

INDIA, CHINA AND NEPAL: THE TRIJUNCTION CONUNDRUM

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ABSTRACT

This paper deals with the current tensions along the Indian border, due to the Galwan and Kalapani issue. It explains the reasons for the changes in the attitudes of both the countries with regard to India. The paper further succinctly explains the effects on international law due to these crises. It gives an insight to the way India should deal with the two issues in the short term. The paper also discusses the consequences of both these issues in the longstanding relations with China and Nepal. Finally, it gives an idea of long time change in foreign policy to ensure such problems are tackled diplomatically.

The ship was sailing through the calm and pristine ocean, with peace and tranquility beholden. Suddenly the firmament changed, the thundering clouds thickened and streaks of lightning began to strike. The ship started wavering in its path, the ocean water, hitting it hard on the deck. It was necessary that the ship hold full mast to protect herself from the pangs of the roaring water. Indian foreign policy with regard to its two key neighbors China and Nepal is at such a threshold, where a recalibration of the policy is of utmost necessity. Such a recalibration at the earliest would be utmost essential for Indian interests.

INDIA'S RELATIONS WITH CHINA & NEPAL: AN OVERVIEW

India and China's relations have had a long history, dating to the ancient times. The relation based itself on the strong influence of Buddhism that had

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flown from its mother country to China. History is replete with travels of Chinese monks to India and vice versa, some of the famous being Fa Hien and Xuan Zang from China and Bodhidharma from India. These high level visits of leaders from both the countries have been a continuous procedure in the relationship. The increasing bilateral trade has led to an increasing trade deficit for India pegged at \$58.4 billion.²⁵⁸ The relationship from the 1950s to the present has witnessed a number of ups and downs, the most regretful one being the Sino-Indian War of 1962. The relationship has now changed from one of cooperation to that of strategic competition in different fronts. The recent Galwan Crisis is the reflection of such a strategic change in the relationship and one which India should not close her eyes to.

India and Nepal share a longstanding relationship, one which is metaphorically called as “*roti-beti*” relationship. This relationship valued the deep roots that both the countries, shared, the informal trade between the two sides, the sharing of religions, the love for movies. But for the last few years this relationship has seen continuous setbacks. Nepal has moved away from being the so called backyard of India, to a state with diverse relationships spanning different countries. One of the key reasons for this has been the increasing formalization of economy of India which seemed anachronistic to the largely informal trade that India and Nepal had.²⁵⁹ Thus the strain witnessed, is due to the divergence of interests, political and economic of the two countries and also due to the domestic politics in both the countries. It is in this light that we have to look at the recent political posturing of Nepal with regard to the Kalapani issue. The ramifications of this on the relationship would be many and varied.

²⁵⁸ Ministry of External Affairs, *India China Trade and Economic Relations* (July. 17, 2020, 1:08 PM), <https://www.eoibeijing.gov.in/economic-and-trade-relation.php>

²⁵⁹ Atul K Thakur et al, *The Challenges Facing India-Nepal Ties*, Observer Research Foundation (July. 09, 2020), <https://www.orfonline.org/expert-speak/the-challenges-facing-india-nepal-ties-69458/>

**THE CHINESE FRONT AND THE GALWAN ISSUE: BILATERAL
AGREEMENTS AND INTERNATIONAL LAW**

A. THE INCIDENT

The evening of June 15 would remain as the day one of the deadliest clashes between India and China happened, at Galwan. The deadly clash between the two sides led to 20 soldiers from the Indian side being martyred and an unconfirmed number of Chinese soldiers too facing casualties. Post the incident a number of calls regarding lack of proper analysis of intelligence and similar issues has been trending in various circles. Lack of proper analysis of intelligence only answers why could have India failed to preempt this situation. But it fails to answer why China is taking an aggressive posturing along the Line of Actual Control (LAC). Only an answer for this latter question would ensure such further actions are preempted diplomatically.

B. CHINA'S FOREIGN POLICY AND GALWAN INCIDENT

China's foreign policy has evolved both with the needs of the time as well as the needs and domestic potential of the country. China has evolved from being a country maintaining a low profile (Deng Xiaoping's thought) to one which overtly aims at playing an important role on the international stage. The various facets of dominance of China can be witnessed through the Belt and Road Initiative (economic dominance), the aggressive posturing in the South China Sea and the tussle for power with the US. China has reached to a level of dominance in different arenas that a show of strength and dominance in the South Asian region was in the offing. Thus, Galwan valley incident cannot be called a sudden outburst of emotions; rather it was in concurrence with the enlarging Chinese dominance and evolving Chinese foreign policy.

Change in Chinese foreign policy can be witnessed from the harsher statements coming from the administration on different issues.²⁶⁰ The need for dominance in the various domains is pertinent for China because of its increasing footprint across the globe, be it good quality cheaply priced labor or the high grade investment in port and other maritime domain (The Gwadar Port of Pakistan is a clear example.). The ‘Wolf Warrior’ diplomacy of China is an outcome of rising nationalism and the need to tell the China story. This became particularly necessary post the Covid-19 pandemic where China was accused of lack of transparency.²⁶¹ It required that it cleans its image of a country with less transparency and post the reduction of pandemic in China it took to its mask diplomacy to garner international support. Finally China used the opportunity of the spreading pandemic in other countries to undertake a tough posture in a number of areas. Thus its actions like the Galwan issue, the tough posturing in the South China Sea issue boils down to one single point, bringing the present multilateral world to a partially unilateral set up dominated by China in different sectors. Whether it is possible or will it be restricted is for no one to predict, but the machinations of the Chinese definitely aim for the same.

C. THE GALWAN ISSUE & RAMIFICATIONS ON INTERNATIONAL LAW

China and India has always had skirmishes on the border, at different periods, the one preceding Galwan being the Doklam valley issue, where 70 Indian soldiers were injured. But what makes Galwan valley incident extremely sinister is that for the first time since 1975 deaths have occurred on the Line

²⁶⁰ Kurt M. Campbell et al, *China Is Done Biding Its Time*, Foreign Affairs (July. 15, 2020) <https://www.foreignaffairs.com/articles/china/2020-07-15/china-done-biding-its-time>

²⁶¹ Zhiqun Zhu, *Interpreting China’s ‘Wolf-Warrior’ Diplomacy*, The Diplomat (May. 15, 2020) <https://thediplomat.com/2020/05/interpreting-chinas-wolf-warrior-diplomacy/>

of Actual Control.²⁶² The other depressing fact is that the deaths happened, even with different bilateral border agreements signed in 1993 and 1996 being in place. In one sense this gives one the realization of the present disutility of these bilateral agreements and the need for a review of the agreement itself and also the mechanism for enforcing the agreements. It would be pertinent at this juncture for this author to briefly analyze the 1993 and 1996 bilateral border agreements that India had signed with China.

THE 1993 BILATERAL AGREEMENT

The 1993 Agreement named as the ‘Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control in the India-China Border Areas’ is one of the existing mechanisms for talks with China on border issues. The agreement aims to ensure mutual respect in sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit and peaceful coexistence and aims to maintain peace and tranquility in areas of line of actual control.²⁶³ It categorically states that neither of the parties would resort to the use of force and threaten the other by any means and till the boundary question is found an ultimate solution the two sides are to strictly observe the line of actual control.²⁶⁴ This clause was in clear violation by Chinese where the Chinese transgressed this line through the deployment of military equipment and similar hardware.

²⁶² Sushant Singh, *India-China Galwan faceoff: How serious is the situation, what happens next?*, The Indian Express (June.19, 2020)

<https://indianexpress.com/article/explained/gulwan-faceoff-china-india-border-dispute-explained-6463394/>

²⁶³ Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control in the India-China Border Areas, India-China, Sept. 7, 1993 https://peacemaker.un.org/sites/peacemaker.un.org/files/CN%20IN_930907_Agreement%20on%20India-China%20Border%20Areas.pdf

²⁶⁴ *Id.* Art. 1

This agreement further envisages a reduction in the deployment of military forces along the line of actual control.²⁶⁵ Prior to the incident at Galwan there was large deployment of the military of both sides along the Line of Actual Control, which again is in violation of the Agreement between the two countries. Further, the action of the People's Liberation Army to attack the Indian army personnel supervising the withdrawal was clearly a unilateral use of force with disregard to the 1993 agreement.

THE 1996 BILATERAL AGREEMENT

This agreement was a subsequent effort to further strengthen the existing border peace mechanism. It envisages a peaceful border through a clear ban on use of military capability against the other side.²⁶⁶ The agreement bans the opening of fire, or causing bio-degradation through the use of hazardous chemicals or through conducting blast operations.²⁶⁷ Thus any form of violence, even using clubs or fistfights are technically banned under the Agreement. Thus, the rationale of no bullets having been fired during the Galwan incident falls flat on its face and the bilateral agreement nonetheless stands violated.

Further, the agreement states that in case any exercises being conducted in close proximity of the Line of Actual Control, it is necessary that the strategic direction of the main force involved shall not be towards the other side.²⁶⁸

²⁶⁵ *Id.* Art. 2

²⁶⁶ *Agreement Between the Government of the Republic of India and the Government of the People's Republic of China on Confidence-Building Measures in the Military Field Along the Line of Actual Control in the India-China Border Area*, India-China, Nov. 29, 1996, Art. 1

https://peacemaker.un.org/sites/peacemaker.un.org/files/CN%20IN_961129_Agreement%20between%20China%20and%20India.pdf

²⁶⁷ *Id.*, Art. 6

²⁶⁸ *Id.*, Art 4 (1)

The Chinese army has been carrying out its summer exercises opposite Ladakh which is in violation of this agreement.²⁶⁹

Thus, both the agreements have seen gradual violations by both the countries and in essence the need is to review the format of these agreements and to understand how the violation of bilateral treaties has an effect on International Law.

BILATERAL AGREEMENTS AND INTERNATIONAL LAW

'*Pacta Sunt Servanda*' forms the crux of any agreement under International Law. The fundamental principle of treaty law is undoubtedly the proposition that treaties are binding upon the parties to them and must be performed in good faith.²⁷⁰ This basic principle has become a customary principle of the various international agreements that have been entered into. These agreements are considered generally binding in nature, unless the parties did not intend to create such obligations.²⁷¹ Article 2 of the Vienna Convention of Law of Treaties defines treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."²⁷²

The Bilateral Border Agreements between India and China clearly comes under the definition of a treaty and the intention of both the parties was to preserve border peace. This being the intention it could be safely argued that the treaty was intended to be binding on both the parties and it was no

²⁶⁹ Pranab Dhal Samanta, *Chinese Action Violates 1993, 1996, and 2013 Border Agreements*, The Economic Times (Jun.18,2020)
<https://economictimes.indiatimes.com/news/defence/chinese-action-violates-1993-1996-and-2013-border-agreements/articleshow/76405795.cms>

²⁷⁰ MALCOLM. N. SHAW, INTERNATIONAL LAW 903 (6th ed, 2008)

²⁷¹ *Id.* At. 905

²⁷² *Vienna Convention of Law of Treaties*, Art.2(1)(a), May. 23, 1969,
https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

informal agreement. The Vienna Convention of Law of Treaties, 1969 under Article 26 embodies the principle of “pacta sunt servanda”, when it states that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”²⁷³ This principle assumes relevance since; it aims to ensure a peaceful society based on mutual cooperation. The necessity of such a principle is to ensure, that world order is preserved and rights and duties are defined, considering the fluid nature of international law. The principle depends on the intention of the parties to the agreement, and thus a straitjacketed formula as to whether this principle would apply for all the treaties is impossible.

Considering the issue of India and China, the fact that both the countries are aspiring to play a greater role in the international stage, the importance of the principle of “pacta sunt servanda” increases further. That the two countries ought to resist the impulse to unilaterally assume more power, is the reason for entering into such bilateral agreements. Thus this gradual violation of these bilateral agreements is the negation of this basic customary principle which assumes great relevance in this world of developing aspirations.

The “pacta sunt servanda” rests on the principle of good faith which forms the basis of any agreement entered into. It is necessary that the parties to the agreement believe in the objects of the agreement and proactively ensure the implementation of the agreement in letter and spirit. The principle of good faith for treaties was recognized in the *Nuclear tests case* where the International Court of Justice held that the “one of the basic principle governing the creation and performance of legal obligations, is the principle of good faith.”²⁷⁴ This essential aspect of good faith was found lacking as

²⁷³ *Id.* Art. 26

²⁷⁴ *Nuclear Tests Case (Australia v France)*, 1974 I.C.J. 253, 46 (December 20) Reports of Judgments, Advisory Opinions and Orders

seen from the Galwan Valley incident. The critical aspect of good faith is necessary for maintaining an international order and to ensure peaceful and sustainable development of the world at large.

WAS THERE A MATERIAL BREACH ?

The next pertinent question that needs to be answered is whether the breaches that have been committed to these bilateral agreements are “material breaches” for the termination of these agreements. The Vienna Convention of Law of Treaties provides that a “material breach by a party to a bilateral treaty entitles the other party to invoke this breach as a ground for terminating the treaty or suspending its operation in whole or in part”.²⁷⁵ Further, material breach under the Convention is defined as two instances which include, firstly, a repudiation of the treaty not sanctioned by the present Convention, secondly, the violation of a provision essential to the accomplishment of the object or purpose of the treaty.²⁷⁶ It is this second point that we have to deal with. The most important question is whether the actions of both India and China on the Line of Actual Control amounts to a material breach for the other to claim a repudiation of the agreement.

The principle of material breach arises from the longstanding principle “*inadimplenti non est adimplendum*” which allows a State party to forego obligations, if the other party does not keep the same. This principle aims to balance the relationship among nations and ensure that foreign and military policies do not have negative exigencies on international treaties. The key aspect to claim a material breach is whether the agreement has become impossible to be performed.

²⁷⁵ Vienna Convention of Law of Treaties, Art.60(1), May 23, 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

²⁷⁶ *Id.* Article 60(3)(a)&(b)

It would be pertinent to briefly analyze the Arbitration between the Republic of Croatia and the Republic of Slovenia.²⁷⁷ This case related to Croatia shutting down an Arbitration Agreement claiming material breach. The Tribunal interestingly decided that material breaches occur only when the purpose for which the agreement is entered into stands impossible due to the breaches committed.

Taking this award and rationale into consideration the actions on part of both China and India would not amount to material breaches. These actions have not made the utility of these border agreements null and void. Rather these would be categorized as mere skirmishes. Further, claiming a material breach would not be in anyone's benefit. Considering that the India and China borders are governed by the Line of Actual Control, it is necessary that a backing of the agreement is essential for preventing such future issues. If a call for "material breach" is preferred by India or China, it would be for their own doom. Thank fully the issues have not been called with such harsh measures.

Further, neither party could call for a "fundamental change in circumstances"²⁷⁸ and repudiate the agreement. But this would not be possible as the agreement aims to limit the encroachment of the Line of Actual Control, and thus would come within the purview of Article 62 (2)(a), "establishes a boundary". Though no clear boundary has been established between India and China, the Agreement itself states that till the boundary issue is solved, it is the Line of Actual Control which is to be adhered to.

²⁷⁷ *Arbitration Between the Republic of Croatia and the Republic of Slovenia*, PCA Case no 2012-04

²⁷⁸ *Vienna Convention of Law of Treaties*, Art. 62 (1)(a)&(b), May. 23, 1969 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Thus, we can safely argue that this agreement cannot be termed as being breached by both the parties, due to Galwan Valley incident or even the earlier incidents. The Galwan valley incident, was definitely a breach, but it could not be categorized as a material one, primarily because post the conflict, mechanisms of border talks were entered into with full earnest. Having argued, that the agreements cannot be repudiated, we should ask ourselves; Does there exists a remedy for this boundary Issue?

THE SOLUTION

The most important process for solving this issue is to ensure that the boundaries between the countries are properly demarcated. The Line of Actual Control far from being clear is generally a concept followed by both the countries.²⁷⁹ The LAC falls on three sectors the Eastern Sector comprising Arunachal Pradesh and Sikkim, the Middle Sector comprising Uttarakhand and Himachal Pradesh and the Western Sector covering the Union Territory of Ladakh. The Western Sector is the most controversial of the three sectors and the Galwan Valley is located on this sector. The LAC runs through Galwan valley, precisely to the east of the confluence of Galwan and Shyok River.²⁸⁰ The Chinese had during the 1962 War claimed the entire valley as part of its territory but since the 1993 Agreement that claims had been subsided. Thus what is being witnessed post Galwan is a movement back to the old claim by China. This is an example of clear Chinese aggression and taking the advantage of a less clarified Line of Actual Control. Thus the primary aim of the Commander level as well as the diplomatic talks post Galwan should be to clearly demarcate the western sector of the Line of

²⁷⁹ Sushant Singh, *Line of Actual Control: Where is it located, and where India and China differ*, The Indian Express, (June. 18, 2020) <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>

²⁸⁰ Ananth Krishnan, *Who does Galwan Valley belong to?*, The Hindu, (June. 21, 2020) <https://www.thehindu.com/news/national/the-hindu-explains-who-does-galwan-valley-belong-to/article31879418.ece>

Actual Control. Any subsequent agreement on boundary issues between the countries should include in writing the areas demarcating the LAC, especially in the Western sector. If this process is not expedited then such subsequent overreach in an overzealous manner would be forthcoming.

As far as the boundary issue is concerned, the territorial claims of India include Aksai Chin which is a part of the Union Territory of Ladakh, while China claims the entire of Arunachal Pradesh as Southern Tibet. The best possible and most realistic solution would be to make the clearly demarcated Line of Actual Control as the Western boundary between India and China. This may reduce the problems to a great extent and would allow greater military mobilization for India in these areas. The borders between the two countries should rather than being a place of conflict and skirmishes can be made into an area of cooperation and trade. This would require greater coordination between the armies, diplomatic personnel and the Governments of both these countries.

As to the short-term solution of preventing another Galwan, the need of the hour is to pro-actively enter into the Commander level talks and increase the contact between the people in these border towns. Such an approach would add much more humanitarian perspective to the relationship rather than only being an avenue for contest between the countries.

INDIA AND NEPAL FRONT- THE CURIOUS CASE OF MEANDERING

KALITHE ISSUE

In November 2019 India published its revised political map which showed the Kalapani area within the Indian Territory. Further, India also inaugurated the Darchula-Lipulekh Pass link road, which would be used by the Kailash

Manasarovar Yatra pilgrims.²⁸¹ All these catapulted a strong reaction from the Nepal government leading to a steady deterioration of relations.

THE DISPUTED AREAS

The areas of recent dispute between Nepal and India are those of Kalapani, Lipulekh, Limpiyadhura and Susta. The Kalapani lies to the east of Uttarakhand and in the Pithoragarh district. The dispute is based on the claim on the origin of the River Kali. Nepal claims that it originates in the region of Limpiyadhura and thus all the regions falling to the east which includes, Lipulekh and Kalapani would be part of Nepal. India on the other hand claims that the Kali River originates in the Kalapani region and thus the border starts from this region. The Sugauli Treaty of 1816 had demarcated the border on the basis of the origin of the Kali River and the areas west of it came under British India while the areas east of it came under the Kingdom of Nepal. The biggest issue with regard to this dispute is the lack of clear consensus in the precise location of the Kali River.²⁸² The biggest problem is the oft shifting course of the Kali river and this further complicates the matter as it was argued by Alok Kumar Gupta in “Kalapani: A Bone of Contention Between India and Nepal”.²⁸³ Thus the issue of Kalapani is one which is primarily based on lack of clarity and which requires a proactive approach from both the sides.

²⁸¹ Kallol Bhattacharjee, *Why are India and Nepal fighting over Kalapani?*, The Hindu, (May. 24, 2020) <https://www.thehindu.com/news/national/why-are-india-and-nepal-fighting-over-kalapani/article31660401.ece#:~:text=The%20story%20so%20far%3A%20The,Jammu%20and%20Kashmir%20and%20Ladakh.>

²⁸² Adrija Roychowdhury, *Mapping the history of Kalapani dispute between India and Nepal*, The Indian Express, (June. 13, 2020) <https://indianexpress.com/article/research/mapping-the-history-of-kalapani-dispute-between-india-and-nepal-6423687/#:~:text=Located%20on%20the%20banks%20of,part%20of%20its%20Dharchula%20district.>

²⁸³ Alok Kumar Gupta, *Kalapani: A Bone of Contention Between India and Nepal*, Institute of Peace and Conflict Studies, (Oct. 17, 2000) http://www.ipcs.org/comm_select.php?articleNo=422

KALAPANI ISSUE AND THE INDO NEPAL FRIENDSHIP TREATY OF 1950

The Indo-Nepal Friendship Treaty of 1950 is the key agreement which paved way for decades of friendly relations between the two countries. The recent crisis could jeopardize the friendly relations established through this treaty. It would be pertinent to briefly analyze the provisions of this treaty.

The treaty aims to ensure that everlasting peace and friendship between the Government of India and Nepal is present and also to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other.²⁸⁴ It further explicitly states that it cancels all previous treaties, agreements and engagements entered into between the British India and Government of Nepal.²⁸⁵ This article is important since the question of whether the Sugauli Treaty, 1816 stands cancelled on account of the above mentioned article would have a bearing over the Kalapani issue. The Sugauli Treaty was a post war treaty but, it too was establishing relationship between the Kingdom of Nepal and British India. Furthermore, one of the key guarantees given to the citizens of both India and Nepal is the reciprocity in the treatment and privileges by the two Governments.²⁸⁶ This reciprocal benefit was a key factor for the cordial and civilizational ties that both the countries enjoyed. One of the most important points in the Friendship Treaty was the freedom given to Nepal to import, from or through the territory of India arms and ammunition or warlike material and equipment necessary for the security of Nepal.²⁸⁷ Thus this treaty was aimed as a starting point to the upbringing of close ties between the two countries.

²⁸⁴ *Treaty of Peace and Friendship Between the Government of India and the Government of Nepal*, India-Nepal, (July. 31, 1950), Art. 1 <https://mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>

²⁸⁵ *Id.* Art. 8

²⁸⁶ *Id.* Art. 6 and Art. 7

²⁸⁷ *Id.* Art. 5

CONFLICT IN TREATIES: IS THE SUGALI TREATY INVALID ?

The treaty law under the Vienna Convention of Law of Treaties under Article 59 states that a treaty would be considered terminated if all the parties to it conclude a later treaty relating to the same subject matter and it appears that the later treaty should be the one which governs the relations or the provisions or the later treaty is incompatible with the former treaty.²⁸⁸ The Treaty of Friendship between India and Nepal under Article 8 clearly mentions that for all the matters dealt in this treaty all earlier treaties stand cancelled.²⁸⁹ Both the treaties have similar subject matter, like establishing diplomatic relations, cooperation between the two countries. Thus if Nepal argues that the Sugali treaty is to be governing the Kalapani border, India can also argue that the latter treaty effectively cancelled the earlier. The 1950 treaty clearly calls for a invalidation of all other agreements pertaining to the subject matter and such an argument by India would have a bearing. In the Arbitration between Eureka and Slovak Republic²⁹⁰ the tribunal had clearly stated that under Article 59 of VCLT, the requirement is a broad similarity or overlap, and it is not necessary that specific provisions have to be similar for an earlier treaty to be terminated.²⁹¹

But the much more important question that we have to ponder is the implications on the Treaty of Peace and Friendship between India and Nepal due to the current crisis.

IMPLICATIONS ON THE 1950 TREATY

²⁸⁸ *Vienna Convention of Law of Treaties*, Art. 59(1) (a)&(b), May. 23, 1969

²⁸⁹ *Treaty of Peace and Friendship Between the Government of India and the Government of Nepal*, India-Nepal, (July. 31, 1950), Art. 8, <https://mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>

²⁹⁰ *Eureka v Slovak Republic*, Permanent Court of Arbitration, PCA Case no 2008-13 <https://www.italaw.com/sites/default/files/case-documents/ita0309.pdf>

²⁹¹ *Id.* At 240

The border issue between India and Nepal has reached such heights that have not been seen in recent times. The amount of hatred that the people of Nepal have over India has increased to a great extent. But, this issue could have the negative outcomes over the long standing treaty of friendship.

Primarily, the concern for India would be the loss of an ally of all times. Nepal being a country having strategic as well as civilizational ties, such a loss would be one which India could not fathom. The concept of Neighborhood First would be in cold water and could have diplomatic drawbacks for India. Secondly, India would have to content with a rising China in the close neighborhood. A growing China would be a great cause of concern not only in the strategic domain but also in the economic and cultural domain. It is important to be noted that Nepal has made Mandarin Chinese mandatory in its schools, which clearly would lead to an erosion of Indian soft power in the region. Economically, Nepal being part of the Belt and Road Initiative can have an impending problem of debt trap in the South Asian region.

Thirdly, Nepal would have to face the big drawback of losing the freedom to import arms and ammunitions through the territory of India. A breach of this treaty could put a stop to this and lead to much costlier arms import mechanism for Nepal. Or it could also lead to an increase in the arms purchase of Nepal through the Tibetan region. Thus China could play a greater role in the arms dealings of the South Asian region.

Fourthly, the people to people contact that has been established through this treaty would become redundant. It is this contact between the people that have led to greater understanding and cooperation between the governments. Thus a break in treaty could lead to greater escalation of the relations.

Fifthly, there would be a change in the geopolitics of the South Asian region. China and Nepal would come closer than ever and there would be the support of the U.S.A for India. Russia could emerge much more neutral in its stance since it has much to gain and lose from both China and India. The other countries in the South Asian region, could try to align strategically closer to both India and China, considering gaining the best interests from both the countries. There would be the emergence of greater debt crises in the region, due to the emerging consequences of the Belt and Road Initiative.

A breaking of this treaty between India and Nepal could have a much more domino effect than we could expect. Thus it is essential for both the countries to understand the deep rooted significance of the relationship that the countries have. It is necessary for strengthening the people to people ties with both sides to get a clear understanding of the rich heritage that both the countries have and cooperating together for the greater good of the entire region.

CHANGE IN INDIAN FOREIGN POLICY?

After an analysis of two events with two neighboring countries it is clear that a change in Indian diplomatic policy is utmost essential. This section would consider the possible changes that could help to tighten the mast of foreign relations for India.

India should have a much proactive approach in diplomacy, especially in the South Asian region. Post the Neighborhood First policy, much getaway has not been possible with the neighbors. India has longstanding issues with different neighbors. Either, the issues have to be solved, once and for all, or else it is necessary that the issues are separated from the gains in the relationship. For example, consider the issue with Nepal, the issue of Kalapani should be decoupled from the economic or cultural relations. India should remember that any action similar to the 2015 blockade would only

have severe implications for Indian power in South Asia. This has to be the policy with all relations, which could give much more leeway for relations to grow. An area of cooperation can act as healing for an area of discord.

Second, India has to be expeditious in its delivery of kept promises. India has on numerous occasions delayed in the implementation of projects. A clear example is the Kaladan multi modal transport which has been delayed to nearly two decades.²⁹² Thus, such delays on part of India bring hesitancy among countries to actively encourage India to take up projects. India needs to follow a transactional approach while implementing the projects while also giving importance to the depth and history of relations.

Thirdly, India should as Indian External Affairs Minister stated, never be part of an alliance system.²⁹³ A strategic autonomy is essential for India, if it intends to emerge as a responsible power. Having a clear policy on issues concerning India and weighing each relationship is necessary for ensuring such strategic autonomy. This author does not mean to say that enriching relationships is not essential, but only that India cannot fall into the cauldron of raging conflicts between different countries important for India. Thus autonomy is essential for India.

Fourthly, India needs to erase the paranoia it has with Pakistan and open its eyes to an impending wolf warrior China. Such a realization is essential because, Pakistan may be able to beat India in a battle, but it could never win a war with India. On the other hand China is still capable to win a war with India on different fronts and this should make us wary.

²⁹² Constantino Xavier, *The quest for regional connectivity*, The Hindustan Times, (Feb. 05, 2020) <https://www.hindustantimes.com/analysis/the-quest-for-regional-connectivity-opinion/story-DZU7JLrCXBebOmZHkwUbbL.html>

²⁹³ *India will never join any alliance: Jaishankar*, The Deccan Chronicle, (Jul. 21, 2020) <https://www.deccanchronicle.com/nation/in-other-news/210720/india-will-never-join-any-alliance-jaishankar.html>

Thus, to conclude this analysis, the author sincerely believes that India has the will and capability to ensure that the mast is held tight, that the water on the deck is thrown back into the sea and surge ahead to create a more beautiful, peaceful and harmonious firmament.