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Dear Sir or Madame:

I write this letter in support of Bagdat G. Kuzhatov's defense of his PhD thesis: "revision of balance between regulatory rights and investment protection under fair and equitable treatment: The Energy Charter Treaty framework."

I am the founder and Global Co-Chair of the International Dispute Resolution Practice Group at Squire, Patton Boggs. We are one of the largest international arbitration practices in the world with about 150 lawyers in 25 offices in Europe, Asia, and the Americas. A substantial part of our practice involves representing sovereign states; our lawyers have represented 32 different countries and the European Commission in international disputes.

My first sovereign representation began in 1977 when my law firm was retained by the Togolese Republic. Since then, I have represented many countries and consider myself fortunate to have been lead counsel in several significant cases, examples include: *Saluka Investments B.V. v. The Czech Republic* (Uncitral); *Phoenix Action, Ltd. v. The Czech Republic* (ICSID Case No. ARB/06/5); and *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador* (ICSID Case No. ARB/06/11). My academic legal training was at Cambridge University (UK) and Harvard Law School (US).

Mr. Kuzhatov's thesis focuses on fair and equitable treatment, one of the key standards in the Energy Charter Treaty (ETC), as well as in many other multilateral and bilateral investment treaties. The thesis deals with what, in my view, is the timely, important, and necessary evolution of the fair and equitable treatment standard. Treaties (including numerous bilateral investment treaties preceding the Energy Charter Treaty) containing this standard often were drafted in the last several decades of the 20th Century and their purpose was to promote investment by creating protections for investors. The problem, however, was that this broad concept of investor protection did not always fit easily with a sovereign's legitimate right and need to impose and change governmental regulations – particularly those that promote health, safety, and public welfare.

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This is particularly true with energy industry investment which, of course, is a primary focus of the Energy Charter Treaty. For example, on the one hand, extraction of hydrocarbons necessarily involves investment of large sums of money, which may not be forthcoming unless investors believe they will have appropriate protections. On the other hand, those activities often involve significant environmental threats to the host state, its citizenry and, indeed, beyond the territory of the host state. As the world community has become increasingly sensitive to these threats and the resulting need for governmental regulation, it has become increasingly necessary to balance investor protection with a sovereign's legitimate right to regulate in environmental protection as well as other areas.

Mr. Kuzhatov deserves congratulations for his thesis. His analysis of the history of fair and equitable treatment in the context of the Energy Charter Treaty is accurate and rigorous. More important, however, are his insightful proposals for revision of the fair and equitable treatment standard and his demonstration of how they would have applied both in past cases and from his own experience representing Kazakhstan.

I have evaluated Mr. Kuzhatov's proposals in the context of issues I have faced as counsel for sovereigns. I have also evaluated the solutions that would have been driven by the proposals. The proposals are extremely well developed and present what I believe are appropriate solutions to the inherent tension between investor protection and a sovereign's right to regulate in the Energy Charter Treaty context. I am certain that Mr. Kuzhatov's proposals will be of assistance both to lawyers who act as counsel in Energy Charter Treaty cases and to the arbitrators who decide those cases.

In judging legal scholarship, it is one thing to describe the history and existing state of legal rules or principles. It is quite another thing, and much more important, to be able to show effectively why and how the law should evolve. Mr. Kuzhatov has achieved both with flying colors.

Yours sincerely,



George von Mehren
Senior Partner
For Squire Patton Boggs (UK) LLP

