

SOME ISSUES TO BE ADDRESSED BY NEW CONSTITUTION OF NEPAL

Dr. Yubaraj Sangroula¹

1 . Professor of Jurisprudence and International Law at Kathmandu School of Law.

Preface:

Strategically, Nepal has been placed between two emerging powers of Asia. Both of them possess, in terms of nuclear weapons, strength to significantly harm the human lives by use of their nuclear weapons. The future of strategic survival of Nepal is not going to be easy, if we overlook the issue of 'survival' from war or any conflicts around us. In South Asia, Pakistan and India have a large stockpile of nuclear weapons. Both of these countries are obtaining nuclear technologies from USA. Iran is running in speed to possess stockpiles of nuclear weapons too. To the north of Nepal, China does have the strength of massively using nuclear weapons too. Nepal is situated thus in a very precarious position. Nepal, in this context, has no option but to think of its 'survival strategies peacefully'.

Can Nepal afford surviving with military strength?

Of course, not! No one can nurture a 'myth that Nepal can raise a huge army and protect its sovereignty with the help of military. This is not possible in view of its strategic encircled placement as well as lacking of prospect to develop weaponry to compete with two regional powers to north and south of its borders. The present constitution, therefore, must consciously think of devising a roadmap to the 'international relations of Nepal' based on peace and amity, by renouncing all kinds of games and attempts to hold arms to defend the territory. The Constituent Assembly has to seriously think about it. The following agenda should be the matter of concerns for every members of the Constituent Assembly:

1. The population of Nepal with a comparatively smaller territory and rectangular landscape, with rugged terrain, is not feasible for 'building security and defense system based on military strength. Nepal's stretch from south to north is too limited, and with this kind of landscape it is virtually not possible to defend territory way mobilization of military force in the context of modern war strategies and weapons. Nepal has to survive, therefore, with full commitment of neutrality in any war, strife and international as well as regional tensions. The concept of constructive neutrality, which condemns war as crime, is the foundation orientation and principles of the Nepalese defense and security system. The upcoming constitution ought to consider evolving clear guidelines to the future defense and security policies of Nepal.
2. The nuclear catastrophe is potential in the South Asia due to massive possession of nuclear weapons with China, India and Pakistan. The fall-outs of such catastrophe cannot be avoided if we do not prepare in time. Nepal is vulnerable from any conflict in the regions in many ways. The migration of the people to be affected by the war or conflict will disastrously impact Nepal. On the other hand, the possibility of using Nepal's territory is also not fully ruled out. Thus, Nepal has to be able to institutionalize its non-nuclear, non-aggressive and non-aligned position right from now.
3. The downsizing of the military is a pre-requisite for constructive neutrality. King Birendra proposed the concept of peace zone long back, but this was the point where he failed. He wanted to continue a strongly trained contingent of military and also wanted international community to support his idea of peace zone. His proposal was unilateral- seeking obligation from international community but not committing to the same internally. The downsizing of the current military force is necessary also from the economic point of view. The current size of military has been achieved in wake of conflict in Nepal. To be precise, to fight against the

Maoist guerrillas. Nepal has ended this situation. The size of military before the insurgency was almost below half of the present size. The present size is thus not justified in any reason. A contingent of 25000 military can be maintained for national emergency works.

4. Nepal has to sign non-war or non-aggression treaty both with India and China. Nepal should not maintain a special treaty with any nation. It should engage with both countries in constructive policies, i.e. the promotion of peace and economic and social development in the region. Nepal should develop a capacity of 'negotiator' in the region. It should roles in flourishing trade and commerce among the members in its vicinity.

These guiding principles will provide a basis for peaceful living of the people. These policies will also enhance prospect for economic and social development of Nepal.

What happens if Nepal fails to understand that Military Strength is not a Sound Policy of Nepal's International Relations?

The compulsion to join either 'south or the north' in their conflict cannot be avoided strategically. Falling to practice a game of 'alignment' is dangerous for Nepal from both sides as it will lose confidence of both neighbors. To gain confidence of the both, Nepal should internally develop instruments and mechanisms that 'it will support none of them in conflict and war-like activities'. The proximity of the southern plain (*Taria*) to India and the Himalayas and hills to China can be dangerous 'vulnerability' of dividing nation by any tensions between neighbors. Nepal in the past very clearly understood this crisis. It was why Prithvi Narayan said that 'Nepal is a yam between two rocks'. However, this understanding was based on negative perception of security. The understanding that the military strength is not a right strategy was not realized. The concept of 'yam' was conceived as a 'strategic caution for mobilization of the military strength'. It educated the government and militaries that they had to take utmost consideration for any military movement to make. It was *a priori* understanding to keep in mind for designing any military movement. The peaceful international policy for better and secured survival of the Nepalese people was never an objective of this pronouncement.

Nepal has to change this 'dynamic' of thinking. Nepal's development is not possible by keeping two neighbors in a state of "skepticism" of Nepal's role in international peace, the regional amity and peace in particular. No suspected neighbors will open their markets for Nepal, and Nepal, having no access to two neighbors' markets, will have no access to international trade and commerce. This compulsion requires 'thinking from opposite perspective of Prithvi Narayan Shah', i.e. Nepal is a robber ad-joiner between two iron wheels. It implies that Nepal has to play role of an effective negotiator for peace in the region. Its international relations and security policies should therefore be fully guided by this notion of thinking. This logic can be justified by answers to a question why Nepal cannot defend its security by strength of military capabilities?

- a. Nepal has no possibility of raising military, in terms of numerical or population strength, at par of India and China, countries with over billion population. Nepal's population is hardly 30 millions. The size of military to numerically compete with India and China should exceed 3 million active members. This is simply not possible to form such a huge army. It implies that, if such a huge size is impossible to form, there is not meaning of maintaining a military force which cannot defend territory on its strength. The only possible strategy to defend territory and security of the nation is 'the faith on the doctrine of constructive neutrality'.

- b. Economically, it is simply not feasible to maintain a size of army that consumes unnecessarily huge part of the resources for nothing. The huge size of military means 'expenditure of huge amount on weapons and maintenance'. Nepal has limited resources in terms of industrial goods exports. Hence, huge army means 'engagement of considerably large number of youth population in non-productive sector' and 'institutionalization of non-productive consumption of the national resources'. Nepal instead can invest this huge amount in raising world class universities.
- c. The landscape itself is difficult for maintaining and mobilization of the huge size of army. The mobilization cost would be immensely expensive. Hence, any efforts carried out for defense of national security and integrity by military strength is doomed to be failure with countless of negative impacts.
- d. A militarily powerful Nepal will pose a danger to the security of neighbors. It will thus attract a neighbor's strategy of influence for polarization in international and regional relations. Nepal will be compelled to partake in one of the neighbor's strategy. This will not only render the nation aligned but will also effectively divide the population. A country like Nepal with so much diversity will thus face a constant danger of 'disintegration'.

Thus, the upcoming Constitution has to address the issue of Nepal security policy as a matter of prime concern. The issues of 'reintegration and rehabilitation of combatants and maintenance and mobilization of Nepal Army' ought to be viewed from the above-mentioned national requirements. Any overlooking of these issues by Constituent Assembly and failure of the Constitution to work out a clear scheme of 'international relations and security of nation-based on constructive neutrality' will place Nepal's future in a serious trouble.

What are the Challenges facing the Nation in relation to the national security and international relations?

Nepal constantly filed in evolving a workable 'international relation policies' in the past. The total theme of international relations confined to participation of Nepal military in peace process. What is obvious in this regard is that 'the participation in peace process is attracted by remittance benefit'. Nepal's engagement in peace process is never guided by 'ambition or commitment to peace negotiation'. The king used the international relations' platform only for its institutional benefit. The post 1990 governments, on the other hands, did hardly think about it. The following problems in this regard pose challenges of Nepal to international relations and security policies:

- a. A deeply rooted psyche of political parties to maintain 'equal-distance' between China and India rather than constructive engagement has been domineering feature of Nepal's international relations. This psyche pulls Nepal back from its active participation in regional problems and issues. As a matter of fact, Nepal has no voice on any issues of regional problems and issues. This psyche is thus a problem as well as a challenge. Until and unless Nepal's political parties are totally free of this psyche, Nepal will never become able to address its 'back-bencher's role in international relations'.
- b. The open border in the south has been a constant source of dispute between Nepal and India. India has been making constant allegation to Nepal that the border has been used by terrorists. It is an undeniable fact. The border left open for free access of the people of two

countries has been spoiled by the anti-social elements, criminals and terrorist. This problem is affecting both India and Nepal. A security of both countries is affected by failure to regulate the borders systematically. The unregulated border is farther more negatively affecting the trade and commerce of Nepal. The illegal trade is outweighing the legal trade, thus posing a serious imbalance of trade between Nepal and India. Nepal has not been able to raise these genuine issues in right platforms. While India has largely able to control such effects by placing border security force along the Nepal-India border, Nepal has done nothing. The regulation of border is thus a challenge too.

- c. China and India have not yet been able to resolve their border problems. Due to this, they often have coldness in their relations. The Tibet's security has been a prime concern of the Chinese Government. Its huge deployment of force for the security of Tibetan Autonomous region has been a matter of concern for India. The problem of their border often spills over to Nepal. Nepal has never thought seriously in this regard.
- d. Nepal's gossiping of its mistreatment by India and its unaddressed situation is another challenge. Certain spectrum of the ruling segment of India has not been able to understand "landlocked, small country" psyche of Nepalese people. They are bound to feel insecure in their given extreme situation of survival. While Nepalese people maintain intrinsically closer relation with Indian people, some actions of India in the past have generated negative psyche among vast majority of people. The larger segment of the Indian political society is always positive to Nepal and it is concerned with Nepalese people's problems. In the democratic movement of Nepal, the Indian political segment has immensely contributed. However, the domineering ruling class of India has developed a tendency of dealing relations with Nepal not politically but by help of bureaucracy. In this point, Indo-Nepal relations often become prey of misunderstanding and crisis. The bureaucracy has yet to make efforts to understand sensitivity of the Nepalese people, as a nation with critical strategic placement and needing balancing relations with its neighbors. The issues negatively affecting relations are generally of trivial nature. Few instances that seriously affected relations in the past can be summarized as follows:
 - i. Hijacking of Indian airlines by terrorists was deplorable act. Nepal was fully innocent victim of this act. From the very first spark of news, the Indian media blatantly condemned Nepal's security at airport and involvement of the Nepalese citizens in that hijacking. Nepal faced condemnation worldwide by the time the truth came out. The Nepalese passengers were equally victims of this dreadful crime. Immediately, the Government of India came to a decision to suspend all flights to Nepal for uncertain period. The flourishing tourism of Nepal was sabotaged. How Indian Airlines staffs, who are responsible for handling embarkation and disembarkation of passengers at Tribhuvan International Airport, could check in passengers without thorough identification of passengers? What the family, relatives and friends the Nepalese citizen unreasonably condemned to have connection with terrorists had felt of this incident? These questions were never answered.
 - ii. Indian films makers often use Nepalese national dress, with black cap, as a dress to be used by security guards and servants. The term "*Gurkha*" is synonymous "nationalism". It carries a sense of pride for being Nepali. This word is, however, used by Indian cinemas to refer to 'house servants'. Many Bombay cheap cinemas pass 'humiliating' strictures. Nepal is sometimes projected as a 'country of hippies',

other times a society where marriage is consummated by offering 'human sacrifice', and so on. Indian cinema stars interview that 'Nepal is a province of India'. The Indian media is never censored by the Government for such cheap treatment and behaviors. These kinds of very trivial issues originate a kind of 'negative feelings among the general populace'.

- iii. When Prime Minister Madhav Kumar Nepal was sworn in as Prime Minister, some media expressed joy 'saying him as son of Sitamari (a place in Bihar close by Rautahat). What it wanted to mean is clear. This wrong information was widely entertained by media.
 - iv. Hundreds of Nepalese students enroll in Indian universities every year. They have to pay as 'foreigners' while admission takes place. They are classified as foreigners. No Nepalese have objection for them being treated as foreigners. Yet, the facilities are not, however, provided as foreigners. These minor inconsistencies collected by many students pose a general psyche.
 - v. One very sensitive issue is related with dealing of RAW (Research and Analysis Wing) with political leaders of Nepal. Intellectuals in Nepal are often described by political leaders that officials of RAW do not hesitate to suggest in matters of even minor affairs, such as change of a secretary of the government.
- e. Though, these issues cannot be taken up at higher level of governments for discussion, one should not overlook them that they are crucial to form opinions among the general people. These are issues to be sensibly taken care by governments from both sides. Nevertheless, these concerns of the Nepalese people are mistakenly taken by Indian side as anti-Indian feelings, and they are often wrongly taken at the political level. The Indian bureaucracy involved in dealing with Nepal should be able to differentiate between the 'concerns and antagonistic attitudes'. Truly speaking, the Nepalese people do have nothing as attitude against India as they share so many things as common. They understand that a 'peaceful good relation between India and Nepal' is a boon for overall development of Nepal. Nepal can truly be benefited by mounting economic development of India. A little spill-over would tremendously positively impact the Nepalese economy. However, the Indian bureaucracy must be able to properly inform the political spectrum of India of these problems in their true dimensions. What is an abject lacking in Indo-Nepalese relations is the consistent and constant political communication and engagement of the political societies of the two countries. This is noticed to be a challenge too, because in it lacking the relations between India and Nepal is controlled by the bureaucracy. Undoubtedly, the bureaucracy deals affairs using 'formalism', and the same is not possible in a relation of countries like Nepal and India. The Indo-Nepal relations require 'pragmatism', and it is possible only by dealings of political societies. If one looks in the past, when Indian political society came openly in dealings with Nepal, no problems were left unaddressed. During early 1990s, the political contact between Nepalese and Indian political societies reached at its apex. Consequently, all problems looming large in the past, including the transit embargo imposed by India, found ways to be settled without any hassles. Gradually, the political communication discontinued and was replaced by the bureaucracy. Obviously, the problems too thickened. During takeover of democracy by the king after 2002, the political dialogue between Indian and Nepalese political societies revived swiftly. Consequently, Nepal, with generous help of political parties of India and Government, had been able to rapidly transform from a deadly

insurgency and king's authoritarian rule to a new political spectrum. The situation again changed after 2008. Today, again there are problems widely seen. The reason is obvious. That is the political dealings of the problem are hardly in scene. These ups and downs in political endeavors of the Indo-Nepalese political societies can thus be termed as problem as well as a challenge.

- f. Many Indian and Nepalese intellectuals possess misconceptions regarding religion and culture of India and Nepal. They take similarity of the Nepalese and Indian culture as *a priori* of understanding about respective society. It is in fact not true. Nepal and India both are societies with tremendous diversities of religion, culture, languages, social taboos, rituals and milieus. In Nepal the cults of 'Hinduism and Buddhism' constitute religions. Even a large section of Hindus of Nepal from hills observe these cults as their religion. These cults are the sources behind the 'typical behaviorism' of the Nepalese populace. While many things are common between two countries, there are obvious eccentrics also. Both countries need to deeply understand these eccentrics for evolving a culture of mutuality in respect. The traditional commonsense of understanding micro-realities is also seen as challenge.

What can be done to evolve a sustainable relation and cooperation in mutual security of two countries?

The Nepalese intellectual society and bureaucracy has constantly ignored this question. The Nepalese intellectual society is divided somehow in this issue. Some people skeptical of Indian roles in Nepal's affairs, and others take every thing for granted. Both spectrums are less pragmatic and reasoned-based. Obviously, this factor has seriously hindered the process of emergence of 'pragmatic opinions, principles and norms' of Nepal's relation with India. A critical and pragmatic think-tank has not been able to emerge in Nepal with regard to Indo-Nepal relations. What often we find factors playing roles in shaping opinions about Indo-Nepalese relations are personal interests, ideologies, biases, prejudices and vested interests individual intellectuals. The foreign policy bureaucracy of Nepal, on the other hand, is a docile body, with no policy guidelines and vision. It is simply an institution to conduct day to day administrative activities. It is powerless and kept in very low profile. A prompt and urgent improvement in these two sectors is thus a vital point for departure. The Foreign Ministry of Nepal should be given a high-profile along with adequate authority to deal with foreign policy issues, with great emphasis on relations with neighbors. The ministry must have separate India and China divisions to deal with relations with respectively and independently. These divisions must adequate authorities given along with precisely defined legislative, administrative and technical measures. They must have their own research wings presided over by academics and researchers. They must be able to project all possibilities of good relations and strategies to benefit Nepal's overall development and security. The directors of divisions must be enabled to enjoy autonomy in their respective responsibilities, and the staffs must have thorough specialization on respective countries. This kind of structural and institutional frameworks in the strategic condition of Nepal constitute a pre-requisite for its sustainable foreign policy and security.