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**CHANGING
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Changing Property Rights Systems in Western Mongolia:

Private Herd Ownership and Communal Land Tenure in Bargaining Perspective

Introduction¹

The subject of this paper are the changes in property rights systems in livestock and pastures in Western Mongolia in the post-socialist period. The aim is not to point at the contradiction of private herd ownership and communal grazing, or the superiority of private property rights. The intent is rather to look for necessary criteria for the effectiveness of different property rights systems.

The approach is a new institutionalist one, which defines property rights as one kind of institutions, i.e. formal and informal rules structuring social interaction, in this case access to and rights of usage of different kinds of resources (cf. North 1990; Eggertsson 1990). In some cases, formal and informal institutions may substitute each other, while in other cases they may coexist and eventually obstruct each other. The important difference between both kinds of institutions is their respective way of enforcement which is backed by a neutral third party, like the state, in the case of formal institutions. The concept of property rights includes not only ownership structures, but the entire rights and duties connected with the property and usage of a specific resource. So, for example, taxes, restrictions on sales, or the danger of appropriation by the state or other actors are all part of a specific property rights system. Clearly defined property rights are thought to be the main prerequisite for an efficient allocation of resources and thus the relative success of different economies, because they result in legal security and offer incentives for investment and long-term strategies.

New institutionalists see property rights, as other institutions, as a product of repeated interaction among individual actors driven by their respective utility function. This means on the one hand, that they reflect the power and resource asymmetries inherent

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in the respective society at any given moment, and on the other hand, since every institution means a restriction of alternatives available, that they are constantly under pressure of change because self-interested actors have an incentive to change institutions in a way as to better serve their individual utility than the present ones. The resulting new institutions must by no means be more efficient than the old ones, since every change again reflects the relative bargaining power of the different actors involved. Rational actors do not strive for institutions which increase social benefit but which advantage themselves, often at the expense of others (cf. Knight 1992).

The main function of institutions for the individual actor is the establishing of expectations about the future actions of other actors. This is one reason why the violation of institutions reduces their benefits not only for the persons involved but for all others who come to know about the violation. This means, that most essential for the functioning of any property rights is their credibility which in turn depends on the probability of a sanction in case of disregard. Especially the change of informal institutions often takes place very slowly and gradually, because it involves the establishing of new expectations regarding the strategies of other actors and thus introduce uncertainty to social interaction. In that way, informal rules may often slow down or even sabotage changes of formal institutions, be they more or less efficient than the existing ones (cf. Knight 1992; Ensminger 1992).

In a detailed study, Ostrom (1990) describes the different prerequisites necessary for creating successful communal property regimes. Above all, she argues, these have to be self-organised, i.e. have to result from bargaining among the affected actors, and not be imposed by a third-party. This self-organised character enables the emergence of mutual trust and a confidence that the institution will be respected by others and therefore it will pay to respect it as well. In this paper it will be argued, that the advantage of self-organised institutions may apply for the establishment of a private property rights system as well, because it results in high degrees of legitimacy and credibility, which may be more important for the effectiveness of a property rights system than criteria of economic efficiency or social justice.

The Setting

In the following I will draw mainly on my findings in one district (*sum*) in Western Mongolia where I did field research between 1991 and 1996 (cf. map 1). The Xovd-

sum is situated in the north-western part of the *aymag* of the same name, and in close vicinity to the centre of the *aymag* which also bears this name. The western parts belong to the Mongolian Altay and reach an altitude of 3.800 metres, whereas the eastern parts belong to the so-called Depression of the Great Lakes and consist of desert steppes with an altitude of between 1.100 and 1.500 metres. The climate is dry, with annual precipitation being less than 150 mm for the plains and about 300 mm for the upper parts of the mountains. Precipitation is concentrated in summer, so winters are free of snow except for the mountains. Winters are cold, average temperatures being within a range of -24 to -28 degrees and characterised by inversions, which means they are lower in the plains than in the mountains. Since spring is cold and windy, plant growth does not start until late May or even June. In summer, average temperatures are within a range of 10-20 degrees.

The predominant ethnic group in the *sum* are the Kazaks, who make up almost 95 percent of the *sum's* population, which numbered 4.200 individuals in 1995. In addition, there is a small group of the west-Mongolian Ööld and a number of Uygur families, although the latter are usually looked upon as part of the Kazak community. Like in other Kazak dominated areas within Mongolia, the population density of 1,5 per square km is higher than in Mongolian-dominated *sum* due to higher Kazak birth-rates in the last decades. The Kazaks came to the area starting in the 1930s, partly from Xinjiang and partly from the neighbouring province of Bayan-Ölgiy, where the bulk of the Kazaks of Mongolia live. Until that time the population consisted mainly of Mongolian herders and Uygur farmers, most of whom left the *sum* in the end-fifties, in connection with collectivisation.

In the early nineties the *sum* was affected by new waves of migration. Between 1990 and 1994 approximately one-third of the Kazaks left Mongolia for the newly independent Kazakstan (cf. table 1). The out-migration was particularly pronounced among agriculturalists and the inhabitants of the *sum* centre (bag 4 and 5 in the table) while herders (bag 1 to 3) left only in small numbers. In 1994 the emigration stopped, and about 100 families have already returned to the Xovd-*sum*. In the meantime there was an immigration of Mongols from the *aymag* centre and other *sum* into the Xovd-*sum*. Most of them are Ööld who were born in Xovd-*sum* and have returned after retirement or due to unemployment. Apart from 50 Mongol families officially registered as inhabitants of the *sum*, there are approximately another 100 Mongol families settling in Xovd-*sum* all year round. These frequent migrations, which have

changed the ethnic composition of the *sum* several times, of course, have important consequences for the economic and social relations within the *sum* (cf. Finke 1995).

Table 1. Number of families in Xovd-*sum* 1991-1995

bag	1991	1992	1993	1994	1995	1991-1993	1993-1995
1	183	113	108	130	172	-41,0%	59,3%
2	205	177	146	161	179	-28,8%	22,6%
3	173	169	164	171	197	-5,2%	20,1%
4	193	112	114	125	138	-40,9%	21,1%
5	333	209	191	203	174	-42,6%	-8,9%
total	1087	780	723	790	860	-33,5%	18,9%

The *sum*'s economy is based on pastoralism. The herds consist of the same five animal species kept throughout Mongolia: sheep, goats, cattle (including yaks), horses, and camels. Farming is of secondary importance, although the *sum* comprises some of the major agricultural areas in the whole of western Mongolia. Other economic activities are carried out only as supplementary activities. In socialist times the *sum* territorially corresponded to one collective (*negdel*) which was divided into brigades; today the latter are called *bag* and function as sub-units of the *sum*. The Xovd-*sum* consists of five *bag*; three are made up of the former *negdel* herders, one of agriculturalists, and one of the inhabitants of the *sum* centre. Today membership in a specific *bag* is not very strict, since along with privatisation the difference between herding and other economic activities has become vague. Many herders grow potatoes and vegetables as well, while some members of the fourth (farmers) and fifth *bag* (inhabitants of the *sum* centre) today subsist mainly on livestock with some of them nomadising all year round with their herds.

Livestock numbers decreased in the early nineties due to the large emigration to Kazakhstan but almost recovered in the following years because herders now try to build up their herds (cf. table 2). Also the herd composition by species changed in favour of goats since cashmere became the main source of income in the rural areas of Mongolia (cf. table 3).

Table 2. Number of livestock in Xovd-sum 1990-1995

	1990	1991	1992	1993	1994	1995
camels	1.644	1.299	906	864	983	1.080
horses	7.928	6.857	4.647	4.859	5.409	6.227
cattle	8.766	7.982	5.571	5.599	6.619	7.835
sheep	54.661	47.847	32.972	34.670	36.288	40.974
goats	51.765	48.429	34.928	38.884	44.874	56.045
total	124.764	112.414	79.024	84.576	94.173	112.161

Table 3. Herd composition by species in Xovd-sum (in per cent)

	1990	1991	1992	1993	1994	1995
camels	1,3	1,2	1,1	1,0	1,0	1,0
horses	6,4	6,1	5,9	5,7	5,7	5,6
cattle	7,0	7,1	7,0	6,6	7,0	7,0
sheep	43,8	42,6	41,7	40,8	38,5	36,5
goats	41,5	43,1	44,2	45,8	47,7	50,0

Property Rights in Livestock

In the following I will describe the changes in the property rights system in livestock. Since the final collectivisation in the end-fifties, all herders in Mongolia have been members of particular *negdel*. The herds were distributed among the herders by species as well as by age and sex of the animals. Every herder had to deliver a fixed amount of newborns and animal products to the *negdel* every year. In return he was paid a monthly salary according to the number of animals herded and the amount of products delivered, and was provided with food-stuff, clothing, and the like (cf. Goldstein & Beall 1994). In terms of property rights analysis this meant little incentives for productivity and low risk for the individual herder whose lack of ownership was contrasted with secure purchase of animal products and reliable supply of other goods.

In 1991 privatisation was started in the pastoral sector in spite of widespread disapproval among the rural population (cf. Schmidt 1995). The chosen modus was one

of free mass privatisation per voucher, as in some Eastern European countries as well. The total value of the country's assets was calculated and divided by the number of citizens. During a first phase 30 percent were to be distributed, while the rest would be left for allocation until the second phase which was to be carried through in 1992-1993. The actual mode of distribution was left to the device of the individual *negdel*. As a consequence, it differed within the country and was always the result of extensive bargaining between different groups (cf. Potkanski 1993; Müller 1995).

The Xovd-*sum* is a typical example of a *sum* with a low per-capita number of livestock. As in similar *sum*, it was decided to distribute 70 percent of the total herds during the first privatisation phase, because the recommended 30 percent would have left too many families with a number of animals not sufficient to build up a herd of their own. The remaining 30 percent were then distributed during the second phase in spring of 1993. Another feature of the distribution modus, which was similar to other *sum* with few livestock, was the exclusion of state-employees like teacher, physicians and part of the functionaries who had not been members of the *negdel*. The relative bargaining power of different groups of actors during the privatisation was generally in strong disfavour of state-employees, since they were less in number, and legally the animals were in possession of the *negdel*, not the Mongolian state. In *sum* with larger per-capita numbers of livestock, state-employees could successfully claim that they had made major contributions to the well-being of the *sum* population, and that they would be left without a sufficient subsistence basis if they were excluded from the distribution of livestock (cf. Potkanski 1993; Schmidt 1995; Müller 1995). In *sum* with low per-capita numbers like in the Xovd-*sum* the economic situation did not promote such concessions on part of the *negdel* members.

Among the *negdel* members the former occupation did not make any difference. Therefore, herders, farmers, drivers, or functionaries were considered by the same ratio. The amount of livestock each family received was determined first by the number of years its members had been working for the *negdel*, and second by family size. The number of animals delivered during collectivisation was no major criterion for the apportioned number. This is true for the whole of Mongolia and may be attributed to the weak bargaining power of the former rich herders due to ideological and numerical reasons.

One object of criticism within the Xovd-*sum* was the way livestock was actually allocated. Every family was instructed to acquire their entitled animals of the different

species from specific *negdel* herders. This created opportunities for cheating on the part of these herders, who claimed the *negdel* animals had perished while retaining them for themselves. Most affected by this attitude were former farmers and large-stock herders, because cheating was easier with non-branded small-stock. Among the latter were most of the *sum*'s Mongol herders, so that dissatisfaction was particularly pronounced among them. Another source of discrimination was the allotment of yaks to farmers, since these could not survive in the warm climate of the lowlands and had to be slaughtered or sold cheap.

What is lamented by the majority of people is the dissolution of the *negdel*. The main problem today are the difficulties in marketisation. The end of the redistributive socialist system of compulsory delivery and supply resulted in high transaction costs for the individual herder, which caused a general retreat to subsistence production and local barter exchange. It is not only the difficulty and uncertainty in finding trading partners, but also the unreliability of prices, which are criticised.

In spite of the deficiencies during the distribution process, which systematically disfavoured small groups with little bargaining power, the new property rights system is generally well accepted. This also applies to the majority of the Mongols and the most disadvantaged state-employees. In my opinion, this can be attributed rather to the self-induced character of the new institution than to a general preference for private property rights. In some other *sum* in Mongolia, there still exist systems of collective ownership and marketisation of livestock, and herders there do fairly good. In the *Xovd-sum*, on the contrary, as well as in most other *sum* in Mongolia, a private property rights system with a high degree of credibility has been established. People do not fear any renewed appropriation by the state, and the acceptance of private ownership is high even with those disfavoured by the distribution modus, as might be concluded from the low occurrence of animal theft.

Property Rights in Pastures

In contrast to the privatisation of the herds, there has been no fundamental change in the allocation of pastures, as the other crucial resource in pastoral economy. Although according to the classic property rights approach private property rights are thought of as being economically most efficient, this makes very little sense in the case of the extremely arid and highly variable ecological setting of Western Mongolia. This is due

not only to the high costs for enforcement in these thinly populated areas, but also to the need of access to yearly changing and mutually overlapping territories.

Pastoralism in Western Mongolia is still based on free-range grazing throughout the year. The overall conditions for animal husbandry in the *Xovd-sum* concerning pastures and the availability of water are considered medium-quality compared to other parts of the country. There are degraded pastures next to *aymag* and *sum* centres, but in general it is claimed that the *sum* territory might sustain still more herders, although livestock numbers are higher than in other *sum* of the region because of the relatively high population density.

By law all land in Mongolia is state property. In socialist times the territory of one *sum* was allotted to the corresponding *negdel* which distributed the pasture areas between its herding brigades to graze its animals. *Negdel* members, herders and agriculturalists as well as city-dwellers had usufruct to graze their own animals as well without paying any rent (Lungwitz & Harcke 1988: 224f.). It was again left to the individual *negdel* to organise internal distribution within its allocated territory and therefore migratory cycles as well as land tenure arrangements differ widely within Mongolia (cf. Mearns 1993a, 1993b).

In the following I will confine myself to two issues concerning pasture usage in the *Xovd-sum*. The first is the delimitation of grazing territories. In general, herders are supposed to restrict their seasonal movements to the territory of their respective *bag*. Therefore, these were designed in order to include all seasonal pastures necessary for the yearly cycle and have access to the mountain pastures of the Mongolian Altay as well as to the lowland desert steppes in the eastern part of the *sum* (cf. map 1). Nevertheless, there are regional shortages of seasonal pastures within the *Xovd-sum* as well as in neighbouring *sum* which makes border crossing for many herders a necessity. In the past these were arranged by the chiefs of the involved *negdel* and in most cases were based on reciprocity. Today many herders are reluctant to ask for permission, and since there is little authority at the moment, abuses are seldom punished.

Within the *Xovd-sum* the borders of *bag* are crossed quite regularly and most herders do not see any problems with that. The problem in this context is, however, that the fourth and fifth *bag*, i.e. the farmers and the inhabitants of the *sum* centre, have no territory of their own, because the *negdel* divided its pasture areas among the three herding brigades. This was no problem in the past when the former had only small herds which were tended by related herders. Now that they obtained own livestock

during privatisation they are in need of a territory of their own. The same is true for the inhabitants of the near-by *aymag*-centre, i.e. the city of Xovd, to which also most of the „new nomads“, the former city-dwellers who nomadise on territory of the *Xovd-sum*, might be counted. The crossing of borders with neighbouring *sum* is also frequent in both directions, although this is a matter of some dispute. For example, almost half of the herders of the first *bag* regularly move to the *Buyant-sum* in autumn. In the last years the administration of the latter *sum* threatened to impose heavy fines on these herders, although at the same time many herders from *Buyant-sum* use the territory of the first *bag* as summer pastures. The affected herders insist on customary law since they have been used to cross these borders for years.

The second matter of dispute is the allocation of pastures within the *sum*, or *bag*, respectively. For an understanding of this it is necessary to briefly sketch the basic patterns of seasonal movement in the *Xovd-sum* which are typical for the whole of Western Mongolia. The most widespread pattern is that of the former sheep and goat herders of the *negdel*. They spend winter in the lower parts of the mountains which give shelter and due to inversions are warmer than the plains. In spring they move down to the slopes while in summer they use the high mountain meadows. Autumn pastures are located in the lowlands (cf. figure 1). The second type is represented by the former cattle, horse, and camel herders. During three seasons they settle in the plains and go up the mountains only during summer. The third type is that of the specialised yak herders who stay up in the mountains all year round.

These different types were established by the *negdel*, who allocated respective grazing areas for every season. Within these areas the choice of camp sites and pastures is generally free, although winter and spring quarters which are equipped with shelters and, eventually, permanent buildings are considered private property of individual families or camps. But even in this case the surrounding pastures are accessible to any herder camping in a given area in a particular season. The only restriction on this general freedom of pasture usage is the invulnerability of pastures adjacent to winter and spring quarters in other seasons (when the occupant is away). This is necessary since both are, as discussed above, often located in immediate neighbourhood to summer and autumn camp sites and serve as intermediate stay on the passage to other seasonal pastures. Therefore, those pasture areas which are used during the most crucial period of the year are also most exposed to the danger of misuse.

In the last years abuse of winter and spring pastures has increased considerably for several reasons. One is, that herders try to diminish distance as well as frequency of migration in order to save transport costs and to stay as close as possibly to urban centres for infrastructure and market opportunities. So, for example, many herders today restrict summer moves to the lower parts of the mountains, which are nearer to the *sum* centre. This generates protest on part of those herders who have their winter camp sites in this area. Another issue is, that many herders try to extend their intermediate stay in winter and spring areas of other herders in order to spare other grazing areas. The most serious source of trespassing, however, is the need for a general reorganisation of migratory cycles because of the return to mixed-species herds. This is especially a problem for the former large-stock herders, among them most of the Mongol herders of the *sum*. Wintering in the plains is favourable for cattle and camels, it is also reasonable for horses and goats, but sheep suffer from cold winds and low pasture quality. In order to find suitable pastures for small-stock, camps may split up for one or two seasons, some members or individual shepherds moving with sheep and eventually goats to the mountains, the others staying in the plains. Since the designated winter pastures in the mountains are very far from the lowland where the mother camp is situated, many of these remain along the mountain slopes, i.e. the spring areas of other herders.

The question here, again, is whether customary rules have validity any more. This is denied by some Mongols, who claim they have been imposed by a Kazak-dominated *negdel* and deny any legal basis for prohibiting the use of winter and spring areas in other seasons. The point is, that the areas where nearly all the Mongols spend winter and spring, i.e. the plains, are of no interest in other seasons, and hence they do not benefit from the maintenance of this rule. At the same time they have no suitable winter pastures for their small-stock acquired during privatisation. However, disregard of this rule happens among the Kazaks as well.

Of course, this denial is most emphasised by the newcomers among the Mongols, who do not have winter and spring sites worth of protection. Since most of them originate from the *Xovd-sum* they demand free access to pastures while disregarding land rights of the Kazaks. In their view, the *sum*'s administration, which is made up exclusively of Kazaks, has no legitimacy to sanction them. This low degree of legitimacy of authorities is a general problem for the enforcement of rules. In the autumn of 1996 the newly elected administration tried to put more effort into an effective enforcement of

pasture regulation. Several camps, among them a couple of Mongol camps, were by force removed from spring pasture areas and punished with heavy fines. At this point it is interesting to note, that the new *sum* administration consists predominantly of rich and well-off men, either relatives of rich herders or officials with large herds of their own. These have a stronger interest in the enforcement of the existing property rights regime than poor herders who have little incentive to move frequently and protect winter and spring sites.

This scenario could be interpreted as a transition from a common property regime, i.e. collectively owned and managed resources, to one of open access where no one can be denied access. From a property rights perspective this could be explained by a change in the cost-benefit relation of land value vs. territorial behaviour. Of course, this puts heavy pressure on the pasture areas and might eventually end up in a „Tragedy of the Commons“: although everybody would benefit from a corporate solution, the individual cost-benefit calculation will inevitably lead to increasing degradation. Herders are stuck in a collective action problem. From the individual viewpoint there is no incentive for a sustainable usage of pastures as long as it is not clear that anybody else will do.

Conclusion

But my main concern here is not free-riding and other related problems, but the legitimacy and hence the adherence and effectiveness of property rights as institutions. The privatisation by the mass and free distribution of vouchers, as has happened in Mongolia, is suspected to be inefficient by many economists because it creates no capital and little incentive for investing. Furthermore, the delegation of the actual procedure to the individual *negdel* enabled local power asymmetries to influence the outcome of this bargaining process to a significant extent as was demonstrated above. Nevertheless, the modus was quite successful because it was perceived as a self-organised institutional change and created a high degree of legitimacy and credibility, since the process is hardly reversible.

Both legitimacy and credibility are lacking concerning the property rights regime in pastures. The problem with land allocation is, that the omnipresent formal institution of the *negdel* made traditional informal arrangements unnecessary in socialist times. Today the existing property rights system is not conceived as self-established but as one superimposed by the former socialist organisation. At the same time the low degree of

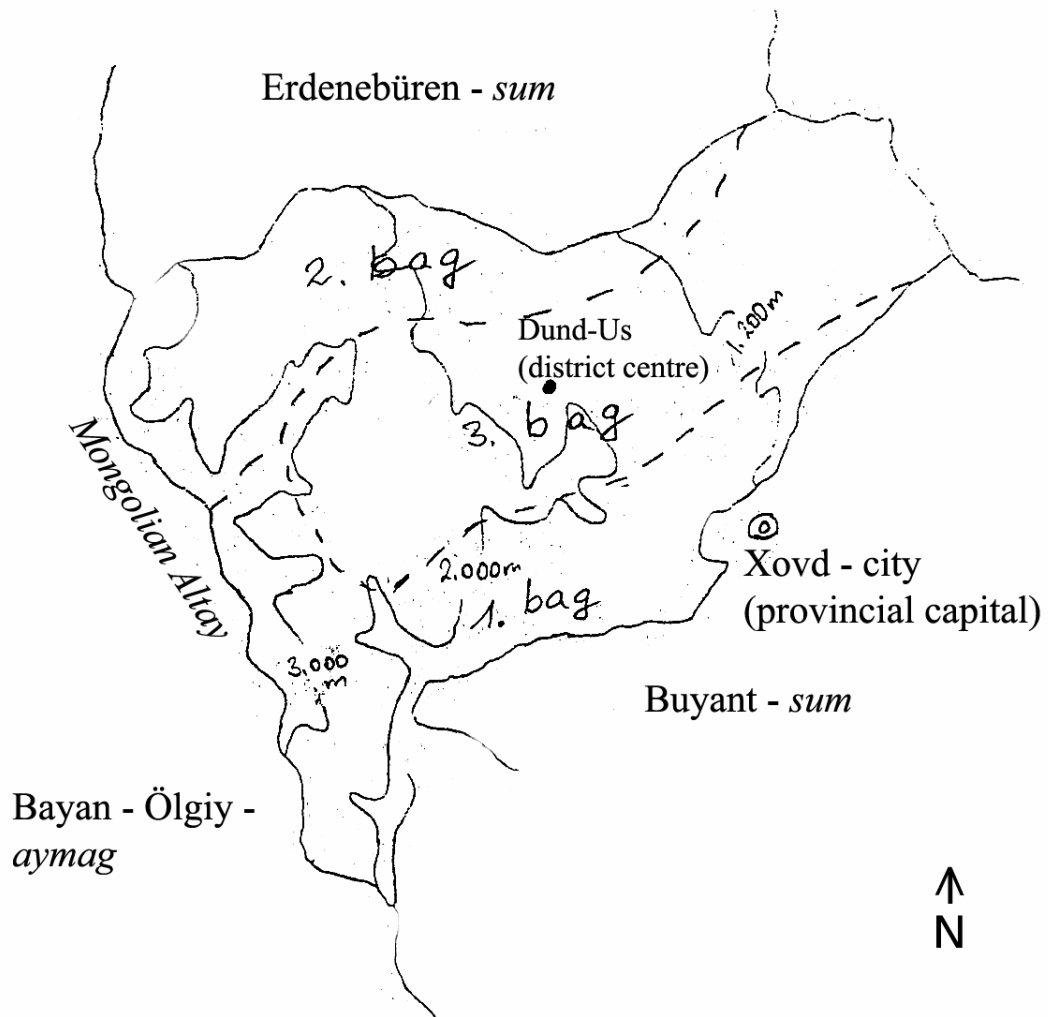
mutual trust and the low time-horizons in post-socialist society make collective action a very difficult matter. The time-horizons, of course, are especially low among the „new nomads“, who often move between different *sum* within the year and are not part of local networks. Therefore, their misbehaviour can not be retaliated by a disruption of other social or economic interactions. And since they do not know how long they will be making a living as herder, investing in one's reputation may be perceived as too costly. But also the option of an emigration to Kazakhstan may reduce the expected benefits of behaving in accordance with existing rules, since people do not know how long they will stay within a specific community and thus will have less incentives to invest in social relations. If, however, rules are not followed by a significant proportion of actors, adherence does not pay anymore for the rest as well. Another important aspect is, that due to their rising number the relative bargaining power of the Mongols is increasing, even more since they identify themselves, in contrast to the Kazaks, as part of the Mongolian nation.

Up to now ethnic relations are still fairly well, so it should be possible to find a solution for these problems. Considering the ethnic heterogeneity and the economic decline faced by most households, it might, however, be necessary to introduce neutral agents from outside the *sum* to encourage and conduct the search for new and effective informal arrangements (cf. Ostrom 1990). These depend in the first place on their legitimacy and credibility. In the above discussed case the establishing of a private property regime in livestock met, in spite of its serious deficiencies in terms of economic efficiency and social fairness, with little opposition because of its self-organised character with the Mongolian privatisation law and its demand for the distribution of the *negdel's* assets serving as a kind of neutral agent. On the contrary, it seems to be impossible to maintain the current common property regime in pastures, although this would serve the overall interest, because people do not accept its legitimacy anymore and hence observance of this institution has decreased to a degree where it does not pay for the individual actor anymore.

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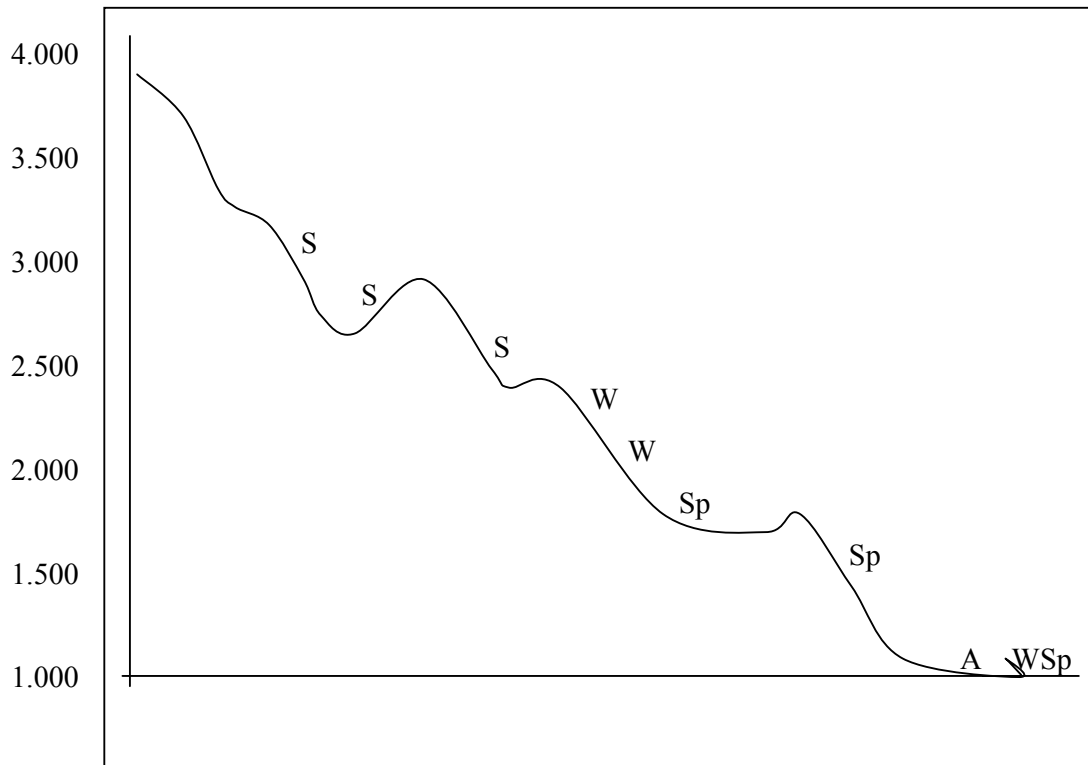
MAP 1: Map of the XOVD - SUM



map: peter finke

Figure 1. Yearly migratory cycle in the Xovd-sum

height (metres)



W Winter camp sites of former small-stock herders

Sp Spring camp sites of former small-stock herders

S Summer camp sites

A Autumn camp sites

WSp Combined winter and spring camp sites of former large-stock herders