Dumberry

Fair and Equitable Treatment

Its Interaction with the Minimum Standard and Its Customary Status

The fair and equitable treatment ('FET') standard is a type of protection found in BITs which has become in the last decades one of the most controversial provisions examined by arbitral tribunals. This book first examines the interaction between the 'minimum standard of treatment' (MST) and the FET standard and the question why States started referring to the former in their BITs. It also addresses the question whether the FET should be considered as an autonomous standard of protection under BITs. This book also examines the controversial proposition that the FET standard should now be considered as a rule of customary international law. I will show that while the practice of States to include FET clauses in their BITs can be considered as general, widespread and representative, it remains that it is not uniform and consistent enough for the standard to have crystallised into a customary rule. States also lack the necessary opinio juris when including the clause in their BITs.

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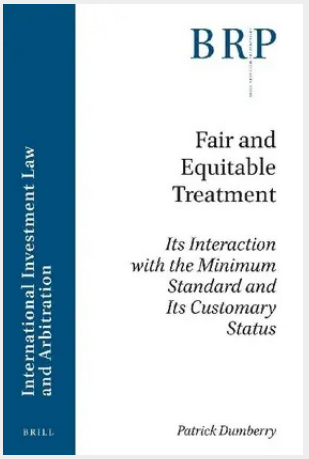

90,50 €
90,50 € (zzgl. MwSt.)

Nicht mehr lieferbar

Artikelnummer: 9789004366114
Medium: Buch
ISBN: 978-90-04-36611-4
Verlag: Brill
Erscheinungstermin: 01.03.2018
Sprache(n): Englisch
Auflage: VI, 82 Pp. Auflage 2018
Serie: Brill Research Perspectives in International Law / Brill Research Perspectives in International Investment Law and Arbitration
Produktform: Kartoniert
Gewicht: 136 g
Seiten: 82
Format (B x H): 155 x 234 mm