

# Capacity-Building of the National Space Legislation in Post-Soviet Countries: The Recent Contribution of Kazakhstan<sup>1</sup>

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## Abstract

The space posture of Kazakhstan is mainly associated with the Baikonur cosmodrome, the substantial origin of the space era: common launch pad of the first satellite and of the first person sent to space. Upon these outstanding events Sergei Korolev, a prominent personality in the Soviet space history, noted: “The way to space is opened” ... for which the departing point is Baikonur.

The space history of independent Kazakhstan starts, as for the Russian Federation and Ukraine, with the proclamation of the dissolution of the Soviet Union and respectively the formation of new independent states. Pursuant to agreements reached upon the disintegration of the USSR, these three ex-soviet republics have been recognised as major legal successors of the soviet space heritage. In former times the USSR space assets constituted the holistic complex of interlinked infrastructure units being principally placed in the territories of the aforementioned states. Therefore, upon the collapse of superpower it was needed not only to legally enshrine the respective breakdown of space complex between the successors but also to consider the way to develop the national independent space industries. As it could be revealed from analyses of the “new” space acquisitions of respective states, the distribution did not consider the established industrial connections but followed the principle of territorial affiliation. Hence, the normal operation of industry has been complicated due to the broken inter-entity linkages urging the prompt determination of how to proceed with further activities. In addition, the launch facilities were concentrated in Baikonur, Kazakhstan, the country where no real space manufacturing was conducted.

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<sup>1</sup> The present paper was presented during the 2012 IISL Colloquium on the Law of Outer Space but was inadvertently not published in the corresponding 2012 IISL Proceedings. Due to its interest, and at the request of the authors, it is being published in the 2014 IISL Proceedings.

Despite the national differences in securing continuity of the soviet space tradition, the Russian Federation and Ukraine highlighted common traits:

- All national space activities are centered around specially shaped executive authority
- Planning is based on space programmes
- Solid legal grounds for space activities: space legislation is composed of basic space law, associated laws and derived by-laws.

Kazakhstan followed its own “space” way, with crucial milestones of establishing the national space agency in 2007 and adopting the fundamental space activities act at the beginning of 2012.

Being the last basic space law adopted by space-faring countries of the post-soviet area and the first one for Kazakhstan, it requires to be more specifically approached in the paper. However, the legal appraisal of its text *per se* would be incomplete without an overview of the Kazakh space perspective, pertinent legislative scope alongside with philosophic rationales of what is kept behind.

For many years Kazakhstan has been undertaking space activities without any specific legislative act. The need of developing a legal foundation for this kind of business was acknowledged at the domestic level for more than 10 years, however only this year the legal initiative achieved a long-expected result. Being considered nowadays as one of space-faring countries, Kazakhstan advanced a lot through the years of its independence. The progressive evolution of its space capacities is primarily due to significant state support, in particular a presidential one. A strong and expressed political will to bring Kazakhstan to the level of leading space powers led to constant capacity – building of the respective branch of the national economy. One should note that all these developments could not have been achieved without appropriate legal premises that during the 20 years following Kazakh independence were enshrined in diverse international agreements, legislative acts and by-laws. Due to a lack of a comprehensive act that would have incorporated all legal elaborations with regard to space activities caused the situation where space activities advanced faster than the establishment of the desired legal framework. Even though it could not be said that the latter has been seen as a challenging cornerstone that hindered further advancement, the necessity to ensure public regulation in a systematic manner brought for many times the issue of Space Act on the agenda. Despite the interesting content of the Law, the picture will not be holistic without understanding all the peculiarities that remains at its background. For these purposes, we deem expedient to provide foremost a brief overview of the transition period in establishing the Kazakh space branch (from the proclamation of the USSR dissolution until recent times), identify the role played by main constitutive elements of the Kazakh space infrastructure acquired as soviet heritage and finally outline the importance of continuity of the Russian – Kazakh cooperative links, observed from the legal perspective through a scope of so called “Baikonur agreements”.

## **1 Background Information On The Soviet Approach To Space Activities**

It would be wrong to consider the Kazakh current posture in space without starting with a preliminary overview of the role of space activities at the time of its predecessor, notably how this realm has been prioritised in comparison to other domains and what were the prevailing approaches.

The Soviet Union, pioneer in space, was the first state to launch a satellite to the Earth orbit and to send a human into space. From the outset of space era, the space branch became one of those sectors that were under a particular attention of the USSR administration. It has been granted a special status: it was under exclusive jurisdiction and control of the Union ministries, not being conferred to the republic authority, as in case of most of the domains. Respectively all space assets have been seen as the USSR property, were closely interrelated and constituted a holistic complex. None of the soviet republics possessed the infrastructure that enabled to ensure the complete cycle of space activities, reasoning thereof the need to maintain duly established bilateral and multilateral partnership within the entire system. The soviet space capacity comprised about 140 space-related enterprises and research institutions, with capability to access to space only from territories of the Russian SSR (Plesetsk cosmodrome) and Kazakh SSR (Baikonur cosmodrome).

Once the USSR collapsed, the question concerning the division of common space property arose. On 8 December 1991, in Minsk, the agreement declaring the termination of the USSR's existence as the subject of international law has been concluded.<sup>2</sup> The legal succession took a format firstly of succession in respective parts for all 15 newly independent states and secondly of continuity for the Russian Federation with regard to the majority of commitments deriving from the participation of former USSR in international treaties. Partition of USSR property was performed based on Vienna Convention on Succession of States in respect of State Property, Archives and Debts dated 8 April 1983.<sup>3</sup> Almost one year later, in October 1992 in Bishkek the CIS member-states signed an agreement on mutual recognition and regulation of property rights.<sup>4</sup> It was jointly agreed that soviet real estate located as of 1 December 1990 at the territories of parties to aforementioned agreement is transferred to the ownership of states where such property objects are placed. With regard to space infrastructure two special agreements, signed among CIS member-states, are worth to be recalled, namely the Agreement on joint activities on exploration and use of outer space (dated 30.12.1991, Minsk)<sup>5</sup> and Agreement on order for maintaining and exploiting the objects of space infrastructure in the interests

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<sup>2</sup> Agreement on CIS Establishment - [http://zakon2.rada.gov.ua/laws/show/997\\_077](http://zakon2.rada.gov.ua/laws/show/997_077)

<sup>3</sup> Vienna Convention on Succession of States in respect of State Property, Archives and Debts <http://untreaty.un.org/cod/avl/ha/vcssrspad/vcssrspad.html>

<sup>4</sup> Agreement on Mutual Recognition and Regulation of Property Rights - [http://zakon3.rada.gov.ua/laws/show/997\\_002](http://zakon3.rada.gov.ua/laws/show/997_002)

<sup>5</sup> Agreement on Joint Activities on Exploration and Use of Outer Space - [http://zakon2.rada.gov.ua/laws/show/997\\_128](http://zakon2.rada.gov.ua/laws/show/997_128)

of space programmes implementation (dated 15.05.1992, Minsk).<sup>6</sup> Following the provisions enshrined in the first agreement the parties committed themselves neither to take the decisions, nor to undertake actions that might endanger the functioning of space complexes placed within the territories of CIS member-states. The second document clearly specified that objects of space infrastructure constitute the property of countries pursuant to the principle of territorial attachment. The coordination of infrastructure exploitation for purposes of implementing interstate and national space programmes was conferred to the advisory board on space issues – the Interstate Space Council<sup>7</sup>, constituted from members' representatives. However the right to use real estate, to use and possess movable property was transferred based on special agreements to CIS Strategic Forces or "other interested parties".<sup>8</sup> With regard to intellectual property rights the regulation took form of bilateral intergovernmental agreements recognizing in most cases the validity of previously issued soviet documents protecting industrial property rights within their territories. However the terms were defined based on the national legislation of concerned countries.

## **2 Role of space activities in Kazakhstan nowadays**

The President of Kazakhstan always paid and continues paying particular attention to space activities and constantly provides it a thorough support. He set a goal: to elaborate and gradually implement a long-term programme on establishment and development of the space sector, since the realisation of space projects could give a significant impetus in solving tasks on development of industrial & innovative sector and of the country's economy. For these purposes the Programme on development of space activities for 2010-2014 has been elaborated and consequently approved. This has been done by Kazcosmos with presidential and governmental support, and was aimed to implement the first phase of establishing the Kazakh space branch. The Programme fostered the implementation of a series of investment projects, among which four projects entered the Map of the country's industrialization.<sup>9</sup>

<sup>6</sup> Agreement on Order for Maintaining and Exploiting the Objects of Space Infrastructure in the Interests of Space Programmes Implementation  
[http://zakon2.rada.gov.ua/laws/show/997\\_126](http://zakon2.rada.gov.ua/laws/show/997_126)

<sup>7</sup> For more info please see the Protocol on Approval of Regulation on the Interstate Space Council - [http://zakon2.rada.gov.ua/laws/show/997\\_280](http://zakon2.rada.gov.ua/laws/show/997_280)

<sup>8</sup> Agreement among CIS Member-States on Strategic Forces - [http://zakon2.rada.gov.ua/laws/show/997\\_082](http://zakon2.rada.gov.ua/laws/show/997_082);  
Agreement among CIS Member-States on Status of Strategic Forces - [http://zakon2.rada.gov.ua/laws/show/997\\_104](http://zakon2.rada.gov.ua/laws/show/997_104)

<sup>9</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/kazaxstan-budet-proizvodit-apparatyi-i-sputniki-\(kazaxstanskaya-pravda,-15-marta-2012-goda-.html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/kazaxstan-budet-proizvodit-apparatyi-i-sputniki-(kazaxstanskaya-pravda,-15-marta-2012-goda-.html)

Historically the capacities of Kazakhstan in the space sector were limited to the cosmodrome and respectfully launch capacities. Upon independence, the country with its unique spaceport did not possess a developed space industry, and it felt a lack of relevant scientific and technical facilities for the development of launch vehicles and spacecrafts. Furthermore Kazakhstan did not yet have a space segment. Due to this, Kazakhstan had to establish international contacts in the space sector, develop its space segment and ground infrastructure, monitor all modern achievements in order to be in line with international trends.<sup>10</sup>

Currently Kazakhstan is on the way of creating its space branch that it did not have before. Mr. T. Musabayev, Head of Kazcosmos, noted *“its beginning has been laid down on 27 March 2007 from the moment of signing by the President N. Nazarbayev of the Order on establishment of the National Space Agency of the Republic of Kazakhstan. The country has a strong advantage – the very first, most launching and biggest cosmodrome in the world is located in Kazakhstan and belongs to Kazakh Republic that gives the right to be proud that the first cosmonaut has been started namely from the Kazakh Baikonur. For us it is also a good incentive for future achievements in space branch. Certainly, the development of space activities is a matter of global competitiveness of Kazakhstan at the world arena. This is a development of satellite telecommunication and broadcasting systems, ERS, high-precision navigation, formation of space infrastructure, development of space science ... I am confident that Kazakhstan eventually will take its rightful place in the club of space-faring countries, and we with our work will approach that day”*.<sup>11</sup>

As shows experience of major space-faring countries it took decades for building up their space sectors. In order to become and remain competitive Kazakhstan had to go several times faster.<sup>12</sup>

Establishment of a complete space branch was referred to the most strategic directions of economic development, defined by the President of the Republic of Kazakhstan N. Nazarbayev.<sup>13</sup> In his address to Kazakh people „New decade – new economic rise – new possibilities for Kazakhstan“ he determined specific objectives and tasks, including the forced industrial and innovative development of Kazakhstan where a concrete role is conferred to the National Space Agency of the Republic of Kazakhstan.<sup>14</sup> Therefore, the establishment of the Kazakh space branch is foreseen by the State programme

<sup>10</sup> <http://kazcosmos.gov.kz/ru/press-office/dokladyi-i-vyistupleniya/doc/lekcziya.html>

<sup>11</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-\(novoe-pokolenie,-10.04.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-(novoe-pokolenie,-10.04.12).html)

<sup>12</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-\(novoe-pokolenie,-10.04.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-(novoe-pokolenie,-10.04.12).html)

<sup>13</sup> <http://kazcosmos.gov.kz/ru/press-office/dokladyi-i-vyistupleniya/doc/vyistuplenie-predsedatelya.html>

<sup>14</sup> <http://kazcosmos.gov.kz/ru/press-office/dokladyi-i-vyistupleniya/doc/lekcziya.html>

on forced industrial & innovative development and by Branch programme on development of space activities in the Republic of Kazakhstan. In the context of the Kazakh space branch evolution quite important is the presidential order dated 4 March 2008 regarding the gradual transition of the Baikonur cosmodrome to Kazakhstan.<sup>15</sup>

A significant role in fulfilling the strategic task is allocated to the National Space Agency of the Republic of Kazakhstan.

Established in 1991 the Agency for Space Research of the Kazakh SSR was later in 1993 reorganized into the National Aerospace Agency of the Republic of Kazakhstan.<sup>16</sup> The Agency passed from one ministerial jurisdiction to another for several times. In 2005 by Decree of the Government of the Republic of Kazakhstan was constituted another legal structure - the Space Council to the Government. The National Space Agency of the Republic of Kazakhstan (Kazcosmos) in organizational shape as we evidence it today has been established in 2007. The legal status of Kazcosmos was defined as an independent state authority in charge of implementing the state policy, state regulation and inter-branch coordination in the domain of space activities. At the outset of its formation the Agency was tasked to examine the evolution of the national space activities<sup>17</sup> and to form space sector capable to implement breakthrough projects of international importance fostering thereof country's integration into the world space arena.<sup>18</sup>

The strategic plan of Kazcosmos for 2011-2015 foresees two strategic directions<sup>19</sup> that focus on the development of all elements of technological chain from scientific research to technical exploitation and commercial use of space technics and technologies.

#### **A Creation and Development of Space Infrastructure**

- development and launch of telecommunication satellites «KazSat»;
- development of ERS space system;
- development of the assembling and testing facilities for spacecrafts;
- creation of high-precision satellite navigation system;
- establishment of the space-rocket complex «Baiterek» at the cosmodrome Baikonur;

<sup>15</sup> <http://kazcosmos.gov.kz/ru/press-office/dokladyi-i-vyistupleniya/doc/doklad-predsedatelya-nka-rk-t.-musabaeva.html>

<sup>16</sup> Kazcosmos official web-site - <http://kazcosmos.gov.kz/kz/index/>

<sup>17</sup> Talgat Musabayev, Head of Kazcosmos, On topical issues of cosmonautics of the Republic of Kazakhstan at the current stage of its development, p. 1. - [http://www.kazcosmos.kz/index.php?option=com\\_content&view=category&layout=blog&id=21&Itemid=63&lang=ru](http://www.kazcosmos.kz/index.php?option=com_content&view=category&layout=blog&id=21&Itemid=63&lang=ru)

<sup>18</sup> Ibid

<sup>19</sup> <http://kazcosmos.gov.kz/ru/press-office/dokladyi-i-vyistupleniya/doc/doklad-predsedatelya-nka-rk-t.-musabaeva.html>

## CAPACITY-BUILDING OF THE NATIONAL SPACE LEGISLATION IN POST-SOVIET COUNTRIES

- participation in commercial use of the launch vehicle (LV) «Zenit» and the launch vehicle (LV) «Dnepr» at the cosmodrome Baikonur;
- ensuring effective use of the Baikonur cosmodrome facilities.

**B Development of scientific and technological bases, human resources and international cooperation**

- introduction of specialisation named «Space technics and technologies» in five Kazakh universities;
- Kazakh professionals followed the basic and academic course at the enterprises belonging to French part of the company EADS Astrium, gained practical experience and skills on designing spacecrafts.

**3 Baikonur Cosmodrome As A Main Heritage Of Kazakhstan From The Soviet Space Complex And Its Legal Status**

«The way to space is opened!». The first human space flight became an important milestone for humanity. The star road of mankind began with Kazakh Baikonur, from which already over fifty years LVs and spacecrafts were started.<sup>20</sup> The Kazakh people remain proud that Kazakhstan is directly related to this achievement.<sup>21</sup>

Actually in context of space activities the Baikonur complex is seen as the main subject for cooperation between Kazakhstan and Russia. Today the number of international agreements concluded at different levels (interstate, intergovernmental, interagency), governing issues pertaining to the Baikonur complex, including the status of Baikonur city in terms of lease by the Russian Federation, is close to fifty.<sup>22</sup>

De facto the Baikonur complex represents three cosmodromes. The part that is allocated to LV Zenit launches in sizes is comparable to spaceports of China and USA, the one where LV Proton are started with its 4 launch facilities even exceeds them. Parts assigned for LV Soyuz and Dnepr are placed in the center of Baikonur complex and can be seen as a separate cosmodrome. The territory of the Baikonur counts 6700 square km. Therefore it would be enough to keep a proper functioning of at least one of those three constitutive parts in order to ensure the continuation of its further exploitation.<sup>23</sup>

<sup>20</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-\(novoe-pokolenie,-10.04.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-(novoe-pokolenie,-10.04.12).html)

<sup>21</sup> <http://kazcosmos.gov.kz/ru/press-office/doklady-i-vyistupleniya/doc/lekcziya.html>

<sup>22</sup> <http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/mezhdunarodnoe-sotrudnichestvo-kazkosmosa.html>

<sup>23</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-\(megapolis,-20.02.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-(megapolis,-20.02.12).html)

The Republic of Kazakhstan and Russian Federation decided on development of the space rocket complex Baiterek.<sup>24</sup> This project is foreseen for the use of the environmentally friendly LV Angara and presumed to enable the Kazakh participation in launches, including those provided on commercial basis. As of today the main concern of project implementation is the issue of its further financing, even though all conceptual agreements have been reached in 2004. The complex was supposed to be constructed in 5 years, i.e. until 2010, however the price set at the beginning have been raised seven times over this period significantly and this complicates its payback. Initially the Baiterek project has been defined as a commercial one and implied the use of a credit financing to be returned through exploitation.<sup>25</sup>

The breakdown of responsibilities between the two countries has been determined as follows: Kazakhstan committed itself to secure an interest-free loan for a 5-years period, to build technical facilities and launch pad, whereas Russia had to provide the LV Angara. From available open sources it appears that only the technical design phase is completed. In the meantime, the interests on the loan were due to be paid already starting from 2011.<sup>26</sup> Moreover, recently it became known that the Russian party considers the possibility of using the LV Angara at Baikonur's direct competing launch site - the cosmodrome Vostochny (from Russian literally translated as "East"), to be built in the Amur region.<sup>27</sup> Baiterek had a strategic meaning for the future of Kazakh launch capacities, giving the second breath to Baikonur. Commercial launches envisaging the use of LV Proton were supposed to be provided from Baiterek.<sup>28</sup>

Baikonur is one of the major international spaceports that takes a leading position according to the number of launched spacecrafts. Implementation of the biggest part of Russian space programmes are attached to it. Today Kazakhstan aims to go from the temporary benefits obtained through the Baikonur lease to the implementation on the cosmodrome of a long-standing joint Kazakhstan-Russia space programmes and projects.<sup>29</sup>

<sup>24</sup> <http://kazcosmos.gov.kz/ru/press-office/doklady-i-vyistupleniya/doc/doklad-generalnogo-direktora-ao-sp-bayterek.html>

<sup>25</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-\(novoe-pokolenie,-10.04.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-(novoe-pokolenie,-10.04.12).html)

<sup>26</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-\(megapolis,-20.02.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-(megapolis,-20.02.12).html)

<sup>27</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-\(novoe-pokolenie,-10.04.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/cherez-teorii-k-zvezdam-(novoe-pokolenie,-10.04.12).html)

<sup>28</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-\(megapolis,-20.02.12\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«nam-ostayotsya-zhdat,-kogda-rukovodstvo-rossii-proyasnit-svoi-planyi»-(megapolis,-20.02.12).html)

<sup>29</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«kosmodrom-«bajkonur»-vchera,-segodnya,-zavtra»-\(«ekspress-k»-2-iyunya-2010-g.\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«kosmodrom-«bajkonur»-vchera,-segodnya,-zavtra»-(«ekspress-k»-2-iyunya-2010-g.).html)

#### 4 Baikonur Agreements

In Kazakhstan a major block of the collection of international legislative acts constitute bilateral agreements concluded between Kazakhstan and the Russian Federation. Most of them are focused on the legal status and regime of exploitation of the Baikonur cosmodrome. This was reasoned by the fact that at the time of the dissolution of the USSR appeared a need to ensure the continuation of launches and Baikonur was this unique cosmodrome on the post-soviet area that could provide them. Thus, already in 1992 the first agreement on order of use of the Baikonur cosmodrome was signed. Two years later, literally in 1994, in furtherance of the mentioned agreement the parties concluded the agreement on basic principles and terms of the Baikonur cosmodrome.<sup>30</sup> Deriving from its provisions in December inst. between the governments of respective states was reached the lease agreement of the Baikonur complex.<sup>31</sup> According to these documents the space complex was passed for lease to the Russian party for 20 years. This constituted the legal grounds for the relationship between the two countries on further use of the cosmodrome.

Later in 1995 the interstate Kazakhstan-Russia agreement on the status of Baikonur city specified that for the lease period the Kazakh city Baikonur was granted a status that corresponds to one of the Russian federal city. The latter agreement also set a particular regime of the functioning of enterprises and organizations and terms of residence for citizens.

Here it is worth noting that most of the agreements did not strive to play a proactive role but rather followed the needs or concerns of bilateral cooperation. The environmental problems that increased as a consequence of launch failures reasoned their legal treatment through signing of the agreement on environment and use of natural resources at the territory of Baikonur complex under the terms of its lease by Russian Federation. Launch failures also lead to the conclusion of another agreement governing the order of interaction in case of emergencies while starting LV from the Baikonur cosmodrome. It namely defined the competences of both states, their obligations and responsibilities when such situations arise, describes the plan of actions for mitigation and removal of their consequences.

On 9 January 2004 the Presidents of Kazakhstan and Russia started a new important phase in the exploitation of the Baikonur complex, having signed in Astana the Agreement between the Republic of Kazakhstan and the

<sup>30</sup> Agreement between the Russian Federation and Republic of Kazakhstan on Basic Principles and Terms of Use of Baikonur Cosmodrome, dated 28 March 1994 - [http://www.mid.ru/spd\\_md.nsf/processQueryBl?OpenAgent](http://www.mid.ru/spd_md.nsf/processQueryBl?OpenAgent)

<sup>31</sup> Lease Agreement on the Baikonur Complex between the Government of the Republic of Kazakhstan and Government of the Russian Federation, dated 10 December 1994 - [http://www.mid.ru/spd\\_md.nsf/processQueryBl?OpenAgent](http://www.mid.ru/spd_md.nsf/processQueryBl?OpenAgent)

Russian Federation on effective use of the Baikonur complex.<sup>32</sup> In a joint statement dated 2 June 2005 the presidents of both countries once again noted that: «*The Republic of Kazakhstan and the Russian Federation will continue undertaking efforts towards keeping the Baikonur cosmodrome in the vanguard of development of the world cosmonautics, to be served as a symbol of scientific and technical progress, true evidence of the multi-folded and mutually-beneficial cooperation between two states*».<sup>33</sup>

As enshrined in its article 6 the term of lease has been prolonged until 2050. However lawyers doubt its legitimacy. When referring to the premises of two basic agreements dated 1992 and 1994 as well as bearing in mind the provisions of the article 4 of the lease agreement (1994), the Baikonur complex has been passed for a 20-year lease with a clause enabling to extend it for the next 10 years. The latter could have been done if none of the parties declares in written its intention to terminate the agreement no later than 6 months prior to its expiration. Due to this it could be seen as a new agreement that has no legal connection with a former one. Moreover, as correctly noticed by some lawyers the agreement over 6 years has been implemented without due ratification by the Kazakh party (the Law “On ratification of the Agreement between the Republic of Kazakhstan and the Russian Federation on cooperation development regarding effective use of the Baikonur complex” was signed by the President of Kazakhstan on 29.04.2010).<sup>34</sup> Moreover the respect of parity is under question; the agreement, prolongating *per se* previous commitments did not revise any of substantial terms fixed in early agreements.

Recently the space authorities of Kazakhstan and Russian Federation have been asked by the Heads of respective States to promptly consider an issue of elaboration of an comprehensive bilateral agreement regulating the order of joint exploitation of the cosmodrome, development of its scientific and technical capacities, development of joint space complexes, preparation of personnel and participation of the Kazakh specialists in provision of launch services.<sup>35</sup>

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<sup>32</sup> Agreement between the Republic of Kazakhstan and the Russian Federation on Effective Use of the Baikonur Complex, dated 9 January 2004 - [http://www.mid.ru/spd\\_md.nsf/processQueryBl?OpenAgent](http://www.mid.ru/spd_md.nsf/processQueryBl?OpenAgent)

<sup>33</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«kosmodrom-«bajkonur»-vchera,-segodnya,-zavtra»-\(«ekspress-k»-2-iyunya-2010-g.\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/«kosmodrom-«bajkonur»-vchera,-segodnya,-zavtra»-(«ekspress-k»-2-iyunya-2010-g.).html)

<sup>34</sup> See Essays on Space Law, N. Malysheva, p. 133

<sup>35</sup> <http://kazcosmos.gov.kz/ru/novosti/glavyi-kazaxstana-i-rossii-poruchili-kosmicheskim-vedomstvam-razrabotat-vseobemlyushhee-soglashenie-po-sovmestnomu-ispolzovaniyu-bajkonura.html>

## 5 New Law

The evolutionary development of a space branch in Kazakhstan required appropriate legislative regulation enabling to ensure due coordination between main stakeholders such as governmental authorities, legal entities involved in space activities and individuals. It has been foreseen that this task will be covered by the prospective Law on Space Activities. The origins of respective legislative initiative focused on the elaboration of the basic framework law governing space activities in Kazakhstan, which started already in 1999. Upon the establishment of the National Space Agency the process was further promoted, the pending draft law was submitted on several occasions for consideration to the Parliament, however not getting required support. The long way of draft law was ended with its approval in December 2011 and signing by the Kazakh President beginning of January 2012.

For the first time after 20 years of Kazakh independance and its existence in a capacity of subject of international law, the Law in question laid the comprehensive legal grounds governing space activities under the jurisdiction of Kazakhstan. Prior to its adoption, the pertinent to space activities provisions were enshrined in a number of separated legislative acts, by – laws and bilateral & multilateral agreements, with particular emphasis on the establishment of a legal regime for exploitation of the Baikonur cosmodrome.<sup>36</sup>

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<sup>36</sup> Including but not limited to:

*Agreement between the Russian Federation and Republic of Kazakhstan on Basic Principles and Terms of Use of Baikonur Cosmodrome*, dated 28 March 1994 - [http://www.mid.ru/BDOMP/spd\\_md.nsf/0/F4E1DD5191D4E9CF442579B500367F15#](http://www.mid.ru/BDOMP/spd_md.nsf/0/F4E1DD5191D4E9CF442579B500367F15#);

*Lease Agreement on the Baikonur Complex between the Government of the Russian Federation and the Government of the Republic of Kazakhstan*, dated 10 December 1994 - <http://www.mid.ru/bdomp/nsdvbr.nsf/11d2e6203c37ed2643256a1700434414/01fb5ce8c1e28c2e43256a5700497101!OpenDocument>;

*Agreement between the Russian Federation and Republic of Kazakhstan on Development of Cooperation on Effective Use of the Baikonur Complex*, dated 9 January 2004 - <http://www.federalospace.ru/main.php?id=280&did=1172>;

*Agreement between the Government of the Russian Federation and the Government of the Republic of Kazakhstan on Environment and Use of Natural Resources at the Territory of the Baikonur Complex under its Lease to the Russian Federation*, dated 2 June 2005 - <http://www.roscosmos.ru/main.php?id=280&did=1117>;

*Agreement between the Government of the Republic of Kazakhstan and the Government of the Russian Federation on Order of Visiting the Baikonur Complex*, dated 21 May 2009 - <http://www.roscosmos.ru/main.php?id=280&did=1118>

Giving a brief description of the Law<sup>37</sup>, it should be noted that pertinent document enshrines the shared competencies of main public actors within Kazakhstan drawing clear distinction between them. The Law defines content of space activities, status of space infrastructure and regime of its exploitation. Furthermore, it regulates the issues relevant to state regulation, control and supervision within the scope of space activities, security aspects as well as regulation of launch services provided from the Kazakh territory. As specified, it is currently seen as a basic document in functioning of the National Space Agency of the Republic of Kazakhstan.<sup>38</sup>

The Kazakh Space Law is framed according to general structure inherent to most framework acts of CIS countries. It is divided into 7 chapters with 37 articles in total. 1) general provisions, 2) state regulation and control in the sphere of space activities, 3) execution of space activities, 4) space infrastructure, 5) safety of space activities, 6) legal status and social security measures for cosmonaut candidates / cosmonauts and 7) final provisions.

The space legislation of the Republic of Kazakhstan is not limited to current Law, but contains references to a number of by-laws and special provisions incorporated by other legislative acts. With regard to a series of the Baikonur agreements worth consideration a principle enshrined in the Law noting that in case of contradiction between the international agreements ratified by the Republic of Kazakhstan and rules provided by Law, provisions of the international agreements prevail.<sup>39</sup>

The Law defines principles<sup>40</sup> and directions<sup>41</sup> for undertaking space activities, the latter with emphasis on space applications and launch services. The choice was governed by peculiarities of space activities undertaken within Kazakhstan with due regard of its major competitive / strategic advantages.

The Kazakh government is in charge of the most crucial domestic space policy issues, such as policy development and ensuring of its implementation, coordination of international cooperation issues, approval of procedures for coordination and decision-making with regard to space launches as well as of the order for selecting cosmonaut candidates. Furthermore, determination of all strategic aspects relevant to space activities is entrusted to the government. To them refer e.g. the definition of activities for the development and economic support of the Baikonur cosmodrome, specification of rules for provision of satellite transponders to individuals and legal entities, planning of space imagery, ERS data receipt, processing and distribution by the

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<sup>37</sup> The Law is also available in German. Unofficial translation with brief overview can be accessed in the German Journal of Air and Space Law (ZLW), № 61 Jg. 3/2012, p. 426-450

<sup>38</sup> [http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/kazaxstan-budet-proizvodit-apparatyi-i-sputniki-\(kazaxstanskaya-pravda,-15-marta-2012-goda-\).html](http://kazcosmos.gov.kz/ru/press-office/intervyu/doc/kazaxstan-budet-proizvodit-apparatyi-i-sputniki-(kazaxstanskaya-pravda,-15-marta-2012-goda-).html)

<sup>39</sup> Article 2

<sup>40</sup> Article 3

<sup>41</sup> Article 4

national operator of ERS system and finally setting of an order for organization and provision of satellite navigation services by national operators of high-accuracy satellite navigation system. The mentioned “national operators of space systems” being submitted by the authority in charge of space activities are also assigned by the Kazakh government. The list of competencies provided by Law is not exhaustive, it clearly specifies only those that are key for due understanding of the primary responsibilities breakdown within state authorities.

The authority in charge of space activities within Kazakhstan ensures implementation of public policy on space activities determined by government as well as of space projects and programmes. The scope of its powers could be described as one pertaining to the realisation of state regulation in the respective domain and drafting of all basic documents, rules and procedures needed for a coherent undertaking of space activities. Elaboration of the order for decision-making coordination with regard to launches from the Kazakh territory is also conferred to the competence of authority in question. As a part of state control and supervision of those activities the authority is vested the obligation to ensure licensing of such activities and to verify the meeting of qualification requirements. Undertaking of space activities is not possible without license to be issued in conformity with Kazakh thematic legislation.<sup>42</sup>

The functions of the authority concerning implementation of dual-use space projects are fulfilled in conjunction with the Ministry of Defence.

It is worth noting that all space projects undertaken within Kazakhstan are subject to mandatory branch expertise. Without obtaining a positive opinion, the project implementation is prohibited. This expertise made by the authority in charge of space activities is purported to define the expediency, technical feasibility, economic viability and also consistency with Kazakh legislation, derivative technical rules and standards in sphere of space activities.

The space infrastructure of the Republic of Kazakhstan comprises ground space infrastructure and space objects, its constitutive elements represent strategic objects.<sup>43</sup> Baikonur cosmodrome is considered to be one of them and unites technical, launch and landing facilities, land plots allocated for preparation and realisation of launches. Being referred to the category of strategic objects and forming an integral property complex, Baikonur is excluded from the scope of objects that might be subject to privatisation.<sup>44</sup> It is clearly specified that transfer of object belonging to space branch for lease

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<sup>42</sup> Article 13

<sup>43</sup> Article 20

<sup>44</sup> Article 23

to the international or foreign actors is regulated by Kazakh legislation unless otherwise is foreseen by the international agreement ratified by Kazakhstan.<sup>45</sup> Quite novel is the provision regarding the innocent passage through airspace of the Kazakh territory. In that respect it is provided that a space object owned by a foreign individual or legal entity could realise an innocent passage through Kazakh airspace - under the condition of prior consent - in two cases: when launching it in outer space or upon its return to Earth. The passage has to be authorised by the Ministry of Defence, entrusted authorities in charge of natural disasters and man-made emergencies, as well as of the environmental protection.<sup>46</sup>

The Law clearly defines that space objects are subject to state registration. This provision extends to the objects that belong to 1) individuals and legal entities of the Republic of Kazakhstan and rights to them and 2) foreign stakeholders launching into outer space from the Kazakh territory.<sup>47</sup> Under state registration of the first category of space objects and rights to them is understood their record, act of recognition and confirmation of right, its change or termination according to the civil legislation of the Kazakh Republic.<sup>48</sup> The second one differs by the fact that their registration does not provide for state registration of the right to space objects, the record in the register is limited exclusively to registration of the space object, according to space law.

Even though launch facilities in shape of the Baikonur cosmodrome are passed for a long-term lease to Russia, the territory itself according to the international public law remains the ownership of Kazakhstan. According to the territorial criterion (i.e. consideration of state from whose territory space objects are launched), Kazakhstan is seen as one of the launching states. The designation of space objects of the Republic of Kazakhstan launched into outer space should be made in form of marking defined by the national authority in charge of space activities in conformity with international standards and legislation of Kazakhstan.

Another important block of space activities in Kazakhstan, apart from launch services, is the training of cosmonauts. The status of cosmonaut candidates that confers to a person a scope of legally enshrined rights, is assigned on submission of a pertinent authority by the Kazakh government.<sup>49</sup>

It is determined that space activities posing a threat to human life and health, either causing losses or damage to the environment within a certain project, should be limited or prohibited according to environmental legislation of the

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<sup>45</sup> Article 26

<sup>46</sup> Article 27

<sup>47</sup> Article 11

<sup>48</sup> Article 11

<sup>49</sup> Article 31

Republic of Kazakhstan.<sup>50</sup> Prior to launch the concerned participants have to notify respective authorities in charge of environmental protection about the intended impact areas. If any damage or loss occur, it is provided for their compensation.<sup>51</sup> The information concerning environmental protection and emergency situations related to space activities within the Kazakh territory is open, subject to dissemination through mass-media with use of notification and communication system.<sup>52</sup>

Despite of the aforementioned provisions, the issues of responsibility and liability are treated in a vague and concise way that however is common for the wording used by post-soviet countries in special framework laws. The current Law envisages them in an indirect way referring to more technical legislative acts that govern issue in question from a larger perspective (criminal, criminal procedure, land and tax codes, code on administrative offences etc.).<sup>53</sup>

The Law reasoned a series of changes to the existing legislative acts aimed to secure consistent and coherent interrelation between them. The latter was namely foreseen by the accompanied Law on amendments and modifications to several legislative acts of the Republic of Kazakhstan concerning space activities<sup>54</sup> (criminal, criminal procedure, land and tax codes, code on administrative offences, laws on housing relationship, on private entrepreneurship and on state registration of rights on real estate and transactions with it). The Law also led to the elaboration of the scope of space-related rules<sup>55</sup>, approved on the governmental and agency level few months after its adoption. The rules are mainly focused on:

- crew of cosmonauts of the Republic of Kazakhstan;
- selection of cosmonaut candidates and status attribution of cosmonaut candidate / cosmonaut;
- social & economic security of cosmonauts;
- results review of the completed projects in space activities domain;
- branch expertise of space projects;
- provision of spacecraft transponders to individuals and legal entities.

## **6 A Comparative Analysis Of Kazakh Law With Its Russian And Ukrainian Counterparts: Specific Features**

The adoption of the current Law took place more than 15 years later in comparison to similar laws adopted in the Russian Federation and Ukraine.

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<sup>50</sup> Article 30

<sup>51</sup> Article 27

<sup>52</sup> Article 29

<sup>53</sup> Article 36

<sup>54</sup> <http://ru.government.kz/docs/z120000052920120106~1.htm>

<sup>55</sup> <http://kazcosmos.gov.kz/ru/activities/pravovaya-baza.html> - available at the Kazcosmos web-site in Russian language, accessed on 5 June 2012

As addressed before, those two countries together with Kazakhstan constituted three main successors of the soviet space heritage. Each of them followed their own way in framing unique approaches and visions as to how better to maintain and reinforce acquired space capacities. Russia and Ukraine were of the view that to proceed further a single legislative act, covering all key aspects of legal relationship arisen when undertaking space activities, is needed. Even though those acts were not exhaustive, explained by their legal nature, i.e. the framework one, still they provided clarity with regard to the domestic position on space issues, their importance for economic development, the niche allocated to this sector of national economy, role of state as a regulator of respective activities etc. Kazakhstan, however, did otherwise. The major emphasis was made on the international agreements specifying a legal regime for exploitation of the Baikonur cosmodrome. Apart from that, specific provisions were incorporated in general acts covering a large scope of relationship not limited to those inherent to space activities. Nonetheless, the format of current Kazakh Law is consistent with the one used by its predecessors, comprising as in other cases the consideration of national peculiarities.