

Do Bilateral Investment Treaties Attract Foreign Direct Investment to Developing Countries? A Review of the Empirical Literature

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States have signed over 3,000 bilateral investment treaties (BITs). BITs stipulate the terms and conditions by which foreign investors from one country must be treated in another. A series of empirical studies have asked the question, do BITs increase foreign direct investment to less developed countries? This paper reviews the literature. While the studies come to conflicting results, most studies suffer from the same methodological misstep—they fail to account for variation in treaties. The paper concludes that the most productive path forward for future research efforts includes using dyadic research designs that account for variation in BITs.

Keywords: bilateral investment treaties, BITs, foreign direct investment, multinational corporations, less developed countries, developing countries

Introduction

Bilateral investment treaties (BITs) stipulate the terms and conditions by which investors from one state must be treated in another. To date, over 3,000 of these treaties have been signed. Most treaties are between one developed state and one developing state. Developed states sign BITs to protect the foreign investments of their multinational corporations (MNCs) (Guzman, 1998). Developing states sign BITs to attract multinationals to their countries (Guzman, 1998). The multinationals from developed states have benefited from the legal protections provided by BITs (Salacuse & Sullivan 2005). However, the benefits received by developing states are still unclear. Developing states are merely granting foreign multinationals extra legal protections and receiving nothing in return if signing a BIT does not spur additional foreign direct investment (FDI) into the developing country—an inequitable outcome. This raises an important question: Do BITs increase FDI to less developed countries (LDCs)?

A slew of empirical studies address this question. These studies vary methodologically and present conflicting results, with some studies finding a positive relationship between BITs and FDI flows to the developing world, some finding no relationship between the two, and others finding a relationship between BITs and FDI, but only in limited model configurations.

This paper reviews the empirical literature on BITs and FDI. It distinguishes between studies using monadic data structures (those studies looking at the total number of BITs signed by the LDC and the total FDI received by the LDC) and dyadic data structures (those studies looking at the presence of a BIT between a pair

of countries and FDI flows between those two countries) and concludes the later as the most fruitful path for future studies to pursue because dyadic studies are uniquely suited to account for specific provisions present in some BITs but not others.

The paper proceeds as follows: (1) brief section covering the evolution of the regime protecting foreign owned investment; (2) review of monadic studies; (3) review of dyadic studies that do not account for variation in BITs; and (4) recommendations for future studies.

Historical Background: The Evolution of Investment Protection

Prior to BITs, developed state foreign investment in developing countries was not protected through treaty law, but through customary international law and general legal principles of international law. In fact, no multilateral treaty on the treatment of foreign owned property has ever been established. The pre-BIT legal standard was called the international minimum standard for the protection of foreign owned property, or the minimum standard for short.

The minimum standard contained two key principles, full compensation for expropriation and the right to diplomatic interposition. Outright expropriation was the most significant threat to foreign owned property in the developing world in the pre-BIT era. Most investments in LDCs were in the natural resource sector. Host states could expropriate (nationalize) a foreign owned mine or plantation and fully utilize the property (Frieden, 1991). The minimum standard did not prevent expropriation. The ability of a state to expropriate property in its territory was firmly established in general principles of international law (Sornarajah, 2010; Slomanson, 1995). The minimum standard required the host state to provide full compensation to the injured foreign national for any expropriated property (Steiner & Vagts, 1968; Borchard, 1915).

The minimum standard also allowed injured foreign investors to pursue diplomatic interposition, notably in cases when a host state did not pay full compensation to a foreign investor for expropriated property. Diplomatic interposition refers to the process by which the foreign investor's home state intervenes on the investor's behalf and elevates a domestic dispute between a foreign investor and host state to a diplomatic row between the two states (Borchard, 1915; Eagleton, 1928; Dunn, 1932; Eagleton, 1970). When these disputes could not be brought to an amicable solution, more drastic measures were taken, including military enforcement in some cases. During its hegemonic reign of the late 19th and early 20th centuries, the United Kingdom enforced the minimum standard (Lipson, 1985). Other European powers enforced the minimum standard with their colonial possessions, and the United States followed suit in Latin America in the interwar era (Lipson, 1985).

BITs replaced the minimum standard following WWII. Two factors stand out in the decline of the minimum standard and the rise of BITs. Firstly, the US and western European powers no longer dominated the international system (Lipson, 1985). The rise of the Union of Soviet Socialist Republics (USSR) inhibited the west's ability to pursue diplomatic interposition and strong-arm developing states into compliance with the minimum standard. The second factor concerned the changing nature of foreign investment. After WWII, developed state MNCs began to invest in services and production. Foreign investments in these areas could not be effectively expropriated by a host state (Frieden, 1991). For the investment to be lucrative, it had to be connected to the multinational and its supply chains and technical knowledge. Developing states began to realize that they needed foreign multinationals to pursue economic development and began to actively court multinationals in the 1980s (Stopford & Strange, 1991). But once the foreign companies invested, the

developing host states implemented various restrictive business practices, such as higher taxes, local content requirements for production inputs, and restrictions on monetary transfers, on the companies to reap a larger share of the benefits from the investment and promote domestic economic stability.

Thus, the new issue developed state MNCs faced in the developing world was no longer the outright expropriation of foreign owned property, but creeping expropriations via increasingly restrictive business practices. BITs proliferated in this period because they contain provisions specifically addressing various restrictive business practices, and other issues concerning how host states must treat foreign owned companies.

DO Bits Attract FDI to LDCs?

Both developed, capital-exporting states and capital-importing LDCs expect to receive benefits from being a BIT signatory. Salacuse and Sullivan (2005) refer to these expected benefits as the “grand bargain”: Protection is promised to the investments made by the MNCs of the developed state in return for future investments in the LDC.

However, the actual benefits received by developing states from signing BITs remains a hotly debated topic involving serious equity concerns. LDCs essentially forgo a degree of economic sovereignty by limiting their ability to regulate and extract rents from MNCs when they sign a BIT: “BITs may facilitate a division of profits that is less favorable than might occur under other regimes less highly controlled by the developed countries” (Tobin & Rose-Ackerman, 2005, p. 8). Depending on the content of the BIT in question, BITs may limit an LDC’s ability to, among other concerns, respond to balance of payment problems and regulate the environment. In addition, BITs may place domestic industries at a competitive disadvantage by providing foreign investors with preferential treatment and may crowd out domestic investment. If LDCs do not garner increased investment flows from BIT membership, all of the benefits from the treaty will go to the MNCs of developed states at the expense of the LDCs. In this scenario, the MNCs of developed states would continue to make investments they would in the absence of a BIT, but they would get a better deal in the process.

Developed States and the Grand Bargain

Developed states sign BITs to protect investments in LDCs (Tobin & Rose-Ackerman, 2005; Salacuse & Sullivan, 2005). Structural changes in the international economy emanating from technological advances in communication and transportation, and economic liberalization in trade and finance, have prompted the MNCs of developed states to invest abroad in order to seek additional markets and resources, and achieve greater efficiency (Stopford & Strange, 1991). However, a string of expropriations in the late 1960s and 1970s precipitated by a decline in US hegemony demonstrated the vulnerability of investments in LDCs (Lipson, 1985). The willingness of developed states to engage in BITs “rests in the desire of companies of industrialized states to invest safely and securely in developing countries” and to create an international legal framework to govern the treatment of international investments (Salacuse & Sullivan, 2005, p. 75). While international law does recognize the economic sovereignty of all states (Slomanson, 1995), by signing a BIT, the capital importing LDC commits itself under international law to provide the various protections to foreign investment that are included in the treaty; and most importantly, BITs entitle investors to dispute settlement provisions when they feel a component of the treaty has been violated by the host state.

Virtually all BITs contain a section covering the settlement of investment disputes; the vast majority calls for disputes to be settled through the International Centre for Settlement of Investment Disputes (ICSID) (Dolzer & Stevens, 1995). Recent research suggests that developed states have been able to leverage their power positions over developing states to force strong dispute settlement provisions in BITs (Allee & Peinhardt, 2014). Almost 200 dispute cases between an MNC and a host state were taken to arbitration from 1995-2005 (United Nations Conference on Trade and Development (UNCTAD), 2007). Because a BIT is a treaty between two sovereign states, not just an agreement between a host state and an MNC, LDCs face steep reputational costs by ignoring a BIT commitment and not conforming to the dispute settlement process outlined in the BIT. Allee and Peinhardt (2014) find that even appearing before ICSID for an investment settlement dispute harms the reputation of developing countries and reduces investment flows to those states. In short, BITs appear to have succeeded in developing a legal apparatus that works to protect the investments of MNCs by subjecting the host state to international arbitration according to each individual treaty.

Developing States and the Grand Bargain

LDCs sign BITs to encourage foreign investment (Tobin & Rose-Ackerman, 2005; Neumayer & Spess, 2005; Salacuse & Sullivan, 2005; Elkins, Guzman, & Simmons, 2006). Investment from an MNC can be beneficial for an LDC's economic development. For instance, investments can provide capital, technology transfers, and increase the job skills of the local population. Indeed, Salacuse and Sullivan (2005) note, "developing countries sign BITs to promote foreign investment, thereby increasing the amount of capital and associated technology that flows to their territories" (p. 76). Neumayer and Spess (2005) go so far as to claim, "undoubtedly, BITs are so popular because policy makers in developing countries believe that signing them will increase FDI" (p. 1567).

Scholars agree that developing countries sign BITs in order to attract FDI, and to overcome the dynamic inconsistency problem (that is to say, situations in which host states make promises to investors that they may be unable to keep). However, there is less agreement about the mechanism through which BITs attract investment to developing states. Some scholars claim a "signaling" logic is at work while others vie for a "tying hands" approach. The underlying logic has important ramifications for the empirical model used in the study of the effect of BITs on FDI flows to developing states.

BITs as a Form of Signaling (the Monadic Approach)

The signaling logic is rooted in realist theory. Realists contend that international treaties are merely formal commitments to policies that states would make in the absence of the treaty (Downs, Rocke, & Barsoom, 1996). The signing of a BIT is a host state's public commitment to business friendly policies, a signal aimed at quelling investor concerns over the dynamic inconsistency problem (Kerner, 2009; Salacuse & Sullivan, 2005). According to signaling logic, BITs should affect the investment decisions of foreign investors from states covered by the treaty as well as foreign investors from states not covered by the treaty (Kerner, 2009; Salacuse & Sullivan, 2005). Foreign investors view BITs as a credible commitment to business friendly policies because of the developing country's high *ex ante* costs associated with entering into the agreement (Kerner, 2009; Buthe & Milner, 2009). For instance, South Korean President Kim Dae-Jung faced intense political pressure for making a BIT with the United States a key component of his economic policy (Kim, 2006). The Korean film industry, which lost protection from competition with the US film industry, adamantly opposed the treaty (Kim, 2006).

Through signaling, an LDC will attract FDI from multiple home states through the signing of a single BIT. Quantitative studies designed to capture the signaling logic are monadic, focusing solely on the capital importing state. The dependent variable in these studies is, in slightly varying forms, the total amount of FDI received by the host state, regardless of country of origin. The primary independent variable is, usually, the total number of BITs signed by the host developing state. Signaling studies hypothesize that the more BITs an LDC signs, the more FDI it will receive from capital exporting, developed states. However, studies with the same basic research design have come to quite different conclusions.

Monadic Studies. Early monadic studies are fraught with methodological limitations¹. More recent monadic studies employ broader temporal and special parameters and account for state specific factors, yet the studies still arrive at conflicting results. The studies by Neumayer and Spess (2005), Yackee (2009), and two studies by Tobin and Rose-Ackerman (2005; 2011) are monadic studies that investigate the interaction between BITs and the institutional quality of the host developing state. All four studies test to see if a developing state's institutional quality influences the ability of BITs to stimulate FDI inflows. Tobin and Rose-Ackerman (2005; 2011) and Yackee (2009) conclude that BITs work best—that is to say, they attract the most FDI—when signed by developing states with low levels of political risk (high institutional quality). Neumayer and Spess (2005) find the opposite: They find that BITs are more productive when signed by developing states with high levels of political risk (low institutional quality).

Buthe and Milner's (2009) study largely mirror that of Neumayer and Spess' work. Similar to Neumayer and Spess, Buthe and Milner find a positive and statistically significant relationship between the total number of BITs signed by a developing state and the total FDI it receives, which is assessed as a percentage of the host state's GDP. The unit of analysis in Buthe and Milner's study is non-Organization for Economic Co-operation and Development (OECD) countries with populations greater than one million (At the time of that research 129 countries met those criteria). Countries are analyzed from 1970 to 2000 using a time-series, fixed-effects model.

A pair of recent monadic studies look at regional groupings of states. Agrawal, Sethi, and Dwivedi (2017) look at the effect of BITs on total FDI flows to five South Asian countries (Bangladesh, India, Pakistan, Nepal, and Sri Lanka) from 1970-2014. They find no relationship between the total number of BITs each country signed and inward FDI flows. The Colen, Persyn, and Guariso (2016) study investigate the total number of BITs signed by each of 13 former Soviet Union and Central and Eastern European states and FDI flows to each country. In particular, the authors test to see if BITs influence different sectors (i.e. utilities, real estate, manufacturing, and services) differently. Their findings indicate that BITs increase investments in utilities and real estate, but not in manufacturing and services.

The final monadic study covered here is by Sirr, Garvey, and Gallagher (2017). The study covers 28 developing and transition countries from 1999-2008 and specifically investigates whether BITs have differentiated effects on vertical and horizontal FDI. The study looks only at BITs ratified with OECD countries and the study weights each BIT according to the OECD state's FDI outflows. The authors find that BITs positively increase both types of FDI, but that BITs have a stronger effect on vertically integrated FDI.

¹ Early monadic studies are limited by at least one of the following: limited temporal parameters (years covered by the analysis), limited scope (the number of states included in a study), or the use of cross-sectional data, which prevents the studies from controlling for state-specific factors. All of the early studies, with one exception (Grosse & Trevino, 2005), find a statistically insignificant relationship between the total number of BITs signed by a developing host state and its FDI inflows (see UNCTAD, 2007; Salacuse & Sullivan, 2005); Gallagher & Birch, 2006).

Criticisms of Monadic Studies. Monadic studies can be criticized along two lines. Firstly, these studies insufficiently account for variation in developed and developing countries. Signing a BIT with the United States, for instance, is more likely to induce higher levels of FDI than signing a BIT with a smaller country that exports less FDI. In the studies reviewed, only Sirr et al. account for this dynamic (by weighting BITs by the host OECD state's FDI outflows). Furthermore, these studies do not adequately account for host state variation. Studies usually account for a limited number of variables, such as host GDP and some measure for host institutional quality, but other factors that could influence state's ability to attract FDI are left absent or are simply difficult to account for with available data.

Secondly, the signaling logic used by monadic studies to justify the claim that BITs can attract FDI from MNCs not covered by the agreement is not applicable to today's globalized world. Structural changes in the international economy have made liberal economic policies a necessary component of the economic development strategies of LDCs (Stopford & Strange, 1991; Strange, 1988). LDCs no longer view the expropriation of foreign owned property as a necessary policy for economic development (Stopford & Strange, 1991; Minor, 1994). Developing states want the benefits that stem from multinationals operating within their borders and are willing to enter into BITs to get them (OECD, 2003). Through the signing of BITs, LDCs may signal to MNCs from multiple states that they will not expropriate foreign investments, but that is not enough to lure multinationals.

Other areas of LDC economic policy are more important to the investment decisions of multinationals. These areas affect the ability of an MNC's host state operations to be profitable. For instance, transfer issues are the most frequent source of investment disputes between developing states and multinationals (Sornarajah, 2004; UNCTAD, 2007; Vandevelde, 2009). Some BITs guarantee the right of MNCs from a particular state to remit profits unconditionally, but do not extend that benefit to MNCs from other states. There is no legal avenue for a multinational from another state to achieve this benefit, or any other benefit provided in a BIT under which the multinational is not covered. If a multinational from a state not covered by the treaty is not permitted to remit profits, no international or domestic law is broken, and it is unlikely a host state will lose or gain potential investments when it exercises its legal and legitimate policies.

BITs as Tying Hands (the Dyadic Approach)

The tying hands logic is ingrained in institutionalist theory. Institutionalists argue that international agreements can be designed to alter state incentives, and therefore state behavior (Abbott & Snidal, 2000; Simmons, 2000; Keohane, 1984). According to this logic, BITs change the behavior of host states by raising the *ex post* costs of violating treaty commitments to MNCs (Kerner, 2009). BITs limit the policies that host states can apply to MNCs covered by the treaty, thus tying the hands of host states.

Violating a BIT commitment severely damages the reputation of a host state. Because of its highly public status as a treaty commitment, and a commitment enshrined in international law, the violation of a BIT would generate bad publicity for the host state, which would discourage foreign investors from investing in the state in the future. Violating the terms of a BIT could also cause a diplomatic dispute with the investor's home state, possibly spilling into other areas of diplomacy. In fact, host state BIT violations might lead to a reduction in its credit rating, making International Monetary Fund (IMF) and World Bank loans and government bonds costlier (Garcia-Bolivar & Schmid, 2004).

However, the tying hands logic can only be applied to MNCs covered by the treaty (Kerner, 2009). Anecdotal evidence demonstrates how host states can treat MNCs covered by BITs differently than MNCs not covered by BITs. For example, during South Africa's post-apartheid property reallocation, foreign mining companies covered by a BIT were allotted more favorable treatment than those not covered by a BIT, particularly in the area of compensation paid for expropriation (Peterson, 2004).

Through tying hands, the logic goes, a developing state will attract higher levels of FDI from the host state in the agreement. Quantitative studies designed to capture the tying hands logic are dyadic, focusing on state pairs. The dependent variable in these studies is the FDI levels flowing from the home, developed state in the agreement to the host developing state. The explanatory independent variable is, usually, the presence of a BIT in a particular dyad of states. Tying hands studies hypothesize that the presence of a BIT in a dyadic pair of states will increase FDI flows from the home state to the host state. Most dyadic studies have not verified the tying hands hypothesis.

Dyadic Studies. UNCTAD (1998) contains a dyadic study of FDI flows from 14 developed capital exporting countries into 72 capital importing developing countries from 1971 to 1994 using panel data in a time-series analysis. The results indicated a positive relationship between the presence of a BIT in a dyad and FDI flows, but not at statistically robust levels. The study is criticized because of data collection methods and limited control variables (Salacuse & Sullivan, 2005). Because there is scant bilateral FDI data for the 1970s, the authors pieced together their dataset from a variety of sources, each with different data collection methods. UNCTAD (1998) also employed a limited set of control variables.

Hallward-Driemeier (2003) investigates the impact of BITs on bilateral investment flows between 20 OECD states and 31 LDCs from 1980-2000 using a time-series model with fixed-effects. The unit of analysis is each OECD state-LDC dyadic pair. Hallward-Driemeier utilizes a barrage of various model specifications and control variables and finds in the vast majority of her models that BITs do not have a statistically significant effect on FDI flows within dyadic pairs of states.

Salacuse and Sullivan (2005) and Gallagher and Birch (2006) both analyze dyads consisting of the United States and a developing country. These studies have conflicting results, likely because of their limited and disparate research designs. Salacuse and Sullivan's research contains a dyadic model featuring 31 developing countries paired with the United States. The authors analyze FDI flows from the United States to a developing country from 1991 to 2000 and find a positive and highly significant relationship between the presence of a BIT with the United States and United States' FDI flows to the developing countries. Salacuse and Sullivan use signed, but not necessarily ratified, BITs in their study. Haftel (2008) replicates Salacuse and Sullivan's study but only includes signed and ratified BITs; Haftel's results are consistent with those of Salacuse and Sullivan (2005). Gallagher and Birch's study contains a dyadic model consisting of 24 Latin American countries, on the one hand, and the United States, on the other hand. Net FDI inflows to the Latin American country from the United States are analyzed from 1980 to 2003. The results from this dyadic analysis are not statistically significant.

Aisbett, Busse, and Nunnenkamp (2016) build upon Allee and Peinhardt's (2011) work (mentioned above). Allee and Peinhardt conclude that developing countries see a reduction in FDI flows after being a part of an International Centre for Settlement of Investment Disputes (ICSID) case; however, the study uses a monadic design that does not distinguish between FDI from BIT partner states and FDI from non-BIT partner states. Aisbett et al. make this distinction using a dyadic research design covering 83 host states and 39 FDI exporting

states from 1980 to 2010. The authors' findings show that, indeed, FDI from home to host BIT partner states is reduced by host state participation in an ICSID case, but only for dyads where a BIT is present.

The final dyadic study covered here is from Kerner. Kerner's (2009) study is unique because it tests both the signaling hypothesis and the tying hands hypothesis in the same model. The unit of analysis is direct dyads (pairs of countries and one observation per ordered pair). Dyads include one of the original OECD members plus Japan, Australia, and New Zealand, on the one hand, and 127 developing countries on the other hand. The period covered is 1982 to 2001. The dependent variable is the natural log of FDI flows. Two explanatory independent variables are used: the presence of a BIT in a dyad, and a rolling average of BITs ratified by LDCs outside the dyad in years $t-1$ and $t+1$. The former independent variable tests the tying hands hypothesis and the latter independent variable tests the signaling hypothesis. Kerner uses a two stage least squares regression and two instrumental variables to control for endogeneity². Kerner concludes that BITs have a positive and robust effect on FDI to developing countries and BITs affect FDI through both channels, directly through the tying of hands logic and indirectly through the signaling logic³.

Critique: Why not Account for Variation in BITs? A possible advantage of dyadic research designs is that they can enable researchers to account for differences among BITs. However, none of the aforementioned dyadic studies account for variation in BIT content. In other words, the studies assume that any variation that exists across BITs does not have any impact on the amount of FDI the treaty is expected to garner for LDCs.

In a study on the proliferation of BITs, Elkins et al. (2006) justify their assumption of BIT homogeneity by claiming that because of the market power superiority of the developed capital-exporting state in the agreement, as well as LDC competition for FDI, LDCs have no bargaining power to alter provisions of BITs and must accept the provisions offered by the developed state if they want to enter into a BIT with a developed, capital-exporting state. However, some scholars disagree. For instance, Sornarajah (2010) claims the content of each BIT varies according to the bargaining position of each party to the treaty, and observes:

Though the outer shell of bilateral investment treaties looks similar [...] a deeper examination would indicate that the contents of the treaties vary so widely that each must be considered a carefully balanced accommodation reached after negotiation between the parties. (p. 206)

The fact that most BITs cover the same issue areas does not necessarily guarantee those areas will be treated the same in every BIT. BITs vary because of the bargaining positions of the two states involved in the treaty (Sornarajah, 2010). Small changes in language or the inclusion or exclusion of a certain provision could result in large differences in the amount of FDI a BIT can attract. Indeed, Hallward-Driemeier (2003) admits, "while it should be recognized that a BIT could be an important commitment device, the nature of the commitment can vary enormously depending on the terms of the BIT" (p. 3).

Studies Including BIT Variation. Yackee examines whether strong BITs are more effective than weak BITs at stimulating FDI flows to developing states. Strong BITs guarantee a foreign investor's right to unilaterally initiate binding arbitration against a host state over a wide range of issues. Weak BITs do not provide foreign investors such protections (Yackee, 2008). Yackee utilizes a dyadic, time-series cross sectional

² The first instrumental variable is "the percentage of a host state's neighbors that have ratified a BIT with the home state in question as an instrument for the existence of a ratified BIT" (Kerner, 2009, p. 87). The second instrumental variable is a "3-year moving average of new BITs that a host state's neighbors have ratified as an instrument for the 3-year moving average of the number of BITs that a host country has ratified with countries outside the dyad" (Kerner, 2009, p. 87).

³ Kerner (2009) claims that these findings are hidden unless endogeneity is controlled for.

research design with clustered standard errors. He assesses FDI flows from the top 18 capital exporting states to all other countries from 1945 to 2002. Yackee concludes that strong BITs do not garner more inward FDI to developing states than weak BITs. In fact, he finds that neither category of BIT has a statistically significant effect on FDI flows from the capital exporting state to the capital importing state. Buthe and Milner (2014) apply the same logic to preferential trade agreements (PTAs), but with different results. The authors find that PTAs containing investor-friendly, investment-inducement provisions generate greater FDI than PTAs without such provisions. While Yackee (2008) and Buthe and Milner (2014) are steps in the right direction in regards to their inclusion of BIT variation, they do not go far enough. The studies only include one area of BIT variation when, in reality, BITs vary across dozens of provisions, the inclusion or exclusion of which could influence the investment decisions of multinationals. A more sophisticated analysis of BIT strength is needed before the BIT strength hypothesis can be properly tested.

Conclusion: Future Studies

Studies trying to discern the effect of BITs on FDI flows to developing countries can be improved by accounting for the treaties' internal dynamics. Monadic research designs cannot capture influences from BIT variation. Furthermore, the signaling logic undergirding this approach is outdated. Quelling the threat of expropriation through signaling is no longer enough to receive investment from multinationals. Guaranteed protections in a wide variety of policy areas could influence multinationals, however. Yackee, in a dyadic research design, attempts to account for specific guarantees in BITs, but does not go far enough. He only accounts for one area of variation in BITs, the foreign investor's right to initiate arbitration.

Other BIT provisions might affect FDI flows and should be accounted for in future studies as well. For instance, BITs containing provisions guaranteeing monetary transfers back to an MNC's home state could induce more FDI to LDCs. In fact, most investment disputes include situations where host state governments attempt to restrict the ability of an MNC to repatriate profits (Sornarajah, 2004; UNCTAD, 2007; Vandevelde, 2009). Investment provisions that prevent restrictive business practices, like the ability of an MNC to bring-in its own management to operate the investment, might prompt increased FDI flows to LDCs, too. These BIT provisions, monetary transfer protections, and protections against restrictive business practices, do not represent the totality of foreign investment protections present in BITs, but including them in future studies assessing how BITs affect FDI flows to the developing world would be a good place to start.

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