
STUDENT CONTRIBUTION

The Rights of Mongolia's Internal Migrants under International Law: Climatic, Domestic and Commercial Responsibilities

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Over the last decade, 350,000 people have moved from Mongolia's countryside to the suburbs of its capital, Ulaanbaatar, where they live in abject poverty despite the rapid economic development of the country. This article proposes three complementary international legal analyses of this internal migration. First, because this migration is partly and indirectly induced by the adverse impacts of climate change, States have a common but differentiated responsibility to assist the Mongolian government to address climate migration. Second, Mongolia should bear its own responsibilities to take steps to realize the social and economic rights of its population without discrimination. Third, Mongolia's commercial partners should be warned against any control or influence that would cause harm to Mongolia, in application to public international law on State responsibility and to States' extraterritorial human rights obligations. While each narrative reveals an important dimension of a complex phenomenon, this article argues that all policy levers must urgently be pulled to guarantee the rights of Mongolia's internal migrants.

Keywords

Mongolia, Migration, Narratives, Climate Change, Development, Geopolitics, Environment, Human Rights.

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I. Introduction

As a large country with a small population, Mongolia¹ is facing many social issues. While the mining boom has caused the economy to flourish, not enough has been done to guarantee a fair and equitable redistribution; inequalities are rapidly rising. Each year, tens of thousands of people move from Mongolia's countryside to Ulaanbaatar, its capital. There, they settle in the 'ger' districts,² insalubrious suburbs already inhabited by 300,000 migrants from the last decade. Isolated from the economic growth of the city center, the dwellers of the *ger* districts often have no running water, sewage or electricity, and strive to access public services such as education or health care. Their reliance on inefficient stoves (as opposed to the communal heating system available in the central districts) is the main cause of extremely high levels of air pollution in the valley of Ulaanbaatar during the long winters.³ To understand this migration, one needs to first explore the historical context in which it takes place, before looking at the relevance of specific norms of international law.

This research will analyse three different political narratives on Mongolia's internal migration from the viewpoint of international law. This paper is composed of six parts including Introduction and Conclusion. Part two (climate narrative) will highlight the (indirect and partial) causal relation between climate change and migration. Part three (political narrative) will attribute the on-going migration to Mongolia's policies during the last two decades. Part four (geopolitical narrative) will focus on the influence of Mongolia's international trade and development partners. These narratives are not only explanatory, but also normative. By attributing migration to a 'cause,' each of them ascribes responsibility to specific actors and suggests specific policy levers to address migration. Thus, the climate narrative calls for all States to recognize their responsibility *vis-à-vis* Mongolian 'climate migrants' in accordance with the principle of "common but differentiated responsibilities" in international environmental law. The political narrative underscores Mongolia's own responsibilities under international human rights law, in particular with regard to social and economic rights and the prohibition of discriminations. The geopolitical

¹ By 'Mongolia,' the author refers to the sovereign State of Mongolia (Outer Mongolia).

² The 'ger' (yurt) is the traditional tent in which the Mongolian nomads live. Many destitute internal migrants settle around Ulaanbaatar in their 'ger,' hence the name 'ger districts.'

³ Other internal migrants become artisanal miners, often living in drastic conditions. Interview of Coralie Grielle, volunteer in international cooperation, in Ulaanbaatar (Apr. 1, 2013).

narrative suggests specific forms of responsibilities for those international factors that influence Mongolia's policies in application to general international law and to the extraterritorial application of international human rights law. While each narrative reveals an important dimension of a complex phenomenon, this article argues that all policy levers should be pulled concurrently in order to guarantee the rights of Mongolia's internal migrants.

II. Background

For long, the Mongols have adapted to a particularly harsh climate through nomadic animal husbandry, which still remains widely regarded as the main economic activity of the country. Constantly moving on the grasslands with their herd has allowed Mongolian nomads to cope with natural climatic variability such as droughts and extremely cold winters. The nomads, however, have always interacted with a small sedentary population, which at some time were settled in or around Buddhist monasteries.⁴ The political organization of Mongolia varied over time under the influence of larger historical trends. By contrast to Inner Mongolia, the *Qing* dynasty (1691-1911) had only a late and marginal impact on 'Outer Mongolia'.⁵ The usage of the pasturelands was regulated by a complex feudal system. The communist regime established in 1924, under the influence of the USSR, failed in its early collectivization efforts in the 1930s; the collectivisation of livestock only occurred through a more cautious, step-by-step reform undertaken during the 1950s and 1960s, accompanied by heavily subsidized industrial development.⁶ The most striking transformation of Mongolia under the communist regime was its rapid urbanization "from a few per cent living in towns in the 1920s to 55-60 per cent in 1990."⁷ In particular, Ulaanbaatar, which was an encampment of about 6,000 inhabitants in the 1920s, became a city of half a million inhabitants by the end of the Cold War. The population of Ulaanbaatar grew by 3,700 per year between 1930 and

⁴ See generally M. Fernández-Giménez, *Sustaining the Steppes: A Geographical History of Pastoral Land Use in Mongolia*, 89 *GEOR. REV.* 315 (1999).

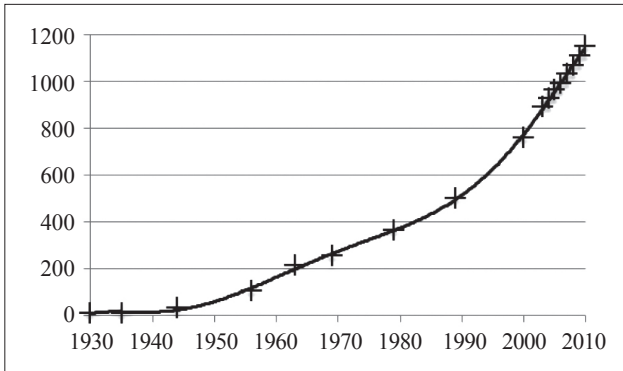
⁵ Mei-hua Lan, *China's 'New Administration' in Mongolia*, in *MONGOLIA IN THE TWENTIETH CENTURY: LANDLOCKED COSMOPOLITAN* 51 (S. Kotkin & B. Elleman eds., 1999). See also W. JACKSON, *RUSSO-CHINESE BORDERLANDS* 42 (1962).

⁶ R. Gilberg & J. Svantesson, *The Mongols, Their Land and History*, in *MONGOLIA IN TRANSITION: OLD PATTERNS, NEW CHALLENGES* 13 (O. Bruun & O. Odgaard eds., 1996). See also H. Bradsher, *The Sovietization of Mongolia*, 50 *FOREIGN AFF.* 545 (1972).

⁷ Gilberg & Svantesson, *supra* note 6, at 21.

1956, 12,000 between 1956 and 1989, but 24,000 between 1989 and 2000, and 39,000 between 2000 and 2010 (Figure 1). Most of this growth is due to incoming internal migration.

Figure 1: Population of Ulaanbaatar, 1930-2010 (in thousands)⁸



Ulaanbaatar now counts 1.3 million inhabitants - almost half of the country's population. The history of the last two decades (since 1990) is described by the Mongols as "the Age of the Market." The capitalist transition was generally peaceful, but it was brutal, often referred to as a 'shock therapy.'⁹ As the massive financial support from the USSR suddenly came to an end, the industrial sector collapsed, public services were interrupted, half the government employees were laid off, and unemployment and poverty skyrocketed. The privatization of the livestock and the sudden recognition of the freedom of internal movement¹⁰ caused havoc in the structure that supported nomadic animal husbandry. As a result, Mongolia's transition was described as a transformation "from a middle-income to a poor country, as if the process of development had been put into reverse."¹¹

The national economy started to recover in the second half of the 1990s and grew faster during the first decade of the 2000s (Figure 2). However, inequalities remained substantial.¹² In contrast to the communist regime's focus on agriculture

⁸ See National Statistical Office of Mongolia, available at <http://www.nso.mn> (last visited on Apr. 14, 2014).

⁹ M. ROSSABI, MODERN MONGOLIA: FROM KHANS TO COMMISSARS TO CAPITALISTS (2005). See also O. Bruun & O. Odgaard, *A Society and Economy in Transition*, in Bruun & Odgaard, *supra* note 6, at 28.

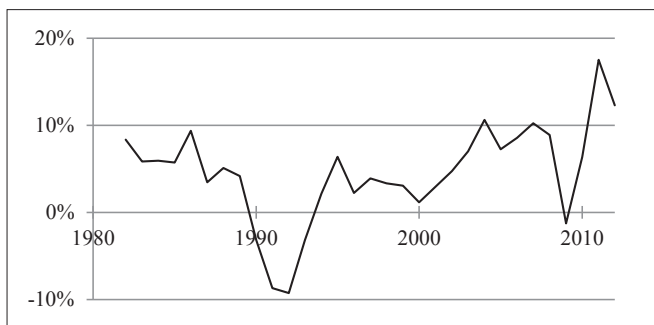
¹⁰ Mongol Ulsyn Ündsen Khuuli [Constitution], Jan.13, 1992, art. 16(18) (available only in Mongolian).

¹¹ D. Sneath, *Mongolia in the 'Age of the Market': Pastoral Land-use and the Development Discourse*, in MARKET AND MORALITIES: ETHNOGRAPHS OF POSTSOCIALISM196 (R. Mandel & C. Humphrey eds., 2002).

¹² UNDP AND GOVERNMENT OF MONGOLIA, HUMAN DEVELOPMENT REPORT 2003: URBAN-RURAL DISPARITIES IN MONGOLIA

and light industry, the capitalist regime's development strategy has almost entirely relied on the development of the mining sector. Mongolia's large territory comprises of some of the most promising reserves of coal, copper, gold and uranium (among others) in the world. The mining boom has triggered an unprecedented economic growth, reaching 17.5% in 2011 and 12.3% in 2012.¹³ Yet, this economic development has only benefited a small minority of educated urbanites, further increasing social inequalities.¹⁴

Figure 2: Mongolia's annual GDP growth, 1982-2012¹⁵



Migration theorists describe 'migrations' as the consequence of a complex conjunction of 'push factors' (at the place of origin) and 'pull factors' (at the place of destination) in a specific social, cultural, economic and demographic context.¹⁶ However, it is a common tendency of political discourses to ascribe simple causes to observed phenomena, thus suggesting convenient policy levers.¹⁷ In this sense, internal migration in Mongolia can be attributed to the economic and cultural attraction of Ulaanbaatar as the '*ville lumière*'¹⁸ or to the economic downturn of the

7 (2003).

¹³ World Bank, Country Data: Mongolia, available at <http://data.worldbank.org/country/mongolia> (last visited on Jan. 15, 2014)

¹⁴ *Supra* note 11, at 193. See also A. Campi, *The Rise of Cities in Nomadic Mongolia*, in *MONGOLS FROM COUNTRY TO CITY: FLOATING BOUNDARIES, PASTORALISM AND CITY LIFE IN THE MONGOL LANDS* 21, at 50 (O. Bruun & L. Narangoa eds. 2006); UNDP & GOVERNMENT MONGOLIA, *HUMAN DEVELOPMENT REPORT 2011: FROM VULNERABILITY TO SUSTAINABILITY, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT* 18 (2011).

¹⁵ *Supra* note 13.

¹⁶ E. Lee, *A Theory of Migration*, 3 *DEMOGRAPHY* 47 (1966).

¹⁷ C. Nicholson, *Climate Change and the Politics of Causal Reasoning: The Case of Climate Change and Migration*, *GEOGR. J.* (Forthcoming 2014).

¹⁸ Telephone interview of a high-rank officer in a multilateral development bank in Ulaanbaatar (Apr. 9, 2013).

countryside,¹⁹ the would-be incompatibility of nomadic animal husbandry with a modern economy.²⁰ This migration can also be attributed to environmental factors such as overgrazing (the use of the pasture beyond its regeneration capacity).²¹ However, overgrazing itself is the consequence of climatic change (reduction of the yield or regeneration capacity of the pasture) and the increase and change of the composition of the national livestock (increasing use of the pasture).

Migration is not always an issue. Human history has been marked by constant migration. Though migration may reflect social issues forcing people to move, it may be a useful adaptation strategy to changing circumstances when the rights of the migrants are duly respected and protected. Migration becomes a social issue when policies fail to protect the rights of migrants. This is increasingly the case in Mongolia where internal migrants are being denied fair access to equal economic opportunities.

III. The Climate Narrative: Climate Migration and Common but Differentiated Responsibilities

'Climate migration' (attributed to climate change) has attracted growing attention in international law and politics over the last decade. The debate has particularly centered on low-lying small island developing States such as the Maldives or Tuvalu (sinking islands) and on overpopulated least-developed countries with large populations in low-lying coastal areas such as Bangladesh.²² Yet, apart from sea-level rise, climate-related desertification, land degradation and drought may also induce

¹⁹ Interviews of Tserenpuntsag Buyandalai, Vice-Mayor of Ulaanbaatar in charge of employment and social welfare, in Ulaanbaatar (Apr. 2, 2013), of Sumyaa Sukhbaatar, Governor of Dungovi province (April 13, 2013), and of Tsetsegee Munkhbayar, President of the Board of Directors of the United Movement for Mongolian Rivers and Lakes, in Ulaanbaatar (Mar. 27, 2013).

²⁰ For details, see C. HUMPHREY & D. SNEATH, *THE END OF NOMADISM? SOCIETY, STATE, AND THE ENVIRONMENT IN INNER ASIA* (1999).

²¹ Interview with Johan Ramon, natural resource management advisor at the Swiss Agency for Development and Cooperation, in Ulaanbaatar (Apr. 15, 2013).

²² See e.g., THE GOVERNMENT OFFICE FOR SCIENCE, LONDON, *FORESIGHT, MIGRATION AND GLOBAL ENVIRONMENTAL CHANGE: FINAL PROJECT REPORT* (2011); EACH-FOR (Synthesis Report) (2009); *MIGRATION AND CLIMATE CHANGE*, (E. Piguet, A. Pécoud & P. de Guchteneire eds., 2011); *CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES* (J. McAdam ed., 2010); J. McADAM, *CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW* (2012); B. Mayer, *Constructing 'Climate Migration' as a Global Governance Issue: Essential Flaws in the Contemporary Literature*, 9 MCGILL J. INT'L. SUSTAIN. DEV. L. & POL'Y 87 (2013).

human migration, in particular by an increase in water stress on the ecosystem.²³

Thus, the government of Mongolia tried to frame the migration of destitute herders to Ulaanbaatar as a form of climate migration. Just like the Maldives once organized an under-water ministerial cabinet to attract the world's attention on the plight of 'sinking islands',²⁴ Mongolia's ministers met publicly in the Gobi desert, a fifteen hour drive from Ulaanbaatar, in order to "draw ... the attention of the world community to the fact that Mongolia's traditional nomadic civilization based on pastoral animal husbandry is likely to be at risk by mid-twenty-first century."²⁵

A. Conceiving Mongolia's Migration as Climate Migration

Situated in a zone of transition between forests and steppes, Mongolia's fragile environment is highly sensitive to any climatic change.²⁶ Any climatic change is likely to threaten the traditional nomadic animal husbandry and, by depriving herders from their livelihood, cause migration. On a long historical perspective, southward migration flows toward China were correlated to drought and extreme winter conditions.²⁷ Some historical studies even suggest that Genghis Khan might have started his conquest of the world in reaction to a temporary cooling following several decades of abundance in the early thirteenth century.²⁸

Mongolia is severely affected by global anthropogenic climate change. Whereas the world's average temperature rose by 0.7°C during the last century,²⁹ Mongolia experiences a more rapid warming of 2.1°C,³⁰ leading to an increase of

²³ See generally UNU, *WHERE THE RAIN FALLS: GLOBAL POLICY REPORT* (2012).

²⁴ See *Maldives cabinet makes a splash*, BBC NEWS (Oct. 17, 2009), available at <http://news.bbc.co.uk/2/hi/8311838.stm> (last visited on Apr. 16, 2014).

²⁵ Government of Mongolia, *Message from the Gobi Desert on Climate Change* (Aug. 27, 2010).

²⁶ See I. Saizen, *Change in Livestock Species and Their Spatial Distribution*, in *THE MONGOLIAN ECOSYSTEM NETWORK: ENVIRONMENTAL ISSUES UNDER CLIMATE AND SOCIAL CHANGES* 215 (Norio Yamamura, Noboru Fujita & Ai Maekawa eds., 2013); Z. Batjargal & B. Enkhjargal, *Interference Impact of Global Warming and Globalization on the Society and Ecosystem in Mongolia*, *id.* at 298; T. Indree & D. Ariungerel, *Degradation of Mongolian Grassland Vegetation under Overgrazing by Livestock and Its Recovery by Protection from Livestock Grazing*, *id.* at 127.

²⁷ J. Fang & G. Liu, *Relationship between Climatic Change and the Nomadic Southward Migrations in Eastern Asia during Historical Times*, 22 *CLIM. CHANGE* 166 (1992). See also D. Zhang et al., *Climate Change and War Frequency in Eastern China over the Last Millennium*, 35 *HUM. ECOL.* 405 (2007).

²⁸ G. Jenkins, *A Note on Climatic Cycles and the Rise of Chinggis Khan*, XVIII *CENT. ASIAT. J.* 217 (1974). See also M. Hvistendahl, *Roots of Empire*, 337 *SCIENCE* 1596 (2012); T. MAY, *THE MONGOL CONQUESTS IN WORLD HISTORY* 213 (2012).

²⁹ K. Trenberth & P. Jones, *Observations: Surface and Atmospheric Climate Change*, in *CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE* 235 (S. Solomon et al. eds., 2007).

³⁰ D. DAGVADORI, *MONGOLIA SECOND NATIONAL COMMUNICATION UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON*

evapotranspiration (the amount of water that moves from the ecosystem to the air) by an estimated 7-12%.³¹ Moreover, the precipitation patterns have changed; summer precipitations have decreased, whereas winter precipitations, increased.³² These changes have already resulted in more frequent and more severe droughts, which constitute a severe constraint on the productivity of Mongolia's grasslands.³³

Mongolia would sometimes experience a '*dzud*' - a local term referring to particularly difficult winter conditions for the livestock.³⁴ A *dzud* results from the combination of a summer drought (reducing the yield of the grassland and weakening the livestock) and specific winter conditions (extreme cold, snowfall covering the pasture, extreme wind, ice, or late spring).³⁵ Due to an increasing water stress on the ecosystem and the increase in winter precipitations, *dzud* has become more frequent and more harmful. Thus, even though the *dzud* is not a new phenomenon,³⁶ its severity is increasing. From 2000 to 2002 and again in 2010, Mongolian herders lost large proportions of their livestock- up to 26% of the livestock (Figure 3). This had tremendous social consequences: the 2010 *dzud*, e.g., left 75,000 herder families with less than half of their herd,³⁷ and the annual inflow of migrants to Ulaanbaatar increased by 40% (10,000 additional migrants).³⁸

CLIMATE CHANGE (2010).

³¹ J. Tsogtbaatar, *Deforestation and Reforestation of Degraded Forestland in Mongolia*, in Yamamura, Fujita & Maekawa, *supra* note 26, at 90.

³² MINISTRY OF ENVIRONMENT, NATURE AND TOURISM ("MENT"), MONGOLIA ASSESSMENT REPORT ON CLIMATE CHANGE 2009, 41 (2009); P. BATIMA ET AL., OBSERVED CLIMATE CHANGE IN MONGOLIA 20 (2005); Dagvadorj, *supra* note 30, at 99; Tsogtbaatar, *supra* note 31, at 90; N. Banzragch, J. Greene & C. Goulden, *Trends in Extreme Daily Precipitation and Temperature near Lake Hövsgöl, Mongolia*, 27 INT. J. CLIMATOL. 345 (2007); A. Marin, *Riders under Storms: Contributions of Nomadic Herders' Observations to Analysing Climate Change in Mongolia*, 20 GLOB. ENVIRON. CHANGE 162 (2010).

³³ T. Sternberg, D. Thomas & N. Middleton, *Drought Dynamics on the Mongolian Steppe 1970-2006*, 31 INT. J. CLIMATOL. 1028 (2011); Li Sheng-Gong et al., *Evapotranspiration from a Mongolian Steppe under Grazing and its Environmental Constraints*, 333 J. HYDROL. 141 (2007); Marin, *supra* note 32, at 166; MENT, *supra* note 32, at 61-65.

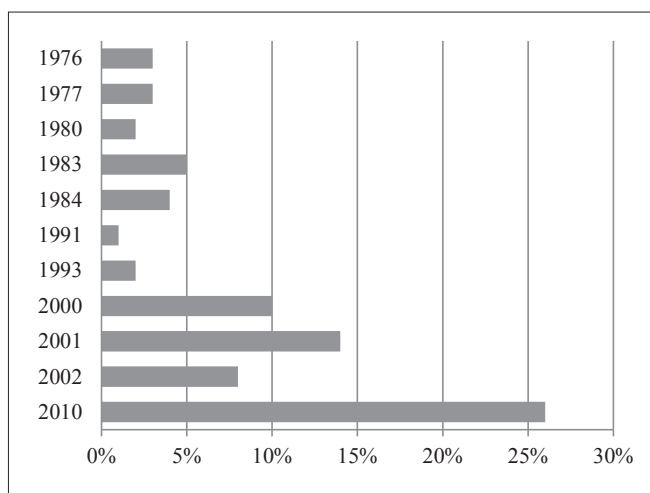
³⁴ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, MANAGING THE RISKS OF EXTREME EVENTS AND DISASTERS TO ADVANCE CLIMATE CHANGE ADAPTATION: A SPECIAL REPORT OF WORKING GROUPS I AND II OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [hereinafter IPCC] 500 (2012).

³⁵ Interview with Ravsal Oyun, Director, JERM LCC consultancy in Ulaanbaatar (Apr. 9, 2013). See also P. BATIMA, CLIMATE CHANGE VULNERABILITY AND ADAPTATION IN THE LIVESTOCK SECTOR OF MONGOLIA (2006).

³⁶ See A. Khazanov, *Characteristics Features of Nomadic Communities in Eurasian Steppes*, in THE NOMADIC ALTERNATIVE 121 (W. Weissleder ed., 1978); O. Farkas & B. Kempf, *Reinventing the 'Dzud': Livestock Famine and Twenty-First-Century Mongolia*, in CONTINUITY AND CHANGE IN CENTRAL AND INNER ASIA 127 (Michael Gervers & Wayne Schlepp eds., 2002); H. LANSDELL, RUSSIAN CENTRAL ASIA, INCLUDING KULDJA, BOKHARA, KHIVA AND MERV 318 (1885).

³⁷ T. Sternberg, *Unravelling Mongolia's Extreme Winter Disaster of 2010*, 14 NOMADIC PEOPLES 72 (2010).

³⁸ Statistics communicated personally by Ulaanbaatar's registration office (Apr. 32013). 33,387 newcomers from other provinces were registered in Ulaanbaatar in 2008; 28,337 (2009); 39,701 (2010); and 29,027 (2011).

Figure 3: Loss of livestock in years of national *dzud* since 1972³⁹

B. Common and Differentiated Responsibilities for Climate Migration

The climate narrative tends to exonerate the Mongolian government from most of the responsibility for the migration occurring within Mongolia because domestic greenhouse gas emissions are only a small part of the global anthropogenic climate forcing. It is, however, noteworthy that Mongolia's *per capita* rate of greenhouse gas emissions is, in accordance with a governmental report, "relatively high compared to other developing countries because of the cold continental climate, the use of fossil fuels for energy, and the low efficiency of fuel and energy."⁴⁰ If climate change were to be approached in terms of causal responsibility, this high *per capita* contribution (only partly explained by geographical conditions) would hinder Mongolian arguments for compensation because of Mongolia's own contributory negligence.⁴¹ But overall, the climate narrative attributes most of the responsibility for the impacts of climate change to the international community, in particular to high emitters such as the United States. Through the 1992 UN Framework Convention on Climate Change, States committed to cooperate in responding to climate change "on the basis

³⁹ *Supra* note 8.

⁴⁰ MENT, *supra* note 32, at 115. *See also* Dagvadorj, *supra* note 30, at 22.

⁴¹ D. Kysar, *What Climate Change Can Do about Tort Law*, 41 ENVIRON. L.20 (2011).

of equity and in accordance with their common but differentiated responsibilities and respective capabilities.⁴²

The climate regime comprises of two main areas of cooperation: mitigation and adaptation. On the one hand, States try to *mitigate* climate change, that is to say, to reduce the magnitude of climate change, in particular through the reduction of greenhouse gas emissions.⁴³ If Mongolian migrants are regarded as climate migrants, they may become the basis for an argument for more stringent international cooperation in order to maintain the ‘human face’ against the adverse consequences of climate change.⁴⁴ However, climate change mitigation is unlikely to lead to any immediate improvement of the situation of Mongolia’s migrants; it may only, at best, reduce the migration flow over the forthcoming decades.

On the other hand, States have also committed to cooperate in *adapting* to the adverse effects of climate change,⁴⁵ which is of more direct relevance to migration. The Cancun Agreements adopted in 2010 at the 16th Conference of the Parties to the UN Framework Convention on Climate Change (“COP16”) included migration within the enhanced action on adaptation,⁴⁶ thus confirming the eligibility of migration policies to international funding as climate adaptation. Further, in 2012, COP18 in Doha recognized migration as part of the “loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.”⁴⁷ Although the loss and damage mechanism adopted at COP19 remains embryonic,⁴⁸ climate migration is increasingly appearing to be an issue for which States most affected by climate change demand compensation from global greenhouse gas emitters.

⁴² United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 [hereinafter UNFCCC], art. 3(1). See also Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998), art. 10; Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, decision 1/CP.16 (2010), ¶ 1.

⁴³ UNFCCC art. 2 (“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”) This article may also be considered to suggest adaptation, as a way to reduce the dangerousness of inevitable climate change. [Emphasis added]

⁴⁴ By analogy, see F. Gemenne, *Tuvalu, un laboratoire du changement climatique ?*, 204 REV. TIERS MONDE 89 (2010).

⁴⁵ UNFCCC art. 4(4). See also Cancun Agreements, *supra* note 422, ¶ 11-35.[Emphasis added]

⁴⁶ Cancun Agreements, *supra* note 422, ¶ 14(f).

⁴⁷ Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, decision 3/CP.18 (2012), ¶ 7(a)(vi).

⁴⁸ Warsaw international mechanism for loss and damage associated with climate change impacts, decision 2/CP.19 (2013).

The climate narrative may be viewed as a fund-seeking strategy, as part of a blame game between the Mongolian government and the international community. There is a possibility that this narrative may contribute to exonerate Mongolia from its own responsibilities, as will be argued in next section, legitimizing inaction. In any case, although the climate regime addresses the question of burden sharing, it does not provide any substantive guidance or political vision as to the responses to internal migration. 'Climate migration' is not a legal concept,⁴⁹ considering that the refugee regime does not apply to climate migrants.⁵⁰ Even by analogy, it would not be of much relevance to internal migrants.⁵¹ In normative terms, although some scholars have pleaded for a specific legal regime to protect 'climate refugees',⁵² it would be arbitrary to circumscribe protection to individuals displaced by a specific cause (the impacts of climate change) rather than extending it to all individuals in a similar situation of vulnerability.⁵³ International human rights law, however, applies to migrants regardless of the cause of migration.⁵⁴

IV. The Political Narrative: Mongolia's Human Rights Obligations

The climate narrative focuses on the causal relation between climate change and migration. However, this is only a part of the story. A 'natural disaster' (such as a *dzud*) is never entirely natural; human activities are always a concurrent issue. A society's vulnerability to the physical impacts of climate change depends not

⁴⁹ See generally McAdam, *supra* note 22.

⁵⁰ See Convention relating to the Status of Refugees of 1951, art. 1(A)(2) (according to which a refugee is a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.") See also B. Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, 22 COLO. J. INT. ENVIRON. L & POL'Y 380-383 (2011).

⁵¹ Mayer, *supra* note 22.

⁵² F. Biermann & I. Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10 GLOB. ENVIRON. POLIT. 60 (2010). See also B. Docherty & T. Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVIRON. L. REV. 349 (2009); Crideau, *Draft Convention on the International Status of Environmentally-Displaced Persons*, 39 REV. DROIT UNIV. SHERBROOKE 451 (2008).

⁵³ A. BETTS, SURVIVAL MIGRATION: FAILED GOVERNANCE AND THE CRISIS OF DISPLACEMENT (2013). See also B. Mayer, *Environmental Migration in the Asia-Pacific Region: Could We Hang Out Sometime?* 3 ASIAN J. INT'L L. 101 (2012); Nicholson, *supra* note 17.

⁵⁴ F. CRÉPEAU, REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS (2012).

only on its physical exposure, but also on its social organization, notably its level of development and its policy responses to climate change.⁵⁵ This suggests an alternative narrative where Mongolian migrations are put in a political perspective rather than being considered inevitable.

A. Migration as a result of Domestic Development Policies

Since the privatization of the livestock in the early 1990s, Mongolia's agricultural sector has entered into an unprecedented era of de-regulation. It is dominated by the quest for individual profit, as if Mongolia was utilized for a life-size demonstration of the "Tragedy of the Commons."⁵⁶ Despite the repeated episodes of *dzud*, the size of the national livestock increased from about 22 million animals in 1990, to 43 millions in 2009. The composition of the livestock also changed dramatically⁵⁷ and the number of cashmere goats quadrupled (Figure 4). This reflects rational individual profit-maximizing strategies, but collectively irrational results. Mongolia's grassland cannot sustain 43 million animals comprising 20 million goats,⁵⁸ which have a much greater environmental impact than other animals.⁵⁹

⁵⁵ Social scientists use the concept of 'resilience' to indicate the capacity of a society to withstand the physical impacts of climate change. See generally IPCC, *supra* note 34, at 65.

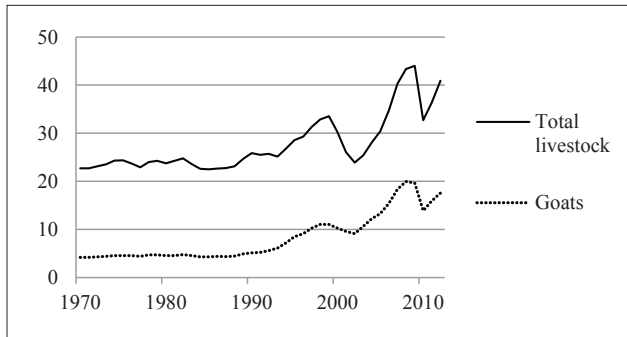
⁵⁶ The "Tragedy of the Commons" refers to the situation where, in the absence of regulation, individual herders increase their herd in an individually rational (profit-maximizing) way that leads to the exhaustion of the pasture. See G. Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).

⁵⁷ Traditionally, Mongolian herds are composed primarily of sheep and goats, with a few cattle, horses and camels. See generally C. Humphrey, *Pastoral Nomadism in Mongolia: The Role of Herdsmen's Cooperatives in the National Economy*, 9 DEV. & CHANGE 133 (1978).

⁵⁸ Interview with Ramon, *supra* note 21. See also N. Yamamura, *Ecosystem Networks as Social-Ecological Systems*, in Yamamura, Fujita & Maekawa, *supra* note 26, at 4; A. Maasri & J. Gelhaus, *The New Era of the Livestock Production in Mongolia: Consequences on Streams of the Great Lakes Depression*, 409 SCI. TOTAL ENVIRON. 4841 (2011); T. Sternberg, *Environmental Challenges in Mongolia's Dryland Pastoral Landscape*, 72 J. ARID ENVIRON. 1294 (2008); N. Fujita & N. Amartuvshin, *Distribution Patterns of Vegetation as a Fundamental Factor in Mongolian Ecosystems*, in Yamamura, Fujita & Maekawa, *supra* note 26, at 23.

⁵⁹ Ai Maekawa, *The Cash in Cashmere: Herders' Incentives and Strategies to Increase the Goat Population in Post-Socialist Mongolia*, in 233 ENVIRONMENTAL ISSUES UNDER CLIMATE AND SOCIAL CHANGES 4 (Norio Yamamura, Noboru Fujita & Ai Maekawa eds. 2013); N. Fujita, N. Amartuvshin & E. Ariunbold, *Vegetation Interactions for the Better Understanding of a Mongolian Ecosystem Network*, in Yamamura, Fujita & Maekawa, *supra* note 26, at 157.

Figure 4: Evolution of the Mongolian livestock from 1970 to 2012
(millions of animals)⁶⁰



In addition, the collapse of public services responding to the needs of herders since 1990 (mobile health brigade,⁶¹ boarding schools,⁶² or even law enforcement⁶³) and the increased transportation costs pushed many nomadic herders to settle either permanently or for half a year close to small urban centres.⁶⁴ An author estimates that one third of Mongolian herders have completely stopped moving, whereas another third has reduced the frequency or distance of their displacements.⁶⁵ Moreover, the national production of fodder, which may help herders face a difficult winter (especially when a *dzud* affects only a part of the territory) by the mutualisation of risk, also collapsed in the early 1990s. (Figure 5) In conjunction with the growth of the livestock, the increased proportion of goats, and the partial settlement of the herders have all contributed to severe overgrazing. This has increased the vulnerability of Mongolian herders to *dzud*, the loss of livestock, and the migration of destitute herders.

⁶⁰ World Bank, *supra* note 13.

⁶¹ T. Medvedeva, *Medical Services and Health Issues in Rural Areas of Inner Asia*, II in *CULTURE AND ENVIRONMENT IN INNER ASIA* 182 (C. Humphrey & D. Sneath eds. 1996).

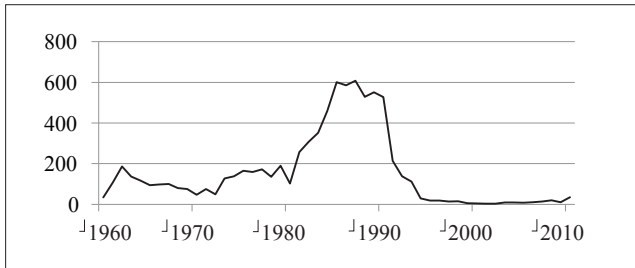
⁶² D. Sneath, *The Rural and the Urban in Pastoral Mongolia*, in *MONGOLS FROM COUNTRY TO CITY: FLOATING BOUNDARIES, PASTORALISM AND CITY LIFE IN THE MONGOL LANDS* 155 (O. Bruun & Li Narangoa eds., 2006); K. Griffin, *The Macroeconomics of Poverty*, in *A STRATEGY FOR POVERTY REDUCTION IN MONGOLIA* 1, 23 (K. Griffin ed., 2001).

⁶³ O. Bruun, *Nomadic Herders and the Urban Attraction*, in Bruun & Narangoa, *id.* at 174.

⁶⁴ Campi, *supra* note 14, at 24; T. Okayasu et al., *Spatially Heterogeneous Impacts on Rangeland after Social System Change in Mongolia*, 18 *LAND DEGRAD. DEV.* 555 (2007).

⁶⁵ D. Lkhagvadorj et al., *Pastoral Nomadism in the Forest-Steppe of the Mongolian Altai under a Changing Economy and a Warming Climate*, 88 *J. ARID ENVIRON.* 85 (2013).

Figure 5: Evolution of annual fodder crop production (1962-2012)
(thousands tonnes)⁶⁶



Therefore, the vulnerability of herders can largely be attributed to the choices made by the Mongolian government. By failing to organize the use of the pasture or to regulate the number of livestock, and by discontinuing public and support services indispensable to nomadic animal husbandry, Mongolian herders have been pushed to change their way of life. Yet, no alternative was proposed to the herders. Jobs disappeared when public services closed. The heavily subsidized light industry that allowed the development of small urban centres during the communist regime also suddenly collapsed in the “Age of Market.” Therefore, many destitute herders were unable to find a job in small urban centres, and, after several years without stable source of income, finally decide to move to Ulaanbaatar.⁶⁷ Thus, the “resolute urban prioritization” in the development policies of the Mongolian government has only benefited Ulaanbaatar,⁶⁸ while contributing to the economic and environmental degradation of the countryside.⁶⁹ Figure 6 shows how urban growth, that used to be divided between Ulaanbaatar and smaller urban centers during the communist era, has concentrated entirely in Ulaanbaatar since 1990. (Figure 6)

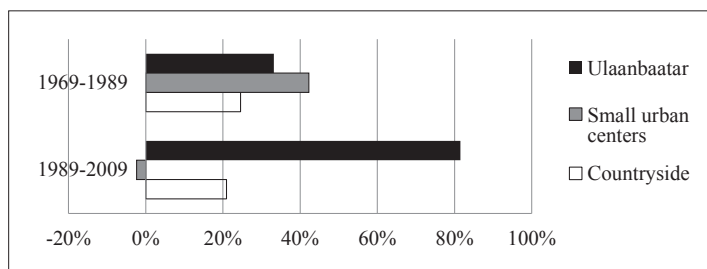
⁶⁶ World Bank, *supra* note 13.

⁶⁷ Interviews with *ger* district dwellers conducted in April 2013, in Ulaanbaatar.

⁶⁸ Bruun, *supra* note 63, at 162; Campi, *supra* note 14, at 50.

⁶⁹ J. Janzen, *Mobile Livestock-Keeping in Mongolia: Present Problems, Spatial Organization, Interactions between Mobile and Sedentary Population Groups and Perspectives for Pastoral Development*, in *PASTORALISTS AND THEIR NEIGHBORS IN ASIA AND AFRICA* 70 (K. Ikeya & E. Fratkin eds., 2005); J. Janzen & E. Bat-Ochir, *Rural-Urban Migration of Pastoral Nomads in Mongolia: Causes, Course and Consequences for the Country's Development*, in *NOMADIC CIVILIZATIONS IN CROSS-CULTURAL DIALOGUE* 310 (B. Enkhtuvshineds., 2011); Batima, *supra* note 35, at 62; Sneath, *supra* note 11, at 196.

Figure 6: Repartition of the population growth, during and after the democratic transition⁷⁰



There is nothing inherently wrong in a development policy that promotes urbanization, even at a rapid pace, if such a policy offers economic opportunities for the migrants.⁷¹ The mining boom has triggered most of the economic growth during the last two decades, and this sector now represents a third of Mongolia's economy.⁷² Yet, the extractive sector is little job-intensive; it does not accommodate destitute herders without re-training them. Moreover, the environmental impact of the extractive sector (in particular the transportation of ore on trucks through the steppe and the use of water) directly impacts many herders, in addition to the direct conflict for land use.⁷³ Mineral extraction has also had a negative economic impact on the herders as inflation and the valuation of the currency have made export-oriented cashmere production significantly less competitive.

B. Domestic Responsibilities for the Realization of Economic and Social Rights

Whereas the climate narrative emphasizes the responsibility of other States for inducing internal migration in Mongolia, the political narrative reveals the responsibility of the Mongolian government. Many in Mongolia believe that the social and economic guarantees were swapped in 1990 for civil and political

⁷⁰ World Bank, *supra* note 13.

⁷¹ One may also wish that such decisions be made through a substantially democratic process, but this question goes largely beyond the scope of this article.

⁷² See *supra* note 8; Y. Suzuki, *Conflict Between Mining Development and Nomadism in Mongolia*, in Yamamura, Fujita & Mackawa, *supra* note 26, at 271.

⁷³ Suzuki, *id.* Interview with Sukhgerel Dugersuren, Executive Director of Oyu Tolgoi Watch, in Ulaanbaatar (Apr. 8, 2013).

freedoms, whereas aspire to a regime that would protect all human rights.⁷⁴ The UN Special Rapporteur on Extreme Poverty and Human Rights recently reported that “the significant income inequalities affecting communities living in poverty.”⁷⁵ She noted that: “As the gap widens, poverty is becoming entrenched, not only in rural areas, but also in urban centres.”⁷⁶ The paradox is that Mongolia is now a lower-middle income country with a steady economic growth, which could allow it, through proper development and redistribution policies, to ensure a decent protection of social and economic rights to everyone. Internal migrants are not necessarily worse off than people living in the countryside, but their geographical proximity to the rich centre of Ulaanbaatar sheds light on the growing social gap.⁷⁷

Mongolia is a party to the International Covenant on Economic, Social and Cultural Rights (“ICESC”). Under the ICESC, it is obligated to “take steps ... with a view to achieving progressively the full realization” of economic, social and cultural rights.⁷⁸ It must also ensure that such rights are “exercised without discrimination of any kind, as to ... social origin, property,... or other status.”⁷⁹ These rights include “the enjoyment of just and favourable conditions of work,” to social security, to “an adequate standard of living... including adequate food, clothing and housing,” to “the enjoyment of the highest attainable standard of physical and mental health,” and the right to education,⁸⁰ among others.

Development policies that systematically advantage the rich urbanites and oversee the needy might be considered as discriminatory. Neither herders in the countryside, nor migrants in the *ger* districts have access to work, standard of living, health or education in the same conditions as the urbanites.⁸¹ It is no excuse for the government of Mongolia that the distinction is not intended: the Committee on Economic, Social and Cultural Rights defines ‘discrimination’ as a

⁷⁴ Interview with a diplomat, in Ulaanbaatar (Apr. 4, 2013).

⁷⁵ UN Human Rights Commission, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on her mission to Mongolia (3 to 7 December 2012)*, UN Doc. A/HRC/23/36/Add.2 (30, May 2013), ¶ 9.

⁷⁶ *Id.*

⁷⁷ *Id.* ¶ 83. (It notes that: “While poverty is more prevalent in rural and remote areas of Mongolia, inequality in living standards is more pronounced in urban areas.”)

⁷⁸ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. [hereinafter ICESCR] art. 2(1).

⁷⁹ *Id.* art. 2(2).

⁸⁰ *Id.* arts. 7, 9, 11(1), 12(1) & 13(1).

⁸¹ See UN Human Rights Commission, *supra* note 75, ¶¶ 43-46 (Herders and Nomads) & ¶¶ 52-55 (Internal migrants); *Report of the Special Rapporteur on the right to education, Vernor Muñoz Villalobos, on his mission to Mongolia (1 to 8 October 2009)*, UN Doc. A/HRC/14/25/Add.3 (May 17, 2010).

“differential treatment that is directly or indirectly based on the prohibited grounds of discriminations.”⁸² Accordingly, the ICESCR prohibits not only formal, but also substantive or *de facto* discriminations. States are also, when necessary, “under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.”⁸³ The same committee also interpreted the prohibition of discriminations as follows:

The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; *e.g.*, whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health care facilities.⁸⁴

Thus, international human rights law compels Mongolia to adopt such measures as necessary to realize the rights of all, but more particularly of its poor.

Currently, the Mongolian government largely relies on foreign actors- international organizations, non-governmental organizations - to support Mongolian herders and migrants.⁸⁵ These organizations, in particular small non-governmental organizations, tend to focus on the most visible projects with lower administration costs, mostly in the *ger* districts rather than in the countryside. As Mongolia transformed into a middle-income country, the amount of international assistance it received decreased during the last decade, even though the amount of aid was relatively high for a lower-middle income country.⁸⁶ The ICESCR recognizes the importance of “international assistance and co-operation, especially economic and technical.”⁸⁷ This does not absolve a State from its main responsibility for the realization of the rights of its population. Eventually, the political narrative suggests that the Mongolian government ought to either reconsider its development orientations, or at least take substantive measures to mitigate their social consequences, with the view of complying with its international obligations under international human rights law.

⁸² UN Committee on Economic, Social and Cultural Rights, General Comment 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, ¶ 2), U.N. Doc. E/C.12/GC/20 (2009), ¶ 7.

⁸³ *Id.* ¶¶ 8 & 9.

⁸⁴ *Id.* ¶ 34.

⁸⁵ Interview with a diplomat, in Ulaanbaatar (Apr. 4, 2013). An individual monthly allowance of 21,000 tögrög (USD12), that used to be distributed to needless citizens since 2010, was discontinued in 2012.

⁸⁶ *Supra* note 75, ¶ 90.

⁸⁷ ICESCR art. 2(1).

V. The Geopolitical Narrative: the Resource Curse and the Responsibilities of Mongolian Partners

This section suggests a third narrative, which relates to ideological changes undergone by Mongolia since the collapse of the USSR and Mongolia's new alliance with capitalist States, in particular South Korea, Japan and the United States.

A. International Influence on Mongolia's Politics

Mongolia is of great geopolitical interest to many countries. During the late communist period when tensions were escalating between the USSR and China, Mongolia became a strategic buffer zone between the two communist powers. While China accelerated its settlement program in Inner Mongolia, the USSR stationed up to 100,000 troops in Mongolia and invested massively to support the development of the country.⁸⁸ Different from older generations who studied in USSR or Eastern Europe, current political leaders hold degrees from some of South Korean, Japanese, American or Western European institutions. When the Soviet Union no longer had an influence on Mongolia, the western capital began manipulating Mongolia's national elite group in order to open the immense natural resources to foreign investors. Rapidly, a new generation of political leaders came back home with fresh capitalist ideas and useful Western relations. These new elites had a different conception of the world (*Weltanschauung*), often pushing toward an unbridled neoliberal ideology. The very concept of a 'shock therapy' says much about the sudden arrival of a revanchist generation of leaders.⁸⁹ This ideology turned half of the population - the urbanites - against the other half - the herders. Internal migrants, as herders knocking at the doors of Ulaanbaatar, symbolize the encounter of two worlds that share the same country.

Mongolian elites increasingly describe nomadism as a timeless and obsolete way of life that belongs to another age.⁹⁰ The indispensable interaction of nomads with some sedentary populations is overseen, and the new, widespread understanding

⁸⁸ Gilberg & Svantesson, *supra* note 6, at 14.

⁸⁹ On the social consequences of the 'shock therapy,' see E. SHAGDAR, NEO-LIBERAL 'SHOCK THERAPY' POLICY DURING THE MONGOLIAN ECONOMIC TRANSITION (2008).

⁹⁰ See, e.g., A. Abdualiyeu, *Abstract of Research: Impact of Globalization on the National Values of Central Asian States*, in HISTORY AND SOCIETY IN CENTRAL AND INNER ASIA 231 (M. Gervers, U. Bulag & G. Long eds., 2005); A. Marin, *Between Cash Cows and Golden Calves: Adaptations of Mongolian Pastoralism in the 'Age of the Market.'* 12 NOMADIC PEOPLES 75 (2008); P. SALZMAN, PASTORALISTS: EQUALITY, HIERARCHY, AND THE STATE 138 (2004).

that “herders can survive on their own because they have their animals”⁹¹ conveniently justifies the interruption of support services to herders. If nomads want to develop, many believe that they should first settle.⁹² Half a century ago, *e.g.*, an American expert in Mongolian history already predicted that:

If nowadays the Mongols are to integrate themselves in a world whose increasingly uniform culture demands factories, farms and cities, then nomadism will have to disappear. If the Mongols were to stand aside from this process they would finish up as curiosities, survivals in a reservation.⁹³

Only a few ‘romantic’ foreign observers continue to argue that it only belongs to the Mongols to write their history, and that a modern, ‘smarter nomadism’ could possibly be imagined.⁹⁴ By contrast, the dominant political vision sees a turn toward intensive livestock production as unavoidable: the sooner the better. Herders themselves were persuaded that their traditional way of life belongs to the past,⁹⁵ and, in the context of the “continued denigration of rural life”⁹⁶ by the elites, it is undeniable that some of them - especially the youngsters - are attracted by the modern (urban) way of life.⁹⁷

Such an economic transformation is bound to have tremendous social consequences in a country where agriculture still employs a third of the total workforce.⁹⁸ The communist regime, after the failure and the renouncement to a top-down collectivisation of the livestock in the 1930s, initiated a progressive ‘modernisation’ of the country in the 1950s. It was a step-by-step collectivisation of the livestock accompanied by support programs for the industrialization and urbanization of the country. This reform strived to ensure that the economic system would make a place for everyone, at any time, while investing massively in education. By contrast, the “Age of the Market” has proclaimed the end of nomadism without making any plans for the conversion of the herders, refusing to see the daunting challenge of redeploying hundreds of thousands of herders in a modern economy. An influential Mongolian intellectual maintained that “people are waiting for the

⁹¹ Interview with Sumyaa, *supra* note 19.

⁹² Salzman, *supra* note 90, at 33.

⁹³ C. BAWDEN, *THE MODERN HISTORY OF MONGOLIA* 387 (1968).

⁹⁴ Campi, *supra* note 14, at 50.

⁹⁵ Interviews with herders in Dungovi, Mongolia (Apr. 13-14, 2013).

⁹⁶ Bruun, *supra* note 63, at 177.

⁹⁷ Campi, *supra* note 14, at 49.

⁹⁸ *Supra* note 75, ¶ 43.

mining wealth to somehow spill over to them.”⁹⁹ Similarly, a senior government official explained to me that people were poor because “working represents too much burden for them.”¹⁰⁰ This official argued that the Japanese and the Koreans are hard-working because they are descendants of rice-growers, whereas the Mongols are accordingly accustomed only to short periods of work during the summer, as, for most of the year, “animals grow themselves.” For migrants, adapting to the new life in the city is difficult: “if you lived like that for thousands of years, 20 years [in Ulaanbaatar] will not change it.”¹⁰¹ Such disregard, quite common among Mongolian elites,¹⁰² is used to justify a brutal policy of *laissez faire*. This ignores the growing social inequalities and the real difficulties faced by herders through a rapid economic change, instead focusing on the sole extractive industry for the exclusive benefit of the national elite supported by foreign investors.

Thus, the growing economic disparities between urbanites and herders/migrants are largely justified by the widening cultural gap resulting from the rejection of the herders/migrants by the dominant urbanites. Political reforms since 1990 have paid little attention to the specific context of Mongolia. The inability of the Mongolian lawmakers to adopt any statutory provisions to regulate the use of the pasture during the last two decades results from the flawed “common-sense presuppositions that fail to take into account the specificities of Mongolian cultural and material conditions.”¹⁰³ While private property might generally be an adequate response to the Tragedy of the Commons, it is an inadequate response to the needs of mobility of Mongolian herders.

B. The Responsibility of Mongolia’s Trade and Development Partners

With influence and control comes responsibility. A State may be held responsible if it “aids or assists” or “directs or controls” another State in the commission of a wrongful act.¹⁰⁴ It is equally recognized that the conduct of a person or a group of

⁹⁹ S. Luvsandenden, cited in D. Levin, *Wealth Rises in Mongolia, as Does Worry*, N. Y. TIMES, July 15, 2012, available at <http://www.nytimes.com/2012/07/16/world/asia/in-mongolias-boom-town-hope-and-fear.html> (last visited on Apr. 6, 2014).

¹⁰⁰ Interview with a senior government official (Apr. 15, 2013).

¹⁰¹ *Id.*

¹⁰² *Supra* note 75, ¶ 68. (denouncing the “[u]nverified assumptions suggesting that universal grants create disincentives to work or that people living in poverty do not invest the money wisely [that] seem to underpin public policies.”)

¹⁰³ Sneath, *supra* note 11, at 196.

¹⁰⁴ See Draft Articles on Responsibility of States for Internationally Wrongful Act [hereinafter Draft Articles], UN Doc. A/56/10 (2001), arts. 16 & 17; J. CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART 395-434 (2013).

persons can be attributed to a State “if the person or group of persons is in fact acting on the instruction of, or under the direction or control of, that State.”¹⁰⁵ Under some domestic laws such as the US Aliens Tort Statute,¹⁰⁶ individuals and corporations may be held liable for inflicting harms to foreign stakeholders. Adding to an extensive debate on the social responsibility of investors, there has been a growing social demand for accountability and responsibility in international development agencies (either multilateral institutions such as the World Bank, or bilateral ones such as Japan International Cooperation Agency), leading to the adoption of specific norms of conducts, accountability mechanisms, and a few cases before courts.¹⁰⁷

Between an angelic representation of official development agency and a systematic rejection of aid as harmful,¹⁰⁸ the demand for accountability and responsibility of development agencies suggests a duty of diligence. Mongolia's international partners are not entirely responsible for the plight of Mongolian herders. However, big foreign investors interested in the mineral resources of Mongolia but disinterested in the genuine development of the country are a source of worry for the rights of the poor. Although substantive mitigation measures are attached to a few mega-projects such as Oyu Tolgoi,¹⁰⁹ small and medium-size investments often neglect their environmental and social impact.¹¹⁰ Many mining companies fail to support the local economy, hiring mostly foreign workers despite domestic unemployment and important food from abroad despite local production of meat.

It is important that the international partners of Mongolia remain fully aware of the responsibilities due to their influence on Mongolia's government. A State is never obligated to support any specific project in any specific State,¹¹¹ although

¹⁰⁵ Draft Articles art. 8. *See also* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 86 (June 27); Prosecutor v. Duško Tadić, ICTY, Case IT-94-1-A, ¶ 117 (Nov. 1999).

¹⁰⁶ 28 U.S. Code § 1350 (“The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”).

¹⁰⁷ *See generally* B. Mayer, *Development Is No Excuse for Human Rights Abuses: Framing the Responsibility of International Development Agencies*, TRADE, L. & DEV. (forthcoming). *See* the judgment of Tokyo's High Court on December 26, 2012 (dismissing the claims of the Support Action Centre for Kotopanjang Dam victims against Japan International Cooperation Agency and three other Japanese institutions that had funded a development project in Indonesia, allegedly without sufficient social mitigation measures). *See* SUPPORT ACTION CENTRE FOR KOTOPANJANG DAM VICTIMS, STATEMENT OF PROTESTS: WE STRONGLY DENOUNCE THE TOKYO HIGH COURT'S UNFAIR JUDGMENT (Jan. 10, 2013).

¹⁰⁸ D. MOYO, *DEAD AID: WHY AID IS NOT WORKING AND HOW THERE IS A BETTER WAY FOR AFRICA* (2009).

¹⁰⁹ Oyu Tolgoi, partly controlled by Rio Tinto, is the largest mining project in Mongolia and one of the largest exploitations of gold and copper. The works started in 2010, and the exportations in 2013.

¹¹⁰ Interview with Dugersuren, *supra* note 73.

¹¹¹ A. Khalfan, *Division of Responsibility amongst States*, in *GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INTERNATIONAL LAW* 322 (M. Langford et al. eds., 2013).

developed States are at least under an obligation to provide some international assistance.¹¹² When a State decides to provide official development assistance or to invest abroad, however, this creates some obligations in promoting a development that benefits the poor. It is widely considered that a State acting abroad must: (1) avoid causing harm; (2) conduct proper impact assessment; (3) refrain from direct or indirect interference with the economic, social and cultural rights of persons abroad; and (4) ensure non-State actors under its regulation to cause such harm or interference.¹¹³ It would not necessarily be unreasonable to argue that, by supporting the mining boom, international investors would increase inflation and the valuation of the currency, thus contributing to the pauperisation of the herders, who do not otherwise benefit from the economic development of Mongolia.

On the other hand, and perhaps more importantly, a State that decides to provide official development assistance must ensure that this assistance is provided in a non-discriminatory way.¹¹⁴ This State must in particular “prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups.”¹¹⁵ While Mongolia receives large amounts of official development assistance and aid to development, most of the funds focus on mineral exploitation (among others through the development of infrastructure) instead of poverty eradication. By furthering extraction and ignoring human development, international aid magnifies the social divide between urbanites and herders/migrants, pushing Mongolia into a resource curse where its politicians are by all means induced by its foreign partners to make decisions that hinder long-term human development.

VI. Conclusion

This article has analysed three political narratives on the internal migration occurring in Mongolia from an international legal perspective. Each perspective has identified a different ‘cause’ of migration (climate change, political orientations, or geopolitical context). Each also suggests a different set of responsibilities on different

¹¹² P. Alston & G. Quinn, *The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 191 (1987). [Emphasis added]

¹¹³ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (Feb. 29, 2011), princs. 13, 14, 20, 21 & 24.

¹¹⁴ ICESC Pt. 2(2). *See also supra* note 111.

¹¹⁵ Maastricht Principles, *supra* note 113, princ. 32(a).

actors, (greenhouse gas emitters, the government of Mongolia, and the commercial partners of Mongolia). They relate to a different regime of international law (climate law, human rights law, the growing norm of State responsibility), as well.

When migration is attributed to climate change, in accordance to the principle of “common but differentiated responsibilities,” it is upon the developed States to support adaptation policies in Mongolia. When migration is attributed to political orientations, the responsibility of the Mongolian government comes to the fore. When, finally, migration is attributed to an unbalanced development favoured by massive foreign investments and international development assistance that have constantly failed to benefit the poor, the responsibility of Mongolia's foreign partners is questioned.

These different narratives are neither incompatible, nor necessarily contradictory. They should rather be conceived as complementary as representing different aspects of a complex social phenomenon (migration) triggered by a cluster of causes. Instead of rejecting the responsibility on one another, the actors involved need urgently to adopt measures to improve the situation of Mongolia's destitute migrants. There will be no sustainable development in Mongolia as long as economic growth only benefits the richer part of the population.

