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WEEKLY



DeFacto ARTICLE №505

Jargalsaikhan Dambadarjaa, Mongolian political and economic observer, columnist

OBSERVING THE





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Fifteen years have passed since Mongolia joined the Shanghai Cooperation Organization ("SCO") as an observer state. Moreover, a while ago our two neighbors that founded the SCO and exert great influence on its decision-making suggested Mongolia to join the SCO as a full-fledged member. The government of Mongolia begun expressing their interest in acceding to the SCO. Nevertheless, in a democratic country, a final decision on the accession to the SCO cannot be made without public support. In case the government makes a decision despite public disapproval, citizens will use the upcoming election to overthrow the government. Hereupon, it is impossible for the government, which is elected for a short-term, to take decisive actions until both citizens and civil society fully understand not only the consequences of joining the SCO but the challenges, and the underlying reasons for the pressing need to commit to a full membership. Mongolia signed a permanent treaty on a comprehensive strategic partnership with both our neighbors but in spite of that, no single large-scale project was implemented for over 10 years. Thus, people are left baffled, doubtful, and above all: they are losing trust in bilateral or trilateral cooperations.

Mongolia is a large country with a small population and located between the world's two powerful countries, China and Russia. For Mongolia, economic security is of utmost importance. Given that the government is failing to carry out a successful project pursuant to the bilateral or trilateral treaties, it is increasingly difficult to imagine any outcome from multilateral relations, or the accession to any regional organization.

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THE SCO EXPANSION AND CHALLENGES

The SCO was founded in response to the urgency to "strengthening mutual trust in the military sphere in the border area" among newly established Central Asian countries due to the collapse of the Soviet Union in 1990. The SCO became the largest regional organization that holds an annual summit of eighteen heads of states. Currently, eight countries enjoy a full member status, four retain observer status, and six have a dialogue partner status. Its initial goal was to ensure the regional security of Euro-Asia, particularly to combat terrorism, separatism, and extremism. Currently, the SCO is aiming to take the multilateral economic cooperation to the next level.

In terms of economic cooperation, no substantial actions were taken except for China's initiative to provide loans independently through the Bank of China under the "One Road and One Belt" initiative. Furthermore, the intelligence information of the Regional Anti-Terrorist Structure ("RATS"), which aimed to combat three evils of terrorism, separatism, and extremism, is not fully accessible. The member states have not even agreed on the definition of terrorism. Furthermore, the gap between definitions is widening with India and Pakistan's accession to the SCO. Especially, as India abolished the autonomous status of the Jammu-Kashmir, a state in India with a Muslim-majority population and is taking control through its military power.

Traditionally, India has a military alliance with Russia and purchased several S-400 air defense missiles from Russia despite the US opposition. It is evident that in India, the majority of military weapons are Russian-made. In addition, six nuclear power plants that were built by Russia are officially about to provide energy in India and the contract for the building of to six more nuclear plants was recently signed off between these two countries in

WILL MONGOLIA CHANGE ITS VIEWS?

The SCO is an organization conjointly headed by China and Russia. We need to keep an eye on how the situation might change following the accession of the largest democratic country with strong military power, India. It is worthy of attention to observe how the SCO members will receive India's request to add English to the list of official languages along with Chinese and Russian. It might become one of the factors for Afghanistan and Iran to join the SCO as a full member and to actively involve. If, in fact, Iran accedes then the SCO will certainly become the world's largest political organization under the close collaboration of Russia, China, India, and Iran.

In the multipolar world, a wealthy country with a powerful economy and military needs to choose sides in a timely manner. In contrast, the Mongolian economy is relatively Vladivostok, Russia.

China and Pakistan also share close military relations. In 1947, China had a border dispute with India and as a result, China obtained part of Kashmir, a disputed area, in 1962. It is believed that Russia and China supported India and Pakistan respectively and encouraged their simultaneous accession to the SCO.

The Indian economy is growing seven percent annually but is facing an energy shortage. Further, India has the intention to join the Eurasian Economic Union. Hence, India has a practical reason to join the SCO due to the fact that it may rely on the Central Asian or Russian natural gas and oil deposits. Indeed, China has a long-lasting rivalry with India. In the case in point, India does not take China's "One Road and One Belt" initiative as an open project but as China's economic expansionary policy. Therefore, India is not in favor of discussing this project at the SCO meetings. India bears an obligation to keep the maritime transportation secure under the quadrilateral treaty with the US, Australia, and Japan. These countries are opposing the Chinese military base in the Pacific islands which is subject to territorial dispute. Atul Bhardwaj, a research fellow, described that "India's one leg is on the US boat and the other leg on the Chinese boat." However, those two boats are drifting apart instead of coming closer. This is apparent from the ongoing China-US trade and tech war for obtaining geopolitical dominance.

The relations with the US, the European countries, and the economic sanctions are placing immense pressure on the Russian economy which is hugely dependent on oil prices. As a result, the Russian ruble is facing instability which in turn is negatively affecting the living standards of citizens.

small, the politics are unstable, and as the government is frequently replaced the necessary conditions for making a long-term decision are not in place. Hence, for a small country like Mongolia, it is not an urgent matter to pick sides. Moreover, the Mongolian small private enterprises have not yet expanded to regional markets. Before reaching a decision on the accession to the SCO, discussions must be held on various levels and from different angles. Until then, Mongolia should make most of the bilateral and trilateral treaties by collaborating with the two neighbors in terms of economy, environment, and combating illegal drugs. Also, we need to seize all opportunities offered to the SCO observer states, to collaborate with the SCO in every available way, and to focus on educating the workforce.



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ONLY A STRONG CIVIC SOCIETY WILL CREATE AN ENVIRONMENT FOR RESPONSIBLE PARTIES

Michal Klima is a political science professor at the University of Economics, Prague and Palacky University Olomouc. In addition to this, he is the President of the Metropolitan University, Prague. He is also involved in research into party politics and election systems, forms of governance, comparative analysis of democratic models as well as clientelism.

Jargal Defacto: You are well known in Mongolia for your first book, "From Totalitarianism to Defective Democracy". Please tell us about this book.



Michal Klima: It is an analysis of the post-soviet transition towards democracy including the shift from state ownership to private ownership. As this process was quick and unprecedented in scale, it was managed by a very narrow circle of people within political parties connected to nontransparent business interests as well as individuals with social and economic capital from the communist era. This led to the process being marred by systemic corruption and clientelism. At times, the privatization of the economy was even connected with organized crime and a narrow circle of political and economic elites gained control over a significant amount of state assets.

JD: During the late 1930's, the Czech Republic was considered

among the 7 most industrialized countries in Europe and I lived in Prague, witnessing firsthand, the country's industrial culture. To my understanding the industrial and residential infrastructure was privatized with some being returned to their pre-communist owners. Please tell us more about this.

MK: This is correct as the buildings were returned to the descendants of their original owners. It is worth noting that the properties were returned after 40 years of communist rule, so the original owners were either ailing or deceased. This was a quite successful venture.

JD: In terms of former state-ownedenterprises, you mentioned that they went to a very narrow circle of decisionmakers. Can you elaborate on what this resulted in?

MK: We should remember that there was no private ownership of any business or property for over 40 years so those with social and financial capital in communist times were able to acquire factories and other businesses given that they were privy to information regarding the privatization process. Those individuals were mostly involved in currency exchanges and trading in Western goods during communist times or were a part of the security apparatus. Also, managers of large industrial assets knew foreign languages and possessed managerial skills. Those close to the new political elite were able to privatize assets and the new banks only provided loans to them so the process was conducted in a very quick but nontransparent manner.

JD: So large amounts of state assets were acquired by few influential individuals under the name of

democracy.

MK: More in the name of a transition to a market economy rather than democracy. This was a noble pursuit but there are other avenues to pursue this. However, in all post-communist countries, the process was marred by corruption and clientelism.

JD: So this took place in all postcommunist countries to varying degrees. Assets were centralized in the hands of few under the guise of a democratic transition. Political party leaders are connected to this process creating rampant corruption. How can we change this system?

MK: There are several alternatives with the best being the revitalization and activation of civic society. Sociologist Dahrendorf once stated that a constitutional change can be carried out in six months, economic reforms can be carried out in 6 years, but the development of an authentic, active civic society requires 40-60 years. Moreover, only a strong civic society will create an environment for responsible parties. Only thousands of individuals across the country taking part in civic society can effectively hold parties responsible. Dahrendorf insists that in order to achieve this. there needs to be educated people and the formation of a new middle class.

JD: I agree that our civic society is underdeveloped. While our economy is smaller which somewhat minimizes the amount of resources that can be plundered, politicians also have access to our vast mineral resources. Is there a way to expedite the establishment of a vibrant civic society?

MK: A civic society is vital but there also needs to be an institutional framework geared to the optimization

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of governance. It is important that the judiciary operates independently from political elites. This is also important in the economic market in that judges don't have a bias towards those with influence.

JD: This is an issue in Mongolia as those with political influence nominate judges who put on a façade of the Rule of Law with no one ultimately being held accountable for corruption. How does the Czech Republic compare in this sense?

MK: We had the same problem until about 2011 with police and the judiciary failing to look into the multitude of corruption scandals. This created political disenfranchisement with the media embarking on active campaigns against scandals which led to an internal shift in political parties. There comes a point where people become increasingly disenfranchised and movements for change begin to take root within political parties along with judges deciding to become more decisive and impartial. In Czech Republic, this led to a change in the leadership of the Prosecutor's Office and the establishment of new rules on police independence. There was also a very corrupt political system in Italy until the 1990's but there were big changes in the 90s that led to a shift in the situation. Perhaps, these processes will take place in Mongolia in a few years.

JD: We are on this trajectory. So the changes would be positive?

MK: Perhaps, the issues we discussed are in an optimistic vein, but I hope that Mongolia will follow this trajectory. However, if this change does not take place, people may become increasingly disenfranchised and turn to an authoritarian solution, seeking the leadership of an authoritarian figure.

JD: This is what is currently happening in Mongolia. People are seeking a strong hand that can establish discipline. In what way does the Czech Republic lean?

MK: From time to time, you are on the crossroads with one path towards enhancing democracy and the other path towards and authoritarian solution. The latter is a bad path, but it is possible that people's faith in democratic rules and values may linger, eventually leading to calls for an authoritarian leader. In fact, this path is still open for the Czech Republic as old clientelist and corrupt

groups transformed themselves and are cooperating closely with Russian and Chinese nontransparent political groups and businesses. This is an issue facing Central European governments as clientelist groups can now survive by establishing close ties with authoritarian superpowers like Russia and China. They can also establish nontransparent interests in Central Asian countries and profit from them.

JD: So individuals behind political parties are adapting to current conditions by establishing more nontransparent interests. In this case, there is no national framework that can control their activities.

MK: These clientelist groups in the Czech Republic are still connected with official parties and the Presidential circle so there is a permanent struggle between transparent and liberal political parties against clientelist, nontransparent interests. Therefore, our development has not been black and white but mixed.

JD: How is the quality of life in Czech Republic?

MK: The Czech society is based on solidarity and there are no big gaps in wealth such as in Mongolia. We are one of the leaders in economic equality in Europe. While inequality exists, it is not as big as here or in other European states. Nevertheless, there is a gap between more liberal urban areas and poorer rural areas as in many democracies. There is a noticeable division in that more educated urban areas are more liberal and the more rural, uneducated areas are more passive and easily manipulated by clientelist interests.

JD: In a democracy, we hope that the Rule of Law prevails. Civic society and demands for a just society from the people are the only mechanism through which to achieve this.

MK: This is the main goal of democracy but at the same time, changes to the institutional environment are also essential. Political interference into the justice system and constitutional law should be eradicated, public media must be independent.

JD: Media was state-owned in all communist countries. What is the situation in Czech Republic now?

MK: We have public media outlets which are fragile with a number of political parties seeking to limit their

independence. Over the last 30 years, there have been constant attempts by political parties to intervene in the operation of the media. However, if we look at countries like Poland or Hungary, the governing parties were successfully able to limit the freedom of its media outlets. This is achieved through the appointment of a Director with close ties to the ruling elite.

JD: What is the best example of a former communist country escaping this path?

MK: I don't have details in all countries like Slovenia and Baltic states, but the Czech Republic currently has an independent public media and Constitutional Court. It is however imperative that we are active to protect this independence. In this sense, the Czech Senate serves as a counterweight until one party rule.

JD: How many members does the Senate have?

MK: There are 81 members. The lower chamber is called the Chamber of Deputies and has 200 members.

JD: Is the President elected directly or from Parliament?

MK: Unfortunately, directly. Until 2013, we had career parliamentarism and a proportional representation electoral system which produced coalition governments leading to a balance of power. The President was elected from the two chambers of Parliament so they had to be mindful of their actions but since 2013, the President has been elected directly and therefore has a stronger legitimacy. This has led to the President being more active causing tension with Parliament.

JD: This is exactly what is happening in Mongolia today and there are talks of a President elected by Parliament being incorporated into the amendments to the Constitution. This is a very big issue and your new book has some new chapters I believe.

MK: It has three new chapters and the previous chapters were updated.

JD: Your books are interesting to us as we can relate to the issues and we thank you for your work and sharing your knowledge, expertise with me.

You can watch the full 30-minute interview at www.jargaldefacto.com



DeFacto **REVIEW**

Every Sunday live at 7pm on MNB World television: 24th November, 2019 For weekly reviews, visit *http://jargaldefacto.com/category/12?lang=en*

Host: Namsrai Tsend Commentator: Jargal Dambadarjaa

WILL THE MONGOLIAN GOVERNMENT IMPROVE THE OYU TOLGOI AGREEMENT?

The Parliament unanimously passed a draft resolution aimed at protecting the Mongolian people's rights and interests in terms of the Oyu Tolgoi deposits. It is comprised of 8 articles designed to improve the Oyu Tolgoi agreement and came at the heels of a municipal court invalidating the decision of the previous government regarding the Dubai agreement.

The Oyu Tolgoi project was initiated in 2010 with Oyu Tolgoi having extracted 32 million tons of copper, 1,200 tons of gold and 2,700 tons of silver to date. According to the Economic Research Institute of the National University of Mongolia, Mongolian exports increased 3,2 times between 2009 – 2017 as a result of the project. Mongolia's copper reserve increased 2.5 times since 2010 and the value of the reserves increased threefold. A third of Mongolians employed in the mining sector are trained by Oyu Tolgoi with 27 million dollars being spent on training. Moreover, 55% of domestic flights follow the Ulaanbaatar-Khanbogd route with Khanbumbat the closest airport to the project. Therefore, the development of Mongolia is hard to imagine without this project.

Parliament decree 40 of December 2008 stated that the Mongolian government is to own 34% of natural deposits and another decree enacted in 2009 gave the government permission to sign a contract with Oyu Tolgoi. I would argue that there are four main reasons to pursue a renegotiation of the Oyu Tolgoi contract.

Firstly, the costs keep increasing with the initial investment estimate rising from 5.3 billion USD in 2010 to 11.1 billion today. As Mongolia owns 34% of the project, with its share of investment borrowed from Rio Tinto, Mongolian debt to Rio Tinto has risen to 1.4 billion USD.

Secondly, the management service fee was initially set at 6% of total sales and although this was negotiated down to 3% which Mongolia still considers to be high.

Thirdly, the Mongolian government and Oyu Tolgoi are constantly engaged in tax disputes with a 3.2 billion USD discrepancy in tax payments.

Finally, the proposed power stations with Oyu Tolgoi currently paying 130 million USD a year to China for electricity are a source of dispute. These four issues are causing concern within the public leading some to call for a renegotiation of the contract.

The combination of these issues is plunging Mongolia

into deeper debt to Rio Tinto but on the other hand, a contract is a contract. However, the agreement was a flawed one and both sides agreed to implement gradual changes to the contract. However, with the upcoming election in mind, Parliament is seeking to pass increasingly populist legislation. Parliament created a working group on the issue headed by MP Terbishdagva which produced a report following 5 years of diligent work and it would be discussed in Parliament. This led to the conclusion that the government should renegotiate the Oyu Tolgoi agreement.



A week prior to this, the Administrative Court of Ulaanbaatar rendered a decision on a case lodged by an NGO to invalidate the permission that Prime Minister Saikhanbileg had given to Mr. Byambasaikhan, the Head of "Erdenes Mongol" LLC and Mr. Ganbold, the CEO of "Erdenes Oyu Tolgoi" LLC to sign the Oyu Tolgoi underground mine agreement. As the agreement was signed in Dubai, it would come to be known as the Dubai Agreement. However, this decision has not reached the higher Administrative Courts and there are some lingering questions. Firstly, the legislation on the Administrative Courts set forth certain criteria that entities bringing forward cases for public interest have to fulfill and a determination on whether the entity that initiated this lawsuit meets those requirements has to be made. It is also stipulated that the Administrative Courts shall not render a verdict on political decisions. We will be able to discuss this issue with more clarity and in more detail following the publication and translation of the written decision.

POLITICS OF SOCIAL INSURANCE

The social insurance tax is set to increase by 1% next year causing public outcry as the tax has seen steady increases over the last three years without noticeable improvements in the quality of social services. The Association of Small and Medium Enterprises and the Association of Mongolian Trade Unions protested the decision with the President of Mongolia stating his intention to veto the increase. This intention was relayed by Mr. Enkhold, the Chief of Staff of President's office.

Until recently the social insurance tax consisted of a contribution equal to 10% of salary by both the employee and the employer. However, the conditions of the IMF loan that helped Mongolia escape a severe debt crisis three years ago required that the social insurance system operate without a deficit. This led to an increase in the social insurance tax from 20% to 24%. The new increases would see the tax at 25%, causing dissatisfaction among employers.

It would be helpful if the President justifies his veto by the fact that any increase in social insurance tax diverts funds from investment, the expansion of businesses and ultimately, the creation of new jobs. Under the current system of taxation, it is extremely expensive for employers to hire workers. This leads to the disheartening statistic of only half of Mongolia's working age population is employed, a figure that is 60% in Russia and 85% in China.

Moreover, this means that the half of the population that is employed is in essence contributing to the pensions of the half of the population that is not employed. This creates an incentive not to work and it will be beneficial if the President also included this unjust system in his reasoning for the veto. However, Presidential vetoes in Mongolia can be overridden by a second reading in Parliament and this happens more often than not.

The deficit in the Pension fund are mainly due to the government proclivity to spend more than they earn. Moreover, the social insurance system is marred by incompetent management. According to Mr. Chinzorig, the Minister of Labor and Social Protections, 280 billion MNT in social insurance taxes were in Capital Bank at the time of his appointment. He claims that this was reduced to 100 billion MNT prior to its bankruptcy but this still means that we lost 100 billion MNT.

It is simply not right for the same government that loses taxes in bankrupt banks to then increase them.

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Therefore, proper management of the existing fund is essential. There is also a dire need to increase the number of private pension funds in Mongolia. In other countries, the employer matches employee contributions to a private pension funds in order to ensure their loyalty to the company as the employee will not have access to the employer contributions if they leave the company.

We held a "DeFacto Debate" on Mongolian National Broadcaster last week with the Minister of Labor and Social Protections debating the incompetent management of the funds with another guest. Mongolia is attempting to implement what the Russians failed in. Mongolia is going to increase the age for retirement through legislation enacted this year with retirement age increasing by six months every year until 2027 which would set the retirement age for men at 65 years and women at 60 years. This decision was defended by the argument that the average life expectancy in Mongolia is increasing.

While social insurance taxes itself are not the highest compared to other countries, the amount of the tax lost by the government through incompetent management is certainly the most. Any country that loses the equivalent of 100 billion MNT in taxes to the bankruptcy of a small bank has major flaws that need to be addressed. Mongolia is a developing country with a GDP of 4000 USD per capita so we need to be extremely prudent with money, but this is not the case for every government since 2000. The Mongolian government should be careful with public money and property, but we should also fight the corruption that is draining public money and property.

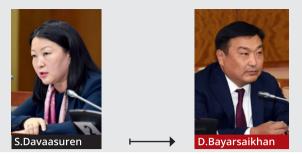
NEW LEADERSHIP OF THE BANK OF MONGOLIA AND THE FINANCIAL REGULATORY COMMISSION

Mongolia was grey-listed by the Financial Action Task Force (FATF), an international organization against money laundering and terrorism financing. In response to this, the leadership of two of Mongolia's main financial institutions, Bank of Mongolia and Financial Regulatory Commission have been relieved of their duties. The Vice-President of the Bank of Mongolia Lkhagvasuren was appointed to run the bank and the Deputy-Chief of the Financial Regulatory Commission, Bayarsaikhan was appointed as its new Chief.

These appointments of individuals involved in the previous administrations of the Bank of Mongolia and the Financial Regulatory Commission raises serious concerns. It is possible that the previous heads of the institutions were preventing them from take appropriate actions but if there are no changes, it will raise questions as to the rationale behind relieving

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their predecessors from their duties. Therefore, these individuals have a great responsibility of enacting real change and taking Mongolia out of the grey-list. According to the report by FATF, Mongolia has to undertake concerted efforts to make its banking system healthier. The Minister of Justice echoed these sentiments during the confirmation hearing of the President of the Bank of Mongolia stating that the reform of the banking system needs to continue.

One of the main issues facing the new President of the Bank of Mongolia is the increase in the equity capital of commercial banks which was carried out, but the IMF requested an independent verification that this was carried out in accordance with banking best practices. An independent enquiry found that three system banks (banks with 5% of total banking assets) did not increase their equity capital in accordance with the Basel requirements. If this is the case, the increases in their equity capital should be annulled or declared in another part of their balance sheets. They should be then given some time to increase their equity capital in accordance with international norms and failure to do so should lead to the state increasing their equity capital. This process was undertaken in South Korea in 1998.

The main issue facing the head of the Financial Regulatory Commission involves one of the FATF requirements regarding the implementation of more stringent controls over the non-banking financial sector. Mongolia for example can not establish control over the flow of gold as 20 tons of gold would disappear if royalties were raised to 5% and reappear if they were dropped to 2.5%. We expect the new heads of the agencies to work towards addressing those two issues.

While the previous heads of the agencies do deserve some of the blame for Mongolia being placed in the greylist, they were utilized as scapegoats. For example, the Minister of Finance claims that the previous President of





the Bank of Mongolia failed to consistently report on their anti-money laundering operations. However, we should remember that the inaction of the Independent Authority Against Corruption and the court system allows corrupt politicians to operate with impunity. Therefore, the lions share of the responsibility for Mongolia being placed in the grey-list lies squarely at the feet of our court system. The Independent Authority Against Corruption refers 400 or so cases annually to the Prosecutor's Office with only 10% of them going to the courts with them then rendering a decision on a handful of cases. The Mongolian court system does not operate as it is meant to.

There are so many pending criminal cases the status of which we don't know. Current and former high-ranking officials would be arrested only to be released. The owner of the Trade and Development Bank was arrested but we have no idea what is happening to him now. With the political elite exerting a significant amount of influence over the court system, the courts are powerless to adjudicate corruption cases.

In a democratic system, monitoring of the government should take place in a horizontal manner with people holding the government accountable. It is the responsibility of civic society and NGOs to mobilize the discontented masses. We can not expect the state to audit and monitor its own actions. Therefore, we all need to monitor the government through protests. The lack of this monitoring leads to the government plundering public funds with impunity leading to a third of Mongolians living under the poverty line, half of the working age population not working and a massive exodus of labor to South Korea.

> This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [HERE].

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