

ARTICLES

**MONGOLIA'S NEW CONSTITUTIONAL REGIME:
INSTITUTIONAL TENSIONS AND POLITICAL
CONSEQUENCES***

H. Hulan

The struggle to strengthen the new democracies in Eastern Europe and Central Asia has led to an international academic and political debate about the nature of social transformations there and the difficult decisions, at times involving excruciating and bitter ethical choices, concerning economic restructuring, political institution-building and the basic values of equity, equality, and justice.

The international debate has produced provocative hypotheses about the effects of institutions on democracy. It forms part of the "new institutionalism" literature in comparative political studies that holds as a premise that political democratic transformation depends not only on economic and social conditions but also on the design of political institutions.¹

One of the most important institutional issues that is only beginning to draw scholarly attention is related to the influence of different constitutional frameworks on democratic development: a stable consolidation of representative state institutions, a clear-cut and balanced method of checking executive and legislative powers, transparent mechanisms of decision-making in all branches of government, and a democratic consolidation of multi-party systems. New constitutions are necessarily an exercise in political and

Institutional engineering in countries where polities are being reconstructed. They bear the political marks of the struggle between the new and the old in politics of respective countries reflecting both their recent political histories and the scope and dimension of political changes in many respects, new constitutions in Eastern Europe and Central Asia have either strengthened or weakened institutional incentives for democratic consolidation. In order to be able to explain the impact of Mongolia's new constitution on the democratic consolida-

*This article was originally prepared for the workshop on 'The Greater Mongolia in the Twentieth Century' at Princeton University, February 3-4, 1995.

¹ Alfred Stefan and Cindy Sketch give a brief overview of the 'new institutionalism' literature in their 'Constitutional frameworks and democratic consolidation: Parliamentarianism vs. presidential', *World Politics* 46:1 (October 1993), 1-22.

tion and the overall political process in the country, one has to look into the historical and political setting against which the first democratic Mongolian constitution emerged.

The political transformation in Central Asia is essentially conducted in two different ways as far as the sequence of political and economic reforms and the speed of change are concerned: One is a politically decentralized way, found in Mongolia, and the second is an authoritarian bureaucratic way (the “Chinese model”) found in Kazakhstan, Uzbekistan, and smaller Central Asian states. The Mongolian model, simultaneously implementing market economy reforms and sweeping political changes, displays the dilemmas of a semi-nomadic society struggling to curtail its “Asian nomadic” and make a breakthrough into the world of modernity, prosperity, and diversity. The specifics of the Mongolian model were brought about by its political and economic status as the closest Soviet satellite.

In late 1989 and early 1990, Mongolia became involved in a process of political emancipation. Triggered by the political changes in the Soviet Union and Eastern Europe, intellectual and political dissatisfaction with the dominant Communist Party, a rigid centrally planned economy, and Mongolia’s satellite status translated into demands for changing the political regime so that it would incorporate freedom of thought, political choice and social justice.²

The intellectual and political aspirations of young democrats were clearly beyond the traditional socio-political paradigm and were something new for most Mongols. The discrepancy between the “intellectual mobilization” and its political manifestation on the one hand, and the economic and socio-political reality of a backward Central Asian society on the other hand was bridged by the fusion of the democratic and nationalistic goals formulated by the democrats. The dominance of the Mongolian People’s Revolutionary Party (MPRP) was seen as a political arrangement for perpetuating the Mongols’ inferior political status, and as the quintessential expression of the interests of a foreign power. Consequently, removal of the MPRP’s political control was perceived as ridding the country of the old regime and as an act of political decolonization.

In March 1990, facing the biggest threat ever to its survival the MPRP changed its leadership, restructured the government, and abandoned the one-party system. The country’s former rubber-stamp legislature, the People’s Great

² Political and cultural aspects of Mongolia’s social transformation are treated in my report at the UNDP workshop on transition at the Ost-West Wirtschaftskademie, Berlin, September 27-October 7, 1993, and my article ‘Mongolia’s political transformation’ *The Mongolian Journal of international Affairs* 1 (1994), 28-37.

Khural, adopted amendments to the 1960 Constitution that provided for a transitional political system and multi-party elections.

The first open and free elections, in July 1990, resulted in the formation of a multi-party legislature, with the young democratic opposition parties taking forty percent of the seats in the standing legislature, the Baga Khural, created by the 1990 constitutional amendments., and a coalition government including members of the MPRP reformist faction, the National Progress Party and the Democratic Party. Both the President and Prime Minister were elected by the non-standing legislature, the Great People's Khural.

The fragile nature of the political consensus reached in 1990 and 1991 by the reformist faction of the MPRP with both the democrats and its own party's conservative majority led the new political elite to realize the urgent need for a new constitution which would legitimize the emerging political and economic institutions. A sense of urgency was added by a belief generally shared among the leaders of the Baga Khural about the international situation. To the south, China was pursuing its politically rigid strategy of "building socialism with Chinese characteristics", and to the north, Russia had been thrown into a political, economic, constitutional, and federal turmoil. A new constitution would establish a domestic framework for a continued open foreign policy and a new international orientation.

Moreover, as soon as news reached Ulaanbaatar about the attempted coup detach in the Soviet Union in 1991, a conservative group of Mongolian politicians switched sides. The democrats took this incident as yet another incentive to make the country's transformation irreversible. They were convinced that the creation of the rule of law required a moral and political commitment on their part to proceed with the transformation in accordance with law rather than in defiance of it or in a legal vacuum.³

The two factions within the ruling MPRP were also in favor of a speedy passage of the new constitution, albeit for different motivations. The reformists heading the cabinet in 1991 shared the concerns of the democrats. The conservatives, on the other hand, wanted to use the constitutional process to ensure their party a political and institutional advantage by using their majority in both the Baga Khural and the Great People's Khural. The MPRP feared that continued reform would jeopardize its political survival and that it might even lose its considerable material and financial assets

³ In 1990-1991 the author worked in the Baga Khural where she had an opportunity to hear the views of leading politicians on the new constitutional regime.

It is important to emphasize that both the democrats and the MPRP viewed the constitutional issue as an important guarantee for the peaceful change that marked Mongolia's transition, which was in marked contrast to the volatile and antagonistic dynamics in Russia and other post-communist countries.

The deliberations over the final constitutional draft started in November 1991 and lasted for two and a half months instead of the three weeks planned by President Ochirbat and his drafting commission. Right from the first day it became clear that the debate would be heated.⁴ It involved such issues as the type of representative government, the type of legislature, the number of deputies, the election of the president, property rights, land ownership, and the country's name.

When the Constitution was finally adopted on January 13, 1992, it was the product of a compromise the democrats reached with the conservatives and nationalists. It was not only time pressure that persuaded them to compromise but also an increasing sense of disillusion with the reform process which revealed an abysmal lack of knowledge about democratic government and the rise of a childlike desire for instant gratification.

The compromise had its price. The final draft, carefully drawn up by the commission, with logically coherent provisions and precise details, was scuttled in favor of a hybrid system that prevents increased political participation and the further democratization of the entire political system.

The 1992 Constitution is the first document in Mongolia's history that incorporates individual political rights and freedoms, and an independent judiciary. It declares democracy, justice, freedom, equality, and national unity as the premier goals of Mongolian society, and it recognizes all forms of property ownership with legal protection for ownership rights. All in all, in spite of the last-minute compromises, one can view this document as a great accomplishment in a semi-nomadic country which was geographically far removed from the global experience of democracy and representative government.

The fundamental aim of the constitution was to establish the basic rules of government reflecting the philosophy of representative government. It is well known that there are three basic types of representative government in the world today: the presidential (as in the United States), the parliamentary (as in most of Western Europe), and the semi-presidential where a president elected by universal suffrage coexists with a prime minister and cabinet responsible to

⁴ The constitutional debate in the Great People's Khural and the major provisions of the 1992 Constitution are discussed in Alan Sanders, 'Mongolia's new constitution: Blueprint for democracy' *Asian Survey* 32:6 (1992), pp.506-520.

the legislature (as in France). A parliamentary regime is a system of mutual dependence where the chief executive power must be supported by a majority in the legislature and has the capacity to dissolve the legislature and call for elections. A presidential regime is a system of mutual independence where both the legislative and executive powers have fixed electoral mandates and their own source of legitimacy.⁵ It follows that a semi-presidential regime would be a mixed version of these two which have mutually incompatible characteristics.

The 1992 Constitution established something like a semi-presidential regime which injected ambiguity into the political system and thus affected the parameters of action and the strategies to be adopted by parties and other political actors. In an emerging democracy, the origins and evolution of democratic institutions and procedures are determined more by members of the political elite than by abstract cultural factors. In Mongolia's case, the result was a semi-presidential regime favored by the conservatives in the MPRP, and provisions for human rights and property ownership favored by the democrats.

The original draft of the Constitution was intended to consolidate the parliamentary system with its indirect election of a president. It was prepared by the commission which included the democratically-oriented leaders of the Baga Khural and of the new parties. They emphasized the need for a parliamentary regime in a country with strong authoritarian traditions, and they feared that in a presidential regime, with institutional but not necessarily political independence of the two main branches of government, a president might usurp power. Not surprisingly, the MPRP insisted on a presidential system, basing its contention on two observations. It claimed that a presidential system would eliminate the "social anarchy" which it blamed on the democratic process, and it played up Mongolia's long tradition of authoritarian rule dating back to the glorious days of Chinggis Khan's empire. The latter argument was, of course, a blatant appeal to the nationalists among the intellectual and rural deputies in the Great People's Khural. In the end, the democrats and the MPRP conservatives settled for a compromise whereby there was created an extremely powerful legislature on the one hand, and a directly elected president on the other hand.⁶ In keeping with the idea of the presidential system, the Constitution provides for a separation of the executive, legislative, and judicial powers.⁷

⁵ Stefan and Shell, 3-4.

⁶ Mongol Ulsyn Undsen Khuul [The Constitution of Mongolia]. Ulaanbaatar 1992. Chg., sections 1-3.

⁷ Ibid, Articles 20, 38, 47.

The State Great Khural (SGK), a 76-member unicameral legislature, is the supreme organ of state and legislative power. It enacts laws and supervises their implementation, determines the laws of domestic, financial, monetary, and foreign policy, approves the budget, sets the dates for legislative and presidential elections, removes or relieves the president, appoints and replaces the prime minister and other officials accountable to the SGK, determines the organization and role of the National Security Council (chaired by the president), holds national referenda, ratifies and vetoes international agreements, establishes and severs diplomatic relations, and declares a state of emergency or war.⁸ The president, upon consultation with the prime minister, can propose a dissolution of the SGK, but two-thirds of its members must actually agree to it.⁹

The president is elected by universal suffrage and is the head of state and the symbol of national unity.¹⁰ He may not concurrently serve as a member of the cabinet or the SGK. Each parliamentary party or group of parties may nominate a candidate in presidential elections. A candidate who receives a majority of the popular vote is considered elected and the SGK will pass a law recognizing his or her mandate. If no one receives a majority, a run-off election will be held between the two leading candidates.

The president has the power to veto all or parts of any legislation, with a two-third's majority of the SGK needed to override the veto; select, in consultation with the majority party or a group of parties, the prime minister; instruct the cabinet and issue decrees with policy guidelines effective only upon the prime minister's signature; represent Mongolia in foreign relations and enter into international treaties; serve as commander-in-chief and head of the National Security Council; declare general or partial conscription; declare a state of emergency or war, with the SGK's approval within seven days.¹¹ The president is accountable to the SGK, which may invalidate his decrees and, upon findings of illegality by the Constitutional Court, remove him from office.¹² In the president's absence, incapacity or resignation, the chairman of the SGK exercises presidential power until a new president is inaugurated.¹³

The existence of a powerful legislature and a powerful prime-ministerial office undermines the principle of the separation of power by fusing legislative and executive powers by means of majority rule in the SGK. This fusion also

⁸ Ibid., Article 25.

⁹ Ibid., Article 22.

¹⁰ Ibid., Article 30.

¹¹ Ibid., Article 33.

¹² Ibid., Article 35.

¹³ Ibid., Article 37.

runs counter to the political separation of state institutions as prescribed by the presidential regime's rules of the game. The parliamentary regime's rules establish a mutual dependence between parliament, the prime minister, and, in Mongolia's case, the president who has a share of executive responsibility. Complicating this mixture is the fact that the Mongolian president as the symbol of national unity has to renounce any political party affiliation even though the president is initially chosen by one or more parties in the SGK. Moreover, the president's formal political neutrality is compromised by the right to initiate and veto legislation and issue decrees. Despite the president's legislative powers, his right to give policy guidelines to the cabinet must be countersigned by the prime minister, thereby sharply reducing the president's political and institutional authority.

The Mongolian constitutional regime becomes still more ambiguous when set against the current electoral law which became operational with the 1992 parliamentary elections. The multi-member plurality electoral system, which over time turns into a two-party system, leaves virtually no political role for the president. Once in office, his party can abandon him if its leaders realize they could improve their fortunes by disassociating their party from the president, and, when his party is in opposition, it can manipulate him in order to thwart the majority party's legislative agenda.

There are few semi-presidential regimes in the world, and the, successful ones are even fewer. In fact, such a system could work if, under certain circumstances, it operates under the rules of either a presidential or a parliamentary regime. In Mongolia, such a choice is extremely difficult because of the dominance of one party in the wake of the 1992 parliamentary elections and the resulting lack of an institutionalized opposition in parliament.

The first directly elected president, Punsalmaagijn Ochirbat, became a reformist member of the ruling MPRP in 1990 and ran in 1993 on the combined ticket of the National Democratic Party and the Social Democratic Party which form a tiny parliamentary opposition. In doing so, he further alienated the conservative majority of his own party. His victory in spite of a smear campaign launched by his party antagonized many members of the cabinet and the legislative majority. This experience continually frustrates President Ochirbat's efforts to build a working relationship with the legislative majority, the cabinet, and the ruling party. He is constantly obliged to create working coalitions on his side of the fence in order to be effective in the discharge of his constitutional duties.

The leadership structure of the dominant MPRP is another stumbling block for the new constitutional regime. Since 1990 the party's secretary-general has been placed outside both the cabinet and parliament, which is a continuation of the party's survival strategy but calls into question its right to criticize the cabinet. An even more awkward consequence is the fact that the president, in order to forge a working coalition, has to approach the MPRP outside the institutional framework of the state, a maneuver that may violate his constitutional role.

The ambiguous nature of Mongolia's constitutional regime makes its operation dependent not on constitutional rules but on the nature of the party system, the electoral system, the legislative majority, and the nature of informal personal relationships within the country's political elite. This excessive reliance on the political elite is dangerous in any country and especially in a small country such as Mongolia.

If Mongolia wishes to eliminate the present ambiguities and strengthen its democratic institutions, it must make three major choices:

1. whether to continue the present ambiguity which threatens direct popular participation or to make the presidency more workable;
2. whether to continue with an electoral system which exaggerates the gains made by the winning party or opt for a system which allows diversity in parliament and gives the president a chance to fulfill his constitutional obligations; and
3. whether to keep the present "executive dualism" of the president and prime minister or provide for a division of labor between the two, thus making the decision-making process more transparent and the institutions more accountable.

Under present conditions, the only way to make the presidency more workable is to have a president whose agenda is more in line with that of the MPRP. But a triumvirate at the top of Mongolia's political pyramid would leave almost no room for the checks and balances provided for in the Constitution.

Mongolia's best option, without threatening the fragile balance between the economic rights of citizens and the governmental system provided for in the Constitution, is to introduce a proportional representation electoral system which would reflect the country's multi-party reality. It would facilitate the execution of the president's constitutional duty as unifier of the country's political system. The MPRP, however, is not likely to agree to such a change because it would jeopardize its present dominance. As a result, it will require deliberate and sustained efforts on the part of all democratically minded members of the political elite to continue democratic consolidation in Mongolia.