

# Base legal para la creación y el funcionamiento de universidades internacionales en la República de Kazajstán

## Legal Basis for the Creation and Functioning of International Universities in the Republic of Kazakhstan

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### Resumen

Sin definir el concepto de universidad internacional y resaltar sus características, la legislación kazaja en el campo de la educación superior permite la creación de universidades internacionales basadas en acuerdos intergubernamentales o decretos gubernamentales. Sin embargo, la práctica kazaja tomó un rumbo diferente cuando comenzaron a crearse universidades internacionales sin cumplir las condiciones estipuladas por la ley. El objetivo del artículo era discutir la base jurídica para la creación y funcionamiento de universidades internacionales en Kazajstán. El estudio implicó un análisis en profundidad de la legislación de Kazajstán relativa a la educación superior y las universidades internacionales. Esto incluyó una revisión de documentos legales, un análisis comparativo con estándares internacionales y un examen de estudios de casos de universidades internacionales existentes en Kazajstán. Se analizaron aproximaciones al concepto y contenido de las universidades internacionales en la literatura científica. Según la doctrina científica y la práctica de creación y funcionamiento de universidades, el concepto de universidades internacionales comprende una lista más amplia de universidades basada en diversos criterios que los previstos por la legislación kazaja. Para clasificar algunas universidades como internacionales, se definió el alcance de sus actividades, que debía ir más allá del sistema nacional de educación y ciencia, como lo demuestra el trabajo de una universidad en la internacionalización de la educación, contribuyendo a la interacción intercultural e internacional. El artículo destaca que la legislación kazaja clasifica a las universidades como internacionales sólo si han sido creadas gracias al esfuerzo de representantes de dos o más países. Sin embargo, este enfoque no refleja el funcionamiento real de las universidades internacionales. El documento también propone formas de mejorar la legislación actual para reflejar adecuadamente el establecimiento y el sistema de actividades de las universidades internacionales.

**Palabras clave:** Legislación educacional, Universidad internacional, Internationalismo.

### Abstract

Without defining the concept of an international university and highlighting its features, Kazakh legislation in the field of higher education allows the creation of international universities based on intergovernmental agreements or government decrees. However, Kazakh practice took a different path when international universities began to be established without complying with the conditions stipulated by law. The purpose of the article was to discuss the legal basis for the creation and functioning of international universities in Kazakhstan. The study involved an in-depth analysis of Kazakhstan's legislation pertaining to higher education and international universities. This included a review of legal documents, comparative analysis with international standards, and examination of case studies of existing international universities in Kazakhstan. Approaches to the concept and content of international universities in scientific literature were analyzed. According to the scientific doctrine and practice of creating and operating universities, the concept of international universities comprises a wider list of universities based on various criteria than those provided for by Kazakh legislation. To classify some universities as international, the scope of their activities was defined, which should go beyond the national system of education and science, as evidenced by a university's work on the internationalization of education, contributing to intercultural and international interaction. The article highlights that Kazakh legislation classifies universities as international only if they are created with the efforts of representatives of two or more countries. However, this approach does not reflect the real functioning of international universities. The paper also proposes ways to improve the current legislation to adequately reflect the establishment and system of activities of international universities.

**Keywords:** Educational legislation, International University, Internationalism.



## INTRODUCTION

It is relevant to study the legal foundations of international universities, the concept of an international university, and its classification and distinctive features to improve the educational process in the Republic of Kazakhstan and contribute to the scientific doctrine, i.e., to create a categorical framework, which can be further used in the legal regulation of education and science. Based on scientifically verified conclusions, the doctrine gives the legislator an idea of the state-legal patterns, allowing them to select the optimal regulation model ([Abdullin and Gilmullin, 2019](#)).

J. Knight emphasizes that there is no unambiguous definition of a university as an educational institution with an international focus. Various terms are used to reflect such characteristics of universities as multinationalism, globalism, transnationality, intercultural exchange, etc. ([Knight, 2014](#)). The importance of developing a precise definition is to ensure the correspondence and correlation of scientific doctrine, legislation, and its application in the legal regulation of public relations in the field of education and science ([Skorobogatov and Krasnov, 2020](#)).

We cannot but agree with the opinion of scholars who consider the concept of international universities broadly and emphasize the global goal of their activities, allowing students to better understand the world so that they can create something better and more peaceful through intercultural communication and respect. Thus, they can think of the world as one nation rather than as a collection of different nations ([Akishina et al., 2023](#); [Ayoubi, 2019](#)).

On the other hand, some scholars view the concept of the international university more narrowly and include only those universities in Kazakhstan that train “personnel with mastery in several languages” ([Lukashova et al., 2015](#), p. 76).

Kazakh legislation does not define an international university. Clause 11 of Article 59 of the Law of 2007 only prescribes that international and foreign educational organizations and their branches established in Kazakhstan are checked in accordance with Kazakh laws. This means that not all universities are endowed with the status of international since Article 64 establishes that the creation of international and foreign educational institutions in Kazakhstan and/or their branches is based on international agreements or resolutions of the Government of Kazakhstan ([Parliament of the Republic of Kazakhstan, 2007](#)).

International universities in Kazakhstan have been created and functioning since its independence in 1991. In this process, an important role is given to the scientific doctrine and legal consolidation of the status of international universities in Kazakh legislation and international treaties analyzed in the study.

The purpose of the study was to analyze the meaning and role of the internationalization of education and science in Kazakhstan, in particular its mission and goals from the international and intercultural perspective. The study also focuses on the foreign scientific doctrine of international universities that has a positive impact on the formation and development of Kazakhstan’s experience in establishing such universities.

## METHODOLOGY

To achieve the goal of the study we examined the level of systemic links between national and international law and between Kazakh legislation in the field of education and international treaties and agreements concluded by Kazakhstan.

To study the creation and functioning of international universities, we reviewed the scientific literature concerned with the internationalization of higher education and intercultural cooperation, which are the basis for the idea of international universities and their emergence. We conducted a comprehensive theoretical analysis of scientific sources and Kazakh and foreign laws to realize the above-mentioned.

We used the comparative-legal method to compare Kazakh laws and international agreements in the field of higher and postgraduate education. In addition, we applied the system-structural method to identify the relationship between scientific achievements and their reflection in legislation.

The study also considers the text presentation of international universities in national legislation and how their essence is disclosed in Kazakh legislation. Measures are proposed to improve the current legislation in terms of presenting legal norms relating to the activities of international universities.

To analyze Kazakh and international law governing the activities of international universities in Kazakhstan, we studied the works of Kazakh and foreign scholars on this topic. The above-mentioned references are taken from scientific articles, periodicals, and online resources. Laws were retrieved from the legal base of the official Kazakh websites.

System analysis, comparison, and theoretical and legal forecasting were the methodological basis of the research and allowed us to draw certain conclusions. We considered works by scholars who studied the formation and development of international universities: A. Abdullin, A. Gilmullin, J. Knight, R.M. Ayoubi, N.M. Pankova, E. Galazhinsky, K. Tremblay, C. Crisan-Mitra, A. Borza, E. Buckner, C. Chen, F. Vanclay, N.A. Hassan, etc. Particular attention was paid to works by Kazakh authors: S. Lukashova, E. Omirzhanova, E. Chongarov, S.M. Baymoldina, F.M. Syrlybaeva, etc.

## RESULTS

During the study, we described the relationship between the agreements of the Commonwealth of Independent States (CIS) countries, the Eurasian Economic Union (EAEU), and Kazakh regulatory legal acts. We also investigated criteria to classify universities as international and answer the question of why international universities should include not only higher education institutions created jointly with representatives of two or more countries.

Among the first legal acts that predetermined the creation of international universities, we should mention the Law of the Republic of Kazakhstan “On Education” of January 18, 1992, which has become invalid. Part 2 of Article 37 established that the heads of higher and secondary education institutions of republican sub-

ordination (except for military, autonomous, and *international*) are appointed by the Ministry of Education of Kazakhstan in agreement with the relevant executive bodies and heads of regional administrations, cities of republican significance, and the capital for five years or under contract ([Parliament of the Republic of Kazakhstan, 1992](#)). Under Article 37, the state singled out international universities in the system of higher education.

Based on the Law “On Education” of 1992 and the agreement between the Government of Kazakhstan and the Government of the Republic of Turkey, the Turkestan State University named after A. Yassawi in Turkestan is reorganized into the Khoja A. Yassawi International Kazakh-Turkish University.

Article 1 establishes that the parties agree to transform the Turkestan State University named after Khoja A. Yassawi into the Khoja A. Yassawi International Kazakh-Turkish University from January 1, 1993. The parties continued the work necessary for the university to obtain a university qualification that meets international standards until the end of 1993. From the beginning of 1993, the Turkish party started to provide technical equipment for the university. Article 2 stipulates that the rector and vice-rector of the university are appointed by the agreement of the parties.

The Kazakh party appointed Professor M. Zhurinov as the rector of the university. In turn, Turkey appointed the vice-rector of the university ([Türkiye Cumhuriyeti Hükümeti, 1993](#)).

The Law “On Higher Education” of April 10, 1993, which has lost legal force, did not define the concept of an international university. However, it stated that the activities of a higher education institution are regulated by its Charter, and the activities of an international university are regulated by the Charter approved by the governments of the state founders ([Parliament of the Republic of Kazakhstan, 1993](#)). According to the previous law, only universities approved by the governments of the founding states were defined as international, i.e., joint universities. In contrast to this provision, the Republic of Tajikistan does not classify joint universities as international since Clause 2 of Article 19 establishes that institutions of higher professional education are state, non-state, international, and joint ([Parliament of the Republic of Tajikistan, 2009](#)).

Practice and legislation do not always act synchronously. Even though the Law of 1993 required the approval of the Governments of the founding states to establish an international university, international universities were created in Kazakhstan without this requirement. In 1994, the first international university in Kazakhstan was established (the Kazakh-American Free University), whose vice-president was an American citizen D.J. Ballast. The international status of the university was determined by the following features: the participation of foreign partner teachers in the educational process; in-depth study of English; Kazakh and American study programs (double diploma program); industrial practical training in the USA; teaching foreign students; grants from the local budget, the president of the university, and foreign partners ([Kazakh-American Free University, n.d.](#)).

One more legal act that contributed to the development of international universities is the Law “On Education” of June 7, 1999 ([Parliament of the Republic of Kazakhstan, 1999](#)), which was replaced with the Law of July 27, 2007.

Clause 4 of Article 35-1 prescribed that *international and foreign* educational organizations and their branches established in Kazakhstan are inspected in accordance with Kazakh laws. Using such terms as “international and foreign educational organizations”, this prescription provided for the creation and functioning of international universities in Kazakhstan. Clause 3 of Article 46 established that international and foreign educational institutions in Kazakhstan and branches of foreign educational organizations are created based on international treaties and interstate agreements, as well as agreements between central executive bodies in the field of education. The charters of the above-mentioned educational organizations are approved by the governments (authorized bodies) of the founding countries.

The activities of international universities in Kazakhstan are currently regulated by the Law “On Education” of 2007. Clause 11 of Article 59 prescribes that international and foreign educational organizations and their branches established in Kazakhstan are checked in accordance with Kazakh laws ([Parliament of the Republic of Kazakhstan, 2007](#)). In addition, Clause 40 of Article 5 prescribes that the authorized body conducts negotiations with foreign partners and signs, within its competence, international treaties (agreements) and programs in the field of education ([Tretyakova et al., 2023](#)), as well as scientific activities, establishes the rules for organizing international cooperation by educational organizations, and coordinates this work ([Zorina et al., 2022](#)). Thus, Article 11 distinguishes between the concepts of international higher education institutions and foreign higher education institutions established in Kazakhstan, still referring only educational institutions established jointly with other countries to international universities.

What results did we obtain during the analysis of existing scientific studies? In contrast to Kazakh legislation, the scientific doctrine and the educational practice use the term “international” in relation to a university, depending on the scope of its activities. In the relevant scientific literature, the term does not determine the fact that a university is international, but its activities and those approaches that characterize the level of internationalization, intercultural cooperation, and other factors indicate the transnational activity of higher education institutions. It is difficult to say that there is any standard model for recognizing a university as international ([Knight, 2014](#)), but its scope should go beyond the national education system and include the following areas.

Firstly, the development of intercultural cooperation with other universities can indicate the international component of universities. Enjoying the opportunities of academic mobility, undergraduate and postgraduate students at Kazakh universities get acquainted with foreign, mainly Western, education, culture, university traditions, and management system in higher education institutions in Europe, Asia, and America ([Garusova and Piginseva, 2013](#); [Shukusheva, 2020](#)).

Secondly, students and lecturers at international universities differ from those of other universities, i.e., a large number of foreign students and lecturers study and work at such universities ([Krasnoschekov, 2014](#)).

This means that the level and quality of education at the university allow attracting foreign students from other countries so that they continue their education in a new place and leave their alma mater in another country for a while. This option assumes that the skills and grades obtained at the probationary university are recognized and credited at the university where the student came from. Therefore, a feature of an international university and its active internationalization is not only sending students to foreign universities but also the opportunity to provide high-quality education to foreign students ([Chumaceiro Hernandez et al., 2022](#); [Melnikova et al., 2019](#); [Sokolova et al., 2017](#)).

*Thirdly*, universities are called international when they open their branches not only in their native country but also far beyond its borders, in which there are appropriate educational and research programs and a good material and technical base. Thus, the number of countries opening branches of foreign institutions is increasing ([Krasnova and Pykhtina, 2017](#)). The criteria for endowing university branches with international status are as follows: the branch might not own the land or premises in which it operates but it must have educational licenses from the main university, be responsible for curricula, and meet accreditation requirements ([Wilkins and Rumbley, 2018](#); [Gladilina et al., 2023](#)).

The formation of international universities of a certain type (campuses and institutions) in Kazakhstan was facilitated by the Agreement “On the Establishment and Functioning of Branches of Higher Education Institutions in the States Parties to the Treaty on the Customs Union and the Common Economic Zone” of May 23, 2000 ([Agreement on establishment, 2000](#)). The latter is included in the list of agreements that retain their legal and regulatory impact on public relations in the field of education in the EAEU countries. In addition, there is the Agreement “On the Procedure for the Establishment and Operation of Branches of Higher Education Institutions in the Member States of the Commonwealth of Independent States” ([Agreement on the procedure, 2001](#)). To develop and implement the provisions of these interstate documents, several university branches of the CIS countries were opened in Kazakhstan.

*Fourthly*, the development of intercultural interaction and mutual cultural enrichment should be regarded as one of the main indicators of an international university. Intercultural interaction creates good prerequisites to learn more about the national culture of another country ([Platonova et al., 2023](#)). This stipulates the internationalization of all aspects of public life and helps students better understand the diversity of social and cultural processes, as well as trends for universalizing human life. This understanding highlights the importance and necessity of mutual worldviews, whose lack is acutely felt in the current context of instability and global challenges ([Zhang, 2020](#)).

*Fifthly*, international universities strive to ensure that the internationalization of education and science is directly reflected in the curricula and research programs of students ([Shalgimbekova, 2012](#)).

The internationalization of education ultimately attracts foreign students, improves research specialization, and increases productivity in the labor market. In addition, internationalization strengthens international cooperation between universities and ensures the transparency and recognition of qualifications in the educational process ([Crisan-Mitra and Borza, 2015](#)).

*Sixthly*, international universities are included in international rankings, show outstanding results and high performance in the education of undergraduate and postgraduate students, and become world-class universities. According to [J. Salmi and P. Altbach \(2016\)](#), new world-class universities can emerge from the private sector or governments would allow new universities to operate under more favorable regulatory conditions. Kazakhstan has selected the latter path and tries making its economy less dependent on oil and more competitive. To this end, a new international university (Nazarbayev University) was established in Astana.

*Seventhly*, Kazakh universities formed based on intergovernmental agreements or resolutions of the Government of Kazakhstan are considered international universities in practice and scientific research ([Lukashova et al., 2015](#)).

When analyzing the theoretical, legal, and substantive aspects of the concept of an international university, and generalizing various approaches, we formulated a definition of this term, considering it in a broad and narrow sense.

In a broad sense, international universities are involved in activities that can be characterized as going global in terms of various ratings. Thus, we can distinguish the following types of international universities:

- Classical universities that have all features of international training of specialists;
- Specialized universities that have received international accreditation and passed the official test of compliance with international standards;
- International universities operating based on international agreements with the participation of Kazakhstan.

The term “international university” refers to the status and activity of universities created jointly with the representatives of two or more countries based on intergovernmental treaties and agreements that contribute to the internationalization of this university and the strengthening of intercultural interaction.

In a narrow sense, international universities are divided into several types in conformity with their functioning in Kazakhstan: firstly, joint international universities based on the equality of parties in management and responsibility for its activities; secondly, joint international universities based on the priority of one party in the university’s management; thirdly, joint international universities established with the indirect participation of the Government of Kazakhstan as a party to the agreement.

## DISCUSSION

The results that we have received from our research, based on the analysis of international and national law, showed that there are no clear criteria based on which it would be possible to clearly determine that the organization functions as an international university.

In general, while agreeing that there is no fundamental difference in what to call international universities, we believe that the unification of important social concepts on a global scale is a sign of a global trend of internationalization and intercultural cooperation in the field of higher education and science as the national context interacts with international aspects to interpret the internationalization processes ([Buckner, 2019](#)).

In our opinion, some features of universities, which show that a university has gone beyond the national education system and reached the international level, might indicate that such institutions of higher education are international universities ([Avdeev et al., 2023](#)).

The definition of an international university and its features should be enshrined in the legislation of countries and regional integration state entities in a unified form ([Rodenkova et al., 2023](#)). At least, there should not be a clear contradiction between the established practice of creating international universities and national legislation like, for example, in Kazakhstan.

On the one hand, only those universities that are created based on intergovernmental agreements or resolutions of the Government of Kazakhstan can be considered international universities under Kazakh legislation. On the other hand, many universities call themselves international without these preconditions, based on their own understanding of the activities of international universities. Thus, the website of Nazarbayev University emphasizes that it is an *international* English-speaking research university.

The Law “On Education” prescribes that international universities can be created based on international agreements or resolutions of the Government of Kazakhstan. However, there are no mentions of the creation of an international university in the Resolution of the Government of the Republic of Kazakhstan “On the Establishment of a Non-Profit Joint-Stock Company ‘New University of Astana’ and the Allocation of Funds from the Reserve of the Government of the Republic of Kazakhstan” of June 20, 2009 ([Government of the Republic of Kazakhstan, 2009](#)) or in the Resolution of the Government of the Republic of Kazakhstan “On Certain Issues of the Non-Profit Joint-Stock Company ‘New University of Astana’ and the Joint-Stock Company ‘Orken’” of June 7, 2010 ([Government of the Republic of Kazakhstan, 2010](#)), by which the New University of Astana was transformed into Nazarbayev University.

Consequently, Nakhaldarzarbayev University is not an international university according to the legislation, but the scope of its activities goes beyond the national system of education and science, and the work of the university fully coincides with the provisions that characterize a university as international.

There are other cases of violation of the law when a declared form does not correspond to a university's activities that should comply with the rule of law, as well as the common sense and scientific understanding of an international university ([Khaldarova, 2022](#)).

However, several universities have reached the international level of their activities, regardless of their official name. For example, the L.N. Gumilyov Eurasian National University, according to scholars, plays a major role in the system of international universities, as evidenced by the following data. The university is a member of the International Academy of Sciences of Higher Education, the Eurasian Universities Union, the Association of International Studies of the CIS and Baltic States, the International Universities Union, and the European Association of Institutions in Higher Education. The university signed the Magna Charta Universitatum in Bologna, Italy. With the support of the Swiss government, the International Foundation awarded the university staff with gold medals "For impeccable business reputation" and "For high-quality business" ([Baimoldina and Syrlybaeva, 2015](#)).

At this stage, within one country, namely Kazakhstan, we would propose two definitions of international university based on the established practice and for the legal consolidation of those social relations that have been formed in this area.

The Law "On Education" should be supplemented with a new provision that an international institution of higher and/or postgraduate education is a higher education institution established based on international treaties or resolutions of the Government of Kazakhstan. It should prescribe that the creation of international educational institutions within the framework of international cooperation based on international treaties or resolutions of the Government of Kazakhstan does not prohibit any institutions of higher and postgraduate education call themselves international since their activities correspond to the international level based on ratings.

The balance of our conclusions about the need for a general definition of the category of an international university does not contradict the position of

The results obtained allow us to indicate theoretical and practical conclusions from our research.

Among the theoretical conclusions we include the consolidation of the definition of the category of international university, which is supported for example by C. Chen and F. Vanclay. Although they call international universities transnational, they emphasize their difference from national universities. This applies to management philosophy, funding mechanisms, and student recruitment sources ([Chen and Vanclay, 2021](#)).

Our conclusions about the difference between international universities and traditional universities are also supported by many other scholars who claim that universities face changing and increasing demands. Today they must implement the so-called "third mission", i.e., to increase innovation in cooperation between universities. There are no generalizing conclusions, and an emphasis is laid on certain problems and tasks of international universities ([Hassan, 2020](#)).

As practical conclusions, we include the results obtained during the comparison of the legislation of Kazakhstan with other countries. It is worth mentioning that the concept of an international university is rarely used in foreign laws as there is no separate legal regulation of such educational institutions. Unlike Kazakhstan, Ukraine does not use the concept of international and foreign educational organizations in its legislation. Instead of these concepts, Ukrainian legislation operates with the concepts of institutions of higher education with the participation of foreign individuals and legal entities or institutions of higher education in foreign countries ([Verkhovna Rada of Ukraine, 2014](#)). We prefer this approach since it avoids a discrepancy between the legislation and the actual situation, as opposed to Kazakh practice. Moreover, this issue remains relevant as long as there is no unified definition of the concept of an international university.

## CONCLUSION

When analyzing Kazakh legislation, as well as Kazakh and foreign scientific doctrine on the concept and functioning of international universities, we concluded that there is a big difference, on the one hand, between Kazakh scientific doctrine and legislation in terms of the concept and ways of establishing an international university and, on the other, between Kazakh legislation and the practice of establishing and operating international universities.

The above-mentioned facts indicate that not only the status of a university defined by the Government of Kazakhstan, or an international treaty is the basis for considering it international. The activity corresponding to the features and criteria of an international university, developed by the scientific doctrine and practice, and recognized by the international educational community is a clear indicator of an international status without the use of this term in the legislation.

The definition of scientific and doctrinal approach to the concept of an international university plays a significant role in the international legal regulation of relations associated with the activities of such universities.

Within Kazakh legislation, there is a set of legal norms that formally prohibit considering universities that are not formed based on intergovernmental agreements or a special resolution of the Government international. Thus, it is necessary to supplement the Law “On Education” with a special norm. It should not exclude the possibility of universities naming themselves international if their activities correspond to the international level based on ratings.

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