

6-18-2005

India, Nepal and the Maoist Conflict: A Nepalese Perspective

Surya Subedi

Follow this and additional works at: https://digitalrepository.unm.edu/nsc_liberal_democracy

Recommended Citation

Subedi, Surya. "India, Nepal and the Maoist Conflict: A Nepalese Perspective." (2005). https://digitalrepository.unm.edu/nsc_liberal_democracy/23

This Article is brought to you for free and open access by the Nepal Study Center at UNM Digital Repository. It has been accepted for inclusion in Liberal Democracy Nepal Bulletin by an authorized administrator of UNM Digital Repository. For more information, please contact disc@unm.edu.

India, Nepal and the Maoist Conflict: A Nepalese Perspective

Surya Subedi, Ph.D.*

While events in Nepal are troublesome and a kind of diplomatic disaster for India, India would benefit from a peaceful Nepal and suffers costs from having a poor and conflict-ridden neighbour. India should demonstrate greater vision and farsightedness in its dealings with Nepal, while Nepal should stop mistrusting its giant neighbour. India should let the international community, namely the UN, play a major role in bringing about a peaceful resolution to the current crisis in Nepal.

Introduction

Despite numerous similarities, India and Nepal tend to have difficulties in resolving many vital issues common to both of them, including border disputes, trade and transit issues, and matters relating to cooperation in the water sector. Successive political leaders in both countries have been unable to demonstrate the degree of farsightedness and wisdom required to cultivate and nurture a relationship that does not actually call for much hard work or a major sacrifice in order to flourish. Unfortunately, problems between India and Nepal persist and small differences become larger and then seem to be intractable.

The Background to Indo-Nepal Relations

* Surya Subedi is Professor of International Law at the University of Leeds and Chairman of the Britain-Nepal Academic Council. He has published widely on legal aspects of Indo-Nepal relations and his book, titled "Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations," has recently been published by Oxford University Press, New Delhi. This paper, by Professor Surya Subedi OBE, stems from a paper given at Chatham House on January 27, 2005, updated in the light of the royal take-over of February 1, 2005.

India and Nepal share not only a long and open border but also a cultural history. A sizeable population of Indian origin live in Nepal and vice versa. This is one reason why the 1950 Treaty of Peace and Friendship grants the nationals of India with national treatment in Nepal (and nationals of Nepal with Indian national treatment in India) as far as certain industrial, economic and commercial activities are concerned. However, the nature and scope of this treaty has been the subject of controversy since its conclusion. Critics argue that this treaty is based on the 'Himalayan frontier policy' of India, fundamentally a policy pursued by the British during colonial rule, which should be changed to reflect the current reality.

Nepal views India's attitude towards Nepal as old-fashioned and patronising. Nepal is virtually land-locked by India and India has tended to view Nepal as its own backyard. But while India is a huge factor in Nepal's international relations, Nepal is an important, though relatively small, factor in India's own foreign policy. India has been critical of the inclination of Nepal's leaders to adopt the role of an irritating neighbour, incapable of understanding the bilateral relationship from a broader perspective. India views its dealings with Nepal in a regional context, while Nepal takes a bilateral view of relations with India.

This outlook has hindered Nepal's attempts at modernisation and economic development and the misperceptions regarding the asymmetric relationship have often prevented meaningful cooperation between the two neighbours. For instance, Nepal has huge hydroelectric potential but has yet to take advantage of this resource largely because of mistrust of India – the natural market for power.

There is little balance in the interplay between diplomacy and law in shaping the relations between Nepal and India. As a result, Indo-Nepal relations have become a "laboratory" for testing various principles of international law. While some treaties between the two countries have been unbalanced, inviting inevitable criticism, others, even those concluded ostensibly on the basis of equality, have yet to be implemented because they have also been tainted by the old mindset of "unequal" treaties. For instance, Nepal as a land-locked country has a guaranteed right to free access to and from the sea through the territory of India under international law, but India has been slow to acknowledge that fact and is often reluctant to honour the right in practice. Furthermore, the very existence of some treaties is contested. Treaties have been concluded between the two countries without being designated as such in order to avoid parliamentary scrutiny.

Indo-Nepal relations are marred by mistrust, confusion and dogmatism. It is necessary to develop an environment in both countries that is conducive to meaningful cooperation. The perception that India sees Nepal as its own backyard causes resentment in Nepal. And

Nepal's tendency to denigrate its larger neighbour for any perceived ills is equally unhealthy and may ultimately block any effort by the two countries to work together.

India and Nepal need to usher their relations into a new phase, prepared for and capable of facing current challenges. They have to move away from the old dogmas and embrace transparency and democratic norms in the conduct of their relations. For this, the immediate task at hand is to:

- Regulate the Indo-Nepal border and require some sort of ID card when nationals of both countries cross the border;
- Resolve the border disputes such as those relating to Kalapani;
- Implement the Mahakali River Treaty in a manner which is satisfactory to both parties;
- Conclude a new friendship treaty to replace the 1950 Treaty of Peace and Friendship; and
- Cancel formally the 1965 Arms Agreement and any other "secret" agreements.

The Maoist Problem and the Royal Coup

The Maoist insurgency, which began in Nepal in the 1990s, had two main political objectives:

- Abolishing the monarchy, seen as an obstacle to the economic, social and political development of Nepal; and
- Cancelling the "unequal" treaties with India in order to end the virtual control of the Nepalese economy by Indian businesses.

The Maoists began to be seen as a viable alternative to the increasingly unsatisfactory situation created by the endless squabbles among the parliamentary political parties, rampant corruption, economic mismanagement, neglect of the real concerns of the people, and unfair access to and unbalanced distribution of Nepal's resources.

To make matters worse, the King of Nepal grabbed power on February 1, 2005, and suspended human rights and democracy by declaring a state of emergency. The resumption of absolute rule in a country ridden by internal strife has further divided Nepal and complicated existing political problems. The King has tried to justify his move by arguing that he was driven by a desire to bring about peace in the country and tackle the Maoist problem. However, there are no indications of that occurring. Rather, the Maoists seem to have

hardened their position and the risk is that many people standing in the middle ground may very well end up on the Maoist camp.

There can be no denying that the coalition partners within the sacked government itself were divided on the question of holding the general election under critical conditions and were unable to address the Maoist problem. But while the ousted government achieved little, the King should have taken the opportunity to build a national consensus to address the Maoist problem. His best option was perhaps to dissolve the government and call for a national convention represented by all major political forces within the country. The King could have acted as a unifying force, a mediator, a conciliator and a peace-broker, demonstrating that he himself was prepared to make sacrifices and compromise for the greater good of the country. Unfortunately, he did not take advantage of this opportunity.

In the past, various political parties, including the Nepali Congress, have taken advantage of Nepal's long open border with India and the democratic and open nature of Indian society to organise themselves in India. When the Maoist campaign within Nepal escalated, there was a tendency to look towards New Delhi for tougher action against the Maoists leaders who were supposedly operating from within the Indian territory.

The intensification of the Maoist campaign in the 1990s drew India closer into the problem. India began to supply more weapons to the Royal Nepalese Army thereby increasing the dependency of Nepal on India for the resolution of the problem. Other major powers, including the US and UK also saw things in Nepal through the New Delhi lens or were unwilling to do much for Nepal without checking first with India. International efforts to assist Nepal fizzled out due partly to the disunity among the parliamentary political parties and partly to India's resentment of any significant involvement of other countries in Nepal's affairs.

The much awaited visit by the King to India was postponed repeatedly before the Royal coup of 1 February 2005. Indian political leaders had started to increase their stake in the Maoist problem, calling it a common problem. The Indian media had started a debate about the need for Indian intervention in Nepal. The influence of New Delhi on the international media also increased.

The royal coup, however, faced criticism not only from India, but also from the UK, the US and the UN. It appears that both the UK and the US have given India the lead in putting pressure on the King to restore democracy and human rights in Nepal. Both India and the UK suspended military aid to Nepal. The US took a "wait and see" approach but was generally supportive of the Indian and the British positions. However, India has now lifted its suspension of military aid and it remains to be seen whether the UK follows suit. India is

concerned both about the contagion effect of conflict on India, as well as its own arms industry. In Nepal there is a perception that India is more interested in promoting its national self-interest than in promoting democracy, requiring it to reach an accommodation with the *de facto* ruler in Nepal. During India's suspension of military aid, the King tried to give the impression that Nepal could turn to China to rescue it from international isolation but, apart from demonstrating some public support to the present regime in Nepal, it is doubtful whether China would have come to Nepal's rescue and risked its own rapidly improving relations with India. It is widely held that since 1954 both China and India have some sort of understanding whereby India would do nothing to undermine the vital Chinese interests beyond the Himalayas and China would do nothing to undermine vital Indian interests beyond the natural frontier of the Himalayas.

Indian indifference towards the Dalai Lama's claims for independence or greater autonomy for Tibet and weak Chinese opposition to India's annexation of Sikkim in 1974 are cited as examples of this *détente* at work. While India has provided shelter to the Dalai Lama, it has not supported his political ambitions. Similarly, China has accepted India's annexation of Sikkim. This *détente* makes it unlikely that China would consider replacing India as Nepal's main source of arms, or take other steps to suppress the Maoist movement. Furthermore, China has not embraced the UN human rights agenda according to which human rights violations by a despotic regime within any country should be regarded as a matter for international concern.

At present there is a stalemate in Indo-Nepal relations in terms of broader economic cooperation and a complete deadlock within Nepal in terms of resolving the Maoist problem and moving the political process forward. There does not seem to be any constructive dialogue between Nepal and India to address the whole gamut of Indo-Nepal relations and the conflict in Nepal has stalled efforts to work together for economic development.

India's claim that the Maoist problem in Nepal is spilling over to India, posing a great security threat to India itself, has gained international attention. Before the Royal coup, it was rumoured that the King was considering asking India to send troops to Nepal to fight the Maoists. Was his visit postponed to give both sides an opportunity to work out the modalities for direct Indian military intervention? Given subsequent developments, these stories seem far-fetched. It also is difficult to believe how a tiny Maoist rebel movement in Nepal would have any meaningful impact on India – a huge country with several similar rebel movements. Even if the Maoists took power in Nepal they would pose little threat to India - a regional power aspiring to become a global power. And the Maoists would face the same constraints as

any Nepalese ruler. If they should want to maintain power, they would need to accept the limitations of ruling a virtually India-locked impoverished country and reach an accommodation with the larger neighbour.

A Way Forward?

The government of Nepal faces two options: 1) use more military force to weaken the Maoists, forcing them to negotiate, or 2) address the issues raised by the Maoists.

Option one would invite a bloodbath. Any Indian interference or direct military assistance risks bolstering the Maoist threat. The Nepalese are fiercely nationalist and proud of their independence. The move could inflame the Gurkhas, proud of their military tradition. Furthermore, there is little guarantee that Indian interference would bring military success. India is struggling to fight its own Maoist and other insurgent movements. Any Indian interference would not only be illegal but could prove to be a costly affair, for both countries.

The second option is more sensible but would require international pressure on both the Maoists and the government. International involvement, however, would not be difficult to secure. The international community has a stake in Nepal. The international community would be abdicating its responsibility if they leave the resolution of the conflict to India alone. Gross violations of human rights and humanitarian law are taking place in Nepal. Law and order has broken down. The Maoists have not respected the rule of law and have created a lawless situation in the rural areas of Nepal. Now the royal government has created another type of lawless society in urban areas by undermining basic principles of the rule of law, democracy, and human rights. The law is confined to the books and the order that does exist is confined to the Kathmandu Valley. Outside the Valley, terror, not order, rules the day.

The forced disappearance of people is now a daily occurrence, torture is routine and the killing and suffering of innocent people caught in the cross-fire is beyond belief. The protection of human rights in Nepal is as much a matter of concern for the international community as anywhere else in the world. International involvement is needed to prevent such violations of human rights in Nepal.

The Maoist problem is essentially a political problem - there are no internal territorial disputes involved, nor is the Maoist campaign based on ethnic lines. It is about political governance. The Maoists are unlikely to muster enough support to overthrow the present system of government and should know their limitations. At the same time, the army seems incapable of defeating the Maoists completely. Hence,

there is a stalemate. There are, of course, beneficiaries in this conflict: recent governments (including the present Royal government) have tried to remain in power by invoking the Maoist threat; the Maoists themselves have benefited from the money collected from extortion; there is a huge INGO/NGO industry supposedly working to find a negotiated settlement, and there is a small clique which benefits from the commissions offered by the arms industry and the huge expenditure allocated to the military and the security sector.

The present Royal government has not shown any sense of urgency in dealing with the Maoist problem. Rather, it has focussed on consolidating power within the country in the hands of a small clique surrounding the King by invoking the threat posed by the Maoists and intimidating supporters of democracy.

It is the marginalized – the poor, the vulnerable, the weak and those with low or no income that suffer most at the hands of the Maoists and the security forces. The international community has owes these people an obligation and should become actively involved to bring the warring sides to the negotiating table.

Conclusions

While events in Nepal are an irritating, diplomatic disaster for India, India would benefit from a peaceful Nepal and suffers costs from having a poor and conflict-ridden neighbour. India should demonstrate greater vision and farsightedness in its dealings with Nepal, while Nepal should stop mistrusting its giant neighbour. India should let the international community, namely the UN, play a major role in bringing about a peaceful resolution to the problem.

The King has a historical responsibility to show flexibility at this juncture. With the help of the international community, he should convene a broad political convention, including the Maoists, to consider the political future of the country. He should appoint a non-political caretaker cabinet, headed by a former Chief Justice or a similar figure, with the sole task of holding a free and fair general election under international supervision.

Other countries should act through the UN to facilitate a negotiated settlement in Nepal. It seems perfectly possible for a government of national unity comprising all democratic forces of the country to deal decisively with the Maoists if the international community is united behind a democratic government in Nepal. The Maoists have no popular support, believe in an outdated political ideology, and have resorted to some of the worst atrocities imaginable in order to terrorise people in the rural areas.

But in tackling the Maoists, the issues of inequality, poverty, feudal control of the country and neglect of the underprivileged classes raised by the Maoists should not be forgotten. Some of the issues raised by the Maoists should be addressed with sincerity in the negotiations. This is where India can play the role of a friendly mediator and conciliator as part of a broader international effort led by the UN to bring about peace and prosperity to the people of Nepal. In the absence of international involvement, the Maoist problem may be allowed to continue for a long time in order to justify the political ambitions of the warring sides. This will prolong and compound the suffering of the masses of innocent people rendered helpless in this brutal struggle for power.