

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

AND EQUITABLE TREATS

UNCTAD Series
on issues in international investment agreements



UNITED NATIONS
New York and Geneva, 1999

Table of contents

	Page
Preface.....	v
Executive summary.....	1
INTRODUCTION.....	3
I. EXPLANATION OF THE ISSUE.....	7
A. History of the standard.....	7
1. Origins.....	7
2. Recent usage.....	8
B. The meaning of fair and equitable treatment.....	10
1. The plain meaning approach.....	10
2. International minimum standard.....	12
3. "Equitable" vs. "fair and equitable" treatment . . .	13
C. The relationship with other treatment standards.	15
D. Principal drafting issues.....	16
1. The need for an express provision.....	16
2. Formulating the standard.....	18
II. STOCKTAKING AND ANALYSIS.....	21
A. Trends in the use of the standard.....	21
B. Models based on State practice.....	22

	Page
1. No reference to fair and equitable treatment	22
2. The hortatory approach.....	24
3. Reference to "fair and equitable" treatment, "just and equitable" treatment or "equitable" treatment.....•	26
4. Reference to "fair and equitable" treatment with related standards.....•	31
a. Does the fair and equitable standard constitute an overriding obligation?.....	34
b. Is the fair and equitable standard the same as the international minimum standard?.....	37
 III. INTERACTION WITH OTHER ISSUES AND CONCEPTS.....	 43
 CONCLUSION: ECONOMIC AND DEVELOPMENT IMPLICATIONS AND POLICY OPTIONS.....	 53
A. The economic and development implications of incorporating the standard.....	54
B. Policy options.....	58
 References.....	 63
 Selected UNCTAD publications on transnational corporations and foreign direct investment	 67
 Questionnaire.....	 77

Table

1. Interaction across issues and concepts.....	43
--	----