

Nepal, India and Sovereignty

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Introduction

Although the very first article of the Treaty of Peace and Friendship between the Government of India and the Government of Nepal of 1950 contains the message of mutual acknowledgement and respect for each other's "complete sovereignty", precisely this very concept of complete sovereignty has haunted since then the bilateral relations between the two sovereign states. Seemingly, India has always been showing only a grudging respect for Nepal's independence. For its part, Nepal has always tried to assert that it deserves better. The sovereignty debate vis-à-vis India (but not only India) reached an all-time high during the formation of a technocratic electoral (or ministerial) council charged of conducting general elections or Constituent Assembly elections in November 2013.

Almost all political pundits including some political leaders cogently claimed that the idea was "foreign" made and foisted on Nepal. Some even got a step further and speculated that, given the domestic mess, sooner or later Nepal would meet the same fate what the Himalayan state of Sikkim did or at least Bhutan for that matter. Sikkim was merged into the Union of India in 1975. However, it had already been India's protectorate (Indo-Sikkim Treaty of 1950) unlike the sovereign status of Nepal vis-à-vis India. Bhutan submitted its foreign and security policy to India.

Furthermore, some found rather amazing that this non-party government formula, supposedly dominantly Indian, was endorsed in the same breath by other world powers, including China and the US (nonetheless, there were plenty of rumors that the formula was devised in and imported from Europe). The strategic belief of many in Nepal that drawing in China and others would yield a balance of threat or power in the region turned out wrong raising some critical questions. Why is it so that breaching

Nepal's sovereignty is in every others' interest? How come the inherently hostile India and China have one voice in this issue? For the sake of their own strategic interests, regardless of what the neighboring power foists upon Nepal, will the faraway powers (US and Europe) continue to endorse it? Has the world relented that Nepal falls under India's sphere of influence? And also, why the act of interference for some is the gesture of mediation for others? Why the breach of sovereignty for some is the act of friendship for others? And so on. In the end, the source of all these perplexities boils down to one concept, i.e. the concept of sovereignty.

Theories of Sovereignty

Is a sovereign state in the world system is like the moon up in the sky which is eternally invariant? Is it materially given like the unyielding Mt. Everest or is it our mutual understanding and perception that is subject to change? The systemic theorists of international politics- the realists, liberals and constructivists (not all of them) - though share the similar approach of taking state as a unit of analysis; they differ on the concept of state and sovereignty. For the realists/neorealists, state and sovereignty resemble a billiard ball model where every state is self-contained (Waltz, 1979), enjoys the monopoly of legitimate coercion -- Max Weber's conception (Weber, 1949), and survives in the given antagonistic structure of the world system. The liberals/neoliberals see the same self-contained balls but in cooperative structure as opposed to the conflictive one (Keohane and Nye, 1989). Besides, they move away from the centrality of state governments and give importance to individual citizens. By contrast, the constructivists like to get inside these balls; put differently, for them the states and sovereignty are not given but continuously metamorphosed; the construction of state and the "institution" of sovereignty are contingent upon interactions and practices between the states of the world system (Wendt, 1992).

Given the perennially dominant realist discourse as regards Indo-Nepal relations and the relatively recently unleashed liberal discourse (constructivist to some extent as well) that how the state sovereignty and authority is superseded by human rights and

democracy (related to the recent cases of the Nepal Army Col. Lama's arrest in Hastings by the Metropolitan Police, UK and the issue of delaying the formation of Truth and Reconciliation Commission, for instance), I will follow the constructivist's conception of state and sovereignty in the world system, and will try to find a fit of this systemic theory in the sovereignty of Nepal vis-à-vis India. These theories are not spared of criticism, however; Amitav Acharya and Barry Buzan (2009) have raised this particular issue within the academic field of International Relations (although in general this idea is not new and is much talked about across the region); given that the colonialism has become a distant history and non-Western world has been there for significantly long time, the Western International Relations theories misunderstand much of world history. These theories, since they were developed against the backdrop of social historical facts of the West, are characteristically limited in explaining the social phenomenon in sub-systemic or regional level.

An overarching lesson from this is perhaps the Western disciples' lens of examining the Indo-Nepal and by extension, Sino-Nepal and Sino-India relations begs some adjustments. For instance, the entrenched belief of the West that too much power mixed with past resentment towards others will make states go unruly (a lesson learnt from Germany's behavior in the past), which has been the major lens of the West to see China, so far has only been West's perceived fear more than anything else (but that excludes the controversial Chinese behavior in the South China sea for instance; or constructivists might also dig deeper and come out with some alternative explanations regarding China's behavior). Incidentally, just to mention some anomalies of realist explanations, China did not have over \$ US 100 billion defense budget as of now or did not even need, if you like, when Tibet was merged into China. India did not have or need any nuclear alliance with the US as today, when Sikkim was merged into Union of India. The recent release of Wikileaks cables have revealed that the US came to terms with India's move toward Sikkim taking it as something meant to be that way given the historical grounds.

Alexander Wendt (1992) describes the sovereignty and state's interests as social construct in the following way. Sovereignty is an institution established by the widely held practice of mutual recognition of states. It is an established norm in international system, but not a given structure. This institution only exists in virtue of intersubjective understandings and expectations. Recognition of one's sovereignty by others not only creates state but also community because identities are relational. This community recognizes each other's right to territorial existence. Though states fight for borders, this does not change the fact that state sovereignty is mutual recognition. He further says that norms of sovereignty are taken for granted to a far extent. The sovereignty is an ongoing practice; it does not exist apart from practice. Why the US does not annex Bahamas or why Nigeria refrains from seizing Togo and so on, it is not that much of sanction cost rather than the norms of sovereignty. Similarly, small states rely on institutional fabric of international society than national means. They learn fast that the collective recognition is a cornerstone of security. The same European states whereby the military power and the principle of nation-state and nationalism was the foremost in the mid-twentieth century which resulted into World War II, now their interests and identities have been transformed from within into a collective European identity under a supra-national institution. However, power does play a role in community of states; some states threaten others' existence, but even this behavior hovers around the terms of sovereignty.

Thomas J. Biersteker (2002) also shows that the founding components of sovereignty, i.e., territory, authority and identity, evolve with changing practices, which he proves by historicizing and contextualizing the concept in the following way. He argues that the absolute Westphalian sovereignty is just ideal, and in the contemporary world, sovereignty has become conditioned to several factors. For instance, for the recognition of a new state, in the early 20th century it was enough to accomplish minimum Weberian criteria, but that was added up with the factor of political alignment in the mid-20th century, and now the democratic character of government is added up to the recognition criteria. However, these criteria are not universal either. US

recognized Croatia's and Bosnia's sovereignty without their "firm" territorial boundaries. Similarly, the forms of states in the beginning of the 20th century were more empires than states, which transformed into nation-states in the middle of the century, and by the end of it, some appeared to be failed states (in Africa), while others emerged as sort of superstate (in Europe). By the same token, in the contemporary world, the advanced and post-industrial states have come to understand the states of sovereignty in the terms that "intervention is legitimate to secure democracy"; the developing states understand it as "non-intervention in domestic affairs is inviolable".

Threat Construction

Given the fact that states are increasingly intrusive in domestic affairs of others or the double entendre of the concept of sovereignty or the non-intervention in domestic affairs at the level of United Nations and its applications (Biersteker, 2002), the critical question will be what does this mean for the existence of minnow states? Are the chances that minnows will cease to exist higher than that they continue to exist in a compromised sovereignty or not?

The sovereign state system is just too seductive for powerful states as long as the sovereignty remains "soft" on weaker sides (this rationalist view cannot be denied at this point because simply annexing another state can be a catch-22 situation). Besides, no states would like to invite a conflict with international norms, or international law by trying to usurp others' sovereignty. What does it mean for Nepal's sovereignty vis-à-vis India? The answer is that Nepal will continue to exist, but with or without compromised sovereignty will depend on India's identity and behavior.¹ Why so? First, India-China or India-Nepal are not inborn enemies or threats to each other, it is simply that they make of each other that way, which is largely unfounded;² and second, there are more

¹ India's identity and behavior seems to be continuously dictated by mainly its security concerns vis-a-vis China, Pakistan and terrorism, and then its economic as well as social interests in Nepal.

² While many leftist commentators emphasize on the US-India nexus to encircle China, this is this very unfounded hostility that they also admit that there is a possibility that the China and India come together one day to defend the Western maneuvering in the region.

normative elements at play than the power asymmetry between India and Nepal or the geo-politics of the region (also to some extent). I will explain further.

After six decades of bilateral relations between the post-British India and the never-colonized Nepal, both seem still unsure what to make of each other. But one thing is certain, they see themselves as self-contained and unyielding entities, and posing threats to each other all the time one way or the other. But such perception is clearly unfounded. An expert on the matter, Mr. Gopal Khanal observed in the leading daily Kantipur, that it was only once in its entire history that somehow Nepal was dragged into India's security threat motive, and that was the incident of IC 814 hijacking; but India's policy has been entirely guided by the belief that Nepal is invariably India's Achilles heel.

The Indian Airlines Flight IC 814 on the way to Delhi from Kathmandu on 24 December 1999 was hijacked by a Pakistan based militant group. After several stops eventually the aircraft was landed in Kandahar, Afghanistan. India ended up swapping some terrorist prisoners to release the hostages. One person was killed. There are opposing voices regarding the hijackers being operated from Nepal as some in Nepal claim that the hijackers were already in the aircraft when it came to Nepal in the first place. Besides, very recently a startling fact came out in the Indian press that the Indian establishment had the pre-information about the hijacking but it apparently did not act on it seriously enough.³ In any case, the issue that India sees it as necessary to put Indian air-martial in the inbound-outbound flights of Nepal, and Nepal's denial as it sees the proposal as the breach of sovereignty, marks one of the anomalies in the so-called special relationship between Nepal and India.

In the same fashion, there has been only one trade embargo on Nepal by India in 1989-90, which was labeled as an "unfortunate interlude" by the then Indian PM V. P

³ Kumar, S. 2013. "Govt was warned of IC-814 Kandahar hijack". Available at: <<http://www.sunday-guardian.com/news/govt-was-warned-of-ic-814-kandahar-hijack>>, accessed 11 October 2013.

Singh.⁴ The 15 month embargo was imposed by the PM Rajiv Gandhi apparently on the grounds that Nepal denied signing a single treaty both covering trade and transit, and particularly for annoying India by turning towards Chinese weapons.⁵ Even those restrictions took place against the backdrop of a democracy restoration movement in Nepal, in which the palace had to climb down to agree with democratic forces to a multi-party parliamentary democracy, ending the 30-year-long palace-led non-party Panchayat system.

India and China Mutual Threat

As regards India-China mutual threat, The Economist, August 19, 2010,⁶ puts that “despite several threatened dust-ups...there has been no confirmed exchange of fire between Indian and Chinese troops since 1967”. A much talked-about trade volume between India and China, sometimes labeled as a “tectonic movement”, represents a strong case for “interdependence liberalism” how growing mutual dependence discourages violent conflict between states. However, unlike the most economically successful states like Japan and Germany in the post WW II that cut down their high military-expenditure, India and China have got into an extraordinary arms race. But there are policymakers in the West who believe that the “alarmingly” growing military spending, particularly in China, reflects China’s economic transformation and projection of a reasonable military status for its size; thus China going unruly in the region is not inevitable⁷.

Even if it would, the strategic analysts predict that China would try to deter the US vis-à-vis Taiwan, but any potential conflict with India seems improbable. The contested “pockets” along the 4000 km border between these two states stem from the

⁴ Crossette, B (1990). New York Times. “India to Lift Nepal Embargo and Discuss Rift”. Available at: <<http://www.nytimes.com/1990/06/12/world/india-to-lift-nepal-embargo-and-discuss-rift.html>>, accessed 20 April 2013

⁵ Crossette, 1990.

⁶ The Economist, 2010. “India and China: A Himalayan Rivalry”. Available at: <<http://www.economist.com/node/16843717>>, accessed 20 April 2013.

⁷ See The Economist, 2012. “China’s military rise: The dragon’s new teeth”. Available at: <<http://www.economist.com/node/21552193>>, accessed 07 April 2013.

British era for not being clearly demarcated, more than anything else.⁸ When Tibet and Sikkim “merged” into their respective capitals, apart from just securing its own territory, none of them tried to escalate the situation.

It is also worth mentioning what Maxwell argued; it was basically Nehru’s heavy-handedness towards then-struggling China and his intransigence concerning the negotiations on border demarcation (Maxwell, 1970). He argues that Nehru was excessively adamant on claiming that the McMahon Line, an informally understood border as the British legacy, represents the border between two countries, with our without map, which in the end compelled the Mao China to come down to forcefully seized its borders (Maxwell, 1970) Even now since no politicians in India would apparently dare to question what Nehru established, also for the nationalism issue and so on, the hostility and suspicion remain. Besides, the fact that Mao’s nationalist propaganda and a tactic to legitimize the Great Leap Forward could have prompted him to attack India cannot be denied.

Nepal on the other hand, involuntarily bears the brunt of this perceived hostility particularly from the Indian side. Incidentally, in a controversial interview published in the Times of India, Nepal’s Chief of Army Staff Gaurav S. Rana⁹ also surprisingly gave his statement that “In all military agreements, there are problems when you draw lines of control on maps using a pen. Whenever there is a violation, either country then blames it on the thickness of the drawn line. So there are no signs of any concern for India.”¹⁰

India and International Norms

⁸ The Economist, 2010. “India and China: A Himalayan Rivalry”.

⁹ Chief Rana was educated in India, and both his mother and his wife were from India as well. He is a good example to show the socio-political complexities between the two countries. His “undiplomatic” statement drew a huge controversy in Nepal. One commentator I interviewed said that this very confusion regarding Nepali and Gorkhali (Nepalese of India) identity always comes into play, put it other way, what the chief said was as being Gorkhali but not Nepali. This issue is inherently complex and out of the scope of this study.

¹⁰Dua,R.2013. “China can’t afford to enter India: Nepal Army Chief”. Available at: <<http://timesofindia.indiatimes.com/india/China-cant-afford-to-enter-India-Nepal-Army-chief/articleshow/23488581.cms>>, accessed on 11, Oct. 2013.

The irony in the economic growth of India and China is that each of them embraces an opposing ideology. Given the relevance of the “democratic peace theory” that democracies do not fight each other, in order to tackle the headlong military growth of China, the international community’s focus naturally comes to India. China, being second to US in military spending, what concerns the West the most now is how to engage China in international institutions, rules and norms in the hope of averting any potential conflict as well as utilize China’s economic might to heal world’s problems¹¹.

India, although not quite confident that the West would come to its rescue when really needed, the most powerful leverage it has is its democratic character. Both the West and India need this very character of India more than ever before. Its alliance with the West hinges upon this; and by extension, the deterrence vis-à-vis China, aspiration for the permanent membership at the United Nations Security Council, securing its energy supplies, fight against terrorism, and many more. Against this backdrop, could India afford to, say, *sikkimize*, Nepal? Will it do so at the expense of its democratic identities and interests?

Any action that would put its democratic identity in jeopardy is not in India’s or in the West’s interest. The contemporary India relies on the rhetoric like, for instance, in the words of the former Foreign Secretary of India and the former ambassador to Nepal Mr. Shyam Saran “ (I)ndia is the only nuclear weapon state to declare that it believes its security would be enhanced, not diminished, in a world free of nuclear weapons”¹². That is perhaps because of the transformation of threat from Pakistan, as India’s policy-makers fear that the Pakistani regime itself is not much of a threat for India compared to what a failed Pakistan could constitute in the context of nuclear weapons falling into extremist hands.

¹¹ Several journal articles or newspapers argue in this line. For instance, see Ikenberry, John G. (2008) “The Rise of China and the Future of the West”, Foreign Affairs. Available at: <<http://www.foreignaffairs.com/articles/63042/g-john-ikenberry/the-rise-of-china-and-the-future-of-the-west>>, accessed 05 April 2013

¹² Saran, S. 2013. “Weapon that has more than symbolic value”. Available at <<http://www.thehindu.com/todays-paper/tp-opinion/weapon-that-has-more-than-symbolic-value/article4682120.ece>> , accessed 02 April 2013.

Nonetheless, it shows India's identity of a democratic state, and so it redefines its interests. Even in realist perspective, for instance, will it be willing to set precedent in the region so that China would legitimize its aggression against Taiwan, which would certainly drag in international powers? The international community has already given some concessions by turning its blind eyes on Kashmir, or Sikkim, or North East India, or India not signing or ratifying the Nuclear Proliferation Treaty and the Nuclear Test Ban Treaty and so on.

Concluding remarks

These facts perhaps explain why India's unilateral "patronage", and thus its unilateral formula for Nepal will not work anymore, unless the international community endorses it. India not only accepted the supposedly European formula of apolitical electoral government in Nepal, although it was not an option, it also had to use its leverage on Nepal to ensure that the foreign plan would be successfully employed. Even though many experts still see such practices as a diversification of interference in Nepal from one or two to four, making it more difficult to function as a sovereign nation, the most important aspect of this has been overlooked; **the weak state strengthens its sovereignty by the community's recognition.**

Although, on the one hand national sovereignty has been seemingly breached, on the other, Nepal has rescued its running-down-the-river sovereignty vis-à-vis India via the international community. Former Foreign Minister and political analyst of Nepal Mr. Ramesh Nath Pandey claims that a country like Nepal where all the five permanent members of the UN Security Council are actively present, it would not be that easy for India to simply annex it¹³. His argument further reinforces the theory that the group recognition makes the weak state stronger as regards its sovereignty against a predator state. Having said all that, although it is true that the "soft" state acquires sovereignty not from the national capacities but from the external recognition, too much weakening of national capacities could provoke the same external actors to ruin its sovereignty.

¹³ He said this while taking a popular TV talk show Disha Niradesh with Bijaya Kumar on Kantipur TV.

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