

TREATIES BETWEEN NEPAL AND HER NEIGHBORS: A HISTORICAL PERSPECTIVE

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INTRODUCTION

A treaty is nothing but a written contract between two or more political authorities, signed by representatives duly authorized, and ratified by the law making authority of the state. Treaties between two states or groups of state in a particular region or any part of the globe constitutes the basic framework of international law. The earliest traces of international law is, however, confined to the relatively narrow geographical limits and the points of contacts between them were few. The earlier recorded treaties were those between the Egyptian Pharos and the neighboring states. They were codified as early as the fourteenth century BC and provided the recognition of their mutual sovereignty, and equality and the extradition of political refugees and immigrants.¹ The Epic literature of India, Ramayan and the Mahabharat, also narrate regional laws governing the relationship between the states of the subcontinent. But these laws were often violated.² The idea of a treaty was a little foreign to the Mughal Emperors. Thus, Sir Thomas Roe, the British Ambassador to India, was unable to extract a treaty from the Emperor Jahangir between 1615 to 1618.³ The above introduction forms a perfect backdrop for the analysis of the treaties between Nepal and her neighbors⁴ in modern times. The treaties with her neighbors can be divided into two broad groups: Those treaties with India and those with Tibet.

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TREATIES WITH TIBET

The socio-cultural contacts between Nepal and Tibet have been long and intimate. This interaction benefited both the countries and helped to develop sophisticated cultures of their own. It was primarily through Nepal that the Tibetan people received their Buddhist religion in the ancient period. However, in the medieval period Nepal was herself to receive a greater dose of Tantrick Buddhism from Tibet that to affect almost every aspect of her life and practices. Such an intimate social and cultural relationship was codified into a political treaty in the seventeenth century.⁵ It was Bhim Malla, the brother of King Pratap Malla, of Kathmandu, and the deputies of Dalai Lama that put the signatures in the treaty some where between 1645 to 1650 at Sigatse. This treaty secured Nepali interest in Lhasa by permitting her merchants to trade in Tibet without paying custom duties; and Kathmandu court was represented in Tibet by a resident. It contained, in a nutshell, the foundations of the future Nepal-Tibet political relations by giving her the right to exercise a joint authority over Kuti and Kerong, two trading centers that Nepal always coveted, and even an annual token payment of one tola of buki gold (worth twelve rupees), thirteen masas of silver (worth one rupee) and one pathi of salt.⁶

The next milestone in Nepal-Tibet relations was the treaty of Kerong of 1789. This treaty was signed after the victory of Nepal in the First Nepal-Tibet War of 1788-89. The most important provision of the treaty is the last article (article ten) in which Tibet promised to close the trade routes from Sikkim and Bhutan and channelize the Trans-Himalyan trade through Kathmandu. It further permitted Nepali merchants to trade throughout Tibet; but the Tibetans could enter Nepal only as pilgrims and not as traders. The treaty looked more like the terms imposed by the victor over the vanquished. Many of the stipulations are one sided for example the right to station representative, right to trade, and the method of punishment of the offenders. The Tibetan did not enjoy the same privileges in Nepal. From the Tibetan perspective the annual payment of 300 dotsed of silver (57.600 rupees) was the most humiliating provision.

The treaty of 1789 did not close the political and economic differences between Nepal and Tibet rather only aggravated them, which became the causes of the Nepal Tibet war of 1791-1792. This war, which ended in the humiliation and defeat of Nepal, brought greater involvement of China in Nepal-Tibet relations. Among others the future dispute between Kathmandu and Lhasa was to be referred

to the Chinese Amban in Lhasa for; and the boundary between Nepal and Tibet was to be demarcated by the Chinese officials. Again Nepal was to send quinquennial missions to China with gifts; and the Chinese government was to bear the entire cost of the mission, provide transit facilities and send gifts in return. Furthermore, China was to help Nepal if she was invaded by a foreign power.⁸

The war ended with a treaty. A stone pillar was erected by the Chinese in Lhasa to commemorate the monumental victory, which called the Gorkhalis "thieves", who were "panicwstricken"⁹. The Nepali chronicles, however, points out that "having cut the Chinese army to pieces the Chinese Emperor thought it better to sue for peace"¹⁰. Both the Nepali and the Chinese versions have made excessive claims of victory. But one thing is certain that the war took heavy toll on both sides. The Nepalis were virtually driven to the threshold of their capital; and the Chinese troops had suffered so much that it refused to move forward¹¹. Whatever may have been the truth in the above statements both China and Nepal were not victors in the war; and the greatest losers were the Tibetans. Nepali merchants continued to trade in Lhasa and the Nepali coins continued to circulate in Tibet. To Tibet the Chinese help proved to be catastrophic for Tibet was made more dependent upon China than before. Nepal though defeated in the war was successful in negotiating terms which were neither fully humiliating or catastrophic. In short the war left little impact on the general pattern of Nepali way of life. Her military capability and territorial integrity remained undisturbed and the people soon forgot about the above Chinese invasion.

The second Nepal-Tibet war was followed by the sixty years of peace and goodwill between the two countries. But the truce that prevailed was a shaky one for it was more an outcome of Nepal's economic and political turmoil rather than her commitment to live in peace with the northern neighbor. However, with the rise of a powerful personality like Jang Bahadur, Nepal decided not only to settle her economic grievances with Lhasa but also to reassert her political dominance across the Himalayas up to the watershed. This led to the Third Nepal Tibet War of 1856 to 1857. The war concluded with a treaty of 1856. This accord known as the Kathmandu Treaty consists of ten articles.

The Kathmandu Treaty of 1856 preserved in National Archives, New Delhi and the India Office Library, London, were the only versions of the treaty available for scrutiny and analysis. However, the Nepali version of the treaty was for the first time published in 1980¹². The Nepali version of the treaty, though basically the

same as the ones preserved in the Imperial Records, yet, there are differences in the details. For example article nine says "if the property of the Gurkha merchant is plundered by the Tibetan subject the Tibetan Government will compell the restoration of such property to the owner. Should the plunderer not be able to restore them the Tibetan Government will compell to restore them in an extended period of time". The Gurkha Government should also do likewise in Nepal. But the Nepali version points out that "if the Bhote looter cannot restore the plundered articles of the Gorkhalis the Bhot government will compensate for the loot. The Gorkhali Government will act in a similar fashion..." Again the expression salami has been interpreted in the traditional text as "present" while the Nepali version calls it a "tribute". (see article one). Furthermore, the article five in the traditional text asserts that the Gurkha Government shall keep a high officer, not a Newar, to hold in charge in Lhasa. But the Nepali version calls the high officer a bhardar and the phrase "not a Newar", has been deleted.

TREATY ANALYZED

The principal war aim of Nepal, namely, the annexation of the two important river valleys up to the watershed was not realized, nor the violation of the Nepali trading rights completely stopped, though their frequency was definitely decreased. Nepal gave up several ranges of hills south of Khasa. The rupees 10,000 Nepal was able to extract as an annual Salami (tribute) hardly compensated the loss of 2,683, 568 rupees¹³ during the war. However, the treaty when analyzed from a historical perspective was more advantageous than the treaty of 1792. The annual salami Nepal received from Tibet as well as the promise of Nepal to help Tibet if she was invaded by a foreign power was significant in the diplomatic annals in two ways: first, Tibet was reduced to a semi-satellite status, and second, Nepal assumed China's traditional role of a protector. The fourth clause in which Tibet promised to return the Sikh soldiers who had been captured in 1841 in the war between Tibet and the Dogra ruler of Kashmir was inserted to please the British. The last clause was inserted for Nepal wanted to protect the people of Kuti and Kerong, who had cooperated with the Nepalis during the war.

Nepal-Tibet relations became highly acute in the post-war decades. The civil war in Tibet in 1862, the diplomatic crisis in 1872 and the riots of 1883 provided three major occasions for the test of the treaty of 1856. These decades among others reveal how shaky was the truce patched up by the two countries or in other words

how little was the utility of the meticulously drawn up provisions of the comprehensive treaty of 1856.

TREATIES WITH INDIA

The treaties with India can be neatly divided into two broad segments: treaties with British India and the treaties with Independent India. Altogether four treaties have been analyzed in this connection two when she was a under the colonial rule and: two after she attained swaraj.

A. TREATIES WITH BRITISH INDIA

The most historic treaty between Nepal and British India was the treaty of Sugauli of 1815, which closed the two years war between British India and Nepal. The treaty is significant in the sense that it guided Nepal-India relations for a little over a century. The treaty consists of nine clauses among which article seven and article eight are the most important. The article seven places a kind of limitation on the sovereignty of the state by requiring Nepal to take the "consent" of the British government " to retain in the state service any subject of the British nor the subject of any European or American state.." But the Nepali negotiators took this clause in the treaty very lightly for she did not like the presence of a white man in the nation's capital anyway. However, what bothered her most was that Kathmandu and Calcutta were to exchange accredited Ministers at the court of each other. Nepal did object to this provision; but as she had lost the war she had no choice but to go along with it. The Nepali leadership was very much disturbed by this provision of the treaty. But in real terms the most damaging portion of the treaty was the cession of one-third of her territory to the British. However this was a fact of life, which learned to accept reluctantly.¹⁴

The treaty of 1815 was put to test in the coming century during which Nepal went out of her way to support the imperial cause during the Indian Revolt of 1857, the First Great War (1914-1918), Afghan War (1919) and the Second World War (1939-1945). During this period Nepal was not only a friend in peace but also an ally in war. Thus, the British decided to replace the treaty of 1815 by the treaty of friendship of December 21, 1923. This treaty gave "unequivocal" recognition of Nepal's independence by asserting that "the two governments agree mutually to

acknowledge and respect each others independence both internal and external. The scope of her independence was, however, limited by article three of the treaty which makes it mandatory for both the governments "to inform each other any serious friction or misunderstanding with those States likely to rupture such friendly relations. The article four carries the message still further by preventing each other's territory being used for inimical purposes to the security of each other. The article five did permit Nepal to import arms and ammunitions through British India into Nepal required for the strength and security of Nepal provided it poses no threat to India. However, a note accompanying the treaty limited this right by requiring Nepal to furnish a list of arms and ammunitions to be imported before the importation to the British envoy.¹⁵

TREATIES WITH INDEPENDENT INDIA

In the Post-independence period the official policy of the Government of India was against the annexation of the border states like Nepal, Sikkim and Bhutan. India labeled the Himalayan region as sensitive areas and maintained special relation with each of the three states. Sikkim's autonomy limited both internally and externally. Bhutan's internal autonomy was recognized; but India retained the right to advise her in external affairs. Nepal, which possessed five hundred miles of contiguous border with India's heartland, UP, Bihar and Bengal, drew special attention. India, thus, concluded the Treaty of Peace and Friendship with her on July 31, 1950.¹⁶

This treaty of Peace and Friendship was hastily signed by India and Nepal during the hot summer of 1950. Two factors were instrumental in paving the way for the Rana Nepal and the independent India to formulate the treaty at this special juncture: the clear emergence of the Chinese sovereignty in Tibet and the increasing probability of "an armed revolution" in Nepal. After the conclusion of the treaty Premier Mohan had strong reasons to believe that pandit Nehru was on his side and not that of the "rebels". For Premier Nehru, Nepal had to be brought within the security system of India at all cost. Thus, Nehru decided to guide the events in the Himalayas. He clearly saw Chinese sovereignty in Tibet was a foregone conclusion so the communist infiltration South of the Himalayas had to be checked. Again, any violent upheaval like "an armed revolution" that could promote anarchy in the Himalayan region had to be prevented. So Nehru decided to curb the wings of Nepali revolution. Premier Mohan had little comfort from the above reasonings for the days of Rana oligarchy in Nepal in the new scheme of things devised by India were numbered.

It was in the above background the Treaty of Peace and Friendship was signed between India and Nepal during the month of July 1950. The Indo-Nepal treaty shows signs of haste. The original draft had nine clauses. Article nine says "the treaty shall be in force for a period of ten years..." unless terminated by either party by giving a notice of not less than one year in writing. But the final draft was ammended in the last moment to include ten articles. Article nine of the draft became article ten of the treaty. It says that " treaty shall remain in force until it is terminated by either party by giving a notice of one year."¹⁷

Here we can visualize what was going in the minds of Indian leadership. Among the two treaties signed on July 1950, the Treaty of Trade and Commerce¹⁸ between the Government of India and Nepal was limited for a period of ten years; whereas the political treaty of peace and Friendship was to be of a more permanent character and was to last for an indefinite period. India was right in her contemplation. Even during 1989-90 when Nepal-India relations reached a state of all time low Nepal could not give one year notice required for the termination of the Treaty of Peace and Friendship rather only asked for the removal of only distortions. Then when the UML government came to power in 1994 it also gave up the idea of replacing the treaty of 1950 by a new one.

The principal clause of the treaty which brings Nepal within the parameter of the Indian security system is article 2, which makes it obligatory on the part of both the government "to inform each other of any serious friction of misunderstanding with any neighboring state likely to cause any breach on the friendly relations existing between the two governments."

The two treaties were not all Nepal received from India on the eve of July 1, 1950. She was also the recipient of "the letters of exchange", which was kept in tight secrecy till a decade. It was the Indian Premier Nehru who disclosed the existence of the letters of exchange attached to the treaty of 1950 in June 1960, while he was responding to the statement of B.P. Koirala on Mustang Karla pass incident of June 28, 1960. But since 1960 these letters of exchange has been increasingly looked upon as representing India's domination in South Asia. The "letters of exchange" is a novel feature of Indian diplomacy for they contain far more important clauses than the treaty itself. They were not included in the treaty for India did not want to come into public controversy. India possibly felt that the "letters of exchange" could be interpreted as "penalty clauses" imposed by a big power over a "weak neighbor". The same psychology was prevalent in the Indian leadership when

India signed the Indo-Srilankan Agreement at Colombo on July 29, 1987. Here also like in the case of Nepal letters were exchanged between the Indian Prime Minister and the Sri Lankan President. Some of the important provisions of the "letters of exchange" between India and Nepal are as follows:

"Neither the government shall tolerate any threat to the security of each other by a foreign aggressor. To deal with such a threat the two governments shall consult each other and devise effective countermeasures."

Any arms and ammunition or warlike materials, and equipments necessary for the security of Nepal, Nepal government may import through the territory of India shall also be imported with the assistance and agreement of India (emphasis on the original).¹⁹ Both the governments agreed not to employ foreigners whose activities may be prejudicial to the security of each other. The letters of exchange reminds one of the article seven of the treaty of 1815, and the article three of the treaty of 1923. In doing so the leaders of Independent India were trying to insulate South Asia from the Chinese Communist influence. The Government of India felt that the "letters of exchange" attached with the treaty in the annexes were as valid as the treaty itself; and they served as important tools of the Indian diplomacy.

Then came the agreement between Nepal and India of January 30, 1965 in which Nepal gave to India the monopoly of fulfilling her military needs including the training of her personnel. In return India withdrew support to the Nepali Congress and the Nepal Communist party members, who were living in exile in India. The details of the agreement were kept a secret till April 1989, when an Indian newspaper disclosed the important text of the treaty.

CONCLUSIONS

The relations between Nepal and her neighbors, namely, India and Tibet, have been governed by treaties (ahads), aide memories, and memorandum of understanding. Here major treaties between Nepal and her two immediate neighbors have been brought for scrutiny and analysis. Special focus has been laid in the links and continuity between the treaties. Ofcourse, In doing so innovations and departures made by one treaty from the other have also been carefully pointed out. A treaty is like a human organism. It grows and evolves according to the changing circumstances and the needs of the hour. It is, thus, rooted in the past, breathes with the present and looks forward for a better future.

FOOT NOTES

1. For the ancient records of Egypt see Charles G. Fenwick, International Law (New Delhi: Allied Pacific, 1962), pp. 5-6.
2. D. Mackenzie Brown, The White Umbrella: Indian Thought from Manu to Gandhi (Berkeley: University of California Press, 1968), pp. 38-43.
3. For more on the attempts made by Sir Thomas Roe to conclude a treaty between England and India see Philip Woodruff, The Men Who Rule India: The Founders (New York: Schocken Books, 1964), pp. 30-36.
4. Here the term neighbors is used to include Tibet and India. I have used the word Tibet rather than China for in the period of study Tibet was a distinct political entity and not a part of China.
5. See prem R. uprety, Nepal-Tibet relations, 1850-1930: Years of Hopes Challenges and Frustrations (Kathmandu: Puga Nara, 1980), pp. 4-7, 15-17.
6. C.R. Nepali, "Nepal ra Tibbat ko Sambandha" (Nepal-Tibet Relations), Pragati Yar II, Issue No, Iv, No, X, 2013 V.E. (1956 A.D.), p. 214.
7. A text of the treaty has been published in Nara Hari Nath Yogi (ed.), Itihas Prakash ma Sandhi Patra Sangraha (A Collection of Treaties in the Understanding of History) (Kathmandu: publisher n.k., 2022 V.E. (1966).
8. The text of the treaty is not available either in the Foreign Ministry, Kathmandu, or the National Archives, New Delhi, or the India office library, London for scrutiny and analysis. Nara Hari Nath Yogi gives the essence of the treaty, ibid. It appears that he is basing his facts upon the undocumented text published by Pudma Jung. No Tibetan text is available for scrutiny and analysis. See Pudma Jung, Life of Maharaja Sir Jang Bahadur (Kathmandu: Ratna Pustak, 1974), pp. 7-10.
9. Charles Bell, Tibet Past and Present (Oxford: Clarendon Press, 1924), p 16.
10. Bikram Jit Hasrat (ed.), History of Nepal As Told by Her Own Chronicles (Hoshiapur: Bikram Jit Hasrat, 1970), pp. Lxiii-Lv.

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11. William Kirkpatrick, An Account of the kingdom of Nepal: Being a Substance of Observations Made During the Mission to That Country in 1793 (London: W. Miller, 1811), p. ix.
12. Prem R. uprety, Nepal-Tibet Relation, of cit pp 213-214
13. Budhiman Singh, Vamsabali (Nepali Chronology), manuscript, without pagination.
14. For Treaty of 1815 see C.U. Attichinson, A Collection of Treaties, Engagements and Sunnuds Relating to India and the Neighbouring Countries (Calcutta: Bengal Printing Press), pp. 205-011.
15. For the text of the treaty and the speeches made by the Nepali Premier during the signing ceremony see Gorkhapatra, December 24, 1923, pp. 3-7, For a draft of the ammended version see Foreign ministry Archives, E.1, Poka No. 1.
16. For the text of the treaty see the Poka entitled Treaties in Ministry of Foreign Affairs, Kathmandu.
17. Ibid.
18. Ibid.
19. See Poka entitled Treaties, ibid.; also Jawaharlal Nehru's, India's Foreign Policy: Selected Speoches September 1946-April 1961 (New Delhi: Ministry of Information and Broadcast, 1961), p. 374.
20. The Statesmen, 27, 1989.