

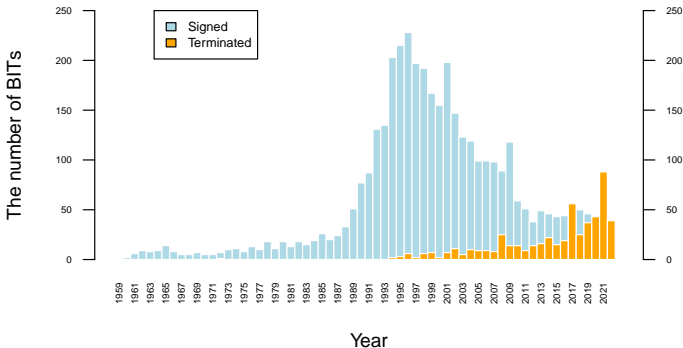
# Strategized Exit: Sunset Clauses & Unilateral Terminations of BITs

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# Motivations: Rising Trend of BIT Termination<sup>1</sup>



<sup>1</sup>Source: UNCTAD. Last updated in Dec. 2022

# Motivations: How Have States Been Exiting BITs?

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<sup>2</sup>Source: UNCTAD. Last updated in Dec. 2022

# Overview: Puzzle & Argument

## The puzzle

Under what conditions would states unilaterally terminate BITs?

## My argument

States may unilaterally terminate BITs to increase their leverage in bargains over future terms of investment agreements.

# Overview: Approach & Findings

## Empirical approach

473 BITs across 112 countries and 50 years

Original data on sunset periods and BIT terminations

## Findings

Longer sunset period increases the likelihood of unilateral termination of BITs.

Declining economic growth amplifies the effect of sunset period on the likelihood unilateral termination of BITs.

## Controversy over BITs

Criticism against BITs: exorbitant costs on host countries;  
privilege to foreign investors

Some countries chose to either not join or leave the network  
of global investment regimes

Examples: The withdrawal of Venezuela and Bolivia from the  
ICSID Convention

## Unilateral Termination as an End?

However, many more countries have been terminating some of their BITs without completely leaving the network

Examples: India and Indonesia have been releasing new models of BITs and renegotiating for new BITs

=) Unilateral termination & renegotiation are often intertwined

# Policy Options to Challenge Existing BITs

## Policymakers' tradeo

Waiting for partner country to agree with termination  
, being constrained by BIT obligations for a period of "sunset"



# Causal Mechanism: Discriminatory Effect of Sunset Clause

A host state can discriminate against future investors from its treaty partner

Longer sunset clause, once invoked, can undermine bilateral investment relations to a larger extent

An invoked sunset clause will put the host government in a better position in future negotiations with the partner country

## Core Argument: A Strategized Exit

Unilateral termination as a coercive strategy implemented by states that seek to reform their BITs

Longer sunset clauses provide bargaining leverage to host countries

Countries that need this strategy most are those that have declining growth thereby decreasing bargaining leverage

# Hypotheses

H1: The longer a BIT's sunset period, the more likely the BIT's sunset clause would be invoked.

H2: The relationship between sunset period and unilateral termination of BIT is conditioned upon economic growth. The higher the economic growth of a host country, the less the effect of sunset period on unilateral termination of BIT.

## Data & Variables

473 BITs across 112 countries and 50 years

Original data on the length of sunset clauses and the ways in which BITs were terminated

Binary dependent variable: whether the BIT was unilaterally terminated

Two key independent variables:

- The length of sunset period

- Host country's annual GDP growth rate (lagged)

# Dependent Variable

The frequency of sunset periods for all sunset clauses in the sample

# Independent Variables

The sunset period of BITs and the annual GDP growth rate of host countries across years

## Other variables

### Control variables

The cumulative number of investment disputes where the host country was a respondent (logged)

The annual GDP growth rate of the home country (lagged)

The gap of economic strength between the two signatory countries of BIT (lagged)

### Confounders

Democratization of the host country (lagged)

Government stability of the host country

Intra-EU

Year (cubic polynomial)

# Model

Logistic regression model

Standard errors are clustered by country dyad



# Finding 1: The Positive Effect of Sunset Period on BIT Unilateral Termination

## Finding 2: Declining Economic Power Amplifies the Effect of Sunset Period of BIT

Economic growth diminishes the effect of sunset period on BIT unilateral termination

## Key Findings

Strong, positive correlation between sunset period and BIT unilateral termination, conditioned by host economy's growth

Longer sunset clauses provide additional negotiating leverage to host countries

A host country experiencing negative GDP growth may exit strategically for the sake of bargaining leverage

## Broader Implications of Research

Exit may be part of a long-term renegotiation process

States can use the ultimate bargaining chip of exit threat to push for institutional reforms

Countries lacking channels of influence may use lock-in institutions at their advantage

## Next Steps

What explains the inclusion and settings of sunset clauses?  
Institutional design as another part of my larger project

Thank you very much!

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# The Case of Indonesia-Singapore BIT

In 2016, Indonesia unilaterally terminated the 2005 Indonesia-Singapore BIT / 10-year sunset clause

A new BIT signed in 2018 and ratified in 2021

Singapore has been Indonesia's top source of foreign investments

