Interview with H.E. Mr. Uzakbai Karabalin, First Vice-Minister of the Ministry of Energy of the Republic of Kazakhstan

At the Energy Charter Conference meeting on 6 December 2013 a new system of chairmanship of the organisation was introduced designed to encourage the member countries' political ownership of the Energy Charter Process. From 2014 individual countries are chairing the Conference on an annual basis. Kazakhstan assumed the honorary right to become the first country-chair in 2014. How would you assess the outcomes of Georgia's chairmanship in 2015 and what are your expectations ahead of the chairmanship of Japan in 2016?

"Kazakhstan became the first country in the history of the Energy Charter who assumed the Chairmanship of the Energy Charter Conference.

For the first time in the history of the Energy Charter starting from 2014, a new system of chairmanship of the organization was introduced. By virtue of this new system the responsibility of the leadership of the Energy Charter Conference, the governing body of this international organization, is taken over by the government of the country-chair.

In the framework of its Chairmanship the government of Kazakhstan made a significant contribution to the definition of the political agenda of the Conference, aiming at discussing the development of transit corridors to ensure global energy security.

During its chairmanship Kazakhstan put forward a number of important policy proposals to improve the Energy Charter process, which were reflected in the Astana Declaration, adopted in 2014. Above all, it tackled the issues related to the modernization process of the Energy Charter and the adoption of the "renewed" political declaration of the Energy Charter [the International Energy Charter – DN] designed to modernize the European Energy Charter as the political declaration - is the modernization of the Energy Charter , the adoption of "renewal" of the Energy Charter , the main purpose of which is the modernization of the European Energy Charter as the basic political declaration of the Energy Charter Process.

The Astana Declaration is grounded in two strategic aims:

1 Full implementation of the Energy Charter Treaty and

2 Expansion of the Energy Charter Process

In pursue of these aims, the Declaration sets out clear priorities in a number of key action areas, such as the protection and promotion of investments, dispute settlement, trade, transit and emergency response, including the possibility of resuming negotiations on a multilateral framework agreement on energy transit.

As I have already mentioned, in the framework of Kazakhstan's Chairmanship of the Energy Charter Conference (2014) a number of initiatives to improve mechanisms of investment disputes resolution were put forward.

As for the implementation of our initiatives, in the framework of X KAZENERGY Eurasian Forum on September 30, 2015 a round table was held, dedicated to the topical issues of investment disputes settlement in the energy sector. The round table was prepared in cooperation with the Energy Charter Secretariat and represents the continuation of the first global dialogue between governments and energy companies on effective resolution of energy disputes, held at The Hague Legal Forum of the Energy Charter in May 2015.

At the end of our Chairmanship, as of 1 January 2015, Georgia has taken over commitment to Chair the Energy Charter Conference.

In 2015 during the presidency of Georgia [1] high priority was given to implementation of the conclusions of the Review carried out in 2014 in accordance with Article 34 (7) of the Energy Charter Treaty (ECT)- that is, the Review of the CONEXO policy - policy of Energy Charter's consolidation, outreach and expansion.

The results of the successful implementation of policies to consolidate, expand and attract new members include the activation of the Energy Charter Process and the adoption of the International Energy Charter.

In the framework of its presidency of the Energy Charter Conference Georgia proposed to initiate a political dialogue on regional cooperation in the field of power markets in the

[1] Bold and italics present in the original document.

South Caucasus. This innovative initiative is aimed at promoting trade in electricity, development of efficient transit corridors and investments in regional energy infrastructure.

Regional energy cooperation in Central and South Asia was also discussed at the 11th meeting of RECA (Task Force on regional energy cooperation between the countries of Central and South Asia).

It should be noted that regional energy cooperation will play an important role in the development and sharing of resources in response to global energy challenges.

Regional energy cooperation has always been the object of support and stimulation in the framework of the Energy Charter Process as an important element of energy policy definition, as well as the development and sharing of resources on the regional scale.

In this regard, I would like to note that issues of regional energy cooperation formed the basis of the political agenda of the recent 26th session of the Energy Charter Conference, which marked the assumption of the Conference Chairmanship by Georgia.

Regarding the question of what we expect from the Chairmanship of Japan in 2016, I would like to note the following.

Before 2016 Energy Charter Secretariat faced serious budgetary problems and it is primarily due to the fact that some countries, for various reasons, do not pay their contributions since 2010, and the settlement of outstanding payments is not expected in the near future.

It is also likely that Italy will withdraw from the Treaty, and in this case it can no longer be included in the list of national contributors.

Serious budget constraints can therefore have negative impact on the implementation of tasks ahead of the Energy Charter in the coming year.

Most of the strategic priorities for 2016 in fact present the continuation of current activities and above all the following ones:

- *Implementation of the second phase of modernization of the Energy Charter;*
- *Implementation of the transit provisions of the ECT.*

This is a big and complex task and we hope that the presidency of Japan for the Energy Charter Conference in 2016 will contribute to the implementation of the key objectives of the Energy Charter."

Do you consider the International Energy Charter and the Energy Charter Treaty important elements of international energy governance? How, in your opinion, could the position of the Energy Charter as a leading international organisation be strengthened in the context of the changing global energy dynamics?

"The Energy Charter Treaty currently serves as the only multilateral legally binding instrument in the energy sector covering the areas of investment protection, energy transit and trade; and its enforceable international regulations, including its powerful dispute settlement mechanisms, which are very useful for reducing specific risks associated with the functioning of the energy sector.

The legal framework of the Energy Charter Treaty, applicable on the international level, plays an important role in the global energy architecture, as it provides unique rules strengthening energy security. The changes in the balances of the global energy markets are characterized, above all, by the growing dependence of industrial countries on energy imports, and the increased proportion of new states on the global energy demand side. New key players also emerge on the global energy market.

It should also be noted that at present there is a growing interest from new countries in the world in the Energy Charter process. Given the major changes in the geopolitical situation, the increased interest in the Energy Charter Treaty in the Middle East, China and others. Arose the need for the ***International Energy Charter.***

On 20 - 21 May in The Hague at the invitation of the Government of the Netherlands the Ministerial Conference on the adoption and signing of the International Energy Charter was held.

At this conference, 75 countries (most of which are signatories of the European Energy Charter in 1991 and observer countries), the European Union, the European Atomic Energy Community (Euratom) and the Economic Community of West African States (ECOWAS) adopted the new International Energy Charter, which is the updated version of the European

Energy Charter of 1991.

That ministerial conference was a historical event and a new milestone. After 20 years, the European Energy Charter was updated and adapted to the realities of the 21st century.

The adoption of the International Energy Charter is seen as the first step towards accession to the legally binding Energy Charter Treaty (ECT). Several countries have already announced that they will begin the process of accession to the ECT.

The text of the International Energy Charter is on the text of the European Energy Charter adopted in 1991 in The Hague («The Hague I»). However, at the present stage the main goal was to update and develop a text that would reflect current challenges in the energy sector and the desire of the Energy Charter to play a leading role in the development of the global energy governance architecture.

In this context, I would like to remind about the ***historical background*** [of these developments – DN]:

16 - December 17, 1991 the Conference on the adoption of the European Energy Charter was hosted in The Hague (The Netherlands).

December 17, 1991 - the signing of the European Energy Charter took place.

The European Energy Charter is a political declaration adopted in The Hague on December 17, 1991. To date, it is signed by 64 countries from Europe, Asia, North America and Africa as well as Australia, the European Union and EURATOM, ***as well as Kazakhstan.***

The Framework Agreement referred to in the European Energy Charter, is also known as the Energy Charter Treaty. Most of the signatories to the European Energy Charter, but not all of them, signed or acceded to this Agreement, which was opened for signature in 1994 and entered into force in 1998. In contrast to the European Energy Charter, the provisions of the Energy Charter Treaty with respect to energy-related trade, transit, investments, environmental aspects and principles of dispute resolution are legally binding.

The Republic of Kazakhstan signed and ratified the ECT according to the Decree of the

President of Republic of Kazakhstan from 18.10.1995.

The Energy Charter Treaty (ECT) that was signed in 1994 and entered into force in 1998 is the only set of [legally binding] international [energy] rules, designed specifically for the energy sector.

***The International Energy Charter** is a political declaration, expanding the scope of the original European Energy Charter to the international level. In the context of globalization of the energy markets and the prevailing instability in the world economy, geopolitics and demography, a new International Energy Charter, currently supported by 75 countries from five continents of the world, is an important instrument for attracting the necessary investment in the energy sector.*

***Important principles** of International Energy Charter remain efficient functioning of the energy markets, investment protection, freedom of transit of energy resources, promotion of trade of energy and energy products, as well as cooperation in the development of energy policy, including energy efficiency and environmental protection.*

***The key new aspects** [of the International Energy Charter] are recognition of the importance of universal access to modern energy sources and the need for increasing the share of low-carbon and renewable energy. Thus, the International Energy Charter reflects the persisting importance of energy security for producing, consuming and transit countries.*

Since the adoption of the Energy Charter Treaty the geopolitical situation [in Europe and Central-East Asia] changed dramatically, while the window of political opportunity for adopting a new international treaty in the field of energy cooperation sharply narrowed in terms of. At the same time the issue of the modernization of the Energy Charter process, especially in terms of energy security, crisis prevention, dispute settlement has always been important.

The updated Energy Charter and the ECT represent an important step in helping to stimulate significant investment flows that are required each year to meet the growing global energy demand in a sustainable manner.

I would like to emphasize that at this stage strong political support is required at the highest level of the Energy Charter Process. The provisions of the Energy Charter Treaty should reach the major international energy companies.

One of the remaining problems is lack of clarity regarding some provisions of the Treaty for the energy companies and lack of knowledge about the former (not only in the area of transit), which could be solved by employing greater efforts to share information about the Treaty and clarifying [its provisions] both in governmental circles, and among the representatives of the energy industry.

What is the strategy and methods of active participation of Kazakhstan in the process of the 2nd phase of modernisation of the Energy Charter?

The question of the modernization of the Energy Charter, and giving it a new impetus, especially in terms of energy security, crisis prevention and dispute settlement is of utmost importance at the present stage.

It should be noted that energy security can not be achieved without a solid legal basis and the international aspects of the issue deserve special attention. The Energy Charter Treaty was [initially] adopted by member-states to provide international guarantees for security of supply and to prevent inter-state conflicts associated with the supply and transit of energy resources and products.

Here I would like to emphasize that the International Energy Charter is only the first step on the road to full modernization. The second stage of modernization may relate to any matter within the development and legal regulations of the energy sector, mentioned in the European Energy Charter (1991), the International Energy Charter (2015), or at the request of any of the countries members of the Energy Charter Treaty.

As for the potential future steps in the direction of modernization, we would prioritize the following ones for ourselves:

- **Dispute resolution** - the discussion and establishment of ***an effective framework for peaceful settlement of investment disputes;***
- ***Investment and trade -*** *the possibility of resuming negotiations* ***on the***

Supplementary Treaty, or a Protocol on Non-discrimination at the Pre-Investment Stage;

- ***Transit*** *- the possibility of* ***resuming negotiations on the Transit Protocol, development of a multilateral framework agreement on transit.***

I would like to highlight once again the stable and predictable legal and regulatory framework for international energy cooperation provided by the Energy Charter is of particular importance in achieving national energy security. The dependence of energy trade on fixed infrastructure (such as pipelines and power networks) necessitates common rules for the transportation and transit of energy resources across borders.

At the same time, the implementation of infrastructure projects across multiple countries or on a regional scale is essential for meeting the energy needs of specific countries and achieving the goals of providing national energy security.

Transit provisions are still highly sought after by the Contracting Parties and are considered unique features of the Energy Charter Treaty. No other multilateral treaty offers comparable rules intended to solve the problems of energy transit through fixed infrastructure. That improves the international status of the Treaty greatly in the context of energy security and is essential for export of the ***Kazakh energy resources***, which involves transit through the territory of many countries.

I would like to emphasize that the lack of a stable regulatory and legal framework also leads to delays in the process of making investment decisions with respect to infrastructure facilities for the extraction (production) and transportation of energy resources.

In this regard, the adoption of a multilateral framework agreement on transit of energy resources is of fundamental importance for Kazakhstan.

Thus, the main goal of the Multilateral Framework Agreement on Transit needs to be setting legally binding rules on the basis of the existing provisions of the Energy Charter Treaty relating to transit, and taking into account the specifics of cross-border flows of energy, such as conditions of access to the "available capacity for transit" in the national pipeline systems and criteria for establishing transit tariffs.

Over the past ten years the importance of transit of energy resources had been recognized in the framework of other international initiatives, such as UN's General Assembly Resolution №67/263 "Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation" adopted on 17 May 2013.

Recognizing the role of the Energy Charter Process and the importance of its modernization, we believe that it is necessary to strengthen international cooperation on the development of an international legal mechanism in the field of transit of energy resources, including enhanced multilateral dialogue with relevant international organizations.

Kazakhstan intends to initiate an in-depth multilateral dialogue on security of energy transit, and the transparency of all segments of international energy markets (production/export, transit, consumption/import).

In this regard, I would like to mention the active participation of Kazakhstan in Energy Charter's work. Deputy Chairman of the Association «KAZENERGY» Dzhambulat Sarsenov holds the honorary position of the Special Representative of the Secretary General of the Energy Charter on improvement of mechanisms of the Energy Charter Treaty on investment protection. The representatives of Kazakhstan also chair the Working Groups of the Energy Charter Secretariat on Trade and Transit, as well as Energy Efficiency.

Our active engagement and holding leading roles in the organization will allow to further increase the impact of the Energy Charter Process, both in Kazakhstan and across the entire Eurasian space.