patterns in BIT bindingness are attributed to the power politics that gives the advanced partner more leverage during negotiations, as Allee

[21] Mansfield, Milner and Rosendorff, 2002
[22] Rosendorff, 2005; Baccini, Dür and Elsig, 2015
[23] von Borzyskowski and Vabulas, 2019
[24] Koremenos, Lipson and Snidal, 2003

& Peinhardt (2014) concisely put. Indeed, large body of literature on the origins of the BIT regime agrees that it was major capital exporting states in Europe and later the USA that pushed for strong investor protection in the form of BITs. In contrast, capital importing countries had to accept the BITs as they were competing for foreign capital.[25] The capital importer-exporter relations, therefore, could be an important factor shaping state's preferences on BIT's exit clauses. In the following section, we elaborate our theoretical framework that focuses on the regime type and capital importer-exporter relations.

3. The political economy of states' preferences in exit clauses

In this section, we outline the theory of why some states prefer more flexible exit clauses in their investment agreements. First, we identify the benefits and costs associated with BIT termination. Then, we argue that the benefits and the costs vary across regime type. We theorize that democracies, in general, find benefits to be greater than costs, and therefore prefer agreements that are easier to terminate than autocrats. Second, we bring in the importer-exporter dynamics in the argument and theorize that the effect of regime type on termination flexibility is moderated by a partner state's regime type. Specifically, capital exporters, regardless of their regime type, want to lock in autocratic importers for a longer time than democratic importers due to the lack of credible domestic institutions. At the same time, autocratic capital importers find BIT termination highly costly, thereby accepting strict exit clauses. Our theoretical framework suggests that both domestic political interests and capital importer vs. exporter dynamics jointly shape a states' preferences on the exit clauses in BITs.

[25] Salacuse, 1990; Salacuse and Sullivan, 2005; Elkins, Guzman and Simmons, 2006; Allee and Peinhardt, 2010, 2014; Tobin and Rose-Ackerman, 2011

3.1 The benefits and the costs of BIT termination

To understand states' different preferences over the BIT termination flexibility, it is necessary to examine the benefits and costs associated with BIT termination. We argue that BIT termination can generate both international and domestic benefits and costs (See Table 2). At the international level, the biggest benefit of a BIT termination is to eliminate the threats of investor-state dispute settlement (ISDS) from any new investors from a treaty partner state. By exiting the cooperative agreement, the terminating state aims to eliminate its exposure to costly investment arbitration, which has been found to be the primary concern for governments terminating and renegotiating their investment treaties.[26]

From domestic political economy perspective, the benefits of terminating BITs include electoral gains from newly increased state regulatory space (SRS),[27] which will enable the government to react to the domestic demands for changes in regulatory policies. Investors have increasingly brought claims against democratic governments when their investments have been negatively affected because of governments' efforts to regulate for the benefit of the society. Examples of such "indirect expropriation" claims have resulted from government policies aiming to facilitate the green energy transition, reduction of coal-based energy sources, and phase out nuclear energy.[28] Terminating a BIT lifts constraints on such regulatory activities, as after termination, new foreign investments will no longer be able to bring such claims against the host government based on the BIT. Governments can leverage their increased regulatory space and

[26] Haftel and Thompson, 2018; Huikuri, 2022. The legal questions surrounding continuing liability for governments under BITs following unilateral termination are a subject to continued debate (Harrison, 2012). Regardless, limiting the risk of ISDS has been the main motivator for states when exiting their investment agreements, increasingly also under the Energy Charter Treaty (Cima, 2021).
[27] Broude, Haftel and Thompson, 2017
[28] Pelc, 2017

extended sovereignty to please their selectorates.[29] This, however, means that interest groups who used to benefit from the BITs could turn against the government, which accounts for domestic costs of BIT termination.

Table 2. Benefits and Costs of BIT Termination

	International	**Domestic**
Benefit of BIT termination	Decreasing risk of ISDS	Electoral gains from increased regulatory space
Cost of BIT termination	Financial, reputational, and diplomatic cost	Domestic beneficiaries of BIT turning against the government

In exchange for such benefits, terminating BITs results in international costs which include financial, reputational, and diplomatic costs. Note that when states find their BITs not in line with their interests, termination is not the only option - they can choose to either apply escape clauses (e.g., compensate the partner through ISDS for temporary violation of treaty terms) or, for example, attempt to mutually terminate the BIT in agreement with the partner state, an approach adopted by EU-member states. In fact, unilateral termination of a BIT is politically much more costly than reliance on escape clauses or cooperative adjustment of the agreement for several reasons. First, termination sends hostile signals to international investors, who regularly rely on cues to gain information about the investment environment in host countries.[30] If BIT ratification signals investor-friendliness of the host country, BIT terminations can signal hostility and create uncertainty over a government's intentions towards investors. Recent empirical findings indicate

[29] Mesquita *et al.*, 2005
[30] Brooks, Cunha and Mosley, 2015; Shim, 2022

that investors react to BIT terminations by governments, reducing and rerouting FDI into the country.[31] Furthermore, a termination of an international agreement attracts a lot of global attention, amplifying the negative signals beyond the market and generating potential diplomatic consequences. For instance, when the U.K. terminated its membership in the European Union, it grabbed global attention and generated far-reaching consequences that went beyond the UK-EU relations. Fundamentally, termination can be interpreted as a signal of unreliability and a defection from international cooperation. Given the uniqueness of termination, thus, states should consider the attractiveness of BIT termination on its own, independently from an agreement's flexibility features. Rather than focusing on substantive flexibility of treaties generally, we therefore focus on termination flexibility specifically.

3.2 BIT termination and regime type

We argue that the benefits and the costs of BIT termination vary significantly across regime type. First, democracies are more likely to find *international* benefits to be greater than *international* costs of BIT termination. When BITs are terminated, both democracies and autocracies benefit from eliminating ISDS threats. However, autocracies bear greater reputational, financial, and diplomatic costs than democracies because democratic domestic institutions mitigate the time-inconsistency problems for democracies. BITs improve "investment climate" in a signatory state, and they do so more in autocracies than democracies.[32] In other words, autocracies need BITs more for the purpose of credible commitments, and therefore, terminating BITs cause more credibility concerns for them. The heightened credibility concerns for autocrats then translate into increased reputational, financial, and diplomatic costs, making BIT terminations less attractive for autocrats.

[31] Hartmann and Spruk, 2020
[32] Arias, Hollyer and Rosendorff, 2018

Second, *domestic* benefits of BIT termination are also more likely to be greater for democracies than autocrats. When BITs are terminated, both democracies and autocracies face the domestic cost in the form of discontent from interest groups such as multinational corporations who used to benefit from the BITs. However, domestic benefits are likely to be greater in democracies than autocracies because governments in democracies face larger uncertainty regarding the core constituents they must satisfy to stay in office in the future.[33] Uncertainty increases the desire for control, and therefore the desire for flexibility, in institutions.[34] In democracies, an executive's base support may vary from election to election. Given that BITs typically last for several decades, parties might well dissolve and form alliances over the BIT duration. The evolution of parties inevitably creates different support bases. Thus, even though signing a BIT satisfies some interest groups at the moment of signing, it is important for democracies to keep the capacity to terminate the agreement in case it has to satisfy different groups of voters in the future. Studies, indeed, find that leaders prefer less binding BITs when they have longer time horizon and therefore face larger uncertainty about future changes (Blake 2013). Such uncertainty, however, is less likely to be a concern for autocrats. Autocrats have much more rigid support base, and the base tends to stay constant over a long period of time. In a military dictatorship, for example, the executives do and will have to serve military interests to survive. Thus, autocrats are less concerned about its ability to terminate the BIT because their core constituents, and thus their interests, are less likely to change in the future.

Overall, therefore, our theoretical framework expects that democracies are more likely to demand easy termination clauses. With less concerns about international repercussion of BIT

[33] Bauer, Cruz and Graham, 2012
[34] Koremenos, Lipson and Snidal, 2001

termination and more concerns about changing core electorates, democracies should be keen to keep its capacity to terminate a BIT when needed. This framework generates our first testable hypothesis:

H1: When at least one signatory country is a democracy, the BIT is more likely to include more flexible termination clauses.

3.3 Capital importers and exporters

In addition to a state's regime type, the kinds of costs and benefits generated from BIT termination also depend on whether the state imports or exports capital in relation to its treaty partner state. Because only capital importers face ISDS threats to begin with, BIT termination results in such international benefits only when the state hosts substantive amounts of foreign investment. On the contrary, if a signatory state expects to be the main capital exporter in the future, eliminating ISDS can be more costly than it is beneficial: investors and MNCs lose their treaty protections for new investments after BIT termination (domestic cost). Therefore, considering the signatory states capital importer-exporter interests is necessary to fully understand states' preferences also for BIT termination clauses.

Large body of literature on the origins of the BIT regime recognize that the strong investor protections, including ISDS clauses, were initially pushed for by major capital exporting states in Europe and later the USA, while competition for capital among developing, capital importing countries forced them to accept such strict treaty terms.[35] States preferences over what they want from their BITs are therefore strongly shaped by whether they expect to receive or send FDI flows.

[35] Salacuse, 1990; Salacuse and Sullivan, 2005; Elkins, Guzman and Simmons, 2006; Allee and Peinhardt, 2010, 2014; Tobin and Rose-Ackerman, 2011

Likewise, states' preferences regarding contents of their investment agreements tend to change when they shift from a net capital importer status to a net capital exporter status.[36] In line with the existing empirical literature on the origins of BITs, we therefore argue that a government's capital importer/exporter status moderates its preferences over BIT design.

We argue that capital exporting states assess the domestic environment in capital importing states, which is reflected in BIT features they push for in negotiations. Domestic institutions mitigate political risks faced by foreign investors in host countries in many ways: democracies tend to have more policy stability, enable firms to influence policy outcomes, generate transparency in politics, and create reputational costs for politicians who might have incentives to expropriate investors' assets.[37] In democratic host countries, there is therefore less need to push for BITs that generate credible commitments, or increase the ex-post costs of opportunistically expropriating investors' physical assets or, for example, whimsically changing tax policy.[38] However, in the absence of investment treaty obligations, autocratic regimes are not affected by such factors. Therefore, capital exporters, regardless of their regime type, are more likely to want BITs that force autocratic governments to commit to BITs and investor-friendly conduct that are hard to escape from, while they are less likely to push for strict termination clauses in BITs with democratic capital importing partners.

Capital exporters are not necessarily always able to impose their preferred treaty features on their capital importing counter parts. For example, host countries receiving large amounts of FDI towards natural resources in the extractive sector often have a lot of bargaining power vis-à-

[36] Haftel, Kim and Bassan-Nygate, 2021
[37] Jensen, 2008
[38] Elkins, Guzman and Simmons, 2006

vis potential investors.[39] However, we argue that autocratic capital importers are also more likely to *accept* stricter termination clauses likely demanded by the capital exporters in BITs than their democratic counterparts. Because democratic capital importers stand the most to gain both from limiting the international costs of ISDS risks as well as domestic benefits from greater regulatory freedom in the face of changing domestic demands, they are more likely to prefer high termination flexibility in investment treaties. Autocratic regimes have less to gain from BIT termination overall, and hence they are less likely to object to strict termination clauses if proposed by their capital exporter partners. Therefore, based on the preferences of both the capital exporters and capital importers, we would expect the regime type of the capital importer to influence termination flexibility in BITs.

H2: The more democratic the capital importing signatory state, the more likely the BIT is to include more flexible termination clauses.

4. Empirical strategy

To test our theoretical claims, we build an original dataset on terminational flexibility across BITs by manually coding how binding their exit clauses are. Although recent research has begun to explore whether IOs include exit clauses in their establishing conventions[40] , investment treaties are novel in including substantive variation in the strictness of these exit clauses across agreements. To our knowledge, no past research has coded the termination flexibility of international agreements at a comparable scale. Our unit of analysis is a BIT.

[39] Vernon, 1971; Ramamurti, 2001
[40] Debre and Dijkstra, 2021; Dassler, Heinkelmann-Wild and Huysmans, 2022

4.1 Data

We employ a dataset of 2,536 investment agreements from the United Nations Conference on Trade and Development (UNCTAD) IIA Mapping Project.[41] The dataset includes all investment agreements for which the treaty text is publicly available and that have been human coded for key contents at the time of data collection. We code a new variable, *termination flexibility,* ourselves, which we elaborate below. We also control for other treaty features including the duration of initial treaty term, length of automatic renewal, required termination notice period, and the length of the sunset clause, which capture the key aspects of how long the treaty commitment a state makes when joining the treaty in question. In addition, we capture features that influence how flexible the agreement is while in place, such as whether amendment protocols are included, whether there are exceptions for regulation in public health and the environment, and whether investor-state dispute settlement is included. Summary statistics of included treaty features are presented in Table A1 in the appendix, along with the rest of the variables included in the models.

Dependent variable: Termination flexibility

We identify three categories of termination features across investment agreements as shown earlier in Table 1, whereby 1.) termination is possible anytime; 2.) termination is possible after the initial term has passed; or 3.) termination is possible after the initial term has passed but before automatic renewal. These termination flexibility categories capture how easy the negotiating governments

[41] The UNCTAD IIA Mapping Project website can be accessed at https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping. Although new databases on investment agreements provide valuable sources for increasingly standardized, machine-readable treaty texts (for instance, see the Electronic Database of Investment Treaties (EDIT) project, Alschner, Elsig and Polanco, 2021), we rely on the collaborative UNCTAD project with universities that includes readily available, pre-coded treaty contents. Because of some concerns for lack of checks on coding by student RAs in the UNCTAD IIA Mapping Project, we conduct checks ourselves to ensure accuracy of the key coding decisions made.

have intended abandoning the investment agreement to be after it has been ratified.[42] Based on the category, we create an ordered categorical variable, $Termination\ flexibility$, which takes the value of 1 for strict termination window clauses, 2 when treaty can be terminated any time after initial period, and 3 for highly flexible treaties allowing termination anytime.

We define the highest termination flexibility to be allowed by treaties that can be terminated *anytime*, without time restrictions for when one signatory party may unilaterally exit the agreement. For example, the Angola-South Africa (2005) BIT states clearly that "[e]ither party may, at any time, give notice of its intention to terminate this Agreement." (Art. 12.3) Even if the termination right "at any time" is not explicitly mentioned but is otherwise implied, we include it into this highest category of termination flexibility. For example, the Mexico-UAE BIT (2016) states that "[t]his agreement shall remain in force for a period of ten (10) years renewable for equal periods of time, unless either of the Contracting Parties gives in writing the notice of termination of the Agreement." (Art. 31.3) Because no deadline is specified for when such notice of termination can be provided, this implies that such notice can be indeed sent at any time.[43] The

[42] Most international agreements can be terminated at any time. However, where an agreement provides special requirements or features for the termination procedure, these must be legally followed by the signatory parties. The Vienna Convention on the Law of Treaties (1969) is an international agreement regulating treaties between states, establishing for example the general principle of *pacta sunt servada* – that every treaty in force is binding upon its parties and must be performed by them in good faith (Section 1, Art. 26). Regarding termination of treaties, the Vienna Convention gives supremacy to the terms specified in the negotiated treaties. It states that the "termination of a treaty or the withdrawal of a party may take place in conformity with the provisions of the treaty; or at any time by consent of all the parties after consultation with the other contracting States" (Section 3, Art. 54, a-b.). The Vienna Convention also specifies the standard notice period of twelve months applying to parties that intend to withdraw from the treaty (Section 3, Art. 56, 2.). If an individual investment treaty specifies special features of termination, these must therefore generally be followed by any party who wishes to unilaterally withdraw from the agreement.

[43] Likewise, the Brazil – Mozambique BIT (2015) states that the treaty "will remain in force for a period of 20 years, automatically renewable for equal and successive periods, unless one of the parties notifies the reporting to the other at least 12 months in advance." (Art. 17.1) This this case, the 12-month advance

most flexible termination clause is not common in the BIT regime. Out of 2,519 BITs, we find that only 78 BITs allow a state withdrawal *anytime*.

The second termination flexibility category, which we categorize being of medium strictness, includes exit clauses that can be terminated *any time after some specified initial term*. A clear example of such a clause is included in the Gabon- Turkey BIT (2012): "Either Contracting Party may, by giving one year's prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter." (Art. 14.2). Occasionally, the right to terminate any time after the lapse of the initial period is not explicitly mentioned, but otherwise implied with wording such as "after which" or "thereafter" after an initial period is specified, such as in the Mauritius-UAE BIT (2015):

> "This agreement shall remain in force for a period of ten years. Thereafter it shall continue to remain in force until the expiration of twelve months from the date on which the other Contracting Party shall have given written notice of termination of this Agreement…" (Art. 16.3)

This category of termination flexibility therefore locks-in the treaty for a set initial term, after which unilateral exit is allowed flexibly. This category is the most common exit cluse in BIT regime. Out of 2,519 BITs, we find that 1,235 treaties specify exit clauses with features related to the *anytime after initial term*.

Finally, the strictest category of termination provisions presents a novel feature, not present in any other international regime. Some of the investment treaties include not only a set initial term, but also an automatic renewal of the treaty for a new time-period, unless one of the parties terminates the agreement within a limited "*termination window*". This feature is also known as the

notification refers to the period between when termination notification is sent and the termination taking effect.

tacit renewal clause, which has become notorious for governments seeking reform of their investment agreements: unless unilateral exit is conducted within the allowed time window, the treaty is renewed automatically, and the government remains obligated to follow its terms until a new termination window rolls around. For example, if a reformist government under the BLEU-Oman BIT (2008) were to miss the 12-month termination window, it would be committed for another 20 years under the treaty:

> "…The Agreement shall remain in force for a period of twenty years. Unless notification of termination is given by either Contracting Party at least one year before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of twenty years." (Art. 15.1)

Such a limited termination window in some investment treaties is a peculiar design feature, raising questions about when a government would want to tie its hands in such a drastic way. We find that although termination windows are more common in older BITs, we detect many tacit renewal clauses also in newer BITs (See Figure 1). This suggests that some governments continue to value such continuity in treaty protections for their investors and are willing to limit the possibilities of walking away from them. Out of 2,519 BITs, we find 884 BITs with strict *termination windows*.

Explanatory variables

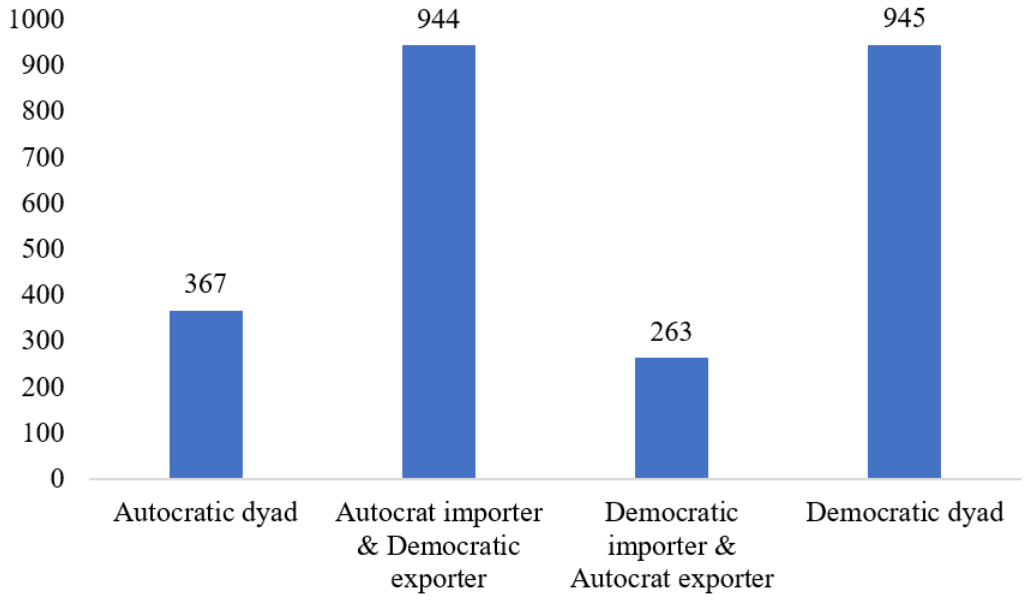
To test H1, we identify whether a BIT includes democracy. We define a democracy as having a value of 7 or higher on the combined Freedom House and Polity 2 variable with imputed missing values from the Quality of Government dataset, which ranges from 0-10, where 10 is the most democratic (Theorell *et al.*, 2020). Then, we construct a binary variable, $Democracy\ involved$, which takes the value of 1 when at least one signatory party was a democracy in year *t* when the treaty was signed and 0 otherwise.

To test H2, we code the regime type of capital importer, which requires us to identify which of the two signatory states imports more from the partner state. As the precise measure of the bilateral FDI flows is not available,[44] we rely on the second-best proxy, which is the net capital exports/imports in the years of treaty signature.[45] We assume that a country with larger net capital exports is the capital exporter, and the other is the capital importer. For dyads where export data is missing for one or both parties in the year of signature, the country with larger GDP becomes the presumed larger capital exporter. These two rules result in 2,393 ordered treaty-dyads. Then, we utilize the capital importer's regime type to test H2. Specifically, we combine Freedom House and Polity 2 score with imputed values for missing data and create a variable, *Democracy,* which is a continuous variable ranging from 0 to 10, where 10 is the most democratic regime.

Figure 2 shows the number of BITs in our dataset classified by their regime type and capital exporter/importer identity. Out of 2,519 total BITs, 367 treaties are between autocrats (15%), while 944 treaties are between autocratic importer and democratic exporter (37%), 263 treaties are between democratic importer and autocratic exporter (10%), and the remaining 945 treaties are between democracies (37%). Consistent with the existing understanding that BITs enhance credibility of autocrat importers the most, the dyad between autocrat importer and democratic exporter takes a large proportion of the total BITs (37%).

[44] We are in the process of acquitting the FT Market data on bilateral FDI flows.
[45] 'World Development Indicators', 2020

Figure 2. Number of BITs by regime type and exporter-importer relations



Control variables

We include various controls to address the most pressing endogeneity concerns. First, different treaty features are likely to influence states' preferences over termination flexibility. In addition to the known use of model treaties in BIT negotiations, other key features in investment treaties will likely influence how much flexibility to exit the signatories want to maintain. We control for the *Year of signature,* because governments have learned a lot about the BITs and the associated risks since the early days of the regime.[46] Overtime, governments have not only learned from experience

[46] Initially, many governments were not fully aware of the nature these agreements: many were taken by surprise when the first investment disputes with investors emerged, and became more wary of signing new agreements after they faced ISDS cases (Poulsen and Aisbett, 2013).

with investment arbitration, but also through lively policy discussion in international fora, such as those hosted by UNCTAD. We would expect that governments increasingly spend more resources in designing treaty features that serve their preferences and pushing for them at related negotiations – such as those derived from their regime type. Therefore, we expect the effect of regime type on BIT termination flexibility to be stronger among newer BITs, as well as newer BITs to be more likely to include flexible termination features.

There are also additional treaty features that could influence termination flexibility in investment treaties, which we control for in our analysis. We control for the length of the *Initial term,* which captures the duration of the investment treaty from the moment it is ratified by both parties, while *Automatic renewal* captures the length of the time-period for which the treaty is renewed for after the initial period has ended. Both variables are measured in years. Generally, longer initial term and auto-renewal imply longer time commitment to the treaty.[47] Commonly, governments also need to give notice if they intend to unilaterally terminate the investment treaty. This is captured by the variable *Notice period*, measured in months, which defines the period from when notification is sent from one government to the other via diplomatic channels about their intention to terminate the treaty to the termination taking effect (commonly 6-12 months). After the termination takes effect, unilateral termination usually triggers the so-called survival or *Sunset clause,* variable we measure in years, which keeps the provisions of the BIT in force for all investments that were made prior to termination for the specified sunset duration. Most BITs include notoriously long sunset clauses, leaving many governments stuck with their treaty

[47] However, these features alone are not fully informative of the length of treaty commitment. For example, agreements where the initial term is indicated to be "indefinite", common also for most free trade agreements, usually also allow for flexible termination anytime. Therefore, our termination flexibility variable is an important contribution to the study of BIT design.

commitments often for decades after already having exited from the agreement. It is important to control for these additional treaty features in our empirical investigation because they likely matter for states' preferences over termination flexibility. For example, states might be more likely to accept treaties with stricter termination provisions, such as a narrow termination window, if the initial commitment period and the automatic renewal periods are shorter.

We also include binary variables for whether an explicit *Unilateral termination* clause, *Amendment* clause, or *ISDS* and *SSDS* clauses are included. Finally, we control for whether the treaties include different types of exceptions: if a treaty is substantively flexible, such as allowing deviation from some of the treaty's obligations under special circumstances, signatory states might be more willing to accept binding agreements. We therefore include binary control variables for whether the treaty includes *Security exception, Health/Environmental exception*, *Other exception*, or a *Prudential carveout*, which allow more regulation by the host government under special circumstances.[48]

In addition, we control for a set of treaty partner and year of signature-specific variables. In international economic negotiations, the economic and political attributes and conditions have been found to shape both governments preferences as well as negotiation outcomes. To isolate the effect regime type has on the flexibility of exit clauses in investment treaties, we therefore control for economic variables from World Development Indicators. Economic power is captured by *GDP* in billions of US-dollars*,* which is likely to both influence bargaining power dynamics and likely influences democratic institutions. Because governments with higher dependency on international

[48] State regulatory space (SRS) has been employed as a single metric capturing how much regulation is allowed by investment treaties (Broude, Haftel and Thompson, 2018). However, SRS data is not available for the over 2,000 BITs in our dataset. We therefore rely on controlling for the specific individual features which we think are the most relevant for influencing states' preferences over termination flexibility.

capital flows might be more likely agree on stricter termination clauses, we also control for % *FDI inflows of GDP,* which measures the percentage of foreign direct investment inflows of the total GDP of the country, and % *Trade of GDP* controls for the party's trade dependence.

Research on BIT reform has found that states become more reserved towards their investment treaties and become more likely to renegotiate them towards higher state regulatory space after becoming a respondent state in investment disputes. Therefore, the parties' *Cumulative ISDS experience* as a respondent state in ISDS is also likely to influence how strict the termination clauses in their BITs are, which we control for. Finally, other political factors are also likely to influence both whether partner states themselves prefer higher or lower termination flexibility, but also what kinds of provisions their partner states demand of them. We therefore control for both partners the *Law and Order* and *Government stability* in the year the treaty was signed, because potential host countries to investment with stable and reliable investment climate pose less risk and therefore might be more likely to achieve higher termination flexibility in BITs as well.

4.2 Model specification

We employ a cross-sectional dyadic dataset where the unit of observation is the investment treaty between the two signatory partners. The dyads are ordered based on theorized capital exporting status such that Party 1 is always the party with larger net capital exports in the year of treaty signature. 1,954 dyads are ordered employing export data.[49] To test H1, we employ the following OLS model:

[49] Exporting volume results in occasional oddities, such the Ethiopia-UK ordering whereby Ethiopia was the larger capital exporter in 2009, therefore coded as Party 1 in the dyad.

$$Termination\ flexibility_{ijt} = \beta_0 + \beta_1 Democracy\ involved_{ijt} + Treaty\ features_{ijt} + X_{it} + Z_{jt} + \varepsilon_{ijt} \quad 1.$$

where the dependent variable is *Termination flexibility* in the treaty between state *i* and state *j* signed in year *t*. The explanatory variable is *Democratic involved,* which indicates whether the treaty involves at least one democracy. *Treaty features* is a set of treaty-specific controls; X_{it} and Z_{jt} are sets of country- and signature-year specific controls, and ε_{ijt} is the error term.

To test our hypothesis 2, we capture the level of democracy in both states separately. For hypothesis testing, we are particularly interested in whether the democracy in the capital importing state corresponds to higher termination flexibility. In other words, this model can be written as the following, and we expect β_2 to be positive and statistically significant:

$$Termination\ flexibility_{ijt} = \beta_0 + \beta_1 Democracy_{it} + \beta_2 Democracy_{jt} + \beta_3 Treaty\ features_{ijt} + \beta_4 X_{it} + \beta_5 Z_{jt} + \varepsilon_{ijt} \quad 2.$$

Because our dependent variable is categorical and ordered with increasing termination flexibility, we also estimate a set of ordered logit models for both hypotheses testing. While OLS assumes equal interval distances between the different categories, an ordered logit does not require such an assumption. Since we have no reason to assume that the differences between the different types of exit clauses are necessarily equal, we estimate ordered logit models where the dependent variables are ordered outcome variable with value 1 for *termination window*, 2 for *anytime after initial*, and 3 for *anytime*.

5. Results

Table 3 presents the results from the OLS and ordered logit models for testing hypothesis 1, the effect of democratic signatory states on the outcome variable *Termination flexibility.* Across the models, an investment treaty with one or both signatory states being democracies corresponds to

having a more flexible termination clause in the BIT. The effect is statistically significant and positive in all models, providing support for our first hypothesis.

In addition, other intuitive findings emerge. Newer BITs tend to include more flexible termination clauses than older ones, as manifested by the positive and statistically significant coefficients for the year of signature variable. The finding is in line with recent literature on BIT design, reform trends, and learning in the investment treaty regime. Further, longer initial terms included in BITs correspond to higher termination flexibility: for example, states are likely to sign and ratify international agreements that are indefinite in their duration as long as they can be legally terminated anytime, as is the case in free trade agreements. Likewise, longer automatic renewal terms and notice periods correspond to a statistically significant and positive effect on termination flexibility. Inclusion of a security exception likewise corresponds to more flexibility to terminate the BIT, also because of such flexible preferences often go together. On the other hand, if a treaty includes an ISDS clauses, it is more likely to include a strict termination clause specifying a limited termination window, as indicated by the negative and statistically significant coefficients in models 5 and 7. This is likely due to the hundreds of BITs signed especially through the 1980s and 1990s which aimed to push for stronger investment protections through ISDS and also keeping such commitments in place for as long as possible to facilitate investor confidence.

Of the signatory state -specific controls, higher trade dependence of Party 1 decreases the predicted termination flexibility, while the effect is not statistically significant for the trade dependence of Party 2 in the fully restricted models. It is possible that the larger capital exporter (and economy) Party 1 that is deeply embedded in international trade and markets prefers to push for stricter termination clauses to cater to the interests of its business groups and can also push for them in investment treaty negotiations. Stability of government for the party that exports capital

in larger quantities, on the other hand, increases the chances of including higher termination flexibility. Interestingly, the ISDS experience of signatory parties has no consistent statistically significant effect on termination flexibility in BITs.

Table 3. OLS and ordered logit models

	Dependent variable: termination flexibility						
	OLS model					Ordered logit	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Democracy involved	0.151***	0.0717***	0.133***	0.184***	0.123***	0.553***	0.832***
	(0.0286)	(0.0208)	(0.0351)	(0.0397)	(0.0321)	(0.104)	(0.234)
Year of signature		0.00845***			0.00586**		0.0403**
		(0.00114)			(0.00235)		(0.0182)
Initial term		0.00099***			0.00096***		0.00638***
		(0.00007)			(0.00008)		(0.00076)
Automatic renewal		0.00062***			0.00063***		0.0034***
		(0.00002)			(0.00002)		(0.00018)
Unilateral termination		0.0389			-0.0115		-0.114
		(0.0847)			(0.109)		(0.800)
Notice period		0.0135***			0.0166***		0.120***
		(0.00333)			(0.00412)		(0.0297)
Amendment		0.0458**			0.0307		0.322
		(0.0201)			(0.0260)		(0.196)
Sunset clause		-0.000995			-0.000293		0.000942
		(0.00196)			(0.00264)		(0.0197)
Health/environmental exception		-0.0471			0.0742		0.510
		(0.0366)			(0.0521)		(0.405)
Security exception		0.141***			0.128***		1.107***
		(0.0274)			(0.0362)		(0.307)
Other exception		-0.0176			-0.0395		-0.387
		(0.0352)			(0.0443)		(0.366)
Prudential carveout		0.0312			0.0492		0.686
		(0.0569)			(0.0670)		(0.561)
ISDS clause		0.0297			-0.470***		-2.956***
		(0.0478)			(0.122)		(0.961)
SSDS clause		-0.215			-0.0551		-0.566
		(0.173)			(0.376)		(3.719)
GDP in bn. USD (party 1)			4.4e-14***		-6.95e-15		-5.01e-14
			(7.94e-15)		(7.55e-15)		(6.15e-14)
GDP in bn. USD (party 2)			7.23e-14**		-2.68e-15		-1.51e-14
			(3.50e-14)		(2.82e-14)		(2.17e-13)
FDI inflow dependence (party 1)			-0.00157		-0.00105		-0.0109
			(0.00134)		(0.00104)		(0.00737)
FDI inflow dependence (party 2)			0.00602**		0.00242		0.0172
			(0.0027)		(0.00241)		(0.0191)

Trade dependence (party 1)			-0.00006		-0.0008***		-0.00557***
			(0.00025)		(0.00023)		(0.00155)
Trade dependence (party 2)			0.0004		0.00021		0.00123
			(0.00034)		(0.00032)		(0.00238)
Cum. ISDS experience (party 1)				0.0351***	-0.00465		-0.0270
				(0.0043)	(0.0041)		(0.0340)
Cum. ISDS experience (party 2)				0.00830	0.00155		-0.00880
				(0.0055)	(0.00427)		(0.0292)
Law and order (party 1)				-0.0132	-0.00187		-0.00184
				(0.0124)	(0.0107)		(0.0782)
Law and order (party 2)				-0.00435	-0.00552		-0.0285
				(0.0111)	(0.009)		(0.0676)
Government stability (party 1)				0.0312***	0.0344***		0.254***
				(0.0088)	(0.0069)		(0.0534)
Government stability (party 2)				-0.00333	0.00568		0.0459
				(0.008)	(0.0069)		(0.0520)
N	2528	2473	2009	1719	1435	2528	1435

Standard errors in parentheses
* $p < .10$, ** $p < .05$, *** $p < .01$

Turning to testing Hypothesis 2, Table 4 presents results addressing the level of democracy in the major capital exporter and importer separately. Based on our theory, we would expect the regime type of the capital importer (Party 2) to have a statistically significant effect on termination flexibility; namely, more democratic importers should be able to achieve more termination flexibility than less democratic ones, both because of their own preferences as well as demands from their treaty partner. Indeed, we find this in both the fully restricted OLS and ordered logit models: the higher the level of democracy for Party 2, the higher the termination flexibility in the termination clauses. The same is also true for the level of democracy of Party 1, the party exporting more capital, suggesting that overall, democratic countries demand more flexible termination clauses in investment agreements.

The ordered logit models are largely consistent with the results from the OLS models presented in Table 3. BIT features that correlate positively with termination flexibility are the year of signature, the security exception, as well as the lengths of the initial term, automatic renewal

and the notice period. On the other hand, inclusion of the ISDS clause decreases the flexibility of the included termination clauses like in the models presented in Table 3. Likewise, the cumulative ISDS experiences of the parties does not have a statistically significant effect on termination flexibility (Table 4, Models 5 and 7). The effect of trade dependence of Party 1 on termination flexibility between the countries also maintains its statistical significance.

Table 4. OLS and ordered logit models

	Dependent variable: Termination flexibility						
	OLS model					Ordered logit	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Democracy (party 1)	0.0104***	0.00925***	0.00984**	0.0144***	0.0135***	0.0359***	0.0852***
	(0.00374)	(0.0028)	(0.00419)	(0.00505)	(0.00406)	(0.0138)	(0.0297)
Democracy (party 2)	0.0140***	0.00301	0.0168***	0.0186***	0.00911**	0.0495***	0.0697***
	(0.00374)	(0.0027)	(0.00411)	(0.00451)	(0.00353)	(0.0138)	(0.0267)
Year of signature		0.0066***			0.00545**		0.0353*
		(0.0013)			(0.00239)		(0.0187)
Initial term		0.00099***			0.000912***		0.00594***
		(0.00007)			(0.00008)		(0.000737)
Automatic renewal		0.00063***			0.000636***		0.00344***
		(0.00002)			(0.00002)		(0.000186)
Unilateral termination		-0.00681			-0.00247		-0.0700
		(0.0943)			(0.109)		(0.822)
Notice period		0.0203***			0.0164***		0.120***
		(0.00347)			(0.0042)		(0.0297)
Amendment		0.0529**			0.0302		0.302
		(0.0206)			(0.0265)		(0.201)
Sunset clause		0.00129			0.00106		0.0118
		(0.00209)			(0.0027)		(0.0203)
Health/environmental exception		-0.0224			0.0658		0.421
		(0.0379)			(0.0537)		(0.418)
Security exception		0.127***			0.129***		1.117***
		(0.0281)			(0.0367)		(0.313)
Other exception		0.00620			-0.0217		-0.203
		(0.0364)			(0.0457)		(0.382)
Prudential carveout		0.0213			0.0566		0.791
		(0.0568)			(0.0677)		(0.558)
ISDS clause		-0.196***			-0.493***		-2.975***
		(0.0716)			(0.128)		(1.014)
SSDS clause		0.0728			-0.0945		-0.810
		(0.267)			(0.375)		(3.727)
GDP (party 1)			4.4e-14***		-6.98e-15		-5.11e-14
			(8.04e-15)		(7.60e-15)		(6.26e-14)
GDP (party 2)			7.81e-14**		4.56e-15		4.46e-14

			(3.74e-14)		(2.82e-14)		(2.18e-13)
FDI inflow dependence (party1)			-0.00276**		-0.00123		-0.0132
			(0.00137)		(0.00106)		(0.00908)
FDI inflow dependence (party2)			0.00609**		0.00238		0.0177
			(0.00273)		(0.00241)		(0.0195)
Trade dependence (party1)			-0.000319		-0.00083***		-0.00584***
			(0.00027)		(0.00023)		(0.00156)
Trade dependence (party2)			0.000601*		0.000368		0.00265
			(0.00036)		(0.00032)		(0.00247)
Cum. ISDS experience (party1)				0.0344***	-0.00414		-0.0218
				(0.00437)	(0.00415)		(0.0341)
Cum. ISDS experience (party2)				0.00916	0.00338		0.00302
				(0.00557)	(0.00429)		(0.0294)
Law and order (party1)				-0.0139	-0.00707		-0.0257
				(0.0136)	(0.0114)		(0.0839)
Law and order (party2)				-0.00486	-0.00257		-0.0125
				(0.0116)	(0.00924)		(0.0699)
Government stability (party1)				0.0281***	0.0367***		0.267***
				(0.00925)	(0.0078)		(0.0560)
Government stability (party2)				0.00237	0.00331		0.0355
				(0.00851)	(0.00732)		(0.0563)
N	2228	2180	1900	1618	1387	2228	1387

Standard errors in parentheses
* $p < .10$, ** $p < .05$, *** $p < .01$

Conclusion

In this paper, we have presented the first theoretical and empirical study investigating what influences termination flexibility in bilateral investment treaties. We collect data on termination clauses in BITs to explore which treaties are more likely to include strict termination windows or highly flexible exit options. We find that the regime type of the signatory states is a key determinant of termination flexibility in international economic agreements: overall, democratic governments tend to prefer BITs which can be terminated at any time. On the contrary, autocratic governments are less concerned with maintaining the option to exit from agreed-on rules, as they are less impacted by future changes in the domestic groups they must satisfy for their political survival. Although international politics scholarship has tended to view democracies as more cooperative, they indeed seem to want to keep a high level of termination flexibility regarding their

investment treaty commitments. We also identify the capital importer and exporter identities of the governments as vital in shaping their preferences over contents of BITs. Because democratic institutions create and signal credible commitments towards fair treatment of foreign investors as well as policy stability mitigating investment risk, democratic capital importers can achieve more flexible termination clauses in negotiations with their capital exporting partners.

Our findings contribute to the growing bodies of literature on the backlash against the investment treaty regime as well as exit from international institutions. Although scholarship on BITs, their design, and reform of investment governance has advanced greatly in the past years, we are not aware of any previous quantitative study on termination flexibility in BITs, even though the unique tacit withdrawal clauses are well known in international economic law and policy circles. We also advance the understanding of design of termination clauses in international agreements more generally. Leveraging over 2,000 bilateral international agreements in a single issue-area enables us to hold constant many political- and negotiation dynamics, as well as isolate the effect of signatory governments' regime type in empirical testing. The insights from the context of investment treaties can aid the understanding of exit clauses also in other issues of international politics.

Challenges to the empirical estimation however remain. While we would theoretically expect capital exporters to prefer stricter termination provisions with more autocratic partner states regardless of their regime type, data limitations on bilateral foreign direct investment flows prevent a more detailed investigation of the bilateral capital importer-exporter relationship. Our correlational analysis also suffers from endogeneity concerns, which we have addressed within the bounds of data limitations. The study of BITs is notorious for concerns of selection bias, as the

unobservable factors that likely influence termination flexibility are likely different from those that influence whether a BIT is signed in the first place. Extension of the study could examine over-time changes in individual states' international agreements and their termination flexibility, especially as substantive changes in their political institutions take place.

References

Allee, T. and Peinhardt, C. (2010) 'Delegating Differences: Bilateral Investment Treaties and Bargaining Over Dispute Resolution Provisions', *International Studies Quarterly*, 54(1), pp. 1–26. Available at: https://doi.org/10.1111/j.1468-2478.2009.00575.x.

Allee, T. and Peinhardt, C. (2014) 'Evaluating Three Explanations for the Design of Bilateral Investment Treaties', *World Politics*, 66(1), pp. 47–87. Available at: https://doi.org/10.1017/S0043887113000324.

Alschner, W. (2022) *Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes*.

Alschner, W., Elsig, M. and Polanco, R. (2021) 'Introducing the Electronic Database of Investment Treaties (EDIT): The Genesis of a New Database and Its Use', *World Trade Review*, 20(1), pp. 73–94. Available at: https://doi.org/10.1017/S147474562000035X.

Arias, E., Hollyer, J.R. and Rosendorff, B.P. (2018) 'Cooperative Autocracies: Leader Survival, Creditworthiness, and Bilateral Investment Treaties*', *American Journal of Political Science*, 62(4), pp. 905–921. Available at: https://doi.org/10.1111/ajps.12383.

Baccini, L., Dür, A. and Elsig, M. (2015) 'The politics of trade agreement design: revisiting the depth-flexibility nexus', *International Studies Quarterly*, 59(4), pp. 765–775.

Bauer, M., Cruz, C. and Graham, B. (2012) 'Democracies only: When do IMF agreements serve as a seal of approval?', *The Review of International Organizations*, 7(1), pp. 33–58.

Blake, D.J. (2013) 'Thinking Ahead: Government Time Horizons and the Legalization of International Investment Agreements', *International Organization*, 67(4), pp. 797–827.

von Borzyskowski, I. and Vabulas, F. (2019) 'Hello, goodbye: When do states withdraw from international organizations?', *The Review of International Organizations*, 14(2), pp. 335–366. Available at: https://doi.org/10.1007/s11558-019-09352-2.

Brooks, S.M., Cunha, R. and Mosley, L. (2015) 'Categories, Creditworthiness, and Contagion: How Investors' Shortcuts Affect Sovereign Debt Markets', *International Studies Quarterly*, 59(3), pp. 587–601. Available at: https://doi.org/10.1111/isqu.12173.

Broude, T., Haftel, Y.Z. and Thompson, A. (2017) 'The Trans-Pacific Partnership and Regulatory Space: A Comparison of Treaty Texts', *Journal of International Economic Law*, 20(2), pp. 391–417. Available at: https://doi.org/10.1093/jiel/jgx016.

Broude, T., Haftel, Y.Z. and Thompson, A. (2018) 'Who Cares about Regulatory Space in BITs? A Comparative International Approach', in *Comparative International Law*. New York: Oxford University Press. Available at: https://doi.org/10.1093/oso/9780190697570.003.0024.

Cima, E. (2021) 'Retooling the Energy Charter Treaty for climate change mitigation: lessons from investment law and arbitration', *The Journal of World Energy Law & Business*, 14(2), pp. 75–87. Available at: https://doi.org/10.1093/jwelb/jwab007.

Dassler, B., Heinkelmann-Wild, B. and Huysmans, M. (2022) 'Insuring the weak: Exit clauses in international organization', in. *Political Economy of International Oragnizations (PEIO)*.

Debre, M.J. and Dijkstra, H. (2021) 'Institutional design for a post-liberal order: why some international organizations live longer than others', *European Journal of International Relations*, 27(1), pp. 311–339. Available at: https://doi.org/10.1177/1354066120962183.

Elkins, Z., Guzman, A.T. and Simmons, B.A. (2006) 'Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960–2000', *International Organization*, 60(4), pp. 811–846. Available at: https://doi.org/10.1017/S0020818306060279.

Haftel, Y.Z., Kim, S.Y. and Bassan-Nygate, L. (2021) 'High-Income Developing Countries, FDI Outflows and the International Investment Agreement Regime', *World Trade Review*, pp. 1–17. Available at: https://doi.org/10.1017/S1474745621000434.

Haftel, Y.Z. and Thompson, A. (2018) 'When do states renegotiate investment agreements? The impact of arbitration', *The Review of International Organizations*, 13(1), pp. 25–48. Available at: https://doi.org/10.1007/s11558-017-9276-1.

Harrison, J. (2012) 'The Life and Death of BITs: Legal Issues Concerning Survival Clauses and the Termination of Investment Treaties', *The Journal of World Investment & Trade*, 13(6), pp. 928–950. Available at: https://doi.org/10.1163/22119000-01306002.

Hartmann, S. and Spruk, R. (2020) *The Impact of Unilateral Bilateral Investment Treaties Terminations on FDI: Evidence from a Natural Experiment*. SSRN Scholarly Paper ID 3591529. Rochester, NY: Social Science Research Network. Available at: https://doi.org/10.2139/ssrn.3591529.

Helfer, L. (2006) 'Understanding Change in International Organizations: Globalization and Innovation in the ILO', *Vanderbilt Law Review*, 59, pp. 649–726.

Helfer, L.R. (2005) 'Exiting Treaties'. Rochester, NY. Available at: https://papers.ssrn.com/abstract=683481 (Accessed: 3 January 2023).

Huikuri, T.-A. (2022) 'Constraints and incentives in the investment regime: How bargaining power shapes BIT reform', *The Review of International Organizations* [Preprint]. Available at: https://doi.org/10.1007/s11558-022-09473-1.

Jensen, N. (2008) 'Political Risk, Democratic Institutions, and Foreign Direct Investment', *The Journal of Politics*, 70(4), pp. 1040–1052. Available at: https://doi.org/10.1017/s0022381608081048.

Koremenos, B. (2016) *The Continent of International Law: Explaining Agreement Design*. Cambridge University Press.

Koremenos, B., Lipson, C. and Snidal, D. (2001) 'The Rational Design of International Institutions', *International Organization*, 55(4), pp. 761–799.

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

Koremenos, B. and Nau, A. (2010) 'Exit, No Exit', *Duke Journal of Comparative & International Law*, 21(1), pp. 81–120.

Mansfield, E.D., Milner, H.V. and Rosendorff, B.P. (2002) 'Why Democracies Cooperate More: Electoral Control and International Trade Agreements', *International Organization*, 56(3), pp. 477–513.

Mesquita, B.B. de *et al.* (2005) *The Logic of Political Survival*. MIT Press.

Pelc, K.J. (2017) 'What Explains the Low Success Rate of Investor-State Disputes?', *International Organization*, 71(3), pp. 559–583. Available at: https://doi.org/10.1017/S0020818317000212.

Poulsen, L.N.S. and Aisbett, E. (2013) 'When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning', *World Politics*, 65(2), pp. 273–313. Available at: https://doi.org/10.1017/S0043887113000063.

Ramamurti, R. (2001) 'The Obsolescing "Bargaining Model"? MNC-Host Developing Country Relations Revisited', *Journal of International Business Studies*, 32(1), pp. 23–39. Available at: https://doi.org/10.1057/palgrave.jibs.8490936.

Roger, C.B. (2020) *The Origins of Informality: Why the Legal Foundations of Global Governance Are Shifting, and Why It Matters*. Oxford University Press.

Roger, C.B. and Rowan, S.S. (2022) 'Analyzing international organizations: How the concepts we use affect the answers we get', *The Review of International Organizations*, 17(3), pp. 597–625. Available at: https://doi.org/10.1007/s11558-021-09432-2.

Rosendorff, B.P. (2005) 'Stability and rigidity: politics and design of the WTO's dispute settlement procedure', *American Political Science Review*, 99(03), pp. 389–400.

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

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

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

Shim, S. (2022) 'Who Is Credible? Government Popularity and the Catalytic Effect of IMF Lending', *Comparative Political Studies*, p. 00104140211060280. Available at: https://doi.org/10.1177/00104140211060280.

Simmons, B.A. (2014) 'Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment', *World Politics*, 66(1), pp. 12–46. Available at: https://doi.org/10.1017/S0043887113000312.

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

Thompson, A., Broude, T. and Haftel, Y.Z. (2019) 'Once Bitten, Twice Shy? Investment Disputes, State Sovereignty, and Change in Treaty Design', *International Organization*, 73(4), pp. 859–880. Available at: https://doi.org/10.1017/S0020818319000195.

Tobin, J.L. and Rose-Ackerman, S. (2011) 'When BITs have some bite: The political-economic environment for bilateral investment treaties', *The Review of International Organizations*, 6(1), pp. 1–32. Available at: https://doi.org/10.1007/s11558-010-9089-y.

Vabulas, F. and Snidal, D. (2013) 'Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements', *The Review of International Organizations*, 8(2), pp. 193–220. Available at: https://doi.org/10.1007/s11558-012-9161-x.

Verdier, D. (2021) 'Bargaining strategies for governance complex games', *The Review of International Organizations* [Preprint]. Available at: https://doi.org/10.1007/s11558-020-09407-9.

Vernon, R. (1971) 'Sovereignty at bay: The multinational spread of U. S. enterprises', *The International Executive*, 13(4), pp. 1–3. Available at: https://doi.org/10.1002/tie.5060130401.

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

Walter, S. (2021) 'The Backlash Against Globalization', *Annual Review of Political Science*, 24(1), pp. 421–442. Available at: https://doi.org/10.1146/annurev-polisci-041719-102405.

Weyrauch, D. (2022) 'Exit from Intergovernmental Organizations: How Domestic Politics Conditions International Disintegration', in *Political Economy of International Organizations*.

'World Development Indicators' (2020). The World Bank Group. Available at: https://datatopics.worldbank.org/world-development-indicators/.

Appendix

Table A1. Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Max
Termination flexibility	2,528	1.62	0.55	1.00	3.00
Anytime	2,528	0.03	0.18	0.00	1.00
Anytime after	2,528	0.55	0.50	0.00	1.00
Termination window	2,528	0.42	0.49	0.00	1.00
Democratic dyad	2,335	0.84	0.37	0.00	1.00
Year of signature	2,535	1,996.78	9.20	1,959.00	2,018.00
Initial term	2,536	37.60	159.65	1	999
Automatic renewal	2,505	627.04	479.64	1.00	999.00
Unilateral termination	2,535	0.99	0.11	0.00	1.00
Notice period	2,525	10.82	2.65	0.00	60.00
Amendment	2,535	0.22	0.42	0.00	1.00
Sunset clause	2,516	12.21	4.29	0.00	20.00
Health/environment exception	2,536	0.08	0.27	0	1
Security exception	2,536	0.14	0.35	0	1
Other exception	2,536	0.08	0.27	0	1
Prudential carveout	2,536	0.03	0.17	0	1
ISDS clause	2,536	0.95	0.21	0	1
SSDS clause	2,536	1.00	0.06	0	1
GDP in bn. USD (Party 1)	2,375	931.06	1,563.22	1.00	14,997.76
GDP in bn. USD (Party 2)	2,310	126.29	340.65	0.18	5,501.97
% FDI inflows of GDP (Party 1)	2,336	3.94	9.09	-4.03	249.11
% FDI inflows of GDP (Party 2)	2,231	3.07	4.52	-37.15	82.05
% Trade of GDP (Party1)	2,349	73.98	51.64	0.37	437.33
% Trade of GDP (Party 2)	2,222	75.03	37.61	0.18	334.60
Cumulative ISDS experience (Party 1)	2,376	0.85	2.93	0.00	26.00
Cumulative ISDS experience (Party 2)	2,387	0.49	2.16	0.00	59.00
Law and order (Party 1)	2,203	4.85	1.09	1.50	6.00
Law and order (Party 2)	1,788	3.83	1.20	0.00	6.00
Government stability (Party 1)	2,203	8.25	1.77	2.33	12.00
Government stability (Party 2)	1,788	8.14	1.97	2.00	12.00