

ORIGIN AND DEVELOPMENT OF LEGISLATIONS ON THE CRIME OF ILLEGAL ENTRY THROUGH THE STATE FRONTIER OF MONGOLIA

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국문초록

고대와 중세 몽골의 불법침입에 대한 법적 관점을 포함함으로써 이 연구는 형사법이 역사적으로 어떻게 발전하였는가를 보여준다. 많은 역사적 근거들이 불법침입을 확인해 주고 있다. 예컨대, 훈 왕조의 법 정책, 이흐자사크(Ikh zasag) 법, 몽골 및 Oird's Ikh tsaats, 만주의 대외 및 몽골리아 법 정책 그리고 북드 황제의 법령이 그것이다.

주제어 : 훈 왕조, 국경, 국경 조약, 국경 침범에 대한 법률, 몽골인 구속영장

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I. Historical Background of Legislation on the Crime of Illegal Entry Through the State Frontier of Mongolia

In order to improve the crime of trespassing a border beyond the regulations set by the criminal justice system, it is crucial to study and research the historical and traditional ways of dealing with violation of trespassing a border. One of the key motives of this research article is to clarify how Mongolia was able to regulate trespassing back in the day.

Numbers of legislative sources have been regulating social relations during the historical periods since establishment of the state in the territory of Mongolia and the adoption of legislative norms more than 2000 years ago. Study of the historical tradition of legislations protecting the inviolability of territory and borders of the ancient and medieval Mongolian states through legal means is significant for enhancing the recent methods of combating against the crime of illegal entry through the state frontier.

There are number of facts that Modu Chanyu, the King of Hunnu Empire, prioritized the inviolability of territory when settling its state. He considered the main source of the independence of a state was its “territory”. King of Khan Empire once threatened the Hunnu Empire to “give certain part of land” when it had not been strengthened, yet. Modu Chanyu asked his officials what to do, and some officials said that it was a “small amount of land”, so let’s give away, but come officials objected. The King Modu Chanyu executed the officials who suggested to “give away the land” and passed the decree saying that “land was the source of a state, therefore, it would never be given away”. Then the King Modu Chanyu had a combat with and conquered the unconscionable King of Khan Empire and he served for King Modu Chanyu for many years.¹⁾

In 198 BC, Hunnu Empire and Khan Empire entered into an agreement and whereby: “the state with the archery in the land from Long city\the Great Wall\ to the north would comply with the law of Chanyu, and I would rule the state with deel and hat within the Long city. ...Khan Empire and Hunnu Empire were equally strong empires²⁾.” In accordance with this agreement, the Great Wall determined to be the border between the Hunnu Empire and Khan Empire. Furthermore, the agreement stated that no one had the right to pass through the border from either sides and the parties were obliged to protect the border chains jointly which they were obliged to inform the other in case any violation. The regulation was determined to impose strict punishment if the border chains of the equally strong states were violated.

“Modu Chanyu stated in his letter to the King of Khan Empire in 176 BC that he punished the third highest official following Chanyu, the *setsen* royal of the west, who breached the Friendship agreement between Hunnu and China without the permission of Chanyu, by the meeting of other officials, sending him to the battle against Yuechi.³⁾ This is the evidence that the legal norms imposing punishment to a person who breached the border, lightening and release from the punishment had been in force.

Hunnu and China amended and reenacted the agreement concluded in 198 BC and complied such agreement for more than 200 years.

Hunnu organized special military force to protect its state borders and named it “Outo”, and named the official directed the frontier guards “Outo van”⁴⁾

1) G.Sukhnaatar. Anthology of Mongolian History. Volume 1. UB., 1992, Page 20.

2) Mongolian History. First Volume. UB., 1966. Page 83.

3) Mongolian History. Volume 1. UB., 2003, Page 191.

4) Ch. Altangerel. History of Border Protection of Mongolia. Volume 1 \from ancient times to People’s revolution \. UB., 2008, Page 14.

“According to the chapter about Hunnu of the writing called “Shitsen” of Sima Tsyuan about the land separating Hunnu and Dunhu, there are more than 1000 land areas between Dunhu and Hunnu where no one resided and there lived “Outo”⁵⁾. Chinese historians and ancient interpreters explained and wrote “Outo” as “Border guards” or “Watch tower”.

The agreement between Hun Empire and Khan Empire in relation to the borderlines concluded in year one of common calendar had been amended as follows:

1. *Residents of Khan Empire escaped to Khun Empire,*
2. *Refugee or Usun requested to join the Khun Empire,*
3. *Residents of western region who get the palm print from China and requested to join the Khun Empire, and*
4. *Ukhans requested to join the Khun Empire are not accepted.*

At that time, the act of illegally entering through the state frontier was the subjective action of changing one's citizenship and material action of objective manner and this is defined in by the content of the above agreement. It is obvious that the right to enter through the state frontier is exercised by any person. Especially, it was common for the residents of Han, Usun, Uhan and western region to enter through frontier in order to join the Hun Empire.

The Kings of ancient empires situated in the territory of Mongolia developed the foreign affairs with the neighboring empires, always prevented from the external attacks and especially prohibited to cross trade the goods and products that have military and war significance. For instance, around 150 AD the King of Xianbei Empire strictly prohibited to trade horses to Wei preventing from the threatening policy of state of Wei of northern China of Kebin. He initiated oath agreement to punish the person violated

5) G.Sukhbnaatar. Ancient Mongolian ancestor. UB., 1980, Page 208.

such prohibition with the common force, and had such agreement approved by the leaders of mongol provinces and complied the agreement. At that time, Su-Lee breached this agreement and sold 1000 horses to Wei was taken down with military force and the province was confiscated⁶⁾.

Pursuant to the laws of Hunnu age, “execution for trade of blades, property confiscation for person punished for theft, thwacks for minor criminal, and execution for serious criminal. There was no imprisonment more than 10 days, minimum number of convicts nationwide, and Kyan of left-hand, Lan and Syunbu tribes of right-hand were in charge of court hearing and imposing punishment and report the same to Chanyu verbally. In addition to imposing punishment, changing and lightening the punishments imposed by others, Chanyu conducted execution for people who committed serious crime which interfere the initial interest of the state.⁷⁾ Nevertheless, there were no records maintained.⁸⁾

The researches made conclusion in their works that the social relations of the Hunnu and later ancient states had been regulated under form legislations.⁹⁾

Mongolian and foreign scholars acknowledge that Ikh Zasag Law is the main state law of the Mongolian unified state (13th - 14th century).¹⁰⁾

6) History of PRM. UB., 1966, Volume 1, Page 97.

7) S. Jantsan. Court governance. UB., 1999, Page 42.

8) G.Sukhbaatar. Anthology of Mongolian History. Volume 1. UB., 1992, Page 20.

9) Doctor G.Bayarkhuu noted that during the times of Hunnu and Kidan empires the social relations were regulated under behavioral norms and it would be evidenced by the decrees of the kings, ancient writings carved on the rocks and hedges.

\G. Bayarkhuu. Comparative study of Mongolian unified state and latter day legislations and behavioral norms.\13th-18th century\. Single thesis for PhD of legal studies. UB., 1995, Page 3. E.Avirmed, D. Dashtsedan, G. Sovd proved in the work of Mongolian law that “The law of the Hunnu empire is derived from the tribal structure, and it is non-written feudalist law basically based on tradition of prohibitions.\ E.Avirmed, D. Dashtsedan, G. Sovd. Mongolian law. UB., 1977, Page 13.

10) Please see form Sh.Natsagdorj. Chinggis Khan decorum. UB., 1991. D. Gongor. Khalkha Tovchoon.

Article 14 of the Ikh Zasag Law of Chinggis Khan states that: “A person must be referred to its respective group of ten, hundred and thousand, and he is prohibited to be transferred on its own will, and it is prohibited to conceal any of such people”.

Doctor N. Nyam-Osor concluded in his explanation on the Ikh Zasag “Prohibition to get a person who is wandering around on its own will to its group of ten and group of hundred was the important provision to prevent from the enemy spies, to ensure the safety of the state, to enhance the observation, and to prohibit the act of concealing any sorts of cunning people”¹¹⁾.

Article 9 of “The Secret History of Mongols” a famous work written in 1240 based on the real facts of the Chinggis Khan and unified state of Mongolia states, it is said that “Khorilardai wise man had fought over the hunting area in his land rich with animals such as mink, squirrel, and he became a man of Khorilr tribe to move to the land of rich Shinch Urinakhai where the territory was established by Burkhan, the owner of Burkhan khaldun, well known with its abundant hunting spots.” According to this quote, it is considered that each one of the Mongolian tribes had their own assigned land and they used to hunt within their own territory. If one trespasses to the other’s territory in hunting, they complained and argued about it. There was obviously such verbal law back then in 12th

UB., 1970. S.Jalan-aajav. Khalkha rule is the Mongolian legal archival document. UB.,1958. Ch.Dalai. Mongolian History. State of Ikh Mongol. 1206-1260. UB., 1992. E.Avirmed, D.Dashtseren, G.Sovd. Mongolian Law. UB., 1977. I.Dashnyam., State and law of the state of Chinggis Khan. UB., 1997. G.Bayarkhuu. Comparative study of law and behavioral norms of Mongolian unified state and its later days.\13th-18th century\, UB., 1997. B.A.Ryazanovsky. Historical summary of archival documents of laws of Mongolians, Ikh Zasag Law. UB., 2000. J.Vernadsky. Study of Ikh Zasag of Chinggis Khan. UB., 1992. Commendation Chinggis Khan tovchoon Second Book. Khukh Khot., 1990.

11) N.Nyam-Osor. Interpretation of “Ikh Zasag Law” of Ezen bogd Chinggis Khan. UB., 2001, Page 18.

century.

“Ikh tsaaz”, or the Great Law was written in 1640 and it is a significant historical legal document that belongs to the time period when Unified Tribal Nation had collapsed. The law has a stipulation relevant to national security of that country. It says, “anyone who was aware of enemy’s intention to attack the country, but didn’t report, or warn about this danger, shall be executed, his or her properties shall be collected and the children shall be exiled.”

The change of citizenship was actually the act of illegal entry through the border and it continued until later. In the Great Law of Mongol and Oirad, it says that “People in Barga, Baatud, North Mongolia belongs to Mongolia and people in Oirad belongs to Oirad between the year of fire snake /1617/ and the year of dirt dragon /1640/. Anyone else was taken without any problem.”¹²⁾

This stipulation shows that Barga, Baatud and North people’s change of citizenship who belonged to Oirad was accepted by this law, but both Mongol and Oirad didn’t allow change of citizenship after 1640. This act was legalized by this statement.

Legal document of Outer Mongolia’s governance ministry is in fact a law of Manj Chin State. Though, it is considered to be an essential document in Mongolian law and legislation history that regulated Mongolian social and political life in wider scope in 17th century. In Mongolian legal document, the crime of “treason against the country” it is described that “In case enemy comes from any side of our country and attacks the rural own, it is not allowed to gather in the area of attack.”¹³⁾ The original logic of this statement was obviously Manjurian Dynasty’s political interest to protect it’s

12) History of Mongolian state and law. Volume I. UB., 2006. Page 38.

13) B.Bayarsaikhan. Mongolian legal script. UB., 2001, Page 100.

land from Russia¹⁴⁾ and to enable readiness of its troops. At the same time, clearly this regulation had a particular impact on protecting Khalkh Mongols territory and the boarder at that time.

Towards the end of 11th century, the boarder area with Tagniin Uriankhai was in danger. Live stock robbery from Tuva side was so out of control that it came to the level where Durvud's 2 tribal people almost lost all of their live stock. Mongolian side made a lot of effort to settle this issue in peaceful manner, but failed. Eventually, the troops were sent by Manjurian King's order and stopped the robbery in military way.¹⁵⁾

Mongolian Legal Document had a very precise regulation regarding protection and crossing Mongolian border. These regulations have inseparable connection with political circumstances of that time.

For instance, "Border and Border patrol" chapter of Mongolian Legal Document has the following article. It says, "Let all inner, or outer Mongolians go through Shanaha, Shinnanjeu, Moltos, Tushijeu, Janjiajeu and Shurke. Inform all gate patrols to record the number of Mongolians when they enter. And also match the previously recorded number when they leave. Don't allow them to pass, or go through any other gate, but these 6 gates ." ¹⁶⁾ And "if any Left wing Uuld, or Russian delegate comes with the help of any provision patrol as a guide, return the guide and take to delegate to the final destination."¹⁷⁾

Mongolian Legal Document, chapter 9, article 1 says, "When the border

14) King of Manju learned lesson from that fact that the border laid between Mongolia and Russia were always in attack, and lost major amount of land to Russia, and clarified the northern border of Mongolia and entered into agreements including "Agreement of Nerch border\1689 \"", "Agreement of Buur border\1727\"", "Agreement of Tarvagatai \1864 \" with Russia. Ch.Altangerel. History of Mongolian border protection, UB., 2008, Page 245.

15) Ch.Altangerel.Mentioned work. UB., 2008, Page 263.

16) History of Mongolian state and law, Volume I. UB., 2006. Pages 142-143.

17) Mentioned work, UB., 2006. Page 143.

patrol leaves the country to catch a refugee, if refugee protests the patrol shall kill the refugee regardless of his or her rank. If refugee doesn't protest, cut the head of the refugees' leader and kill the rest. If refugee who caused a harm to the others and was captured, shall be killed. If a refugee who didn't harm anyone was captured without any protest, shall be fined. A refugee who returned to the country within one day and didn't cause harm to others shall be lashed 100 times and returned to his or her master."¹⁸⁾

This law states a severe punishment to prevent it's people from fleeing to foreign countries. This fact indicates that the punishment to the criminal at that time had a certain correspondence to the bad consequences and the danger of the crime in the society.

The law in the subject also has a very precise regulations regarding Chinese and Russians, the citizens of it's neighbor countries. Especially, the law strongly prohibited Chinese citizens to voluntarily live, run a business and trade in Mongolia. For example, "Chinese citizens who are living inside the gates /referred to as border points such as Moltos, Chulalt gate, Urgusun stone gate/ are not allowed to plant outside the gate, on Mongolian land."¹⁹⁾

In "Mongolian book of law declared by the decree" of Bogd Khaan Mongolia, chapter "Policies in border crossing", it states that "every end points of our land in rural areas shall have an appointed patrol police, and forbid any undocumented wanderers from coming in and going out"²⁰⁾. It shows that there were regulations to pass the borders in provisions and the

18) B.Bayarsaikhan, Mongolian legal script, \Comparative research\, UB., 2001, Page 287.

19) Legal script of Ministry of Mongolian and foreign affairs determined under decree. Edited and restated, Prohibition to cracking cropping stepping out of the door, Article 318. 1989, Khukh Khot.

20) B.Sodovsuren, Mongolian state and history of pre-revolutionary period /1911-1920/, UB., 1989, Pages 55-56.

violation of such regulations were considered a crime. And it contains the concept of crime illegal entry through the state frontier.

II. Current State of Legislation on the Crime of Illegal Entry Through the State Frontier of Mongolia

Throughout the progress of Criminal Law of Republic of Mongolian People the act of “Illegal entry to Mongolian border” had been restrained by legal methods, restoration and security of broken relations had been inserted in every criminal law formats.

Mongolian criminal law had been started to be developed in compliance with European mainland method and systems since 1926 and Russian legislative experts played main role in this process. Foundation of criminal law was issued and enacted in 1926 during Republic of Mongolian People under the name Judgment Act /Shuukh Tsaaziin Bichig/. The crime of Illegal entry through the state frontier was described in the chapter 77 in this criminal law as following. “If a foreigner who was expelled out of this country by court decision comes back, he or she shall be sent to jail up to 1 to 3 years”. This statement is not regulating legally common relations. But in fact, the emphasis is, it was the very first legalized regulation for the case when foreigner illegally enters the country. This regulation’s purpose was to prevent foreigners from illegally immigrating to Mongolia at that time. It has certain significance even today.

The issue of illegal entry through state frontier was described in a very clear detail. Chapter 68 is about Mongolian border crossing. It says, “Anyone who arrives or departs the country of Mongolia without passport, or proper documentation equivalent to passport shall do up to 100 days of forced labor, or shall be fined up to 100 tugrug. Explanation: in case if anyone

who doesn't agree with political, or religious doctrines of capitalist country, or anyone who escaped from military service of capitalist countries enter our countries without proper documentation like passport there shall not be any discussion of punishment.

Chapter 69 says that "anyone who helps to those who crosses the border illegally repeatedly shall be sent to jail for not less than 1 year."

This law determines the act of crossing the border without proper documentation as an objective nature of crime of illegal entry through state frontier. And it defined the act of providing an assistance to subject of this crime also as a crime. The primary grounds for imposing criminal charge to those who helped illegally entered the country are:

- a) objective nature of this illegal act became "consistent living" of the one who is entering through state frontier,
- b) subjective nature of the one who is giving assistance to the criminal is he or she is intentionally supporting the illegal act even though being aware of criminals illegal entry was repeated, or consistent,

The one who entered the country with improper documentation due to following reasons shall be free from criminal charge.

- a) political disagreement,
- b) religious disagreement,
- c) escape from military service in capitalist country,

At that time Border crossing regulation²¹⁾ of Mongolian People's Republic was issued and implemented for the first time. The valid documentations used to cross Mongolian border were diplomatic and foreign passport for Mongolian, Soviet Union, Tagna and Tuva citizens.

In 1920s, there were confidential instruction²²⁾ about the following

21) Special archive of National Intelligence Agency. Instruction of inspection unit of far frontier of Ministry of Internal Affairs of PRM, 1930.

22) Special archive of National Intelligence Agency No1. 37, Pages 15-17.

stamps that are used to mark on Piu department visa approved by the Head of Internal Defense. The instruction was used not only in issuing visa to foreign citizens, but also it is very interesting how it was used at the immigration when foreigners crossed the border. According to the instruction, there were 4 different confidential ways of affixing on foreign citizen's visa at their departure. The number on the stamp was marked looking at 4 different directions and each carried a confidential instruction.

One can deduce upon examining these concealed instructions in detail that such instructions were of much importance for monitoring the flow of foreigners as well as preventing criminal activities such as contraband and illegal crossing of national borders.

Illustration 1

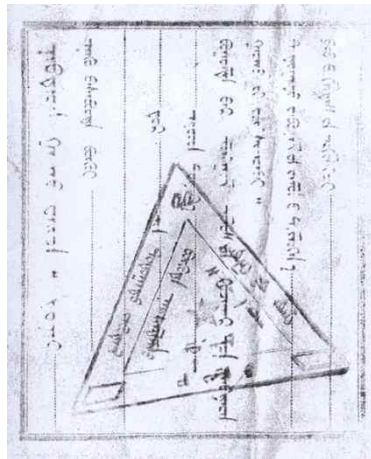


Illustration 2

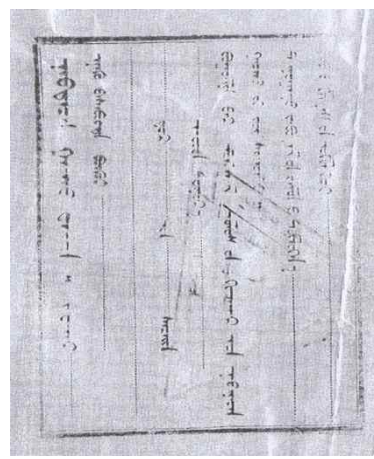


Illustration 1: Depiction of stamp number facing up, an indication to grant direct passage through the border to the bearer with light inspection of personal belongings.

Illustration 2: Depiction of stamp number facing right, an indication to inspect the bearer and grant passage.

Illustration 3

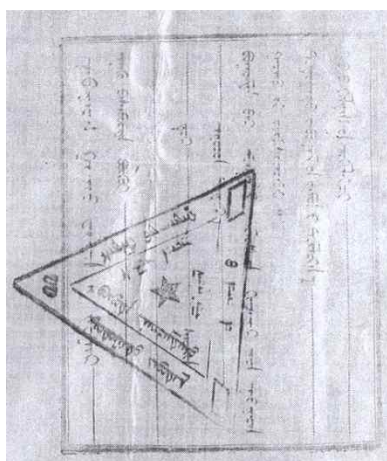


Illustration 4

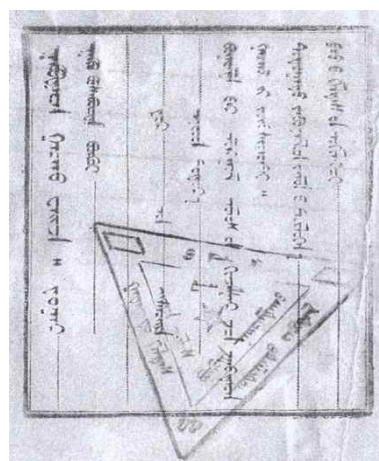


Illustration 3: Depiction of stamp number facing left, an indication to thoroughly inspect personal belongings and detained in accordance.

Illustration 4: Depiction of stamp number facing down, an indication to immediately arrest the person.

Illegal border crossing is formulated as “*Illegal border crossing on multiple, repeated occasions thereby rendering the national borders insecure shall be punishable for a term of up to 5 years in prison*” in Article 34 in the Penal Code of 1934. Article 78 states that “*Entering or exiting Mongolia without a passport or proper authorization shall be punishable for up to 6 months of compulsory labor or a fine of up to 300 tugrug. Note: Foreign nationals who has crossed the border without a passport or authorization from the respective authorities avoiding incarceration due to political or religious reasons*” in the Penal Code of 1934.

The above mentioned regulation, for instance Article 78 reflects the contents of the 1929 Penal Code. The main distinction is that the former grants exemption from criminal liability if the offender has “deserted military duty from a capitalist country.”

The concept of “illegal border crossing thereby rendering the national border insecure” was incorporated in Article 57 of the Penal Code. Let us examine this concept in relation with Article 80 of the 1942 Penal code. The concept of “rendering the national borders in secure” seems to be needed to analogized and explained in the same context as “Crossing national borders with intentions of financial gain.” The inviolability of national borders is the object of such crimes. The subjective attribute of the crime is the lucrative motive, the objective attribute is the repeated nature of the offense and the subjects are identified as citizens and employees and assistance granted to them. Upon conducting comparative analysis on the two articles the severity of the punishment also sparks interest. The severity in Article 57 is “up to a term of 5 years” and “a minimum of 3 years” in Article 80 respectively. The contents of Article 80 indicates that the option for punishing the accused for a term greater than 3 years remains a possibility as well as giving the maximum sentence allowed in the general provisions.

Mongolian social life has experienced much change in the 40s, and the new constitution has been adopted in June 1940 during the Eight Plenum of the State Ikh Khural /Upper Chamber of Parliament/. The new penal code has also been reformulated in accordance with the new constitution and adopted in January 17, 1942 during the 25th Plenum of the State Baga Khural /Lower Chamber of Parliament/ as the Criminal Code of the Mongolian People’s Republic.

The crime of illegally crossing national borders has been put into distinct independent dispositions in two separate articles. For instance Article 80 states that “*Illegal border crossing for lucrative motives on repeated occasions or committed by civil servants, or anyone who has assistant in such a crime shall be punished by imprisonment of a term more than 3 years. Note: If such a crime is committed not in relation to the above*”

mentioned distinctions, in other words if the offender has committed the crime unintentionally caused by the search of grazing land (fodder) or water, the Ministry of Interior shall relocate the offender including his or her property for 1 to 5 years (within the territory of the country)."

As this issue has been thoroughly discussed previously let's examine the note in relation to the article.

- a. If the offender has unintentionally crossed national border;
- b. Or if the offence has been committed due to natural disaster or other issues it states that not only the offender shall not be liable for punishment but also permitted to live in the country for 1 to 5 years, a reflection of nomadic ethics.

Article 104 of the Criminal code states "*Exiting or entering the Mongolian People's Republic without a valid passport or authorization from the local administrative authorities shall be punishable by imprisonment for a term of 1 to 3 years*". *Note: Foreign nationals entering the Mongolian People's Republic without a valid passport or documents issued by the local administrative authorities in avoiding any oppression due to his or her involvement in protecting the interests of laborers or struggle for national liberation, shall not be held liable for punishment mentioned in this article as this person shall be granted the right to reside in the country in accord with Article 88 of the Constitution.*"

Observably, changes have been made to the conditions for exemptions from criminal liability and elements of protecting the ideology driven communist society are identifiable in the above mentioned article. For instance, conditions for exclusion from criminal liability are limited to following:

- a. People who have struggled for interests of the laborers;

- b. People who have struggled for the liberation of their countries.

This indicates the fact that influences of ideological as well as political conflict between contending powers in the international arena has also been reflected upon Mongolian legal texts.

The “Temporary guidelines in making correct decision on violations and incidents for frontier commissars of the MPR sharing borders with the USSR and PRC” cites the various elements of identifying the crime of illegally crossing national borders. The elements are listed below:

- a. Means of committing the crime (on foot or the means of transport, other means to commit the crime)
- b. Personal detail of the offender such as full name, age, place of residence, ethnicity, marital status, membership to any organization if any, occupation etc.
- c. Purpose of crossing the border (reuniting, meeting with family members, seeking permanent residence, unintentional border crossing or other possibilities)
- d. Relatives or acquaintances in the two neighboring countries
- e. Personal belongings and documents on the offender
- f. Conditions of arrest (whether the offender has resisted arrest, attempted escape, attempted to hide personal belongings or documents)
- g. People encountered during or after crossing the border.

Important elements for consideration for aggravating circumstances are mentioned in the note section of this document. It states that “*As witnesses and evidences are needed if the offenders have organized murder, sabotage or have committed crimes of homicide, robbery, theft or have spread rumors against the state, official reports shall be made upon examining material damage, conducting autopsy or other inspections.*” This temporary guideline

has been signed by the Minister of Interior, lieutenant general Janchiv on 24 November, 1953 and has come in effect upon the approval of Foreign Minister Jargalsaikhan on 3 December 1953.

Article 61 of the 1961 Criminal code regulates crimes related to “illegal entry through the state frontier.” The articles states:

- a. Entering or exiting MPR’s borders without proper passport or authorization granted by the respective authority shall be punishable by imprisonment for a term up to 3 years or compulsory disciplinary, rehabilitation work for a term of 18 months.
- b. Repeated offences shall be punishable by imprisonment for a term up to 5 years or deportation from the country.

The article also states “*Foreign nationals having been granted the right to reside in the MPR in accordance with its Constitution are exempt from this provision.*”

The Law on Border Protection of MPR was adopted and come into force first by the decree of the Presidium of People’s Great Khural, MPR on July 16, 1973 and legalized that a person who has done following actions shall be deemed as violated crossing the borders of the MPR under Article 24 of this Law:

- A. Crossing into or passing over /on foot as well as flying tools and other transportation means/ the state border through different points of the determined ports or illegally however through the determined ports, and/or attempting to cross into or pass over the state border
- Б. Crossing into or passing over the rivers and lakes which are along the state border lines into Mongolian side, illegally using watercraft and other water means or without them
- B. Flying beyond or over the border of the MPR without permission by

the competent authority of the MPR or flying through the determined airspace at different destination.

According to border violations and crimes of crossing the border and smuggling animals by the offenders in some parts of the northern and southern borders of our country, the Presidium of People's Great Khural, MPR approved the Decree # 73 "Banning the offenders who have violated the some kind of state crime and border violations to reside in border Soums(district)" on February 27, 1978. It includes: If the persons who conflicted the crimes in the Article 56 of the Criminal Law (smuggling commodities) and Article 61 (illegal border entry), criminal offenders, theft before crossing the border or theft after crossing the border, as well criminals who sentenced for the crimes of crossing the stolen animals through border or who have convicted for the administrative violations of border entry make such conflict again, it is approved the rule to ban residing in border Soums(district) by the Executive Administration of People's Depute Khural of the Aimag(province) by relocating up to 5 years period within the territory of the Aimag for employing another job and if not complying such order, the police is authorized to force it.²³⁾

Although the Decree is considered certain effects for protecting the inviolability of the border of Mongolia with criminal law methods but it was the legal document that seriously violated the Mongolian civil immunity rights.

In the disposition of the Article 79, revised Criminal Law of MPR in 1986, the "objective nature of the crime crossing the border of the MPR, illegally was determined as "if crossing into or passing over the border of the MPR without certain passport or permission given by proper authorities... *and it is stated to sentence up to three years relocating or without*

23) Historical note for border protection of Mongolia UB, 1993, 319th page

relocating and/or forcing for correctional labour up to one year and six months for the crime. It is explained that if foreign citizens entered to the MPR without having proper passport or the permission given by the authorities in order to enjoying the resident rights entitled by the Constitution of the MPR shall not apply this Article.

It is stated in the paragraph 2 of the Article that: *"If the citizen of the MPR who have not certain passport and went abroad with the permission of certain authorities comes to the homeland after the three months from the expiry date should come home without the good reasons and which has no sign of the crime of high treason shall be sent to prison for the period up to four years and/or forcing for correctional labor up to one year and six months.*

The first time legislation which is stated in the paragraph 2 of the Article 79, Criminal Law for not coming back to homeland within the fixed term by the citizens of Mongolia that shall be the reason to impose criminal responsibility was not meet the conditions of the time of "democracy", the climate of free thought or was incompatible and may the last tricky barrage of the "dying" society to restrict and hinder the human rights and liberty. On the other hand, the action that has no relation to the crime concept of "illegal entry of the state border" is included to the aggravated composition of the crime is not obviously clear.

In compliance with the concept and content of the Constitution of Mongolia and other laws, major amendments to the Criminal Law were done in 1993.²⁴⁾ By this amendment, the changes as *"...shall be sent to prison up to three years or forced to engage the correctional labor up to one year and six months and/or fined with one hundred thousand to four hundred thousand tugrik."* to the sentence sanction and invalidated the paragraph 2 of the Article.

24) Newspaper "Ardiin erkh". The publication on June 26, 1993.

The importance of the law was abolishing the attempts of imposing restrictions on human right violations which occurred in the criminal legal practice under the spirit of Constitution of Mongolia, adopted in 1992.

By the Law on “Amendments to the Criminal Law” adopted on April 01, 1996, the new provision “If the crime was committed repeatedly or by the group agreed in advance, shall be sent to prison up to five years or shall be fined with one hundred fifty thousand tugrik to five hundred thousand tugrik” was added, newly to the paragraph 2, Article 79, Criminal Law.

The feature of the law was the identification of the aggravating circumstances of the crime of illegal Mongolian border crossing.

The crime of Illegal state border crossing was determined in the Article 89, Criminal Law of Mongolia adopted in 2002 and the disposition of the previous law was kept as same as was before but the sentence sanction for the crime was amended. For instance, the offenses referred to in Article 89.1 of the Criminal Law, the sentence sanction was commuted as “shall fine with the tugrics equal to eighty to two hundred fifty thousand times or incarceration for a period of time of more than three months up to six months”. But there was no change to the disposition of aggravates composition of the crime of illegal border crossing and the sentence for the crime remained as same as previous “shall sentence up to five years in the prison”.

Following conclusions are made after studying the historical traditions and development of outlawing the illegal border entry actions as criminal offences in criminal legislation documents of Mongolia:

III. Conclusion

1. Since the Hun Empire, the first statehood of Mongolia till the Mongolian Empire, there was no border between the states that was mutually

agreed but it has traditional borders constituted over the historical period and there was a state tradition on legal practice about the protection of internal and external borders have accumulated the considerable experience, constituted specific legal environment on these issues and had engaging diplomatic activities with neighboring countries on border protection.

2. It is concluded that they taught “land is the base of the state” and the legal norms were acted the legal norms as focusing on protection of territories by their borders, making friendly with neighboring countries, enforcing them, imposing strict penalties to breaches, reducing or releasing from penalties on the time of Hun state, the ancestors of Mongolians.
3. By analyzing the content of border agreement of Hun Empire, the real actions of the objects with the subjective motivation as escaping to the Empire, changing the citizenship and etc were considered as a violation of the agreement provision expresses the similar meaning with the objective approach composition of the illegal border entry crime in current time. These norms remained in Great Yassa or Law of Mongols - Oirad in 1640.
4. Mongolian laws during the Manchurian empire had legal regulations imposed strong punishment to criminal offences of crossing borders for going abroad and in doing so it regarded the social dangers at least and it was not aimed to protect the security of Mongolian border but it's only political purpose was to strength the hegemony of Manchurian empire.
5. Analyzing the norms of 9-time criminal laws that had been adopted on crimes crossing Mongolian border illegally between 1926-2002, the objective nature of the crime crossing the state border illegally has not been changed, basically but the revised Criminal Law of 1986 had serious violation norms of human rights and freedom, first time as “Not coming back to homeland within the fixed term by Mongolian citizens as

a basis for criminal responsibility”.

By the Criminal Law of 1961, the crime to cross the state border, illegally was included to the group of crimes against the state (formerly included in the group of crimes against administrative offenses) and has tightened the criminal liability is considered that is under the effects of foreign political conditions and alternative view on the objects of the crime causing former SSSR.

6. By the Decree #73 of the Presidium of People’s Great Khural, MPR “Banning the offenders who have violated the some kind of state crime and border violations to reside in border Soums” on February 27, 1978, it was ruled that if the person who had been punished for the crimes of illegal border crossing and smuggling animals or conflicted border regimes and who has been punished with administrative responsibilities make such conflict again, it is approved the rule to ban residing in border Soums by relocating up to 5 years period within the territory of the Aimag for employing another job and if not complying such order, the police is authorized to force it. This provision is considered that had certain effects for protecting the inviolability of the border of Mongolia with criminal law methods but it was the legal document that seriously violated the Mongolian civil immunity rights.
7. It is concluded that the crime to cross the state border, illegally in Mongolia since 1929 had a sentence to fine was tightened and changed into the sentence of imprisonment for 1-3 years by the Criminal Law in 1942, and the sanction was remained same during the subsequent Criminal laws but the sentence sanction was commuted by the Criminal Law in 2002.

References

- B.Bayarsaikhan. Mongolian legal script. UB., 2001.
- B.Bayarsaikhan. Mongolian legal script. \Comparative research\ UB., 2001.
- B.A.Ryazanovsky. Historical summary of archival documents of laws of Mongolians, Ikh Zasag Law. UB., 2000.
- B.Sodovsuren. Mongolian state and history of pre-revolutionary period /1911-1920/. UB., 1989.
- Ch.Altangerel. History of Mongolian border protection. UB., 2008.
- Ch. Altangerel. History of Border Protection of Mongolia. Volume 1 \from ancient times to People's revolution \. UB., 2008.
- Commendation Chinggis Khan tovchoon Second Book. Khukh Khot., 1990.
- Ch.Altangerel. Mentioned work. UB., 2008.
- E.Avirmed, D. Dashteden, G. Sovd. Mongolian law. UB., 1977.
- G.Sukhnaatar. Anthology of Mongolian History. Volume 1. UB., 1992.
- G.Sukhnaatar. Ancient Mongolian ancestor. UB., 1980.
- History of PRM. UB., 1966, Volume 1.
- History of Mongolian state and law. Volume I. UB., 2006.
- J.Vernadsky. Study of Ikh Zasag of Chinggis Khan. UB., 1992.
- Mentioned work. UB., 2006.
- Mongolian History. First Volume. UB., 1966.
- Mongolian History. Volume 1. UB., 2003.
- N.Nyam-Osor. Interpretation of "Ikh Zasag Law" of Ezen bogd Chinggis Khan. UB., 2001.
- Newspaper "Ardiin erk". The publication on June 26, 1993.
- S. Jantsan. Court governance. UB., 1999.
- Special archive of National Intelligence Agency No1. 37,

[Abstract]

ORIGIN AND DEVELOPMENT OF LEGISLATION ON THE
CRIME OF ILLEGAL ENTRY THROUGH THE STATE FRONTIER
OF MONGOLIA

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By incorporating the legal aspect of the illegal entry of the ancient and medieval Mongolian into the research article it shows how the criminal law has developed throughout history. There are number of historical legal sources have been stated on illegal entry for example: the Hun empire's legal policy, Ikh zasag law, Mongolia and Oird's Ikh tsatts, Manchurian foreign and Mongolian legal policy and Bodg khan's decree of law.

Key words : Hun Empire, border, border agreement, an act of violation of the state border, Mongolian custody paper.