

The 1950 Treaty of Peace & Friendship: An Issue of Contention between India and Nepal

Natasha Manhas and Mamta Sharma

Post Graduate Department of Political Science, University of Jammu, Jammu.

Abstract- The need for treaties has increased as the world's interdependence has intensified. Continuing, technological innovation, economic globalization and the growth of transnationalism has resulted in an enormous increase in the frequency and rapidity of global interaction. Such challenges require both national and international responses. Where a problem cannot be adequately addressed by a country acting alone acting cooperatively at the international level becomes essential for a country to protect its own interests. The purpose of treaties is to address the interests and concerns of the signatories in a given time and context and if they fall short to address the dynamic international policies then the obvious choice is to upgrade or amend them. The interests and concerns of a particular country is defined and determined by its political elite in a particular time, space and context. This is true in the context of the Treaty of Peace and Friendship signed in 1950 between India and Nepal to take care of their mutual interests within a particular regional context. The article examines the relevance of the treaty and prospects of Indo- Nepal relations in the changing international scenario. It argues that Nepal has benefitted much more than India from the treaty. However, considering changes in the strategic equations in the region, India- Nepal bilateral relations must be remodeled into a strategic partnership that seeks to provide security, modernization and prosperity.

Index Terms- Treaty, India, Nepal, Peace, Friendship, Relations, Perspective.

I. INTRODUCTION

Ties between India and Nepal have consistently been close and reflect the historical, geographical, cultural and linguistic links between the two nations. The signing of the India-Nepal Treaty of Peace and Friendship in 1950 established the framework for the unique ties between the two countries. The treaty was signed with an objective to strengthen the relationship between the two countries by recognizing historical values and perpetuating peace in the region. It provided the foundation for India and Nepal relations. The treaty contains ten articles and a letter of exchange. In Article 1, the two countries acknowledged each other's territorial integrity and sovereignty. Article 2 says that they have to inform each other in case of friction with neighbouring countries. Article 5,6 and 7 deals with arms imports of Nepal, national treatment of each other's citizens in economic matters, and reciprocal treatment to nationals in matters concerning residence, protection and trade. Article 8 cancels all the past treaties between Nepal and British government. Article 9 and 10 deals with renewal and cancellation

of the treaty. The objective of the treaty signed by mutual consent of the contracting parties was to establish permanent peace and friendship between the two countries by identifying their mutual politico- economic and socio-cultural linkages and security requirements. The land- locked Nepal conducts trade with the outside world through India. As K.V.Rajan observed, the treaty basically offered economic opportunities in India for Nepalese nationals against Nepalese assurances that security concerns would be respected. The international and regional situation during the 1950s, when the treaty was signed, was wholly different from what it is today. The world was then reeling under the cold war. The international community was divided into three blocks of capitalist, communist and non-aligned nations. India as a newly independent country with a weak military and troubled by internal disturbances was suspicious of the Chinese adventurism in Tibet. It was also apprehensive of the Communist influence in Nepal. India was also perturbed by the Chinese claim that Tibet is China's palm and Nepal, Bhutan, Sikkim, Ladakh and NEFA are five fingers. With the palm already under Chinese grip the security of other Himalayan countries was endangered. The Chinese annexation of Tibet changed the strategic significance of Nepal. India decided to strengthen its northern frontier by taking Nepal into confidence. Expressing India's concern, Prime Minister Jawahar Lal Nehru said, we cannot allow anything to go wrong in Nepal or permit that barrier to be crossed or weakened because that would also be a risk to over security." Nepal, which was striving for recognition in the community of nations and was facing domestic upheaval due to protests against Rana rulers, was surprised by the Chinese claim on Tibet. The then external environment, particularly the developments in China and Tibet and the Chinese attitude of acquiescence towards the Indo-Nepalese ties also contributed a great deal in the evolution and perpetuation of special relations between the two countries. The Ranas also were looking for an opportunity to enter into some kind of understanding with India to pacify the democratic movements in Nepal which had its base in India. During 1947-1950, Rana's policy towards India was guided by winning over India's sympathy or to prevent it from supporting the democratic movements in Nepal which had its base in India. The commonality of interests and requirements resulted in the signing of the treaty. The treaty, thus addressed the socio-economic variables in the relationship. Such as, the citizens of one country could participate in the industrial and economic developments in another country without any discrimination in trade and commerce and movement in each other's country (Clause 7). The provisions were favourable to both the countries particularly to Nepal considering its dearth of economic development and opportunities for people. The letters exchanged along with the

treaty explicitly states: it may be necessary for some time to come to offer the Nepalese nationals in India protection from unrestricted competition (Clause 3). This was done to protect the interests of the Nepalese. At the same time, Nepal also agreed to give first preference to the Government of India or Indian nationals in development projects related to natural resources. When the countries erected barriers to strengthen their security, India and Nepal through the treaty agreed for an open border and tried to bring their countries socially, culturally and economically closer. The treaty could have become a model for bilateral cooperation where the signatories played on each other's strengths but with the passage of time, the mutual interests and concerns have changed in tone and tenor. For example, the open border, which is a historical reality and took into consideration the socio-cultural-economic and security interests of the signatories was infringed by the forces inimical to the interests of the two countries. The mutuality in the security interests was questioned. The treaty which provides for 'national' treatment for each other's citizens in matter of entry, movement and business in their respective territories, is a reflection of the unique relationship.

The 1950 Treaty of Peace and Friendship has been a matter of acute controversy between India and Nepal more or less since the late 1950s when a 'secret' letter exchanged with the Treaty was made public. This letter, together with the Treaty was signed by the head of an oligarchical government i.e. the Rana regime that was about to be overthrown by a democratic movement. The Ranas in its last days in power were desperate for foreign assistance for its survival and were prepared to act in tune with New Delhi. Pt. Jawahar Lal Nehru, a shrewd politician, quickly grasped the situation and opportunity which it offered. The Ranas in Nepal fully accommodated India's security and commercial interests. Soon that oligarchical regime fell in Nepal but the treaty concluded by that regime survived and survives till today, much to the discomfort of Nepal.

The issue of revision of Indo-Nepal Treaty of Peace and Friendship considered unequal by most Nepalis, was first raised publicly by Prime Minister Kirti Nidhi Bista in the year 1969 terming it as obsolete and outdated. The argument put forward for its revision had to do with India not abiding by the related clauses of that treaty (Article II requires that both governments inform each other of any serious friction or misunderstanding with any neighbouring state likely to cause any breach in the friendly relations subsisting between the two countries). Letter exchanged with the treaty stipulates clearly that the two governments shall consult each other and devise effective counter – measures to deal with the threat from a foreign aggressor. India had taken two unilateral actions during its war with China in 1962 (along Ladakh region) and the Pakistan in 1965 (disputed region of Kashmir) without informing Nepal on both occasions despite the treaty obliging both parties to do so. Even later in 1971, India's direct involvement against Pakistan for Bangladesh independence without Nepal's knowledge breached the important article of that treaty. Holding India responsible for violating certain provisions of the treaty, Prime Minister Kirti Nidhi Bista said, developments have taken place in India's relations with the Soviet Union and the United States on the one hand and with Pakistan and China on the other. Nepal was not informed about these developments and India therefore

assumed and has led Nepal to assume that exchange of information on such cases is not necessary". These views were expressed in print media and were not forwarded to the Government of India officially to amend or abrogate the Treaty. Hence, there was no response from the Indian government on this.

With the introduction of multi-party democracy in Nepal in 1990, the treaty became an important electoral issue for some political parties in Nepal. It was by the Communist government of Nepal during 1994-95 that a demand was raised officially for the revision of this treaty for the first time. But it was with the launch of Maoist Insurgency in Nepal in 1996, the demand for the revision of the treaty gained momentum. The 40 – point demands of the Communist Party of Nepal (Maoist) also focused on this issue and generated intense anti-India feelings during the people's war in Nepal. Nepalese Foreign Minister Kamal Thapa visited India in September 1997, with a 'non-paper', which, for the first time, introduced some ideas for a revision of the treaty. Most recently, the CPN-Maoist, in its manifesto for the 2008 Constituent Assembly elections, promised to abrogate the treaty and maintain equal distance between India and China. However, the Nepali Congress (NC) manifesto was silent on the matter. The Communist Party of Nepal (Unified Marxist- Leninist (CPN-UML) promised to review 'all unequal treaties', a reference to the 1950 Treaty between India and Nepal.

Almost forty years down the line in 2008, the Prime Minister, Pushpa Kamal Dahal, terming Indo-Nepal 1950 treaty as unequal from a security relation point of view called for scrapping it off. He also called for a revisit and review of several other treaties such as the Mahakali Treaty of 1996. Even today the core grievance of Maoists in Nepal is the 1950 Treaty of Peace and Friendship signed with India.

II. NEPALESE PERCEPTIONS

Nepalese reservations to the treaty are based on several issues, ranging from security to free movement of people across the border:

First, Nepalese scholars argue that the treaty was signed with a Rana Prime Minister who was not elected by the people and therefore does not represent the Nepali political consensus. They also refer to the unequal status of the signatories as an example of the build-in-inequality in the treaty

Second, the treaty is considered as a legacy of British imperialism. After 1947, the relations between India and Nepal had to start on a new scale of heightened ideological passions of democracy. Even though the two countries were ready to write their political destiny, the relevant treaties and practices that started during the British rule were not done away with. The Standstill Agreement signed in 1949 accepted all the previous treaties signed as valid till new treaties and agreements could be signed. The Treaty of Peace and Friendship of 1950 was a reflection of the Treaty of Peace and Friendship signed in 1923 but with changes made to suit the political context of the time. Six decades have gone by but reference to the continuation of the British policies still find reference in the general perception on India – Nepal relations and continues to haunt the Nepalese elite. It has become a yard stick to critically measure the policies with India even though Nepal had good working relations with the

British. The Left parties in Nepal such as Communist Party of Nepal (Unified Marxist- Leninist), Unified Communist Party of Nepal (Maoist), Nepal Workers and Peasant Party have often declared India's relations with Nepal as imperialistic and hegemonistic and responsible for signing unequal treaties with Nepal. This view was further consolidated after the merger of Sikkim in 1975 and became an easy prey for the domestic consumption in Nepal. The words hegemonistic and imperialistic reflect a continuation of British India's legacy that gets exacerbated by the big size of India vis-à-vis its small, landlocked neighbour.

Third, it is argued that this treaty of Peace and Friendship is an outmoded treaty and derogations from it are common place. Since both countries have led many of its provisions fall into disuse in the last 50 years, the time has come to review the treaty and replace it by a new one. One of the arguments advanced by Maoists to make its case against this treaty is that the government in New Delhi remained silent when Nepalese were forced to leave certain North-eastern states e.g., Assam and Meghalaya in the late 1980s. It is argued that India should not expect Nepal to conform to a treaty to which India itself is unable to conform.

Fourth, many Nepalese complain about the influx of Indian labourers into Nepal. The government of Nepal states that it is difficult for a small country with a population of 27 million to accord national treatment to the Indians which is more than 1 billion in population. Hence, Nepal has enacted laws barring foreign nationals, including Indians from owning land in Nepal. As Nepal borders on some of the poorer parts of India, there is a continuous flow into Nepal of Indian immigrants and labourers in search of work. This places an unfair burden on Nepal and gives unreasonable say to India in the conduct of domestic affairs of Nepal. It is argued that this treaty has never acquired validity.

Fifth, this treaty is described not only unequal but as an attack on Nepal's sovereignty on the ground that the circumstances in which the treaty was signed have changed and therefore, there is no relevance of this treaty anymore.

Sixth, most of the criticism of this treaty is surrounded around the politico-strategic aspects of the same. It is alleged that India has been more concerned about its strategic and security interests in the Himalayas and has ignored Nepal's sovereignty. Article 5 of the Treaty states : The government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or war like material and equipment necessary for the security of Nepal. The procedure giving effect to this arrangement shall be worked out by the two governments acting in consultation. At the same time, the letter of exchange which was kept secret till 1959 says : 'Any arms, ammunition or war like material and equipment necessary for the security of Nepal that the government of Nepal may import through the territory of India shall be so imported with the assistance and agreement of the Government of India'. This article clearly brings Nepal under the security umbrella of India.

Seventh, Nepal has reservations on clause 6 that allows the citizens to participate in the industrial and national development in each other's country and clause 7, which grants the citizens the right to reside, own property participate in trade and commerce and enjoy other privileges in one another's country. The demand of India of reciprocal 'national treatment' for its citizens in Nepalese territory and access to all the Nepal's natural resources,

while Nepalese citizens are being discriminated against while acquiring property in India is inconsistent with Nepal's exercise of full sovereignty. Over the years, there have been many instances when India has ignored the provisions of the treaty. Article 2 of the treaty requires the two governments to inform each other of any serious friction with any neighbouring state likely to cause any breach in their friendly relations. Nepalese argue that India did not inform or consult Nepal during war with China in 1962 and with Pakistan more than once. However, India argues that Koirala government was kept in close touch by its Indian counterpart on the developments in Sino-Indian relations.

III. INDIAN PERSPECTIVE

The reaction of Government of India on the 1950 Treaty of Peace and Friendship is defensive and has stemmed from its larger policy of denying the extra-regional powers a foothold in the region and keeping it away from cold war politics. India regards the 1950 Treaty of Peace and Friendship as valid and insists upon full compliance of its provisions by Nepal. Nevertheless, it emerged from the debate during the 1989 stalemate between India and Nepal that India too was prepared to enter into negotiations with Nepal on the whole gamut of mutual relations, including the 1950 Treaty of Peace and Friendship. But what India was saying was that because of its 'special relationship' with Nepal it had been very generous to its neighbor in many matters and now, since the latter was intended on changing this 'special relationship', in view of New Delhi, Nepal was merely like Bangladesh and Pakistan thus not worthy of generous treatment by India. After the emergence of Maoist Insurgency in Nepal, the demand for the revision of the treaty gained momentum as their first demand in the 40-point declaration was that 'all the unequal treaties and arguments including the 1950 Treaty of Peace and Friendship with India ought to be abolished. The demand for the revision of treaty is seen by India as Nepal's changed relations with China. Nepal has been in favour of equitable relations with India and China and in this regard, the treaty has been viewed as an obstacle. It is true that Nepal has friendly relations with China and the circumstances of the early 1950s do not prevail anymore. But the point is that the treaty puts no hurdles on closer Nepal-China relations. The fact remains that Nepal concluded border treaty with China despite the 1950 Treaty of Peace and Friendship with India. Nepal also accepted aid and imported arms from China and even sought Chinese assistance for the construction of roads and other infrastructure development. It opened relations with several other countries as well. The treaty never obstructed Nepal's diplomatic postures. So, it is mainly for the political reasons that the treaty has been viewed as an obstacle and an issue.

When the Unified Communist Party of Nepal- Maoist (UCPN- Maoist) emerged as the largest party in the Constituent Assembly elections and formed the government in 2008 in Nepal, the issue of revision of treaty was further highlighted. Also on his visit to India as Nepal's Prime Minister Pushap Kamal Dahal(Prachanda) proposed revision of the treaty. However, his government fell in May 2009 and the issue could not move further. This proposal for revision pertained to re-negotiating cooperation on water resource development, halting

the recruitment of Gurkhas in the Indian Army, solving issues like land encroachment by the Indian side and border management and regulation. These defined the political agenda of the UCPN-Maoist before and after the Constituent Assembly elections. Nepal's other left-wing party the Communist Party of Nepal – Unified Marxist- Leninist (CPN-UML) equally rallied for a revised treaty with India, although it was not the main tenet of its election agenda. Unlike the UCPN- Maoist and CPN-UML, the Nepali Congress (NC) has been silent on this issue. The Madheshi parties believe that border management as an inevitable corollary to revision will devastate the special relations between the people of the southern plains (Terai) and the people of the Indian states of Bihar and Uttar Pradesh. The traditional ties of the roti-beti (bread and butter) in the region cannot be ignored by those proposing revision. Moreover, they argue that this will greatly impact the Nepali Pahadi (hill) people who earn their livelihood in different cities of India.

India has expressed its readiness to 'review' the treaty. But the Nepali side has not been able to emerge with a concrete model for a revised treaty. A revision of the 1950 Treaty of Peace and Friendship has to be realistic and practical taking note of the citizens of both countries who enjoy various privileges reciprocally. Any revision of the treaty may directly or indirectly affect the life of citizens on both sides of the border, an aspect that needs to be carefully considered. The long standing India-Nepal relationship based on the inseparable bonds of culture and history cannot be ignored in the name of treaty revision. Nepali experts believe in the short term, a reconsideration of the treaty and claims for the sealing of borders can make political elites sufficiently happy; however, in the long run, it cannot work in favour of India-Nepal relations.

Therefore the continued rhetoric calling for a revision of the 1950 Treaty of Peace and Friendship leaves many questions unanswered as whether a revised treaty duly transforms India-Nepal relations for the better and solve existing disputes or would the Indians and Nepalese arrive at consensus if the treaty is to be revised. In practice, the treaty is more breached than respected by both the countries. Since some of the provisions in the treaty became irrelevant with the changing international scenario, both countries have violated its provisions as the situation demanded. As a result, the treaty remained virtually defunct on several fronts. The disrespect to the treaty first appeared while the Prime Minister of Nepal Tanka Prasad argued in favour of equidistance between India and China in 1956. Subsequently, the monarchy identified India as its main enemy because of its support to the democratic forces and looked towards China as a savior. The vital elements of the strategic as well as socio-economic components of the treaty and the inherent inter-dependence between these components have become nearly eroded. The initiatives for most of the moves made to erode the 1950 treaty and other bilateral arrangements came from Nepal. There were several factors responsible for this erosion of the treaty: (i) prior to the 1962 Sino-Indian war, India was regarded as a security guarantor to Nepal. India's poor performance in the 1962 war reduced its power relevance in the region. The Chinese adventurism also forced India to encourage other big powers to counter the Chinese presence in Nepal. (ii) during that time, India failed to fulfill the economic and technical needs of Nepal for development and modernization. This gave

an opportunity to diversify Nepal's relationship with other countries. Dependence on India decreased due to alternative employment opportunities for Nepalese youth in other countries. Moreover, the concept of security has undergone transformation due to the emergence of nuclear powers in Asia. This has affected the relevance of Nepal as a buffer state between China and India. Unlike the 1950s, Nepal has got new trade routes with China. The Constitutional Monarchy has been replaced by Parliamentary Democracy. On the other hand, the present power equation in Asia is changing both in military and economic terms with the emergence of India as a major player. In this scenario, the new dispensation in Nepal would like to continue the treaty with some changes. The leadership in Nepal is expected to adopt a balanced policy towards India.

IV. CONCLUSION

India – Nepal Treaty of Peace and Friendship of 1950 is a bed rock of the special relations that exist between India and Nepal. Although Nepal has some reservations on the treaty and resorted to political posturing, it has not withdrawn from the treaty. Nepal has, in the past, taken measures to neutralise India's overbearing influence on many occasions. It has used the China card to balance India. It has introduced a work permit system for the Indian workers in 1988 and many discriminatory measures vis-à-vis the Indians in violation of the spirit of the treaty. On this part, India has tried to ensure Nepalese compliance in various ways, which have been termed by the Nepalese as coercive and high – handed. It is surprising that the treaty has survived to this date despite reservations from both countries on certain issues. Moreover, there is a consensus at the moment that the treaty requires revision taking into account the changing international and regional scenario. The fact remains that Nepal will continue to be dependent on India given the geographical realities. India will also have to acknowledge the historical linkages with Nepal and the strategic importance of developing a multi-faceted partnership within future. India has to adopt a liberal approach towards providing trade and transit facilities for Nepal and closely coordinate its security policies to counter emerging threats from non-state actors. Giving the close socio-cultural linkages and the propensity of the people in the bordering regions to connect with each other, the borders should ideally be kept open with joint regulatory mechanisms. The new treaty needs to factor in all these perspectives and usher in a new partnership between the two countries.

REFERENCES

- [1] B.C. Upreti, "India – Nepal Treaty of Peace and Friendship Nature, Problems and Question of Identity of Indian Nepalis," Tanka Bahadur Subba (eds.), Indian Nepalis : Issues and Perspective, New Delhi : Concept Publishing House, 2009.
- [2] Hari Bansh Jha, "1950 Treaty : A Visionary Approach", South Asia Analysis Group, Paper No. 3815, May 12, 2012, at southasiaanalysis.org/%5c papers 3815.html.
- [3] Leo. E. Rose., Nepal Strategy for survival, Kathmandu : Mandla Book Print, 2010.
- [4] Nihar Nayak, "India – Nepal Peace and Friendship Treaty (1950) : Does it Require Revision? , Strategic Analysis, Vol. 34, No.4, July, 2010.

- [5] Nihar Nayak, "Maoist Rhetoric on India-Nepal Relations", January 13, 2010, <http://www.idsa.in/Idsacomments/Maoistrhetoric> India-Nepal Relations - nnayak_130110.
- [6] Nishchal Nath Pandey, "Nepal's Maoist Movement and Implications for India and China, Delhi : Manohar Publishers, 2005.
- [7] Prakash A. Raj, "Indo- Nepal Relations – Future Prospects", Institute of Foreign Affairs, Kathmandu, at <http://www.ifa.org.np/Pdf/Pre/Prakashraj.Pdf>.
- [8] Prashant Jha, "Revisiting 1950", Nepali Times, Kathmandu, March 5, 2010.
- [9] S.D. Muni., India and Nepal: A Changing Relationship, New Delhi: Konark Publishers, 1995.
- [10] S.P. Sinha, "Indo-Nepal Relations", Indian Defence Review, Vol. 22, No.2, April- June, 2007.
- [11] Sanchet Barua, "Maoist Conflict and Impact on India," The Navhind Times, April 13, 2010.
- [12] Sangeeta Thapliyal, "India and Nepal Treaty of 1950 : The Continuing Discourse", India Quarterly, Vol. 68, No. 2, June, 2012.
- [13] Surya P. Subedi, "Indo-Nepal Relations : The Causes of Conflict and Their Resolution," Subrata K. Mitra and Dietmar Rothermund (eds.), Legitimacy and Conflict in South Asia, New Delhi : Manohar Publishers, 1997.
- [14] Surya P. Subedi., Dynamics of foreign policy and law : A Study of Indo-Nepal relations, New Delhi : Oxford University Press, 2005.

AUTHORS

First Author: Natasha Manhas, P.hD Research Scholar,
Department of Political Science, University of
Jammu, Jammu.natashamanhas85@gmail.com

Second Author: Mamta Sharma, P.hD Research Scholar,
Department of Political Science, University of
Jammu, Jammu.mamtasharma2021987@gmail.com

Correspondence Address: Priyadarshni Girls Hostel, University
of Jammu, Jammu, Contact no.s 9797513967, 9797324156.