

Nepal

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Introduction

Nepal is a landlocked State situated between China and India, with a total land area 147,181 square kilometres and has traditionally followed a policy of neutrality and non-alignment in the conduct of its international relations. The country is located in the southern flanks of the majestic Himalayas. Nepal's human rights situation has attracted the attention of the United Nations. The UN was also involved in the peace process actuated to terminate the internal struggle.

History

Nepal is an ancient State that has existed in various forms for more than 2,500 years. It is the birthplace of Lord Buddha. The existence of Nepal is mentioned in various religious scriptures of ancient Hindu and Buddhist civilisations. Neolithic tools found during recent excavations in the Kathmandu Valley indicate that people were living in the Himalayan region in the distant past. The *Mahabharata* and other legendary epics such as the *Ramayana* mention various ethnic groups such as the Kiratas whose descendants still inhabit Nepal.

The history of modern Nepal began in the sixteenth century with the founding of the House of Gorkha by Dravya Shah in 1559 in the western hills of Nepal. When Prithvi Narayan Shah ascended to the throne of Gorkha, a hilly district, in the western part of the country, he began a campaign to unify the country which had remained divided into several principalities. The campaign of conquest was extended by his successors in the late eighteenth century towards the east and west of Nepal, through the Himalayan belt for almost 1,500 kilometers from the western boundary of Garhwal, India, through the territory of (- *Sikkim*) in the east. However, much of the territory gained had to be ceded to British India under the Treaty of Sugauli in the early nineteenth century when Nepal lost the Anglo-Nepalese War (1814-16). The war broke out mainly as a result of the British campaign for expansion of their Empire in South Asia. The British desire was to bring all smaller territories south of the Himalayas in order to consolidate British rule in India. Nepal resisted the (- *aggression*) but was forced to sign a peace agreement with unfavourable terms.

The next phase in the political history of Nepal began when Jang Bahadur Kunwar came to power in 1846 through a court massacre known as the Kot Parva. He established a hereditary Rana family rule which lasted for about 104 years.

Struggle for Democracy

The Rana rule came to an end in 1950 following a nationwide people's movement for democracy which was inspired by the independence of India from the British who had forged close ties with the Ranas. Following the collapse of the Rana rule, Nepal witnessed a decade of democratic experiments resulting in the adoption of a modern constitution based on parliamentary democracy and constitutional monarchy in 1959. The first democratic

elections in the history of Nepal took place for parliament in 1960 and the Nepali Congress Party, a centrist party, led by B.P. Koirala was elected to power.

However, in 1962 King Mahendra Bir Bikram Shah Dev took over power by dissolving parliament and suspending the Constitution. B.P. Koirala, the first elected prime minister of Nepal was arrested along with his cabinet colleagues. This heralded the beginning of a new political system known as panchayat under which the King exercised executive powers and political parties were banned. King Mahendra ruled the country under the panchayat system until his death in 1972. He was succeeded to the throne by his son King Birendra. Political dissension was on the increase within the country against the panchayat rule and culminated in huge demonstrations in 1979. Coming under pressure from pro-democracy movements, the King decided to hold a referendum in 1980 as to the future political system of the country. The referendum was in favour of maintaining the status quo of the panchayat system and its continuation as a rubber stamp for the king.

Nevertheless, opposition to the government and the panchayat system continued to grow, particularly in the late 1980s when the outlawed political parties announced a campaign for a multiparty system. A coalition of the Nepali Congress Party and the Communist Party of Nepal formed in late 1989 launched a nationwide movement for the restoration of democracy. The campaign coincided with the worsening economic situation caused by the trade and transit dispute with India. The call of the Berlin Wall, the end of the (- *Cold War*) and the collapse of communism taking place around the same time had a tremendous impact on the people of Nepal.

As the protests grew across the nation against the panchayat system resulting in violence, arrests, and deaths, King Birendra decided to lift the ban on political parties in April 1990 ending thirty years of direct rule by the king. The king established a Constitution Recommendation Commission upon whose recommendation a new Constitution was promulgated in November 1990 under which sovereignty was vested in the people and the monarchy became a constitutional one. When the new democratic system was still at its infancy, there was a challenge to democracy once again and this time the challenge came from a different quarter – the Maoists. They walked out of parliament and began their armed struggle in 1996 to overthrow the monarchy and the parliamentary system of government.

When the country was going through political instability, a massive tragedy struck at the heart of the Nepalese establishment. The royal massacre that took place at night on the 1st of June 2001 resulted in the death of King Birendra, Queen Aishwarya, Crown Prince Dipendra and several other prominent members of the royal family. This event shook the very foundation of the State and the traditional power base.

Following the massacre, King Gyanendra, acceded to the throne and he soon started to assert power. His political adventures culminated in a take over of power in February 2005, which re-established him as the absolute monarch similar to the one that existed during the old panchayat rule. However, isolated internationally, the King faced strong urban opposition to his rule from the political parties and civil society organisations and fierce rural opposition from the Maoists. As the King's regime became more oppressive, the main political parties went to form an alliance with the Maoists against the King.

Consequently, the King made an announcement on 24 April 2006 to relinquish power and to revive the old parliament. When the main political parties came to power, the revived

parliament and the new coalition government began the process of bringing the Maoists to main stream politics which resulted in the conclusion of a comprehensive peace agreement in November 2006. This formally ended the Maoist War and the promulgation of the Interim Constitution in January 2007 officially stripped the King off all of his powers. The third amendment to the Interim Constitution made in December 2007 declared that Nepal would be a republic and suspended the institution of monarchy. The final decision on the fate of the monarchy was to be taken at the first meeting of the constituent assembly by a simple majority. The election for the Constituent Assembly took place in April 2008 in a peaceful manner and was regarded to be generally free and fair by both national and international election observers. The Maoists won most votes and emerged as the largest party in the Assembly. When the first meeting of the Assembly in May 2008 the first decision it took was formally to abolish the monarchy and declare Nepal a federal republic. Thus, began a new chapter in the history of the nation and the Shah dynasty which unified and ruled the country for nearly 240-years was consigned to history.

Transition to Peace

After witnessing years of violence waged by Maoists, under the auspices of a “people’s war”, which resulted in the death of more than 13,000 people; the disappearance of between 1,000 to 5,000 people; and the displacement of about 100,000 others, the guns finally fell silent in the Himalayan State of Nepal in 2006. Thanks to the comprehensive peace agreement concluded in November 2006, which was described as a “Nepali-owned” peace process by the Special Representative of the UN (- *Secretary-General*) in his report to the Security Council on Nepal, and the adoption of a power-sharing Interim Constitution in January 2007, Nepal was back on the road to democracy. Under the peace deal the Maoists locked away their weapons under the watchful eyes of the UN and confined their fighters to UN monitored sites dubbed as “cantonments.”

The main objective of the agreement between the Maoists and other political parties was to hold fresh elections to elect a constituent assembly to write a permanent constitution for the country. The purpose of a new permanent constitution is aimed at restructuring the system of governance within the country and allowing equal access to power for people of all traditionally marginalised ethnic, religious and racial groups in this highly stratified traditional society and eliminate discrimination against them. Thus, when the election for the constituent assembly took place in April 2008 and the monarchy was abolished a month later by the Assembly, Nepal completed a transitional phase to a lasting peace.

The Role of the UN in the Nepalese Peace Process

The involvement of the (- *United Nations*) in Nepal has been two fold. It is both a human rights mission and a political mission. While the human rights mission is for a longer-term and has a broader mandate, the political mission is for the short-term and has a limited and focussed mandate. A human rights mission was sent by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2005 to monitor human rights violations during the King’s direct rule. When the political situation started to deteriorate, the (- *Secretary-General*) of the UN decided to send his Personal Representative to Nepal to assist the parties to reach a political settlement. When the people’s movement overthrew the autocratic rule by the King, the UN was invited to assist in the peace process by both the Maoists and other major political parties.

It was in January 2007 that a new political mission of the UN – UNMIN – was established by the UN (- *Security Council*) through its Resolution 1740 (2007) of 23 January 2007 for a period of 12 months to assist in the peace process and to disarm the soldiers belonging to the Communist Part of Nepal (Maoist). The main mandate of the UNMIN was as follows:

To support the peace process;

To monitor the management of arms and armies of the Maoists (meaning basically demobilisation and disarming of the Maoists fighters) and the Government;

To assist the parties in implementing their agreement on the management of arms and armies through a Joint Monitoring Co-ordination Committee;

To provide support for the conduct of the election of a Constituent Assembly in a free and fair atmosphere; and

To provide technical assistance to the Election Commission to enhance its capacity to administer a credible Constituent Assembly election.

Soon after the Security Council adopted the resolution to create UNMIN, the UN machinery went into action in Nepal. Consequently, the process of registering the Maoist weapons and their fighters was completed. The weapons were locked away in UN-approved containers and the disarmed Maoist fighters were confined to UN-approved and supervised cantonments. The UN mission in Nepal was headed by a Special Envoy of the UN Secretary-General. The mission also consisted of an Electoral Monitoring Team which monitored the election for the constituent assembly in April 2008. There was a substantial presence of international observers during the election.

The Judiciary

The legal system of Nepal is a blend of Hindu and Western (both common and civil or continental) legal traditions. The independence of the judiciary is guaranteed by the Constitution. The Supreme Court is at apex of the judicial system. All other courts and institutions exercising judicial powers are under its jurisdiction. It has both original and appellate jurisdiction and consists of a chief justice and fourteen other judges. The Chief Justice of the country is appointed on the recommendation of the Constitutional Council.

Nepal has a Civil Code known as the Muluki Ain of 1963 which combines ancient Hindu sanctions and customary law and common laws modelled on the British and Indian codes with the rules of behaviour. The *Nepal Raj Patra*, the government gazette, issued at irregular intervals, publishes all new legislation. Official texts of Supreme Court decisions are published monthly in the *Nepal Kanoon Patrika* (Nepalese Law Journal), which also contains articles on legal topics.

Foreign Policy

Nepal's foreign policy continues to be affected by its geo-strategic location between China and India and its attempt to maintain a balance between these powerful neighbours. Nepal's relationship with India is governed by the 1950 Treaty of Peace and Friendship which replaced the 1923 treaty with Britain. Nepal made serious efforts during the reign of both King Mahendra and King Birendra to assert greater independence in its foreign policy, establishing bilateral diplomatic relations with other countries and joining various multilateral and regional organizations. During his Coronation address in 1974, King Birendra proposed that Nepal be declared a (- *Zone of Peace*). This proposal had been

endorsed by 119 States except India. Nepal is a member of a number of international and regional organisations, including the UN, the (- *Non-Aligned Movement*), the (- *World Trade Organisation*), the (- *World Bank*), the (- *International Monetary Fund*), the Asian Development Bank and the South Asian Association for Regional Cooperation (SAARC). Nepal has not accepted the compulsory jurisdiction of the (- *International Court of Justice*).

Relations with India

Even after India had achieved independence from Britain in 1947, Nepalese-Indian relations continue to be based on the foundations laid by the Treaty of Sugauli and the 1923 Treaty of Friendship signed with the government of British India. The 1950 Treaty of Peace and Friendship concluded by the last Rana Prime Minister of Nepal with India is the foundation stone for Indo-Nepal relations. Under this Treaty each government has agreed to acknowledge and respect the other's sovereignty, territorial integrity, and independence; to continue diplomatic relations; and, on matters pertaining to industrial and economic development, to grant rights equal to those of its own citizens to the nationals of the other residing in its territory. Nepal and India have concluded a number of other treaties to promote cooperation in the areas of trade, transit and utilisation of water resources. Among them are as follows:

The Koshi Agreement: This agreement was concluded in 1954 to utilise the waters of the River Koshi, Nepal's third biggest river, for the generation of hydro-electric power and irrigation.

The Gandak Agreement: Soon after the conclusion of the Koshi Agreement, India and Nepal concluded another agreement in 1959 relating to the Gandak Irrigation and Power Project, to utilise the waters of the River Gandaki, the second biggest river in Nepal, for the generation of hydro-electric power and irrigation.

The Tanakpur Agreement: A newly elected government of the Nepali Congress Party concluded in 1991, an agreement with immediate effect with India to allow it to build a 577-metre long afflux bound on Nepalese territory to ensure the success of an Indian hydro-electric power project being built at Tanakpur, located on the Indian side of the Indo-Nepal border river, (i.e., the Mahakali), using the waters of this river.

The 1996 Mahakali River Treaty: The most recent treaty dealing with water resources co-operation between Nepal and India, is the 1996 Mahakali River Treaty. It is a major water co-operation treaty concerning the Integrated Development of the Mahakali River including Sharada Barrage, Tanakpur Barrage and Pancheshwar Project. This is perhaps the most ambitious and comprehensive water co-operation treaty concluded in the troubled history of Indo-Nepal relations. However, this treaty has encountered a number of problems in its implementation and has remained defunct.

The Treaty of Transit: This treaty was signed on 6 December 1991 and was the second separate transit treaty concluded by Nepal with India and the first one concluded after the overthrow of the panchayat system. The 1978 transit treaty was the first treaty between these two countries solely concerned with transit. Prior to that, transit matters used to be incorporated in single treaties dealing with both trade and transit. The 1991 transit treaty repeats, with minor alterations, the provisions of the 1978 transit treaty. The Preamble to the treaty recognised that 'Nepal as a land-locked country needs access to and from the sea to

promote its international trade'. Among the deficiencies of the 1991 transit treaty is the absence of a dispute resolution provision. Since the transit dispute has often soured the entire Indo-Nepal relationship it was high time to provide for a dispute resolution mechanism in the treaty.

An Appraisal of Relations with India

India has been the largest provider of economic assistance to Nepal. Both of these countries share so many things in common such as religion and culture. However, much of Nepal's struggle for survival as an independent nation has been with India and this remains true to this day. Whether it was during the British rule of India or post-independence India, the rulers in New Delhi have tended to regard Nepal as a country within the Indian sphere of influence and within India's broader security umbrella known as the Himalayan frontier policy of British or independent India which regards the Himalayas as the ultimate frontier of India with China. Because of its geo-political situation, Nepal has always attracted the attention of the major political powers of the day keen to exploit her strategic location.

However, India's efforts have concentrated on keeping other powers at bay. Consequently, India has meddled constantly in internal politics of Nepal and influenced Nepal's decision making process. The 1950 treaty of peace and friendship and the idea of a 'special' relationship between the two countries have been invoked by India in an attempt to have a greater influence in the conduct of Nepal's foreign policy affairs. Because of the porous long open border between the two countries, India seems to be concerned about the activities within Nepal which may have detrimental impact on India's security. Consequently, India has flexed its economic muscle every now and then to ensure that Nepal remains firmly within India's sphere of influence.

Both Nepal and India are members of the (- *Non-Aligned Movement*) and are committed formally to conducting their relations in accordance with the ethos of this Movement and the principles of the (- *Charter of the United Nations*). However, in reality the relationship is unbalanced and is governed by a network of lopsided treaties which has often been referred to as 'unequal' treaties by scholars in Nepal.

Regardless of the legal status of these treaties in international law, what is apparent is that an overhaul of Indo-Nepal relations and the timely revision of certain outdated (- *treaties*) such as the 1950 treaty of peace and friendship is needed on the basis of the modern principles of (- *international law*) such as sovereign equality, mutual and equal benefits, and non-interference in the internal affairs of each other. In sum, what seems to be needed is democratisation and modernisation of Indo-Nepal in order to usher these two countries to the path to greater prosperity and economic development for the millions of people still living below poverty line in this part of the world.

Relations with China

The keystone of Nepal's China policy has been to maintaining equal friendships with China and India. Modern relations with China are regulated by two agreements - the 1960 Treaty of Peace and Friendship and the 1960 Boundary Agreement concluded during the Nepalese Prime Minister B.P. Koirala's visit to China. Under the guidance of the Five Principles, i.e., the Pancha Sheela, the two sides agreed to demarcate the boundary between the two countries in an amicable manner. The Boundary Agreement provided for a Sino-Nepal Joint

Commission to agree on questions regarding alignment, location, and maintenance of the demarcation markers. The findings of the Commission were accepted by both Governments and attached to the original treaty in a protocol signed in January 1963. During the Sino-Indian border conflict of 1962, Nepal reasserted its neutrality. An agreement to construct an all-weather highway linking Kathmandu with Tibet was signed in October 1961 which led to the opening of the Kathmandu-Kodari road through a pass in May 1967. Although the highway had no economic or commercial value for some time, it now operates as a major trading route between the two countries.

China has maintained a cordial relationship with Nepal and assisted in the economic development of the country. One of the main concerns China has had in her relations with Nepal was to ensure that Nepalese territory was not used by the supporters of the Dalai Lama and other countries to carry out activities designed to undermine the situation in Tibet. In turn, Nepal has paid adequate attention to the security and other sensitivities of China and maintained a friendly relationship with her.

Assessment

As a small country located on the southern flanks of the Himalayas and sandwiched between the two giants of Asia, Nepal has traditionally followed a sensible policy to preserve her sovereignty and independence and retain much of her ancient cultural heritage. The country has treaded a careful path to maintain cordial relations with both of her immediate neighbours, reach out to other nations and played an important role in (- *international organisations*) such as the UN. Nepal is a regular contributor to the (- *peacekeeping*) operations of the UN. As a land-locked country, Nepal has been at the forefront of the efforts to secure the rights of land-locked countries in international law, especially during the negotiations on the 1982 UN (- *Convention on the Law of the Sea*). The country is a host to the Secretariat of the South Asian Association for Regional Cooperation (SAARC) and some other regional UN agencies. Although culturally a traditional society, Nepal is very much a liberal society politically. In spite of the political instability within the country, she has been able to participate actively in international activities designed to promote the rule of law, democracy and human rights. The country has a good record of participating in international (- *human rights*) as well as international environmental treaties. All in all, it is a forward-looking country worthy of a rightful place in the galaxy of nations working towards the betterment of humanity and the advancement of human civilization.

Select Documents

Treaty of Peace and Friendship between India and Nepal, 1950: UNTS 3.

Treaty of Peace (the Sugauli Treaty) between the British India and Nepal, 1815 (published in C.U.Aitchison (ed.), *Treaties and Engagements Relating to Nepal*, Pt. II (Calcutta: Government of India Printing Department, 1909).

Treaty of Friendship between Britain and Nepal, 1923 (published in Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations* (Oxford University Press, New Delhi 2005), pp.188-190.

Treaty of Peace and Friendship between Nepal and China, 1960 (published, *ibid.*, pp.251-252.

The UN Security Council decision to establish a political mission to Nepal: UN Doc. S/2007/7 of 9 January 2007.

Select Bibliography

- Agrawal, Hem Narayan. *The Administrative System of Nepal*. New Delhi: Vikas, 1976.
- Bhasin, A.S. (ed.). *Documents on Nepal's Relations with India and China, 1949-66*. Bombay: Academic Books, 1970.
- Caplan, Lionel. "Bravest of the Brave': Representations of 'The Gurkha' in British Military Writings," *Modern Asian Studies* [London], 25, No. 3, July 1991, 571-97.
- Gellner, David. 'Caste, Ethnicity and Inequality in Nepal' *Economic and Political Weekly* (India) 42(20) (2007): 1823-8.
- Khanal, Yadu Nath. *Essays in Nepal's Foreign Affairs* (1988).
- Lévi, Sylvain. *Le Nepal: Etude historique d'un royaume hindou*. (3 vols.) Paris: E Leroux, 1905-8.
- Hutt, Michael (ed.). *Nepal in the Nineties: Versions of the Past, Visions of the Future*. New Delhi: Oxford University Press (second edition 2001).
- (ed.) *Himalayan 'People's War': Nepal's Maoist Rebellion*. London: Christopher Hurst and Co (2004).
- Muni, S.D. *Foreign Policy of Nepal*. New Delhi: National, 1973.
- Petech, Luciano. *Mediaeval History of Nepal (ca. 750-1480)*. (2d ed.) (Serie orientale, toma 54.) Rome: Institutio Italiano per il Medio ed Estremo Oriente, 1984.
- Regmi, Dilli Raman. *Ancient Nepal*. (3d ed.) Calcutta: K.L. Mukhopadhyay, 1969.
- *Medieval Nepal*. (4 vols.) Calcutta: K.L. Mukhopadhyay, 1965-66.
- Rose, Leo E. *Nepal: Strategy for Survival*. Berkeley: University of California Press, 1971.
- Rose, Leo E., and Bhuwan Lal Joshi. *Democratic Innovations in Nepal*. Berkeley: University of California Press, 1966.
- Rose, Leo E., and John T. Scholz. *Nepal: Profile of a Himalayan Kingdom*. Boulder, Colorado: Westview Press, 1980.
- Shaha, Rishikesh. *Essays in the Practice of Government in Nepal*. New Delhi: Manohar, 1982.
- *Nepali Politics: Retrospect and Prospect*. Delhi: Oxford University Press, 1978.
- *Politics in Nepal, 1980-1990: Referendum, Stalemate, and Triumph of People Power*. New Delhi: Manohar, 1990.
- Shrestha, Mangal Krishna. *Public Administration in Nepal*. Kathmandu: Educational Enterprise, 1975.
- Stiller, Ludwig. *The Rise of the House of Gorkha: A Study in the Unification of Nepal*. New Delhi: Manjusri, 1973.
- Subedi, Surya P. *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations* (Oxford University Press, New Delhi, 2005).
- *Land-Locked Nepal and International Law* (1989), K. Gautam, Kathmandu.
- 'The Himalayan Frontier Policy of British-India and the Significance of the 1923 Treaty of Friendship between Great Britain and Nepal', 27 *Journal of the Britain-Nepal Society* (London, December 2003), pp.35-39.
- J. Whelpton. *Nepal* (Cambridge University Press, 1990).