Withdrawing from Investment Treaties but Protecting Investment

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Abstract:
A backlash against Investor State Dispute Settlement (ISDS), in which multinational corporations can sue governments, has led some states to unilaterally withdraw from some of the thousands of investment treaties that facilitate ISDS. But thanks to redundancies in the dense, decentralized network of investment treaties, states can reject some treaty commitments to ISDS and maintain most (if not all) international legal protections for foreign investors. In this article, we explain the source of redundancies, document the group of states that have taken advantage of unilateral withdrawal, and demonstrate that states can recalibrate their international legal commitments without eschewing contemporary international investment law.

Keywords: Investor State Dispute Settlement, Investment Treaty, Foreign Direct Investment, Multinational Corporations, Investment Arbitration

Introduction

States know that tying their hands by signing international treaties can have drawbacks. If states only accept the commitments that they intend to keep, then abrogation should only occasionally happen, off the equilibrium path.[1] Yet since the late 2000s, a growing number of states are abrogating international investment treaties. Some states have unilaterally withdrawn from some investment treaties to protest Investor State Dispute Settlement (ISDS) provisions. ISDS allows foreign investors to sue states for compensation in international tribunals, should the investor feel the state has violated its commitments to protect the investor's property rights. Sometimes, foreign investors win big awards. ISDS thus triggers domestic frustration about the balance between foreign investors' rights and national sovereignty.[2] The fact that states are taking the radical action of abrogating ISDS-enabling treaties has led many to worry about a backlash against the evolving international investment regime.[3]

We document that this backlash has limits. Even states that have taken advantage of opportunities to abrogate some investment treaties have not withdrawn from all international legal commitments to investor protection. In part that choice is due to the difficulty of exiting the dense, decentralized network of 3000-odd investment treaties. At the same time, overlapping sources of access to ISDS in that network allow states to use unilateral withdrawal to recalibrate rather than reject substantive or procedural international legal commitments. In this article, we explain the source of states' redundant commitments to ISDS, survey the group of states that have unilaterally withdrawn from investment treaties, and show that their withdrawals have resulted in little to no real reduction in foreign investors' access to international legal protections.

Overlap and Redundancy in Investment Treaties

States around the world have signed some 3000 investment treaties in hopes of improving access to foreign investment.[4] In exchange for that uncertain benefit, states commit to restrict their policymaking so as to prioritize the property rights of foreign investors. Investment treaties expose states to litigation brought by foreign investors over property rights issues, via ISDS. If the international tribunal enabled by ISDS finds that a state has violated its legal commitments, it can require the state to compensate the foreign investor. Violations include (but are not limited to) outright nationalization, as well as less dramatic actions like discriminatory changes in tax or environmental regulations known as 'creeping' or indirect expropriation. Commitments to ISDS in investment treaties limit a state's sovereignty and transfer rights to foreign investors, in exchange for the hope of more investment. Unsurprisingly, domestic audiences are sometimes frustrated with this tradeoff.

Most investment treaties are Bilateral Investment Treaties (BITs), such that only investors originating from the two signatory states gain access to the treaty's protections.[5] Investor protections are also present in some multilateral treaties, such as NAFTA, CAFTA-DR, and now the Trans-Pacific Partnership (TPP). These treaties, too, provide protection to the subset of foreign investors from signatory states. One prominent multilateral investment treaty, the Energy Charter Treaty (ECT), has protections available only to investors in energy industries from signatory states. While foreign investors' precise legal protections in all these treaties have similarities, they are not identical.[6] As a result, a foreign investor's nationality is an important determinant of the scope of protection available to it.[7]

In practice, however, many foreign investors enjoy multiple, overlapping channels of access to ISDS. First, many of today's most prominent multinational corporations can claim protection under multiple treaties. Multinationals often invest in third countries via second-country subsidiaries. If those subsidiaries are located in countries with relevant investment treaties, then multinationals can usually access those treaties, too. Second, many foreign investors write treaty-like access to ISDS directly in their contracts with host states. This has long been common in natural resource industries like oil and gas, for instance. These foreign investors can also have overlapping channels of treaty-based and contractual access to ISDS. Third, many investment treaties grant foreign investors access to multiple venues in which to bring arbitration under ISDS. Most commonly, investment treaties provide access to ISDS at the World Bank's International Center for the Settlement of Investment Disputes (ICSID), an institutional setting created by the Washington Convention of 1965. The 140-plus signatories of the Convention recognize the ability of private foreign investors to have direct access to ICSID international tribunals and to enforce tribunal awards in their domestic legal systems. Additionally, investment treaties regularly provide access to ISDS under the rules created by the United Nations Commission on International Trade Law (UNCITRAL). Arbitration under UNCITRAL rules can be adjudicated in ad hoc international tribunals that can be constituted virtually anywhere. While there are procedural differences between ISDS at ICSID and under UNCITRAL rules, foreign investors can (attempt to) enforce the same substantive rights in either system. In sum, any given foreign investor may have access to multiple, overlapping procedural ISDS rights, not to mention overlapping substantive protections. The growth of multinational corporations with complex ownership structures and the spread of some 3000 investment treaties around the world have only compounded these redundancies.

From the state's point of view, these overlapping and often redundant commitments to ISDS mean that it has options to act on domestic dissatisfaction with ISDS without eschewing ISDS altogether. For example, a state can withdraw from a particular ISDS venue without limiting foreign investors' access to other venues. At most, a state's withdrawal from any particular investment treaty will eliminate access to ISDS only for those foreign investors that have unique access through that treaty. By prioritizing piecemeal withdrawal from overlapping treaties, states can flexibly reconsider their body of ISDS commitments without needing to reject the institution wholesale.

In the last two decades, more and more states are reconsidering their ISDS commitments as international law around investment protection has come to face a growing crisis of legitimacy. First, signatory states can owe sizeable amounts of compensation to aggrieved foreign investors as a result of ISDS. Over 675 public investment arbitrations have been filed against over 120 states under ISDS through 2014, with filings increasing rapidly in the 2000s. Foreign investors have won an award in 29 percent of concluded cases. Half of these awards are below US$20 million. Five proceedings have resulted in awards of US$1 billion or more – and investors have sought awards over US$1 billion at least 45 times.[8] Certainly, the idea that a state owes these amounts of compensation directly to multinational corporations can trigger domestic dissatisfaction. Second, many see ISDS protections as problematic. First, some argue that states' substantive commitments are unfair, because they do not allow for reasonable state policies and regulations. Second, procedural commitments in ISDS may be flawed: individual arbitrators may behave in biased ways, panel rulings have been inconsistent, and ISDS does not include an appeals process.[9] Third, and most importantly, states chose to sign investment treaties in the hopes of attracting more investment, accepting exposure to ISDS as a necessary tradeoff. However, it is not clear that signing investment treaties increases foreign direct investment. At best, a large literature has found that investment treaties sometimes increase certain kinds of investment.[10] As a result, states and their publics are increasingly uncertain about what they are getting in exchange for their international legal commitments and ISDS exposure. In short, treaties that were intended to be a cheap means to attract foreign investment may on balance generate significant liabilities while constraining government policymaking.[11] Given these developments, it is not surprising that more and more states are interested in recalibrating their investment treaty and, in particular, ISDS commitments.[12]

We take as given that a deep and growing crisis of legitimacy generates incentives to withdraw from investment treaties. Still, backlash against ISDS has taken the form of recalibration rather than rejection. Even the most frustrated states continue to maintain a robust set of substantive and procedural international legal commitments to protect the property rights of foreign investors. States need not reject and are not rejecting modern investment law wholesale. We survey below the states that have walked a middle path, thanks to redundancies in the decentralized network of investment treaties.

Cases: Piecemeal Withdrawal

We use brief case studies to demonstrate that the dense, decentralized network of investment treaties allows states to recalibrate their commitments without eschewing ISDS and international law around investment protection. As of January 2016, seven states have withdrawn from some investment treaties: Bolivia, Venezuela, Ecuador, Indonesia, South Africa, Italy, and Russia. (See Table 1.) These states have eliminated redundant treaties or abrogated treaties that apply only to small groups of investors. Of those treaties that have been abrogated, many include sunset provisions that continue to bind treaty partners for years thereafter.[13] Notably, states that have unilaterally withdrawn thus far have respected those sunset provisions, further supporting our argument that states are withdrawing from particular treaties but not from their broader commitments to international legal principles. These states also continue to respect other investment treaties. Additionally, we compare these states' piecemeal withdrawal with the case of Argentina, a state which for a time behaved as if it had withdrawn from ISDS altogether. Argentina's return to compliance with ISDS demonstrates that wholesale abrogation of international investment law indeed carries costs that are too high to bear for a state interested in accessing foreign investment.

Table 1. Unilateral Withdrawals from Investment Treaties

Country	**Total BITs**	***Unilateral withdrawal from…***	
		ICSID	**Treaty (Partner Country)**
Bolivia	16	Yes	No

Venezuela	28	Yes	Yes (Netherlands)
Ecuador	18	Yes	Yes (Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, the Dominican Republic, Uruguay Finland)
South Africa	39	No	Yes (Belgium and Luxembourg, Spain, Germany, Switzerland, Netherlands)
Indonesia	55	No	Yes (China, Laos, Malaysia, Netherlands, Italy, France, Slovakia, Bulgaria, Egypt)
Italy	88	No	Yes, Energy Charter Treaty
Russia	74	No	Yes, Energy Charter Treaty

Note**:** Data as of January 2016. UNCTAD.

Bolivia

President Evo Morales is an outspoken opponent of investment treaties, and since 2009 the Bolivian constitution has included language threatening broad renegotiations of its investment treaties. But, to date Bolivia has not terminated any bilateral treaties nor forced any renegotiations.

Nonetheless, Bolivia was the first state ever to withdraw from the Washington Convention that underpins ICSID. While this withdrawal allowed President Morales to tout that he had rejected a major World Bank institution, it in fact has had limited impact on foreign investors' actual access to ISDS. Since its withdrawal from ICSID, Bolivia has faced at least four other investment arbitrations facilitated by UNCITRAL rules. Yes, foreign investors in Bolivia lack access to the more public ICSID, but they retain the ability to use Bolivia's investment treaties to access comparable arbitration in other venues.

Venezuela

Venezuela was motivated to withdraw unilaterally from the Netherlands-Venezuela BIT after several multinational energy corporations sued the state via their Dutch corporate vehicles. The treaty became a 'thorn in the side' of President Chavez, and these arbitrations fueled popular frustration with a system in which nationality can be somewhat fungible.[14] But despite its unilateral withdrawal from the BIT in 2008, Venezuela continued to participate in arbitrations that were ongoing. Thanks to a sunset provision, the Dutch BIT will remain in force until 2023; the state has indicated that it will respect that provision. Consistent with our argument that withdrawal from one treaty does not signal general abrogation, Venezuela has behaved as if withdrawing from one BIT carries only limited costs. It has maintained its other BITs and has even signed new BITs with France, Indonesia, Belarus, and Iran.[15]

In 2012, just months before his contested reelection, President Chavez announced Venezuela's withdrawal from ICSID. Venezuela had faced 37 arbitrations at ICSID, and it was frustrated over compensation awards.[16] But of the 26 investment treaties in force in Venezuela, only those with Chile and Germany named ICSID as the sole venue for arbitration.[17] Otherwise Chilean or German firms may still be able to access arbitration via subsidiaries in second countries that have treaties with Venezuela. Additionally, withdrawal had little to no impact on existing disputes: the 20 cases pending against Venezuela at ICSID at the time of withdrawal (ten of which were registered during 2011 alone) have proceeded as if the country were still an ICSID member.[18] Suffice it to say, the vast majority of foreign investors in Venezuela can still access ISDS.

Ecuador

Ecuador exited ICSID, first partially with regard to oil and gas disputes in 2007, and then fully as of 2010. It has denounced dozens of investment treaties and withdrawn from nine. Still, even Ecuador has been recalibrating and not foregoing its commitment to investment protection through international law.

Frustrated that ICSID arbitrators ruled against collecting windfall taxes while arbitrations progressed, Ecuador asserted in 2007 that it would no longer allow oil and gas industry arbitration at ICSID.[19] Formally, Article 422 of Ecuador's 2008 constitution forbids the country to enter into agreements under which Ecuador "would have to cede sovereign jurisdiction to international arbitral tribunals in contractual or commercial matters between the State and individuals or corporations." Citing the constitution, President Correa terminated Ecuador's investment treaties with Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, the Dominican Republic, and Uruguay. However, despite the broad constitutional language, the government used a cost-benefit logic to choose these BITs: the government felt they failed to bring any noticeable benefits to the Ecuadorian economy and would only bring about costs if investors accessed ISDS under them.[20] In contrast, President Correa did not withdraw from the 1993 Ecuador-US BIT, despite having made public threats against it. Instead, Ecuador has used international courts to attempt to set aside awards won by US multinationals under the BIT; it has had mixed success.[21] Now, these set-aside attempts conflict with the spirit of the Washington Convention that set up ICSID, even if they can be read as consistent with the letter of the law. But it is notable that Correa's strategy has been to operate in an international legal framework even when it comes to controversial investment disputes with the United States.

Correa came close to changing his strategy of recalibrating international legal commitments when, in 2009, he denounced many of Ecuador's remaining investment treaties.[22] However, even in this moment of broad, anti-market rhetoric, Correa did not denounce the treaties with Bolivia, Peru, or Spain. The National Assembly rejected Correa's request to withdraw from BITs with China, Chile, Venezuela, the Netherlands, and Germany, even as it approved withdrawal from the BIT with Finland. The National Assembly's singling out of the Finnish BIT again suggests a cost-benefit logic. The other BITs were thought too important to abrogate. Correa was successful in leading Ecuador to fully withdraw from ICSID in 2010. Nonetheless, like Bolivia and Venezuela, Ecuador has since been sued repeatedly under UNCITRAL rules.[23]

A frustrated President Correa urged the National Assembly in 2013 to withdraw from all of Ecuador's investment treaties. A national commission was tasked with determining whether the remaining treaties violated Ecuador's sovereignty, whether previous arbitration tribunals misinterpreted the treaties, and whether investment treaties are beneficial for the country. In late 2014, the commission recommended abrogating all remaining investment treaties. Nonetheless, as of 2016, Ecuador has not withdrawn wholesale from its treaties. In fact, Ecuador used its treaty rights around ISDS to win a partial annulment of a large and controversial award to the oil and gas firm Occidental.[24] It is notable that an anti-investment-treaty politician like Correa has found it useful to retain treaty commitments over a year after an official, domestic commission gave him permission to withdraw wholesale.

South Africa

Post-apartheid South Africa quickly signed investment treaties with many partner countries, but investors have used these to challenge Black Economic Empowerment (BEE) programs that South Africa uses to address historical injustices.[25] South Africa declared in 2010 that its 23 investment treaties 'pose risks and limitations on the ability of the government to pursue its constitutional-based transformation agenda.'[26] It unilaterally withdrew from a BIT with Belgium and Luxembourg (2012) as well as BITs with Spain, Germany, Switzerland, and the Netherlands (2013).[27] These partner states are economically consequential and these withdrawals could have significant consequences for the future of ISDS in South Africa. As such, these broad withdrawals pose a challenge to our argument that withdrawals will have little effect.

Nonetheless, other indicators from South Africa lean more toward recalibration rather than rejection of ISDS and international investment law. South Africa has made no indication that it will ignore the sunset clauses in these treaties. It remains a party to investment treaties with several other European Union members. And, South Africa recognizes that the European Union itself is in the process of consolidating its members' many investment treaties into one supranational commitment. Thus, South Africa's limited withdrawals may merely speed up a process of renegotiation. South Africa now has a new model investment treaty and, going forward, has promulgated a general policy of renegotiating treaties at time of renewal.[28] Consistent with this policy, the government acted within the law by declining to renew the Singapore-South Africa BIT in June 2015.

Indonesia

Indonesia's dispute with Churchill Mining has been dramatic: claiming forgery, the Indonesian central government revoked its mining permits, and Churchill filed at ICSID in 2012.[29] In response to the domestic politics around that dispute, Indonesia somewhat ambiguously announced in 2014 that it would either terminate or renegotiate its 67 investment treaties.[30] As of 2016, Indonesia has unilaterally terminated nine BITs: with China, Laos, Malaysia, the Netherlands, Italy, France, Slovakia, Bulgaria, and Egypt. It has announced plans to withdraw from at least eleven more in 2016-2018.[31] Argentina and Indonesia mutually agreed to rescind their BIT.

Indonesia has not abandoned international law around investment protection, however. Public pronouncements promising withdrawal have led to ISDS cases under controversial treaties. Indonesia, for its part, has both allowed those arbitrations to go forward under sunset provisions (or before actual withdrawal takes pace) and remained committed to adjusting protections. It has made public plans to restructure commitments through renegotiating with Singapore when its BIT is up for renewal and will likely do the same with more partners.[32] Thus, while its large-scale recalibration through unilateral withdrawal stretches our argument, Indonesia is not rejecting modern international investment law. As with South Africa, Indonesia is signaling a commitment to update treaties based on its new preferences, while still respecting principles of international investment protection.

Italy and Russia

Both Italy and Russia have rejected the Energy Charter Treaty (ECT). Italy announced its withdrawal in 2015, after it began to face arbitrations filed by investors in renewable energy.[33] Preexisting arbitrations continue, however, and the European Union (of which Italy is a member) remains a party to the ECT. Thus, Italy's unilateral withdrawal from the ECT may not affect foreign investors' protections whatsoever. Additionally, Italy has been withdrawing from intra-EU BITs, but mutually and in concordance with the European Commission's desire to terminate these treaties that the Commission sees as incompatible with EU law.[34]

Russia in fact never ratified the ECT, but tribunals allowed arbitrations to proceed under it.[35] The controversial arbitrations led to a new record of US$50 billion in several awards. President Putin, who had canceled ratification of the ECT in 2009, announced in 2015 that Russia will not pay these awards. This position is different from the behavior of other states that have abrogated treaties but continued to comply with existing arbitrations and awards. Nonetheless, even Russia remains part of the system: it has used rights available to it under international law to attempt to get these awards set aside. In fact, in April 2016, the Hague District Court did set aside these awards, on the grounds that the original tribunal had no jurisdiction since Russia had not ratified the ECT. Going forward, is likely that Russia recalibrates rather than rejects international law around investment protection, particularly because its own multinationals use ISDS to file arbitrations against other states. Indeed, more stakeholders in states that have traditionally been recipients of foreign investment may come to support ISDS, as those states grow their own multinational corporations that invest abroad.

Noncompliance v. Withdrawal

Russia's action raises the question, why withdraw when you can simply not comply? Starting in the mid-2000s, Argentina systematically refused to pay multiple arbitral awards emanating from multiple investment treaties.[36] Argentina's noncompliance looked like an outright rejection of ISDS, and it triggered the World Bank to threaten to stop loans.[37] In 2013, Argentina paid its five outstanding ICSID awards (over US$450 million), to British, American, and French firms.[38] Days later, it secured a three-year, US$3 billion loan from the World Bank. The timeline suggests that Argentina's broad noncompliance, outside the rule of law, had proved too costly.

If in the future a state uses refusal to pay awards as an alternative to piecemeal treaty withdrawal, we would expect it to learn from Argentina: the state would be well served to limit its noncompliance and (try to) justify it as mere recalibration. It is notable, however, that the several other states surveyed here have not used absolute refusal to pay awards as a means to express their objections to ISDS. Dense and often overlapping investment treaties give states another option to protest ISDS. Through piecemeal withdrawal, states can push back without signaling that they reject modern international investment law altogether.

Conclusion

Frustration over ISDS has led a small handful of states (thus far) to reject some of their treaty commitments to investment protection.[39] Even so, states that withdraw from particular, decentralized, and overlapping investment treaties do not need to eschew international investment law. By focusing on redundancies, states can push back against ISDS while retaining credible legal commitments.

One takeaway is that even highly frustrated states are not choosing to totally withdraw from the system. It is possible that the complex system of global rules toward foreign investment is biased toward multinational corporations. Yet even states that see such bias also see too many potential gains from foreign investment to justify total withdrawal. Whether states' desire for foreign investment will someday diminish is an open question. Regardless, the system is such that states do not need to jump to drastic rejection of international investment law in order to push back against ISDS and modern investor protections.

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Endnotes

[1] E.g., Mitchell 1994; Rosendorff and Milner 2001; Koremenos 2005. But see Helfer 2005.
[2] E.g., Wellhausen 2015; Poulsen 2015.
[3] E.g. Waibel et al 2010.
[4] Treaties spread since the 1950s, and particularly since the 1990s, as developing countries competed for capital and as signing investment treaties became a norm (Elkins et al 2006; Jandhyala et al 2011). In so doing, some states did replace earlier incarnations of international investment protections such as those under US Friendship, Commerce, and Navigation Treaties.
[5] Many BITs however provide Most Favored Nation (MFN) protection, such that firms covered by a BIT receive the strongest protections offered to other firms covered by BITs (but not firms without treaty protection).
[6] Allee and Peinhardt 2010, 2014; Blake 2013.
[7] Wellhausen 2015.
[8] Wellhausen 2016.
[9] E.g., Van Harten 2012; Schultz and Dupont 2015; Simmons 2014.
[10] For a review, see Sauvant and Sachs 2009.
[11] Poulsen 2015.
[12] Similarly, states are more likely to abrogate military alliances when a member experiences a change that affects the alliance's value (Leeds and Savun 2007).
[13] Using a sample of 1896 treaties in force as of 2014, Gordon and Pohl (2015) find that even if one party to the treaty immediately denounced it, 90 percent would still bind treaty partners 10 years later, 50 percent would affect partners 15 years later, and 25 percent would still have some effect 20 years later (20-21).
[14] Peterson, Luke. 16 May 2008. "Venezuela Surprises the Netherlands." IAReporter.
[15] Venezuela may be noncompliant with an award under another BIT. In 2014, a Canadian investor both won a US$713 million award and filed separately in US courts for its enforcement. The investor nevertheless remains in Venezuela. To date, Venezuela is not publicly contemplating withdrawing from the Canada-Venezuela BIT. *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (ICSID ARB(AF)/09/1).* There are no public complaints of nonpayment from the investors who have won two other (admittedly smaller) awards against Venezuela (*ICSID ARB/96/3* and *ICSID ARB/00/5*).
[16] Venezuela claimed that investors deserve "book value" and not "fair market value" of assets. Ripinsky, Sergey. 13 April 2012. "Venezuela's Withdrawal from ICSID." Investment Treaty News: International Institute for Sustainable Development.
[17] Ripinsky, Sergey. 13 April 2012. "Venezuela's Withdrawal from ICSID." Investment Treaty News: International Institute for Sustainable Development.
[18] Venezuela has made some moves to replace ICSID with a regional institution that nevertheless facilitates ISDS.
[19] Peterson, Luke. 17 July 2009. "Ecuador Becomes Second State to Exit ICSID." IAReporter.
[20] Investment Treaty News, 5 February 2008: International Institute for Sustainable Development.
[21] Cases include *LCIA UN3467*, *PCA 34877*, and *ICSID ARB/06/11*.
[22] This included investment treaties with the US, UK, Netherlands, Germany, France, Canada, Switzerland, Finland, Sweden, China, Argentina, Chile, and Venezuela.
[23] Like Venezuela, Ecuador has also proposed the creation of an alternative to ICSID.
[24] Peterson, Luke. 2 November 2015. "Ecuador Achieves Partial Annulment." IAReporter.
[25] Poulsen 2015.
[26] Green, Adam. "South Africa: BITS in Pieces." Beyond BRICS. *The Financial Times*: 19 October 2012.
[27] Green, Adam. "South Africa: BITS in Pieces." Beyond BRICS. The Financial Times: 19 October 2012.
[28] Carim, Xavier. "Lessons from South Africa's BITs Review." *Columbia FDI Perspectives* No. 10: 25 November 2013.
[29] Indonesia later withdrew the charge of fraud. "Churchill Mining and Indonesia in talks." *Reuters:* 8 June 2015.
[30] "Indonesia to terminate." *Financial Times*: 26 March 2014. Ewing-Chow, Michael, and Juniato Losari. "Indonesia is letting its bilateral treaties lapse so as to renegotiate better ones." *Financial Times*: 15 April 2014.

[31] Spain, Cambodia, India, Romania, Turkey, Vietnam, Hungary, Singapore, Pakistan, Switzerland, and Kyrgyzstan. As reported by Peterson, Luke. “Indonesia Ramps up Termination of BITs.” IAReporter: 20 November 2015.

[32] E.g. Lumbantobing, John. “Renegotiating the bite of our BITs.” *The Jakarta Post*: 18 May 2015. “Indonesia not renewing 2005 bilateral agreement.” *Today*: 6 June 2015.

[33] Italy claims it wants to economize and avoid paying dues to the ECT governing body. Hepburn, Jarrod and Luke Peterson. 2 June 2015. “Italy is the EU’s Model Citizen.” IAReporter.

[34] There is some evidence that Croatia does not mutually recognize the termination of their BIT with Italy. The Czech Republic has also been terminating intra-EU BITs.

[35] *PCA AA226, AA227,* and *AA228*.

[36] Argentina has 54 investment treaties in effect. It has been sued over 50 times, more than any country.

[37] Argentina faced bilateral punishments, too. For example, the US Trade Representative suspended Argentina’s access to the Generalized System of Preferences.

[38] Argentina made the payments in sovereign bonds, and claimants quickly sold them onward.

[39] Some states, like India, are writing new model investment treaties and recalibrating without employing unilateral withdrawal.