

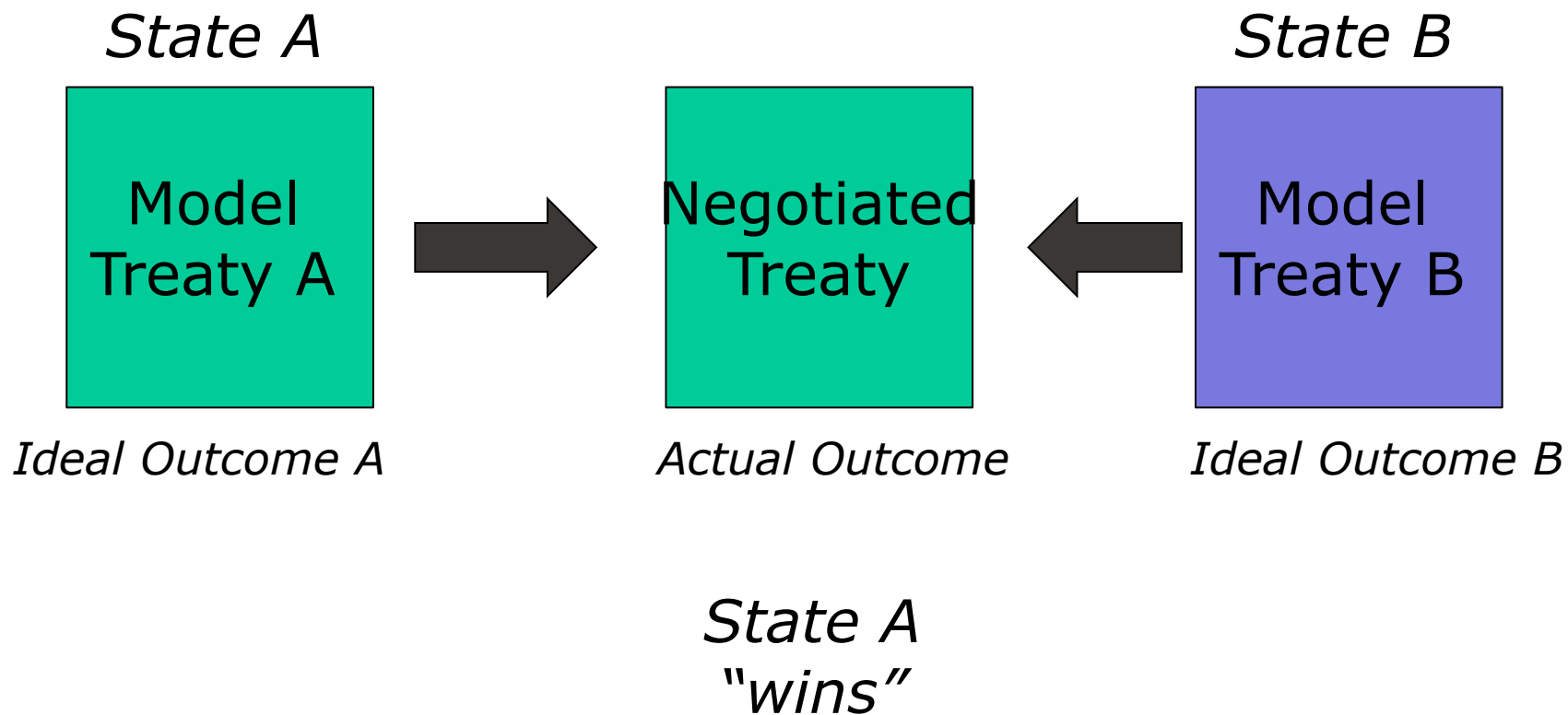
Drafting matters: Winning investment treaty negotiations with “style”

Wolfgang Alschner, 17 May 2019

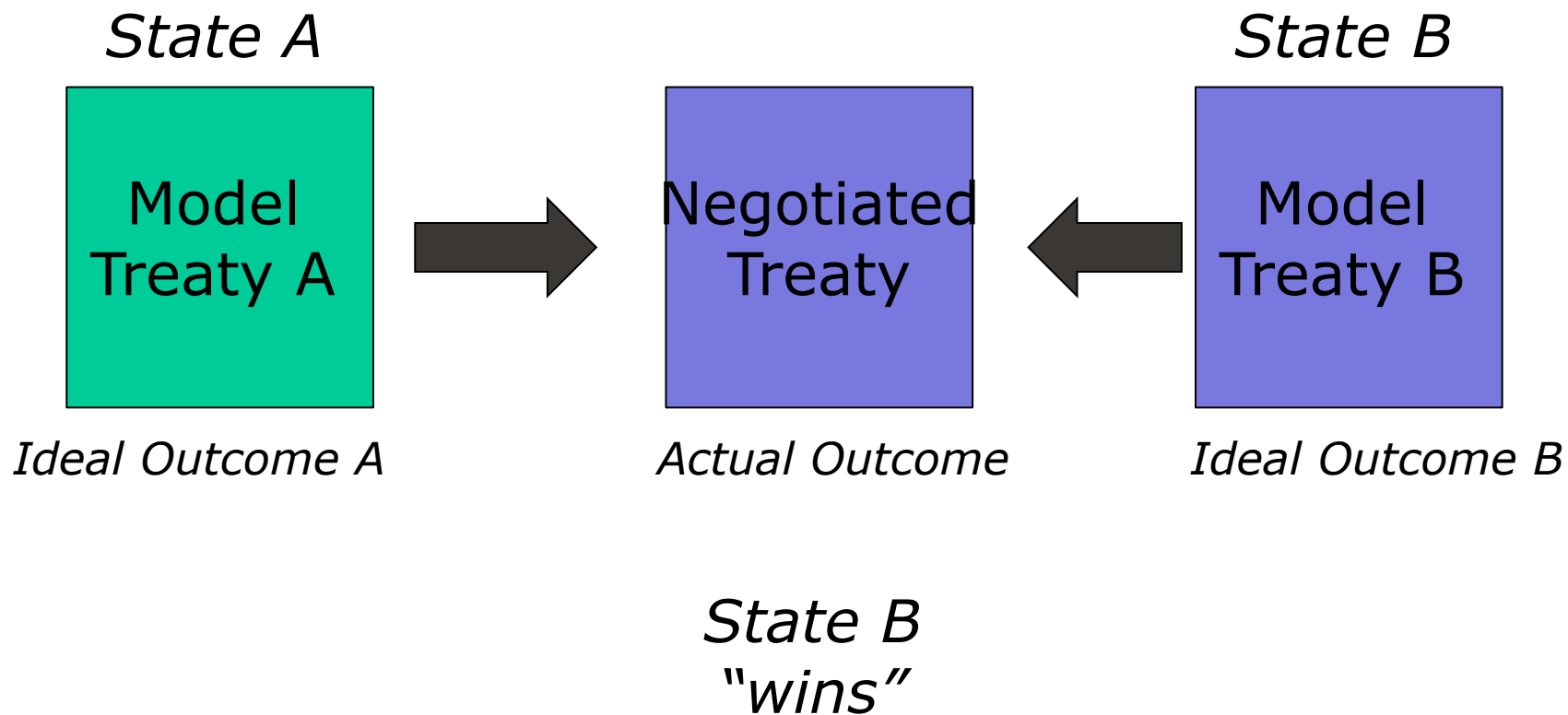
Agenda

1. Motivation: What determines success in treaty negotiations?
2. Case Study: Bilateral Investment Treaties (BITs)
 - A. Brief overview
 - B. Method
 - C. Structure of the BIT universe
 - D. Puzzle
3. Findings: Winning negotiations with (British) style

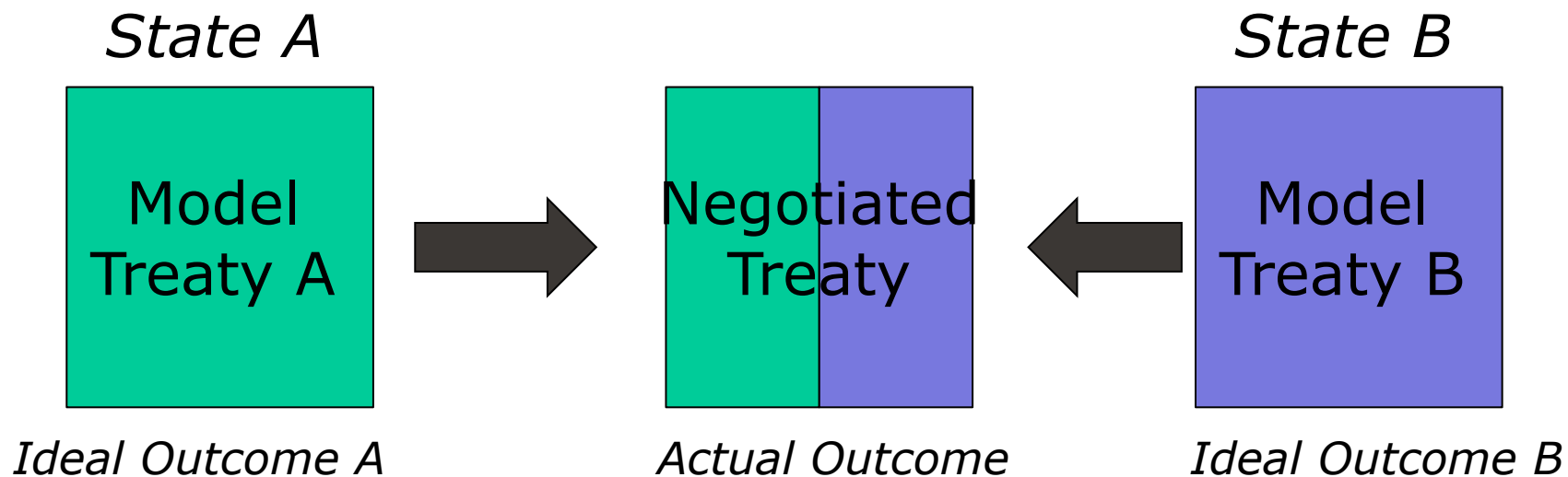
What determines success in treaty negotiations?



What determines success in treaty negotiations?

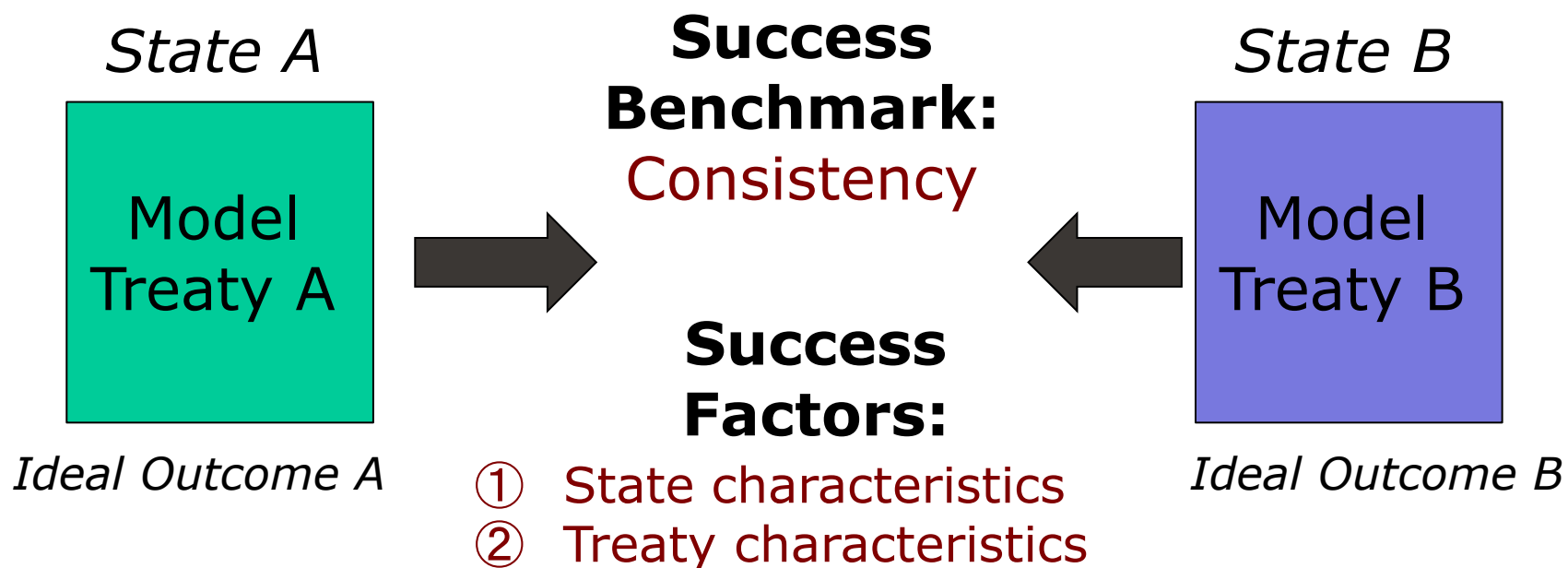


What determines success in treaty negotiations?

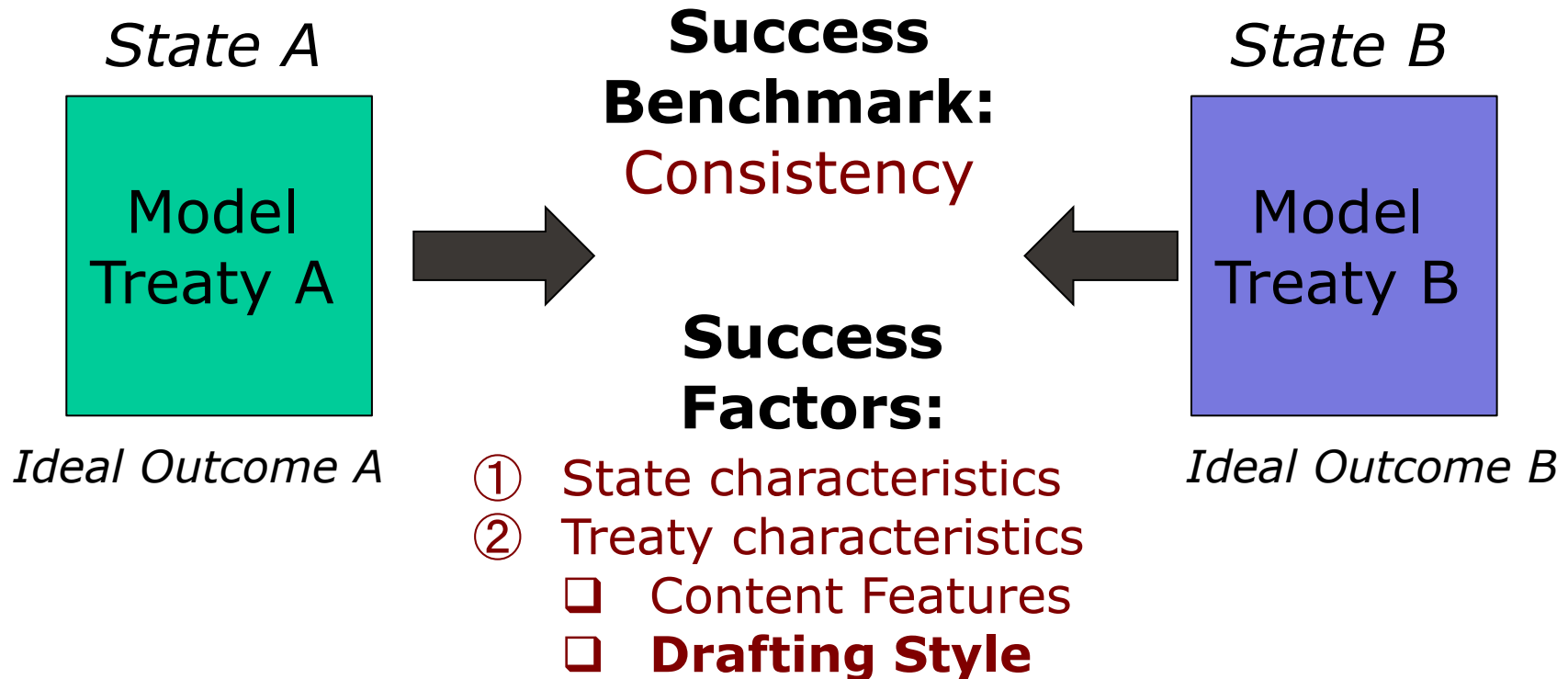


*Both states
compromise*

What determines success in treaty negotiations?



What determines success in treaty negotiations?



Case Study: Bilateral Investment Treaties

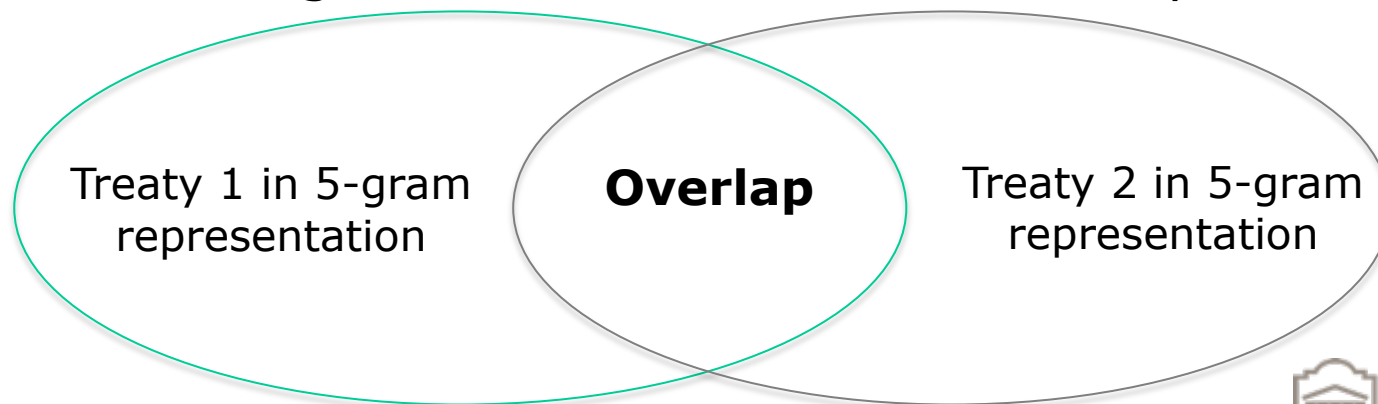
Overview

- Over 3000 Bilateral Investment Treaties in existence
- Based on similar principles but differ in fine print
 - Protection against expropriation and discrimination
 - Enforcement through investor-state arbitration
- Increasingly perceived as controversial
 - Limit regulatory state autonomy → regulatory chill
 - Monetary transfers from taxpayers to investors

Case Study: Bilateral Investment Treaties

Operationalization

- *Dependent variable*: success in treaty negotiations
 - Success = Consistency of national treaty networks
 - Consistency = Similarity
- Calculating textual similarity across national treaties
 - Disaggregating text into 5-character components
 - Calculating Jaccard distance between components

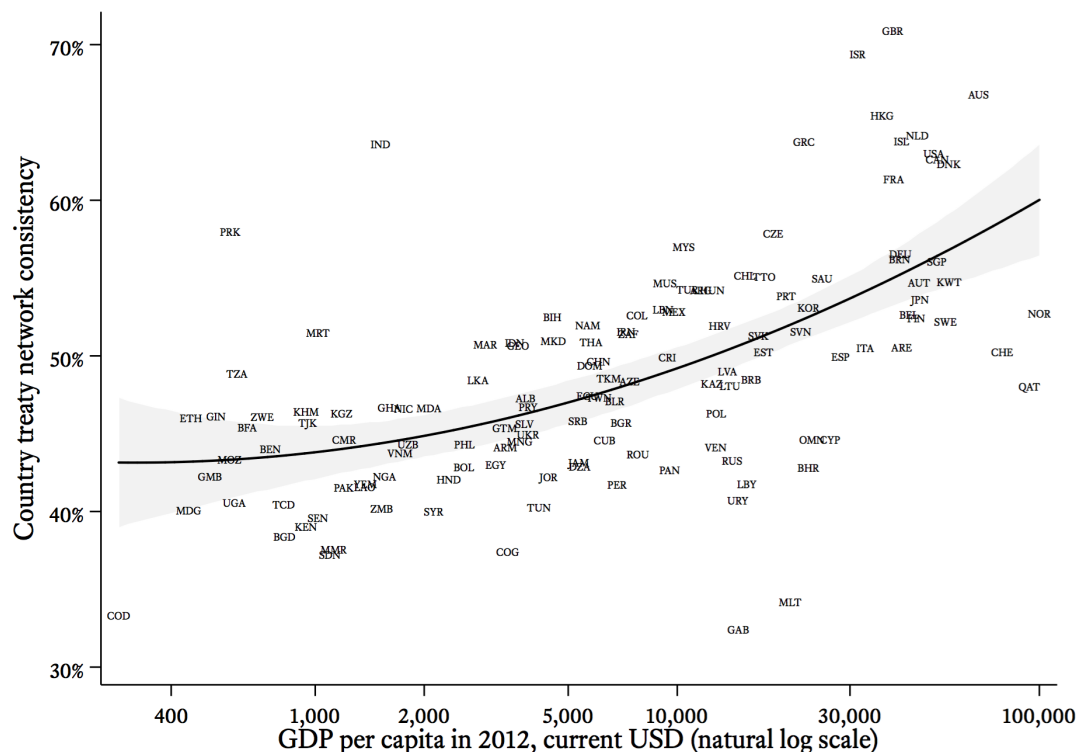


Case Study: Bilateral Investment Treaties

Existing structures

- Rule-Taker vs Rule-Maker Dynamic
 - Developed states: rule-makers
 - Developing states: rule-takers

Alschner, Wolfgang, and Dmitriy Skougarevskiy. "Mapping the Universe of International Investment Agreements." *Journal of International Economic Law* 19, no. 8 (2016).



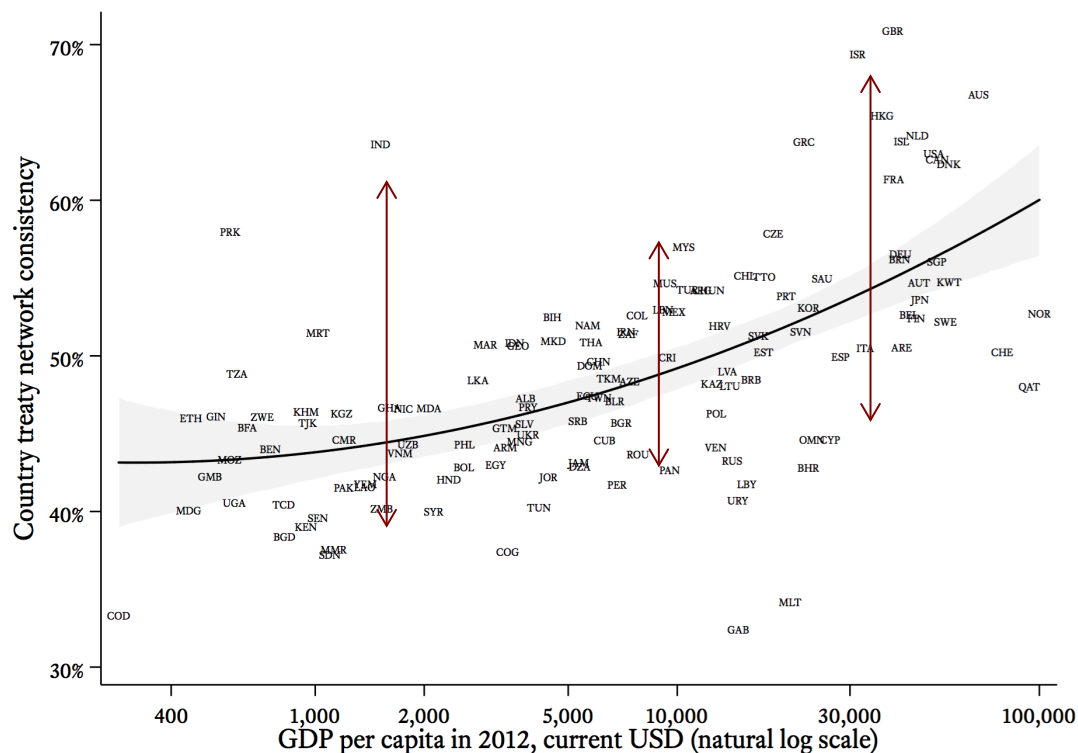
Case Study: Bilateral Investment Treaties

Puzzle

- Explaining in-group variation:

Why do similar states differ in their negotiation success?

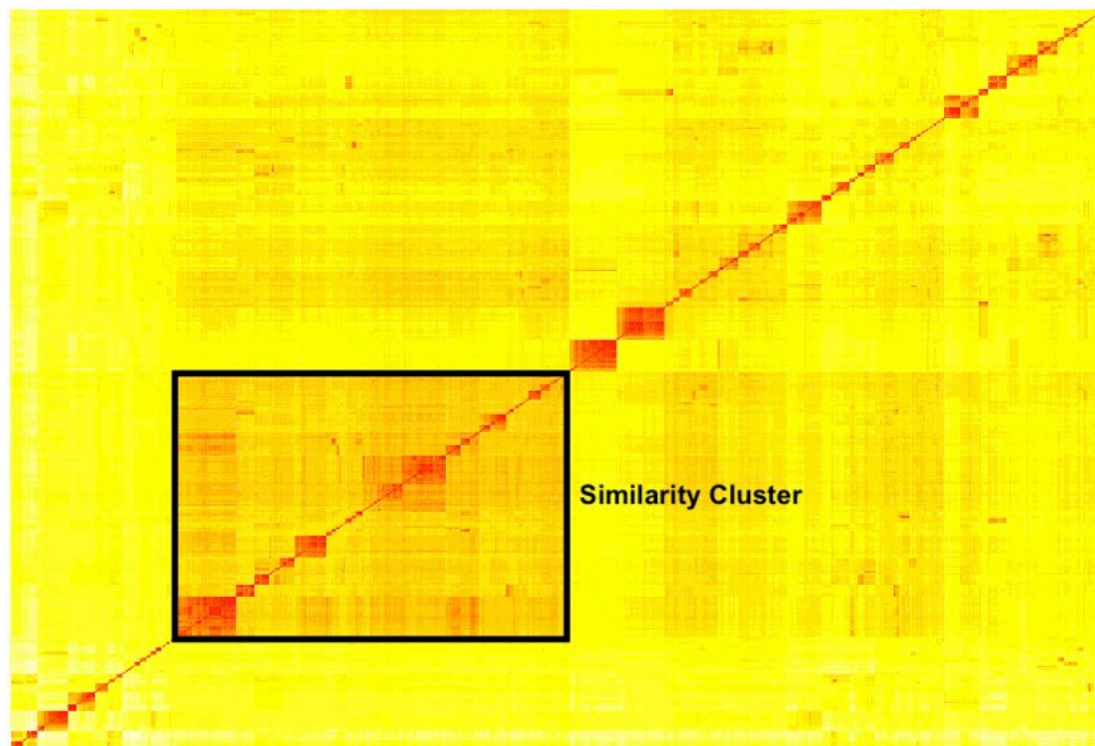
www.mappinginvestmenttreaties.com



Findings: Winning Negotiations with “British” Style

Finding:

More successful states sign treaties modeled on the British BIT template



Findings: Winning Negotiations with “British” Style

Regression design

- 2 stage regression
- *Independent variables*: factors impacting success in treaty negotiations
 - Country-dyad characteristics
 - GDP difference
 - Expertise
 - Common law countries
 - Colonial heritage
 - BIT-dyad characteristics
 - Content feature
 - Writing style

Findings: Winning Negotiations with “British” Style

- Writing style acts as self-standing determinant for negotiation success
- Explaining success of “British” style
 - Closely based on 1967 OECD Convention
 - Drafted by native speakers
 - More intuitive (?)
 - Less legalistic than German treaties
 - Less complex than U.S. treaties

Findings: Winning Negotiations with “British” Style

Implications

All else equal, states can negotiate more successfully by adopting a certain drafting style

→ Language matters!

Thank you!

wolfgang.alschner@uottawa.ca