

DO WE REALLY NEED BITS? TOWARD A RETURN TO CONTRACT IN INTERNATIONAL INVESTMENT LAW

*Jason Webb Yackee**

ABSTRACT

In contrast to arguments commonplace in the extant literature promoting bilateral investment treaties (BITs) I argue that BITs are not necessary to resolve any pressing problems of credible commitment or obsolescing bargain. I point out that investors have long had the ability to credibly commit to treat investors fairly through investment contracts. I recommend that developing countries consider forgoing BITs in favor of a regime in which foreign investors are required to bargain for special treatment.

KEYWORD: *bilateral investment, BITs, international investment law, arbitration, investment risks, BIT substitutes*

* J.D., Ph.D., Assistant Professor, University of Wisconsin Law School. Paper Prepared for the International Conference on Bilateral Investment Agreements: Protection, Promotion, and Development of International Investment, 28-29 November 2007, Taipei. I would like to extend my sincere thanks to Professor Chang-fa Lo, LCS & Partners, and the Taiwan Department of Investment Services for inviting me to participate in such a stimulating conference and to the anonymous reviewer for helpful comments. These thoughts are initial ones in a longer-term research project, and comments and critiques are welcome. The author can be reached at jyackee@wisc.edu.